

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

LPA-709-2018 (O&M)

Date of Decision: 14.05.2018

Union of India

... Appellant

Versus

Dr. Mithilesh Kumar Jha & others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Vivek Singla, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J.

CM-1955-2018:

Prayer in the instant application is for condonation of delay of 94 days in filing the accompanying appeal.

The only justification put forth in the applications is that delay has occurred on account of processing of the case file and such delay was not deliberate or intentional.

We do not find the same to be a good ground to condone the delay.

Application is dismissed.

Main case:

Instant appeal has been filed under Clause X of the Letters Patent assailing the judgment dated 14.12.2017 passed by learned Single Judge in CWP-10483-2017.

Respondent No.1 filed writ petition seeking writ of mandamus for issuance of Vigilance Clearance Certificate so as to facilitate his joining on the post of Director, Central Institute of Technology Kokrajhar, Assam. During pendency of the writ petition, the Vigilance Clearance Certificate was issued and accordingly, the writ petition has been disposed of with directions that respondent No.1 may approach appropriate authority for joining as Director.

Brief facts which are relevant to the issue at hand may be noticed.

Appointment as Director, C.I.T., Kokrajhar is to be made by the Central Government with prior approval of the Appointments Committee of the Cabinet (A.C.C.). Advertisement for the post of Director was published in the month of January, 2015. Against the advertisement, 16 applications were received and which were scrutinized by the Search-cum-Selection Committee in a meeting held on 15.03.2016. Eight applicants were short listed and were interviewed on 19.04.2016. In such process, respondent No.1 was recommended for the post of Director, C.I.T., Kokrajhar and such recommendations were even approved by the concerned Minister. For joining on the post of Director, possession of Vigilance Clearance Certificate is a pre-requisite. The parent organization of respondent No.2 was N.I.T., Jalandhar and since Vigilance Clearance Certificate was not forthcoming, writ petition was filed and which has ultimately led to the passing of the impugned judgement dated 14.12.2017.

Learned counsel appearing for the appellant/Union of India has raised a solitary contention that since respondent No.1 had not joined on the

post, the select panel which had a lifespan of one year stood elapsed and a fresh advertisement had been issued. It is urged that in the teeth of a fresh selection process having been initiated, the directions issued by the learned Single Judge cannot sustain.

We have heard learned counsel at length and have perused the case paper book.

It would be apposite to take note that during pendency of the writ petition, the following order had been passed by the writ Court on 10.10.2017:

“Petitioner is a candidate for the post of Director, Central Institute of Technology, Kokrajhar, Assam. For want of vigilance clearance certificate petitioner is not in a position to join the post at Assam. Therefore, respondent No.1 is hereby directed to consider petitioner's grievance relating to issuance of vigilance clearance certificate for the purpose of reporting as a Director at Central Institute of Technology, Kokrajhar, Assam. Such decision shall be taken within a period of one month from today and communicate the same to the petitioner, failing which personal appearance of respondent No.1 would be ordered for appraisal of the matter.

List this matter on 05.12.2017.”

Apparently, the Vigilance Clearance Certificate was issued on 07.12.2017 during pendency of the writ petition. Recommendation in favour of respondent No.2 for appointment to the post of Director was on 16.09.2016.

In our considered view and against the backdrop of the facts and circumstances delineated herein above, respondent No.1 cannot be penalized for any delay that has occurred in the issuance of Vigilance Clearance

Certificate. The only justification that was sought to be forthcoming before the writ Court as regards the delay in issuance of Vigilance Clearance Certificate was that the concerned Committee could not meet on various dates for want of non-appearance of some of its members. Another reason cited was that constitution of the Committee had also been modified on three occasions. Clearly, the delay in issuance of the Vigilance Clearance Certificate is not attributable to respondent No.1. Under such circumstances, a stand cannot be taken to the detriment of respondent No.1, wherein on the one hand, the Vigilance Clearance Certificate is not issued for a period of more than one year and on the other hand, to defeat the rights of respondent No.1 as a duly selected and recommended candidate for the post of Director.

As regards submission advanced by learned counsel that the lifespan of the select panel had elapsed, heavy reliance has been placed upon office Memorandum dated 30.07.2007 issued by Government of India, Ministry of Personnel, Public Grievances and Pensions, New Delhi. Such office Memo even though not placed on record, was furnished by learned counsel for perusal of this Court during the course of hearing. Even such office memo dated 30.07.2007 does not advance the case of the appellant. The relevant clause in the office Memo dated 30.07.2007 reads in the following terms:

“The panel recommended by the Committee will be valid for one year. If no selection is made from the panel within a period of one year, a fresh Committee shall be constituted to prepare a fresh panel. Such a Committee may also consider the names of the persons recommended in the earlier panel.”

The validity period of one year envisaged in the afore reproduced clause would operate in a situation where no selection is made

from a panel within a period of one year. In the instant case, a selection has been made from a panel and name of respondent No.1 was not only recommended but was even approved by the Minister concerned. Reliance as such upon office Memo dated 30.07.2007 by learned counsel is not well founded.

On a specific query having been put by the Court, learned counsel for the appellant would concede that even though a fresh advertisement had been issued for appointment to the post of Director in the concerned institute, yet it is only at the stage of inviting applications and no selection in pursuance thereto, has been made.

In view of the discussion hereinabove, the impugned judgement dated 14.12.2017 passed by learned Single Judge does not warrant any interference.

Consequently, appeal is dismissed on merits as well as on the ground of delay.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

14.05.2018

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |