

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 22073 of 2016

DATE OF DECISION : 24.10.2016

Hitesh Kumar Khare

.... PETITIONER

Versus

Ministry of Health and Family Welfare and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. V.K. Sharma, Advocate,
for the petitioner.

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RAMENDRA JAIN, J.

1. By way of present writ petition under Articles 226/227 of the Constitution of India, the petitioner is seeking issuance of a writ in the nature of certiorari to quash the order dated 24.08.2016 (Annexure P-4) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'the Tribunal'), dismissing his OA No. 060/00130/2016, and further to quash the advertisement dated 12/18 September, 2015 inviting applications for the post of Senior Scientific Officer Grade II, being in violation of the statutory Recruitment Rules. Further prayer has been sought to issue a writ of mandamus directing the respondents to fill up the post of Senior Scientific Officer Grade II, by way of promotion, deputation and only then to resort to direct recruitment as a last resort.

2. The post of Senior Scientific Officer Grade II, Regional Drugs Testing Laboratory, Chandigarh, became vacant with effect from 06.05.2014 on account of pre-mature repatriation of one Gyanender Saxena on deputation to his parent cadre. Hence, the respondent department approached the UPSC seeking advice to fill up the said post. Vide letter dated 11.05.2015 (Annexure A-3 attached with Annexure P-1), the UPSC advised the respondent department to fill up the vacancy as per the provisions of the Ministry of Health and Family Welfare, Directorate General of Health Services, Regional Drugs Testing Laboratory, Chandigarh, Senior Scientific Officer Grade-II and Senior Scientific Assistant Posts Recruitment Rules, 2013 (hereinafter referred to as 'the Recruitment Rules'), which were notified on 05.06.2013. According to the aforesaid Rules, the mode of recruitment to fill up the post is by composite method of promotion or deputation (including short-term contract) failing which by direct recruitment. Apparently, the respondents have to fill up the post by resorting to promotion of feeder cadre officers or on deputation basis. However, the course of direct recruitment is last option. Misconstruing the said advice and the Recruitment Rules, the respondents proceeded to fill up the post by way of direct recruitment by ignoring the fact that they have to fill up the post by way of promotion, then deputation, failing which by direct recruitment, and issued advertisement dated 12/18 September, 2015 (Annexure A-1 attached with Annexure P-1), inviting applications for the post of Senior Scientific Officer Grade II in the pay scale of ₹ 15600-39100 with grade pay of ₹ 5400/- in the office of Regional

Drugs Testing Laboratory, Chandigarh. The last date for submission/receipt of applications was 02.10.2015. The petitioner, after verifying the facts, submitted his application on 28.09.2015. The interview for the post was fixed for 16.02.2016. Hence, by filing OA No. 60/00130/2016, the petitioner challenged the aforesaid advertisement dated 12/18 September, 2015, to fill up the post by direct recruitment, instead of filling up the post through promotion or deputation. On 12.04.2016, the Tribunal observed that the appointment, if any, shall be subject to final outcome of the OA. During the pendency of the said OA, Shri Debasis Maiti was appointed to the post in question by way of direct recruitment, which obviously was subject to decision of the OA.

3. After hearing learned counsel for the parties, the Tribunal vide order dated 24.08.2016 dismissed the OA of the petitioner, while observing that he would be eligible for promotion after completion of three years of service in January, 2018, and as such, there was no irregularity in resorting to appointment to the post by way of direct recruitment, as earlier efforts to fill up the post by way of deputation have not been successful.

4. Learned counsel for the petitioner argued that the Tribunal has failed to appreciate the fact that since the petitioner would be eligible for promotion to the post in question in January, 2018, therefore, on account of direct recruitment to the post by the respondents, he would not be promoted to the said post. He further argued that Shri Gyanender Saxena was appointed to the post on 24.06.2013 on deputation basis and served the respondent department till 05.05.2014, therefore, it has been wrongly

observed by the learned Tribunal that the efforts to fill the post on deputation had not been very fruitful. Hence, as per the Recruitment Rules, without resorting to the method of filling up the post by promotion/deputation, the post cannot be filled up by direct recruitment.

5. After giving our thoughtful consideration to the contentions raised by learned counsel for the petitioner, we do not find any substance in the present writ petition.

6. Admittedly, at the relevant time, no Senior Scientific Assistant was eligible for promotion to the post in question. Thus, the post could not be filled up by way of promotion. The respondents, therefore, tried to fill up the post by deputation earlier through advertisement issued in September, 2011, for which the selection was held in February, 2013, but the selected candidate did not join, and Shri Gyanender Saxena, whose name was in the reserve list, was recommended for appointment. He joined on deputation on 24.06.2013, but before completing even one year in the post, he requested for pre-mature repatriation. He was, accordingly, relieved from his duties with effect from 05.05.2014. Thereafter, being a last resort, the respondents decided to take the course of direct recruitment to the post and issued the advertisement in September, 2015. At that point of time, the petitioner was having only eight months of service as Senior Scientific Assistant to his credit and would have been eligible for promotion to the post in January, 2018, i.e. after completion of three years service as Senior Scientific Assistant. Moreover, in response to the said advertisement, the petitioner himself applied for the post and unsuccessfully participated in the selection process. Therefore, now he is debarred from challenging the same

advertisement.

7. In view of the above, we do not find any illegality or perversity in the impugned order dated 24.08.2016 passed by the Tribunal, dismissing the OA of the petitioner.

8. Petition is, accordingly, dismissed. Registry is directed to bring this order to the notice of respondent Nos. 1 to 4, so as to avoid any concealment of this order by the other similarly situated persons, if any, while filing any such petition before this court in future.

(RAMENDRA JAIN)
JUDGE

October 24, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes