

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

**CP-419/2016 in
OA-620/2015
MA-3762/2016
MA-764/2017**

Reserved on : 03.03.2017.

Reserved on : 07.03.2017.

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

Shrey Bajaj

Vs.

Sh. Ashim Khurana & Ors.

Present : Sh. Anil Singal, counsel for petitioner.
Sh. S.M. Arif and Sh. Vijay Pandita, counsel for respondents.

O R D E R

Mr. Shekhar Agarwal, Member (A)

This Contempt Petition has been filed for alleged non-compliance of our order dated 05.05.2016, the operative part of which reads as follows:-

“15. In consideration of the above facts, we feel that the applicant has a clear case for consideration against the vacancies of the category as noted above. Therefore, the instant OA stands disposed of with the following directives:- (i) The respondent no.2 shall make a supplementary requisition to the respondent no.1 intimating number of unfilled vacancies for the examination year 2013 for which the respondent no.1 shall prepare and supply a reserve list within a period of one month; (ii) The respondent no.2 shall, thereafter, proceed to make appointments from the afore reserve list for which a supplementary requisition had been sought till exhaustion of vacancies preferably within a period of three months from the

date the reserve list is prepared. (iii) There shall be no order as to costs."

2. The aforesaid order was challenged by respondent No.1 before Hon'ble High Court of Delhi in Writ Petition (C) No. 11739/2016. The aforesaid Writ Petition was dismissed by Hon'ble High Court of Delhi vide order dated 16.12.2016. The operative part of the order of Hon'ble High Court of Delhi reads as follows:-

"15. Learned counsel for the petitioner submits that unfilled vacancies, which arose due to cancellation of candidature, non-appointment, etc. in 2013 recruitment, were cancelled and carried forward to the recruitment/exam in 2016. Respondent No.2-the Commissioner of Police has not challenged the order of the Tribunal. We would not accept this contention to quash the impugned order. The petitioner was wrong in not making a reserve/waiting list/panel. The respondent No.1 who had qualified, should not suffer for the said failure and default. Of course selection of the first respondent would depend upon the number of unfilled vacancies and number of candidates between the last selected candidate and the first respondent. The stand of the second respondent before the Tribunal was that the 2013 selection was to fill up 330 vacancies of Sub-Inspectors (Executive) in the Delhi Police through direct recruitment. The Delhi Police had issued offers of appointment to the candidates recommended by the Staff Selection Commission after completion of the selection process. In the present case the first respondent had not been recommended by the Staff Selection Commission. Furthermore, the Staff Selection Commission had not prepared the panel (waiting) list for selection against cancellation of candidature in the main list. It is in this context that the letter of the second respondent-Delhi Police dated 10.08.2016 is relevant and has been referred to. Thus, the second respondent-the Delhi Police, we believe, in principle does not have an objection.

16. With the aforesaid observation and directions, we dismiss the present writ petition. We clarify that the respondent No.1 would be eligible for consideration, if there were unfilled OBC category Sub-Inspector (Executive) posts in the Delhi Police

and on the basis of marks obtained by him, as per merit, he was entitled to consideration. The discretion whether or not to appoint, is with the Delhi Police, which we accept and believe would be exercised as per, and in accordance with law.

17. The Staff Selection Commission must taken into notice the ratio and directions of the Division Bench of the Delhi High Court in the case of **M.S. Rajni** (Supra), which are salutary and merited. Had due notice and consideration to the ratio been given, this controversy and litigation would have been avoided.

18. Copy of the order be given dasti under the signature of Court Master."

3. When this Contempt Petition was taken up on 15.02.2017, a request was made by the alleged contemnors to grant them time for full compliance of the order. Accordingly, the matter was adjourned to 03.03.2017. Further, directions were given that in case the order is not complied with in the meanwhile, respondent No.1 in the C.P. Mr. Ashim Khurana shall appear in person to explain the position.

4. Respondent No.1 has filed MA-764/2017 seeking exemption from personal appearance and expressing certain difficulties in implementation of the order. This M.A. was heard together with the C.P. on 03.03.2017.

5. Learned counsel for the petitioner Sh. Anil Singal argued that the contemnors were earlier seeking time from this Tribunal for implementation of the order on the ground that a Writ Petition challenging the same was pending before Hon'ble High Court of

Delhi. Now that the aforesaid Writ Petition has been dismissed, there is no reason for the respondents not to comply with the order. He further submitted that this Tribunal had ordered on 15.02.2017 that either this order be complied with by the next date i.e. 03.03.2017 or respondent No.1 Sh. Ashim Khurana should appear in person to explain the position. Sh. Singal submitted that neither the order has been complied with nor Sh. Ashim Khurana has appeared in person. Thus, the respondents have shown scant regard for this Tribunal and for majesty of law.

