

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) No. 9366/2009**

% Date of Decision: 3rd February, 2011

DINESH CHANDRA

...PETITIONER

Through: Mr. R.K. Saini

Versus

**DELHI HIGH COURT
(THROUGH REGISTRAR GENERAL)**

...RESPONDENT

Through: Mr. Viraj R. Datar and
Mr. Chetan Lokur,
Advocates

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI

HON'BLE MR. JUSTICE M.L.MEHTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to Reporter or not? | No. |
| 3. Whether the judgment should be reported in the Digest? | No. |

A.K. SIKRI, J. (Oral)

1. The petitioner is employee of this Court who initially joined services in the Delhi District Courts as Lower Division Clerk in the year 1999. He was promoted to the post of Stenographer

in Delhi District Court in December, 2002. For some time his services were placed at the disposal of this Court in diverted capacity, however, with effect from 29th July, 2006 he was given offer of appointment to the post of Personal Assistant of this Court, which he accepted and soon became the employee of this Court with effect from 1st August, 2006. In that process, he had qualified the open competitive test and only thereafter he was appointed to the post of Personal Assistant in this Court. Sometime in January/February, 2008, an advertisement was issued for filling up of 41 vacant posts of Senior Personal Assistant through competitive test comprising of written test, shorthand skill test and interview. Recruitment rules for the post of Senior Personal Assistant provided for filling up of 50% vacancies by promotion and 50% by way of direct recruitment. The aforesaid 41 vacancies were to be filled by way of direct recruitment. The existing employees of this Court who fulfilled all the terms and conditions for appointment to the said post under direct recruitment were entitled to apply and to be considered. The petitioner, being eligible for the post of Senior Personal Assistant, was called to appear in the written test. He appeared in the said written test and was successful therein. Thereafter, the petitioner appeared in the shorthand test along with other successful

candidates of the written test. He qualified the said shorthand test also. He was called for interview which was held on 17th August, 2008. After facing the interview, a merit list of selected candidates was prepared. The final result declaring successful candidates on merit was displayed on 1st October, 2008. The petitioner found that his name did not appear in that list. On inquiry, he came to know that since there were some disciplinary proceedings pending against him, his name was not included in the merit list of selected candidates for that reason.

2. At this stage it would be necessary to point out that the petitioner had received a memorandum dated 6th September, 2006 in which it was alleged that when one Shri Narender Kumar, Bailiff from the Office of Administrative Civil Judge, Delhi approached the petitioner on 4th September, 2006, to serve bailable warrants upon him issued by Motor Accident Claim Tribunals ('MACT'), Delhi for his appearance in that Court, the petitioner misbehaved with him and tore the said warrant. He was asked to submit his explanation. The explanation of the petitioner was not found satisfactory and it resulted in issuance of regular charge-sheet dated 4th July, 2007. Relying upon the aforesaid charges, it was decided to

hold a regular departmental inquiry against the petitioner on the said charge. When the selection process for the post of Senior Personal Assistant was initiated, until its culminating into the final result on 1st October, 2008, the aforesaid disciplinary proceedings were pending against the petitioner. The petitioner felt aggrieved as his name did not appear in the final selected list, and he found that the person who had secured same marks as the petitioner was at serial number 33 in the said merit list. The persons below 33, were those who had secured even lesser marks than the petitioner. The petitioner thus perceived that action as illegal and submitted his representation dated 4th September, 2008 which was rejected by the High Court.

3. It so happened that in the departmental inquiry, the petitioner was ultimately exonerated of the charges by the Enquiry Officer in its report submitted in December, 2008. This report was accepted by the disciplinary authority and thus enquiry against the petitioner was dropped. After the examination in the departmental enquiry the petitioner submitted another representation dated 17th January, 2009. However this representation was also rejected by Delhi High Court vide memorandum dated 19th February, 2009. After obtaining

opinion on the basis of an application submitted under Right to Information, the petitioner made another representation which was also rejected and at that stage the petitioner filed the instant writ petition challenging the aforesaid action of non appointment of the petitioner to the post of Senior Personal Assistant.

