

Mukesh Kumar Vs. Chairman, Staff Selection Commission and Another

Mukesh Kumar Vs. Chairman, Staff Selection Commission and Another

SooperKanoon Citation : sooperkanoon.com/1115164

Court : Central Administrative Tribunal CAT Principal Bench New Delhi

Decided On : Feb-26-2013

Judge : G. George Paracken, Member (J) & the Honourable Mr. Shekhar Agarwal, Member (a)

Appeal No. : OA 3623 of 2009

Appellant : Mukesh Kumar

Respondent : Chairman, Staff Selection Commission and Another

Judgement :

Shekhar Agarwal, Member (A):

1. The applicants have sought the following relief:-

(i) direct the respondents to issue appointment letters to the applicants to the post of Sub Inspector (Executive) with immediate effect with all consequential benefits;

(ii) to direct the respondents to maintain the seniority of the applicants in the merits of 1994 batch, of Sub Inspector (Executive);

(iii) to declare that there being clear 24 vacancies available to the post of S.I. (Executive) from 1994 batch, the applicants are entitled to be appointed against those vacancies;

(iv) to pass such other/further order(s) as this Honble Tribunal may deem fit and proper in the facts and circumstances of the case to meet the ends of justice.

2. The applicants were graduates and had applied for the post of Sub-Inspector (Executive) in Delhi Police in response to a notice of the Staff Selection Commission (SSC) published in the Employment News on 11.03.1994. The result of the written examination was declared on 07.07.1995 and the applicants were asked to appear for physical endurance test and interview. The final list of the selected candidates was announced on 25.09.1995 in which the name of the applicants did not figure. The applicants came to know from reliable sources that some persons who had secured lesser marks than the applicant were given appointments while they were denied the same. This according to the applicants happened because respondent No.1 (SSC) had used its discretion to impose qualifying standard in the written language paper retrospectively. Aggrieved by their non-selection, the applicants as well as some other persons filed OAs before this Tribunal. OA-1380/1996 was filed by applicant No.4 whereas OA-1880/1995 was filed by Sh. Ajay Singh and Ors., which was dismissed by the Tribunal. Special Leave Petitions were filed in Honble Supreme Court bearing Nos. 16356-16359 of 1996 and 24653 of 1996. On 14.08.1997, the Honble Supreme Court passed the following order:-

In case vacancies are available for appointment on the post of Sub Inspector (Executive) Delhi Police, the respondent may consider for appointment against those vacancies the petitioners and other similarly situated candidates on the basis of merits as per the aggregate of marks obtained by them in all the papers and if on the basis of such consideration, it is found that the petitioners can be so appointed the respondents shall appoint them against the existing vacancies by relaxing the requirement of minimum qualifying marks prescribed for Hindi in paper III.

However, the applicants were not offered appointments by Delhi Police on the ground that vacancies were not available. Contempt Petitions were filed in the Honble Supreme Court bearing Nos. 138-141 of 1997. In the said Petitions, an affidavit was filed by the then Commissioner of Police Sh. T.R. Kakkar in which it

was stated that no vacancy pertaining to the year 1994 was available. The Contempt Petitions were dismissed by the Apex Court. Thereafter, applicants No.1 and 3 made representations to the Honble Chairman, SSC to send recommendations for their appointment but their request was declined. Six other persons who were also candidates in the same examination also represented to the Honble Chairman, SSC but were not given appointments. Thereafter, they filed application under Section 24 of the Administrative Tribunals Act, 1985 read with Rule-24 of CAT (Procedure) Rules, 1987 read with Section 151 CPC. Their application was dismissed on the ground that as per respondents no vacancies were available. The order of the Tribunal was challenged by them before the Honble High Court of Delhi in WP(C)-7591/2000. The said Writ Petition was allowed by the Honble High Court of Delhi vide its order dated 22.09.2008. In pursuance of the orders of the Honble High Court, six individuals were appointed as Sub-Inspectors in Delhi Police. Now the applicants have filed this O.A. before us claiming that the respondents have been falsely declaring that there were no vacancies available in the year 1994 and denying appointments to the applicants.

