

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

Pronounced on : 10.05.2019

Reserved on : 07.05.2019

**OA No. 060/01141/2017**

**MAs No. 060/1907,1908/2017 & 337/2018**

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

1. Harpal Singh S/O Sh. Sarwan Singh, Aged 50 years, working as Workshop Attendant, Government Model Senior Secondary School, Sector 23, Chandigarh.
2. Som Singh S/O Sh. Kaka Singh, working as Peon, Government Model Senior Secondary School, Sector 28-D, Chandigarh.
3. Rakesh S/O Sh. Dharma Singh, working as Peon, Government Model Senior Secondary School, Sector 19, Chandigarh.
4. Mast Ram S/O Jagdev Singh, working as Peon, Government Model High School, Sector 34, Chandigarh.
5. Rakesh S/O Sh. Devi Chand, working as Sweeper, Government Model Senior Secondary School, Sector 35, Chandigarh.
6. Kulbir Singh Negi S/O Sh.Kalyan Singh, working as Peon, O/O District Education Officer, U.T. Chandigarh.
7. Karambir S/O Mohender Singh, working as Chowkidar, Government Senior Secondary School, Manimajra Town, Chandigarh.
8. Bejender Singh S/O Sh. Ishwar Dutt Sharma, working as Peon, Government High School, Sector 30, Chandigarh.
9. Rajinder Singh S/O Sh. Ram Kishan, working as Sweeper in the office of District Education Officer, UT, Chandigarh.
10. Tara Chand S/O Sh.Dayal Chand, working as Peon, Government Senior Secondary School, Khuda Lohra (UT).
11. Raj Rani W/O Sh. Ram Pal, working as Aaya, Government Model High School, Sector 12, Chandigarh.
12. Manjeet Kaur W/O Devraj, working as Aaya, Government Model High School, Manimajra Housing Complex, UT, Chandigarh.
13. Satish Kumar S/O Sh. Tej Lal Sharma, working as Peon, Government Model High School, Sector 11, Chandigarh.
14. Ved Parkash S/O Sh. Daya Chand, working as Sweeper-cum-Chowkidar, Government Model High School, Sector 33-B, Chandigarh.
15. Vijay Kumar S/O Sh. Ram Phere, working as Chowkidar, Government Model Senior Secondary School, Sector 19, Chandigarh.
16. Harnek S/O Sh. Pyare Singh, working as Peon Government Model High School, Sector 41, Barheri(UT).
17. Raja Ram S/o Sh. Raghundan, working as Peon Government Model Senior Secondary School, Sector 44, Chandigarh.

...Applicants

**Versus**

1. Union Territory, Chandigarh through Advisor to the Administrator.
2. Education Secretary, Union Territory, Sector 9, Chandigarh.
3. Director, School Education, Chandigarh Administration, Sector 9, Chandigarh.
4. Sarvan Kuman s/o Sh. Ranjha Ram, aged 37 years, working as Chowkidar at Government Model Senior Secondary School, Sector -23/A, Chandigarh.

5. Santosh Kumar Yadav s/o Sh. Raj Bahadur, aged 35 years, working as Chowkidar at Government Model School, Sector 35-D, Chandigarh.
6. Ranjit Mishra s/o Late Sh. Ram Murat, aged 33 years, working as Chowkidar at Government High School, Sector 53, Chandigarh.
7. Pardeep Kumar s/o Sh. Satpal, aged 32 years, Chowkidar at Government model High School, Sector 20, Chandigarh.
8. Varinder Pal s/o Late Sh. Mam Raj, aged 43 years, working as Chowkidar at Government High School, Maloya, Chandigarh.
9. Manoj Kumar, aged 33 years, working as Chowkidar in the office of Government High School, Manimajra, U.T. Chandigarh.
10. Susheel Kumar, aged 33 years, working as Chowkidar in the office of Government High School, Sector 34, Chandigarh.

