

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

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Judgment reserved on: 20.04.2012

Judgment pronounced on: 25.04.2012

+ W.P.(C) No. 2169/2012 & CM Nos. 4678-4680/2012

DILIP KUMAR

..... Petitioner

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Petitioner-in-person.

For the Respondent : Ms. Anjana Gosain with Ms. Prerna Shah Deo, Advs.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This writ petition is directed against the order dated 22.12.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (herein after referred to as 'the Tribunal'), whereby OA No.2203/11, filed by the petitioner was dismissed. The facts giving rise to the filing of the writ petition can be summarized as under:-

The petitioner holds a Bachelor's Degree Course in Mental Retardation from Osmania University. He also holds a certificate in the Rehabilitation Education Programme and is registered with the Rehabilitation Council of India. He claims to be well experienced in the field of rehabilitation of the disabled. He has been

running a project for the disabled persons and is a director in Mother Home (Special School). The petitioner is also running a Non-Governmental Organization (NGO) in consultation with the Rehabilitation Council of India for rehabilitation of disabled persons.

Vide notification dated 04.02.2009, Secretary, Social Welfare invited nominations for the post of Deputy Commissioner for Persons with Disabilities. The name of the petitioner was sponsored by an NGO, Karunapath and he submitted an application for the said post on 25.02.2009. Department of Social Welfare appointed one Mrs. S. Roy Choudhry to the said post. The appointment of Mrs. S. Roy Choudhry was challenged by the petitioner before the Tribunal by way of OA No.1743/09. The Tribunal vide order dated 10.12.2010, quashed the order of appointment of Mrs. S. Roy Choudhry and directed the official respondents to take steps to fill up the post of Deputy Commissioner of Persons with Disabilities within three months from the date of the receipt of the certified copy of the order, as per the prescribed rules. It was, further, directed that the petitioner shall also be considered for selection, subject to eligibility.

2. Pursuant to the aforesaid directions of the Tribunal, the process to fill up the said post was initiated vide notification dated 19.04.2011. The OA No.2203/11 was then filed by the petitioner contending that only those persons who had applied for the said post, pursuant to the earlier notification issued in the Year 2009, could

be considered for appointment and no fresh notification to fill up the post could be issued. The Tribunal noticing that no such direction had been given by them, dismissed the OA filed by the petitioner.

3. During the course of arguments before us, the petitioner, who appeared in person, contended that the respondents can consider only those persons, who had applied pursuant to the notification which had been issued on 04.02.2009 inviting nominations for the post. He further submitted that if this is done, he would be appointed to the said post since other persons who applied pursuant to the notification dated 04.02.2009 were not eligible for the said post.

We find no merit in the contention of the petitioner. The order passed by the Tribunal in OA No.1743/2009 was not challenged by the petitioner and, therefore, became final and is binding on him. The operative part of the order reads as under:-

“The impugned order dated 19.06.2009 appointing the seventh Respondent to the post of Deputy Commissioner for Persons with Disabilities is, therefore, quashed and set aside. The Respondents will take steps to fill up the post of Deputy Commissioner for Persons with Disabilities as soon as possible, but not later than three months from the date of receipt of a certified copy of this order as per the prescribed rules. The applicant shall also be considered for selection, subject to eligibility. No costs.”

4. While passing the order dated 10.12.2010, the Tribunal did not confine the selection to only those who had applied pursuant to the notification issued in the Year 2009. The Tribunal only directed the respondents to fill up the post within three months from the date of receipt of the certified copy of the order, as per the prescribed rules. The petitioner was to be considered, subject to his being found eligible to the post. Therefore, the respondents were very much entitled to issue a fresh notification to fill up the said post. While doing so, they were also required to consider the petitioner, subject to his otherwise being found eligible for the post. We, therefore, find no infirmity in the order passed by the Tribunal on this account.

5. It transpired during the course of arguments that the Recruitment Rules were modified by the respondents after the order of the Tribunal dated 10.12.2010. The post of Deputy Commissioner of Persons with Disabilities fell vacant when the appointment of Mrs. S. Roy Choudhry was quashed by the Tribunal on 10.12.2010. The vacancy such created was to be filled within three months from the date of receipt of the certified copy of the order of the Tribunal. The question which arises for our consideration is as to whether the respondents can apply the amended rules to fill up the said post.

The question as to whether the vacancies which exist on the date of amendment of the rules have to be filled up as per the amended rules or as per the rules as they were prior to the amendment, came up for consideration before us in

W.P.(C) No.5549.2007, Dr. Sahadeva Singh v. Union of India and Ors., decided on 28.02.2012. After reviewing the case law, this Court summarized the legal position on the issue, as under:-

- (a) The general rule is that the vacancies which exist on the date of amendment of rules have to be filled up in accordance with the rules, as they stood prior to amendment, provided the amendment is not retrospective. If the amendment made in the rules is retrospective, even the vacancies which exist on the date of amendment are also required to be filled up as per amended rules;
- (b) The Competent Authority may take a decision to amend the rules and fill up all the vacancies in accordance with the amended rules. If such a decision is taken by the Competent Authority, that would justify the delay in making the promotion, against the existing vacancies. In such a case, all the vacancies, including the vacancies which existed on the date of amendment of the rules can be filled up as per the amended rules;
- (c) The decision to amend the rules needs to be taken by the authority which is competent to amend the rules and if such a decision is taken by some authority other than the authority competent to amend the rules and the rules are later amended, the vacancies which existed on the date of amendment of

the rules have to be filled up in accordance with the rules as they stood prior to amendment.

6. In the case before us, it is not the case of the respondents that the relevant rules have been amended retrospectively. This was also not their case before us that the competent authority had taken a decision to fill up the vacancy to the post of Deputy Commissioner of Persons with Disabilities as per the amended rules. Since there has neither been any retrospective amendment of the rules nor has the competent authority taken a decision to fill up the post of Deputy Commissioner for Persons with Disabilities in terms of the amended rules, the respondents cannot apply the amended rules, to fill up the vacancy which was created consequent to order of the Tribunal dated 10.12.2010, whereby appointment of Mrs. S. Roy Choudhry to the said post was quashed.

7. Even otherwise, the respondents cannot be allowed to circumvent the order of the Tribunal by not filling up the post within the time given to them by the Tribunal in this regard and then amend the rules and fill up the post in accordance with the amended rules.

8. For the reasons stated above, we direct the respondents to issue a fresh notification for appointment to the post of Deputy Commissioner for Persons with Disabilities, within two month from today. The rules which were applicable to fill up the said post, at the time order dated 10.12.2010 was passed by the Tribunal,

would be applied by the respondents while issuing notification inviting applications/nominations for making appointment in terms of this order. The post shall be filled up by the respondents within six months from today. The petitioner, if found eligible in terms of the rules which existed on 10.02.2012, shall also be considered for the said post.

9. The writ petition stands disposed of accordingly.

There shall be no orders as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

APRIL 25, 2012

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