

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

C.P. No.669/2018 with MA No.4725/2018 In
O.A. No.4218/2012

Reserved On: 17.12.2018

Pronounced on: 19.12.2018

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)

HON'BLE MR. A.K. BISHNOI, MEMBER (A)

1. Babu Ram Manuwal
S/o Late Latour Singh
E-12/367, East Gokulpur,
Amar Colony, Delhi-110094
Section Officer, MCI

Office at

Pocket 14, Sector-8,
Dwarka, New Delhi.

2. Bhagwan Das Jain
S/o Late Shri I.S. Jain
R/o 1/9705, St. No.2,
West Rohtash Nagar, Shahdara,
Delhi-110032.

.....Petitioners

(By Advocate: Shri M. Mohan Rao with Shri Lokesh Kumar)

Versus

1. Shri Vishwas Mehta
The then Jt. Secretary,
Ministry of Health & Family Welfare,
Govt. of India, New Delhi.
2. Shri Sanjay Srivastava
The then Secretary,
Medical Council of India,
New Delhi.

..Respondents

ORDER

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

O.A. No.4218/2012 filed by Shri Bhagwan Das Jain along with
2 others was disposed of by this Tribunal on 13.09.2013, as under:-

“17. In view of the aforementioned, OA is disposed of with the following directions:-

(1) The respondents would apply reservation in promotion to the post of Assistant Secretary provisionally, i.e., till the exercise as directed by Hon'ble Supreme Court in (i) **Suraj Bhan Meena and Another Vs. State of Rajasthan and Ors** (2011) 1 SCC 467, (ii) **U.P. Power Corporation Limited Vs. Rajesh Kumar and Ors.** 2012 (4) SCALE 687, (iii) **M. Nagaraj and Others Vs. Union of India and Others**, JT 2006 SC 191 and (iv) **Salauddin Ahmed & Another Vs. Samta Andolan** (Civil Appeal Nos. 2504-2505/2012 decided on 29.08.2012) is carried and acted upon.

(2) Since the recommendation of the DPC dated 28.12.2010 has expired by efflux of time, the respondents may go ahead with fresh DPC and consider all the eligible candidates including respondent No.3 against reserved vacancy. The said DPC will recommend separate year wise panel according to year of vacancy and a separate panel for reserved category and general category candidates.

(3) If all the vacancies are found to be of the year 2011 or any prior years, the respondent No.3 would be placed in the separate select panel and then would be included in the panel of general category candidates in the order of his seniority in the feeder grade.

(4) If the vacancy of reserved category along pertain to the year 2011 and the remaining vacancies pertain to the subsequent years, then the respondent No.3 would be included in the select panel of the year 2011 and the general category candidates should be included in the select panel of the subsequent years.

The entire exercise of filling up the post in question would be completed within a period of three months from the date of receipt of a certified copy of this order. No costs.”

2. The applicants in the OA, however, filed W.P. (C) No.6754/2013 against the orders of this Tribunal in the OA. The said W.P. was disposed of on 24.04.2015, as under:-

“Mr. Tushar Mehta, learned senior counsel appearing for the respondent No.2 submits that in compliance of the directions given by the learned Tribunal, fresh DPC was held on 09.02.2015 to consider the cases of all eligible candidates including respondent No.3 for the post of Assistant Secretary for the vacancies of the year 2010-2011. The counsel has also produced the report of DPC in a sealed cover before the Court.

The same was directed to be opened. On perusal of the report of DPC, we find that petitioner No.1 Shri Bhagwan Das Jain has been recommended for promotion to the post of Assistant Secretary, likewise, respondent No.3 Shri Babu Ram Manuwal has also been recommended for promotion to the said post. So far as petitioner No.2 Mr. Vineet Kumar Aggarwal is concerned, he was not recommended for promotion to the said post of Assistant Secretary as the DPC found that he was ineligible to qualify the requisite conditions laid down for the appointment to the said post. Copy of the minutes of the DPC dated 09.02.2015 are taken on record. Counsel for petitioners and respondent No.3 have been duly apprised of the said minutes. In the light of the said minutes of the DPC dated 09.02.2015, the impugned order insofar as petitioner No.1 and respondent No.3 are concerned, does not survive. However, so far as petitioner No.2 is concerned, if he is aggrieved by the said decision of the DPC, he will take legal redressal in accordance with law.

The petition stands disposed of.”

3. The CONT. CAS(C) No.126/2018, filed by the 3rd respondent in the OA before the Hon’ble High Court of Delhi, alleging that the respondents have violated the orders of this Tribunal in the OA, was dismissed as withdrawn, on 26.02.2018, as under:-

“It is the submission of the learned counsel for the petitioner that the respondents have violated the order of the Central Administrative Tribunal. If the submission of the learned counsel for the petitioner is that the respondents have violated the order of the Tribunal, the remedy of the petitioner is to approach the Central Administrative Tribunal.

At this stage, learned counsel for the petitioner seeks to withdraw the petition to approach the Central Administrative Tribunal.

The petition is dismissed as withdrawn.”

4. The instant CP was filed jointly by the 3rd respondent in the OA along with the 1st applicant in the OA alleging violation of the orders of this Tribunal dated 13.09.2013 in OA No.4218/2012.

5. Heard Shri C. Mohan Rao with Shri Lokesh Kumar, the learned counsel for the petitioners.

6. M.A. No. 4725/2018 seeking condonation of delay in filing the CP is allowed.

7. Shri C. Mohan Rao, the learned counsel appearing for the petitioners, at the outset, submits that he is not pressing the C.P. in respect of 2nd petitioner, who is the 1st applicant in the OA and accordingly prayed for considering the instant C.P. only in respect of Babu Ram Manuwal, who is the 3rd respondent in the OA.

8. The learned counsel further submits that this Tribunal while disposing of the OA gave certain directions in favour of the 3rd respondent in the OA, i.e., the petitioner in the instant CP, but the respondents failed to comply with the same and hence they are liable for proceeding under the provisions of the Contempt of Courts Act, 1971. However, a bare perusal of the order dated 24.04.2015 in W.P. (C) 6754/2013 of the Hon'ble High Court of Delhi filed by the applicants in the OA against the orders of this Tribunal in the OA, reveals that the Hon'ble High Court categorically held that "in the light of the DPC minutes dated 09.02.2015, the impugned order (i.e., the order of this Tribunal in the OA)" insofar as petitioner No.1 (i.e., the 2nd petitioner in the instant CP and who is now not pressing the CP) and respondent No.3 (i.e., the 1st petitioner in the instant CP) are concerned, does not survive". The 1st petitioner in

the instant CP, if aggrieved with the said order, instead of challenging the said order in the W.P., filed the instant CP, which is not maintainable. The liberty granted by the Hon'ble High Court in CONT. CAS(C) No.126/2018 while dismissing it as withdrawn on 26.02.2018 was not on merits and was only at the instance of the petitioner, without giving any finding that the orders of this Tribunal in the OA, in respect of the 1st petitioner in the CP, who is the 3rd respondent in the OA, is subsisting or not, as on the said date. Hence, the contention of the petitioner's counsel that, in view of the liberty granted by the Hon'ble High Court, the instant CP is maintainable, is unsustainable and accordingly rejected.

9. In the circumstances, the CP is dismissed. However, this order shall not preclude the petitioners in the CP, from availing their remedies in accordance with law, against the orders of the Hon'ble High Court in W.P. (C) 6754/2013 dated 24.04.2015, if they are so advised. No costs.

(A.K. BISHNOI)
Member (A)

(V. AJAY KUMAR)
Member (J)

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