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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.8910/2009 & CM No.6304/2009

Date of decision: 24th November, 2011

THE CHIEF SECRETARY & ORS. Petitioners
Through: Ms. Ruchi Sindhwani, Adv. with
Ms. Megha, Adv.

Versus

KULDEEP SINGH & ANR. Respondents
Through: Mr. Raman Duggal, Adv. for R-1.
Mr. V.K. Tandon, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL, J
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1. The petitioner has impugned the judgment dated 2nd April, 2009 passed in OA No.2743/2008 filed by the respondent seeking appointment to the post of Grade II (DASS) pursuant to the selection process undertaken by the petitioner herein in 2007. It is not disputed that during the pendency of the present writ petition, the respondent has been appointed to the said position on the 30th of June, 2011. The respondent no.1 makes a grievance that the petitioners have incorrectly fixed his emoluments and have denied him the benefit of increment on which other persons who had participated in the same selection process, have been granted.

2. The only plea which has been taken by the petitioner to deny the increment to the respondent no.1 in this petition is that he is entitled to the

same in terms of the Fundamental Rule 17(1) which according to the petitioner, would entitle him to “draw allowances only from the date the person assumes the duty on that post”. The petitioner has also relied on the provisions of the fundamental rule 24 to contend that “an increment shall ordinarily be drawn as a matter of course unless it is withheld”.

3. Ms. Ruchi Sindhwani, learned counsel for the petitioner has also placed reliance on Rule 10 of the CCS (Revised Pay) Rules 2008 to contend that it is only, on the government servant completing six months and above in the revised pay structure as on 1st of July, that he would be eligible to grant of increment.

4. Perusal of the judgment dated 2nd April, 2009 narrates a sorry state of affairs so far as the processing of the application of the respondent no.1 is concerned. In this regard, paras 2 to 9 of the judgment may be usefully extracted and read as follows:-

“2. The Delhi Subordinate Services Selection Board, 3rd respondent herein, had notified vacancies, for selection to several posts, including Grade-II (Dass), as available in the Govt. of NCT of Delhi. 11 posts were reserved for sports persons of the total available posts shown as 227. According to applicant, result of the preliminary objective examination had come on 24.07.2007. He had opportunity thereafter to take part in the Mains Examination. The result was declared on 12.02.2008. This is Annexure A-1. Only the applicant had been declared successful in the sports persons category. Roll numbers of successful candidates, who had been selected and recommended for appointment, thus became available.

3. When follow up steps were indefinitely delayed, according to the applicant, he had sought information under the Right to Information Act. Thereupon, he had been advised on 15.10.2008, that the dossier sent to Services Department had been returned by them, for certain clarifications, and correct details had been forwarded on 21.08.2008. However, since no further communication had come and as the delay was eating into his rights, the applicant had opted to file an application under Section 19

of the Administrative Tribunals Act. In response, Services Selection Board as well as the Government of NCT, Delhi have filed separate replies.

4. The Selection Board disclosed that the person concerned had obtained the required minimum marks and came within the zone of consideration. Routinely, his details had been forwarded to the Services Department. It is, however, disclosed that particulars in respect of the applicant himself, in respect of his application to post Code No.63 of 2006 (Warder), had been (mistakenly) forwarded instead of Code No.59 of 2006 Grade-II (Dass). The applicant had applied for both the posts notified on the same date by Annexure A-2. It is further revealed that the Service Department found that they have been supplied with the application in respect of Post Code No.63 of 2006 whereas he had been selected in response to Post Code No.59 of 2006. They had, therefore, returned the dossier. It is evident that on receipt of the communication, correct application had been traced out and had been forwarded. Normally, the story should have ended there.

5. But further averments are made in the counter statement, wherein it had been stated that there was some correction/overwriting over the column name of post and post code in the application filed, and the service department, on a suspicion that there was certain irregularity, on their own, had referred the matter to the Directorate of Vigilance for investigation. The dossier of the applicant itself had been sent back by letter dated 31.10.2008. The dossier is still lying with the Board and a decision will be taken when the investigation is complete.

6. The counter reply filed on behalf of the Government of NCT, Delhi also shows that when the Department had received the dossier for scrutiny, it was found that the papers were in respect of another post and they had on 05.05.2008, requested the Board to investigate the case and forward a report regarding the discrepancy. The Board had informed them that wrong documents had been inadvertently forwarded and had later on sent the correct application. Finding that the application had been tampered with, the matter had been referred to vigilance and final decision was yet to be taken. It is submitted that notwithstanding the selection, the applicant cannot have any enforceable right for appointment and the Original Application is, therefore, misconceived.

7. On evaluating the submissions made by the rival parties, we find that there has been a good amount of arbitrariness on the part of the respondents and especially

on the part of the Board. A wrong dossier had been forwarded to the Service Department and the person responsible has not been named. The fact remains that if correct details had been supplied, it would have been possible for the applicant to secure employment almost one year back. The agony suffered might have been immeasurable. We have also to take notice of the grievance of the applicant that the present plea of overwriting or wrong details in the application could have been an excuse to get out of liability and responsibility. This is because even at the threshold an application is liable to be subjected if on scrutiny defect is noticed. This appears to be an acceptable position.

8. At this distance of time, an investigation may not reveal as to the time at which the overwriting on the application had come to be made or the author thereof. We are sure in our mind that for some ulterior reasons, the file is given rest, in total disregard of a circumstance that a successful candidate is awaiting appointment. Persons selected along with him in the same examination have already secured appointment. We hope there would not be skeletons in the cupboard.

