

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

**Pronounced on : 24.12.2018  
Reserved on : 10.12.2018**

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

**OA No. 060/00086/2016**

Narinder Pal Singh S/o Sh. Jagat Singh, working as Guide-cum-Clerk, R/o H. No. 1634, Sector 25, Panchkula.

...Applicant

**BY ADVOCATE: Sh. Manu K. Bhandari**

**Versus**

1. The Union of India through Secretary to Government of India, Ministry of Home Affairs, New Delhi.
2. The Chandigarh Administration through Secretary, Cultural Affairs, Chandigarh Administration, 4<sup>th</sup> Floor, UT Secretariat Building, Sector 9-D, Chandigarh.
3. The Director Government Museum and Art Gallery, Sector 10, Chandigarh.
4. Vijay Kumar, Assistant, Government Museum and Art Gallery, Sector 10, Chandigarh.

...Respondents

**BY ADVOCATE: Sh. Arvind Moudgil**

**ORDER**

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

Applicant's prayer in the OA is for the benefit of pay scale of the post of Guide-cum-Clerk.

2. It is necessary to understand the chequered history of the post held by applicant before we adjudicate on the matter. Applicant was appointed as a Guide on 01.02.1989. The Punjab Government issued instructions on 15.04.1991 for merger of isolated category of

posts with ministerial posts. The post of Guide held by the applicant was changed to Guide-cum-Clerk. This post was in the pay scale of Rs. 3120-5160. Though the designation was changed in 1995, the second respondent sent a letter on 19.10.2001 to redesignate the post as Guide-cum-Clerk as appropriate permission for redesignation in the Recruitment Rules had never been sought in 1995. On 09.02.2004, applicant made a request for fixation of his seniority in the ministerial cadre, which was not envisaged when the merger was proposed. A second issue raised is that the order of the Punjab Government had been adopted by UT Administration on 24.06.2005, hence the post of Guide-cum-Clerk should have the same pay scale as that of Clerk.

3. On 16.10.2008, the redesignation of the post of Guide to Guide-cum-Clerk was ordered to be withdrawn. The applicant challenged the order passed by the respondents by filing OA No. 240/CH/2009. The OA was allowed by passing order Annexure A-17. In pursuance to the direction given by the Tribunal, applicant filed a representation. The respondents vide Annexure A-19 rejected the case for merger of applicant's post into the ministerial cadre as no new points were raised and applicant's request was for merger on account of the merger of the two posts in Punjab State.

4. The applicant places reliance on information received by him under RTI that the merger was still in vogue. In support of his contention, he also produces Annexure A-34, Seniority List of Guide-cum-Clerk where his name appears at Sr. No. 8. Prayer of the

applicant in the OA is for a direction to respondent No. 3 to implement Annexure A-39, order which is an instruction to respondent No. 3 to implement the decision regarding merger of isolated posts. The second prayer of the applicant is for consequential benefits of seniority, promotions and arrears of pay.

5. In the reply statement, the respondents submit that the applicant was appointed as Guide in the Chandigarh Museum and Art Gallery on 01.02.1989.

6. Applicant on 14.10.1996 represented to re designate his post as Guide-cum-Clerk as was done by the Government of Punjab Tourism & Cultural Department. The post of Guide of the applicant was redesignated as Guide-cum-Clerk as was done in the case of Punjab Museum. This redesignation was withdrawn by the Department of Tourism of Punjab Government vide letter dated 12.02.1998. The redesignation was also withdrawn in the case of the applicant by UT Government on lines similar to that being done for the Punjab Museum.

7. We have heard the learned counsel for the parties and have carefully gone through the pleadings on record.

8. The post of the applicant did not fulfil the conditions laid down in the Punjab Government letter of 15.04.1991. The duties of the post of Guide were not comparable with the ministerial staff. Thirdly, the recruitment rules for the post of Guide and the post of Clerk and the duties envisaged in the two posts were also different. The qualifications prescribed for both the posts were also not

identical. Therefore, the applicant's case was rejected by the respondents. Hence, applicant continued to be a Guide and all benefits given to him were that given to the post of Guide in the Punjab Museum, the corresponding department in the Punjab State.

