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IN THE HIGH COURT OF DELHI AT NEW DELHI
WRIT PETITION(CIVIL) No. 4135/2016

Date of decision: 20th December, 2016

N.C. MEENA

..... Petitioner

Through Mr. Rajeev Sharma, Advocate.

versus

SHRI K.S. MEHRA & ANR.

..... Respondents

Through Ms. Biji Rajesh, Advocate for Mr.
Gaurang Kanth, Advocate for North DMC.

Mr. Naresh Kaushik, Advocate for respondent
No. 2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Having heard learned counsel for the petitioner, we are not inclined to interfere with the impugned order dated 27th November, 2014 whereby CP No. 204/2012 noticing the subsequent developments has been dismissed as rendered infructuous.

2. The petitioner had earlier filed OA No. 2605/2009, which was disposed of by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) on 28th September, 2010, recording as under:-

“17. With regard to the zone of consideration for SC/ST candidates, we have been through the orders of the Hon'ble High Court of Delhi in WP (C) No.356 of 2008 in Union of India & Others v. Shri Gopal Meena and Others, decided on 23.04.2009 and find that the Hon'ble High Court has held that there has to be an entirely

separate zone of consideration for SC/ST candidates. The relevant extract of the Judgement is extracted below:

“17. OM dated 25.4.2008, while maintaining the provision contained in the earlier OM dated 6.2.2006, mentions about the opinion of the Attorney General for India in the following manner:-

“6. The Attorney General for India has, therefore, given the following answer with regard to the questions raised above:-

The extended zone of consideration for SC/ST candidates is substantially equivalent to a separate zone of consideration for SC/ST candidates. This is subject to the --- that in practice the extended zone appears to be more limited than the separate zone.

Consequently, an extended zone of consideration would tantamount to a separate zone of consideration for SC/ST candidates as in the extended zone only SC/ST category candidates are considered. However, there has to be a limit how far one can go down in the overall gradation/seniority list.”

18. It is clear from the above that even as per this OM, there has to be a separate zone of consideration apart from an extended zone of consideration for SC/ST candidates. What is mentioned is that extended zone of consideration would tantamount to a separate zone of consideration for SCs/STs. Our only reservation is that as per the judgement of the Supreme Court, the implementation of the OM dated 25.4.2008 cannot be secured by extending the zone of consideration. There has to be an entirely separate zone of consideration. Of

course, after having the separate zone of consideration for SC and ST candidates, it can be limited to 1, 2 or 5 times of vacancies in OM dated 6.1.2006.”

18. It is not clear from the reply of the respondents and the records produced whether a separate zone of consideration for ST candidates in this case was prepared (it appears that it was not) and whether the applicant would then fall within the zone of consideration.

19. In this view of the matter, the interests of justice would be met if the present OA is disposed of by directing the respondents to reconsider the case of the applicant as per rules in the light of the order of the Hon’ble High Court of Delhi in the above WP for a separate zone of consideration for ST, and by constituting a review DPC taking into consideration all the facts. This may be done within a period of two months from the date of receipt of a copy of this order and the results of the review DPC should be communicated to the applicant. Ordered accordingly. No costs.”

3. The Union Public Service Commission in their affidavit filed before us on 8th September, 2016 have pointed out the steps taken by them after the order dated 28th September, 2010 was passed. Reference in this regard can be made to paragraphs 7.4, 7.5 and 7.6 of the affidavit, which read as under:-

“7.4 That on non-compliance of the above order, Shri Meena filed the CP No. 204/2012. Subsequently, the North MCD, vide letter dated 09.05.2013, submitted a proposal to carry out a limited Review DPC to consider the case of Shri N.C. Meena for implementation of above order dated 28.09.2010 of Hon’ble CAT. For the purpose of that proposal, the North MCD had sought vigilance status from their

