



**Central Administrative Tribunal
Principal Bench**

OA No.3585/2017

Order Reserved on: 20.02.2020
Order Pronounced on: 29.02.2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Shri Vikas Gupta,
Working as Joint Registrar,
Delhi University, Group 'A',
Age 49 years,
S/o Late IJ Gupta,
R/o House No.9804, Ahata Thakur Das,
New Rohtak Road, Karol Bagh,
New Delhi-110005

- Applicant

(By Advocate: Shri Kripa Shankar Prasad)

VERSUS

1. University Grants Commission,
Through Secretary,
UGC, Bahadur Shah Zafar Marg,
New Delhi-110002
 2. Union of India,
Through Secretary,
Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi
- Respondents

(By Advocates: Shri KK Rai, Senior Advocate assisted by
Sh. Manoj Ranjan Sinha, Sh. Anshul Rai, Sh. Ramkrishna,
Sh. DPS Rajesh & Ms. S. Chatterjee)

: O R D E R :**Per Hon'ble Sri Justice L. Narasimha Reddy:**

In the cadre of Joint Secretary, in the University Grants Commission (UGC), the 1st respondent herein, four posts were earmarked, to be filled through the process of direct recruitment. An advertisement was issued in September, 2016, inviting applications from eligible candidates, and the applicant responded to the same. He was issued call letter for the interview and has appeared before the Selection Committee on 13.12.2016. A select list was prepared on 14.12.2016, in which, the applicant figured at Serial No.4. An offer of appointment was issued to him and on receipt of the same, the applicant conveyed his acceptance. Since he was working in the University of Delhi, he is also said to have taken steps to get relieved. His employer granted him extra ordinary leave on 23.12.2016 and he is said to have obtained all clearances. 30.12.2016 was stipulated as the date for his reporting the duty.

2. On 29.12.2016, the applicant was informed that his offer of appointment has been kept in abeyance for administrative reasons. The applicant is said to have approached the respondents to ascertain the reasons, and





since no response was forthcoming, he filed this OA, challenging the order dated 29.12.2016 and seeking a direction to the respondents to allow him to join the duty, in the post of Joint Secretary.

3. The applicant contends that the advertisement was issued for four posts from candidates not only with educational qualifications of a very high standard, but also with considerable experience in the fields of teaching and administration and he was one of the candidates. He submits that after thoroughly verifying the records and interacting with the candidates, the Selection Committee prepared a panel, and while three of the four candidates were permitted to join the duty, he was prevented from reporting the duty. He contends that the plea of the respondents that the fourth post was earmarked for OBC, is not borne by record, and there was no basis for the respondents in passing the impugned order.

4. On behalf of the respondents, a detailed counter affidavit is filed. According to them, the posts, available for direct recruitment were being filled up for the first time after reorganisation, and inadvertently, no mention was made in the advertisement about reservations. They



contend that after the offers of appointment were issued to the selected candidates, a representation was received by the Ministry of Human Resource and Development, complaining about the non-implementation of the reservation in the appointment to the post of Joint Secretary in the UGC, it was forwarded to them and immediately, the impugned order was passed, pending further action. It is also stated that that the relevant provisions were verified and legal opinion was also obtained and accordingly, it was decided not to proceed with the appointment of the fourth candidate. It is mentioned that steps for filling the same, through a candidate belonging to OBC, would be initiated.

5. The applicant filed a rejoinder, taking exceptions to some of the pleas raised by the respondents. It is stated that there is nothing on record to show that the post was reserved in favour of OBC or that any policy decision was taken in that behalf. He contends that valuable rights have accrued to him on being selected and once he accepted the offer of appointment, and the same could not have been taken away, just on the basis of imagination and contemplation.



6. We heard Shri Kripa Shankar Prasad, learned counsel for the applicant and Shri K.K. Rai, learned senior counsel for the respondents.

7. The cadre strength of the post of Joint Secretary in the UGC is 17. According to the Recruitment Rules, 75% of the posts are to be filled through promotion, and remaining 25% through direct recruitment. It appears that the reorganization of cadre took place in the recent past. Even a roster was not in place. A notification was issued in September, 2016, proposing to fill up the four posts of Joint Secretaries through the process of direct recruitment.

The qualifications prescribed for that post are as under:-

- “1. Doctorate in any discipline with First or second class Master’s Degree;
2. At least 12 years of experience of teaching/research in any University or college or educational administration in higher education;
3. (i) Holding analogous post on regular basis in the parent cadre/department or
(ii) With 5 years’ service in the grade rendered after appointment thereto on regular basis in pay band-3 (Rs.15600-39100) with Grade Pay of Rs.7600 or equivalent in the parent cadre/department.”

