



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

**CWP-6716-2019 (O&M)
Reserved on : 23.04.2024
Pronounced on : 06.05.2024**

Sandeep Singh Parmar

... Petitioner(s)

Versus

PGIMER, Chandigarh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Argued by: Mr. Abhimanyu Singh, Advocate
for the petitioner(s).

Mr. Avinit Avasthi, Advocate
for respondent No.1 – PGIMER, Chandigarh.

Mr. Narender Kumar Vashist, Advocate
for respondent No.2.

SANJAY VASHISTH, J.

CM-2397-CWP-2024

This is an application filed under Section 151 CPC for placing on record the brief synopsis in the shape of affidavit of the applicant-petitioner.

For the reasons recorded in the application, same is allowed and the brief synopsis in the shape of affidavit dated 08.02.2024 of the applicant-petitioner, is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

CM stands disposed of.

CWP-6716-2019

1. By way of present writ petition, Petitioner – Sandeep Singh

Parmar, aged 26 years, has prayed for issuance of a writ in the nature of *Certiorari*, for quashing of the letter dated 16.02.2019 (Annexure P-7), issued by respondent No.1 – Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER), whereby, application forwarded by the petitioner for scrutinizing the documents, has been dismissed, on the ground that there is a postal delay.

Besides, petitioner has also prayed that by quashing of the letter dated 16.02.2019 (P-7), his candidature for the purpose of joining the selection process on the post of ‘Staff Car Driver’, in pursuance to Advt. No. PGI/RC/081/2018/4305, dated 18.07.2018 (Annexure P-1), be also ordered for it reconsideration, as a genuine applicant/candidate.

Chief Post Master General, Chandigarh, Speed Post Centre, Sector 17, Chandigarh has been impleaded as party – Respondent No. 2 by the petitioner.

2. Facts leading to the filing of the present writ petition are as follows:

Respondent No.1 – PGIMER, Chandigarh, invited **online** applications from the Citizens of India for recruitment of various Group ‘A’, ‘B’ & ‘C’ posts on regular basis, vide Advt. Dated 18.07.2018 (Annexure P-1). For the purpose of generation of the Challan/online application, closing date was fixed as 16.08.2018, and the online application was required to be submitted by 18.08.2018.

In the said advertisement, applications for filling up the seven posts of Group ‘C’ of the ‘Staff Car Driver Ordinary Grade’ were also published at Sr. No.15, wherein, essential qualifications for the said post were also detailed. For convenience, the relevant extracted part of the

advertisement, bearing the required qualification/experience for the post of ‘Staff Car Driver Ordinary Grade’ is reproduced here under also:-

<i>Sr. No.</i>	<i>Name of the Post(s)</i>	<i>Qualification/Experience</i>
15.	Staff Car Driver Ordinary Grade	<u>Essential:</u> i) Matriculation or its equivalent. ii) Possession of valid Driving Licence for driving heavy vehicles. iii) Knowledge of motor mechanism (The candidate should be able to remove minor defects in vehicles). iv) Experience of driving motor vehicles (including heavy vehicles) for 3 years. <u>Desirable:</u> Three years service as Home Guard/Civil Volunteer.

As per the advertisement, total 7 posts of “staff car driver ordinary grade” were to be filled. Out of the said 7 posts, 4 posts were for Unreserved (UR) category, 1 post for Scheduled Caste (SC) category and 2 posts were meant for Other Backward Classes (OBC) category.

Petitioner being suitable and eligible candidate under the Unreserved category (UR) applied for the post of ‘Staff Car Driver Ordinary Grade’ vide application No.58620180000595.

3. After examining the applications received online, eligible candidates were called for written examination which was conducted on 30.12.2018. Admit cards for the written examination were issued on the website of the Respondent No. 1 and petitioner was allotted Roll No. 81306 (Annexure P-3). On the basis of the issuance of the roll number and the admit card, petitioner appeared for the written examination on 30.12.2023 and same was qualified by the petitioner and said fact was made clear from

the result of the written examination displayed on 02.01.2019 on the official website of respondent No.1, as informed also through result notice dated 02.01.2019.

4. As per the result notice, candidates who qualified the written examination had to submit all the prescribed/required documents by 22.01.2019. For the said purpose, petitioner sent all the prescribed documents via speed post, booked on 08.01.2019. However, the said speed post was received at the concerned section/office of Respondent No. 1 on 25.01.2019 i.e. beyond the last date.

5. It is the case of the petitioner that he had booked the Speed post well within time that is around 14 days prior to the prescribed last date of submission and it is only because of the fault of the postal authorities, delay in reaching of documents has been caused. Even, postman – Manish Kumar, himself, sent one letter dated 25.01.2019 (Annexure P-6), to the Superintendent, Recruitment Cell, PGIMER, Chandigarh, admitting his fault and explaining the cause of the delay. In the said letter, it is mentioned that Speed Post Article No.EH259910466IN, was mistakenly taken by him to the Dental Department, under the impression that the same pertains to the Dental Department recruitment. However, said parcel was refused by the said Department and returned. Thus, due to the fault committed by Postman, speed post Article did not reach the Recruitment Cell within prescribed time though had reached to the Dental Department of PGIMER (respondent No.1), **despite the same being booked on 08.01.2019, itself at the Head Post Office at Jind.**

6. In response to the application of the petitioner and the letter addressed by the Postman, Respondent No.1, addressed a communication

through its letter No. PGI/RC/2019/725, dated 16.02.2019, informing therein that the application of the petitioner was received by it along with clarification dated 25.01.2019, which in fact, is written by the postman, confessing his unintentional fault, which led to the delayed delivery of Speed Post Article No. EH259910466IN, to the Administrative Office, Recruitment Cell. However, after being considered, same has been rejected by the Competent Authority on the ground that in the result notice, it was clearly stated that *“the Institute would not be responsible for postal delay due to any reason”*. Therefore, application received after the due date fixed in this regard i.e. 22.01.2019, was not even considered for further process of recruitment and has been thus, rejected.

