

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2568/2002

Wednesday, this the 9th day of April, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Ms. Sunita Mumgai
W/o Shri Rishi Dev Mumgai
R/O A-56, Rishi House
East Vinod Nagar, Lane No.8
Near Mayur Vihar Ph.II, Delhi-9
(By Advocate: Dr. Surat Singh)

..Applicant

Versus

1. Govt. of NCT of Delhi through its
Chief Secretary
5, Sham Nath Marg, Delhi-54
2. The Director of Education
Govt. of NCT of Delhi
Old Secretariat
Delhi-54
3. Delhi Subordinate Services Selection Board
3rd Floor, UTCS Building
Institutional Area
Behind Karkardooma Courts Complex
Shahdara, Delhi-32

..Respondents

(By Advocates: Ms. Rashmi Chopra & Mr. Mohit Madan)

O R D E R (ORAL)

Shri Govindan S. Tampi:

Heard Dr. Surat Singh for the applicant and Ms. Rashmi Chopra as well as Mr. Mohit Madan for the respondents.

2. The applicant, Ms. Sunita Mumgai challenges the order No.D.E.(39)/E-III/02/7902 dated 7.8.2002 whereunder her request for appointment to the post of T.G.T. was rejected. The applicant applied for the post of T.G.T. (Social Science) on 1.3.1999 and qualified in the examination and she was among the successful candidates as declared by the Delhi Subordinate Services Selection Board

(DSSSB). As she did not get any appointment, she approached the Tribunal in OA-1947/2001 which was disposed of on 7.8.2001 directing the respondents to consider her representation and pass an appropriate order. The respondents replied on 21.9.2001 stating that she could not be offered appointment because before ~~her~~ turn could come, the vacancies had exhausted. However, by advertisement dated 12.12.2000, the respondents called applicants for filling 24 posts of T.G.T. (Social Science) showing that the vacancies did exist. Her repeated representations only elicited the response that vacancies were not available. This forced her to file the second OA-1485/2002 which was disposed of on 3.6.2002 with directions to the respondents to pass a reasoned and a speaking order, Respondents came out with the another order dated 7.8.2002 to the effect "it is not possible to offer appointment to Mrs. Sunita Mumgai". Hence this OA.

3. The grounds raised in this OA are:-

- i) the applicant's fundamental rights have been violated;
- ii) respondents' refusal to appoint the applicant, though she had qualified in the required test and the vacancies were available, was totally unreasonable, arbitrary and illegal;
- iii) In terms of Hon'ble Supreme Court's judgment in Prem Prakash Vs. Union of India, AIR 1984 SC 1831

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"once a person is declared successful according to the merit list of selected candidates, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates"; and

iv) the respondents are violating the directions of the Govt. of India contained in OM dated 8.2.1982 that "Thus where selected candidates are awaiting appointment recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates awaiting appointment.."

The applicant, therefore, pleads that Tribunal's intervention is called for to set aright the injustice meted out to her.

4. On behalf of the respondents, it is submitted that the OA is devoid of any merit, as the applicant cannot claim that a panel selected candidates will be kept valid forever. Ministry of Home Affairs, Department of Personnel and Training's OM dated 8.2.1982 provided that only when the select list was prepared to the extent of declared/notified number of vacancies (which is not the case in the present matter), there would be no age limit to the validity of the list. However, even if a select list is prepared, the selected candidates would have no right for appointment after expiry of one year (further extended by

(10)

six months) and the respondents can resort to fresh recruitment. In the year, 1999, the DSSSB had forwarded 633 dossiers of candidates, who were declared provisionally successful in examination against notified vacancies and the applicant's name was at Sl.No.25 of the merit list of 64 candidates. She was recommended for appointment under general/unreserved candidates category. Against the notified vacancies, DSSSB had forwarded 64 dossiers, including 26 in the general category, 5 in SC category, 4 OBC category and 29 of ST category. However, for adjusting the visually handicapped candidate at Sl.No.38 from the general category, the applicant, who was withdrawn at the bottom of the list, in general category had to be adjusted against the category had to be withdrawn.

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Physically handicapped candidates have horizontal reservation and the persons selected will have to be adjusted against the category to which he/she belonged i.e. general, SC/ST/OBC, as the case may be. The respondents referred to a few judgments in support of their contention (State of Uttar Pradesh Vs. Harish Chandra, 1996 (9) SCC 309, Sanjoy Bhattacharjee Vs. Union of India, 1997 (4) SCC 283 and Madan Lal Vs. State of Jammu & Kashmir, 1995 (3) SCC 486 showing that when the panel was made in excess of the notified vacancies, the waiting list candidates have no right to appointment. Even otherwise, no panel can be continued after it has elapsed. Further, merely because a person has been selected and/or placed on the panel, he does not acquire any indefeasible right for appointment (Shankaran Dash Vs. Union of India, 1991 (3) SCC 47). According to the respondents, the action taken by them was absolutely

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last 9 candidates qualified
category to be
category dropped.

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correct and the applicant could not have been given appointment as she was at the bottom of the list of qualified candidates and the vacancies stopped just before her. The vacancies notified by advertisements dated 12.12.2000 and 13.5.2002 referred to by the applicant related to the subsequent period and cannot be invoked in favour of the applicant. The order dated 8.2.1982 can also not come to the assistance of the applicant for all the subsequent years to follow. The applicant cannot seek that she could be adjusted against any of the vacancies for the subsequent years and given posting from the previous year. Thus all the points raised by the applicant were wrong and deserved to be rejected, plead the respondents.

5. During the oral submissions, Dr. Surat Singh, learned counsel appearing on behalf of the applicant, pointed out that the respondents could not have rejected her, as she was specifically empanelled in terms of the vacancies notified and before the expiry of the said panel. He stated that 29+29, i.e., 58 vacancies had been declared in the advertisement, whereas only 57 persons had been called and the applicant was placed at Sl.No.25 in the general *or the last person* list. Therefore, she could not have been denied the appointment. On behalf of the respondents, Ms. Rashmi Chopra and Mr. Mohit Madan pray that while the appointments were to be made keeping in mind the vacancies, it was for the respondents to change the number of vacancies. In fact, the post meant for the general candidate was exhausted as a physically handicapped person

belonging to general category was appointed and the applicant being the last person in the list had to be denied the posting and correctly too.

6. We have carefully considered the matter. The facts are not disputed. In terms of the advertisements given by DSSSB, 29+29 vacancies had been advertised in the social studies category. In terms of the Govt's. own OM dated 8.2.1982, "Once a person is declared successful according to the merit list of selected candidates, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates. Thus, where selected candidates are awaiting appointment recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates awaiting appointment and the candidates awaiting appointment should be given appointments first, before starting appointments from a fresh list from a subsequent recruitment of examination." This also has support from the decision of the Hon'ble Supreme Court in the case of Prem Prakash (supra). The plea raised by the respondents in this case is that one of the vacancies of general candidates has been exhausted by bringing in a physically handicapped person, who was a general candidate, and, therefore, the same could not have been given to the applicant. The fact, however, remains is that in spite of fact that 58 posts had been advertised only 57 persons had been taken in, even including the physically handicapped person. The list was prepared at

(7)

the end of the examination and announced included the name of the applicant at Sl.No.25, the validity of such panel stood at one year subject to being extended by another six months. It is seen that DSSB list was published on and before the expiry of the period of one year and six months, the respondents have taken steps to advertise again for the fresh vacancies. This was clearly impermissible. If 58 persons as notified were called the applicant also would have been appointed correctly and in law.

7. In the circumstances, the OA succeeds and is allowed. Respondents are directed to issue letter of appointment to the applicant as T.G.T. (Social Study) as the last person selected in the SSSC Exam. of 1998, ahead of those, who have been recruited in the subsequent examinations. Needless to say she would also be entitled to get seniority accordingly though she would not be granted the benefit of any back wages as she had not worked during this spell. No costs.

S. Raju
(Shanker Raju)
Member (J)

/sunil/

Govindan S. Tampi
(Govindan S. Tampi)
Member (A)