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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2060/2002

New Delhi this the 3rd day of January, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.SRIKANTAN, MEMBER (A)

Shri Baldev Singh
S/o Late Shri Gurdayal Singh
R/o A-253, Moti Bagh-I
New Delhi-110021.

..... Applicant

(By Shri Amit Anand, Advocate)

-versus-

1. Union of India
Through the Cabinet Secretary
Govt. of India
Rashtrapati Bhawan
New Delhi.
2. Director General (Security)
Directorate General (Security)
Cabinet Secretariat
Government of India
East Block-V, R.K.Puram
New Delhi-110066.
3. The Special Secretary
(Aviation Research Centre)
Directorate General (Security)
Cabinet Secretariat, Govt. of India
East Block-V, R.K.Puram
New Delhi-110066.
4. Smt. Seema Nambiar
Through Respondent No.3 ... Respondents

(Shri M.K. Bhardwaj, proxy for Shri A.K.
Bhardwaj, Advocate)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

The applicant by virtue of the present application seeks quashing of the appointment of Smt. Seema Nambiar, respondent No.4 as Technical Assistant Library. It is claimed that thereafter,



the applicant should be promoted to the said post.

2. The relevant facts are that the applicant had joined the services of the respondents as Constable in the Aviation Research Centre under the Directorate General (Security), Cabinet Secretariat. It has now been redesignated as Field Assistant. The applicant had been doing and dealing with the work of issue and return of books, cataloguing, classification, magazine circulation etc. For some time, he was sent on deputation. The applicant while working in the National Security Guard obtained a diploma in Library Science from Punjabi University Patiala in 1991. He joined his parent department in 1997 and was posted to Photo Technical Library Unit under the Data Processing Laboratory. He was transferred back to the Directorate General (Security) Library on 20.5.1998.

3. The Director General (Security) had issued a Memorandum on 15.4.1998 for filling up the post of a Technical Assistant Library. The applicant had applied for the said post but his application was not considered. He filed OA No.1842/1998 in this Tribunal. This Tribunal had allowed the said application and directed the respondents to consider the candidature of the applicant for the post of Technical Assistant Library along with

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others by giving relaxation in respect of age, qualification with the approval of the competent authority and that the decision should be communicated to the applicant. Against the said order of this Tribunal, a civil writ petition had been filed in the Delhi High Court which was dismissed and it is asserted that Special Leave Petition No.2583/2001 filed in the Supreme Court met with the same fate. The applicant filed a Civil Contempt Petition No.128/2001 in the Delhi High Court. An interview had been held to consider the candidature of the applicant along with other candidates. The applicant was not selected. The respondent No.4 had been selected and so appointed. By virtue of the present application, the abovesaid selection is purported to be quashed.

4. In the reply filed, the respondents have contested the application. It has been urged that the applicant was not selected. He had appeared in the interview and now he cannot challenge the said selection. It is denied that the selection so made is against the law in this regard or that only the applicant could be considered for promotion and that the post could not be filled by direct recruitment.

5. Certain facts which are not in dispute hereinafter can be delineated. The applicant is a

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Field Assistant (G) and is posted at Directorate General (Security) Library. On 15.4.1998, Directorate General (Security) had issued a Memorandum for filling up the post of Technical Assistant Library at Aviation Research Centre Headquarters, New Delhi by direct recruitment. The applicant had applied for the post of Technical Assistant Library. His name was not considered for the post because it was being filled up by direct recruitment. The applicant was found to be over-age and it was found that he was not from the allied cadre. Admittedly, he filed OA No.1842/1998 in this Tribunal as referred to above. The application was partly allowed with a direction to consider the candidature of the applicant for the post of Technical Assistant Library along with others by giving relaxation in respect of age and qualification with the approval of the competent authority. Against the same, a petition was filed in the Delhi High Court which was dismissed.

6. It is not in dispute that after the dismissal of the civil writ petition and the Special Leave Petition, an interview board was constituted. Interview letters were issued to all the candidates including the applicant. The applicant and the others attended the interview for the post of Technical Assistant Library. The applicant secured very low marks and, therefore,

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was not selected. It is contended that there was no direction not to consider the other candidates for direct recruitment.

7. These facts are not in dispute.

8. However, the learned counsel for the applicant contended that as per the recruitment rules for filling up the said post, direct recruitment could not be made and the same could only be filled up by promotion and respondent No.4, in any case, could not be selected. Our attention in this regard was drawn to the recruitment rules for the post of Library & Information Assistant, column 11 of which pertains to the method of recruitment and reads:-

"11. Method of recruitment: whether by direct recruitment or by promotion or by deputation and percentage of the vacancies to be filled by various methods.

Any one of the following methods of recruitment

(1) Promotion, failing which by transfer on deputation;

(2) percentage by promotion, failing which by transfer on deputation, and percentage by direct recruitment.

