

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

Chandigarh, this the 31st day of May, 2018

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**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

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I. O.A. No. 060/00665/2018

Vivek Sharma aged 32 years son of Sh. Shyma Sunder Sharma resident of H. No. 2015, Sector 40-C, Chandigarh (Storekeeper – Group-C post.

..... **Applicant**

(Argued by: Mr. Vivek Sharma, Advocate)

Versus

1. Union of India, through its Secretary, Department of Health and Family Welfare, Union of India, New Delhi. (Nirman Bhawan).
2. Post Graduate Institute of Medical Education and Research Chandigarh, Sector 12, Chandigarh through its Director.
3. Gurvinder Singh son of Sh. Baldev Singh, Hospital Attendant, PGIMER, Sector 12, Chandigarh.
4. Vinod Kumar son of Sh. Ramesh Chand, Store Keeper (to be appointed in view of impugned revised result) through Director, PGIMER Sector 12, Chandigarh.

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Respondents

II. O.A. No. 060/00669/2018

Sumit Sharma s/o Sh. Surinder Kumar Sharma aged about 30 years R/o House No. 1483/1, Sector 29-B, Near K.V. School, Chandigarh (Group C)

.....**Applicant**

(Argued by: Mr. Rajinder Sharma, Advocate)

Versus

1. Union of India, through the Secretary to Govt. of India, Ministry of health and Family Welfare, Nirman Bhawan, Department of Health and Family Welfare, New Delhi.
2. Post Graduate Institute of Medical Education and Research (PGIMER), through its Director, Sector 12, Chandigarh.
3. Mr. Gurvinder Singh son of Sh. Baldev Singh, resident of 6, Khuda Ali Sheer, UT, Chandigarh.

.....**Respondents**

ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)

1. As the identical questions of law and facts are involved, so we propose to dispose of the indicated Original Applications (OAs), by virtue of this common decision, in order to avoid the repetition of facts.
2. The challenge in these OAs, instituted by the applicants, is to the impugned orders dated 26.05.2018 (Annexure A-14) (in Ist case) and (Annexure A-1) (in IInd case), whereby their services from the posts of Store Keepers, were terminated with immediate effect, as per terms and conditions of their offer of appointments letters, by giving one month's salary, in lieu of notice period of one month, by the competent authority. The applicant in the Ist case has also challenged the revised result (Annexure A-8), issued by the PGIMER.
3. The matrix of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant O.A., and emanating from the record, is that in pursuance of advertisement dated 04.08.2014 and corrigendum dated 14.08.2014, issued by the Post Graduate Institute of Medical Education and Research (for brevity, PGIMER), the applicants applied and were declared successful, for the posts of Store Keepers, vide result sheet dated 09.09.2016.
4. Meanwhile, one Gurvinder Singh, claiming himself to be eligible, filed O.A. bearing No. 060/01054/2015, challenging his ineligibility clause. As such the applicants were conditionally appointed vide letter 22.09.2016 (Annexure A-4 in Ist case and Annexure A-6 in IInd case), on the post of Storekeeper, subject to the final outcome of O.A. No. 060/01054/2015, filed by Gurvinder

Singh. Having completed all the codal formalities, the O.A., filed by Gurvinder Singh, was accepted and the respondents were directed to consider his case as eligible, as far as his experience is concerned. Thereafter he be called for interview for the post of Storekeeper, then declare the result, and to take further action accordingly, vide order dated 09.12.2016 (Annexure A-6), by this Tribunal. In compliance with the pointed order, Gurvinder Singh was called for interview, and ultimately was selected on merit, on the post of Storekeeper.

5. As a direct consequence thereof, since the appointments of the applicants were conditional and subject to final outcome of the O.A. filed by Gurvinder Singh, so in the wake of selection of Gurvinder Singh on the post of Storekeeper, the impugned Show Cause Notices (in short SCN) dated 02.12.2017 (Annexure A-5 in Ist case and Annexure A-8 in IInd case) were issued to the applicants, to explain as to why their services should not be terminated. In response thereto, they filed separate replies dated 11.12.2017 (Annexure A-13) (in Ist case) and 09.12.2017 (in IInd case), which were found unsatisfactory and as such their services were terminated, after giving one month salary in lieu of one month period of notice, vide impugned order dated 26.05.2018 (Annexure A-14), by the Competent Authority.

