

**Central Administrative Tribunal
Principal Bench**

**OA No.4235/2018
MA No.843/2019**

New Delhi, this the 06th day of May, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Jagat Narayan,
S/o Lt. Shree Hari Lal,
MMIG-C-88, Phase-1 Ashiana Mordabad U.P.,
Presently residing at
Sector E-51, Phase-I,
Raghav Vihar,
Prem Nagar,
Dehradun
Uttarakhkand

...Petitioner

(By Advocate : Shri Ravi Prakash Mehrotra with Shri
Ankit Agarwal)

Versus

1. Union of India,
Through the Secretary,
Ministry of Defence
Government of India,
South Block, New Delhi.
2. Director General of Military Training,
General Staff Branch,
Army Head Quarters,
D.H.Q,
P.O., New Delhi.
3. Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.
4. Commandant,
Indian Military Academy,
Dehradun 110007
Uttarakhand.

...Respondents

(By Advocate : Shri Shanker for Shri Hanu Bhaskar
Dr. Ch. Shamsuddin Khan)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

A notification was issued in the employment news weekly of 8-14 January, 2011 proposing to appoint one Assistant Professor (History) in the Indian Military Academy, Dehradun. The post was reserved for Scheduled Caste (for short SC) candidate. The applicant was selected and appointed initially on ad-hoc basis, on 16.03.2012. It is stated that his probation was declared on 24.04.2013.

2. One Shri Mahesh Kumar Singh, filed the OA No.3757/2011, before this Tribunal challenging the very advertisement. According to him, only one post of Assistant Professor (History) was available and the respondents were not justified in reserving it in favour of SC candidate. The applicant herein was impleaded as one of the respondents therein. The OA was dismissed on 03.07.2015. Aggrieved by that, Shri Mahesh Kumar Singh filed WP(C) No.7584/2015 before the Hon'ble Delhi High Court. Through its judgment dated

04.07.2017, the High Court allowed the Writ Petition holding that the respondents were not justified in reserving the post in favour of the SC. The advertisement as well as consequential actions taken pursuant to thereto, were set aside and the respondents were directed to hold fresh selection for the post, by inviting applications from all eligible candidates from the un-reserved category.

3. It is stated that the SLP filed against the judgment of the High Court was dismissed on 23.10.2017. The Appointing Authority issued an order dated 08.10.2018, informing the applicant that his appointment is terminated with immediate effect, as a measure of implementation of the judgment of the Delhi High Court dated 04.07.2017.

4. Initially, the applicant filed WP(C) No.11945/2018 before the Delhi High Court challenging the said order. However, it was observed that the High Court cannot entertain the Writ Petition and accordingly, it was transferred to this Tribunal.

5. We heard Shri Ravi Prakash Mehrotra, learned counsel for applicant and Shri Shanker for Shri Hanu Bhaskar and Dr. Ch. Shamsuddin Khan, learned counsel for respondents at length.

6. It is not in dispute that the applicant was appointed against the vacancy reserved for SC. That very advertisement and the consequential appointment were challenged before the Tribunal in OA No.3757/2011, duly impleading the applicant herein. Though the OA was dismissed on 03.07.2015, the Hon'ble Delhi High Court allowed the WP(C) No.7584/2015. The operative portion reads as under:-

“26. In the facts of the case, in our view, the Tribunal has not appreciated the aforesaid position and dismissed the OA by wrongly applying the principles of constructive res judicata. Even otherwise, we are also of the view that even in the present OA, there was no necessity for the Tribunal to decide the issue whether the Petitioner was entitled to any age relaxation, as the question of age relaxation, would arise only once the post in question is re-advertised.

27. We are of the considered opinion, that in the present case, once the Tribunal came to an inescapable conclusion that the sole post of Assistant Professor (Lecturer (History)) had been erroneously reserved for SC candidates, in the advertisement published in Employment News dated

8th to 14th January, 2011 for the post of Assistant Professor (History), the advertisement was liable to be quashed with direction to the respondent Nos.1 to 4 to hold a fresh selection for the post of Lecturer (History).

28. Accordingly, the impugned order is set aside insofar as it dismissed the original OA of the Petitioner. The impugned advertisement issued in the Employment News dated 8th to 14th January, 2011 for the post of Assistant Professor (History) and all consequential actions taken pursuant thereto, are set aside and the Respondents are directed to hold a fresh selection for the post of Assistant Professor/Lecturer (History) in ACC, IMA, as expeditiously as possible by treating the said post as an unreserved post and all eligible candidates from unreserved category including the Petitioner, would have liberty to apply for the same and seek age relaxation, if any, as per the rules.”

The judgment of the High Court was upheld by the Hon’ble Supreme Court in SLP No.24214/2017.

7. Once the advertisement as well as the consequential steps which include the appointment of the applicant were set aside by the High Court, there is no way, we can entertain the present OA. The same is, accordingly, dismissed.

8. Learned counsel for applicant submits that in interregnum between selection of fresh candidates as directed by the Hon'ble Delhi High Court and, now, the services of the applicant can be availed. This is totally in the realm of the respondents, and if they feel that the services of the applicant can be availed, it shall be open for them to do so. Any step taken in this direction, shall not violate any facet of the directions issued in the Writ Petition.

MA No.843/2019 also stands disposed of.

There shall be no order as to costs.

Order **Dasti** .

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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