

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.1786/2011

M.A.No.1483/2014

Monday, this the 7th day of September, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Mr. Naresh Sharma son of Hari Prakash Sharma
Drugs Inspector
Director General
Director General of Health Services
Central Drugs Standard Control Organization
FDA Bhawan, New Delhi-2

..Applicant

(Mr. Bijender Singh and Ms. Vidushi, Advocates)

Versus

1. Union of India
Through Secretary,
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi-2
2. Mrs. Swati Srivastava
Drugs Inspector
Director General of Health Services
Central Drugs Standard Control Organization
FDA Bhawan, New Delhi-2
3. Mr. Jayant Kumar
Drugs Inspector
Director General of Health Services
CDSCO, FDA Bhawan, New Delhi-2

..Respondents

(Mr. Nasir Ahmed, Advocate for respondent No.1,
Mr. S M Arif, Advocate for respondent No.2 –
Nemo for respondent No.3)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

M.A. No.1483/2014

For the reasons stated therein, M.A. is allowed and the documents are
taken on record.

O.A.No.1786/2011

The recruitment for the post of Drugs Inspector, Director General of Health Services, Central Drugs Standard Control Organization, Ministry of Health & Family Welfare was finalized by the Union Public Service Commission (UPSC) in terms of the communication dated 4.3.2004. The select list included the names of Mr. Naresh Sharma (applicant herein), Mrs. Swati Srivastava (respondent No.2) and Mr. Jayant Kumar (respondent No.3). Indubitably all the selected candidates were offered appointment on 19.4.2004. The office order No.A-12015/1/2002-D dated 19.4.2004 issued to the applicant has been placed on record by him (page 30 of the paper book). When the two other candidates, i.e., respondent Nos. 2 and 3 herein could assume the charge of the post on 1.9.2004 and 17.6.2005, the applicant herein kept on making representations to the concerned authorities for extension of joining time as well as for changing of place of his posting. Vide letter No.A-12015/1/2002-D dated 30.11.2005 the Director General of Health Services granted him extension upto 22.2.2006. In the said letter, it was specifically mentioned that in the event of his failure to join the duty, the offer of appointment given to him would stand cancelled. The letter reads thus:-

“I am directed to refer to your representation dated 13th October 2005 on the above noted subject and to say that your request for extension of joining time has been examined and you have been granted 3 months extension i.e. up to 22/2/2006 for joining duty to the post of Drugs Inspector in CDSCO, Kolkata. You are, therefore, requested to join duty on or before 22/2/2006 at CDSCO, Kolkata, failing which the offer of appointment will stand cancelled.”

2. Nevertheless, the applicant again made a representation dated 22.2.2006 for further extension of time. In response to the representation,

the Director General of Health Services (Drugs Section) in terms of communication dated 17.4.2006 made it clear that no further request for extension could be accepted and in the event of his failure to join service within two weeks, there would be a presumption that he was no longer interested to join the post and the offer of appointment would be treated as cancelled after expiry of the time limit. The communication reads thus:-

“I am directed to refer to your representation dated 22nd February, 2006 on the above mentioned subject and to say that your representation has been examined in this DGHS (HQ) at competent level. No further extension for joining time can be granted. It has however been decided that you have to join the duty at the Office of the D.D.C. (I) CDSCO (WZ) CGHS dispensary Building, 1st floor Antop Hill, Mumbai-37 instead of joining at CDSCO, Kolkata within two weeks time otherwise it will be presumed that you are no longer interested to join this post and offer of appointment will be treated as cancelled after expiry of the above time-limit.”

3. In any case, again in terms of office order F.No.A-12015/1/2002-D dated 14.4.2006, the applicant was directed to join the duty. In the letter, it was also indicated that he was appointed afresh on temporary post and would be on probation for a period of two years with effect from the date of assumption of charge of the post. The letter reads thus:-

“In modification of this Directorate’s Office Order of even No. Dated 7.6.2005 and dated 17.4.2006 on the subject mentioned above, Shri Naresh Sharma is hereby directed to join duty with immediate effect to the post of Drugs Inspector, Gr. ‘B’ Gazetted, Non-Ministerial, in the pay scale of Rs.7500-250-12,000/- at the office of Joint Drugs Controller (India), Central Drugs Standard Control Organization (CDSCO, North Zone), Segment Wing ‘A’, 1st Floor, CGO Building, Kamla Nehru Nagar, Ghaziabad-200102.

