
(2019) 04 CAT CK 0030

In the Central Administrative Tribunal

Case No : Original Application No. 559, 590, 591 Of 2015, Miscellaneous
Application No. 445 Of 2015

G.C. Bhardwaj

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 23-04-2019

Acts Referred:

Citation : (2019) 04 CAT CK 0030

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Meenu Mainee, VSR Krishna, Shailendra Tiwary

Final Decision : Disposed Off

Judgement

S.N. Terdal, J

1. As the facts of all the three OAs are similar, as such all the three OAs have been disposed of by this common order.

2. We have heard Mrs. Meenu Mainee, counsel for applicants and Mr.VSR Krishna with Mr. Shailendra Tiwary, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

3. In OA 559/2015, the applicant has prayed for the following reliefs:

"8.1. That the Hon'ble Tribunal may be graciously be pleased to allow this application and quash the impugned orders dt. 1-12-2014 and 29-12-2014 so far as the said orders adversely affect the applicant.

8.2 That the Hon'ble Tribunal may further graciously be pleased to pass any other or further order as may be deemed fit and proper on the facts and circumstances of the case.

8.3. That the Hon'ble Tribunal may further be graciously pleased to impose exemplary costs against the respondents for disturbing and unnecessarily

causing tension, harassment and humiliation to the applicant who have a right to live the remaining periods of their life in a peaceful manner.

In OA 590/2015, the applicants have prayed for the following reliefs:

8.1. That the Hon'ble Tribunal may be graciously be pleased to allow this application and quash the impugned orders so far as the said orders adversely affect the applicant.

8.3 That the Hon'ble Tribunal may further graciously be pleased to pass any other or further order as may be deemed fit and proper on the facts and circumstances of the case.

8.4. That the Hon'ble Tribunal may further be graciously pleased to impose exemplary costs against the respondents for disturbing and unnecessarily causing avoidable tension to the applicants at the fag end of their lives.

In OA 591/2015, the applicants have prayed for the following reliefs:

"8.1. That the Hon'ble Tribunal may be graciously be pleased to allow this application and quash the impugned orders dt. 1-12-2014 and 29-12-2014 (Annexure A-1 & A-2) in so far as they adversely affect the rights of the applicant.

8.2. That this Hon'ble Tribunal may further be pleased to direct the respondents to act in accordance with the rules as laid down in the Indian Railway Establishment Manual for holding the selection for Group 'B' service and include the names of the applicants in the field of eligibility.

8.3. Pass any other or further order which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

8.4. That the cost of the proceedings may kindly be granted in favour of the applicant and against the respondents."

4. The relevant undisputed facts of the case are that in 2011, 12 eligible candidates were called to appear in the written test for Group 'B' posts of Assistant Health Officer (AHO) on the basis of combined integrated seniority list of 2011, but, however, the said list did not include the staff working in Production Units. In the said selection of 2011, 4 candidates were provisionally selected. The said selection was challenged in OA No. 245/PB/12 before the Chandigarh Bench of Central Administrative Tribunal in which the applicants were made private respondents. Vide order dated 13.03.2013, the Chandigarh Bench allowed the OA stating that though the applicants herein who had occupied the promotional posts under the said provisional selection, but, however, the Tribunal directed to hold entire selection process afresh within three months. The Review filed against the said order dated 13.03.2013 by one of the applicants was also dismissed by the CAT, Chandigarh Bench. The Writ Petition filed challenging the said order dated 13.03.2013 was dismissed by the Hon'ble High Court of Haryana and Punjab vide its order 10.02.2014. Thus, the said order of the Tribunal having attained finality, in a Contempt proceedings, the respondents passed an order

dated 29.12.2014 implementing the said order dated 13.03.2013. The said order dated 29.12.2014 has been challenged in these proceedings. The above stated undisputed facts have been narrated in the counter reply by the respondents which have been extracted below:

"1. It is submitted that in terms of this office letter No. 752-E/714-AHO/EIA dated 31.01.2011 & 3.03.2011 a total number of 12 eligible candidates were called to appear in written test for selection to the Group 'B' post of AHO for filling up 04 General Category (UR) posts on the basis of combined integrated seniority list issued vide Dy.CPO/S&T/NR's letter No. 847-E/003/Pt.1 /EIIBII/ dated 24/02/2011. The seniority list didn't include the names of staff working in production units i.e. RCF/Kapurthala, DCW/Patiala (Now DMW/Patiala) and RDSO/Lucknow. Following candidates were called in that selection.

