

Central Administrative Tribunal
Principal Bench
New Delhi

R.A.No.22/2015 in O.A.No.4307/2013
and
MA 474/2015 in R.A.No.22/2015 in O.A.No.4307/2013

Order Reserved on: 27.01.2016
Order pronounced on 02.02.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri V. N. Gaur, Member (A)

The Commissioner
North Delhi Municipal Corporation
Civic Centre, Jawahar Lal Nehru Marg
Minto Road
New Delhi – 110 002. Review Applicant

(By Advocate: Shri R.K.Jain)

Versus

1. Jayvinder Singh
S/o Shri Chanderbhan
H.No.9/2, MCD Flat
Modern Town-III
Delhi.
2. Gajender Singh
S/o Shri Prehlad Singh
H.No.9/2, MCD Flat
Naniwala Bagh, Azadpur. Review Respondents

(By Advocate: Shri Vikramaditya for Shri Sanjay Ghose)

O R D E R

By V. Ajay Kumar, Member (J):

The applicants in the OA filed the same contending that they were originally appointed as Mali on regular basis in the respondent-

Corporation and were later promoted to the post of Garden Chaudhary on ad hoc basis and that they have been working as such for the last more than 15 years.

2. It was the grievance of the applicants in the OA that instead of regularizing their services in the grade of Garden Chaudhary, the respondents are considering the cases of their juniors by conducting a Trade Test on 12th/13th/14th December, 2013. This Tribunal as an interim measure by Order dated 12.12.2013, directed the respondents to allow the applicants to participate in the said Trade Test and not to declare their results until further orders. Accordingly, they were allowed to participate in the Trade Test, along with others.

3. One Shri Raj Rani, an Assistant Commissioner (Horticulture) in the sole respondent-North Delhi Municipal Corporation, filed a short affidavit/status report dated 02.07.2014 and the relevant Paragraphs of the same read as under:

"1. That the applicant in the aforesaid O.A. has sought the relief of staying the trade test proposed to be held for the post of Garden Chowdhry. This Hon'ble Tribunal vide order dated 12.12.2013 directed the respondents to allow the applicants to participate in the Trade test to be conducted on 12th/13th/14th of December, 2013. Accordingly they were allowed to appear in the trade test. A true copy of the letter dated 13.12.2013 in this regard is annexed herewith as **ANNEXURE-A.**

2. That the names of the applicants appeared in the list of the successful candidates and they have been accordingly promoted on the regular basis on the post of Garden Chaudhary vide office order no.AO/Hort. (HQ)/SDMC/2014/355 dated 04.03.2014.

A true copy of the office order no.AO/Hort.(HQ)/SDMC/2014/355 dated 04.03.2014 is annexed herewith as **ANNEXURE-B.**

A true copy of the status report no.AC(Hort.)/DA/HQ/MDMC/2014/28 dated 15.04.2014 in

regard to the promotion of the applicant is annexed hereto as **ANNEXURE-C.**

3. That since the applicant has already been promoted to the post of the Garden Chaudhary in the pay-scale of Rs.5200-20200+1900(G.P.), he has left with no grievances in the matter to agitate in the aforesaid OA. The O.A. of the applicant is accordingly liable to be disposed of having been satisfied.

4. It is therefore prayed that the O.A of the applicant may please be dismissed as having become in fructuous in view of the fact that the he has already got the relief of regular promotion on the post of Garden Chaudhary."

4. When the OA came up for hearing, after hearing both sides, and considering the aforesaid short affidavit/status report, filed on behalf of the sole respondent, this Tribunal by Order dated 27.10.2014 disposed of the OA as under:

"Heard Shri Mohd. Farukh for the applicant and Shri S.P. Jain for the respondents.

2. The present O.A. has been filed by the applicants, who are two in number, apprehending reversion from the post of Garden Chaudhary to the lower post and also for the consequential directions.

3. The respondents filed their counter and annexures thereto stating that the applicants cases have been considered as per their merit in the examination and they have already been promoted to the post of Garden Chaudhary during March, 2014 itself.

4. In the circumstances, nothing survives in the O.A., and accordingly, the same is disposed of, as no further orders are necessary. No order as to costs."

5. One Shri Ranbir Singh, an Additional Director (Horticulture) of the Respondent-North Delhi Municipal Corporation, filed the present RA 22/2015 along with MA No.474/2015 seeking to condone the delay of two months seven days in filing the RA.

6. The main ground in the RA, as mentioned therein, is as under:

"7. That it is hereby submitted, that inadvertently, the respondents herein were's stated to have pass the trade test, whereas their result has been in the sealed cover, as per the order dated 12.12.2013 passed by the Hon'ble Tribunal. From the office order dated 15.04.2014, it is clear that the

result of the applicant No.1 i.e. Jayvinder Singh has been kept in the sealed cover. Whereas with regard to the applicant No.2 i.e. Gajender Singh, it is hereby submitted that Gajender mentioned in the office order dated 15.04.2014 is not the same person who is the applicant in the original OA. Gajender Singh who has filed the OA who is working in the Civil Line Zone whereas the Gajender who had been declared successful in the trade test is working in the Central Zone. Even the biometric ID of both the persons are different. The biometric ID of Gajender Singh, who has filed the OA and working in Civil Line Zone is 10039288, whereas the biometric ID of Gajender who has cleared the trade test and working in Central Zone is 10006413.

8. That the counter affidavit stating that the respondents herein have successfully cleared the trade test and have been promoted, has been filed inadvertently and unintentionally, but due to the mistaken of the identity of the respondents herein.

9. That the respondents herein have not been promoted to the post of Garden Chaudary till date and their result has been kept in the sealed cover as per the order of the Hon'ble Tribunal.

10. That this review is being filed as there is following error of fact apparent on the face of record in the order passed by the Hon'ble Tribunal."

7. Heard both sides in RA as well as in MA.
8. In the circumstances and for the reasons mentioned therein, the MA No.474/2015 is allowed.
9. Since the learned counsel for the respondents (Original applicants in the OA) in the RA have also not disputed the fact that the applicants have not been promoted to the post of Garden Chaudhary as was recorded by this Tribunal basing on the averments in the counter in the OA, and since the same is an error apparent on the face of the record, the RA is liable to be allowed.
10. However, before parting, it is relevant to observe that nothing is forthcoming from the Review Application whether any explanation is

called for from the officer, who is responsible for filing such an affidavit, callously and carelessly.

11. In the circumstances and for the aforesaid reasons, the RA is allowed, subject to payment of costs of Rs.10,000/- to the Delhi State Legal Services Authority by the review applicant, within a period of 30 days from the date of receipt of a copy of this order.

12. Accordingly, the OA is restored to its original file and shall be listed for hearing after payment of costs by the review applicant.

(V. N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

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