7. Said decision is assailed by the petitioner by way of present writ petition, before this Court.

8. On 13.03.2019, while issuing notice of motion, Coordinate Bench of this Court, passed the following order:-

“
CWP NO. 6716 OF 2019
SANDEEP SINGH PARMAR
VS
PGIMER AND ANOTHER

*Present : Mr. Trishu Singh, Advocate,
for the petitioner.*

Learned counsel for the petitioner, inter-alia, contends that the petitioner applied for the post of Staff Car Driver Ordinary Grade and pursuant thereto, qualified the written examination, as reflected from the result Annexure P-4. He further submits that pursuant thereto, the petitioner sent the requisite documents, for which cut off date of submission was 22.01.2019, well in advance vide speed post dated

08.01.2019 (Annexure P-5). However, due to the fault of Department of Postal Services, the speed post consignment was delivered one day after the cut off date i.e 23.01.2019. The petitioner approached respondent No.1 along with clarification/confession of the post-man, admitting his mistake for delaying the delivery to respondent No.1. Notwithstanding, vide impugned letter/ order dated 16.02.2019 (Annexure P-7), the documents submitted by the petitioner have not been accepted by respondent No.1, on account of delay of one day.

Notice of motion.

Mr. Praveen C. Goyal, Advocate, has appeared on behalf of respondent No.2 and seeks time to file reply.

Adjourned to 22.04.2019.

Dasti process qua respondent No.1.

In the meanwhile, one post of Staff Car Driver shall be kept vacant by respondent No.1, subject to final outcome of the present writ petition.

(ARUN MONGA)
JUDGE

MARCH 13, 2019”

Thus, one post of ‘Staff Car Driver’ was ordered to be kept vacant by Respondent No. 1, subject to the final outcome of the present writ petition.

9. Both the respondents filed their replies, which are available on the record for perusal. Respondent No.1 – PGIMER, Chandigarh, in its reply/written statement took a specific stand that “*the application was received in the office of the answering respondent on 25.01.2019 (after due date of offline applications i.e. 22.01.2019), therefore, his candidature was rejected, and his offline application/documents were not considered for further recruitment process.*”

10. Further, in the reply of respondent No. 1, it has also been clarified that the eligibility of the candidates with respect to their educational qualifications was not done prior to the written examination. Before the written examination, only eligibility of the candidates for written examination was determined, on the basis, whether or not, a candidate had deposited requisite application fee etc. Candidates so declared provisionally eligible, were allowed to appear in the written examination held on 30.12.2018.

However, there is no dispute that on the basis of the written examination held on 30.12.2018, name of the petitioner was shortlisted and his name was displayed in the list published on the official website of respondent No.1 on 02.01.2019.

In that result notice, it was mentioned that the application(s) along with requisite documents/testimonials of the shortlisted candidates should reach respondent No.1 by 22.01.2019.

Since, petitioner failed to submit his application by due date i.e. 22.01.2019, his candidature was rejected for consideration for further course of recruitment.

11. As per pleaded case of respondent No.1, along with written statement, copy of the result notice dated 02.01.2019 (Annexure R-1), has also been appended, wherein, regarding the candidates who have qualified the written examination, following instructions were mentioned for its compliance:-

“ Therefore, all the shortlisted/qualified candidates are informed that they have to apply afresh in the prescribed application form which can be downloaded from PGI website www.pgimer.edu.in and send the same alongwith all

certificates duly attested by the Gazetted Officer so as to check their eligibility for the above said posts.

All columns of the application form are to be filled in and no column should be left blank. No further addition or deletion in the application form will be allowed. Entries filled in the application form, duly supported by the relevant certificates will only be considered. The applications complete in all respect and accompanied with all the certificates must reach the Administrative Officer, Recruitment Cell, PIMER, Sector 12, Chandigarh - 160012 through speed post/registered post/by hand on or before 22.01.2019 upto 4:00 PM. No application received after this date i.e. 22.01.2019 will be entertained and candidature of such applicants will be treated as cancelled. The candidates are, therefore, advised to apply as soon as possible so that their applications must reach the Recruitment Cell of PIMER, Chandigarh well before the last date. The Institute would not be responsible for postal delay due to any reason. The envelop carrying the application alongwith testimonials must be clearly subscribed in capital letters the name of the post applied for i.e. Computer Programmer and Staff Car Driver Ordinary Grade, as the case may be.

