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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 7377/2010

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Date of Decision: February 9, 2011

Nirmal Negi

.... Petitioner

Through Mr. N.Parashar, Advocate

Versus

The Municipal Corporation of Delhi

.... Respondent

Through Mr. Gaurang Kanth, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? yes

Veena Birbal, J.

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1. By way of this petition, petitioner has challenged the impugned order dated 19th February, 2010 passed by the Central Administrative Tribunal, Principal Bench, Delhi (hereinafter referred to as 'the Tribunal') in T.A.No.841/2009 wherein aforesaid T.A has been dismissed being devoid of merits.

2. Petitioner was appointed as L.D.C with respondent in 1990 and was confirmed on 16th April, 1993. The respondent invited applications from the departmental candidates for unspecified posts of 'Hindi Translator' vide circular dated 19th February, 2003. The examination for the aforesaid posts was held on 14th February, 2004. The result was declared on 25th March, 2004 and select panel of four persons was prepared and from May 21, 2004 to June 17, 2004, the vacancies on the basis of aforesaid panel were filled.

Petitioner has alleged that vide letter dated 25th October, 2005, under RTI, he was informed that he had secured 109 in the said examination and his rank was 5th. The case of the petitioner is that against the five vacancies of 'General category' including two anticipated vacancies which were to arise on 30th April, 2004 & 1st August, 2004 respectively, only panel of four persons was prepared and as such, petitioner was affected by the decision of the respondent in not including the 2nd anticipated vacancy. Petitioner made representation for inclusion of his name in the panel but no action was taken by the respondent. Petitioner filed a WP(C) 7707/2007 before this court. Vide order dated 29th October, 2007 of this court, the said petition was disposed of with the direction to the respondent to dispose of the representation of the petitioner dated 1st March, 2006 within two weeks by passing a speaking order. Thereafter, respondent on 21st November, 2007 passed a speaking order and rejected the representation of the petitioner. Aggrieved with the same, petitioner filed another petition being WP(C) 9154/2007 before this court. Pursuant to the Government Notification dated 1st December, 2008 by which service dispute in case of MCD were to be heard by the Tribunal and accordingly, the aforesaid petition was transferred to the Tribunal where it was registered as TA 841/2009.

3. The stand of the petitioner before the Tribunal was that respondent ought to have prepared a select panel keeping in view not only the actual existing vacancies but also the anticipated vacancies. It was contended that respondent took only one anticipated vacancy as against two. It was contended that one anticipated vacancy was to arise on the retirement of Mr.Gopi Chand Bhadwaj and other on the

promotion of Mr.Prem Chand Sharma in August, 2004. It was contended that the action of the respondent in not taking the anticipated vacancy of August, 2004 in preparing the select panel had affected the petitioner who was 5th in position. Petitioner contended that when one anticipated vacancy of April, 2004 was taken into consideration, respondent ought to have taken the other anticipated vacancy of August, 2004 into consideration while preparing the select panel.

4. The stand of the respondent before the Tribunal was that out of seven vacancies existing at the relevant time, four belonged to UR category and a panel for the financial year 2003-04 was drawn. The vacancies which the petitioner is contending arose only in the financial year 2004-2005 and those vacancies could not have been included in the panel of 2003-2004. Respondent-MCD had also filed its additional affidavits dated 15.9.2009 and 13.1.2010 respectively to substantiate its stand before the Tribunal.

5. The Tribunal dismissed the TA vide impugned order dated 19th February, 2010 by holding that the respondent had correctly filled up 4 vacancies as only four vacancies in the UR category existed when the circular was issued for the year 2003-04 and respondent was right in its decision in not including the two anticipated vacancies which were for the year 2004-05. Aggrieved with the aforesaid impugned order of the Tribunal, the present petition is filed.

6. Learned counsel for the petitioner has contended that the Tribunal committed illegality in holding that four vacancies in the UR category were available in the year 2003-04. It is contended that four posts in UR category included one anticipated vacancy of 2004-05, as

such there was no reason why the other anticipated vacancy of 2004-05 was not taken into consideration by the respondent as petitioner stood 5th in the merit. It is contended that petitioner could have been appointed against the post which had fallen vacant in August, 2004 if the second anticipated vacancy was taken into consideration while preparing the select panel. It is contended that act of respondent is arbitrary and contrary to the law.

7. Learned counsel for the respondent has contended that when circular dated 19th February, 2003 was issued inviting applications for filling up the posts of 'Hindi Translator' by way of Limited Departmental Competitive Examination from concerned eligible candidates, four vacancies in UR category were available and those vacancies were filled up on 25th March, 2004 and the persons had also joined their duties in May and June, 2004. The respondent has also contended that seven vacancies arose after 1.4.2004 for which another selection process was initiated in the year 2007 wherein also petitioner appeared but could not qualify the same.

8. We have heard learned counsel for the parties. Petitioner is relying upon letters dated 20th April, 2007 and 25th October, 2006 in support of his contention that in the selection process of 'Hindi Translators' by way of Limited Departmental Competitive Examination, three existing vacancies and one anticipated vacancy were taken into consideration whereas stand of the respondent throughout i.e before the Tribunal as well as before this court has been that when the circular inviting applications on 19th February, 2003 for filling up the posts of Hindi Translator by way of limited Departmental Competitive Examination was issued, seven vacancies were existing i.e UR 4, SC 2 &

ST 1 and as per Government of India Department of Personnel & Training (DOP&T) O.M.No.22011/09/89-Estt(D) dated 17.10.1994 “Ministries/ Departments may calculate vacancies for reporting to D.P.C financial year wise where ACRs are written financial year wise and calendar year wise where ACRs are written calendar year wise” and that MCD is following the financial year with regard to A.C.Rs. Their further stand in the additional affidavit before the Tribunal was that the two anticipated vacancies which the petitioner is talking about i.e one vacancy arose on the retirement of Shri Gopi Chand Bhardwaj on 30.4.2004 and another on 31st August, 2004 on the retirement of Shri Prem Chand Sharma, the said two vacancies could not have been taken for the financial year 2003-04 and the same were counted for the subsequent financial year.

“Ld. counsel for the MCD is directed to file an affidavit indicating as to against which vacancy were the persons short-listed/adjusted by way of promotion.....”

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8. That it is again submitted that from the record, it appears that the while initiating the selection process in the year 2003 (Departmental Exam-2004), no anticipated vacancies were taken into consideration. The said selection process was for the existing vacancies at that point of time. Further the vacancies arose from 1.4.2004 and 31.3.2007 are considered for the selection process initiated in the year 2007 (Departmental Exam-2009). ”

From the affidavits of respondent on record, it is clear that no anticipated vacancies were taken into consideration in respect of posts of ‘Hindi Translators’ for which applications were invited vide circular dated 19.2.2003. Though, petitioner has alleged that respondent has given evasive reply in the affidavits, however, by perusing the affidavits, it cannot be said that evasive reply has been given, as is alleged. The stand of respondent to the effect that no anticipated vacancy was taken into consideration is very categorical.

The letter dated 20th April, 2007 relied upon by the petitioner does not support the stand of the petitioner. In column no.11 of said letter, wherein petitioner had asked from respondent “On 25.3.2004 how many posts of Hindi Translator were lying vacant in the Corporation”, the respondent had replied “seven” vacancies and only those vacancies had been filled up. The other letter dated 25.10.2006 also does not substantiate the stand that one anticipated vacancy had been taken into consideration as is alleged.

Simply because the name of petitioner was there in the merit list, petitioner has no indefeasible right for appointment. Reference in this regard is made to Shankarsan Dash Vs. Union of India (1991) 3 SCC 47 and Punjab State Electricity Board Vs. Malkiat Singh (1995) 9 SCC 22.