9. Though draft seniority list was drawn up, since no recruitment rules were issued for merger of the post of Guide as Guide-cum-Clerk, the draft seniority list was ineffective. Without amendment of the statutory recruitment rules to merge the two posts, no person could hold the post of Guide-cum-Clerk as the terms and conditions in the recruitment rules of Guide and recruitment rules of Clerk were not similar. Whereas the post of Clerk is a ministerial post, the post of Guide is a technical post and the nature of duties for the two posts is also different. It appears that whereas Clerk is a desk type job, the Guide is a field job.

10. The Government of Punjab, Department of Personnel issued an order dated 15.04.1991 for merger of isolated category of posts which carry a distinct nomenclature with the regular ministerial cadre. By passing this order, it has clearly been stated that the post proposed to be merged should be such that the duties of the isolated post and the ministerial post would be similar, they possess the identical qualification as the ministerial post and the merger be effected after making amendments in the relevant recruitment rules. These conditions of merger were never followed. An administrative order of merger cannot supersede statutory recruitment rules prevalent at a particular point in time.

11. The Government of Punjab merged the post of Guide and Clerk on 12.02.1998 and subsequently withdrew the merger and restored the post to that of a Guide. The UT Government followed on similar lines. Neither the Punjab Government nor the UT Government considered the fact that the ministerial and the museum posts were totally different in terms of qualifications and nature of duties and the merger would therefore not be effective, as a clerical job was more desk oriented and the job of a Guide in a museum was not as such. Secondly, the post of Guide and Clerk do not fulfil the three conditions of merger as contained in letter of 15.04.1991 cited in pre-para. Hence, the merger should not have been effected. Put in other way, it can be said that the merger was made without application of mind, and considering the compatibility of the two posts belonging to two different streams and by overlooking the principles of merger laid down in the 1991 letter.

12. From the reply statement of the respondents, it is brought out that the applicant made a representation for merger with a clerical cadre and as a consequence, redesignation was made, as the same was redesignated in the Punjab museum also. When the Punjab Museum withdrew the merger, the UT Government also followed suit.

13. Applicant has also availed the benefit of ACP on completion of 8, 16 and 4, 9, 14 years of service in the cadre. The private respondent with whom the applicant seeks parity was appointed as a clerk in the ministerial cadre on 06.10.1989 unlike the applicant who is appointed as a Guide in the non-ministerial cadre.

Hence, the challenge of comparison between unrelated ministerial and non-ministerial cadres is raised. Further, the terms and conditions of the recruitment rules of the two posts are different applicant cannot seek any parity between the two posts.

14. It is necessary here to reproduce from Annexure A-19, order of the Director, Government Museum and Art Gallery, Chandigarh, order passed in pursuance of CAT order in OA No. 240/CH/2009 as follows:-

“the post of Guide-cum-Clerk is to be filled in against the 15 percent quota for promotion from amongst the Group ‘D’ employees working under the control of the Director who have passed matriculation examination from a recognized university or institution and with an experience of working as such for a minimum, period of 5 years and should qualify a test in Punjabi typewriting. The post of Guide and Tehsildar fall in the non ministerial cadre and as per Sr. 28 of the Schedule D appended to the notification No. GSR58/Const/ART 309/2001 dated 27.4.2001 regarding the Punjab Govt. Cultural Affairs Archaeology and museums (Group C) Non Ministerial Service Rules 2001 the post of Guide is 100% by promotion from amongst the gallery attendants Gr.I. working under the control of the Director who have passed the matriculation from a recognized university or institution and who have an experience of working as such for a minimum period of five years. Since the letter dated 15.04.1991 has become redundant and the post of Guide and Guide-cum-Clerk are two different posts having different method of recruitment the name of Sh. N.P. Singh, Guide & Sh. Fauja Singh PAdda, Tehsildar their names cannot be considered in the ministerial cadre of Clerk. Hence, the representation dated 12.1.2011 is hereby rejected.”