On receipt of applications of the shortlisted candidates, the scrutiny of these applications will be done for verifying the eligibility of the candidates for the post by the Scrutiny Committee of the Institute. The scrutiny/eligibility will be determined as per the Recruitment Rules/guidelines/detailed information as notified in the advertisement and the documents submitted by the candidates. No further correspondence will be entertained in this regard and no document will be entertained later. The candidates will be selected on merit basis and the list of selected candidates will be displayed on the Institute's website i.e. www.pgimer.edu.in. Therefore, candidates are advised to visit PGI website www.pgimer.edu.in frequently. For any query,

candidate may contact Administrative Officer, Recruitment Cell personally or through Tel. No.0172-2755579 on any working day between 2:00 PM to 4:00 PM.”

Relevant part to be noticed from the result notice is that **“applications complete in all respect and accompanied with all the certificates must reach the Administrative Officer, Recruitment Cell, PGIMER, Sector 12, Chandigarh – 160012 through speed post/registered post/by hand, on or before 22.01.2019, upto 4:00 P.M. No application received after this date i.e. 22.01.2019, will be entertained and candidature of such applicants will be treated as cancelled.”**

Here, it needs to be clarified that in the Advertisement No.PGI/RC/081/2018/4305, dated 18.07.2018, only the last date of submission of application form through online process, was mentioned but there was no date fixed or mentioned about the written examination or submission of offline application with the documents after shortlisting of the candidates by conducting the written examination.

12. While taking the above-said defense, respondent No.1 relies upon a judgment passed by this Court (Punjab and Haryana High Court) titled as **Dr. Jayanta Samanta vs. Director, PGI, Chandigarh and others (CWP-22228 of 2017)**, decided on **03.11.2017** and submits that the facts in the case at hand are similar to the facts in the judgment cited.

13. For opposing the prayer and contention of the petitioner, counsel appearing on behalf of respondent No.1 – PGIMER, Chandigarh, submits that right of the petitioner stands extinguished in view of the judgment of the Full Bench of this Court rendered in **Rahul Prabhakar vs. Punjab Technical University, Jalandhar, 1998 AIR (P&H) 18 : Law**

Finder Doc Id #20114, and also in view of the judgment passed by the Hon'ble Single Bench in ***Dr. Jayanta Samanta's case (supra)***.

14. It is also borne out from the result notice that on receipt of the application and the required documents, applications of the shortlisted candidates from the written examination, were to be scrutinized by the Scrutiny Committee of the Institute for the purpose of verification of the eligibility of such candidates.

15. Based on the pleadings raised in the writ petition, counsel for the petitioner submits that there being no fault on his part, his application should be considered for the recruitment process, by scrutinizing his documents, for the one post kept vacant at the instance of the interim order dated 13.03.2019, of this Court.

There is nothing to refer that at any point of time, said interim order was ever sought to be modified by respondent No.1 or has been modified by the Court on its own. Therefore, for the purpose of deciding the right of the petitioner in the present writ petition, the Court is proceeding further by keeping the said aspect also in mind.

16. Counsel for the petitioner further submits that the application and the relevant documents vide consignment No.EH2599110466IN, was booked for Speed Post at Chang Sub Office (S.O) on 08.01.2019 at 12:07:09 by mentioning the outstation Pin Code as 160012. As per the track record appended with the present petition, said consignment reached the delivery location i.e. Sector 12, Chandigarh Sub Office (S.O), on 23.01.2019 at 14:37:00.

From the track record, it is further revealed that during this journey of the parcel, at the first instance, it had reached to National Speed

Post Hub Chandigarh (NSH Chandigarh) on 10.01.2019 at 16:15:30. Thereafter, the parcel ultimately reached Village Kharak Kalan S.O. (Sub Office) on 23.01.2019, obviously, for its return journey, and thereupon, it was ultimately delivered on 23.01.2019 itself at Sector 12, Chandigarh S.O., which initially was booked for Village Chang S.O.

17. In support of the stand taken by petitioner, Respondent No. 2 - Chief Post Master General, Chandigarh Speed Post Centre, Sector 17, Chandigarh, has filed a reply in the shape of an affidavit of Mr. Manoj Kumar, Senior Superintendent and took a specific stand that the speed post Article No. EH259910466IN was delivered to Respondent No. 1 on 18.01.2019 itself, but instead of delivering it to the Recruitment Cell, it was delivered in the Oral Health Department, PGI, where the date of recruitment had expired on 08.01.2019. Therefore, Oral Health Department returned the application. As per the stand taken by Respondent No. 2 in the written statement, there cannot be any dispute that the parcel reached to the primary Institute i.e PGIMER, Chandigarh well within time. However, because of the mistake of the Postman, it was taken to Oral Health Department of PGI, Chandigarh itself. Thus, either the parcel could have been received by the Oral Health department for its further transfer to the concerned section or the postman could have been guided properly to ensure timely delivery of parcel to the concerned section.

