

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

M.A.NO.808 OF 2016

In
TA No.73 of 2013

New Delhi, this the 27th day of October, 2017

CORAM:

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND
HON'BLE MS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER**

.....

Sh.Mahender Pratap Singh,
s/o Sh. Shyam Lal,
R/o C-28/Y-2,
Dilshad Garden,
Delhi 110095

(Applicant in TA No.73/13).....Petitioner

(By Advocate: Mr.Abhinav Tathagat)

Vs.

1. Govt. of NCT of Delhi,
Chief Secretary,
I.P.Estate, Players Building,
Delhi
2. Director,
Delhi Fire Services,
DFS HQ, Connaught Place,
New Delhi.
3. Secretary,
U.P.S.C.,
Dholpur House,
Shahjahan Road,
Delhi.
4. Abhilash Kumar Malik,
R/o Flat no.F-1,
Fire Station Safdarjang,
Jorbagh
New Delhi 110003
5. Sanjay Kumar Tomar,
R/o Flat No.A-6,
Fire Station,
Connaught Circus,
Delhi 110001

(Respondents in TA 73/13)....Opp.Parties

(By Advocates:Mr.Amit Anand,Mr.D.S.Mahendru & Mr.Sudarshan Rajan)

.....

ORDER

Per RAJ VIR SHARMA, MEMBER(J):

We have carefully perused the records and have heard the learned counsel appearing for the parties.

2. MA No.808 of 2016 has been filed by the petitioner (applicant in TA 73/13) for amendment of his pleadings in TA 73/13.

3. Brief facts giving rise to MA No.808 of 2016 are as follows:

3.1 W.P. (C) No.4006 of 2013 was filed by the applicant-petitioner before the Hon'ble High Court of Delhi, seeking the following reliefs:

- “a) Issue a writ of mandamus or any other appropriate writ, order, or direction in the nature of Mandamus commanding the Respondent No.1 to 3 to comply with appropriate rules and regulations in conformity of the reservation policies with respect to the appointment of Divisional Officer (Fire) with the Respondent No.2.
- b) Issue a writ of mandamus or any other appropriate writ, order, or direction in the nature of Mandamus commanding the Respondent No.1,2 or 3, whoever is responsible for the advertisement no.02/2013 published in the employment news dated 9-15 February 2013 to withdraw/scrap the same.
- c) Issue a writ of mandamus or any other appropriate writ, order, or direction in the nature of Mandamus commanding the Respondent no.3 to refrain from holding the scheduled interview for the post of Divisional Officer (Fire) in the Delhi Fire Service, on 24th of June 2013.
- d) Award costs of the present petition in favour of the petitioner.
- e) Pass any other order/direction, as this Court may deem fit under the given facts and circumstances, in favour of the petitioner and against the Respondents.”

It is pertinent to mention here that through Advertisement No.02/2013, selection and recruitment were sought to be made to two posts of Divisional Officer (Fire) in Government of NCT of Delhi. During the pendency of the TA No.73/13, S/Shri Abhilash Kumar Mallik and S.K.Tomar (present respondent-opposite party nos. 4 and 5) were selected and appointed to the said two posts. Originally, the present

respondent-opposite party nos. 1 to 3 were impleaded as party-respondents in the Writ Petition/TA, and present respondent-opposite party nos. 4 and 5 were not arraigned as party-respondents in the Writ Petition/TA. The Hon'ble High Court, by order dated 19.6.2013, issued notices to the respondent-opposite parties. Subsequently, the Hon'ble High Court, by order dated 21.8.2013, transferred the matter to this Bench of the Tribunal. On transfer, W.P. (C) No.4006/13 was registered as TA No.73/13 on the file of this Bench of the Tribunal.

3.2 After considering the pleadings, and upon hearing the learned counsel appearing for the parties, the coordinate Bench of the Tribunal, by order dated 10.5.2015, dismissed TA No.73/13, solely on the ground of non-joinder of necessary parties, namely, the present respondent-opposite party nos. 4 and 5 who were selected and appointed to the two posts of Divisional Officer (Fire) during pendency of the Writ Petition/TA.

3.3 The applicant-petitioner challenged the Tribunal's order dated 10.5.2015 (ibid) by filing W.P. (C) No.7720 of 2015 before the Hon'ble High Court. The Hon'ble High Court, by order dated 14.8.2015, disposed of W.P. (C) No.7720 of 2015, set aside the Tribunal's order dated 10.5.2015, and remanded the matter back to the Tribunal, with the direction to the Tribunal to hear and decide TA No.73/13 afresh after the application for impleadment of necessary parties is made by the applicant-petitioner.

