

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A. No.60/854/2016

Date of decision: 26.09.2018

(Reserved on: 05.09.2018)

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

Sunil Kumar, age 34 years, son of Sh. Dharampal, resident of House No.119, Vasant Vihar Phase-II, Dhakoli, Zirakpur, District Mohali, Punjab (Group-C).

... **APPLICANT**

VERSUS

1. U.T. Chandigarh Administration through its Secretary, Sports Department, U.T. Civil Secretariat, Sector-9, Chandigarh.
2. Director Sports, Sports Department, Chandigarh Administration, Hockey Stadium, Block-A, Sports Complex, Sector-42, Chandigarh.

... **RESPONDENTS**

PRESENT: Sh. Barjesh Mittal, counsel for the applicant.
Sh. Vivek Arora, counsel for the respondents.

ORDER (Oral)

...
SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant assails advertisement dated 30.07.2015 (Annexure A-1) and has sought issuance of direction to the respondents to re-advertise the single post of Road Roller Driver in Sports Department of Chandigarh Administration to be filled up by open competition from amongst all segments of society.
2. Facts are not in dispute.
3. Brief detail which led to filing of this case is that respondent no.2, Director Sports Department, Chandigarh Administration issued an

advertisement dated 30.07.2015 for direct recruitment to one post of Road Roller Driver in the pay scale of Rs.5910-20200 + Grade Pay Rs.2400/-. The last date for submission of online application form was 30.08.2015. Despite the fact that the applicant is eligible in terms of eligibility criteria, as laid down in the advertisement and also in terms of recruitment rules namely Sports Department, Union Territory, Chandigarh (Group 'C' Non-Ministerial Posts) Recruitment Rules, 2004, he did not apply as the single notified post advertised was reserved for OBC category. Considering the fact that being a single post in the cadre, respondents department cannot reserve that post in terms of law laid down by Hon'ble Supreme Court in the case of **Post Graduate Institute of Medical Education and Research vs. Faculty Association**, reported as 1998 (2) SCT 794 and **S.R. Murthy vs. State of Karnataka** reported as 1999 (4) SCT 627, the applicant represented to respondent department requesting them to allow him to participate in the selection but they continued with the process of holding physical efficiency test. Aggrieved against their action to fill up single post by reserving that for OBC category, being in violation of the settled proposition of law, applicant has approached this Tribunal.

4. The applicant has taken two most important grounds for quashing the impugned advertisement, whereby respondents notified single vacancy of Road Roller Driver that too reserving it for OBC category. Firstly, that there is no post of Road Roller Driver under rules governing the field. Second plea is that even if for the sake of argument, it is assumed that there are three posts of Drivers out of which respondents can fill up one for Road Roller Driver, even then

this post cannot be reserved for OBC category because as per roster point, 4th vacancy goes to OBC category.

5. Respondents, while resisting the claim of the applicant, have filed a short written statement, wherein they did not dispute factual accuracy. However, they have submitted that since they do not have the post of Road Roller Driver, therefore, out of three posts of Driver, competent authority has decided to notify one vacancy. Since 3rd vacancy is reserved for OBC category, therefore, post was kept reserved for OBC category. It is also submitted that roster point has also been vetted by the Director, Social Welfare Department, U.T. Chandigarh.
6. We have heard learned counsel for the parties.
7. Sh. Mittal, learned counsel for the applicant argued that once there is no post of Road Roller Driver, then respondents cannot notify that vacancy, therefore, the impugned advertisement be set aside. He submitted that in terms of 2004 rules, which govern the field, there are posts of Driver only in the Sports Department of Chandigarh Administration. He further submitted that in terms of law settled by the Hon'ble Supreme Court, a single cadre post cannot be reserved for any category, therefore, even on this ground, impugned advertisement is liable to be set aside.
8. Per contra, learned counsel for the respondents vehemently opposed the prayer and submitted that in terms decision of Chandigarh Administration, out of three posts of Driver, one was notified for Road Roller Driver as they required driver for road roller and roster was vetted by Director, Social Welfare Department, Chandigarh.

9. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record with able assistance of learned counsel for the parties.
10. A conjunctive perusal of the pleadings makes it clear that the post of Driver is governed under the 2004 rules. There are three cadre posts of Drivers and as noticed above, there is no post of Road Roller Driver in Chandigarh Administration under indicated 2004 Rules. Even there are no executive instructions or conscious decision taken by the Chandigarh Administration to take out one post from the three cadre posts of Driver and use that for Road Roller Driver. In the absence of rule formation and executive instructions, impugned advertisement cannot be allowed to sustain, therefore, we find substance in the plea raised by counsel for the applicant and O.A. merits acceptance. There is another reason to quash the impugned advertisement because respondents have not finalized the said selection which commenced way back in the year 2015.
11. Accordingly, we quash the impugned advertisement. The O.A. is allowed in the above terms. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 26.09.2011
Place: Chandigarh.

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