

\$~12 (2021)

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

%

Date of decision: 10.09.2021

+ **W.P.(C) 3248/2019**

KAMLESH SINGH KUSHWAHA Petitioner
Through: Mr. Bimlesh K. Singh, Adv.

versus

THE DIRECTOR (RL) AND ORS. Respondents
Through: Mr. Amit Sinha for Mr. R.V. Sinha,
Sr. G.C, Mr. A.S.Singh & Mr.
Sharanya Sinha, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: (ORAL)
[PHYSICAL COURT HEARING]

CM APPL. 30653/2021

1. The substantive prayers made in the application are as follows: -

“a) allow the present application and grant early hearing to the aforesaid writ petition through Virtual/physical hearing;

b) direct the respondent to treat the petitioner at par with any other Chemical Assistants of batch 2008 and also send them for special “instrumental training” along with other Chemical Assistants;”

2. Mr. Bimlesh K. Singh, who appears for the applicant/petitioner, has, broadly, taken us through the backdrop, in which the writ petition came to be filed in this Court.

3. Accordingly, the prayer made for early hearing, is allowed.

3.1. Insofar as the other prayer is concerned, which is, that, the petitioner should be treated at par with his batchmates and sent for special ‘instrumental training’, is an aspect qua which, observations are made hereinafter.

4. The application is, accordingly, disposed of.

W.P.(C) 3248/2019 & CM No. 14907/2021 [Application filed on behalf of the petitioner seeking stay on the operation of the impugned order, dated 22.02.2019]

5. With the consent of counsel for the parties, i.e., Mr. Singh and Mr. Amit Sinha, who appears for the respondents, the matter is taken up for final hearing and disposal, at this stage, itself.

6. The broad facts, concerning the instant case, have been captured by the predecessor bench, in the order, dated 01.04.2019. For the sake of convenience, the relevant part of the said order is extracted hereinafter: -

“...The petitioner has assailed the order dated 22.02.2019 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in Review Application preferred by the Union of India in respect of the order dated 23.07.2018. By the order dated 23.07.2018, the Original Application preferred by the petitioner had been allowed and he had been directed to be reinstated in service from which he was terminated after about 10 years of service on the ground that when he was appointed, he was not qualified in terms of the Recruitment Rules. This wisdom has dawned on the respondent after 10 years of the petitioner rendering service. The respondent had then preferred writ petitions before this court in the present case, as well as other connected cases, being WP(C) Nos. 10235/2018, 10239/2018, 10240/2018 & 10241/2018. The said writ petitions were initially taken up on 27.09.2018. On that day, the submission advanced on behalf of the respondents herein was that, in case, the petitioners herein are reinstated, the said respondents would have the right to take fresh action

after putting the petitioner herein to notice, and after conducting fresh enquiry.

We may observe that the termination of the services of the petitioner herein had taken place without any enquiry against him, by resort to the Central Civil Service (Temporary Service) Rules, 1965. Subsequently, on 28.09.2018, the respondents sought to withdraw the writ petitions with liberty to prefer a review application. Consequently, the respondents herein preferred their review application before the Tribunal, which has been allowed by the impugned order. The ground on which the review application has been allowed is that the initial order allowing the Original Application had been passed without granting an opportunity to the respondent to file their reply.

The submission of the petitioner is that the petitioner has been left high and dry on account of the sudden termination of services without any prior notice or hearing on the ground that the petitioner did not meet the eligibility criteria when the petitioner was appointed 10 years ago. The petitioner submits that with passage of time, the petitioner has become over age and would not be able to take up any employment, and he has a family to support. He further submits that the respondents could not have kept the sword hanging on the petitioner's head and arbitrarily invoked the power under the Central Civil Service (Temporary Service) Rules, 1965 to terminate the services of the petitioner without any prior notice or hearing. The petitioner submits that the order dated 23.07.2018 was passed after hearing the submissions advanced by learned counsel for the respondents and those submissions are also recorded and considered in the said order. Thus, it could not be said that the respondents did not get the opportunity to defend themselves. The further submission is that, even if the Original Applications were to be restored and heard, the services of the petitioner be protected in the meantime.

