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

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Date of Decision: 23.05.2019

% **W.P.(C) 5044/2019**

DEEPANSHU KUMAR GAUR Petitioner
Through: Mr. J.S. Mann, Adv.

versus

UNION OF INDIA AND ORS. Respondent
Through: Mr. K.V. Sreemithun, Senior panel
counsel, UOI, for respondent Nos. 1
to 3.
Mr. Pankaj Kumar, GP.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

C.M. No. 22343/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 5044/2019

1. The petitioner assails the order dated 27.03.2019 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 629/2018. The Tribunal has rejected the said Original Application preferred by the petitioner. The petitioner was aggrieved by the fact that he was not permitted to join the post of Store Keeper Grade-II (SK-II) in MES

when he reported for joining the said post on 19.06.2017. The petitioner had applied for the said post on 14.06.2015. He was shortlisted on the basis of the written examination. On 06.06.2016, he was called for verification of his original documents. The offer of appointment contained in the letter dated 11.11.2016 was issued to the petitioner, requiring him to report for duty to the office of HQ CENC, near Udhampur, on or before 31.11.2016. The petitioner vide communication dated 24.11.2016 sought extension of joining time upto the first week of June, 2017 on the ground that since the year 2013, he was undergoing regular study of undergraduate course i.e B.Tech (Chemical Engineering) from GGSIP University and that he was studying in the 4th year, which would be completed in May, 2017. He stated that he would be able to join his post in the first week of June, 2017. The respondent acceded to the petitioner's aforesaid request partially, by granting him time to join the said post by 10.02.2017. The letter stated that if he did not join his post, his appointment letter shall be treated as cancelled and no further representations shall be entertained.

2. It appears that the petitioner sought further extension of time by making further representations. On these communications, the respondents undertook inter departmental correspondence on 07.03.2017 and 25.04.2017, inquiring about the present status for grant of extension of joining time to the petitioner. Copies of these communications were also marked to the petitioner.

3. The petitioner did not join his post on 10.02.2017 and, as aforesaid, presented himself to join the post only on 19.06.2017. The petitioner was

not permitted to join the post. It appears that the petitioner kept on making representations and on that, further inter departmental correspondence was undertaken in August, 2017 and September, 2017. On 14.09.2017, the respondents issued a communication – with copy to the petitioner, stating that as per the Government of India, Ministry of Personnel, PG and Pensions, DOP&T, letter dated 09.08.1995, if within the specified period of joining mentioned in the appointment letter, request for extension of time is received and circumstances so warrant, maximum six months extension can be granted from the date of issue of the appointment letter. The communication stated that since there was no provision for extension of time beyond six months, the six months period expired on 10.05.2017 considering the fact that the letter of appointment was issued on 11.11.2016.

4. The Tribunal has rejected the petitioner's submission by placing reliance on the aforesaid O.M. which, inter alia, reads as follows:

“it has been decided to reduce from nine months to six months the maximum time upto which an offer of appointment can be kept to open. In other words, an offer of appointment should clearly specify the period (which shall not normally exceed one or two months) after which the offer would lapse automatically if the candidate did not join within the specified period. If however, within the specified period, a request is received from the candidate for extension of time, it may be considered by the Ministries/Departments but extension beyond three months should not be granted liberally and it may be granted only as an exception where facts and circumstances so warrant and in any case only upto a maximum of six months from the date of issue of the original offer of a appointment. An offer of appointment would lapse automatically after the expiry of six

months from the date of issue of the original offer of appointment.”
(emphasis supplied)

5. The Tribunal has also relied upon the decision of this Court in ***Ajay Kumar and Others v. Union of India***, W.P.(C.) No. 267/2013, wherein the O.M. dated 09.08.1995 was considered and this Court observed:

“10. As far as the question of legality of the Office Memorandum dated 9.8.1995 goes, the respondents’ arguments, in the opinion of the court, are merited and substantial. It goes without saying that every offer of appointment should be finite in point of time, more so, in case of a public appointment. The recruiting agency and the competent authority are duty bound to follow transparent selection processes consistent with the dictates of Article 14 of the Constitution of India which mean that vacancies for various posts should be advertised, the last date for entertaining applications clearly notified and the written test or other mode adopted for selection and notified well in advance. Once this stage is over, the result – in the form of a select list – is again duly notified to the concerned candidates or publically. This is followed up by an offer of appointment to all successful candidates. The need to indicate a time within which or a date by which the candidate should report for duty needs to be hardly emphasized.....

11. This Court sees neither arbitrariness nor discrimination in regard to the stipulation of a fixed period within which a successful candidate has to report for duties to his post. As discussed previously, if discretion is allowed to individual appointing authorities, the resultant chaos would throw out of gear the entire process of filling up of vacancies and jeopardize the management of a cadre. Besides, each department or agency in the government would be clueless about the number of vacancies it possesses and indeed the number of successful candidates who are waiting in line to join at a given point of time. It is quite likely that a large

number of posts would remain unmanned and unfilled awaiting individual predilections of selected candidates who would join according to their convenience. To avoid such anomalous and possibly disastrous eventualities, a uniform approach was directed by the OM of 6.6.1978 as modified by the later Memorandum of 9.8.1995.

12. Although the above observations are dispositive of the present case, the Court also notices that the petitioner approached the respondents with a representation after his appointment lapsed, for the first time, on 15.9.2010; he appears to have made repeated representations and finally elicited their response in 2011. During the hearing, his counsel urged with certain vehemence that in terms of the OM dated 28.8.1997, the petitioner could still be accommodated in a later training batch. This Court is of the opinion that such submission is based on the misreading of the OM dated 28.8.1997. It does not and cannot be read as permitting something which is contrary to the OM of 6.6.1978; the allusion to those who report after four weeks clearly means those who report within the overall period of six months or at worst those whose lapsed appointments are allowed to be revived on the ground of their falling within the "exceptional" category in "public interest". It was not - and perhaps justifiably so - the petitioner's case that his is an exceptional case; certainly, we see no elements of public interest, underlining his claim for being accommodated in a subsequent batch.

13. For the forgoing reasons, the Court is of the opinion that the petition lacks merit; it is accordingly dismissed with no order as to costs." (emphasis supplied)

6. The submission of learned counsel for the petitioner is that the petitioner was never informed that the outer limit for his joining the post was six months. He was intimated that he had to join by 10.02.2017 and, thereafter, when he sought extension, he was kept under the impression that his application for extension would be favorably considered.

7. Learned counsel submits that the petitioner's examination relating to the course he was undertaking ended towards the end of May, 2017. Had the petitioner known that he had to join the post within six months of the date of issuance of appointment letter, he would have made some other arrangements. He further submits that the respondents themselves sought extension of time to enable the petitioner to join even in August, 2017.

8. Having heard learned counsels, we find no merit in this petition. Firstly, the petitioner was clearly put to notice in the offer of appointment that if he did not join the post by the stipulated date, and did not send intimation for seeking extension of time for joining, his appointment shall stand cancelled. The petitioner sought extension of time till first week of June, 2017. However, that was not granted. Thus, the petitioner was clearly put to notice that he had to join by 10.02.2017. Since, no further extension was granted, though the petitioner had made his applications, the petitioner had no reason to assume that the extension would be granted as sought by him. Thus, joining time of the petitioner expired on 10.02.2017. Merely because the aforesaid O.M. dated 09.08.1995 issued by the DOP&T states that the maximum period upto which the joining time may be extended is six months, it does follow that in every case six months extension can be sought as a matter of right. So far as the petitioner is concerned, on 10.02.2017, his joining time expired and his appointment lapsed since he did not join the post. Even otherwise, the petitioner, as a matter of fact, did not report even within six months period i.e. by 10.05.2017. Admittedly, he reported only on 19.06.2017, which was well after the period of six months.

9. As is evident from the facts of the present case, the recruitment process started with issuance of advertisement on 14.06.2015. Public recruitment take a long period to mature and, in case, the selected candidates do not join in a time bound manner, not only the administration suffers due to the non-filling of the vacancies, it leads to uncertainty as to whether, or not, the selected candidates would eventually join. This not only affects the efficiency of the administration, since vacancies remain unfilled, but also affects the prospects of other candidates, who may be willing for the vacant posts.

10. In these circumstances, we do not find any merit in this petition.

11. Dismissed.

VIPIN SANGHI, J.

REKHA PALLI, J.

MAY 23, 2019

N.Khanna