(3) Direct recruitment (In case direct recruitment is the only method of recruitment, the following note may be inserted.)

Note: Vacancies caused by the incumbent being away on transfer on deputation or long leave or study leave or under other circumstances

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for a duration of one year or more may be filled on transfer on deputation from the officials of the Central Govt. holding analogous posts on regular basis and possessing the qualifications prescribed for direct recruits under column 8.

Note:-The percentage for promotion for direct recruitment may be fixed taking into account the number of sanctioned posts in the feeder grade. For example if there are 5 posts in the feeder grade and 10 posts in the higher grade, only 50% quota may be prescribed for promotion, and 50% may be ear-marked for direct recruitment."

On the strength of the same, it was contended that when recruitment rules provide more than one sources for recruitment, the post should be filled up firstly by considering the persons from the department itself.

9. The learned counsel for the applicant relied upon the decision of the Supreme Court in the case of S.S.Sodhi v. State of Punjab and Others, (1990) 2 SCC 694. In the case before the Supreme Court, there were more than one sources for appointment. The rules specified order of preference. It was held that the appointing authority must consider the candidates for appointment in accordance with the said order. Similarly, in the case of Gujarat Housing Board Engineers Association and Another v. State of Gujarat and Others, 1993-(SC2)-GIX 915-SC wherein the recruitment rules had provided that the post should be filled up either by promotion of Executive Engineers or by calling Executive Engineers on deputation or by direct recruitment. An attempt should be made firstly to promote people



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who are available from the department.

10. In the facts of the present case, we deem it unnecessary to delve into this controversy. In fact, it is improper in this regard to do so for the reason that the applicant earlier had filed OA No.1842/1998 which was decided on 4.5.1999. This Tribunal had disposed of the said original application and held:-

"8 For the reasons stated above, we partly allow this OA with the direction to the respondents to consider the candidature of the applicant for the post of TA/Library alongwith others, by giving relaxations in respect of age and qualification with the approval of the competent authority. Whatever may be the decision, the same will be communicated to the applicant within a period of 3 months from the date of receipt of a certified copy of this order."

At that time, the applicant did not take up this plea that the candidates who had applied directly cannot be permitted to do so.

11. We are conscious of the fact that under Section 22 of the Administrative Tribunals Act, 1985, the Tribunal is not bound by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice subject to other provisions of the Administrative Tribunals Act and the rules. However, the rules of the game cannot

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be lost sight of. It is one of the basic rules of procedure which cannot be ignored that when a person approaches a court of law, he must lay his full claim and in case he does not take up the pleas available to him, the same are deemed to have been waived.

12. Herein, when the applicant had filed the earlier Original Application No.1842/1998, he did not take up the plea that the post cannot be filled by direct recruitment. Having not taken the said plea, the same is deemed to have been waived. It is too late in the day for him to retrace the steps and go back after having litigated in different forums arising out of OA No.1842/1998.

13. There is yet another reason for coming to the same conclusion. After the directions had been issued by this Tribunal and upheld by the Supreme Court and an interview had been held. The applicant took part in the same but he was not selected. In other words, he had chosen to compete with the candidates appearing for direct recruitment but was unsuccessful. He cannot now contend that the candidates for direct recruitment could not be considered. We have already referred to above, the operative part of the decision of this Tribunal upheld by the Supreme Court that candidature of the applicant had to be considered

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along with others. Others were the candidates for direct recruitment. Therefore, the very basis of the argument loses its significance particularly when the applicant had tried his luck and took the interview along with others.

14. Our attention was drawn by the learned counsel for the applicant to certain observations made by the Delhi High Court in Contempt of Court Petition No.128 of 2001 decided on 27.2.2002 which reads:-

"CCP stands dismissed accordingly.

However, it is clarified that in case the petitioner feels that direct recruits could not be interviewed or that the respondents had acted in contravention of the rules and regulations in the matter of selection of a candidate for the post in question, he may file an appropriate petition in accordance with law."

Perusal of the same clearly shows that it was the pious wish of the Delhi High Court that if the applicant so desired, he may raise the abovesaid plea by filing an appropriate petition but he did not adjudicate the same. Consequently this particular argument so much thought of by the learned counsel must fail.

15. Confronted with that position, it was contended that the candidature of the applicant had been rejected illegally. But necessarily in the absence of any other cogent grounds or mala fide,

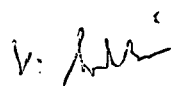



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once the expert body had considered the candidates on basis of the interview and selected them, there is little for this Tribunal to interfere.

16. For these reasons, the original application being without merit must fail and is dismissed. No costs.

Announced.


(V. Srikantan)
Member (A)


(V. S. Aggarwal)
Chairman

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