

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(orders reserved on 24.9.2019).

O.A.NO. 060/00759/2018 Date of order:- 20.11.2019.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. A.K.Bishnoi, Member(A).

Mohit s/o Sh. Ashok Kumar, r/o house No.6, Type 13 JEF, Sector 12,
PGI,Chandigarh.

.....Applicant.

(By Advocate :- Mr.Rohit Seth)

Versus

1. Union of India through Secretary to Government of India, Ministry of Personnel, Public Grievances & Pensions, DOP&T, North Block, New Delhi-110 001.
2. Staff Selection Commission, Block No.12, CGO Complex, Lodhi Road, New Delhi through its Secretary. Pin 110003.
3. Assistant Director (NWR), Staff Selection Commission, Kendriya Sadan, Ground floor, Sector 9, Chandigarh. Pin 160009.
4. The Director, National Centre of Organic Farming, Department of Agriculture, Cooperation & Farmers Welfare, Kamla Nehru Nagar, Ghaziabad, Uttar Pradesh. Pin 201 002.

...Respondents

(By Advocate : Mr. A.K.Sharma).

ORDER

Sanjeev Kaushik, Member (J):

Whether the applicant, whose name was included in the select list prepared for recruitment to the post of Field cum Laboratory Attendant, is entitled to be appointed against the post

which became available due to the resignation of appointee, is the question which arose for consideration in this petition.

2. The applicant lays challenge to an order 14.6.2018 (Annexure A-1) whereby his claim for appointment as Field cum Laboratory Attendant being at sr.no.1 in the waiting list, pursuant to a vacancy having fallen vacant, consequent upon resignation of a selected candidate has been rejected by respondent no.3. The applicant seeks issuance of a direction to the respondents to issue him appointment letter against the post which fell vacant due to resignation of earlier appointee who was offered appointment in terms of OM dated 13.6.2000 (Annexure A-10) issued by the DoPT.

3. The facts which led to the filing of the OA, are that the Staff Selection Commission (for short SSC) (Respondent no.2) issued an advertisement No.NWR-1/2016 dated 27.8.2016 notifying one post of Field cum Laboratory Attendant, with closing date for filling on-line application as 26.9.2016. The applicant who belongs to reserved category of Scheduled caste having the qualification of B.Tech. in Civil Engineering being eligible, applied for the said post. The desired recruitment was to be made for the department for one vacancy of Field cum Laboratory Attendant in the office of National Centre of Organic Farming, Ministry of Agriculture & Farmers Welfare Department of Agriculture, Cooperation and Farmers Welfare, Government of India. As many as 55 candidates were short-listed on the basis of percentage of marks in the essential qualification i.e. matriculation or equivalent pass who were having 70% and above marks in the matriculation to appear in the computer based

examination which was held on 26.3.2017. The name of the applicant was short-listed amongst these 55 candidates. Finally, three candidates on the basis of merit/marks obtained in the computer based examination were called for document verification on 25.5.2017 at SSC(NWR) Chandigarh. Since the applicant scored 130 marks, his name was also included in the selected candidates which were called for document verification. Final result was declared on 15.6.2017 where the name of the applicant was placed at sr.no.1. Later on, respondent no.2 revised the final result on 25.8.2018 and one Shri Vipul Chauhan was placed at sr.no.1 and the name of the applicant was kept at sr.no.2. The name of said Shri Vipul Chauhan was nominated by SSC to the department for appointment and he joined on 23.10.2017. Later on, he resigned from the said post on 25.5.2018 i.e. approximately after seven months from the date of joining. On coming to know that Shri Vipul Chauhan who was at sr.no.1 has since resigned and applicant's name stands at sr.no.1 in the waiting list, the applicant submitted a representation on 4.6.2018 (Annexure A-8) to respondent no.4 for considering his name for appointment. Another representation was made to respondent no.2 on 12.6.2018 (Annexure A-9). By impugned order dated 14.6.2018, his claim has been rejected. Hence the present OA.

5. The respondents have filed written statement wherein they did not dispute the factual accuracy. However, they submitted that since the person at sr.no.1 namely Shri Vipul Chauhan has since joined and later on resigned, therefore, the claim of the applicant for appointment cannot be considered as the said vacancy has been consumed and in their order of rejection, they have submitted that

once the selected candidate had already joined, therefore, his candidature cannot be considered. They have also relied upon the judgment passed by the Hon'ble Apex Court in the case of **Raj Rishi Mehra & Ors.** versus **State of Punjab & Ors.** (Writ Petition (Civil) No73 of 2013) decided on August 13, 2013.

6. The applicant has also filed a rejoinder to controvert the averments made in the written statement to the effect that the respondents have not answered specifically to his plea raised that they have not followed dated 13.6.2000 which still holds the field as the applicant has received various information under RTI Act from the concerned Ministry. He has also placed on record a document where the indented department has requested the SSC to forward the name of the candidate who is next in the list for appointment to the said post as the person who was offered appointment has resigned from the said post within the validity of the select list (Annexure R-4/7).

7. We have heard the learned counsel for the parties and perused the material placed on file.

8. Shri Seth, learned counsel for the applicant strenuously argued that the impugned order is liable to be set aside having been passed contrary to instructions dated 13.6.2000, which talk of offer of appointment to a candidate, who is next in merit, on availability of vacancy on death or resignation by a selected candidate. He argued that the applicant is entitled to be appointed against the

vacancy when fell vacant. In this regard, he placed reliance on the following judgments:-

- i) A.P.Aggarwal versus Government of National Capital Territory of Delhi(2000 A.I.R. (SC) Page 205;
- ii) State of Punjab versus Raghbir Chand Sharma & Another (2002(2) S.C.T. Page 234);
- iii) Dr. Rajalaxmi Beura versus Vice Chancellor (Orissa) & Ors. (2017(2) Ori. Law Rev. Page 603).

