

Central Administrative Tribunal
Principal Bench: New Delhi

RA No.101/2016
in
OA No.2924/2015

Reserved on: 21.11.2016
Pronounced on: 02.12.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Union Public Service Commission
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi.

...Review applicant/
Original respondent no.2

Versus

1. Dr. Vineet Relhan s/o N D Relhan
R/o 35-F, Sector 7 SFS Flats
Jasola Vihar, New Delhi-25. ...Respondent no.1/
Original Applicant
2. GNCT of Delhi through
Chief Secretary
IP Estate, 5th Floor,
Delhi Sachivalaya
Govt. of NCT of Delhi.
3. The Principal Secretary,
Health & Family Welfare,
9th Level A Wing,
Delhi Sachivalaya, I.P. Estate,
New Delhi-2 ...Respondents

Presence: Sh.J.B. Mudgil, counsel for review applicant.
Sh. Ajesh Luthra, counsel for respondent no1/
original applicant.

O R D E R

By Hon'ble Dr. B.K. Sinha, Member (A):

The instant Review Application has been filed by the review applicant/respondent no.1 under Section 22 (3)(f) of Administrative Tribunals Act, 1985 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 seeking review and

rectification of the Tribunal's order dated 02.02.2016 passed in OA No.2924/2015.

2. The original applicant was appointed as Assistant Professor (Skin & VD/Dermatology) on deputation basis through UPSC and had been posted as such at Maulana Azad Medical College Delhi since 30.09.2011. In response to the advertisement issued by UPSC in July, 2013 for filling up 11 posts of Specialist Gr.III (Dermatology) – non-teaching Specialist in Department of Health & Family Welfare, GNCT of Delhi, the original applicant applied for one of the posts under un-reserved category. Out of the above eleven posts, 8 selections were finalized. Since none was found suitable for 2 ST and 1 OBC vacancies, these three UR posts remained unfilled.

3. The original applicant learnt through information received under Right to Information Act that he had obtained 57 marks and was placed sixth in the UR category and two candidates with higher marks, who were placed in the waiting list, had subsequently joined leaving one vacancy unfilled for which the applicant could have been accommodated. However, the respondent no.1 in the meantime requisitioned fresh dossier in respect of the unfilled posts including that of the applicant.

4. This Bench of this Tribunal vide order dated 02.02.2016 passed in OA No.2924/2015 directed the respondent no.2 to forward the name of the original applicant/respondent to the respondent no.1. It was also recorded that-

"Though in the counter reply filed on behalf of the Union Public Service Commission a stand has been taken that the maximum number of names to be kept in the reserve list may be 50% of the total number of posts/vacancies in each category to which recruitment is being made subject to a minimum of 02 names in each category depending upon the availability of candidates who fulfil the cut-off marks for such category in the order of merit, but amid arguments, learned counsel for respondent no.2 submitted that the Commission will have no difficulty to extend the panel if a direction is given by this Tribunal."

5. Now, the review applicant is there before us contending that he had never made a statement to the effect that respondent no.2 would consider sending the name of the original applicant/respondent to respondent no.1 under the terms of the order. It has been argued by the learned counsel for the respondent that this was an order made in special circumstances of the case and to meet the requirement of job. Therefore, even if the prayer of the review applicant were to be allowed, the fate of the case would remain unaffected.

6. Having carefully gone through the pleadings of the rival parties and patiently heard the oral submissions of the learned counsel for the parties, we find that the Bench,

which heard the Original Application, is no longer available though one of the members of the present Bench [Dr. B.K. Sinha, Member (A)] was also representing the Bench which had delivered the order under review. However, we simply go by the argument that in view of the affidavit filed by the learned counsel for the respondents denying the remarks which have been attributed to him, it has to be taken on its face value and accepted as correct. The fact remains that whether deletion of remarks would affect the fate of the decision under review.

7. We have already discussed the facts of the case and, hence, they need not be repeated. We take note of the fact that Section 99-A of CPC lays down limitation to the scope of the review application. Any order in the review application would be subject to the provisions of Section 99-A of the CPC. In order to have complete clarity, it is necessary to extract Section 99-A *ibid* as under:-

“99A. No order under section 47 to be refused or modified unless decision of the case is prejudicially affected.

Without prejudice to the generality of the provisions of section 99, no order under section 47 shall be reversed or substantially varied, on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case.”

It is an agreed position that the rules of the respondent no.2 do not permit maintaining of reserved list beyond two posts

in the instant case. However, the order has been delivered in the peculiar circumstances of the case where a post was going abegging while a competent person was available. There is an aspect of public interest also involved as the appointment related to Medical Doctor. It was in consideration of these peculiar circumstances, the Bench came to pass the order which is being extracted for sake of complete clarity:-

“6. The Commission received 45 applications for the post in question. Out of these only 39 candidates participated in the interview. The Commission recommended 8 candidates (SC-02, OBC-03 and UR-03) and 2 UR candidates were placed in reserve panel in view of the methodology evolved by the Commission, i.e., the number of candidates in reserved panel should not be more than 50%. From the facts of the present case, it appears that the restriction of 50% is not strictly applied, as the inclusion of 2 UR candidates in the reserved panel indicate that the number of candidates included in the list was approximately 66%. In certain cases where one vacancy is required to be filled up, if the number of candidates included in the UR list is two, it would be 200% of the number of vacancies. Admittedly in the present case the declared number of vacancies could not be filled up. Once the user Department, i.e. the Govt. of NCT of Delhi could request the Commission to forward the name of the candidates found qualified for selection for un-filled vacancies, the Commission should have no difficulty in doing so.

7. In the circumstances, the Original Application is disposed of with direction to respondent No.2 – Union Public Service Commission to consider forwarding the name of applicant to Govt. of NCT of Delhi (respondent Nos. 1 and 3) for his appointment to the post of Specialist Grade III (Dermatology). This order is passed in peculiar facts, particularly in the wake of the stand of the counsel for the Commission and the letter dated 27.02.2015 of respondent Nos. 1 and 3 should not be treated as a judicial precedent regarding extension of size of the panel. No costs.”

8. In view of the above, we allow the instant RA to the limited extent that the lines relating to submissions of the learned counsel for the review applicant pertaining to the learned counsel of the respondent/original applicant i.e. ‘*but amid arguments, learned counsel for respondent No.2 submitted that the Commission will have no difficulty to extend the panel if a direction is given by this Tribunal*’ falling in 7th line of para no.4 of the order and ‘*...particularly in the wake of the stand of the counsel for the Commission*’ falling in the fifth and sixth line of para no.7 of the order under review are order to be deleted.

9. In view of the afore modification of the Tribunal’s order dated 02.02.2016 passed in OA No.2924/2015, the instant Review Application stands allowed accordingly. However, import of the order remains unaffected.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)