

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

CWP No. 8469 of 2019

Date of decision : 29.03.2019

Union of India and others

.... PETITIONERS

Versus

Amit Kumar and another

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE KULDIP SINGH

Present: Ms. Aarti Goyal, Advocate, and
Mr. P.C.Goyal, Advocate,
for the petitioners.

* * *

RAJIV SHARMA, J.

1. This petition is directed against the judgment rendered by learned Central Administrative Tribunal, Chandigarh Bench (hereinafter referred to as 'Tribunal' for brevity), in O.A. No. 060/01010/2017 on 31.07.2018.

2. The brief facts necessary for adjudication of the petition are that the petitioners issued an advertisement on 18.01.2014 for holding Combined Graduate Level Examination, 2014, for various posts, including the post of Inspector (Central Excise). The last date for receipt of applications was 14.02.2014. Respondent No.1 participated in the selection

process. He qualified two tier examination. Thereafter, he was directed to undergo physical test and medical examination vide letter dated 18.03.2016. He was also directed vide letter dated 05.04.2016 to undergo medical examination and produce the medical certificate of fitness by stating therein that he was not suffering from colour blindness. He got himself medically examined from Civil Surgeon, Bhiwani on 07.04.2016. He submitted certificate No. 115 dated 07.04.2016. Civil Surgeon, Bhiwani, also certified that he did not discover any disease affecting bodily infirmity, except one eye. He did not consider it a disqualification for employment in the office of Central Excise department as Inspector. However, the fact of the matter is that candidature of respondent No.1 was cancelled vide order dated 23.02.2017.

3. It is in these circumstances that respondent No.1 had filed the O.A. It was allowed by the learned Tribunal on 31.07.2018.

4. The fact of the matter is that respondent No.1 was fully eligible and qualified for the post of Inspector Central (Central Excise, Preventive Officer & Examiner) under the general category. He qualified the written examination. He was denied the appointment simply on the ground that he had vision in one eye. He was medically examined by Civil Surgeon, Bhiwani. He had opined that respondent No.1 was free from colour blindness. According to the certificate issued by Civil Surgeon, Bhiwani, respondent No.1 was fit to discharge the duties of Inspector, as he was having 6 : 6 vision from one eye.

5. This Court in **Shikha Malhotra Vs. State Bank of India and another**, 2008 (1) Service Cases Today 806, has held that a person with one

eye cannot be non-suited for appointment. This Court held as under :-

“5. However, the said stand of the respondents is nothing but based upon surmises and conjectures. The vision of the petitioner with left eye is 6 x 6 and there is no distortion. Once, the vision of the petitioner in respect of one eye is not wanting in any manner, the denial of appointment on the ground that the petitioner cannot see from other eye is depriving of an appointment to an eligible candidate. If the respondents can appoint a totally blind person as a Probationary Officer, it could not be explained as to why, the petitioner who has 6 x 6 vision from one eye, cannot be appointed. It is not disputed by the learned counsel for the respondents that a candidate who is totally blind or has impaired vision is eligible for appointment against the seats reserved for visually handicapped persons. No doubt, the petitioner is not suffering from a disability within the meaning of Section 2 (b) of the Act, but it cannot be said that the petitioner is not eligible for appointment as a general category candidate as well. The petitioner has to fall in one or the other category. If the petitioner is not entitled to reservations for the post meant for visually handicapped category, the petitioner has to be treated as a general category candidate.

6. In fact, denial of opportunity of appointment on such ground, is wholly arbitrary, discriminatory and violates the rights guaranteed under Articles 14 and 16 of the Constitution of India. The petitioner is being denied right of

appointment for wholly untenable reason. The stand of the respondent is without any justification and is wholly arbitrary and has caused manifest injustice to the petitioner.

7. Reference may be made to a judgment of the Hon'ble Supreme Court in **Amita Vs. Union of India and another, 2005 (3) SCT 785 : (2005)13 SCC 721**. In the said case, the candidate was not even permitted to appear as a candidate for appointment to the post of a Probationary Officer. During the pendency of the petition before the Hon'ble Supreme Court, the Union of India has filed an affidavit in respect of certain jobs which could be performed by the visually handicapped persons. Written submissions were filed on behalf of the Union of India, wherein it was stated to the following effect:-

“It was further stated that the writ petitioner being a visually impaired candidate has to either appear in the examination for selection under the reserved category or she can appear with the general candidates. It was further clarified that if she wants to appear as a general category then she has to compete with the general category candidates only and she cannot be given any weightage as the same would amount to discrimination to others competing with her in the said category. It was further clarified the position that OM No. 36035/4/2003-Establishment dated 8.7.2003 provided that the vacancies reserved for any category need to be filled by persons

belonging to that category and such vacancies are not open to others. On the other hand, unreserved vacancies are open to all and reserved category candidates cannot be denied the right to compete for appointment against such vacancies, provided they are otherwise eligible.”

8. Considering the stand of the Union of India, the Hon'ble Supreme Court has returned a finding that the nature of duties of a Probationary Officer can be performed by a visually impaired candidate and some percentage of impaired candidates are entitled to be selected and appointed as Probationary Officers of the Bank either from the General Category or from the reserved category. The Hon'ble Supreme Court in the said judgment has observed as under:-

“That apart, the writ petitioner, although a visually impaired lady had not asked for any special favour for selection to the post of Probationary Officer. The writ petitioner without asking for any favour had only applied for writing the examination for selection not as a reserved handicapped candidate but along with general candidates who were allowed by the Board to sit and write the examination. Since the writ petitioner was similarly situated with other general candidates, and the writ petitioner had not asked for any advantage for being a visually impaired candidate, we failed to understand why she was not permitted to sit and write the examination for the post of

Probationary Officer in the Bank.

At the risk of repetition, it may be reiterated that the writ petitioner fulfilled all the conditions mentioned in the advertisement for the post. The primary object which is guaranteed by Article 16 (1) is equality or opportunity and that was violated by the Board by debarring the writ petitioner from appearing in the examination on the mere fact of disability which was not mentioned in the advertisement and which according to the writ petitioner is not an impediment for the post. We are therefore, of the view that the action of the Board was arbitrary, baseless and was in violation of the right of the writ petitioner under Article 16 (1) of the Constitution.”

9. In the present case the petitioner has not sought any reservation as a visually handicapped person, therefore, she as a General Category candidate is entitled to be appointed as Probationary Officer.

10. In view of the above, we have no hesitation in setting aside and quashing the impugned order (Annexure P.5) and to direct the respondents to appoint the petitioner with all consequential benefits. The consequential benefits shall include pay fixation and seniority from the date, the other appointments were made, pursuant to advertisement (P.1). However, the petitioner shall not be entitled to any arrears of salary prior to her appointment. Such directions be complied within a period of two months from today.”

6. It is reiterated that respondent No.1 had applied in the general category and could not apply in the physically handicapped category, because his disability was only to the extent of 30%. The petitioners could not take advantage of the letter dated 05.08.2016 for the simple reason that respondent No.1 had applied in the general category. The action of the petitioners cancelling the candidature of respondent No.1 was wholly illegal and arbitrary, thus, violative of Articles 14 and 16 of the Constitution of India.

7. Accordingly, there is no merit in this petition and same is dismissed.

(RAJIV SHARMA)
JUDGE

March 29, 2019
ndj

(KULDIP SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No