Thus, as per the stand of Respondent No. 2, there can't be any dispute that the article reached in the premises of PGIMER, Chandigarh on 18.01.2019 itself i.e. much prior to 22.01.2019 (last date for submitting the application) for the post in question. For reference, unchallenged preliminary submissions in the reply of Respondent No. 2, are reproduced herein-below:-

“PRELIMINARY SUBMISSION

That the present writ petition is not maintainable because no injustice caused to the petitioner. That the grouse of the petitioner is that the respondent no 1 did not entertain the candidature of the petitioner because the documents of the petitioner were not submitted before the last date of submission. In fact the speed post article no EH259910466IN was present to be delivered before the respondent no 1 on 18.01.2019 much before the last date of submission of the documents by the petitioner i.e. 22.01.2019 but the officials of the respondent no 1 refused to take the delivery of the above mentioned articles from the postman serving in the office of respondent no 2 by saying that last date was over whereas the last date of submission of the article was 22.01.2019. So, there is no fault on the part of any of the official of the respondent no 2. Recruitment process was going on at PGI in two Departments i.e Oral health department and Recruitment cell PGI and last dates for receiving applications were 08-01-2019 and 22-01-2019 respectively. The articles of both Departments were identical and were being received in huge quantity on daily basis during recruitment period. Moreover, the articles belongs to same institution i.e PGI, Chandigarh. If the official of the Oral Department, PGI (Respondent No. 1) had guided the postman properly, the article in question might have delivered in the Recruitment cell timely. The staff of respondent No. 1 could have received the article and transfer it internally to the concerned section of their office too. The respondent No. 1 did not opt for any of the two means and simply took the articles from the postman and returned after checking the covers of the articles by saying that the date of these articles is over. Furthermore when the sender approached with the returned article to the respondent No. 2, as a good will gesture liaison was made with the office of respondent No. 1 and the official of the respondent no 2 duly delivered the article of the petitioner to the respondent no 1

on 25.01.2019 which was duly accepted by the respondent no 1. If there was any dispute regarding submission of the documents then that is between the petitioner and respondent no 1 and if respondent no 1 accepted the submission of the petitioner and accepted the documents of the petitioner then respondent no 2 would have no objection.”

18. Before proceeding further, the relevant selection process meant for the post, as appended with the present writ petition, is reproduced hereunder:-

“C. *SELECTION PROCEDURE:-*

After the closing of last date of applications, the eligibility of the candidates for written examination will be based on i) whether the candidate has deposited the requisite application fee in the bank or not?, ii) whether after depositing of fee in the bank it has been entered and updated in the application form or not? Iii) after reconciliation with the bank statement.

NOTE: If all the above three conditions are affirmative then the candidate is provisionally eligible. If the candidate doesn't fulfill any of the three conditions, he/she is not eligible.

The eligibility of the candidates regarding educational qualification, age etc. will not be checked at this stage because no certificates/documents are called from the candidates alongwith application forms. These candidates are required to sit in the written examination, which will be held in Chandigarh only. The Date of Examination, Centre of Examination, Roll Number and Instructions for candidates etc. will be intimated to the candidates in Admit Cards which will be available on the website of the PGIMER i.e. www.pgimer.edu.in.

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FOR GROUP 'B' (non-gazetted) & GROUP 'C' POSTS
(Sr.No.5 to 18):-

The written examination in English language only would be of 105 minutes (five minutes for biometric capturing) duration and will consist of 100 questions (each question shall be of one mark). There will be a negative marking to the extent of 0.25 marks per question for a wrong response. On the basis of written examination, candidates, three times of the vacancies advertised will be shortlisted on merit for further selection procedure. However, for the posts of STAFF CAR Driver Ordinary Grade (Sr.No. 15) and Security Guard Grade-II (Sr.No. 18), this will be five times of the vacancies advertised. During the examination, the candidates will be required to undergo biometrics so as to ascertain any impersonation in the examination. The shortlisted candidates will be required to apply afresh on a given application format which will be made available on the website of the Institute (at the time of declaration result of written examination) alongwith all the certificates/documents/testimonials etc. It is made clear that merely appearing and qualifying the written examination for a post does not make a candidate eligible or confer any right of his/her being selected for any post which he/she has applied for.

Based on these documents submitted by the shortlisted candidates, the applications alongwith supported documents will be scrutinized as per Recruitment Rules of the post and the prescribed qualification, experience etc. A candidate who will be found eligible by the Scrutiny Committee, his/her result will be compiled provisionally and candidates in merit list including those in waiting would be called to appear personally for document verification on a day and time to be intimated to them. The candidates who will be found eligible after document verification, their final

merit list will be prepared alongwith a waiting list thereof based on the marks obtained by the candidates in the written examination. The minimum qualifying marks will be 40% for General category and 35% for SC/ST/OBC category. As the Government of India has dispensed with the holding of interview for Group 'B' and 'C' (non-gazetted) posts, there will be no interview for these posts and the candidates will be selected on the basis of merit in the written examination only.

SKILL TEST:-

For the following posts, skill test/physical test will also be conducted for the candidates) shortlisted in the written examination:-

1. Staff Car Driver Ordinary Grade (Sr.No.15):-

A driving test as mentioned above (page no.6) will be conducted to ascertain the knowledge of driving, motor mechanism and or removing minor defects of the vehicles.

2. Security Guard Grade-II (Sr.No.18):-

Physical test on the parameters as mentioned above (page no.788) will be conducted.”