Vigilance Department in respect of 155 officers, vide letter dated 05.12.2011, including the SC/ST officers along with petitioners whose seniority is beyond S.No. 320. In that proposal, the Department indicated three different dates of promotion/current duty charge in respect of Shri Meena in the feeder grade. The Department was, therefore, requested, vide UPSC letter dated 18.06.2013, to reconcile the position and indicate the exact date of promotion of Shri Meena as AE (Civil) so as to be reckoned for determining his eligibility for promotion to the post of EE (Civil). The MCD, vide letters dated 10.07.2013 and 25.10.2013, again intimated two different dates of appointment of Shri Meena as AE (Civil). Meanwhile, it was found that Hon'ble High Court of Delhi, in order dated 28.04.2004 in WP (Civil) No. 5958/2002, had directed the MCD that service rendered by the petitioners (Shri Mena & others) on current duty charge (i.e. 12.07.1995) will be counted towards their service for determining their eligibility for promotion to the next higher post. Therefore, the Commission, vide letter dated 18.11.2013, informed the Department that the date of appointment of Shri Meena as AE (Civil) would be treated as 12.07.1995 and on completion of 5 years service as AE on 12.07.2000, he would be eligible for promotion to the post of EE (Civil) for the vacancy year 2001-02. The MCD was requested to submit the eligibility lists w.e.f. the vacancy years 2001-02 to 2007-08 showing the correct date of eligibility of Shri Meena.

7.5 That however, the MCD, vide their letter dated 12.12.2013, furnished the incorrect eligibility lists for the vacancy years 2001-02 to 2007-08. While preparing the eligibility lists, the MCD calculated the zone of consideration/extended zone of consideration for each year by adding the filled vacancies of previous years also. Whereas as per procedure contained in para 6.1.1 of DOP&T's OM dated 10.04.1989, only unfilled vacancies of previous year should have been carried forward while calculating the zone/extended zone for a particular year. In these incorrect eligibility lists, the name of Shri N.C. Meena was included in the extended zone for ST category in all the vacancy years from

2001-02 to 2007-08. In this incorrect eligibility lists, the North DMC included the names of other SC/ST officers also beyond S.No. 320 in the normal or extended zone of consideration.

7.6 That the calculation/preparation of zone of consideration/extended zone of consideration by the MCD as such was not correct. The Hon'ble High Court of Delhi in their Order dated 23.04.2009 in WP No. 356/2008 in the case of Gopal Meena, based on which Hon'ble Tribunal has passed aforesaid order dated 28.09.2010 in OA No. 2605/2009 for a separate zone of consideration, had held after considering the opinion of the Attorney General of India that "There has to be an entirely separate zone of consideration. Of course, after having the separate zone of consideration for SC and ST candidates, it can be limited to 1, 2 or 5 times of vacancies in OM dated 06.01.2006." and "consequently, an extended zone of consideration would tantamount to a separate zone of consideration for SC/ST candidates." Further, Hon'ble Tribunal, in para 15 of its order dated 28.09.2010 in OA No. 2605/2009, has described the instructions of DOP&T's OM dated 06.01.2006, quoting the limit of extended zone of consideration as 5 times of number of vacancies in a particular vacancy year."

4. However, what is most important and relevant is that the seniority list for the post of Assistant Engineers dated 15th February, 2005 was superseded by seniority list dated 18th July, 2011. Albeit, the seniority list of Assistant Engineers dated 18th July, 2011 was quashed and struck down by the Tribunal vide order dated 30th April, 2014 in OA No. 1276/2012 tilted *Ajay Kumar Agarwal versus Director Local Bodies*. The petitioner was a party to the said OA. By another order dated 24th November, 2014 passed in TA Nos. 327/2009, 395/2009 and 243/2009, *Sandeep Malhotra*

and Others versus Siya Ram Meena and others, the Tribunal has quashed the earlier seniority list dated 15th February, 2005. The petitioner was also a party to the aforesaid TAs filed by Sandeep Malhotra and others. Once the seniority list(s) themselves have been quashed, the exercise has to be undertaken afresh and then the question of zone of consideration, etc. all will have to be reworked on the basis of new seniority list.

5. Counsel for the petitioner has submitted that in case the review DPC had been held earlier, the impugned order dated 30th April, 2014 passed in OA No. 1276/2012 and order dated 24th April, 2014 passed in TA Nos. 327/2009, 395/2009 and 243/2009 would not have affected the petitioner.

6. We appreciate the ingenuity of the argument, but are unable to accept the contention to hold that the respondents are guilty of contempt. Once the seniority list(s) had been set aside, the Tribunal could have dealt with and allowed the contempt application. In fact, even if the petitioner had been granted any promotion on the basis of the seniority list, which has been quashed, the effect thereof may have its consequences.

7. In view of the aforesaid position, we agree with the Tribunal that in view of subsequent developments the contempt petition was rendered infructuous. The writ petition is dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

DECEMBER 20, 2016
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