3. Respondent No.1 (SSC) in their reply have stated that the applicants are trying to revive an issue which has already been settled at the level of Apex Court. This issue has also been adjudicated by the Honble High Court of Delhi Writ Petition (C) No.3281/2003 filed by Sh. Virender Singh Pawar decided on 04.06.2010. By the said order, Honble High Court of Delhi rejected the contention of the applicant and has clearly observed that no vacancy of year 1994 exists. Respondent No.1 has further stated that Delhi Police had intimated that after 264 candidates had been recommended for appointment on the basis of 1994 examination leaving a gap of 36 vacancies, Delhi Police intimated 340 vacancies for the 1995 examination which included 36 vacancies carried forward from the 1994 examination. The result of this selection was declared by the Commission in 1995. Thus, according to Respondent No.1 in 1997 no vacancy of 1994 year was available. Respondent No.1 has further stated that in case of six applicants, Narender Kumar and Ors. who had earlier approached this Tribunal, interim orders to keep one post for each of them vacant existed and consequently when they approached the Honble High Court of Delhi by way of filing Writ Petition No. 7591/2000 they were granted relief vide order dated 22.09.2008. Respondent No.1

has further stated that while granting relief in the aforesaid Writ Petition the Honble High Court has observed regarding the applicants of the present O.A. as follows:-

There is a vital difference between the case of Vijay Pal and the case of the Petitioners. That in the case of Vijay Pal posts were not available, but in the case of the petitioners, posts are available subject final orders of the Tribunal.

4. Respondent No.2 (Delhi Police) in their reply have stated that respondent No.1 (SSC) was requested to fill up 300 vacancies of Sub-Inspector (Executive) in Delhi Police on the basis of 1994 examination. The Commission had recommended 264 candidates. The remaining 36 vacancies were carried forward to the examination year 1995. After the Apex Court decided SLP Nos. 16356-16358/1996 on 14.08.1997, the applicants had sought appointment on that basis and had later on filed Contempt Petition Nos. 138-141/1998 alleging non-compliance of the aforesaid order of the Apex Court. However, on the basis of reply filed by then Commissioner of Police, the Contempt Petitions were dismissed and the notices were discharged by the Apex Court vide their order dated 07.08.1998. Respondent No. 2 has further stated that a similarly situated candidate, Sh. Virender Singh Panwar, had filed OA-1100/1999 before this Tribunal on the basis of Apex Courts order dated 14.08.1997. However, this was dismissed by the Tribunal on 18.12.2000. Aggrieved by this, Sh. Panwar had filed Writ Petition (Civil) No. 3281/2003 before the Honble High Court of Delhi. Respondent No.2 has stated that in the same Petition under directions of Honble High Court of Delhi an additional affidavit was filed by the then Joint Commissioner of Police giving all the facts of the case afresh in detail and that after considering the whole facts and circumstances of the case, the Honble High Court of Delhi had dismissed the Writ Petition vide order dated 04.06.2010. Respondent No.2 has further stated that the present O.A. is barred by limitation, delay and latches.

5. We have heard all the parties and perused the material placed on record.

6. The main contention of the applicants is that the respondents are falsely stating that no vacancies for the 1994 recruitment year are existing. According to them their case is similar to that of Narender Kumar and Ors. who have been given appointment in pursuance of the Honble High Court of Delhi order whereas they

have been denied the same. According to the applicants, the Tribunal had given interim orders in OA Nos. 2226/95, 1975/95 and 1880/95 filed by Vijay Pal and Ors. and the present applicants on 23.05.1996. On the order sheet, it was mentioned that no appointment would be made by the respondents till the disposal of this case. The respondents, on the other hand, have disputed this claim of the applicant stating that their cases have already been adjudicated by the Apex Court as well as Honble High Court of Delhi.

7. We have seen the order of Apex Court dated 14.08.1997, which is being reproduced again:-

In case vacancies are available for appointment on the post of Sub Inspector (Executive) Delhi Police, the respondent may consider for appointment against those vacancies the petitioners and other similarly situated candidates on the basis of merits as per the aggregate of marks obtained by them in all the papers and if on the basis of such consideration, it is found that the petitioners can be so appointed the respondents shall appoint them against the existing vacancies by relaxing the requirement of minimum qualifying marks prescribed for Hindi in paper III.

Apex Court realizing that several years had passed since the 1994 examination has clearly stated that the relief to the petitioners be extended only in case vacancies were available. Thereafter, when no appointments were offered to the applicants and they filed Contempt Petitions before the Apex Court, the same were also dismissed vide order dated 07.08.1998, which reads as follows:-

In our opinion, no case is made out for taking action for contempt of court. The contempt petitions are, therefore, dismissed and the contempt notices are discharged.

