

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

**MA-3623/2017 in
OA-1493/2011**

Reserved on : 28.02.2017.

Pronounced on : 20.03.2018.

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)**

Lokesh Kumar

Vs. DSSSB and Others

Present : Applicant in person.

Ms. Sakshi Popli, counsel for respondents.

O R D E R

Ms. Praveen Mahajan, Member (A)

MA-3623/2017 in OA-1493/2011 has been filed to clarify the directions given in para-8 of the Tribunal's order dated 29.02.2012 whereby the O.A. was allowed, which is reproduced below:-

“8. In view of the above position, we allow this O.A. The respondent - DSSSB shall treat the applicant as the first eligible candidate who secured the first position in the merit list and accordingly it shall forward his name to the user department for appointment. Further, we observe that it is only because of the wrong practice being followed by the DSSSB, the applicant has been deprived of his rightful claim for appointment in time. Therefore, the applicant shall not be put to any disadvantage. Consequently, the respondents shall grant him the benefit of seniority in the post of Assistant Chemist from the due date. In this case since, no one else was appointed earlier and the result was admittedly declared on 01.04.2005, it would be fair and just that the applicant is considered as appointed as Assistant Chemist notionally after a month i.e. from 01.05.2005. The respondents shall also pass appropriate order accordingly. He shall also be paid the consequent arrears of pay and allowances within a period of one month thereafter. There shall be no order as to costs.”

2. Against the order of the Tribunal, the respondents filed Writ Petition (C) No. 5236/2012 before the Hon'ble High Court of Delhi. Vide order dated 27.08.2012 Hon'ble High Court stayed the order of the Tribunal. Thereafter, the applicant filed CP-519/2012 before the Tribunal. Vide order dated 13.09.2012 this Tribunal dismissed the said Contempt Petition as having become infructuous. Further, Hon'ble High Court of Delhi in WP(C) No. 5236/2012 vide order dated 07.03.2013 upheld the order of the Tribunal dated 29.02.2012 stating as follows:-

"11..... As in the instant case, the Delhi Jal Board urgently requires an Assistant Chemist and we have respondent No.1 as a selected candidate but yet the post is not being filled up because the Selection Board is refusing to send the dossier of respondent No.1 to the Delhi Jal Board. We make it clear that the decision to fill up or not fill up the vacancy cannot be the decision of the Selection Board, which is merely a recruiting agency. The employer is not the Selection Board. The office or the department of the Government which sends the requisition to the Selection Board would alone have the right to determine whether or not to fill up the vacancy. In future the Selection Board would forward the names of all candidates who have secured marks above the eligible cut-off mark to the office or the department which has sent the requisition to the Selection Board to conduct the examination. It would then be for the said department to decide whether or not it would like to have candidates in the wait list. This would ensure that it is the employer who would decide whether to fill up the vacancy from the wait listed candidate if the candidates in the select list are found either ineligible or do not respond to the letters offering appointment.

12. We concur with the view taken by the Central Administrative Tribunal the Delhi Subordinate Services Selection Board shall forward the name of respondent No.1 to the Delhi Jal Board for being appointed as an Assistant Chemist.

13. The writ petition is dismissed."

3. After the Hon'ble High Court of Delhi order dated 05.03.2012, applicant filed Contempt Petition No. 651/2015 in OA-1493/2011

before the Tribunal, which was dismissed vide order dated 02.09.2016 stating that:-

“5. We do not find any contumacious act done by the respondent, since it is trite law that order of this Tribunal has merged into the judgment of the Hon’ble High Court, and para 12 of the Hon’ble High Court’s judgment would prevail. Therefore, the CP is dismissed, and the notice issued is discharged.”

4. Thereafter, the applicant filed W.P.(C) No. 11598/2016 in the Hon’ble High Court of Delhi, which was also dismissed on 14.12.2016 with the following order:-

“1. Mr. Lokesh Kumar in this writ petition impugns order dated 02.09.2016 whereby C.P. No. 651/2015 in O.A. No. 1493/2011 has been dismissed.

2. The petitioner had filed OA No. 1493/2011 as the Delhi Subordinate Services Selection Board (DSSSB) had failed to forward the petitioner’s dossier to requisitioning user department, the Delhi Jal Board (DJB), for appointment to the post of Assistant Chemist.

3. The Tribunal while accepting the prayer of the petitioner and repudiating the stand taken by the DSSSB, had issued the following directions:-

“8. In view of the above position, we allow this O.A. The respondent – DSSSB shall treat the applicant as the first eligible candidate who secured the first position in the merit list and accordingly it shall forward his name to the user department for appointment. Further, we observe that it is only because of the wrong practice being followed by the DSSSB, the applicant has been deprived of his rightful claim for appointment in time. Therefore, the applicant shall not be put to any disadvantage. Consequently, the respondents shall grant him the benefit of seniority in the post of Assistant Chemist, from the due date. In this case since, no one else was appointed earlier and the result was admittedly declared on 01.04.2005, it would be fair and just that the applicant is considered as appointed as Assistant Chemist notionally after a month i.e. from 01.05.2005 accordingly. He shall also be paid the consequent arrears of pay and allowances within a period of one month thereafter. There shall be no order as to costs”.