8. A perusal of the qualifications discloses that it is only highly qualified and experienced candidates that are



eligible to apply. The applicant was one of the candidates, and on the basis of the call letter issued to him, he appeared before the Selection Committee on 13.12.2016. It is stated that the Selection Committee prepared a panel of four candidates, and the applicant figured at SI. No.4. He was issued offer of appointment dated 14.12.2016. It reads as under:-

“On the recommendations made by the Selection Committee in its meeting held on 13th December, 2016 and the approval by the Commission in its meeting No.520th held on 14th December, 2016, I am directed to offer you the post of Joint Secretary in the University Grants Commission, Bahadur Shah Zafar Marg, New Delhi on direct recruitment basis

2. The Pay Scale of the post of Joint Secretary is in the PB-4 Rs.37400-67000+8700 (Grade Pay) plus usual allowances as admissible to the officers of the corresponding status in the Government of India.

3. The detailed terms and conditions of your appointment are enclosed herewith as Annexure-A. It may be noted that you can be posted as Joint Secretary in any of the Regional offices of the UGC located at Bengaluru, Bhopal, Guwahati, Kolkata, Hyderabad, Pune, New Delhi including UGC's headquarters at New Delhi.

4. In case you were already medically examined by the medical board and your character and antecedents have already been verified by your employer, a certified attested copy each of these documents may be submitted.

5. In case the terms and conditions of the present offer of appointment are acceptable to you, you may convey your acceptance of the same within a week and join duty within a period of 15 days from the date of your acceptance. You are requested to bring your original



documents at the time of joining for verification, along with necessary clearances from the Competent Authority (if not submitted earlier).”

9. Immediately, the applicant obtained the clearances from his present employer – University of Delhi, and conveyed his acceptance of the offer. With that an order of appointment of the applicant in the first respondent came into existence, and the applicant was entitled to report to duty. In fact, Clause 5 of the offer of appointment itself requires the candidate to join the duty within 15 days. The applicant was to report for duty, latest by 30th December, unless extended further. However, on 29.12.2016, the applicant was issued the following communication through email:-

“Please be informed that the offer of appointment issued to you vide letter No.F.5-3/2012(Admn.I/A&B), dated 14/12/2016, regarding the appointment of Joint Secretary in the University Grants Commission has been kept in abeyance for administrative reasons till further orders.”

10. Except stating that the offer of appointment is kept in abeyance, for administrative reasons, nothing is stated. Though the applicant made an effort to know the reasons, the respondents did not inform him anything further. In the counter affidavit, they came forward with the plea that one out of the four posts of Joint Secretary, earmarked for



direct recruitment was required to be reserved in favour of the OBC and since that was not done, the impugned order was passed.

11. Before we proceed to deal with the matter on merits, certain principles governing the situation of this nature need to be taken note of. Time and again, the Hon'ble Supreme Court held that the mere inclusion of the name of a candidate in the select list does not confer any right upon him to be appointed. This, however, was not treated as an absolute principle, and the discretion of the employer to deny appointment to a selected candidate is hyphenated with the corresponding obligation to record reasons, and any arbitrariness in this behalf would be frowned at. A succinct proposition in this behalf was laid by the Hon'ble Supreme Court in **Shankarsan Dash Vs. Union of India & Ors.**, (1991)3 SCC 47. Even while conceding to the employer, the right to deny appointment to the selected candidate, the Supreme Court directed that the decision not to fill up the vacancy, must be bona fide and for valid reasons. The same principles was reiterated in **RS Mittal vs. Union of India**. 1995 Supp.(2) SCC 230, **Madan Lal & Ors. Vs. The State of Jammu & Kashmir & Ors.**, (1993)2 SCC 573 and **Food Corporation of India Vs. Bhanu Lodh**



& Ors., (2005)3 SCC 618. After referring to all these precedents, the Hon'ble Supreme Court, in **Dir. SCTI for Med. Sci. & Tech. Vs. M. Pushkaran**, Civil Appeal No. 5368 of 2007) decided on 23.11.2007, held as under:-

“18. The application of law would, therefore, depend upon the fact situation obtaining in each case. The judgment of the High Court in view of the aforementioned authoritative pronouncements cannot be said to be perverse. The respondent was to be offered with the appointment at a point of time when no policy decisions was taken. There was, thus, no reason not to offer any appointment in his favour. Why the select panel was ignored has not been explained. Even the purported policy decision was not in their contemplation. We, therefore, do not see any reason to interfere with the impugned judgment.”