...Respondents

BY ADVOCATE: **Sh. R.K. Sharma for the applicants.**  
**Sh. Arvind Moudgil, counsel for respdts. No. 1-3.**  
**Sh.K.B. Sharma, counsel for the applicant (s) in MA No. 1908/2017.**

**ORDER**

**MRS. P. GOPINATH, MEMBER(A):-**

1. The applicants numbering 17, are Workshop Attendants, Peons and Chowkidars. They possess the educational qualification of Matriculation with Science subject and some of them are 10 + 2, BA and MA. At the time of appointment in the respondent department, the qualification for the entry post was Middle pass, and for promotion as Laboratory Attendant/Clerk was Matriculation.

2. Applicants argue that the only avenue of promotion for them was to the post of Senior Laboratory Attendant (SLA). This post was governed by the Punjab Rules as the UT did not have any recruitment rules for the post. For promotion to the post of Senior Laboratory Attendant, 10% of the posts of SLA would be filled by promotion from amongst those Class IV employees who are Matric pass with Physics and

Chemistry and five years regular service. At the time when the post of Senior Laboratory Attendant fell vacant, the applicants were entitled to promotion as per provisions of the Punjab Government Rules.

3. The Chandigarh Administration promulgated its own Recruitment Rules governing the post of Lab Attendant/Senior Laboratory Attendant Chandigarh Service (School Cadre) (Group-C) Recruitment Rules, 2014 dated 10.10.2014. In the said rules, 15% quota has been prescribed for Group 'D' employees with five years of regular service and with educational qualification 10 + 2. Thus, the educational qualifications in 2014 Rules have been upgraded from Matric to 10 + 2. Whereas some of the applicants have this enhanced qualification of 10 + 2, some others are only 10<sup>th</sup> Pass and hence, the amendment of the Recruitment Rules affects them adversely. The new Recruitment Rules notified on 10.10.2014 also has a contradiction in what is stated in Column 7 and Column 11. Column 7 states that educational qualification required for direct recruits is 10 + 2 with Science, whereas in Column 8 it is stated that age and educational qualifications prescribed for direct recruits will not apply in the case of promotees. In column 11, which deals with recruitment by promotion, it is stated that 15% from amongst Lab Attendants who possess 10 + 2 with Science as educational qualification and have five years of regular service in the cadre, is eligible to be promoted as Lab Attendant. Whereas on one hand, the educational qualification has been upgraded from 10<sup>th</sup> Pass to 10 + 2, it is also stated that these educational qualifications are not applicable to promotes.

4. The prayer of the applicant is for quashing the 2014 Recruitment Rules which have upgraded the educational qualifications from Matriculation to 10 + 2. The second prayer of the applicant is for including the applicants who are 10<sup>th</sup> pass Lab Attendants for promotion to the post of Sr. Lab Attendants, by quashing the Recruitment Rules which prescribe an educational qualification of 10 + 2 with Science, qua the vacancies which were available prior to the introduction of the 2014 Recruitment Rules.

5. The respondents in the reply statement submit that the Education Department of Chandigarh Administration framed Rules for the post of Laboratory Assistants in the exercise of power under Rule 309 and issued the 10<sup>th</sup> of October, 2014 Recruitment Rules. The mode of recruitment introduced was 80% by Direct Recruitment and 15% by way of promotion from amongst Lab Attendants who possess the educational qualification of 10 + 2 with five years' service.

6. The respondents bring to notice that the basic qualification for Group 'D' employees in 1993 was Middle pass which was enhanced to Matriculation, and this qualification was further enhanced to 10 + 2 in 2014. This is not the only amendment made, argue the respondents. Besides enhancing the qualification from Matriculation to 10 + 2, computer typing speed of 35 w.p.m. has also been introduced. These changes have been made bearing in mind, the requirements of school education, which improves with passage of time.

7. Heard the learned counsel for the parties and have carefully perused the pleadings on record.

8. Applicants are persons who are working in Laboratories of schools. From the history and the background given by the respondents, it is clear that the educational qualification of Lab Attendants has been raised from Middle Pass, to Matric, to 10 + 2. With the increase in salary levels given by different Pay Commissions, there has also been a simultaneous effort of getting better qualified persons by increasing the educational qualifications of Government servants at all levels. Thus, the applicants have also been subjected to increased and better educational qualification which per se is not an adverse development in school education.

