

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

MA/100/3867/2014
OA/100/3463/2009
MA/100/379/2016

Reserved on : 04.08.2016.

Pronounced on :08.08.2016.

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

Ghanshyam Swami Vs. Comm. of Police

Present : Sh. Anil Singal, counsel for the applicant.

Sh. Pradeep Singh Tomar with Ms. Sangita Rai, counsel for the respondents.

MA-3867/2014

This M.A. has been filed seeking execution of the order dated 07.05.2010 passed in OA-3463/2009 read with order dated 24.11.2010 passed in CP-806/2010. MA-379/2016 has been filed for condonation of delay in filing this MA.

2. Briefly speaking the facts of this case are that OA-3463/2009 was decided by this Tribunal vide order dated 07.05.2010. The operative part of this order reads as follows:-

“21. Resultantly, we are of the considered view that the respondents having not calculated the vacancies as per Rule 7 though having regard to the fact that selection was held right from its initiation and on calculation of vacancies against the rules, yet when it became final and the persons have been appointed, we do not want to disturb the selection already held. However, the right of the applicants cannot also be extinguished on this issue. As such, we dispose of the OA with a

direction to the respondents to recalculate the vacancies in departmental quota in each category, including OBC and thereafter consider the case of the applicants for appointment keeping in light the merit of 2007 and the marks obtained by the applicants, subject to the eligibility and suitability as SI (Executive) from a prospective date within a period of two months from the date of receipt of a copy of this order. No costs."

3. Thereafter, when the respondents did not comply with this order, the applicant filed CP-806/2010. The aforesaid CP was closed on 24.11.2010 as per the order below:-

"Recalculation of vacancies on the basis of averments made in the order has since been made and the applicant was not found fit to make grade for selection. We now direct respondents to apprise to the applicant by a speaking order the methodology adopted for recalculating the vacancies and as to how the applicant has been declared unsuccessful by not making the grade for selection within a period of four weeks from today. With this, CP stands disposed of. "

4. The applicant is now seeking execution of these orders.
5. In their reply, the respondents have stated that once the Contempt Petition filed by the applicant has been closed by this Tribunal, MA for execution of the order was not maintainable. In any case, directions given by this Tribunal in OA as well as CP have been complied with by the respondents. Thus, in pursuance of the order dated 07.05.2010 passed in the aforesaid OA, 02 additional OBC candidates were appointed making the total number of OBC candidates appointed as 04. Thereafter, in pursuance of order dated 24.11.2010 passed in C.P., a detailed speaking order

explaining the calculation of vacancies was issued to the applicant on 23.12.2010.

6. Learned counsel for the applicant, however, argued that all the grounds taken by him in the OA, which are mentioned in paras-4, 5 & 6 of the judgment dated 07.05.2010, have not been considered by the respondents.

7. We have considered the submissions of both sides. It is seen that CP-806/2010 was closed by this Tribunal vide its order dated 24.11.2010. The implication is that this Tribunal was satisfied that the order passed in OA has been substantially complied with. Further, directions given in the CP have also been complied with by the respondents by passing an order dated 23.12.2010. Thus, in our opinion, the respondents have already complied with the directions of this Tribunal and application for execution was not maintainable. If the applicant was still aggrieved by the orders passed by the respondents, appropriate course of action for him would be to challenge the aforesaid orders by means of fresh judicial proceedings.

8. Even on grounds of delay, we are inclined to dismiss this MA. The applicant has tried to explain the delay in his MA-3867/2014 filed for condonation of delay in which he has stated that this Tribunal had allowed two similar OA Nos. 3596/2010 and 4297/2010 vide judgments dated 04.07.2011 and 01.8.2011 respectively. The

respondents had challenged the aforesaid judgments before Hon'ble High Court of Delhi and had assured the applicant that in case Tribunals orders were upheld, the applicant would also get the same relief. However, while both these judgments were upheld by Hon'ble High Court of Delhi on 23.05.2013, the respondents did not grant any relief to the applicant. Hence, he was forced to file this MA.

9. We have considered the aforesaid submissions. First of all, the applicant except for making bald assertions has not adduced any evidence to show that he was asked by the respondents to await orders of Hon'ble High Court of Delhi. Further, as per his own submission, Hon'ble High Court of Delhi gave its judgment on 23.05.2013 whereas his MA-3867/2014 has been filed on 04.12.2014 i.e. after almost 1 ½ years. The applicant has not been able to explain this delay in any manner.

10. Thus, both on grounds of delay as well as on merits, we find that there is no substance in MA-3867/2014. Hence, the same is dismissed. MA-379/2016 for condonation of delay is also dismissed.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/