

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 22.08.2012

+ **W.P.(C) 5056/2012**

SANJEEV KUMAR VERMA

... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI AND ORS

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Rajeev Sharma

For the Respondent : Ms Maninder Acharya for R-1 & R-2.

Mr Anjum Javed for R-3.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order dated 17.02.2012 passed in M.A. No.2430/2011 in T.A. No.1294/2009.
2. By virtue of the said M.A. No.2430/2011 the petitioner had sought a clarification with regard to paragraph 11.6 of the Tribunal's earlier order dated

14.09.2010 disposing of the said T.A. No.1294/2009. The said paragraph 11.6 reads as under:-

“11.6 In view of the foregoing, we dispose of this TA with a direction to the respondents to consider the case of the applicant for promotion against an SC category vacancy under the Promotion Quota or even under the Direct Recruitment Quota (to compensate for the diversion in 1996) from the date of his acquiring eligibility by a speaking and reasoned order keeping in view the instructions on the subject, the date of the vacancies among others. Needless to say while doing so, our observations in the body of this order would be kept in view. In the event of the claims of the applicant regarding the infringement of his rights as an SC category candidate being found justified, the case of the applicant would be considered for promotion with **prospective** effect. This is to be done within a period of three months from the date of receipt of a copy of this order. No costs.”

(emphasis supplied)

3. It was the petitioner’s contention that the words ‘prospective’ appearing in the said order should be read as ‘retrospective’ and, that is the clarification which the petitioner had sought.

4. It may be pointed out that prior to the application for clarification, the petitioner had filed a writ petition before this Court being W.P.(C) 4011/2011 in respect of the earlier order dated 14.09.2010 in T.A. No.1294/2009. That writ petition was disposed of by this Court by an order dated 10.08.2011 in the following manner:-

“Learned counsel for the petitioner seeks leave of this Court to withdraw the writ petition and file a clarificatory petition before the Central Administrative Tribunal. **If a clarificatory petition is filed, as clarification is required in respect of paragraph 11.6 of the impugned order, the Tribunal shall hear the counsel for the petitioner and the respondents and pass an appropriate order.**”

The writ petition is permitted to be withdrawn.”

(emphasis supplied)

5. It is apparent, on going through the said order dated 10.08.2011, that this Court felt that a clarification was required. Consequently, it had directed that if a clarificatory petition is filed, “as clarification is required” in respect of paragraph 11.6 of the impugned order, the Tribunal shall hear the counsel for the petitioner and the respondents and shall pass an appropriate order. The meaning and purport of the order dated 10.08.2011 is clear. It is that this Court felt that a clarification was necessary. While it did not express its view as to whether the word ‘prospective’ should be substituted by the word ‘retrospective’ in the said paragraph 11.6, this Court however made it clear that the Tribunal ought to clarify as to whether the word ‘prospective’ ought to be retained or it ought to be substituted by the word ‘retrospective’, after examining the merits of the matter.

6. Unfortunately, the Tribunal understood the order of this Court differently. This would be clear from reading of paragraph 8 of the impugned order dated 17.02.2011 which is as under:-

“8. Having carefully considered the respective submissions and the material on record, we are unable to accept the contentions raised in the M.A. A bare reading from the Delhi High Court’s order dated 10.08.2011 does not reveal any predetermination of the issue by the Hon’ble High Court. All that it orders is permission to the petitioner for withdrawing the Writ Petition filed before it. It is further stated that in case a clarification petition is filed, for a clarification in para 11.6 of the impugned order, the mandate of the Tribunal would be to hear the counsel of the petitioner and the respondents and pass an appropriate order.

We also do not find this MA as maintainable, because in the garb of seeking a ‘clarification’; the endeavour instead is for getting a substantive relief, which is beyond the directions given by the Tribunal or even claimed as a relief in the TA. Hence our considered view is that even if the applicant has some subsisting grievance in the wake of the respondents’ order dated 08.08.2011, Miscellaneous Application is not the appropriate remedy for it.

For the reasons stated above, the MA 2430/2011 is dismissed”

(emphasis supplied)

7. We do not appreciate the fact that the Tribunal has recorded a finding that the M.A. was not maintainable. Once the High Court had permitted the petitioner to file a Miscellaneous Application for clarification, after observing that a clarification was necessary, it was not open to the Tribunal to conclude that such an application was not maintainable. It is apparent that this Court wanted to have the benefit of the view of the Tribunal on the issue as to whether the petitioner’s case for

promotion was to be considered with prospective or retrospective effect. But, that has been stultified by the Tribunal by holding that the application itself is not maintainable. All that the Tribunal needed to do was to consider the application and dispose it of on merits. It ought to have examined the position as to whether the words 'prospective' ought to be substituted by the word 'retrospective' in the said paragraph 11.6 or not. This Court only wanted to examine the reasons for a decision on either side by the Tribunal. Of late, we have noticed orders passed by the Tribunal refusing to entertain, at the threshold itself, applications which have been specifically permitted by the High Court. The Tribunal must be able to discern the difference between an order which merely records the intention of the party to file an application before the Tribunal and an order where this Court has expressed a need for consideration of an application, as in the present case.

8. In view of the foregoing, we set aside the impugned order dated 17.02.2012 and direct the Tribunal to hear the clarification application afresh and arrive at a clear decision based on reasoning as to whether the word 'prospective' ought to be substituted by the word 'retrospective' in the said paragraph 11.6 or not.

9. The matter is remitted to the Tribunal for such a consideration. The

parties shall appear before the Tribunal in the first instance on 06.09.2012.

The writ petition is disposed of accordingly.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

AUGUST 22, 2012

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