19. From the pleadings raised by the parties through the writ petition, written statement of both the respondents and affidavit dated 07.02.2024, none of the pleaded fact is in dispute. For the sake of convenience, relevant dates with events are presented in a tabular form:-

18.07.2018	<i>Vide Advertisement No.PGI/RC/081/2018/4305, dated 18.07.2018, 7 posts of Staff Car Driver (Orindary Grade) were advertised. In pursuance to which, petitioner applied for the said post.</i>
30.12.2018	<i>In pursuance to the advertisement dated 18.07.2018, petitioner was called for written examination on 30.12.2018, for the post of Staff Car Driver (Ordinary</i>

	Grade).
02.01.2019	Result of the written examination dated 30.12.2018, declared on 02.01.2019. As per result, total 37 candidates including the petitioner were qualified and shorted listed for the post of Staff Car Driver (Ordinary Grade). Name of the petitioner finds mention at Sr. No.14 of the short listed candidates.
22.01.2019	As per the result notice dated 02.01.2019, it was specifically mentioned therein that applications complete in all respect and accompanied with all respects, should have reached the Administrative Officer, Recruitment Cell, PGIMER, Sector-12, Chandigarh through Speed Post/Registered Post/By Hand, on or before 22.01.2019 upto 4:00 PM. It was clearly mentioned therein that no application received after due date i.e. 22.01.2019, would be entertained and candidature of such applicant would be treated as cancelled.
25.01.2019	Out of 37 candidates, 36 candidates had submitted their offline applications on or before the last/due date i.e. 22.01.2019, however, offline application of the petitioner was received in the office of respondent No.1 – PGIMER, Chandigarh, vide Diary No.425, dated 25.01.2019, i.e. after the due date i.e. 22.01.2019, and thus, same was rejected by the concerned authority.
16.02.2019	The Recruitment Cell, vide letter dated 16.02.2019 (P-7) had informed the petitioner regarding rejection of his offline application.

20. Let this Court firstly; proceed with the factual situation of the **Rahul Prabhakar's case (supra)**. In that case, for conducting Common Entrance Test (CET), 1997 for admissions to the Engineering Course, Punjab Technical University, Jalandhar issued one prospectus on 17.03.1997. It was specifically mentioned in the prospectus that application forms duly filled should reach to the Coordinator last by 5:00 P.M. on

21.03.1997. However, application of the petitioner – Rahul Prabhakar reached to the University on 25.03.1997 i.e. four days later to the last date i.e. 21.03.1997. Petitioner therein submitted a representation dated 09.04.1997 which was rejected. When the said order passed by the University was assailed by the petitioner therein through a writ petition before this Court, matter was referred to the Full Bench, wherein, after discussing the other judgments, Hon'ble Full Bench held that *'the cut off date fixed should be imperative and certain. It cannot be varied according to the whims and fancies of the Authorities. If it is made variable, we are clear in our minds that it will lead to injustice, arbitrariness and unfair results. Applications for admission can be sent by post, by courier or can be delivered by hand. The date with which we are concerned is the date of receipt of the application by the Authorities. The date on which it is sent is not of any consequence.'*

It was further observed that *'in such a situation, our considered opinion is that time and date for the receipt of the application fixed in the prospectus/information brochure has to be strictly adhered to.'*

21. While distinguishing with the judgment titled as **Anurag Sharma v. Regional Engineering College, Kurukshetra and others, 1996(1) RSJ 795**, wherein an opportunity was granted to the candidate, Hon'ble Full Bench observed that *'We are not in a position to agree with the logic in these observations. While preparing the prospectus, candidates who seek admission have no say in the matter, but conditions incorporated therein bind all the candidates. One, who is not complying with those conditions, has to meet the consequences. No question of arbitrariness or unfairness can be urged by the person who fails to satisfy the requirements mentioned*

in the prospectus.'

22. While dealing with the observations given in the other judgments, Hon'ble Full Bench observed as under:

'..... Thus, it is settled law that the provisions contained in the information brochure for the common entrance test 1997 have the force of law and have to be strictly complied with. No modification can be made by the Court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the Co-coordinator or the competent authority as the case may be, the same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected.'

23. While relying upon the observation made by Hon'ble the Apex Court in **Union of India v. Mohd. Nazim; AIR 1980 SC 431** that "*post office is not a common carrier, it is not an agent of the sender of the postal article for reaching it to the addressee. According to their Lordships, post office is really a branch of the public service providing postal services subject to the provisions of the Indian Post Office Act, 1893 and the rules made thereunder*", Hon'ble Full Bench held that Entrustment of a postal Article with the post office for transmission to the addressee does not give

rise to a contractual relationship between the sender and the post office.

24. However, while reading the complete judgment of **Rahul Prabhakar's case (supra)**, this Court noticed in specific a fact in paragraph No.9 that *“if this application is directed to be treated as one filed within time, what would happen to other 125 candidates?”* Similar is the fact recorded in another judgment relied upon by the respondent i.e. **Dr. Jayanta Samanta's case (supra)**, wherein, a fact has been mentioned that 15 applications were received after the due date, and all were rejected by the respondent Institute.

