

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

O.A.NO.291/00096/2016

ORDERS PRONOUNCED ON: 22.11.2016
 (Orders reserved on: 07.10.2016) W

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)**

Vivek Chauhan

son of Late Shri Balwant Singh Chauhan,

aged around 44 years,

resident of III/47 Gandhi Nagar, Jaipur,

presently working as ALR,

Department of Law,

State of Rajasthan, Jaipur.

By : Mr. Amit Mathur, Advocate

Applicant

Versus

1. The Union of India through Secretary, Ministry of Finance, Department of Financial Services, III Floor Jeevan Deep Building, 10 Parliament Street, New Delhi.
2. The Joint Secretary, Government of India, Ministry of Finance, Department of Financial Services, III Floor Jeevan Deep Building, 10 Parliament Street, New Delhi.
3. The Under Secretary, Government of India, Ministry of Finance, Department of Financial Services, III Floor Jeevan Deep Building, 10 Parliament Street, New Delhi.

By : Mr. N.C. Goyal, Advocate.

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Respondents

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The present Original Application is directed against circular dated 9.1.2014 whereby the applications have been invited for filling up vacancies of Recovery Officer at Debt Recovery Tribunal, Jaipur. He has further sought issuance of a direction to the respondents to allow him to joint as Recovery Officer, DRT, Jaipur in pursuance of circular issued on 30.11.2011 on deputation basis, which was for a period of 3 years.
2. The facts, which lead to filing of this Original Application, are that the respondents issued a circular in the Employment News dated 30.7.2011 and 15.8.2011 inviting applications for various posts like Registrar, Assistant Registrar and Recovery Officers in various Debt Recovery Tribunals (for short "DRT") for filling up on deputation basis for a period of 3 years. The applicant who was working as Head Legal Assistant in Department of Law, State of Rajasthan, Jaipur, submitted his application, through proper channel. The applicant alongwith another being eligible, was selected and empanelled against two vacancies. One was clear vacancy and another was anticipated vacancy. The applicant was selected against anticipated vacancy of Recovery Officer at DRT, Jaipur, for a period of 3 years. The anticipated vacancy was to fall vacant on promotion of Sh. Dharam Chand Jain, who was working as Recovery Officer, DRT, Jaipur, who was a departmental candidate for promotion to the post of Registrar. Both the selected candidates were informed about

their selection and appointment and in furtherance of acceptance of offer of appointment, the applicant given his consent to join as Recovery Officer on deputation basis.

3. The respondents, however, informed the parent office of applicant on 22.3.2012 not to relieve him to join at DRT, Jaipur due to some administrative exigencies. Shri D.C. Jain, who was working as Recovery officer, was promoted as Registrar and was posted at DRT-I Bench, Delhi, moved this Tribunal by filing an Original Application challenging his transfer order. This Court at first instance stayed his transfer and he was allowed to continue at Jaipur and ultimately Original Application was allowed vide orders dated 1.6.2014 and Shri Jain was allowed to continue at Jaipur. That order became subject matter of a Civil Writ Petition before High Court, Jaipur, wherein High Court stayed order of this Court. It is thereafter Shri Jain moved from Jaipur to Delhi. The applicant thereafter submitted a representation to the respondents to allow him to join post of R.O. as same had fallen vacant on moving of Sh. Jain to Delhi. He was informed vide communication dated 17.9.2013 to send his representation through his parent office, which the applicant did submit on 26.9.2013 which was forwarded to the respondents on 4.9.2013. Despite the fact that the applicant has already been selected and appointed for the post of R.O. on deputation basis for a period of 3 years, the respondents issued impugned circular inviting fresh applications for the post of R.O. at DRT, Jaipur. Hence the O.A.