1. Shri T.K.Chaturvedi, H&MI/UMB
2. Sh. Ram Kumar, H&MI/DLI
3. Shri T.S.Dhillon, H&MI/FZR
4. Shri V.N.Sharma, H&MI/LKO
5. Shri Niranjana Singh, H&MI/MB
6. Shri Moh. Tahir, H&MI/MB (CHI/DDN/MB)
7. Shri Yash Pal Singh, H&MI/LKO
8. Sh. Ramesh Pal Singh, H&MI/DLI (CHI/EMU/GZB)
9. Sh.G.C.Bhardwaj, H&MI/DLI (CHI/LPNR/DLI)
10. Shri O.P.Sharma, H&MI/DLI
11. Sh. Mohd. Gulam Safdar, H&MI/MB
12. Sh.R.K.Agarwal, H&M/DLI

2. It is submitted that as a result of written test held on 05/03/2011 followed by viva-voce conducted on 24/06/2011, the following 04 candidates were placed on the provisional panel of AHO declared vide this office letter No. 752-E/714-AHO/EIA dated 12/07/2011:-

1. Shri Moh.Tahir, H&MI/MB (CHI/DDN/MB)
2. Shri Yash Pal Singh, H&MI/LKO
3. Shri Ramesh Pal Singh, H&MI/GZB(CHI/EMU/GZB)
4. Sh.G.C.Bhardwaj, H&MI/DLI (CHI/LPNR/DLI)

3. It is submitted that, aggrieved with this selection, Shri Mazrul Haque, Shri Ram Singh and Shri R.K.Gupta all working as H&MI in RCF/FXH filed OA No. 245/PB/12 before Chandigarh Bench of the Hon'ble Central Administrative Tribunal for

inclusion of their names in the combined integrated seniority list (as per extant Railway Board instructions) for the purpose of selection to the Group 'B' post of AHO in which they have not been called for. Shri Mohd. Tahir, Shri Yashpal Singh and Shri G.C. Bhardwaj were also made a party in that OA as Private Respondent No. 5, 6 & 8 respectively.

4. It is submitted that the Chandigarh Bench of the Hon'ble Central Administrative Tribunal decided the issue in favour of the applicants therein vide its order dated 13/03/2013 (Annexure A-5 of OA). The operative para No. 7 to 10 of the order dated 13/03/2013 are given below:-

"7. The inter se merit of the candidates appearing at any selection process can be assessed only when all of them appear at that process and are ordained to attempt the same question paper.

8. We would, accordingly, allow the OA with grant of direction that the Competent Authority shall conduct relevant examination qua applicants herein as also the private respondents afresh on the basis of a question paper which would be common to all of them. The outcome of the examination would obviously be followed by consequential action on the part of the Competent Authority.

9. The inter se merit of the private respondents and the applicants cannot be validly determined on the basis of different question papers and at selection process held at different points of time. It being the presently conceded position that access to the relevant selection process came to be wrongly denied to the applicants, the only legitimate methodology that can be determinative of the accurate inter se merit as between them and the private respondents, is the holding of a common test. They will, in that way, have equal opportunity to compete.

10. In the circumstances of the case, we would categorically announce that the private respondents who are occupying the promotional posts on the basis of initially held selection process, shall continue to hold the fort subject, of course, to the outcome of the selection process to be held afresh. In view of the peculiar nature of the controversy, the conclusion of the exercise must ideally come about within 03 months from today."

5. It is submitted that the Review Application No. 47/2013 in OA No. 245-PB-2012 filed by Shri G.C. Bhardwaj was also dismissed by Hon'ble Central Administrative Tribunal, Chandigarh Bench vide its order dated 11/04/2014 (Annexure R-1). The operative part of order is given below:-

"6. It goes without saying that we do not find any factual error much less apparent on the face of the record. Pointed out by the review applicants, which may actuate us to review the order under review.