25. Even on almost similar facts and circumstances, counsel for respondent No.1 – PGIMER, Chandigarh, placed reliance upon the Full Bench judgment of the Hon'ble Allahabad High Court in the case titled as **Rajendra Patel v. State of U.P and another, 2015(4) S.C.T. 681 : Law Finder Doc ID #709947**, wherein it was held that the condition imposed by the recruiting agency needs to be scrupulously observed. Relevant paragraphs No. 12, 13 & 22 of the aforesaid judgment are reproduced herein-below:-

“12. Finding a conflict between the judgments of the Division Benches, a reference has been made to the Full Bench. For convenience of exposition, the question which arises before the Full Bench is formulated as follows:

"Where the Commission requires the submission of an online application as well as the submission of a hard copy of the application together with all the requisite documents by a prescribed last date and candidates are placed on notice that the candidature of an applicant who has failed to complete all the prescribed stages by the last date would be rejected, would it be a correct position in law to hold that the Commission is bound to

entertain the application though the hard copy together with the documents was received after the last date prescribed merely on the ground that the documents had been dispatched before the last date of the receipt of the application."

13. *In the present case, the facts which are not in dispute, are as follows:*

(i) All the candidates were duly notified by the Commission of the four stages that were required to be completed for submission of the application for appearing at the main examination. The stages which were indicated included the submission of an online application by a stipulated date as well as the submission of a hard copy together with all documents at the office of the Commission by 27 October 2014;

(ii) The candidates were given an option of submitting the documents either by registered post or of delivering the hard copy of the application together with all requisite documents by personal delivery at the office of the Commission by the prescribed date; and

(iii) The candidates were placed on notice that all the four stages that were contemplated would have to be completed by the prescribed last date, failing which, the candidature would stand rejected.

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22. *For these reasons, we hold that where the Commission requires the submission of a hard copy of the online application together with all accompanying documents by a prescribed last date and has clearly placed the candidates on notice of the fact that an application which is submitted beyond the last date together with the prescribed documents would result in the invalidation of the candidature, the condition which has been imposed by the Commission would*

have to be scrupulously observed. It would not be open to the Court to hold that notwithstanding such a clear condition, an application which has not been received by the last date should be entertained. The Commission has given an option to candidates of submitting their applications in the hard copy by either of the two modes, namely by registered post or by personal delivery. A candidate who has opted for one of the two modes, is required to comply with the condition that all the requisite four stages are completed within the time stipulated.”

26. Now dealing with the factual aspect of the present case, undoubtedly, this Court is bound to follow the dictum laid down by the Hon’ble Full Bench in **Rahul Prabhakar’s case (supra)** as well as **Rajendra Patel’s case (supra)**. Therefore, in respect to the facts recorded therein, there cannot be any question to the view taken by their Lordships, while laying down the law.

Thus, relying upon the law laid down by the Full Bench of this Court (Punjab and Haryana High Court) in **Rahul Prabhkar’s case (supra)**, and then by the Allahabad High Court in **Rajendra Patel’s case (supra)** as well as by the Hon’ble Division Bench of this Court (Punjab and Haryana High Court) in **Dr. Jayanta Samanta’s case (supra)**, it is firmly concluded that there is no right of the petitioner to get his candidature re-considered as per the law laid down by the Hon’ble Full Bench of this Court as well as Hon’ble Allahabad High Court on the ground that his application was posted through speed post well before time, but it reached to the concerned department of PGI beyond the last date due to the fault of the postal authorities. Thus, on law, no right accrues to the petitioner for reconsideration of his candidature for the post in question.

27. **WHETHER APPLICATION OF THE PETITIONER CAN STILL BE CONSIDERED FOR ONE VACANT POST:**

In the present case, the reason for reaching of the application, somehow at belated stage, appears to be attributed solely to the Postal Department. However, no doubt, the reaching of the application could be ensured by the petitioner by delivering the same by hand.

From the facts explained in the written statement (notarized affidavit dated 17.11.2020) of respondent No.2 and confession of the postman, namely; Manish Kumar and the handwritten endorsement, shows that application, in fact, had reached at the premises of PGIMER, Chandigarh, much prior to the last date of receiving of the application. But for the reason not known to anybody, it was delivered back to the post office, from where it was sent, and thereafter, same was delivered through the employee of respondent No.2, namely, Manish Kumar on 23.01.2019 at the correct address of respondent No.1.

While proceeding further, this Court would like to examine the conduct of both the respondents, which are premier agencies of the Central Government, to provide essential services to the public. There can't be any dispute that Speed Post Article No. EH259910466IN, was booked by the petitioner on 08.01.2019 at 12:07:09 hrs. at Chang Sub Office (S.O). As per the facts detailed in the preliminary submissions of the reply by way of affidavit dated 17.11.2020, of Senior Superintendent of Post Offices, Chandigarh, on behalf of respondent No. 2, the aforementioned Speed Post Article had reached to the premises of PGIMER, Chandigarh on 18.01.2019 itself, but it landed in the Oral Health Department of respondent No. 1 i.e. PGIMER, Chandigarh. Since the last date for submitting the application for

recruitment process, which was going on in the Oral Health Department, PGIMER, Chandigarh, i.e. 08.01.2019, had expired, the officials of the Oral Health Department, PGIMER, Chandigarh, refused to take the delivery of the said article from the postman and the same was marked for its return through the Postman – Manish Kumar. This fact has been corroborated by the Postman in the confessional explanation dated 25.01.2019, submitted by him to the Administrative Officer, Recruitment Cell, PGIMER, Chandigarh (appended as Annexure P-6). Respondent No. 2 in its reply has further stated that Oral Health Department of respondent No. 1 – PGIMER, Chandigarh, could have transferred the application of the petitioner to the concerned Section of the PGIMER, i.e. Recruitment Cell, for consideration for the post in question. This fact, as pleaded by respondent No. 2, has not been questioned/challenged by respondent No.1, by confirming it from the Oral Health Department.

