

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

% *Date of decision: July 12, 2013*

+ **W.P.(C) 6688/2012**

RAHUL Petitioner

Represented by: Mr.Anil Singhal, Advocate

versus

GOVT. OF NCT OF DELHI AND ANR Respondents

Represented by: Mr.Anjum Javed, Advocate with
Mr.Mirza Amir Baig, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. We are concerned with twelve out of twenty one posts of Sub Inspector (Ministerial) which were required to be filled up from amongst the General category departmental candidates.
2. The undisputed fact is that when the select list was drawn up, in order of merit, the candidate at serial No.12 listed was the one who had obtained 152 marks and the petitioner was the senior most departmental candidate few of whom had obtained 151 marks and if there was a thirteenth vacancy available he would have been empanelled.
3. The twelve empanelled candidates joined and thus the select list stood exhausted. After three months a candidate named Swatanter Yadav resigned which was accepted within six months of the panel being drawn up and he left.

4. The petitioner raised an issue by filing OA No.1201/2010 stating that since vacancy resulting on resignation of Swatanter Yadav arose within six months of the select panel being prepared he i.e. the petitioner would be entitled to be appointed against said vacancy being the next candidate in order of merit keeping in view his seniority.

5. The Original Application was disposed of by the Tribunal on October 27, 2010 observing as under in paragraph 6 of its order:-

“In the present case, it is noted that the Applicant is not part of the select panel or in the wait listed panel. However, the Applicant having secured 151 marks, and admittedly he being in the 1st position among the unsuccessful candidates, now seeks to be considered for the vacancy of SI (Executive) in the UR category of departmental candidates. Moreover, the vacancy has arisen within the period of six months. The Respondents have two options viz. (1) fill up the vacancy from the merit list as per law or (2) carry forward the vacancy to be filled up in the next recruitment process. Since the next recruitment process has not commenced, the 2nd option may not be feasible in near future. In this background, the Respondents should consider the first option and also examine the representation of the Applicant pending with them w.e.f. 10.03.2010 and to take decision.”

6. The final direction issued in paragraph 7 reads as under:-

“Considering the above facts, we come to the considered conclusion that the interest of justice will be served if the Respondents are granted the opportunity to examine the case of the Applicant vis-à-vis the vacancy existing in the departmental UR category for SI (Executive) post and the case of the Applicant is decided as per law within a period of two weeks from the date of receipt of a certified copy of this order.”

7. The Competent Authority passed an order on November 26, 2010 recording therein that since the panel prepared was restricted to the number of vacancies notified and there was no reserve list, the question

of appointing petitioner to the vacancy occasioned on account of Swatanter Yadav resigning after he joined service does not arise.

8. The petitioner filed another Original Application registered as No.1103/2011 laying a challenge to the order dated November 26, 2010 and urged that the order passed by the Tribunal on October 27, 2010 left no discretion with the Competent Authority which was obliged to appoint the petitioner and thus prayed for directions that the petitioner be appointed as SI (Executive).

9. Vide impugned decision dated October 18, 2011 the Tribunal has dismissed the Original Application holding that the order dated October 27, 2010 cannot be read as projected by the petitioner and that the select list cannot be extended. The Tribunal has held that since the next recruitment process had commenced the vacancy had to be treated as a carryover vacancy. And as regards the selection process pertaining to the year 2009 must be treated as having lapsed.

10. Undoubtedly the Tribunal has committed an error of fact by recording that the next year's selection process had commenced. This had not commenced when OA No.1103/2011 was filed nor was it commenced when the Original Application was disposed of.

11. But that would be immaterial.

12. The plea urged by the petitioner before the Tribunal which was repeated before us that the order dated October 27, 2010 passed by the Tribunal disposing of OA No.1201/2010 left no discretion with the Competent Authority who was obliged to issue a letter offering appointment to the petitioner is incorrect for the reason notwithstanding certain observations which at first blush appear to be mandating a direction to the Competent Authority, the order concludes by calling upon the Competent Authority to take a decision. The order passed by the

Tribunal would clearly evidence that as per the Tribunal the Competent Authority had two options and this was the reason for the remand i.e. for the Competent Authority to decide as to which out of the two options should be opted for.

