

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.17663 of 2013
Date of decision: May 23, 2016.

Pradeep Kumar and others

... **Petitioners**

v.

Comptroller and Auditor General of India and others

... **Respondents**

2. CWP No.24501 of 2013

Comptroller and Auditor General of India and others

... **Petitioners**

v.

Central Administrative Tribunal, Chandigarh Bench and others

... **Respondents**

3. CWP No.5837 of 2014 (O&M)

Comptroller and Auditor General of India and others

... **Petitioners**

v.

Central Administrative Tribunal, Chandigarh Bench and another

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE SURYA KANT**
HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Shri Jagdeep Jaswal, Advocate, for the petitioners.

Shri Brijesh Mittal, Advocate for respondent Nos.1 to 4.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Surya Kant, J. (Oral):

By way of this common order, we shall dispose of CWP

Nos.17663 and 24501 of 2013 and 5837 of 2014. For the sake of brevity, facts have been taken from CWP No.17663 of 2013.

The question that arises for consideration is whether the petitioners, who belong to reserved category of Scheduled Castes, are entitled to be appointed to the post of MTS if they are higher in merit as compared to some of the general category candidates who have been offered appointment?

The facts may be noticed briefly. The respondent-Department vide advertisement dated 23.9.2011 invited applications to fill up 167 posts of MTS by way of direct recruitment. Out of these, six posts were reserved for SC category. The petitioners, who were working as casual labourers in the Department and had become overage, were granted age relaxation and consequently, they applied in response to the above stated advertisement. They participated in the selection process and were short-listed amongst top 74 candidates of SC category (except one of them). The said merit list was prepared on the basis of 'weightage' awarded for 'education' and 'work experience'. All the 74 candidates were interviewed and the final selection list was prepared on the basis of their overall performance. Meanwhile, the posts reserved for SC candidates were reduced from 6 to 4 as two SC candidates came to be appointed on compassionate grounds. All the posts reserved for SC candidates have been admittedly filled up by appointing SC candidates higher in rank than the petitioners.

It is in this backdrop that the question formulated at the outset, arises for considered, viz., as to whether the petitioners are entitled to be

appointed in view of the fact that general category candidates lower in merit have been appointed.

The officials respondents appear to have taken the plea that the petitioners being lower in merit are not entitled to be appointed. The petitioners, on the other hand, submit that they are higher in merit than some of the general category candidates but their claim has been overlooked for totally erroneous reasons.

The controversy re: claim of a reserved category candidate who has availed relaxation in age for appointment against open category post is no longer debatable and has been set at rest by the Supreme Court in Jitendra Kumar Singh v/s State of U.P., (2010)3 SCC 119.

Unfortunately, this aspect was either not argued before the Tribunal or the same has not been dealt with specifically. The factual aspect, namely, whether or not there are general category candidates who are lower in merit and have been offered appointment overlooking the petitioners' claim, thus, requires re-determination by the Tribunal. An opportunity of hearing to the candidates who are likely to be affected, if the petitioners' claim is accepted, is equally mandatory.

For the reasons aforesaid, we allow these writ petitions in part and set aside the order of the Tribunal to the extent above and request the Tribunal to determine the question, as formulated above. The candidates of the open category who are allegedly lower in merit, shall be impleaded as party respondents, if already not impleaded, and the Tribunal shall ensure that they are arrayed and given an opportunity to defend their appointments.

CWP Nos.17663 and 24501 of 2013 and
CWP No.5837 of 2014 (O&M)

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It shall be appreciated if the Tribunal decides the matter at the earliest but
not later than six months.

[**Surya Kant**]
Judge

May 23, 2016.
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[**A.B. Chaudhari**]
Judge