9. Per contra, Shri A.K.Sharma, learned counsel for the respondents vehemently opposed his prayer and has submitted that SSC has taken a decision in terms of law laid down by the Hon'ble Apex Court in the case of Raj Rishi Mehra (supra) because once the vacancy has been consumed by a selected candidate, then it cannot be said to be vacant and has to be notified in a subsequent selection and cannot to be filled up from the waiting list candidate i.e. the applicant in this case.

10. We have heard Shri Rohit Seth, learned counsel for the applicant and Shri A.K.Sharma, learned counsel for the respondents.

11. We have also noticed the poser raised in the opening paragraph of the petition. The controversy revolves around the OM dated 13.6.2000 issued by the nodal Ministry, therefore, it is relevant to reproduce the same as below:-

" Subject: Operation of reserve panels prepared on the basis of selections made by UPSC, Staff Selection Commission, other recruiting agencies and where selections are made by Ministries/Departments etc. – acceptance of recommendations of Fifth Central Pay Commission – regarding.

The undersigned is directed to invite attention to this Department's Office Memorandum quoted in the margin

and to say that in terms of these Office Memorandum, it was informed that the Union Public Service Commission, wherever possible, maintains a reserve panel of candidates found suitable on the basis of selections made by them for appointment on direct recruitment, transfer on deputation, transfer basis and the reserve panel is operated by the UPSC on a request received from the Ministry/Department concerned when the candidate recommended by the UPSC either does not join, thereby causing a replacement vacancy or he joins but resigns or dies within six months of his joining. Ministries/Departments were advised that whenever such a contingency arises, they should first approach the UPSC for nomination of a candidate from the reserve panel, if any. The recruitment process be treated as completed only after hearing from the UPSC and the Ministry/Department concerned may resort to any alternative method of recruitment to fill up the vacancy thereafter.

2. The Fifth Central Pay Commission, in para 17.11 of its Report, has recommended that with a view to reduce delay in filling up of the posts, vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled immediately by the candidate from the reserve panel, if a fresh panel is not available by then. Such a vacancy should not be treated as a fresh vacancy. This recommendation has been examined in consultation with the UPSC and it has been decided that in future, where a selection has been made through UPSC, a request for nomination from the reserve list, if any, may be made to the UPSC in the event of occurrence of a vacancy caused by non-joining of the candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining, if a fresh panel is not available by then. Such a vacancy should not be treated as fresh vacancy.

3. It has also been decided that where selections for posts under the Central Government are made through other recruiting agencies such as Staff Selection Commission or by the Ministries/Departments directly and the reserve panels are similarly prepared, the procedure for operation of reserve panels maintained by UPSC as described in para 2 above will also be applicable for the reserve panels maintained by the other recruiting agencies/authorities."

A perusal of the reproduced OM makes it clear that the query/doubt which has come for clarification before the nodal Ministry DoPT, whether a vacancy which falls vacant on death or resignation of a selected candidate can be filled up from amongst the candidates in

the waiting list or not, has been clarified in para 2 where the DoPT has clarified that if a vacancy occurs due to non-joining of a candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining, if a fresh panel is not available, then such a vacancy should not be treated as fresh vacancy and the appointment should be made immediately by a selected candidate from a reserve panel. Thus, it leaves no manner of doubt that if a vacancy falls vacant in two eventualities, as noticed herein above, within a period of one year, then a person in the waiting list has a right to be appointed against the said post. Thus, the view taken by the respondents in rejecting the claim of the applicant is not sustainable.

12. Now dealing with the objection raised by the respondents in rejecting the claim of the applicant that the vacancy stand consumed and wait listed candidate cannot be offered appointment in terms of judgment passed by the Apex Court in the case of Raj Rishi Mehra(supra), we are afraid that this judgment will help the respondents on two counts. Firstly the relevant OM dated 13.6.2000 was not before the Hon'ble Apex Court in the case of Raj Rishi Mehra(supra) and secondly the Lordships have themselves quoted a passage from a judgment passed in the case of **Surinder Singh & Ors. versus State of Punjab & Ors. (1997(8) S.C.C. Page 488)**, where they have said that if there is some extreme exigency, the Government may, as a matter of policy decision, pick up persons in order of merit from the waiting list. Meaning thereby, the Lordships have opined that if there is a conscious decision by the Government

to fill up the vacancies from the wait listed candidates, then right of a waitlisted/next in waiting candidate cannot be taken away on the ground that the post has been consumed. This is so because the spirit of the OM itself makes it clear that the mechanism of having wait list has been developed only to save time and expenditure on a fresh selection with a rider that vacancy should be filled up within a period of one year from the date of joining.

13. Thus, we are of the view that the present petition deserves to be allowed as the post fall vacant within a period of one year. Accordingly, the impugned order dated 14.6.2018 (Annexure A-1) is quashed and set aside. The respondents are directed to give appointment to the applicant expeditiously, but not later than one month, from the date of receipt of certified copy of this order. No costs.

**(SANJEEV KAUSHIK),
MEMBER (J).**

**(A.K.BISHNOI),
MEMBER(A).**

Dated:- 20.11.2019.

Kks