

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4684 of 2010

Date of decision: 26.8.2015

Rajeev Kaushal

.....Petitioner(s)

Versus

Central Administrative Tribunal

Chandigarh Bench, Chandigarh & ors.

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE M. JEYAPPAUL

HON'BLE MR.JUSTICE DARSHAN SINGH

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

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Present: Mr. Harsh Garg, Advocate for the petitioner(s).

**Mr.Parminster Singh Kanwar, Advocate for U.T.
Chandigarh respondents No.2 to 4.**

Mr. Raman B. Garg, Advocate for respondent No.5.

DARSHAN SINGH, J.

- 1. The present civil writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner for issuance of a writ in the nature of certiorari for quashing the impugned order dated 6.10.2009 (Annexure P-4) passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter**

called 'the Tribunal') and the order dated 10.7.2009 passed by the Secretary, Sports, Chandigarh Administration, Chandigarh vide which respondent No.5 has been given a direct promotion to the post of Manager in violation of the statutory rules.

2. That vide order/letter dated 25.5.2009 (Annexure P-1), the Director Sports, Chandigarh Administration, Chandigarh proposed to fill up one post of Manager in the pay scale of ₹ 5800-9200 in the Sports Department Union Territory Chandigarh by transfer amongst the non-ministerial "Group C" staff of the Sports Department, U.T.Chandigarh on fulfilling the requisite qualification mentioned therein. The petitioner duly fulfilled all the requirements for the post of Manager and applied for the same. In response to that order/letter, 10 applications were received including that of the petitioner. Respondent No.5, who was working on the post of Electrician and was having no background of organizing sports events and the maintenance of sports fields, was appointed on the post of Manager without considering the comparative merits of the other candidates and in violation of the statutory rules. The petitioner challenged the said appointment before the learned Tribunal by moving Original Application No. 735-CH of 2009 but the said application was dismissed by respondent No.1-Tribunal vide impugned order dated 6.10.2009 in an arbitrary manner. Hence, this petition.

3. Learned counsel for the petitioner contended that the candidature of the petitioner has been rejected on the ground that

he did not fulfill the conditions with respect to the requisite experience of supervisory post. He contended that the petitioner had been performing various functions of supervisory nature which is evident from Annexure P-10. Only three years' experience on the supervisory post was required. Annexure P-10 shows that the petitioner had the requisite experience for the said post. He further contended that once the application of the petitioner was entertained, the same could not have been rejected later on on this ground.

4. He further contended that the Departmental Promotion Committee (DPC) was not properly constituted as per the Rules. He contended that the said Committee should consist the Director, Sports, U.T. Chandigarh as Chairman, Joint Secretary, Personnel Chandigarh Administration as Member, Director, Social Welfare U.T. Chandigarh as Member and Joint Director Sports Department, U.T. Chandigarh as Member but in the instant case, the Joint Director, Sports was not associated in the DPC. So, the DPC was not properly constituted as per the statutory rules and the selection/promotion made such Committee is illegal. This plea of the petitioner has not been considered by the learned Tribunal.

5. He further contended that respondent No.5 did not fulfill the conditions 'C' prescribed in the letter/order dated 25.5.2009 (Annexure P-1) for the post of Manager i.e. having experience in maintenance of the grounds/sports fields with particular reference to the major recognized games. Thus, he contended that the promotion of respondent No.5 to the post of Manager by transfer is illegal and in

violation of the statutory rules.

6. Learned counsel for the respondents contended that respondent No.5 fulfilled all the conditions prescribed for the post of Manager. The recruitment/selection committee was duly constituted vide order dated 15.4.2009 (Annexure R-5/20). All the applications received for the post of Manager were duly considered. Respondent No.5 being eligible and suitable to the post of Manager was selected. They contended that the selection/appointment of respondent No.5 to the post of Manager is strictly in accordance with the statutory rules. So, there is no illegality in the impugned orders.

7. We have duly considered the aforesaid contentions.

8. The challenge in this petition is to the order dated 6.10.2009 passed by the learned Tribunal vide which the original application of the petitioner challenging the selection of respondent No.5 as Manager in the Sports Department U.T. Chandigarh was dismissed and also to the order dated 10.7.2009 whereby respondent No.5 was appointed by transfer as a Manager in the Sport Department U.T. Administration, Chandigarh.