As seen from above, the stream of promotion to the two posts proposed for merger are also different, facts which were not considered when the administrative order for merger was passed.

15. The applicant places reliance on Annexure A-24 issued by the Punjab Government wherein it is stated that after 15.04.1991, Government of Punjab has not issued any instructions vide which merger of isolated category of posts in regular ministerial cadre can be demerged. This is not corroborated by any documentary evidence. The Director, Government Museum and Art Gallery submits that the merger has become redundant with the introduction of the ACP Scheme in which isolated posts were also entitled for upgradations on completion of 8 and 16 years..

16. The grievance of the applicant appears to be that whereas the orders of merger were issued, while withdrawing the same, he was not given an opportunity of being heard, whereas we note that the applicant was given an opportunity of being heard on various occasions. Whereas we note that before issuing Annexure A-19 order, the Director, Government Museum of Art Gallery had given an opportunity of hearing to the applicant. The Chandigarh Administration appears to have issued the orders of merger without considering the consequences of the same. Subsequently, noting the differences of the two posts and the difference in the recruitment rules, the process of merger was withdrawn and the tentative seniority list issued on 24.07.2014, has also not been acted upon. As such, a seniority list would be feasible only after amendment was made to the statutory recruitment rules. The statutory recruitment rules show the two posts of Clerk and Guide as distinctly separate with their own sets of service conditions and promotion. Hence, an

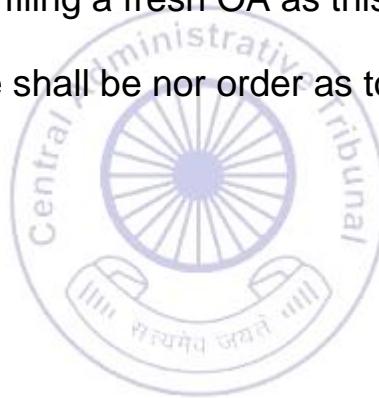
administrative order not supported by amendment to the statutory rules cannot be held to be valid.

17. Whereas the merger was effected before amendment to the statutory recruitment rules, even after the merger, there was no attempt to amend the recruitment rules. Hence, the merger has no legs to stand on as it is not supported by any statutory rules favouring the merger and the tentative seniority list post-merger would also be abrogated in the absence of any statutory recruitment rules allowing a joint seniority list of Guide plus Clerk. Further, the merger letter of 15.04.1991 which lays down three conditions for merger as cited above are also not fulfilled. The merger appears to be a mindless exercise made on the representation of the applicant and that the merger was allowed in the Punjab Government would not be strong argument as the Punjab Government also withdrew the merger subsequently in the light of the fact that the merger was not feasible.

18. Whereas reducing the number of posts by merger of posts with similar duties is a welcome measure, the same has to be addressed by bearing in mind the impact that it will have on the merged cadres, whether the recruitment rules of the two posts merged are similar to a large extent, and that any merger will not disturb the duties and functions of either cadre when they have to work in the merged post.

19. Whereas it is the prerogative of the respondents to decide on nomenclature, number, recruitment rules and promotional avenues of cadres, we find that in this matter, the yo yo attitude of the

respondents of merger and de-merger has created an aspiration in the mind of the applicant to revert to the merged status. The respondents, during arguments, passed an order dated 07.12.2018 wherein it is clarified that the Chandigarh Administration has not issued directions regarding merger/de-merger of the isolated posts in the ministerial cadre. They have only advised re-designation of the posts. This appears to be a late attempt to re-write the hasty action of merger issued by the respondents. However, since the letter clearly states that no merger or de-merger was ordered, this OA is dismissed, however with liberty to the applicant, to challenge this letter of 07.12.2018 by filing a fresh OA as this letter gives him a fresh cause of action. There shall be no order as to costs.



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

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

Dated: 24.12.2018  
**ND\***