9. The applicants argue that since at the time of their recruitment, such a high level of educational qualification was not prescribed, hence the small quota of 15% of the posts reserved for promotion should be operated with a lower educational qualification of Matriculation which the applicants possess. Whereas the respondents are at liberty to fill up 85% posts with 10 + 2 candidates, the 15% quota should be filled in a manner that the persons, who are in possession of lower qualification in the lower posts at the time of their recruitment, should not be disadvantaged by non-grant of access to promotional posts. Further, they also bring to our notice that the Recruitment Rules are defective to the extent that whereas they state that age and educational qualifications prescribed for Direct Recruits are not applicable to promotes, in column 11 prescribing direct recruit qualifications for promotion prescribing 10 + 2 educational qualification for the promotes.

Thus, the qualification prescribed in column 8 & 11 are contradictory and this alone requires that the Recruitment Rules be set aside.

10. In support of their contention, the applicants place on record the following judgements:-

- (i) CWP No. 20485 of 2006 titled Piara Singh Vs. State of Punjab and Anr. & CWP No. 20490 of 2006 titled Krishan Lal Vs. State of Punjab & Anr. decided on 11.12.2012
- (ii) W.P. (C) 7416/2015 titled B. Kumaravel Vs. UOI & Ors. decided on 15.05.2018
- (iii) OA No. 60/32/2018 titled Monika Khanna Vs. UOI & Ors. decided on 02.04.2019

All the above judgements support the contention that the eligibility criteria for promotion should be as on date of occurrence of vacancy and not on the date when the DPC was held, that adequate promotional avenues should be made available to all employees, Recruitment Rules which stymie the promotion of promotes are bad in law, and that the very fact that the Recruitment Rules provide for two channels, i.e. Direct Recruit and Promotion is intended to provide promotional avenues from lower level posts whose educational qualifications would also be of a lower level.

11. The respondents affirm their view point by placing reliance on the following judgements:-

- (i) Bombay High Court judgement in Writ Petition No. 3350/2001 titled K.K. Bhaskaran & Anr. Vs. UOI decided on 22.03.2010.
- (ii) State of Tripura & Ors. Vs. Nikhil Ranjan Chakraborty & Ors., 2017(2) SCT decided on 20.01.2017

In the above cited judgements, it has been held that it is well within the competence of the Government to lay down the conditions in the Recruitment Rules for posts and the Tribunal need not interfere in such matters. The Rules made under proviso to Article 309 being legislative in character cannot be stuck down unless they are found to be



disadvantageous to a particular class of employees or reflect colourable exercise of legislative power.

12. There are judgements supporting the contention that vacancy must invariably be filled by law existing on the date when they arose. There are other judgements which state that if the Recruitment Rules have been updated in order to provide a better class of employees, there should be no dilution of these rules.

13. The arguments made by both the applicants and the respondents weigh well in supporting their separate contentions. Whereas the applicants who have entered the department have an aspiration that as per their educational qualification of Matric Pass, they would become Sr. Laboratory Attendants one day, the respondents were also in their own way, correct, in upgrading educational qualifications in consonance with providing better education to the children of the territory, in consonance with the better pay scales provided.

14. Whereas we do not support the contention of the applicants to quash 2014 Recruitment Rules, we would go with the applicants' contention that the vacancies which arose prior to 2014 amended Rules, should be filled according to the then existing old Recruitment Rules. We would not like to interfere with the attempt of the respondents to provide better qualified employees and educators in the schools. At the same time, we would also favour providing some relief to the applicants who are before us.

15. Moreover, promotion is an aspiration and not a service condition and the Rules cannot be quashed on the ground that it comes in

the way of aspiration of a certain category of employees. If the Rules have been amended to provide a better quality of employees, we would not like to take a retrograde step of quashing the new rules and restoring the old rules. In the area of education, it is always better and advantageous to have better educated people to serve the cause of education and students.

16. In view of the foregoing discussion, we direct the respondents to calculate the vacancies arising prior to 2014 Recruitment Rules and fill them up as per Recruitment Rules in operation prior to 2014 Rules. This exercise be carried out by the respondents within three months of receipt of a certified copy of this order. OA stands disposed of with these directions. MAs pending, if any, are also disposed of accordingly. There shall be no order as to costs.



**(P. GOPINATH)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

Dated:  
**ND\***