9. This recruitment to the post of Manager in the Sports Department U.T. Chandigarh is governed by the Sports Department, Union Territory, Chandigarh (Group 'C' Non-Ministerial posts) Recruitment Rules, 2004 (hereinafter called 'the Rules') (Annexure P-6) which were later on amended vide notification dated 18.12.2008 (Annexure P-7) and were further amended vide notification dated 12.3.2009 (Annexure P-8). After the amendment of the Rules vide

notification dated 12.3.2009, the criteria for the post of Manager was as under:

“Manager:

Col. Revised provisions proposed

No.

5 Non-Selection

11 100% by Promotion failing which by transfer/deputation

12 (i) By promotion, - From Supervisor who have completed 3 years service as Supervisor in the cadre.

(ii) Appointment by transfer.- From the Non-ministerial Group-C, staff of the Sports Department, Chandigarh Administration having 3 years experience on supervisory post in Sports field and also fulfill the following:-

(a) Graduate from recognized Universities.

(b) Having knowledge of organizing sports tournaments or participation in State Tournament.

(c) Having experience in maintenance of grounds/sports fields with particular reference to the major recognized games.”

10. The vires of the aforesaid Rules have not been challenged at any point of time by the present petitioner. As per the above amended Rules, the post of Manager was to be fulfilled 100% by promotion failing which by transfer/deputation. In the present case, the requisite qualifications for appointment by transfer to the post of Manager have been reproduced above in Para No.12(ii) of the amended Rules.

11. The Rules also provide about the composition of the Promotion Committee consisting the Director, Sports, as Chairman, Joint Secretary, Personnel, Director, Social Welfare and Joint Director, Sports U.T. Chandigarh as Members.

12. Learned counsel for the petitioner has pleaded that the Committee was not constituted in accordance with these rules as the Joint Director, Sports was not associated but this plea raised by the learned counsel for the petitioner is devoid of merits as vide specific order dated 15.4.2009 (Annexure R-5/20) the departmental recruitment/selection Committee was constituted having the Director Sports, Chandigarh Administration as Chairman, Representative of Personnel Department, Chandigarh Administration, Representative of the Finance Department, Chandigarh Administration and Representative of Social Welfare, Chandigarh Administration, as Members. The Joint Director does not figure in the aforesaid order with respect to the composition of the Departmental Recruitment/Selection Committee. Thus, it cannot be stated that the Departmental Recruitment/Selection Committee, which carried out the selection, was not duly constituted.

13. There is nothing wrong in the action of respondents No.2 to 4 in rejecting the candidature of the petitioner for the post of Manager as he did not fulfill the requisite experience on the supervisory post which was the main condition for appointment by transfer. Learned counsel for the petitioner has referred to Annexure P-10 in order to show that the petitioner has been working in the

supervisory capacity but these letters/orders cannot establish that he was given any assignment in supervisory capacity. Only the copies of certain orders/letters have been forwarded to him describing him as Incharge, Table Tennis Hall. It has not been disputed at Bar that no order by the competent Authority was passed deputing the petitioner to perform the supervisory job. So, he lacked the basic qualification/condition for the post of Manager, whereas the order Annexure R-5/1 shows that respondent No.5 Sanjay Kumar Sharma, Electrician, was given the duties of Supervisor, Badminton Stadium in addition to his own duties till the regular incumbent is posted. This order was passed by the Director Sports, Chandigarh Administration on 15.4.1996. The order dated 3.6.1999 (Annexure R-5/2) shows that the said charge was withdrawn from respondent No.5. In this manner, he has worked on supervisory post for more than three years and he has fulfilled the basic conditions for appointment by transfer to the post of Manager.

14. The legal position is well settled that in these type of matters, there is very limited scope to interfere with the decision taken by the Selection Committee. The Selection Committee was the best judge to assess the merits of the suitable candidate and to consider the competence of respondent No.5 to fulfill clause 'C' in the letter/order dated 25.5.2009, inviting the applications to fill up the post of Manager by transfer. The learned Tribunal has rightly observed that the applicant/petitioner has not alleged any mala fide or favouratism against any particular person while selecting

respondent No.5 (respondent No.3 before the Tribunal) by the committee. Even same is the position before this Court in the present petition.

15. Thus, we do not find any legal infirmity in the order dated 10.7.2009 (Annexure P-3) with respect to the appointment of respondent No.5 to the post of Manager by transfer and the order dated 6.10.2009 passed by the learned Tribunal dismissing the original application filed by the petitioner.

16. As a sequel to the aforesaid discussion, the present petition is without any merit and the same is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

August 26, 2015
ps

(DARSHAN SINGH)
JUDGE