

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.060/276/2017

Date of decision: 30.04.2019

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

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Jaswinder Singh S/o Sh. Ram Singh, age 44 years, presently working as Clerk in the O/o District Commandant, Home Guards, Sector-17, Chandigarh. (Group-C).

... APPLICANT

VERSUS

1. Chandigarh Administration through its Home Secretary, Civil Secretariat, Sector-9, U.T., Chandigarh.
2. The Commandant General, Home Guards cum Director General of Police, Sector-9, U.T., Chandigarh.
3. The District Commandant, Home Guards, Sector-17, U.T. Chandigarh.

... RESPONDENTS

PRESENT: Sh. D.R. Sharma, counsel for the applicant
Sh. Rajesh Punj, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant is aggrieved against order dated 27.8.2015 (Annexure A-2) and letter dated 14.9.2016, whereby he has been denied benefit of notional seniority and consequential benefits from the date when he was selected for the post of Peon on 17.12.1999.
2. Facts are not in dispute.

3. Respondents issued an advertisement for appointment to the post of Peon, reserved for SC category. Applicant appeared and was declared successful but was not offered appointment even after verification of the documents on the plea that he was not having certificate issued by Chandigarh Administration. A similar issue with regard to issuance of certificate based upon certificate issued by other States got attention of this Court in O.A. No.520/CH/2000 where ASIs were not offered appointments because they were not having caste certificate issued by Chandigarh Administration. This Court found favour with their claim, which was upheld up to the Hon'ble Supreme Court in a similar matter

SLP No.4684/2001 **Chandigarh Administration & Ors. vs. Surinder**

Kumar & Ors. decided on 25.01.2001. It is also not disputed that after dismissal of SLP, applicant was offered appointment vide order dated 19.3.2004 where he joined on 12.4.2004. Thereafter, he submitted representation to give him retrospective benefit from the date when he was selected and was called for verification of documents i.e. on 17.12.1999, which was rejected against which, as submitted by the respondents, he did not raise objection. Thereafter, upon decision from Hon'ble Supreme Court, applicant raised claim for grant of benefit on the basis of judgment in the case of ASIs where similar objection raised was turned down by the Hon'ble Supreme Court. His representation was rejected against which applicant is before this Court.

4. The respondents have filed written statement, wherein they have not disputed factual accuracy of the matter. It is submitted that case of the applicant is not similar to one relied upon by him as no other person belonging to other category has been offered appointment. After decision of this Court as upheld by the Hon'ble Supreme Court, the

candidates therein were offered appointment and opinion was given by LR that they be given benefit retrospectively. Since in the case of the applicant no person was offered appointment and he was not born in the cadre, therefore, his prayer has been declined.

5. We have heard learned counsel for the parties.
6. Learned counsel for the applicant vehemently argued that action of the respondents in denying him similar benefit as allowed in the case of Surinder Kumar & Ors. (supra) is arbitrarily and in violation of Articles 14 and 16 of the Constitution of India. He submitted that it is not disputed that applicant was declared successful for the post of peon by selection Committee on 17.12.1999, subject to verification of the certificates, educational qualification and age certificate. He was denied appointment on the ground that his caste certificate was based upon a communication by State of Punjab, thus the view was taken that certificate was not issued by Chandigarh Administration for reserved category, therefore, he could not be appointed. After decision in the case of Surinder Kumar & Ors., when issue was crystallized, applicant was granted appointment in the year 2004. He submitted that when respondents have in principle agreed to grant him appointment then his selection should relate back to from 1999 when selection was made and he should be given seniority from that date as well as consequential benefits i.e. pension under old pension Scheme. He submitted that once issue has been decided in favour of the applicant in the case of Surinder Kumar & Ors. (supra), then they cannot be deny benefit to applicant on the plea that he belongs to other states. He also submitted that view taken by the respondents that he was not born in cadre of Peon, from the date he is seeking appointment is misplaced