28. After noticing the fact that this Court by its order dated 13.03.2019 (referred herein-above) directed respondent No.1 to keep one post of ‘Staff Car Driver’ vacant, subject to final outcome of the present writ petition, Respondent No.1 was directed to file an affidavit that how many applications have been received by respondent No.1 – PGIMER, Chandigarh beyond the last date of receipt of applications i.e. 22.01.2019 vide order dated 23.01.2024.

29. In response thereto, Mr. Mohinder Singh, Administrative Officer, Recruitment Cell, PGIMER, Chandigarh, filed an affidavit dated 06/07.02.2024 (typed on 06.02.2024 and attested on 07.02.2024), explaining therein that after declaration of result of the written examination, total 37 candidates, including the petitioner were shortlisted for the post of ‘Staff Car

Driver (Ordinary Grade)'. Name of the petitioner finds mention at Sr. No.14 of the said list. Later on, out of 37 candidates, 36 candidates had submitted their offline applications, on or before the last date i.e. 22.01.2019. However, application of the petitioner was received in the office on 25.01.2019. Therefore, broadly speaking, only the application of the petitioner was received after the last date and no other application except of the petitioner was left for its consideration, out of the total 37 shortlisted candidates. Relevant paragraph Nos.4, 5, 6 & 7 of the aforesaid affidavit, are reproduced as under:-

“4. That it is further submitted that in pursuance to the advertisement dated 18.07.2018 followed by written examination held on 30.12.2018, the result of written examination was declared on 02.01.2019. As per the result declared on 02.01.2019, a total of 37 candidates including the petitioner were qualified and shortlisted for the post of Staff Car Driver (Ordinary Grade. The list of shortlisted candidates in all categories are annexed herewith as Annexure R-1. The name of the petitioner finds mentioned at Sr. No. 14 of the shortlisted candidates from the written examination held on 30.12.2018 for the post of Staff Car Driver (Ordinary Grade), General Category.

5. That as per the result notice dated 02.01.2019, the applications complete in all respect and accompanied with all certificates should have reached the Administrative Officer, Recruitment Cell, PGIMER, Sector-12, Chandigarh through Speed Post/Registered Post/By Hand on or before 22.01.2019 upto 4:00 PM. It was clearly mentioned in the result notice dated 02.01.2019 that no application received after the due date i.e. 22.01.2019, would be entertained and the candidature of such applications would be treated as cancelled.

6. That it is further submitted that out of 37 candidates, 36

candidates had submitted their offline applications on/before the last/due date i.e., 22.01.2019, however, the offline application of the petitioner was received in the Office of the undersigned vide Diary No. 425 dated 25.01.2019 i.e., after the due date i.e., 22.01.2019 and the same was rejected by the Authority. Accordingly, the petitioner was informed by the Recruitment Cell of PGIMER, vide letter dated 16.02.2019 (Annexure P-7) with respect to rejection of the application of the petitioner for the post of Staff Car Driver which was advertised vide advertisement dated 18.07.2018.

7. It is therefore respectfully submitted that out of a total of 37 shortlisted candidates a total of 36 candidates had submitted their offline applications on or before the last date/due date i.e., 22.01.2019 and that it is only the petitioner who submitted the offline application after the last date i.e., on 25.01.2019 after the due date of 22.01.2019. Therefore, no other applications have been received by respondent No. -1-PIMER beyond the last date of receipt of applications dated 22.01.2019.”

30. With the said information supplied by the PGIMER, Chandigarh, one fact is found on different footing from the referred judgments wherein, the basic principle of law was laid down. The fact, which is different is that in the **Rahul Prabhakar’s case (supra)**, there were total 126 applications, which were received by the Punjab Technical University, beyond the last date for receipt of the applications, and in **Dr. Jayanta Samanta’s case (supra)**, there were total 15 applications, which were received after the due date. However, in the present case, it is only the petitioner whose application has been received late in the concerned Department of PGIMER, Chandigarh (respondent No.1).

31. The basic purpose of laying down the law in **Rahul**

Prabhakar's case (supra), is not to cause discrimination to the other applicants, whose applications also stands rejected, because of receiving the same, beyond the date for receipt of the applications, and those candidates are not before the Court. Second reason is that permitting such practice would amount to allow the unfair practice and arbitrariness on the part of Recruiting Agency. If the said two reasons are looked into, and applied to the facts and circumstances of the present case at hand, there is no such situation. Rather, the Court is of the view that one seat is still lying vacant and, in any case, would be filled up by Respondent No. 1 after the decision of the present writ petition.

32. Thus, there can be two situations.

- Firstly, if the petitioner is not afforded any right of consideration of his application, said post would be contested by remaining applicants, who are already in queue after clearing the written examination and;
- Secondly, in case, the petitioner is granted right of consideration, he would be one more added candidate contesting for the said vacant post.