3.4 By filing MA No.809 of 2016, the applicant-petitioner sought to implead the said S/Shri Abhilash Kumar Malik and S.K.Tomar as respondent nos. 4 and 5 in TA No.73 of 2013. The applicant-petitioner also filed MA No.808 of 2016 for amendment of his pleadings consequent to impleadment of the said S/Shri Abhilash Kumar Malik and S.K.Tomar as respondent nos.4 and 5 in TA No.73/13.

The coordinate Bench of the Tribunal, by order dated 16.8.2016, allowed MA No.809 of 2016. Accordingly, the said S/Shri Abhilash Kumar Malik and S.K.Tomar were impleaded as respondent nos. 4 and 5 in TA No.73/13. However, by the very same order dated 16.8.2016, the coordinate Bench allowed the original respondents and the newly impleaded respondent nos. 4 and 5 to file their objections/counter replies, if any, to MA No.808 of 2016.

3.5 By way of MA No.808 of 2016, the applicant-petitioner sought to make certain other averments and urge certain other grounds challenging the selection and appointment of the newly added respondent nos. 4 and 5 pursuant to the Advertisement No.02/2013. The applicant-petitioner also sought the reliefs of setting aside the selection/appointment of the said respondent nos. 4 and 5, and for a direction to the official respondents to call him for interview and consider his selection and appointment to the post of Divisional Officer (Fire) pursuant to the Advertisement No.02/2013.

4. It has been contended by the applicant-petitioner that the proposed amendment does not change the nature of the matter, and the issue urged before the Tribunal. The amendment of pleadings has been sought by him for bringing about final adjudication upon the issue, and to avoid multiplicity of proceedings. The proposed amendment will also not cause any prejudice to any of the respondent-opposite parties. It is in the interest of justice that a dispute shall be decided on all points of controversy and, therefore, the prayer for amendment should be allowed by the Tribunal.

5. *Per contra*, by filing separate counter replies to MA No.808 of 2016, the respondent-opposite parties have contended that the amendment proposed by the petitioner will change the nature and scope of TA. The reliefs, as sought to be

claimed by the applicant-petitioner by way of amendment, for setting aside the selection and appointment of respondent nos. 4 and 5, and for calling him to the interview and for considering his selection and appointment pursuant to the Advertisement No.02/2013, are hit by Rule 10 of the CAT (Procedure) Rules, 1987. The application made by the petitioner for amendment of the pleadings is grossly barred by delay and laches. In support of their contentions, the respondent-opposite parties have relied on the decision of the Hon'ble Supreme Court in **T.N.Alloy Foundry Co.Ltd. Vs. T.N.Electricity Board and others**, (2004) 3 SCC 392, and the decision of the Hon'ble High Court of Delhi in **Harsharan Singh Vs. Surinder Kaur Narula & ors**, C.R.P.58/2015, decided on 21.4.2015.

5.1 In **T.N.Alloy Foundry Co.Ltd. Vs. T.N.Electricity Board and others** (supra), the appellant-company filed a suit against the respondents in March 1993 claiming damages. In July 1998, the appellant-company made an interlocutory application for amendment of the plaint and sought to enhance the claim for damages. The learned Single Judge of the Hon'ble High Court allowed the amendment. In LPA, the Division Bench of the Hon'ble Court set aside the order of the learned Single Judge. Dismissing the Civil Appeal, the Hon'ble Supreme Court observed that the appellate court has a coextensive power of the trial court and, therefore, the rejection of the application for amendment by the appellate court was in conformity with law.

5.2 In **Harsharan Singh Vs. Surinder Kaur Narula & ors** (supra), the plaintiff-petitioner filed the suit on 23.4.2011 seeking cancellation of agreement to sell, GPA, Affidavit, and possession letter dated 6.2.1997. A joint written statement was filed by the contesting defendant-respondents on 11.2.2013 stating that the documents dated 6.2.1997 were taken back by the plaintiff-petitioner, and

another bunch of documents were executed by the plaintiff-petitioner in their favour on 22.6.1999 and 26.3.2001. On the basis of the said statement of the defendant-respondents, the plaintiff-petitioner filed an application for amendment of pleadings along with an application for condonation of delay in filing of the application for amendment. By the application for amendment, the plaintiff-petitioner wanted to incorporate the relief of declaration and cancellation of agreement to sell, etc., dated 22.6.1999 and 26.3.2011. In the above context, the learned trial court dismissed both the said applications. Against the learned trial court's order, the plaintiff-petitioner filed the civil revision petition. The Hon'ble High Court, following the decisions of the Hon'ble Supreme Court in **L.J.Leach and Co.Ltd. Vs. Jardine Skinner and Co.**, AIR 1957 SC 357, and in **T.N.Alloy Foundry Co. Ltd. Vs. T.N.Electricity Board** (supra), dismissed the said civil revision petition. It was observed by the Hon'ble High Court that on the facts and circumstances of the case, the plaintiff-petitioner did not make out any exceptional case to allow amendment.