These Contempt Petitions were dismissed after the then Delhi Police Commissioner had intimated to the Apex Court that no vacancies pertaining to the year 1994 existed. In that affidavit, it was stated that 36 vacancies of 1994 year had been carried forward to 1995 examination and the appointments in pursuance of that had already been made. Thus, Apex Court had accepted the contention of

Delhi Police that no vacancies of 1994 existed.

8. Again this matter was considered by the Honble High Court of Delhi in several Writ Petitions filed before them. The same issue was considered by the Honble High Court of Delhi in Writ Petition (Civil) No. 7591/1999. This was decided on 22.09.2008 in which the Honble High Court of Delhi has observed as follows:-

We do not agree with this submission because the admitted position in Vijay Pal and others was that there was no interim order passed by the Tribunal or by the Supreme Court for keeping any post vacant or for filling up any of the posts subject to the final outcome of the original application or the SLP. However, in the case of the six Petitioners that we are concerned with, interim orders were initially passed that posts should be kept available for them and if those posts are later to be filled up, it would be subject to the final outcome of the original applications. In that sense, posts were and are available for being occupied by the Petitioners.

This being the position, there is a vital difference between the case of Vijay Pal and the case of Petitioners. In the case of Vijay Pal posts were not available, but in the case of the Petitioners, posts are available subject to the final orders of the Tribunal.

On merits both the learned counsel were in Agreement (before the Tribunal) and now before us that the case of the Petitioners is covered by the case of Vijay Pal. Under the circumstances, we have no option but to agree with the contentions of learned counsel for the Petitioners and direct that in terms of the decision of the Supreme Court, the Petitioners should be accommodated in the post of Sub-Inspector (Executive) in the Delhi Police.

As we have noted above, learned counsel for the petitioners has submitted that six posts are available. If that is so, these petitioners can be accommodated against those posts. However, if learned counsel for the Petitioners is not correct and six posts are not lying vacant, then the Respondents have no option but to accommodate the Petitioners in terms of the interim order passed by the Tribunal, which obviously merges with the final order in favour of the Petitioners. This will mean that six of the existing appointees will have to give way to the Petitioners.

The impugned order passed by the Tribunal denying appointment to the petitioners to the post of Sub-Inspector (Executive) is quashed. Necessary steps be taken by the Respondents to accommodate the Petitioners on or before 31st December, 2008. We make it clear that the Petitioners will not be entitled to any back wages till the date of their appointment. The petitioners will be accommodated in the batch of 1994 and will be entitled to count their services for pensionary benefits and notional fixation of pay.

9. Thus, even for Narender Kumar and Ors. who were eventually appointed on the basis of Honble High Courts order, the Honble High Court had observed that there were no posts available for the applicants of this O.A., Vijay Pal and Ors. In fact, for Narender Kumar and Ors. the Court had observed that since they had benefit of an interim order passed by the Tribunal even if no vacancies were available, six of the existing employees will have to give way for them. However, the Honble High Court had made distinction between Vijay Pal and Ors., applicants of the present case and Narender Kumar and Ors, who were given the benefit of the interim order of the Tribunal by saying that for Sh. Vijay Pal and Ors. there was no interim order passed by the Tribunal for keeping any post vacant or filling up any post subject to the final outcome of the O.A. or SLP. Thus, in our opinion, this matter has already been adjudicated both by Apex Court and the Honble High Court of Delhi who have accepted the plea of the respondents that there are no vacancies of the 1994 recruitment year and also that the case of the applicants and the present is different from Narender Kumar and Ors. because later had benefit of interim orders whereas no such interim order existed in the case of former. The contention of the applicants that the respondents have falsely intimated that no vacancy exists for the 1994 year appears to be without basis. They have not been able to adduce any evidence to establish false contention of the respondents. On the other hand, the respondents have stated this in their affidavits filed before the Apex Court as well as the Honble High Court of Delhi and the same have been accepted also by them. We are, therefore, inclined to agree with the contention of Respondent No.1 that the applicants are trying to revive an issue which has already been settled at the level of Apex Court. We are also inclined to agree with the contention of Respondent No.2 that the present O.A. is barred by limitation, delay and latches because after decisions of Apex Court and

the Honble High Court of Delhi, no fresh cause of action appears to have arisen. In any case, once the Apex Court has adjudicated this matter, there is no scope for this Tribunal to re-open this case. Accordingly, we find that there is no merit in this O.A. and the same is dismissed. There shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com