

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**CP-541/2016 &
MA-3516/2016 in
OA-2602/2016**

New Delhi this the 13th day of September, 2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

1. Sh. Harinder Kumar, 43 years
Son of Late Sh. Chander Singh,
V.P.O. Mundakhare,
Teh. Bahadurgarh,
Distt. Jhajjar, Haryana-124 105.
2. Sh. Ashok Kumar, 44 years
Son of Late Sh. Matu Ram,
RZ-107-B, Shiv Nagar,
New Roashan Pura, Najafgarh,
Delhi-110 043.
3. Sh. Yogender Kumar, 44 years
Son of Sh. Raja Ram,
Village:Sadullapur,
The.Dadari, P.O. Vaidpura,
Distt. Gautam Budh Nagar.
4. Sh. Harish Kumar, 38 years
Son of Sh. Jai Singh,
44/1, Pushp Vihar, Sector-1,
M.B. Road,
New Delhi-110 017.
5. Sh. Raj Kumar Prasad, 42 years
Late Sh. Parmeshwar Prasad,
66/812, Sector 'D',
Mandir Marg,
New Delhi-110 001.
6. Sh. Yashwant Sah, 39 years,
Son of Sh. Dwarka Sah,
H.No. C-46, Ambedkar Place,

Nangli Vihar Extension,
Village Bepraula,
New Delhi-110 0043.

7. Sh. Shivappa M., 40 years
Son of Sh. Malleshppa K.,
H.No. 276, Sector-1, R.K. Puram,
New Delhi-110 022.
8. Sh. Umesh Prasad, 39 years
Son of Sh. Arat Prasad,
RZ C-97, Dabri Extension (East),
New Delhi-110 045.
9. Sh. Manoj Kumar Yadav, 38 years
S/o Sh. Randhir Singh,
Jhuljhuli, P.O. Ghuman Hera,
New Delhi-110 073.

.... Applicants

(through Sh. Shree Gopal Aggarwal for Sh. Susheel Sharma,
Advocate)

Versus

1. National Human Rights Commission
Through its Secretary General,
Manav Adhikar Bhawan, C-Block,
GPO Complex, INA,
New Delhi.
2. Director (Admn.),
National Human Rights Commission,
Manav Adhikar Bhawan, C-Block,
GPO Complex, INA,
New Delhi.
3. Under Secretary (Estt.),
National Human Rights Commission,
Manav Adhikar Bhawan, C-Block,
GPO Complex, INA,
New Delhi.

.... Respondents

(through Sh. R.V. Sinha, Advocate)

ORDER (ORAL)**Mr. Shekhar Agarwal, Member (A)**

MA-3516/2016 has been filed praying for vacation of our interim order dated 04.08.2016 by which operation of the impugned order dated 29.03.2016 was stayed.

2. Learned counsel for misc. applicants Sh. R.V. Sinha argued that while seeking admission of the OA as well as interim relief, the applicants had argued that their case was similar to OA-2422/2016 in which stay had been granted. Sh. Sinha submitted that vide a detailed order dated 23.03.2017 this Tribunal has vacated the interim relief granted in the aforesaid O.A. Sh. Sinha has produced a copy of that order. He has prayed that in this case also the interim relief may be vacated. He further argued that the applicants had been reverted vide order dated 29.03.2016 but it was only on 04.08.2016 that this Tribunal had stayed the aforesaid order. By that time, the order had already been implemented and the applicants had been reverted. Since the Tribunal had not ordered restoration of status quo ante, the order of the Tribunal had become un-implementable. He relied on the same judgments, namely, **Public Services Tribunal Bar Association Vs. State of U.P. and Another**, (2003) 4 SCC 104 and **Ashok Kumar Bajpai Vs. Dr. (Smt.) Ranjana Bajpai**, AIR 2004 ALL 107 which he had relied on while arguing MA-3523/2016 in OA-2422/2016 for vacation of interim directions given in OA-2422/2016 and

submitted that the Apex Court had ruled that in cases of suspension, dismissal and transfer etc. where grant of interim relief amounts to grant of final relief, interim relief should be granted only in exceptional circumstances.