7. In that view of the matter, the Review Application is found to be barred by the law of limitation as well as devoid of any merit and is dismissed accordingly. No costs."

6. It is submitted that Hon'ble High Court of Haryana & Punjab at Chandigarh vide CWP No. 24737-CAT of 2013 also upheld the judgment dated 13/03/2013 of Hon'ble Tribunal vide its order dated 10/02/2014 (Annexure R- 2):

"A perusal of the order Annexure A-1, whereby Respondents No.4 to 7 were promoted shows that such candidates were placed on original panel of promoted Group 'B' post of Assistant Health Officers on provisional basis. Therefore, there is no illegality in the direction of the Tribunal when it is directed that all the eligible candidates should be made to appear in the same selection process so as to have parity and fairness in the selection process. The promotion on provisional basis cannot be act as shield to such candidates for regular promotion without competing further. Thus we do not find any illegality in the order passed by the Tribunal, which would warrant interference of this court."

7. It is submitted that the Railway Board vide its letter No.E(GP)2014/2/14 dated 17/07/2014 rejected the proposal of this office for filing of SLP in the matter and desired that the order dated 13/03/2013 passed by Hon'ble Central Administrative Tribunal, Chandigarh Bench and upheld by Hon'ble High Court of Chandigarh vide its order dated 10/02/2014 should be complied with.

8. It is submitted that Shri Mazrul Haque and others filed a C.P.No. 060/00206/14 and M.A. No. 060/01419/14 in OA No.245/PB/12 before Hon'ble Central Administrative Tribunal, Chandigarh Bench for compliance of orders dated 13/03/2013 in OA No. 245/PB/12. Necessary Compliance Affidavit was filed in Central Administrative Tribunal, Chandigarh Bench that necessary selection process has already been initiated in the matter. It is further submitted that in view of the said affidavit the Hon'ble Tribunal disposed the Contempt Petition giving 2 months time to comply with the orders of Court.

9. It is submitted that in this regard, the Railway Board Instructions on the subject of combined integrated seniority list of AHO is given below:

1. Railway Board vide its letter No. E(GP)99/2/69 dated 30/11/99 (Annexure R-3) has stated that for the purpose of selection to the post of AHO etc., "for the purpose of eligibility list, the seniority of eligible staff of Production Units shall be clubbed with contiguous Zonal Railway" while preparing integrated seniority list of eligible staff.

2. Railway Board vide its letter No. 2003E(GC) 10-7(125) dated 21/07/2006 (Annexure R-4) has distributed 43 posts of Assistant Health Officers (AHOs) out of which 04 posts were earmarked for Northern Railway including RCF, DCW/PTA (now DMW/PTA) and RDSO.

10. It is submitted that in compliance of orders dated 13/03/2013 (Annexure A-5 of OA) passed by Hon'ble Central Administrative Tribunal, Chandigarh Bench in OA No. 245-PB-2012 which was upheld by Hon'ble High Court of Chandigarh in Writ Petition No. 24737/2013 vide its order dated 10/02/2014 and as per Railway Board's direction vide its letter No. E(GP)2014/2/14 dated 17/07/2014 to

implement the orders, a revised combined seniority list was issued vide this office letter no. 847-E/003/Pt.1/EIIBII dated 01/12/2014 (Annexure A-1 of OA) vide which the names of applicants i.e. S/Shri Mazrul Haque, Ram Singh and R.K.Gupta all working in RCF/Kapurthala were interpolated in the combined seniority list issued vide this office letter No. 847-E/003/Pt.1/EIIBII dated 24/02/2011 (Annexure R- 5) at item No.5(a), 5(b) and 5(c) respectively below the name of Shri Niranjana Singh and above the name of Shri Ramesh Pal Singh.

It is further submitted that the revised seniority list was issued on 01/12/2014 for giving wide publicity amongst staff concerned. Objections, if any, against above seniority list were invited within 15 days. As no objections were received within stipulated period of 15 days, the seniority list was treated as final and selection notice 29/12/2014 was issued (Annexure A-2 of OA).