2. Sh. Sharma is appointed on temporary basis and will be on probation for a period of two years w.e.f. the date of assumption of the charge of the post.”

4. From the aforementioned documents placed on record by the applicant himself, it is clear that there was extension of time to join only upto 22.2.2006 and the subsequent letters addressed to him were only to emphasize that he should join duty, failing which the consequences would follow. In a way, office order dated 14.6.2006 (ibid) is sort of revised offer of appointment to the applicant. Finally, the applicant joined the post on 28.11.2006 and when he was assigned seniority below the two other selected candidates, i.e., private respondent Nos. 2 and 3, he approached the Tribunal by way of Original Application No.857/2011, which was disposed of with direction to the respondents to decide his representation by a reasoned and speaking order. Thereafter, the Ministry of Health & Family Welfare, Government of India passed order dated 2.5.2011 rejecting the prayer of the applicant for assigning seniority above private respondent Nos. 2 and 3. In the wake, the applicant filed the present Original Application praying therein:-

“i) Quash the impugned order F.No.C.18018/6/2011-DFQC, dated 02.05.2011.

ii) Quash the impugned Order F.No.Z.23024/1/2010-D dated 27.1.2010 (2011) and the draft list issued under it.”

5. Learned counsel for applicant espoused that once in the select panel the applicant has been shown above private respondent Nos. 2 and 3 and his request for extension of time to join the post was accepted by the Department, he should be assigned seniority in terms of relevant instructions on the subject, i.e., as per his position in the select panel.

6. On the other hand, learned counsels for the respondents espoused that the Original Application is *ex facie* barred by limitation as the draft

seniority list was issued in May 2008 and only after receiving objections from the concerned employees the final seniority list was issued in August 2008. The further stand taken by the respondents is that once the applicant did not join the service within 9 months, his seniority had to be depressed. When the learned counsel for applicant relied upon the O.M. No.9/23/71-Estt. (D) dated 6.6.1978 by producing the copy of the same, Mr. S M Arif, learned counsel for respondent No.2 also placed reliance on the same O.M., a copy of which is also enclosed as Annexure R-10 to the counter filed on behalf of respondent No.1.

7. We heard the learned counsels for the parties and perused the record.

8. Indubitably, the seniority of direct recruits has to be fixed with reference to their merit position in the select list. Paragraph 2.1 of the Government of India, Department of Personnel & Training, O.M. No.22011/7/86-Estt. (D) dated 3.7.1986 and O.M. dated 11.11.2010, relevant to the proposition, reads thus:-

“2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection. The relative seniority that used to be determined earlier according to the date of confirmation and not the original order of merit, (in case where conformation was in an order different from the order of merit indicated at the time of their appointment), in accordance with the general principles of seniority, has been discontinued with effect from 4-11-1992. The general principles of seniority therefore stands modified to that extent.”

9. Nevertheless, where an employee does not join the duty within a reasonable time, i.e., 9 months, in view of the office order (ibid), relied upon by the learned counsels for the parties, the seniority of the applicant

has to be depressed. Admittedly, the applicant had joined the service after 9 months of the first offer of appointment. It is also matter of record that on 14.6.2006 the applicant was given fresh offer of appointment and as it may, no extension of time limit to enable him to join the service with reference to first offer of appointment was given. Even otherwise also in the wake of O.M. dated 6.6.1978 (ibid) once a period of 9 months from 19.4.2004 had lapsed, in not giving extension to the applicant beyond 22.2.2006, the user Department acted with some fairness. When the period of 9 months had lapsed, normally the offer itself could not have been revived and respondent No.1 was gracious enough to revive the offer given to the applicant. The O.M. dated 6.6.1978 (ibid), wherein it has been provided that only such candidates who joined within the period of 9 months will have their seniority fixed under the Seniority Rules (ibid) and in the case of his failure to do so the seniority is likely to be depressed, reads thus:-

“Office Memorandum

Subject: Candidates recommended by the UPSC for appointment to Central Civil Services and the post – delay in joining – revival of offers of appointment after their cancellation – determination of seniority.