4. In this writ petition, the petitioner has prayed for quashing of the memorandum vide which his representation had been rejected and has also prayed for issuance of writ of mandamus commanding the respondent to appoint the petitioner to the post of Senior Personal Assistant with effect from 1st October, 2008, i.e., the date from which the selected candidates were appointed according to his position and with all consequential benefits. Along with the writ petition, the petitioner had also filed an application for interim measure in the year when he was passed keeping one post reserved. That order continues till date.
5. The respondents have filed the counter affidavit opposing the prayers made in the writ petition. It is the case of the respondents that the pending disciplinary proceedings against the petitioner was valid ground for not appointing the

petitioner to the post of Senior Personal Assistant. The respondents have, in this behalf, referred to Rule 6(2) contained in Chapter 45 in Swamy's complete manual on Establishment and Administration, as per which if some departmental proceedings are pending against a Government Employee and a charge sheet has been issued, the application of such employee is not to be considered/forwarded. It is however, explained that the aforesaid rule/instruction contained therein are applicable to the petitioner also by virtue of Rule 11 of Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 which incorporates the rules issued by the Central Government from time to time and are applicable to Central Government servants. It is also explained that the factum of pendency of disciplinary proceedings against the petitioner was communicated to the Selection Committee at the stage when vigilance clearance was sought in respect of the selected candidates. It was for this reason that the petitioner was not to be selected in the list and since this fact was not known to the Selection Committee or the Committee which had proceeded with the aforesaid selection, the petitioner was allowed to participate in the selection process.

6. Learned counsel for the High Court has also submitted that the Selection Committee had put 41 persons in the selection list (as there were 41 vacancies) and no waiting list or panel was formed. It is for this reason that even after the petitioner was exonerated in the inquiry he could not be appointed when the selection process was over and complete and therefore his representation was rightly rejected.
7. Challenging the aforesaid approach of the High Court, Mr. Saini, learned counsel for the petitioner has argued that undoubtedly the petitioner had made his mark in the selection and should have been at serial number 33/34 and since there were 41 vacancies he got sufficiently high merit to enable him to get the appointment to the post of Senior Personal Assistant. His submission was that the respondent could not take shelter under Rule 6(2) contained in Chapter 45 in Swamy's complete manual on Establishment and Administration as the said rule was applicable only qua Central Government servants and the employee of the High Court is not a Central Government employee. He also submitted that the said Rule is applicable to the Department which has to forward the application of the concerned Government employee to another

Ministry/Department/Office/UPSC where the selection process is initiated. Thus, it is within the discretion of the forwarding Department, whether to consider or not to consider the application of such an employee against whom disciplinary proceedings are pending and charge-sheet is issued and to forward the same or not to other Department. It was also submitted that once the application is entertained and the concerned employee is allowed to appear in the selection process in which he is successful, at that stage, such a rule cannot be put in service to deny the appointment to the selected candidate.

8. Mr. Saini, learned counsel for the petitioner further submitted that respondent cannot take aid of Rule 11 of Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972. Only those Rules or the orders of the Central Government which pertains to the 'condition of service' and rules or orders relating to appointment are not made applicable, which would be clear from the bare reading of Rule 11. It was also argued by Mr. Saini, Advocate that the petitioner was exonerated in the Departmental inquiry and therefore the said embargo of disciplinary proceedings was no more applicable and thus thereafter he would have been

offered the appointment to the post of Senior Personal Assistant, more particularly, when all the 41 vacancies are not been filled in as much as some of the persons who were selected for the appointment did not join. He argued that being an employee of this Court, the High Court could resort to Sealed Cover Procedure and the result of the petitioner, on the basis of the said selection could have been kept in sealed cover which may be opened after the disciplinary proceedings would be over, which resulted in his exoneration. Thus, argued the learned counsel that from whatever angle the matter is looked into, the petitioner is entitled to the appointment to the post of Senior Personal Assistant on the basis of aforesaid selection.

