

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00686/2016

**Chandigarh, this the 3rd day of October, 2018
(Reserved on 25.09.2018)**

...
**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

...

Joginder Singh, age 40 years, s/o Sh. Dhoop Singh, Constable (Belt No. 2008/CP), Recruitment Training Centre, Police Lines, Sector 26, Chandigarh R/o House No. 989, Kishangarh, UT, Chandigarh.

....Applicant

(Present: Mr. Barjesh Mittal, Advocate)

Versus

1. UT Chandigarh Administration, Civil Secretariat, Deluxe Building, Sector 9-D, Chandigarh through its Advisor to Administrator.
2. Home Secretary, Chandigarh Administration, UT civil Secretariat, Deluxe Building, Sector 9-D, Chandigarh.
3. Inspector General of Police, UT Chandigarh Administration, Police Headquarters, Chandigarh.
4. Senior Superintendent of Police, UT Chandigarh Administration, Police Headquarter, UT Civil Secretariat, Deluxe Building, Sector 9-D, Chandigarh.

..... Respondents

(Present: Mr. Arvind Moudgil, Advocate)

**ORDER
SANJEEV KAUSHIK, MEMBER (J)**

1. The present O.A. has been filed by the applicant seeking issuance of a direction to the respondents to anti-date his appointment as Constable to 26.02.2002 instead of 20.02.2015, when the other persons who were selected along with him, were offered appointment.

2. This case has a chequered history. The facts which led to the filing of the present case are that the applicant being eligible, applied for the post of Constable, but due to litigation, his selection was not finalized, and ultimately he, along with other candidates, was called for test held on 22.06.2001, and he was declared

successful. He was subjected to medical examination and was declared fit by the duly constituted Medical Board. However, after verification of antecedents and character from his native village, it was found that he was involved in a case FIR No. 200 dated 14.04.1998 registered u/s 148/149/323/325/307/506 IPC Police Station Sadar Bhiwani. He was, however, acquitted in the aforesaid FIR by the Additional Sessions Judge, Bhiwani, vide order dated 04.10.1999, i.e. much before the applicant was called to participate in the selection process. Despite the fact that the applicant was declared successful and placed at Sr. No. 20 in the select list, the respondents denied him appointment. This led to the filing of O.A. No. 1114/CH/2002 before this Court where the applicant challenged the action of the respondents in withdrawing his appointment as Constable, which was allowed, by this Court, directing the Competent Authority to offer him appointment as Constable within 30 days from the date of receipt of certified copy of the order. Aggrieved against that order, the Chandigarh Administration approached the Jurisdictional High Court by filing Judicial Review (CWP NO. 5909/CAT/2003 which was allowed vide order dated 24.03.2008 and the order of this Court set aside. The applicant then approached the Hon'ble Supreme Court by filing SLP (C) No. 30798/2008, which was allowed and the order of this Court was upheld, vide order dated 11.11.2014. The respondents were directed to issue appointment letter to the applicants for the post of Constable. The Review Application No. 284/2015 filed at the instance of the UT Administration was dismissed vide order dated 11.02.2015. Even thereafter, when the respondents did not comply with the order, the applicant filed CP No. 060/00001/2015

before this Court. Pending CP, the respondents issued appointment order and allowed the applicant to join as Constable w.e.f. 20.02.2015. Since the applicant was not granted the benefit from the date when the other successful candidates were offered appointment, the present O.A. has been filed.

3. Learned counsel for the applicant submitted that once the applicant has been declared successful and there is nothing against him at the relevant point of time, and his selection has been upheld up to the Hon'ble Supreme Court, then denying him the benefit from the date he was selected as such, is bad in law. He has prayed that the respondents be directed to grant him the service benefits w.e.f. 26.02.2002 instead of 20.02.2015, when the other less meritorious selected candidates had been given appointment.

4. In support of the above plea, Mr. Barjesh Mittal, counsel for the applicant, vehemently argued that once it has been held by the Hon'ble Supreme Court that withholding of appointment to the applicant by the Competent Authority is bad in law, therefore, the action of the respondents in not extending the benefit retrospectively w.e.f. 26.02.2002, cannot sustain in the eyes of law. Therefore, he has prayed for a direction to the respondents to anti-date the appointment of the applicant w.e.f. 26.02.2002.

5. The respondents have filed detailed written statement, wherein they did not dispute the factual accuracy. However, they submitted that since the applicant did not work on the post w.e.f. 2002, therefore, he is not entitled to pay and allowances for that post. Further they submitted that if the applicant is given seniority retrospectively, it will disturb the seniority of the other candidates

selected in the year 2002. On these grounds, the respondents tried to justify their action of offering appointment to the applicant w.e.f. 2015.

6. Mr. Aseem Rai, learned counsel for the respondents argued what has been stated in the written statement.

7. We have given thoughtful consideration to the entire matter and perused the pleadings with the able assistance of the learned counsel for the parties.

8. A conjunctive perusal of the pleadings makes it clear that there is no dispute about the applicant being successful and selected, along with other candidates, who were offered appointment in the year 2002, however, he was not given appointment despite the fact that there was nothing against him at the relevant point of time. The only plea which the respondents have taken is that an FIR was lodged against him in the year 1998. Admittedly, he was acquitted of all the charges in the year 1999, which means there was nothing against him at the time when he was called for participation in the selection process in the year 2001. It is also not the case of the respondents that except the FIR aforementioned, there was any other material due to which the applicant could not be offered appointment. Nor is there any voice raised by the respondents that the applicant is not suitable for appointment, in view of the report of the concerned Deputy Commissioner. The Hon'ble Supreme Court in the earlier litigation of the applicant has also held that the action of the respondents in withholding the appointment of the applicant after his acquittal is bad in law. The order of this Court was upheld and the respondents were directed to offer appointment to the applicant

within four weeks. Therefore, once he has been held eligible to be appointed to the post of Constable in the selection made in 2001-02, and the action of withholding his appointment has been invalidated by the Hon'ble Supreme Court, there is no reason to deny him the service benefits of the appointment retrospectively.

9. In the wake of above noticed facts and invalidation of the action of the respondents in withholding the appointment of the applicant by the Hon'ble Supreme Court, we are left with no other option but to direct the respondents to grant him appointment notionally, from the date when the other selected candidates were offered appointment. Consequential benefits of seniority and pay fixation etc. shall follow. However, the actual benefits will accrue only with effect from the date when he joined his duty in 2015. Let the needful be done within a period of two months from the date of receipt of copy of this order.

O.A. stands disposed of in the above terms.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 03.10.2018

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