....

The undersigned is directed to refer to the general principles of seniority contained in Ministry of Home Affairs' O.M.No.9/11/55-RPS dated 22nd December, 1959 and to say that relative seniority of direct recruits appointed on the recommendations of the UPSC or any other authority is determined by the order of merit in which they are selected for such appointment, the persons appointed as result of an earlier selection being placed above those appointed as result of the subsequent selection. It has come to the notice of the Government that in certain cases, the candidates recommended by them for appointment take long time to join and there have also been cases where offers of appointment were revived by Departments after they had been cancelled and in spite of the long delay in joining the candidates were allowed the benefit of seniority on the basis of their initial selection. The question whether in such cases it would not be desirable to depress the seniority of the candidates who are appointed

on the result of the selections by interviews/examination was considered by the Government in consultation with the UPSC and it has been decided that the following procedure may be adopted now. This procedure will be applicable both in case of (a) selection through interview and (b) examinations.

(i) In the offers of appointment issued by different Ministries/Departments, it should be clearly indicated that the offer would lapse if the candidates did not join within a specified period not exceeding two or three months.

(ii) If, however, within the period stipulated, a request is received from the candidates for extension of time, it may be considered by the Ministries/Departments and if they are satisfied, an extension for a limited period may be granted but the total period granted including the extension during which the offer of appointment will be kept open, should not exceed a period of nine months. The candidates who join within the above period of nine months will have their seniority fixed under the seniority rules applicable to the service/post concerned to which they are appointed, without any depression of seniority.

(iii) If, even after the extension(s) if any granted by the Ministry/Departments, a candidate does not join within the stipulated time (which shall not exceed a period of nine months), the order of appointment should lapse.

(iv) An offer of appointment which has lapsed, should not ordinarily be revived later, except in exceptional circumstances and on grounds of public interest. The Commission should in all cases be consulted before such offers are revived.

(v) In a case where after the lapsing of the offer, the offer is revived in consultation with the Union Public Service Commission as mentioned in sub-para (iv) above, the seniority of the candidates concerned would be fixed below those who have already joined the posts concerned within the prescribed period of nine months; and if the candidate joins before the candidates of the next selection/examination join, he should be placed below all others of his batch. If however, the candidate joins after some or all the candidates of the next selection/examination have joined, he should be:

- (a) In cases of selection through interview, placed at the bottom of all the candidates of the next batch.
- (b) in the case of examination, allotted to the next years batch and placed at the bottom.

The Ministry of Finance are requested to bring the above instructions to the notice of all concerned.”

10. As far as the judgment of Hon'ble Supreme Court in **Chairman, Puri Gramya Bank v. Ananda Chandra Das** (1994) SCC 6 301, relied upon by learned counsel for applicant, is concerned, there can be no two opinions that the seniority of the direct recruits need to be fixed in the order of their merit position. Such is also the ramification of the aforementioned General Instructions dated 3.7.1986 and 11.11.2010. Nevertheless, when a candidate does not join the service within 9 months and give joining report only after revival of the offer on expiry of the period, the seniority has to be depressed.

11. In the wake, we are satisfied that in fixing the seniority of the applicant below private respondent Nos. 2 and 3, respondent No.1 has acted in terms of General Instructions (ibid) and there is no infirmity in its action.

12. The Original Application is found bereft of any merit and is accordingly dismissed. No costs.

(K. N. Shrivastava)
Member (A)

(A.K. Bhardwaj)
Member (J)

September 7, 2015

/sunil/