11. It is submitted that on the basis of Revised Seniority List issued vide this office letter No.847-E/003/Pt. 1/EIIBII dated 01/12/2014 and in compliance of orders dated 13/03/2013 passed by Hon'ble Central Administrative Tribunal, Chandigarh Bench in OA No. 245-PB-2012 which was upheld by Hon'ble High Court of Chandigarh in WP No.24737/2013 vide its order dated 10/02/2014, a selection notice was issued vide this office letter No.752-E/714-AHO/EIA dated 29/12/2014 (Annexure A-2 of OA) for AFRESH selection to the 04 Group 'B' posts (Unreserved) of Assistant Health Officers (AHO), Grade Rs.9300-34800+GP Rs.4800/- for the Assessment Year 01/06/2010 to 31/05/2012. The date of written exam was fixed for 19/02/2015. The following 12 candidates were called to appear in the selection on the basis of Revised Seniority List issued on 01/02/2014:-

1. Shri T.K.Chaturvedi, H&MI/UMB (Retired on 31/12/2012)
2. Shri Ram Kumar, H&MI/DLI (Retired on 30/04/2012)
3. Shri T.S.Dhillon, H&MI/FZR (Retired on 30/11/2011)
4. Shri V.N.Sharma, H&MI/LKO (Retired on 31/01/2012)
5. Shri Niranjana Singh, H&MI/MB (Retired on 31/01/2013)
6. Shri Mazrul Haque, H&MI/RCF/KXH
7. Shri Ram Singh, H&MI/RCF/KXH
8. Shri R.K.Gupta, H&MI/RCF/KXH
9. Sh. Mohd.Tahir, H&MI/MB
10. Sh. Yash Pal Singh, H&MI/LKO
11. Sh. Ramesh Pal Singh, H&MI/DLI (Retired on 31/01/2014)
12. Sh. G.C.Bhardwaj, H&MI/DLI (Retired on 30/09/2014)

In addition to above, following 06 candidates were kept in reserved list:-

1. Shri O.P.Sharma, H&MI/DLI (Retired on 30/09/2013)
2. Shri Syed Gulam Safdar, H&MI/DLI
3. Shri R.K.Agarwal, H&MI/DLI (Retired on 31/12/2011)
4. Shri Subodh Chand Sharma, H&MI/DLI (Expired)
5. Shri Gopal Dutta, H&MI/DLI
6. Shri Darshan Lal (SC), H&MI/DLI.

12. It is submitted that, aggrieved with the selection process issued AFRESH for the Assessment Year 01/06/2010 to 31/05/2012 and Revised Seniority List dated 01/12/2014 as stated above, Shri Subodh Kumar Aggarwal and others approached this Hon'ble Tribunal vide OA No. 591/2015 to quash the impugned orders dated 01/12/2014 (Annexure A-1 of OA) and 29/12/2014 (Annexure A-2 of OA) vide which combined seniority list and notice for a fresh selection of AHO was issued respectively. In addition to this, the applicants prayed for inclusion of their names in the field of eligibility. It is further submitted that this Hon'ble Tribunal vide its order dated 13/02/2015 (issued on 16/02/2015) in OA No. 559/2015 restrained the Respondents from acting on the basis of impugned Annexure A-2, qua the applicant for a period of 14 days. Accordingly, the written exam scheduled to be held on 19/02/2015 was postponed till further orders in compliance of Hon'ble Tribunal orders dated 13.02.2015 in OA No. 559/2015.

13. It is further submitted that the applicant has filed the subject OA on the same issue which has already been decided by Hon'ble CAT/Chandigarh and upheld by Hon'ble HC/CDG is not maintainable and the same is barred by constructive res-judicata hence the present Original Application may be dismissed accordingly."

As the impugned orders have been passed by the respondents in compliance with the order dated 13.03.2013 which had attained finality, we are of the view, as vehemently submitted by the counsel for respondents this Tribunal cannot interfere with the said order dated 29.12.2014.

5. Accordingly these OAs are dismissed. The interim orders passed are vacated. MAs, if any, pending stand disposed of. No order as to costs.