

11.07.2007

Hon'ble Mr. Justice Khem Karan, VC
Hon'ble Mr. P.K. Chatterji, AM

Sri P.N. Rai learned counsel for the respondents in OA 464/03 and Sri D. Pandey brief holder of Sri A. Banerjee appears for the applicant G.L. Srivastava.

Sri D. Pandey filed objection against the application for modification of order dated 02.05.2006.

Heard parties counsel on MA Nos. 2093/06, 2878/06 and 2881/06.

It appears from the perusal of record of OA that the same was finally disposed of vide order dated 02.05.2006 without calling for the reply from the respondents. The operative portion of the said order reads as under:

"It is accordingly finally disposed of with a direction to the respondent No. 3 to consider and dispose of the said representation dated 1.8.2005 (Annexure -5) within a period of two months from the date a certified copy of this order together a copy of the said representation is filed before him and till the representation is decided, atleast one vacancy of the General quota for which merit list has been prepared placing the applicant at Sl. No. 1 shall not be filled in by bringing the person from other departments. No cost."

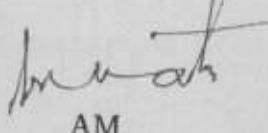
What Sri P.N. Rai wants is that the said order should be modified so as to delete the portion by which this Tribunal directed the respondents to leave one vacancy of the general quota unfilled till the disposal of the representation. He says that all the vacancies had already been filled in March 2006, even before filing of this OA in April 2006 and passing of the said order dated 02.05.2006. He says that had the reply been called for, the Tribunal would have been apprised of the said fact. But since the respondents had no opportunity to place the said fact, so the above direction for keeping one vacancy of general quota unfilled ~~were~~ issued. Sri Pandey appearing for the applicant in OA does not dispute that all the vacancies had already been filled in before passing of the said direction. He says that after the respondents disposed of the representation of the applicant, he filed one OA at Lucknow Bench challenging propriety and validity of the order, so passed on the representation. According to him the said OA is pending. What Sri

✓

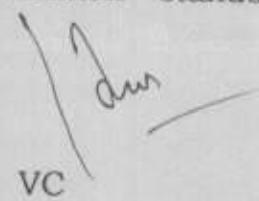
2.

Pandey states is that when the OA at Lucknow is pending against the order passed on the representation of the applicant, the question of modification of the order dated 02.05.2006 should not arise.

After considering the respective submissions we are of the view that the request of the respondents made in MA 2881/06 for modifying the direction dated 02.05.2006 for keeping one vacancy of general quota unfilled till the disposal of the representation of the applicant, has to be accepted. The reason is that the said direction was issued for keeping one vacancy unfilled till disposal of the representation without knowing as to whether there was any such vacancy. If it is the fact that all the vacancies had already been filled up in March 2006 itself as stated in the modification application, then there seems to be no good reason not to modify the said order. So order dated 02.05.2006 is modified to the effect that the direction to the respondents for keeping one vacancy of general quota unfilled till disposal of the applicant's representation will not be there and will not be treated to have been there. MA 2881/06 for modification stands disposed of accordingly.



AM



VC