Considering the aforesaid pleas, we, prima facie, find merit in the submission of learned counsel for the petitioner. Pertinently, the petitioner had been serving the respondent for about 10 years without any complaint. It was not that his working was found unsatisfactory on account of the alleged lack of qualification/ experience in terms of the Recruitment Rules. There is no allegation of any misconduct against the

petitioner which makes it undesirable to permit him to continue to serve the respondent. Accordingly, we direct the respondents to, without prejudice to the rights and contentions of either of the parties, reinstate the petitioner in service forthwith.

We, however, make it clear that such reinstatement shall not create any equity in favour of the petitioner and shall not be construed as an expression of the view of this Court on the merits of the dispute. The same shall not entitle the petitioner to claim any back wages from the date of his termination, till date. He shall, however, be allowed to discharge his duties henceforth and shall be paid the salary accordingly. This order shall continue to operate either till the disposal of the present writ petition or till the disposal of the Original Application, whichever is earlier and the same shall merge with the orders that may be passed finally by the Court/ Tribunal.

In the meantime, we make it clear that the pendency of this petition shall not come in the way of the Tribunal hearing the Original Application and deciding the case.

Neither party shall seek nor be granted any undue adjournment by the Tribunal.

List on 08.11.2019”.

6.1. As would be evident on a plain reading of the aforesaid extract of this Court's order dated 01.04.2019, a direction has been issued to the Central Administrative Tribunal (in short 'the Tribunal') to continue with the hearing of the original application, i.e., OA No.2457/2018.

6.2. Counsel for the parties inform us that, the pleadings are complete in the aforementioned OA and the matter is ripe for hearing.

6.3. As is apparent from the record, the petitioner had approached the Tribunal by filing the aforementioned OA to assail the order of termination, dated 12.06.2018. [See page 96 of volume 1 of the case file.]

6.4. The basic grievance of the petitioner was that, after he had been in service for nearly 10 years, he was removed from service, based on the investigation conducted by the Directorate General of Vigilance in 2009

concluding that, there was a doubt with regard to his qualification.

6.5. The Tribunal, in the first round, agreed with the petitioner, and via order dated 23.07.2018, passed in the aforementioned OA, had set aside the order of removal as also the consequential orders.

6.6. It appears that, thereafter, the respondents preferred a review application qua the aforementioned order dated 23.07.2018, which was allowed by the Tribunal, *vide* order dated 22.02.2019. It is against this order, which is dated 22.02.2019, that the petitioner has instituted the instant writ petition.

7. Having regard to the fact that the Tribunal is hearing the original application of the petitioner, once again, in our view, the best course forward would be to allow the completion of hearing in that matter i.e., OA No.2457/2018.

7.1. Therefore, the writ petition is disposed of, with the following directions: -

(i) The Tribunal is requested to dispose of the original application i.e., O.A. No. 2457/2018, at the earliest, though not later than 2 months from the date of receipt of a copy of the order.

(ii) Pending disposal of the aforementioned OA, the interim directions issued by this Court, *vide* order dated 01.04.2019, will continue to operate.

(iii) In case, the Tribunal were to pass an order, which is, adverse to the interest of the petitioner, the interim directions, contained in the order dated 01.04.2019, will operate for further 4 weeks, commencing from the date of the order.

(iii) Insofar as the petitioner's grievance is concerned, that respondents have taken steps, in the interregnum, which are detrimental to his interest, the Tribunal, *inter alia*, will examine this grievance as well, and grant relief,

if it falls within the purview of the pending OA. In case, the grievance articulated by the petitioner does not fall within the purview of the pending OA, the petitioner will have liberty to file a separate action, as per law.

(iv) Parties and/or their counsel will appear before the Registrar of the Tribunal, on 17.09.2021, to enable the matter being placed before the concerned bench, for appropriate orders.

7.2. As addendum to what we have said in paragraph 7.1 (iii) above, we may observe that, the petitioner's grievance appears to be that, he is not placed at par with officers in his batch i.e., 2008 batch, therefore, it may be possible to grant this relief to the petitioner in the pending OA, as part of consequential relief, provided the petitioner succeeds in the main matter.

8. The writ petition and the pending application are disposed of in the aforesaid terms.

9. All concerned will act on the digitally signed copy of this order.

**RAJIV SHAKDHER, J**

**TALWANT SINGH, J**

SEPTEMBER 10, 2021/nk

[Click here to check corrigendum, if any](#)