4. The respondents have filed a reply resisting the claim of the applicant. The factual accuracy of facts mentioned above is not disputed by them that due to filing of an O.A. by Sh. Jain, and stay granted by this Court, he was allowed to continue as R.O. DRT, Jaipur and as such applicant could not be allowed to join against that post and his parent office was informed accordingly not to relieve him. Additionally, they submit that an O.A. No. 03/2012 was filed before C.A.T. Ahmadabad for appointment of only Group 'B' Gazetted Officers for the post of Recovery Officers, which was allowed and direction was issued to department to amend the Recruitment Rules. In Civil Appeal Nos. 617-618 of 2013 (Arising out of SLP © Nos. 22808-22809 of 2010), the Court directed that the level of Selection Committee may be raised with a higher level of representative from Reserve Bank of India and a Presiding Officer of DRT may also be made a member. Accordingly rules were amended and as per new rules, the Group B Gazetted Officers, having seven years experience with grade pay of Rs.4600 is eligible for appointment to the post of R.O. as per earlier criteria, applicant was selected and appointed though he was having grade pay of Rs.4200 but now he is not eligible for such appointment. The applicant cannot force the respondents to appoint him as it is a tripartite agreement among lending department, borrowing department and the deputationist. A person even if placed on panel has no right to seek appointment.

5. We have heard learned counsel for the parties at length and examined the material on the file.
6. Mr. Amit Mathur, learned counsel for the applicant argued that the action of the respondents in circulating the vacancy against which the applicant stands appointed out of advertisement / circular issued in 2011 for a period of 3 years, is illegal and arbitrary and cannot be sustained in the eyes of law as he has a right to seek appointment against that post. He submitted that the vacancy occupied by Shri Jain stood vacated after his transfer to Delhi and as such he is entitled to appointment and his right of appointment cannot be defeated without disclosing any reasons.
7. Shri N.C. Goyal, learned counsel for the respondents on the other hand, argued that a person empanelled does not have any right to seek appointment if the panel has expired and if competent authorities takes a conscious decision not to fill up the advertised post.
8. We have given thoughtful consideration to the entire matter and scanned through the material available on record with the able assistance of learned counsel for the parties
9. Two questions that arise for our consideration as to whether a candidate who has been selected and empanelled for a post (like RO in DRT, Jaipur) on deputation basis, can seek issuance of direction to the authorities to offer him appointment and join the post after expiry of the validity of the panel.
10. Admittedly the respondents had notified two vacancies, one clear vacancy and another was anticipated on vacation by

Shri Jain in future. Sh. Jain did not vacate the post and matter remained in litigation for quite some time and due to this the applicant could not join. The respondents informed parent office of the applicant that he should not be relieved to join in view of unavailability of the relevant vacancy. The vacancy became available only when litigation came to an end in High Court and Sh. Jain was transferred in 2013 to Delhi. In the meantime, consequent upon litigation in C.A.T. Ahmedabad and Hon'ble Apex Court, the rules underwent change and a person in grade pay of Rs.4200 (drawn by the applicant) became ineligible for the post in question. Thus, the respondents took a conscious decision to re-notify the vacancy as per new recruitment rules. Merely because the applicant was offered appointment at some point of time and was empanelled, would not create any right in him to seek appointment that too on deputation basis and more so he has now became in-eligible in new rules. The authorities had valid reason not to offer to the applicant.

11. In so far as right of empanelled candidates is concerned, the Hon'ble Apex Court in the case of **State of Bihar & Ors Vs. The Secretariat Assistant Successful and Examinees Union** 1986 & Ors. AIR 1994 SC 736 has held that "It is now well settled that a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at the best a condition of eligibility for purposes of appointment and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary"".

Similar view was earlier taken in the case of **Shankara and Dash V.** (1992) IILLJ 18 SC and **Sabita Prasad & Ors. Vs State of Bihar & Ors** – AIR 1992 SC 243. The panel in this case, with passage of time, has expired and secondly now under new rules the applicant has become ineligible. Thus, on these twin grounds the respondents were well within their power and authority in not offering the appointment to the applicant, that too on deputation basis only, and as such circulation of post for filling up the same as per new rules cannot be faulted with.

12. In view of the above factual and legal position, this Original Application turns out to be devoid of any merit and is dismissed.

13. The parties are left to bear their costs. *(Signature)*

(SANJEEV KAUSHIK)
MEMBER (J)

(Signature)
(MS. MEENAKSHI HOOJA)
MEMBER (A)

Place: Jaipur
Dated:

HC*