9. Evidently, positive directions are necessary to be issued as the respondents have been oblivious of the plight of the applicant. His rights have already been crystallised, and the respondents cannot altogether wash their hands. The third respondent should forward the relevant dossier of the applicant to the second respondent forthwith. The application is to be considered as proper in all respects. The alleged defects, the details of which are not disclosed, cannot at all be attributed as the handiwork of the applicant. Application should be considered as valid for all purposes. Appointment orders should be issued by the second respondent, within two weeks from today."

5. It is submitted by Ms. Ruchi Sindhvani, learned counsel, that the petitioner was awaiting the report of the vigilance inquiry looking into the entire matter before the appointment letter was issued.

We do not find that to be a sufficient explanation for the long delay which has occurred in the matter.

6. We also find that the Central Administrative Tribunal had given a period of two weeks to issue the appointment letter. The perusal of the

order shows that a period of five years has elapsed since the order for inquiry with regard to the selection process which commenced in the year 2006. The petitioner ought to have ensured that the vigilance inquiry is expeditiously completed.

7. We are informed by Ms. Ruchi Sindhwani, learned counsel for the petitioner that vigilance inquiries have been completed and show cause notices for commencing disciplinary proceedings have been issued to the six officials of the petitioner's organization with regard to the manner in which they have conducted themselves so far as the appointment of the respondent no.1 is concerned. It is, therefore, apparent that the selection and appointment of the respondent no.1 has been unreasonably and unduly delayed on account of deliberate acts by certain officials of the respondents.

8. In this background, admittedly, the delay in offering the appointment to the respondent no.1 rests squarely on the petitioner's organization and the respondent no.1 herein cannot be faulted for the same. In fact, the appointment letter would not have been issued but for the fact that the respondent no.1 approached the Principal Bench of the Central Administrative Tribunal by way of a petition under Section 19 of the Administrative Tribunal Act, 1985 resulting in the pronouncement dated 2nd April, 2009.

9. We find that when this writ petition was listed for the first time on 13th May, 2009, this court had clearly noticed that the matter has been kept shuffling between the petitioner and the Delhi Subordinate Services Selection Board impleaded as the respondent no.2 before us. This court has also noted that the Board is a creation of the petitioner and that any dispute

inter se the two organizations should be resolved by an in-house mechanism. The court has observed that it is on account of some miscommunication or the other with the respondent no.2, that the petitioner has had to reach this court to resolve the dispute with respondent no.2. The order dated 13th May, 2009 records that the respondent no.1 was duly selected to the post.

10. The above narration of facts would show that despite such selection and despite the judgment of the tribunal, the appointment letter has been issued only on 30th June, 2011 to the respondent no.1.

11. It is also not disputed that appointment letters to other persons who had participated in the selection pursuant to the same selection process which was commenced by the advertisement dated 16th-22nd September, 2006 stand issued and that they are in their respective positions. It is admitted position that these persons have been given increment on the dates on which they would be entitled premised upon appointment.

12. We find that no show cause notice has been issued in the writ petition. Given the manner in which the petitioner and the respondent no.2 are functioning, the court had directed personal appearance of the officials of the petitioner as well as chairperson of the respondent no.2 on 13th May, 2009.

13. We also find that there is not a whit of an explanation as to why the appointment letter was not issued for a period of more than two years after passing of the impugned order.

14. It is submitted by Ms. Ruchi Sindhwani, learned counsel for the petitioner that the respondent no.1 also has been given due seniority and placed appropriately in the seniority list having regard to the dates on which his counterparts were appointed as per merit in the selection list.

15. Given the facts and circumstances noticed above, interests of justice

merit that the petitioner in any case would be entitled to the consequential financial benefits.

16. Mr. Raman Duggal, learned counsel for the respondent no.1 contends that the counterparts of the respondent no.1 have been permitted to join and have been given increment w.e.f. 21st June, 2008.

17. The respondent no.1 has been given due seniority. It is accordingly directed that the respondent no.1 would be entitled to increment from the same date w.e.f. 1st April, 2009.

In case the respondent no.1 is entitled to any other financial benefits as a result of this increment, the petitioner shall compute the same and effectuate the same as well.

18. It is submitted by Ms. Ruchi Sindhwani, learned counsel for the petitioner that the respondent no.1 was employed with the Survey of India. Mr. Duggal, learned counsel on instructions of the respondent no.1 informs that the respondent no.1 was employed with the Survey of India office of the Government of India before joining the petitioner's organization.

19. The respondent no.1 shall file an affidavit disclosing his complete emoluments including increments etc. which he was drawing from his previous employer i.e. Survey of India, within a period of eight weeks from today with documentary proof thereof. In case the petitioner is entitled to adjust any amounts which have been drawn or received by the respondent no.1 from his earlier employer, the adjustment shall be effected. The petitioner shall receive the balance, if any, after adjustment of the amount received by the respondent no.1.

20. The computation of the arrears in view of the orders passed today shall be effectuated within a period of three months from today and shall be communicated to

the respondent no.1. Payment of the arrears shall be paid within a period of four months from the date of receipt of this order.

21. The learned counsel for the respondent no.1 has also disputed the salary fixation by the petitioner.

22. In case the respondent no.1 has any other claim, it shall be open for him to agitate the same by way of appropriate petition.

This writ petition and application are disposed of in the above terms.

(GITA MITTAL)
JUDGE

(J.R. MIDHA)
JUDGE

NOVEMBER 24, 2011

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