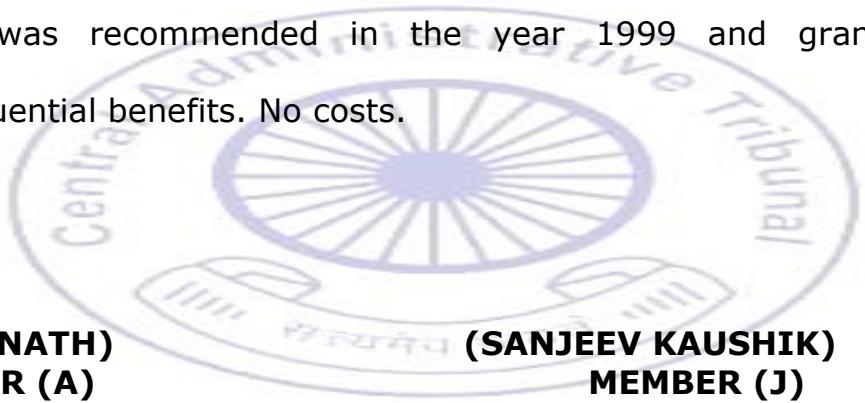
because once they have granted similar benefit to ASIs in Chandigarh Police, who were also not born in cadre, applicant cannot be denied same as it would amount to discrimination and arbitrary exercise of power. He also placed reliance on judgment in the case of **Vikram Singh & Ors. Vs. C.A.T. Chandigarh Bench and Ors.** decided on 31.08.2015 where similar issue has been put to rest. He also cited judgment in the case of **Dr. Anurag Sankhian & Ors. vs. U.T. Chandigarh & Ors.**, where the lecturers in Govt. School of Education participated in selection but not offered appointment because they belonged to OBC and SC category of other states. This Court after considering judgment of the Supreme Court in the case of Surinder Kumar & Ors. (supra) allowed the O.As, by holding that candidate having certificate of reserve category from other states are also entitled to benefit in Chandigarh Administration. He also countered plea of the respondents that he did not challenge earlier declaration by submitting that after decision of the Hon'ble Supreme Court once issue was decided, he submitted representation, which was rejected, therefore, he has not misled or concealed anything in the O.A

7. Per contra Sh. Rajesh Punj, learned counsel for the respondents submitted that they have already submitted in the written statement that case of the applicant is not identical to that of Surinder Kumar & Ors. as in that case batch mate of the applicant joined prior in time for want of category certificate, subsequently, on the basis of opinion given by LR, they were given benefit retrospectively while in the case of the applicant no person was appointed prior in time. He placed reliance on judgment in the case of **Pawan Pratap Singh & Ors. vs. Reevan Singh & Ors.**, 2011 (3) SCC 267 to the effect that once a person has

not been born in cadre, then he cannot be given seniority retrospectively in the cadre when he was neither selected or appointed.

8. 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.
9. It is not disputed that the applicant was found suitable and his name was recommended for appointment vide communication dated 17.12.1999 (Annexure A-2/A) for issuance of appointment letter subject to verification of SC/Educational and Age certificate. In similar kind of litigation in O.A. No.520/CH/2000 respondents had filed written statement admitting that applicants were selected and recommended for appointment but denied appointment due to caste certificate not issued by Chandigarh Administration but on the basis of communication issued by District Authorities of Punjab. This Court found favour with argument raised by the applicant based on judgment in the case of **Amit Mehra vs. UOI & Ors.** (O.A. No.221/CH/2002) decided on 29.01.2003, and directed the respondents to issue appointment letters to the applicant therein within a period of 30 days, if there is no legal problem, which was upheld up to the Hon'ble Supreme Court in other similar matter in the case of Surinder Kumar & Ors. (supra). Respondents while accepting the judgment have granted appointment to the applicant in the year 2004. Only plea applicant is raising before this Court is for grant of appointment from the date when his name was recommended in 1999. It is not disputed that his name was recommended for appointment and it has also been admitted that when his name was recommended in 1999, no other person was appointed in his category. Ground for denying him benefit retrospectively from the

date when his name was recommended is that he was not born in cadre. This seems to be *prima facie* arbitrary as the respondents themselves have allowed similar benefit to ASI and Constables in the case of Surinder Kumar & Ors. (*supra*), where they were denied similar benefit, which was negated by the Hon'ble Supreme Court and thereafter, the applicants were offered appointment retrospectively. Once respondents have extended benefit in the case of Constables/ASI then this cannot be denied to the applicant herein more so when no other person was appointed thereafter since he is seeking benefit of notional fixation only. Accordingly, the impugned orders are set aside. Applicant be granted benefit of notional fixation from date when his name was recommended in the year 1999 and grant him all consequential benefits. No costs.



(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date:

Place: Chandigarh.

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