6. Aggrieved thereby, the applicants have preferred the instant OAs, challenging the revised result sheet and the impugned orders, mainly, on the ground that the issues raised by them, in their replies, were not considered. They obtained more marks than Gurvinder Singh. It was claimed that eight posts of unreserved category were advertised, but only seven posts were filled and one

post under unreserved category is lying unfilled. So the respondents ought to have adjusted Gurvinder Singh, against the vacant post of unreserved category, and the service of the applicants should not have been terminated. Thus, according to the applicants, the impugned termination orders are arbitrary and illegal. On the strength of the aforesaid grounds, the applicants seek to quash the impugned orders, in the manner indicated hereinabove.

7. Having heard learned counsel for the applicants, having gone through the record, with their valuable assistance, and after considering the entire matter, we are of the firm view that there is no merit and the present OAs deserve to be dismissed, for the reasons, mentioned herein below.

8. What cannot possibly be disputed here is that one Gurvinder Singh had filed O.A. bearing No. 060/01054/2015, claiming himself to be eligible for the post of Storekeeper. As such, the offers of appointments, subject to condition of final outcome of the indicated O.A, were given to the applicants, vide appointment letter dated 22.09.2016 (Annexure A-4 (in Ist case) and Annexure A-6 (in IInd case). Admittedly, the O.A. filed by Gurvinder Singh was accepted, the respondents were directed to consider him eligible as far as experience is concerned, and then to proceed further accordingly, vide order dated 09.12.2016 (Annexure A-6), by a Co-ordinate Bench of this Tribunal, which has been upheld vide order dated 15.03.2017 (Annexure A-7) in CWP NO. 5202 of 2007, by the Hon'ble High Court.

9. As a direct consequence of the directions of this Tribunal, Gurvinder Singh was selected on merit, on the post of Storekeeper,

the result of selection was re-drawn, and the names of applicants did not figure in the impugned re-drawn final selection list. In that eventuality, no option was left with the Competent Authority to issue SCN to the applicants, to which they filed reply. Taking into consideration the final re-drawn merit list and all the relevant factors, the services of the applicants were terminated, by giving them one month salary, in lieu of notice of one month. They were also held entitled to a sum equivalent to the amount of their pay plus allowances for the period of the notice at the same rates at which they were drawing them immediately before the termination of their services, vide impugned order dated 26.05.2018 (Annexure A-14 (in the Ist case) and Annexure A-1 (in IInd case)).

10. Thus it would be seen that Gurvinder Singh was over-all more meritorious, so he was selected and conditional appointment letters of the applicants were withdrawn, after issuing SCNs and after providing opportunity of being heard, as per terms and conditions of the appointment letter, vide a detailed impugned order dated 26.05.2018.

11. Ex-facie the argument of learned counsel that since the applicant in IInd case obtained more marks in the written test than Gurvinder Singh, so the Competent Authority ought to have selected him instead of Gurvinder Singh, is not only devoid of merit, but misplaced as well, because all the candidates have been selected on the basis over-all merit and not on the basis of only marks, obtained in the written test, by the Selection Committee. The mere fact that the applicant has obtained more marks in written test, *ipso facto*, is not a ground, much less cogent, to select him, in place of Gurvinder Singh, who was over-all meritorious than the applicants.

12. Sequelly, another contention of learned counsel that since one post of Storekeeper under unreserved category is lying vacant, so Gurvinder Singh ought to have been adjusted against that post and the applicants should not be terminated, is neither tenable nor the observations of the Hon'ble High Court in the case of **Ramesh Kumar Vs. State of Haryana and Others** (CWP No. 7062 of 2003 decided on 01.07.2004) are at all applicable to the present case, wherein it was observed that if more meritorious candidate is not available, then the official respondents were directed to consider the cases of reinstatement of the petitioner (therein). Indeed, this contention cannot possibly be accepted because Gurvinder Singh was more meritorious and was selected on merits, whereas the applicants were not selected on merits, in the revised final merit list. As such, this Court has no jurisdiction to direct the Competent Authority to commit illegality to adjust the applicants, on speculative grounds and at their wishful thinking, which is not legally permissible.

13. Possibly no one can dispute with regard to the aforesaid observations, but the same would not come to the rescue of the applicants, in the instant controversy, where selection has already been made on merits, by the Selection Committee and approved by the Competent Authority, in the manner, indicated herein above. It is now well settled principle of law that indeed the Courts cannot sit in appeal over the decision of the Selection Committee. It was ruled in case of **Bhagwant Singh Vs. Union of India through Secretary** (O.A. NO. 449/PB/2013 decided on 10.02.2017), by this Tribunal that the scope of judicial review in the matter of appointment and selection is very limited, such as illegality or patent material irregularity in the constitution of the Selection Committee, vitiating the selection

or/ a proved malafide affecting the selection process, and not otherwise, which is totally lacking in the present cases.

