

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

**OA No.682/2016
M.A. No.300/2018
MA No.1457/2017**

Reserved On:01.11.2018

Pronounced On:02.11.2018

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)

Shri Kanwal Kumar
S/o Late Shri Maher Chand
R/o Flat No.184, First Floor,
Pocket D-6, Sector-6,
Rohini,
New Delhi-110085.

..Applicant

(By Advocate: Shri Mahabir Singh, Sr. Advocate with Shri Pankaj
Yadav)

Versus

1. Union of India through
Secretary,
Ministry of Urban Department,
Nirman Bhawan,
New Delhi.
2. Delhi Development Authority,
Through Vice Chairman,
Vikas Sadan, INA,
New Delhi.
3. Smt. Smriti Gupta Mittal
W/o Shri Anand Mittal
R/o C-106, Sector-41,
NOIDIA, UP-201301.
4. Smt. Nidhi Tyagi
W/o Shri Rakesh Tyagi
R/o H-10, Naveen Shahdara,
Delhi-110032.

(By Advocate: Shri J.P. Tiwari for R-1
Shri Arun Birbal with Shri Sanjay Singh for R-2
Ms. Pinky Behera for R-3
Shri Kripa Shankar Prasad for R-4)

ORDER**By Hon'ble Mr. V. Ajay Kumar, Member (J)**

The applicant, an Architectural Assistant under the 2nd respondent-Delhi Development Authority (in short DDA), filed the OA seeking the following reliefs:-

“(a) Pass an appropriate order or direction quashing the impugned modification/amendment whereby a “note” was added in column 11 vide Notification No.GSR 943 (E) dated 11.12.2003, wherein the amendment/modification was effected in the Recruitment Rules by the Respondent No.2 without any authority under the law.

(b) Pass an appropriate order or direction quashing the impugned circular No.3 of F7(31)2003/PB-1/AD/Arch/Pt-II/223 dated 27.01.2016 whereby a Final Eligibility List of Architectural Assistants for promotion to the post of Asstt. Director (Arch.) issued by the respondent No.2.

(c) Pass an appropriate order or direction to the respondent for grant of promotional benefits to the petitioner as Asstt. Director (Arch.) before any junior level official is considered for promotion for the said post.

(d) Grant any other order or direction in favour of the applicant and against the respondents as this Hon'ble Tribunal may deem fit and proper in the larger interest of justice and equity”.

2. Heard Shri Mahabir Singh, learned Sr. counsel with Shri Pankaj Yadav, learned counsel for the applicant and Shri J.P. Tiwari, learned counsel for respondent No.1, Shri Arun Birbal with Shri Sanjay Singh, learned counsel for respondent No.2, Ms. Pinky Behera, learned counsel for respondent No.3 and Shri Kripa Shankar Prasad, learned counsel for respondent No.4 and perused the pleadings on record.

3. The issue involved in the present OA is that whether the ranking assigned in the eligibility test for promotion to the post of Assistant Director (Architecture) (previously known as Assistant Architect) or

the seniority in the feeder category of Architectural Assistants shall determine the seniority in the promotional post of Assistant Director (Architecture) and the amendment made governing the same in the Recruitment Rules, is the issue, in the instant OA.

4. At the outset, all the learned counsels appearing for the respondents would submit that identically placed persons like the applicant in the instant OA, have approached this Tribunal on an earlier occasion seeking the same reliefs by filing TA No.108/2007 and batch in Ashwini Khullar Vs. Delhi Development Authority and others which was dismissed by this Tribunal by a common order dated 17.02.2009 (Annexure P-6) and the applicants therein have preferred Writ Petition No.7289/2006 and batch in Ambuj Sood Vs. DDA and Others and batch before the Hon'ble High Court of Delhi and the said batch of Writ Petitions are pending on the file of the Hon'ble High Court of Delhi and hence the instant OA, which is identical to the said TA No.108/2007 and batch, in all respects, has to be dismissed on the same lines.

5. In view of the above submission of the respondents, we have carefully gone through the judgment of the Co-ordinate Bench of this Tribunal in TA No.108/2007 and batch in Ashwini Khullar Vs. DDA and Others and also the interim order dated 16.05.2006 in W.P. No.7289/2006 of the Hon'ble High Court of Delhi and found that the submission made by the respondents is valid and the subject matter of this OA is squarely covered by the said decision.

6. Shri Mahabir Singh, the learned Sr. counsel appearing for the applicant while not seriously disputing that the instant OA is identical to the TA No.108/2007 and batch, however, submits that the order in Ashwini Khullar is a wrong order and against the various judgments of the Hon'ble Apex Court. The learned Sr. counsel while drawing our attention to a letter of the 2nd respondent-DDA dated 05.01.2018, filed along with their additional affidavit dated 19.02.2018, further submits that the 2nd respondent-DDA has changed its stand completely by rightly interpreting the note introduced by way of impugned Rules, though decided that the promotions already made and seniority already decided will not be disturbed, and in view of the same, the instant OA is to be heard, independently, without reference to the judgment in TA No.108/2007 and batch (Ashwini Khullar and Others supra).

7. We cannot accept the submission of the learned Sr. counsel. Once an identical issue was already decided by a Coordinate Bench of this Tribunal, the instant OA cannot be entertained. This is more so, when a Writ Petition is pending before the Hon'ble High Court against the said decision. This principle is applicable even though any of the parties to the lis, changed their stand, subsequent to the disposal of the earlier TA.

8. In the circumstances and for the aforesaid reasons, the instant OA is dismissed in terms of the judgment of this Tribunal in TA No.108/2007 and batch dated 17.02.2009 in Ashwini Khullar Vs.

Delhi Development Authority and Others. However, this order is subject to the result of the W.P. No.7289/2006 pending on the file of the Hon'ble High Court of Delhi. All the pending MAs also stand disposed of. No costs.

(A.K. Bishnoi)
Member(A)

(V. Ajay Kumar)
Member (J)

RKS