

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 24669 of 2016
Date of decision: 30.11.2016**

**Chandigarh Administration through Director Principal, Government
Medical College and Hospital, Sector-32, Chandigarh and another**

.....Petitioners

Vs.

**The Central Administrative Tribunal, Chandigarh Bench through its
Registrar and others**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Vivek Chauhan, Advocate for Mr. Rakesh Sobti,
Advocate for the petitioner-UT.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226 and 227 of the Constitution of India is for quashing the impugned order and judgment dated 20.04.2015 passed by the Central Administrative Tribunal, Chandigarh Bench Chandigarh (in short "the Tribunal") whereby claim of respondent No.2-Ms.

Nisha Rani for appointment as Staff Nurse on her selection in the category of Other Backward Class (OBC) has been allowed.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. Petitioner No.1 - Director Principal Government Medical College and Hospital, Sector-32, Chandigarh issued an advertisement dated 26.05.2012 in the Newspaper inviting online applications from the eligible candidates for filling up 409 posts of Staff Nurse for GMCH 32 and GMSH 16, Chandigarh. The last date for submission of online applications was 16.07.2012. Thereafter, petitioner No.1 issued a corrigendum in the newspaper on 12.07.2012 that backlog of Scheduled Castes was being enhanced in the reservation since 2005 onwards and not because of non-availability of candidates in the previous selection in GMCH. Similarly, there was also backlog of Other Backward Class vacancies. The backlog of Scheduled Castes and Other Backward Classes was to be filled up first during the current selection and these candidates were to stand senior to the other candidates. As per the terms and conditions of the advertisement, it had been mentioned at Serial No.6 (i) under the heading "Other General Conditions" that "the number of posts and reservation thereof are tentative and can increase or decrease subject to confirmation of roster point by Social Welfare Department/Employment Exchange, UT, Chandigarh. The Department reserves the right to reject/cancel any application or withdraw the posts at any time without assigning any reasons or without any notice whatsoever." Respondent No.2 who belongs to 'Luhar' Caste which had been declared as Other Backward Class in the State of Haryana, applied online for the said post under the OBC category. She was issued Roll No.26693. Thereafter, the Chairman, Selection Committee issued merit wise list of selected candidates under the OBC category and the name of respondent No.2 was shown at Serial No.39.

The petitioner issued corrigendum dated 21.09.2012, Annexure R.1 clarifying that definition of Other Backward Class in UT Chandigarh was that “the Caste of OBC should be reflected in both Central List as well as UT List.” In order to correct this discrepancy, only the OBC candidates who fell in UT as well as Central List were to be considered on the basis of their merit in the OBC category. The candidates who had applied under OBC category but were not covered under the UT as well as Central List were to be considered in the General Category according to merit. Vide letter dated 23.12.2003, Annexure R.II, the benefit of reservation to OBC category in UT Chandigarh was to be extended on the pattern of Central Government wherein the OBC would have to be included in the Central List and UT Chandigarh List. A meeting was held on 21.11.2012, Annexure R.III under the chairmanship of Director-Principal, GMCH to discuss the issue regarding genuineness of OBC certificate submitted by the OBC candidates. A decision was taken to advise all the candidates to submit a fresh OBC certificate by 25.10.2012. It was further decided that the candidates of Caste strictly as per the spellings mentioned in both UT and Central Lists were to be given the benefit of reservation under OBC category. At the time of scrutinizing the application of respondent No-2, it was revealed from OBC certificate attached by her along with the application that she belonged to ‘Luhar’ Caste. As per UT OBC List at Serial No.29 and Central List meant for UT, Chandigarh at Serial No.11, the benefit of reservation in OBC category was only to be given to ‘Bhuhalia Lohar’. As such, fresh OBC certificate indicating specifically ‘Bhuhalia Lohar’, was required to be submitted by respondent No.2 for establishing her eligibility under OBC category. Respondent No.2 was requested vide letter dated 11.10.2012, Annexure R.IV to submit fresh OBC certificate by 25.10.2012. She failed to submit the said certificate. Thereafter, the Chariman Selection Committee

issued corrected merit list of General Category and Other Backward Class category for the posts of Staff Nurse on 09.10.2012 on GMCH website. The name of respondent No.2 was shown in corrected merit list of OBC at Serial No.8 subject to the condition that 'Bhuhalia Lohar' was eligible to be considered in OBC category. The Caste certificate reflected 'Luhar' only. Fresh certificate mentioning 'Bhuhalia Lohar' needed to be furnished by respondent No.2, failing which she was not to be considered in OBC category. Respondent No.2 failed to submit the said certificate. Thereafter, respondent No.2 filed application before the Tribunal challenging the action of the petitioner-Department. Written statement was filed by the petitioner-Department controverting the averments made by respondent No.2. Vide order dated 24.07.2013, Annexure P.6, the Tribunal dismissed the application. Respondent No.2 filed review application, Annexure P.7, for reviewing the order dated 31.07.2013. Neither the counsel for respondent No.2 nor respondent No.2 appeared. Vide order dated 21.05.2014, Annexure P.8, the Tribunal dismissed the review application for non-prosecution. Respondent No.2 moved another application before the Tribunal. Vide order dated 27.03.2015, Annexure P.9, the Tribunal allowed the application and restored the original application to its original number. Vide order dated 20.04.2015, Annexure P.1, the Tribunal allowed the original application filled by respondent No.2 on the ground that similar question had already been decided by this Court in CWP No. 2648 of 2013 (*Chandigarh Administration Vs. Sunil Kumar and another*). Hence the instant petition by the petitioners.

3. We have heard the learned counsel for the petitioners.

4. Admittedly, 409 posts of Staff Nurse were advertised by the petitioner-Department on 26.05.2012. A corrigendum was issued on 12.07.2012

whereby the petitioner-Department increased the vacancies to complete the backlog of vacancies of Scheduled Caste/Other Backward Class categories. Respondent No.2 Ms. Nisha Rani who belongs to 'Luhar' Community applied for the said post. She was selected under the OBC category and her name figured at Serial No.39. On 21.09.2012, a corrigendum was issued by the Department clarifying that the definition of OBC in UT Chandigarh was that "the caste of OBC should be reflected in both Central List as well as UT List." Thereafter, a decision was taken by the respondents to ask all the candidates to submit a fresh OBC certificate by 25.10.2012. It was clarified that the Caste strictly as per the spellings mentioned in both UT and Central List was to be given the benefit of reservation under OBC. Aggrieved thereby, respondent No.2 approached the Tribunal. The short question that came up for consideration before the Tribunal was whether or not the caste of respondent No.2 fell under the category of OBC of UT or not. It has been categorically recorded by the Tribunal that the said issue has already been settled by this Court in ***Sunil Kumar's*** case (supra) wherein also the candidate belonged to 'Luhar' Caste and his candidature was not considered under the OBC category. After considering the matter, it was held by this Court that the Caste of the said candidate was amongst the notified OBC categories of Chandigarh Administration and entitled to seek the benefit to reservation meant for OBC in respect of the post under the Chandigarh Administration. Thus, the claim of respondent No.2 was held to be valid. The petitioners were directed to consider her claim under the OBC category and issue her appointment letter as she was declared successful for the post in question. Learned counsel for the petitioners has not been able to controvert the decision rendered by this Court in ***Sunil Kumar's*** case (supra). He has also not been able to place on record any material to controvert the findings recorded by the Tribunal or to substantiate the claim

made in the petition. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

November 30, 2016
‘gs’

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes