

**Central Administrative Tribunal
Principal Bench**

RA No.60/2015 in
OA No. 2882/2009

Order pronounced on: 09.12.2016

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

Dr. Madhulika Sharma
 Assistant Director (Chemistry)
 Forensic Science Laboratory, Delhi
 Sector 14, Rohini,
 Delhi-85
 (By Advocate: Mr. Ajesh Luthra) ... Applicant

Versus

1. The Govt. of National Capital Territory of Delhi
 Through Principal Secretary (Home)
 5th Level, C Wing, Delhi Secretariat
 IP Estate, New Delhi
2. Forensic Science Laboratory, Delhi
 Through the Director,
 Madhuban Chowk,
 Sector 14, Rohini, Delhi-85.
3. Union Public Service Commission
 The Chairman
 Dholpur House, Shahjahan Road
 New Delhi-11
4. Dr. Rajender Kumar
 Forensic Science Laboratory,
 Govt. of NCT of Delhi,
 Madhuban Chowk, Sector-14,
 Rohini, Delhi-85.
5. Mrs. Deepa Verma,
 Forensic Science Laboratory,
 Govt. of NCT of Delhi,
 Madhuban Chowk, Sector-14,
 Rohini, Delhi-85.
6. Ashutosh Kumar Srivastav,
 Forensic Science Laboratory,
 Govt. of NCT of Delhi,
 Madhuban Chowk, Sector-14,
 Rohini, Delhi-85. ... Respondents

(By Advocate: Mr. C.Mohan Rao (for original applicants)

Ms. Sangeeta Tomar for R-1&2
 Mr. R.N.Singh for R-3

ORDER**Hon'ble Mr. V.N.Gaur, Member (A)**

The present RA has been filed in OA No.2882/2009 which was disposed of by this Tribunal vide order dated 27.02.2015. The review applicant was private respondent no.4 in the OA. The following reliefs were sought in the original application:

“8 (i) direct the respondents not to act on the seniority list prepared contrary to the directions of the Hon'ble High Court and/or conduct DPC to promote respondent no.4;

(ii) direct respondent nos. 1 to 3 to prepare seniority list in accordance with the directions of the Hon'ble High Court dated 11.10.2006 and to conduct the DPC considering the applicants for promotion to the post of Deputy Directors; and

(iii) pass such order or orders as the Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

Interim Relief

Pending final decision on the application, the applicant seeks the following interim relief:

Restrain the respondent Nos. 1 to 3 from taking any action pursuant to the tentative seniority list dated 17.9.2009 or conduct DPC contrary to the directions of the Hon'ble High Court during the pendency of the present OA.”

2. Paras 2 to 5 of the order dated 27.02.2015 (sought to be reviewed) read as follows:

“2. The Order of the Hon'ble High Court is very clear and the ramification of the same is that the applicants were to be granted promotion as Assistant Director notionally from the date the post in the respective disciplines fall vacant. According to the learned counsel for applicants, they were granted promotions w.e.f. 29.4.2002 and thereafter and not from the dates of availability of vacancies. According to him, the applicants could acquire the eligibility for promotion to the post w.e.f. 1.3.1999, 1.8.2001 and 19.3.1998.

3. In sum and substance, the grievance espoused by the learned counsel is that before making the promotion to the next grade, i.e., the post of Deputy Director, official respondents ought to have given promotion to the applicants as Assistant Directors from the due date and should have drawn the seniority list in the grade.

4. In the counter reply, the official respondents have submitted that the applicants could not get seniority from the date of joining the post of Senior Scientific Officer on deputation, as they were not in the equivalent grade in the parent organization and the Order passed by the Hon'ble High Court (supra) has not attained finality, as the same could be challenged before the Hon'ble Supreme Court in C. A. No.1753/2007. We find that now the Apex Court has upheld the aforementioned Order of the Hon'ble High Court in terms of the Order dated 13.10.2011.

5. As far as the plea of the official respondents regarding entitlement of the applicants for seniority from the date of deputation is concerned, the issue could be determined by the Hon'ble High Court in terms of its Order dated 11.10.2006 (supra). Thus the Original Application is disposed of with direction to the official respondents to ensure that the applicants are granted promotion as Assistant Director in the spirit of the Order of Hon'ble High Court and their seniority is fixed accordingly. The applicants would also be entitled to their promotion as Deputy Director on the basis of the seniority to be fixed, as directed above. No costs."

3. Mr. Ajesh Luthra, learned counsel for the applicant submitted that there were apparent errors in the order dated 27.02.2015 which call for its review by the Tribunal. The grounds mentioned by the learned counsel for the review applicant are:

(i) The applicants had sought direction to the respondents not to act on the seniority list prepared contrary to the directions of the Hon'ble High Court and/or conduct DPC to promote respondent no.4. The factual situation is that as on the date of filing the OA, i.e. 05.10.2009 no seniority list had been published by the respondents. The question of acting

or not acting on a non-existing seniority list to conduct DPC to promote respondent no.4 therefore did not arise. The OA was not maintainable as there was no cause of action.

(ii) The OA was filed on 05.10.2009 but was kept *sine die* and revived later. In the meantime, the respondents had issued the final combined seniority list of Assistant Directors of FSL on 19.01.2012. With that the directions of Hon'ble High Court dated 11.01.2006 had been complied with. The applicants in the OA, however, did not bring this to the notice of the Tribunal either by amending the OA or filing a fresh one challenging the said seniority list and promotion order. The applicant in the OA did neither, and got the order of the Tribunal by misrepresentation of facts.

(iii) The Tribunal noted the date of acquisition for eligibility for promotion of the applicants in the OA as 01.03.1999, 01.08.2001 and 19.03.1998, which was in complete derogation of the fact that they had been absorbed as SSOs on 25.02.2002. This finding of the Tribunal because of the suppression of the subsequent developments by the applicant has caused prejudice to the review applicant.

4. Learned counsel argued that the facts that the Tribunal had not considered the fact that the OA was not maintainable and the developments after the OA had been filed in 2009 and before the

OA was disposed of, were not brought to its notice, justify invoking the review jurisdiction by the Tribunal and allow the RA, as there was an apparent error on the face of record.

5. Learned counsel for the respondents in the RA, however, vehemently contested the submissions of the learned counsel for the review applicant and submitted that the Tribunal in its order dated 27.02.2015 had not adjudicated on the matter raised in the OA but disposed of the OA with direction to the official respondents to ensure that the applicants were granted promotion as Assistant Director in the spirit of the order of Hon'ble High Court dated 11.10.2006 and their seniority was fixed accordingly. The respondents had already issued the seniority list following the directions of Hon'ble High Court, and therefore, the order of the Tribunal could be infructuous but, it in no way, adversely affected or caused any prejudice to the review applicant.

6. We have perused the order of this Tribunal dated 27.02.2015 and given a careful consideration to the grounds on which the review applicant has sought its review. There is no doubt that the applicants in the OA, when the matter was taken up after recalling it from the *sine die* list, failed to place on record the seniority list dated 19.01.2012 issued by the respondents. However, in the Tribunal's order dated 27.02.2015 the

respondents were only directed to grant promotion to the applicants as Assistant Director in the spirit of order of Hon'ble High Court. The respondents had already implemented the order of the High Court and it is not the case of the review applicant that the order dated 19.01.2012 is under challenge or any prejudice has been caused to the review applicant by the order of this Tribunal. Another ground of the review applicant is that there was no seniority list existing at the time of filing the OA, and therefore, the relief claimed in para 8 (1) of the OA was not maintainable and there was no cause of action.

7. There is no doubt that the facts indicated above might have rendered the OA as not maintainable. However, the fact to be considered is that the direction of the Tribunal dated 27.02.2015 was mainly to implement the order of the Hon'ble High Court, which has already been implemented by the respondents and the same is not under challenge. If the RA is allowed and the plea of the review applicant is accepted, the OA will have to be heard and declared non-maintainable or infructuous. We do not see any reason to go through a needless formality to achieve an infructuous goal. With regard to the third ground taken by the review applicant that the Tribunal had recorded its finding regarding the date of eligibility for promotion of the applicants in para 2 of the order, which has caused prejudice to the review applicant it is noted that the Tribunal had not give any finding of

its own and only recorded the submission of the learned counsel for the applicants. Therefore, this cannot be treated as an error apparent on the face of the record.

8. In the light of the foregoing, we find no merit in the RA and the same is dismissed.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

‘sd’

December, 2016