13. Before proceeding further ahead we would failing not to be noting that large number of writ petitions filed before us are evidencing that before remanding the matter, on questions of fact and law, determinative findings are being recorded by the Tribunal and thereafter the matter is remanded to the Executive for decision afresh. This may be permissible if the Executive has wrongly interpreted the law requiring the Executive to re-apply the facts to the correct law as expounded by the Tribunal. Likewise, a fact or a circumstance may be opined to be relevant by the Executive and said fact or circumstance has influenced the decision. Upon the fact or the circumstance found to be irrelevant the matter may be remanded to the Executive to decide afresh after excluding the said fact or the circumstance. But where the facts are not in dispute and only a legal issue arises, the Tribunal ought not to remand the matter for the reason no useful purpose would be served to remand the matter. In any case, whenever a matter is remanded, the reason for the remand must be clearly brought out and if a legal point is debated, the conclusion has to be clearly stated. What we are finding is stray observations here and there with a remand. The Executive is left guessing what to do.

14. The legal reason given by the Tribunal with respect to Swatanter Kumar having joined; in fact all empanelled candidates having joined, and Swatanter Kumar resigning subsequently would not result in the vacancy being available is correct.

15. In the decision reported as 2002 (1) SCC 113 State of Punjab Vs. Raghbir Chand Sharma only one post was notified to be filled up and

the first candidate on the select panel joined after accepting letter offering appointment. Upon resignation the second empanelled candidate sought appointment. The Supreme Court observed:-

“With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently.”

16. A similar view was taken in the decision reported as JT 2002 (2) SC 329 Thrissur District Cooperative Bank Ltd. Vs. Delson Davis P.& Ors. It was observed:-

“When once the selection process is complete and appointment had been made, that process comes to an end and if any vacancy arises on the appointee having joined the post leaves the same, it must be treated as a fresh vacancy and fresh steps in accordance with the appropriate rules should be taken. This view is fortified by the judgment of this Court in State of Punjab v Raghubir Chand Sharma & Anr.”

17. In the decision reported as 2011 (2) JKL 42 Renu Bala Vs. State of J&K & Ors. it was observed:-

“In the event, as already stated, all the appointed candidates join in pursuance of the appointment orders, the power of the government/appointing authority to make appointment thereof comes to an end, and that particular selection process gets concluded by issuance of appointment orders and by joining of all the appointed candidates on the advertised posts. After conclusion of the selection process by joining on the posts by appointed candidates, the PSC as also appointing authority cannot have any role to play in a concluded process. If after joining on the post some appointee resigns, even if such resignation takes place during the validity of the selection panel, it becomes a post available for fresh selection and

appointing authority cannot fall back upon the selection list which is non-existent in the eyes of law having been exhausted by the appointment of all the selected candidates. After joining of appointed candidates on all the posts, there being no selection list/wait list available in law, the appointing authority cannot fall back upon on a non-existent list. Same will be the position in the case of the death of the appointed candidate.”

18. Turning to the decisions relied upon by learned counsel for the petitioner, pertaining to the decision reported as (2000) 1 SCC 600 A.P. Aggarwal Vs. Government of NCT of Delhi & Anr. we find that the issue raised was decided with reference to an office memorandum issued by DoPT on May 14, 1987 as per which vacancies occurring within a period of six months were to be filled up from the select panel.

19. There is no pleadings before us that the said memorandum issued by DoPT was adopted by Delhi Police or would be applicable to appointment under Delhi Police. Besides, the said decision clearly notes the fact that for one vacancy a panel of two persons was drawn up. It was in said context the Supreme Court held that where the first person on the panel joins but resigns within six months, the second empanelled candidate has a right to be appointed.

20. The second decision relied upon being (2010) 6 SCC 777 State of Orissa & Anr. Vs. Raj Kishore Nanda & Ors. is also not applicable in view of the fact that the Supreme Court in said case was considering Recruitment Rules of the year 1985 pertaining to recruitment of Ministerial staff in the District Judiciary in the State of Orissa, which required a panel to be drawn up and to remain valid for a period of one year.

21. No Rule has been shown to us requiring a panel to be drawn up containing reserve names and candidates listed therein to be appointed

if within six months of the select panel being drawn up a vacancy accruing due to resignation of a candidate who had joined.

22. The writ petition is accordingly dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

JULY 12, 2013
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