6. After having given our thoughtful consideration to the rival contentions, we have found considerable force in the contentions of the applicant-petitioner.

7. In the Writ Petition/T.A., as originally filed, the applicant-petitioner not only challenged the action of the official respondents in initiating the selection process through the Advertisement No.02/2013, but also prayed for a direction to the said respondents to withdraw/scrap the said Advertisement No.02/2013 as being violative of the reservation policy and instructions issued by the Government. According to the applicant-petitioner, one of the two posts of Divisional Officer (Fire) ought to have been filled up by way of direct recruitment

of an SC candidate as per the roster point. Thus, the issues which arise for our consideration are: (i) whether respondent nos. 1 and 2 were justified in deciding to fill up the two posts of Divisional Officer (Fire) by way of direct recruitment without reserving one of the two posts for SC category candidate; (ii) whether the entire gamut of selection process initiated through Advertisement No.02/2013 is violative of the reservation policy/instructions issued by the Government and is sustainable in the eyes of law; and (iii) whether the selection and appointment of private respondent nos.4 and 5 made by the official respondents in pursuance of the Advertisement No.02/2013 during pendency of the Writ Petition/TA are liable to be interfered with. It is the admitted position between the parties that in the absence of any interim order of stay, the respondent-UPSC conducted the interview and selected the private respondent nos. 4 and 5, and accordingly, respondent nos. 1 and 2 appointed private respondent nos. 4 and 5 to the two posts of Divisional Officer (Fire) during the pendency of the Writ Petition/TA before the Hon'ble High Court/Tribunal. Considering the facts and circumstances of the case, the Hon'ble High Court set aside the Tribunal's order dated 15.5.2015(ibid) and remanded the TA back to the Tribunal for hearing after an application for impleadment of the present private respondent nos. 4 and 5 is made by the applicant-petitioner. In compliance with the Hon'ble High Court's direction, the Tribunal allowed MA No.809 of 2016 filed by the applicant-petitioner for impleadment of private respondent nos. 4 and 5 in the TA. By filing MA No.808 of 2016, the applicant-petitioner wanted to introduce, by way of amendment, certain averments pertaining to the selection and appointment of private respondent nos. 4 and 5 made by the official respondents pursuant to the Advertisement No.02/2013, and to seek quashing/setting aside of the selection and appointment of

the private respondent nos. 4 and 5 and other consequential reliefs. Thus, in our considered view, the proposed amendment will not change the nature of the matter, and the issues urged before the Tribunal in TA 73/13 inasmuch as the decision of the respondent nos. 1 and 2 for filling up the two posts of Divisional Officer (Fire) by way of direct recruitment without reserving one of the two posts for SC candidate as per the roster point, and the entire process of selection were under already under challenge. If the amendment, as sought by the applicant-petitioner in MA No.808 of 2016, is not allowed, the issues involved in the Writ Petition/TA cannot be said to be finally adjudicated upon, and there will be multiplicity of proceedings. As the respondents are at liberty to file their counter replies to the amended TA and to make their submissions during the final hearing on the TA, the proposed amendment, if allowed, will also not cause any prejudice to any of the respondents. Considering the totality of the facts and circumstances of the case, particularly the order dated 14.8.2015(ibid) passed by the Hon'ble High Court, we do not find any substance in the contentions of the respondent-opposite parties that selection and appointment of the private respondents gave rise to a fresh cause of action, that the application for amendment of the pleadings is barred by delay and laches, and that the reliefs now sought to be claimed by the applicant-petitioner by way of MA No.808 of 2016 are not consequential to the reliefs as originally prayed for by the applicant-petitioner in the Writ Petition/TA and are hit by Rule 10 of the CAT (Procedure)Rules, 1987.

8. The decisions cited by the learned counsel appearing for the respondents, besides being distinguishable on facts, do not come to the aid of the respondent-opposite parties.

9. In the light of our above discussions, we allow MA No.808 of 2016. The applicant shall file consolidated TA incorporating the amendments as sought in MA No.808 of 2016 and serve copies thereof on the learned counsel appearing for the respondents within one month from today. The respondents shall file counter replies, if any, to the amended TA within one month from the date of receipt of copies of the consolidated TA from the applicant. After completion of the pleadings, the TA shall be placed before the appropriate Bench on 5.1. 2018 for hearing.

10. MA No.808 of 2016 is accordingly disposed of. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

AN