9. In order to appreciate the contention of the learned counsel for the petitioner it would be necessary to reproduce Rule 6(2) which is based on administrative instructions as well as Rule 11 of Delhi High Court Establishment (Appointment and Conditions of Service), Rules, 1972, which reads as under:-

“In respect of all such matters regarding the conditions of service of Court servants for which no provision or insufficient provision has been made in these rules, the rules and orders for the time being in force and applicable to Central Government Servants shall regulate the conditions of service of the Court servants subject to such modifications, variations or

exception, if any, in the said rules, as the Chief Justice may, from time to time, specify.

Provided that the Registrar and Joint/Deputy Registrar belonging to Delhi Higher Judicial Service and Delhi Judicial Service respectively, shall be governed by the rules applicable to the said service.”

10. Rule 6(2) in Swamy’s complete manual on Establishment and Administration compilation make the following reading:-

“6. Forwarding of application to Ministries/Departments/other Government Offices/UPSC--- The following instructions is supersession of the existing instructions contained in O.M. No. 11012/10/75-Estt. (A), dated 18.10.1975 and O.M. No. 42015/4/78-Estt, (C), dated 1.1.1979, are issued for guidance of all Administrative Authorities.

2. Application of a Government servant for appointment, whether by direct recruitment, transfer on deputation or transfer, to any other post should not be considered/forwarded, if-

(i) he is under suspension; or

(ii) disciplinary proceedings are pending against him and a chargesheet has been issued; or

(iii) sanction for prosecution, where necessary has been accorded by the competent authority; or

(iv) Where a prosecution sanction is not necessary, a charge-sheet has been filed in a Court of Law against him for criminal prosecution.”

11. If we refer to the administrative instructions forming the basis of the aforesaid Rule 6, it provides in no uncertain terms that

where disciplinary proceedings are pending against the Government servant and the chargesheet has also been issued to him in this behalf, his application for the post of which he wants to apply/applies is not to be considered/forwarded. This recourse of the Rule extends not only to direct recruitment but even when such an appointment is made on the basis of transfer on deputation or to any other Department. The words 'considered/forwarded' are of significance and have to be given due importance. The tenor and spirit of the aforesaid administrative instruction is to clearly debar a person, from even consideration for the said post in case a departmental proceedings are pending against such an employee. Therefore it is difficult to accept the contention of Mr. Saini, Advocate that it is the discretion of the forwarding Department to consider/forward the application of such a Government employee and once the candidature of such an employee is considered and he is allowed to undergo the selection process, the aforesaid embargo would not apply. It is stated at the cost of repetition that purport of the aforesaid consideration is to debar such an employee to be considered for the post.

12. The next question which falls for consideration is as to whether these instructions are applicable to the employees of

the Delhi High Court. We have already reproduced Rule 11. The expression which is found is 'conditions of service'. It follows that the Rules and orders which are applicable to the Central Government servants are made applicable to the employees of this Court and are confined only to the conditions of services and the instruction which relates to the appointment would not be applicable at all. Our answer has to be in negative.

13. In the first instance, it is to be noticed that Rule 11 is a part of rules which are not confined to the conditions of service to relate to the appointment as well.
14. Secondly, the rules regarding the appointment can be covered by the expression 'condition of service' in the context in which Rule 11 is incorporated in these Rules. As pointed above, the rule of which Rule 11 is a part, deals with not only the condition of service but also with the appointment. Therefore, in this context, the purpose of Rule 11 was to make applicable all those rules and orders which were applicable to the Central Government servants, in respect of which provisions in these rules have not been made. We cannot give restrictive interpretation to the scope of Rule 11 as sought to be

concluded by Mr. Saini. Once we examine the matter from this perspective it is clear that the petitioner was not eligible to be considered for the post in question as he was facing a departmental enquiry. In this view of matter, merely because his application was entertained and he was allowed to appear in the exam, it would not confer any right upon the petitioner to say thereby beginning illegal. Likewise, subsequent exoneration in the departmental enquiry would also be of no relevance or consequence. In such case there was no question of resorting to Sealed Cover Procedure either. We, thus, do not find any merit in this petition and dismiss the same.

**A.K.SIKRI
(JUDGE)**

**M.L.MEHTA
(JUDGE)**

FEBRUARY 3, 2011

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