14. There is yet another aspect of the matter, which can be viewed entirely from a different angle. As is evident from the record, that offer of condition appointment was given to the applicants, subject to the final outcome of the O.A. No. 060/01054/2015, filed by Gurvinder Singh. It is not a matter of dispute that the O.A. of Gurvinder Singh was accepted and he was selected on merits. As such, the name of the applicants did not figure in the final revised select list. Therefore, SCNs were issued to them, to which they filed their replies, which were found unsatisfactory, and ultimately they were terminated, as per the terms and conditions of the appointment letter, vide impugned order (Annexure A-14), which in substance is as under:-

“Whereas Sh. Vivek Sharma S/o sh. Sham Sunder resident of House No. 2015, Sector 40-C, Chandigarh was offered an appointment to the post of Store Keeper at the PGIMER, Chandigarh vide appointment letter No. PG-EII(1)-2016/F-03 dated 22.09.2016 subject to the final outcome of the O.A. No. 060/01054/2015-Gurvinder Singh Vs. UOI & Others which was pending before the Hon’ble CAT, Chandigarh Bench, Chandigarh. As such, he accepted the appointment to the post of Store Keeper and submitting his joining report int he Institute on 03.10.2016 (AN) for the said post.

And whereas his appointment letter contained condition under the para “Probationary Period” the operative part of which is read as under:-

“Your appointment will be temporary and you will be on two years of probation. Your appointment during the probationary period may be terminated at any time with one month’s notice by either side viz. The appointing authority, or the appointee, without assigning any reason whatsoever. It will be open to the Institute to pay, in lieu of notice, for the period by which the notice falls short of one month. Similarly, if you wish to resign, you may do so by depositing with the Institute your salary & allowances in lieu of the notice in respect of the period by which it falls short of one month.”

The period of probation may be extended at the discretion of the competent authority.”

And whereas the Hon’ble CAT vide its orders dated 09.12.2016 in O.A. No. 060/01054/2015-Gurvinder Singh vs. UOI & Others has directed as under:

13. In the light of the above authoritative law, we are left with no other option but to quash the impugned offer being contrary to the rule governing the field and accordingly, O.A. is allowed. Impugned orders are quashed and set aside. The respondents are directed to consider the applicant eligible as far as experience is concerned and thereafter, he be called for

an interview, for the post in question and then declare the result and take further action accordingly.

The said order of the Hon'ble Tribunal was upheld by the Hon'ble High Court vide orders dated 15.03.2017 in CWP No. 5202 of 2017.

And whereas as per orders of the Hon'ble Tribunal and Hon'ble High Court Sh. Gurvinder Singh was allowed to appear in the interview for the said post and the merit list for the post of Store Keeper as advertised vide advertisement No. PGI/RC/29/2014 dated 01.08.2014 with subsequent corrigendum & Addendum 14.08.14, 10.09.14 & 19.09.14 and result notice No. PGI/RC/2016/7526 was re-drawn in light of the orders of Hon'ble Tribunal as above and vide which, Sh. Gurvinder Singh has been placed at Sr. No. 9 and Sh. Vinod Kumar at Sr. No. 6 (similar situated candidate). Both selected in UR category on their own merit. The name of Sh. Vivek Sharma does not figure in the re-drawn merit list.

And whereas sh. Vivek Sharma S/o Sh. Sham Sunder, Store Keeper was issued a show cause notice in this regard vide dated 02.12.2017 as to why his services should not be terminated with the stipulation to submit his reply within 10 days to which he has submitted his reply on dated 11.12.2017.

I have carefully considered the reply dated 11.12.2017 submitted by Sh. Vivek Sharma, Store Keeper and do not find any merit in his reply.

Now, therefore, the service of Sh. Vivek Sharma S/o Sh. Sham Sunder, appointed as Store Keeper and posted in the Department of ENT, PGIMER, Chandigarh are terminated with immediate effect as per conditions of appointment letter by giving him one month's pay in lieu of notice period of one month. He shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services."

It will not be out of place to mention that a similar impugned order was passed in IInd case as well, by the Competent Authority.

15. Meaning thereby, the Competent Authority has examined the matter, in the right perspective, issued SCNs to the applicants, provided them an opportunity to explain the matter, and thereafter their services were rightly terminated as per terms and conditions of offer of appointment letter, by the Competent Authority.

16. Therefore, we see no reason to interfere with the impugned orders and the applicants, who were not included in the revised final merit list, cannot be adjusted, in the manner, suggested by them, in the obtaining circumstances of the case.

17. No other point worth consideration has either been argued or pressed by the learned counsel for the applicants.

18. In the light of the aforesaid prismatic reasons, as there is not merit, the instant O.As. are hereby dismissed as such, with no order as to costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 31.05.2018

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