3. In response proxy counsel for the applicants Sh. Srigopal Aggarwal submitted that the case of applicants herein was different from the case in OA-2422/2016 and the order passed in that case vacating interim relief cannot be straight away applied in this case. He submitted that the applicants had been promoted from one Group-C post to another and as per DoP&T Instructions in such promotions no probation period has been prescribed. He also submitted that the applicants had been reverted without issue of a show cause notice in complete violation of principles of natural justice. He argued that one of the reasons given for reversion by the respondents was that the applicants had not passed the qualifying typing test, which was a mandatory requirement. He cited Recruitment Rules of the post of LDC to submit that no such requirement has been mandated in the Recruitment Rules. He has relied on several judgments, which are as follows:-

- (i) **Prakash Ratan Sinha Vs. State of Bihar and Ors.**, (2009)14 SCC (L&S) 443 to say that since respondents were an instrumentality of the State , it was incumbent on them to

adhere to principles of natural justice before passing an order which has civil consequences.

- (ii) **Dr. M.A. Haque and Ors. Vs. UOI & Ors.,** (1993) 2 SCC 213 to say that Recruitment Rules made under Article-309 of the Constitution have to be followed strictly and not in breach.
- (iii) **Deoraj Vs. State of Maharashtra and Ors.,** (2004) 4 SCC 697 to say that Courts grant interim relief only when they are satisfied that non grant of such relief would perpetuate injustice.
- (iv) **Tej Prakash Pathak & Ors. Vs. Rajasthan High Court & Ors.,** 2013(2) AISLJ 139 to say that the criteria for selection cannot be altered by the authorities in the middle or after the process of selection had commenced.
- (v) **Management of M/s M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Ors.,** (1990) 2 SCC 48 to say that justice should not only be done but also seen to have been done.
- (vi) **Union of India and Anr. Vs. Arulmozhi Iniarasu and Ors.,** (2001) 7 SCC 397 to say that Courts should not place reliance on decisions without discussing as to how factual

situation of case relied upon fits in with the factual situation of the case in hand.

4. We have heard both sides and have perused the material placed on record. Without going into the merits of this case at this stage, we find that it has not been disputed by the parties that the applicants had been reverted vide order dated 29.03.2016 and the order had already been given effect to before 04.08.2016 when the interim relief of stay of the impugned order dated 29.03.2016 was granted. This fact was not brought to the notice of the Court at that time. It is also evident from the dates mentioned above that while the reversion order was passed on 29.03.2016, the stay order was granted by the Tribunal almost 4 ½ months later on 04.08.2016. Moreover, the Tribunal had only ordered stay of the impugned order and not restoration of status quo ante. Therefore, we find merit in the contention of the respondents that the interim directions of the Tribunal had become un-implementable.

5. We also notice a contradiction in the stand taken by the applicants. While arguing the O.A. for admission on 04.08.2016, they had submitted that this case was similar to OA-2422/2016 in which stay had already been granted. However, today before us, it was argued that this case was different.

6. We are further of the opinion that many of the issues raised by learned counsel for the applicants and enumerated above pertain to the merits of the case and are not relevant for considering vacation of the interim directions, particularly, keeping in mind the fact that the impugned order has already been given effect to. Further, we find that applicants are drawing pay in the grade of LDC by virtue of grant of MACP benefit. Thus, no monetary loss has been caused to them by reversion. Moreover, if the applicants succeed in OA, they can always be suitably compensated and no irreparable loss will be caused to them by vacation of interim relief.

7. Therefore, considering all these factors, we are inclined to allow the MA and vacate the interim relief granted on 04.08.2016. Ordered accordingly. We make it clear that we have not expressed any opinion on the final merits of the case.

CP-541/2016

8. This Contempt Petition has been filed alleging disobedience of our order dated 04.08.2016 by which the impugned order dated 29.03.2016 was stayed.

9. In view of our orders above in the MA, nothing survives in this Contempt Petition. Hence, it is closed. Notices issued to the alleged contemnors are discharged.

OA-2602/2016

10. List the OA for final hearing on 03.10.2017. In the meanwhile, applicant may file rejoinder, if any.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/