In the second situation, right of no one will be prejudiced if the petitioner herein is afforded a right to get his application considered, as in that situation, he would be an additional candidate contesting for the one vacant post. Rather, if the petitioner is not afforded right of consideration of his application, legitimate right of the petitioner would get prejudiced, without achieving any purpose.

33. From the advertisement/brochure dated 18.07.2018 (Annexure P-1), a fact is born out that online applications from the general public were

invited for filling up various posts of Group 'A', 'B' and 'C', on regular basis. As per details of posts, in Group 'C', at Sr. No. 15, there is mention of total 7 posts of 'Staff Car Driver Ordinary Grade', bearing the Post Code: STCD/054. Out of total 7 posts, 4 posts belonged to Unreserved Category (UR); 1 post for Scheduled Caste Category (SC); and 2 posts were reserved for Other Backward Class Category (OBC).

34. In the present case, the petitioner is claiming his right of consideration for recruitment to the post of Staff Car Driver Ordinary Grade, against 4 posts of Unreserved Category (UR). During the course of hearing, this Court was informed that out of said four posts, three have already been filled. Therefore, the contest is left only for one vacant post, which has been kept vacant in pursuance to the interim order dated 13.03.2019, passed by this Court.

From the facts detailed in the earlier part of this judgement and the stand taken by respondent No. 1, it becomes clear that after receipt of on-line applications and short-listing through the written examination, for all 7 posts of "staff car drivers", only 37 candidates including the petitioner, were found eligible, to be proceeded further for receiving of off-line applications along with relevant documents/testimonials. Out of 37, already 36 candidates have participated in the process of recruitment and selection process of three posts belonging to the Unreserved Category, has already been completed. Therefore, in all eventuality, only one post of Staff Car Driver Ordinary Grade is lying vacant under the order of this Court, and in case, the said post is to be filled, the contest would be amongst 34 candidates, including the petitioner, **and there is no one else who would be left out resulting into any kind of injustice, prejudice or discrimination**

to him/her, because no one else, except 37 eligible candidates, have cleared the written examination conducted for short listing the candidates for the further course of recruitment.

Apart this, there is another aspect. The date of written examination was not declared in the advertisement/brochure dated 18.07.2018 (Annexure P-1). In fact, in the entire advertisement dated 18.07.2018, except for the closing date for submission of 'online applications', i.e. 18th August 2018, no other dates for various stages of the selection process of any of the advertised posts, were given. Rather, desirous applicants were asked to apply for the posts, who are eligible to move online application, after acknowledging on their own the eligibility criterion for the post to which any applicant/candidate wishes to apply. Accordingly, the petitioner being fully eligible applied through online application, and participated in the process of selection/recruitment for the post in question.

35. As per advertisement (Annexure P-1), information, such as date of examination, centre of examination, roll number and instructions for candidates etc. was to be intimated to the candidates in 'Admit Cards, which were to be made available on the website of the PGIMER i.e. www.pgimer.edu.in'. In other words, all such details were not there in the advertisement, but were informed to all the candidates through the admit cards. Even other dates were also not known before the date of conducting of the written examination. While reading the documents appended with the writ petition, and going deeper, it is found that after display of the result notice dated 02.01.2019 (Annexure R-1), the eligible candidates were informed to submit offline application to the Administrative Officer,

Recruitment Cell, PGIMER, Sector 12, Chandigarh – 160012, through Speed Post/Registered Post/By Hand, on or before 22.01.2019 upto 4:00 PM.

In other words, prior to the said result notice dated 02.01.2019 (Annexure R-1), it was never disclosed in the advertisement or any other communication as a public document that the last date for receiving of the offline application and documents is 22.01.2019. Impliedly, the result notice dated 02.01.2019 is an information to the 37 candidates only, who were short-listed and found eligible for consideration, for further selection process of Staff Car Driver Ordinary Grade, under all the categories. As per the list appended with affidavit dated 07.02.2024, total 21 candidates cleared the test for unreserved category (UR) and petitioner's name is at serial No. 14 therein.

Therefore, as already discussed here-above, except the petitioner, out of total 20 eligible candidates, there is no one else who could not avail the chance of joining the process of selection for the post in question. Thus, in case, petitioner finds an opportunity to rejoin the further course of selection for one vacant post, no one's right is going to be affected, prejudiced or discriminated.

36. In the nutshell, by observing in the foregoing paragraphs No.25 & 26, it is settled proposition of law that no definite right accrues to the petitioner to claim that his application be considered as a valid one.

This Court leaves it open for respondent No.1 – PGIMER, Chandigarh to take note of the circumstances, as noticed by this Court (in paragraphs No.27 to 35), and then make an independent decision. If it so wishes, it may give a chance to the petitioner to participate in the selection

process for one vacant seat left under the order of this Court. However, it will depend entirely on the **pious discretion** of the authorities of respondent No.1 – PGIMER, Chandigarh, who may also proceed by seeking ‘no objection’ from the other contestants/candidates, for one vacant post of Staff Car Driver Ordinary Grade.

Accordingly, with the above-said terms, **writ petition stands disposed of.**

(SANJAY VASHISTH)
JUDGE

May 06, 2024

J.Ram

Whether speaking/reasoned: ✓ *Yes/No*

Whether Reportable: ✓ *Yes/No*