6. Sh. S.M. Arif, learned counsel appearing for Ashim Khurana submitted that a mere reading of the order would reveal that respondent No.2 herein (Commissioner of Police) was first required to send a requisition to the SSC intimating number of unfilled vacancies for the examination year 2013. Such a requisition has not been received so far. Sh. Arif argued that respondent No.1's role in the matter commences only after receipt of requisition from the respondent No.2. As such, respondent No.1 cannot be held to be responsible for non-compliance of the order.

7. Sh. Vijay Pandita, learned counsel appearing for respondent No.2 (Commissioner of Police Sh. Alok Kumar Verma) argued that in compliance of this Tribunal's order a communication dated 10.08.2016 was sent to SSC by which it was intimated that the unfilled

vacancies that had occurred due to cancellation of candidatures etc. for the recruitment/exam of 2013 have already been adjusted and carried forward to the recruitment/exam of 2016. Sh. Pandita thus submitted that the order stood complied with as far as respondent No. 2 was concerned.

8. Learned counsel for petitioner Sh. Anil Singal, however, drew our attention to para-15 of the judgment of Hon'ble High Court of Delhi and stated that the aforesaid communication dated 10.08.2016 was in the knowledge of Hon'ble High Court but they have not accepted the same. Sh. Singal stated that the relevant part of the order reads as follows:-

"15. Learned counsel for the petitioner submits that unfilled vacancies, which arose due to cancellation of candidature, non-appointment, etc. in 2013 recruitment, were cancelled and carried forward to the recruitment/exam in 2016. Respondent No.2-the Commissioner of Police has not challenged the order of the Tribunal. We would not accept this contention to quash the impugned order. The petitioner was wrong in not making a reserve/waiting list/panel. The respondent No.1 who had qualified, should not suffer for the said failure and default. Of course selection of the first respondent would depend upon the number of unfilled vacancies and number of candidates between the last selected candidate and the first respondent....."

8.1 Sh. Anil Singal argued that in view of the above observations of Hon'ble High Court of Delhi it cannot be said that order has been complied with as far as respondent No.2 was concerned.

9. We have considered the aforesaid submissions and have perused the material placed on record. A mere reading of our order dated 05.05.2016, compliance of which is being sought, reveals that this was in two parts. The first part was a direction to respondent No.2 to send a supplementary requisition to respondent No.1 intimating the number of unfilled vacancies of the examination in question. Respondent No.1 was thereafter required to prepare a reserve list for the unfilled vacancies so that they could be exhausted. It is evident that the first step was to be taken by respondent No.2 and role of respondent No.1 was to commence only after receiving the requisition from respondent No.2. It is clear from the records that respondent No.2 has not sent any communication to respondent No.1 in this regard after their letter dated 10.08.2016. The aforesaid communication by which Police Commissioner had intimated to SSC that no vacancy existed of 2013 examination has not been accepted by Hon'ble High Court of Delhi as is evident from extracts of their order quoted above. We, therefore, direct the respondent No. 2 to re-assess the vacancy position and if any unfilled vacancies of 2013 examination are still unfilled, send a requisition to respondent No.1. The present incumbent of the post of Commissioner of Police shall also file an affidavit within two weeks intimating the action taken. In case, no

vacancy exists, that may be placed on record by means of the affidavit.

9.1 In the event of receiving such a requisition, respondent No.1 shall taken action for compliance of this Tribunal's order by preparing a reserve list within four weeks thereafter.

9.2 Arguing for respondent No.1 Sh. Arif had also submitted that the aforesaid examination was not restricted to recruitment of Sub-Inspectors of Delhi Police alone. It was a combined examination through which recruitments were made to CAPFs as well as Intelligence Bureau. He submitted that preparation of reserve list for Delhi Police would be a herculean task as the entire merit list of all candidates who have joined in various organizations has to be revised. He relied on the judgment of Hon'ble Supreme Court in the case of **Mohd. Iqbal Khanday Vs. Abdul Majid Rather** 1994 AIR 2252 to say that Apex Court has held that if there were genuine difficulties in implementation of an order, the Courts should not insist on their compliance. Para-16 of the aforesaid judgment reads as follows:-

"16. From the above, it appears that the appellant was expressing his genuine difficulties with regard to the implementation of the order dated 21-9-1992. In such a situation the insistence of the courts on implementation may not square with realities of the situation and the practicability of implementation of the court's direction. In our considered view, hooking a Party to contempt proceedings and enforcing obedience to such orders hardly ends credence to judicial process and authority; more so, in the peculiar facts and circumstances of the case. The court must always be zealous in preserving its authority and dignity but at the same time it will

be inadvisable to require compliance of an order impossible of compliance a? the instance of the person proceeding against for contempt. Practically, what the court by means of the contempt proceedings seeks is an execution which cannot meet with our approval."

9.3 We are of the opinion that if respondent No.1 feels that it is not possible to implement the directions given by this Tribunal then a detailed affidavit to this effect be filed for our consideration as to why implementation of the judgment is not possible.

10. In view of our directions above, we allow MA-764/2017 filed by respondent No.1 and exempt the personal appearance of respondent No.1 till further orders.

11. List on 17.05.2017 for our consideration.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/