4. The DSSSB had challenged the order dated 29.02.2012 passed in O. A. No. 1493/2011 in the Writ Petition No. 5236/2012, which was dismissed reiterating that the name of the petitioner shall be forwarded to the DJB for the appointment as an Assistant Chemist. The High Court had observed that the petitioner who had secured second rank in the merit list in the OBC category, was entitled to the relief granted as the candidate who had secured the first rank was ineligible. The stand and stance of the DSSSB in not forwarding the

petitioner's candidature was inappropriate and illegal. At the same time, the High Court realised that the DJB was to make the final call and decide the question of appointment of the petitioner. The High Court had accordingly directed as under:-

“11. If any deficiency is found or noted in a certificate issued, the empanelled candidate is de-empanelled and the Board then takes a stand that since it has not drawn up a reserve list, it would not forward the name of the next selected candidate who is also above the qualifying mark limit prescribed. Not only does this breed litigation but even results in public posts remaining unfilled. As in the instant case, the Delhi Jal Board urgently requires an Assistant Chemist and we have respondent No.1 as a selected candidate but yet the post is not being filled up because the Selection Board is refusing to send the dossier of respondent No.1 to the Delhi Jal Board. We make it clear that the decision to fill up or not fill up the vacancy cannot be the decision of the Selection Board, which is merely a recruiting agency. The employer is not the Selection Board. The office or the department of the Government which sends the requisition to the Selection Board would alone have the right to determine whether or not to fill up the vacancy. **In future the Selection Board would forward the names of all candidates who have secured marks above the eligible cut-off mark to the office or the department which has sent the requisition to the Selection Board to conduct the examination. It would then be for the said department to decide whether or not it would like to have candidates in the wait list. This would ensure that it is the employer who would decide whether to fill up the vacancy from the wait listed candidate if the candidates in the select list are found either ineligible or do not respond to the letters offering appointment.**

12. We concur with the view taken by the Central Administrative Tribunal that the Delhi Subordinate Services Selection Board shall forward the name of respondent No.1 to the Delhi Jal Board for being appointed as an Assistant Chemist.

13. The Writ petition is dismissed.

14. There shall be no order as to costs”.

(emphasis supplied)

5. A reading of the aforesaid directions would show that the respondent's name was to be forwarded to the DJB for being appointed as Assistant Chemist. The petitioner was entitled to consideration for appointment by the requisitioning department, i.e., DJB.

6. Upon consideration, the petitioner was appointed by the DJB and in view of the direction treated as notionally appointed as Assistant

Chemist from 01.05.2005, and given seniority and promotions on the said basis.

7. The petitioner is aggrieved that he has not been paid back wages from the date of notional appointment. We do not think that the order of the High Court had directed payment of back wages. To this extent, the direction of the Tribunal had merged and was modified by the afore stated directions of the High Court. This is apparent from the highlighted portion quoted above as it was for the requisitioning department to decide whether they would like to have a candidate from the "waiting" list. Even successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. Department need not fill up all or any vacancy, unless the relevant Rule so indicate. Right to consider is different, from right to appointment.

8. There is no merit in the present writ petition and the same is dismissed. No order as to costs."

5. Again the applicant filed S.L.P.(C) No. 8362/2017 in Hon'ble Supreme Court against the order of the Hon'ble High Court of Delhi dated 14.12.2016. Hon'ble Supreme Court passed the following order:-

"The petitioner seeks a direction for payment of actual backwages from 2005 but the Central Administrative Tribunal has limited it to the notional. The petitioner was granted only notional appointment in 2005. According to the petitioner, he has actually been working as Assistant Chemist from 2003 and his service has since been regularized also. But in case he actually requires backwages from the date of regularization, it is for him either to challenge the orders passed by the Central Administrative Tribunal or to seek appropriate clarification of the orders passed by the Central Administrative Tribunal.

In that view of the matter, we do not find any merit in this special leave petition, which is dismissed.

Application for impleadment is dismissed.

Pending application (s), if any, shall stand disposed of."

6. Thereafter, the applicant filed Review Petition (C) No. 1489/2017 in SLP(C) No. 8362/2017, which was dismissed on 01.08.2017 by Hon'ble Supreme Court.

7. The applicant has filed the current MA-3623/2017 before us seeking clarification of para-8 of the Tribunal's order dated 29.02.2012 in OA-1493/2011. In the prayer clause, the applicant has sought clarification/elaboration about the line that "He shall be paid the consequential arrears of pay and allowances within a period of one month thereafter." He states that the meaning of notional word has been assumed by DJB as no payment of arrears, neglecting the other directions passed by the Tribunal. More specifically, the applicant has sought clarification whether the arrears of pay and allowances is liable to the applicant since the date of regularization i.e. 01.05.2005.

8. On this very issue, as recently as 08.05.2017 in SLP(C) No(s)-8362/2017, the Hon'ble Supreme Court has observed that:-

"The petitioner seeks a direction for payment of actual backwages from 2005 but the Central Administrative Tribunal has limited it to be notional. The petitioner was granted only notional appointment in 2005. According to the petitioner, he has actually been working as Assistant Chemist from 2003 and his service has since been regularized also. But in case he actually requires backwages from the date of regularization, it is for him either to challenge the orders passed by the Central Administrative Tribunal or to seek appropriate clarification of the orders passed by the Central Administrative Tribunal.

In that view of the matter, we do not find any merit in this special leave petition, which is dismissed."

9. As is clear from the facts and discussions of the aforementioned paragraphs, the order dated 29.02.2012, passed in OA-1493/2011 (para-8) needs no further clarification. No further meaning can be

attributed to the self speaking directions contained therein. This is evident from the observations of the Hon'ble Supreme Court vide their order dated 08.05.2017 (supra), an attempt to do so would tantamount to flogging a dead horse!! The issue does not need any further intervention by this Tribunal. M.A. is accordingly dismissed.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

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