12. There are other precedents on the subject, such as the judgments in **State of Bihar vs. Md. Kalimuddin & Ors.** (1996)2 SCC 7 and **Prem Prakash vs. Union of India & Ors.**, 1984 (Supp) SCC 687.

13. In the instant case, the matter did not stop at the stage of inclusion of the name of the applicant in the select list, but it progressed further. The offer of appointment issued to the applicant evolved into a valid order of appointment, with the conveyance of his acceptance. Naturally, that conferred an indefeasible right upon the applicant, to join the duty and to become a member of the cadre. Such a right can be taken away only through a



reasoned order and on legally tenable grounds, that too by following the prescribed procedure, or at least the principles of natural justice.

14. The only reason mentioned by the respondents in the counter affidavit is that the fourth post was required to be reserved in favour of the OBC. The advertisement was totally silent about the aspect of reservation. Further, it is not as if there existed any roster with the 4th respondent for the post in question or that any administrative decision to implement the reservation and to earmark of the post in favour of a particular category was taken.

15. It all occurred, almost like a flash, with the submission of note on the basis of a complaint said to have been received from angel. The note, which is made available to us, reads as under:-

“M/HRD has forwarded a complaint alleging that reservation policy has not been followed while filling up the posts of Joint Secretaries in UGC. (copy of complaint is placed below).

As per reservation guidelines of DoPT, if the number of post in a cadre is more than 2 but less than 14; reservation is provided as per L shaped Roster wherein the first three positions go to the general category candidates and the fourth one goes to the OBC.



In view of the position explained above, it is submitted that we may if approved, seek legal opinion in the matter and until then the offer issued to the 4th candidate (in order of merit); may be kept in abeyance.

Accordingly, a Draft is put up for kind consideration and approval.

Submitted please.

Sd/-
29/12/16
(Dr. Ajay Kumar Khanduri)
Deputy Secretary (Admn.)”

16. In the counter affidavit filed by the respondents, it is not even mentioned that any administrative decision was taken, to fill up the post through an OBC candidate or that any step in that direction was taken. It is only when an administration takes a decision to enforce reservation in appointments, that a legal regime in that behalf comes into operation, particularly, when the posts are being filled up by the first time. The Articles 15 and 16 enable a State and its instrumentalities to implement the reservation. For that purpose, an administrative decision at an appropriate level needs to be taken. In the absence of such a decision, it cannot be said that any particular post in a cadre is reserved in favour of a class, caste or community. Therefore, the very basis on which the respondents passed the impugned order, becomes shaky.



17. There are instances where the posts, which were reserved and notified in favour of certain categories, were filled inadvertently or otherwise, by a candidate not belonging to such category. The deviation in this behalf was not visited with too severe, a consequence of denuding the selected candidate of his right to be in employment. The Courts have evolved the method of subsequent adjustment, even while protecting the rights of the candidates, so appointed.

18. In **Prem Prakash's** case (supra), the Hon'ble Supreme Court dealt with a case, where the posts, which were earmarked in favour of SC candidates, were filled through certain other category of candidates. The error appears to have occurred in the process of identification of available vacancies. While dealing with the issue, a notification dated 08.02.1982 issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms, was also taken note of. The relevant paragraphs of the notification read as under:-

“The matter has been carefully considered. Normally, recruitment whether from the open market or through a Departmental Examination should take place only where there are no candidates available from an earlier list of selected candidates. However, there is a likelihood of vacancies arising in future: in case, name of selected candidates are already available,



there should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons already in the list of selected candidates awaiting appointment. Thus, there would be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies, either by the method of direct recruitment or through a Departmental Competitive Examination.

Once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of the vacancies undergoes a change, after his name has been 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 accommodate or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting appointment from a fresh list from the subsequent recruitment or examination.”

19. After referring to it, the Hon'ble Supreme Court allowed the Writ Petition filed by the candidates, who were similarly situation as applicant herein, with the following directions:-

“18. These writ petitions must therefore succeed. Our reasons for allowing the petitions may be summed up thus: In the first place, in the process of remedying injustice which was done to the two Scheduled Caste candidates of 1979, no injustice can be caused to the petitioners who had qualified for the reserved seats in the examination held in 1980. Secondly, the quota of seats available for reserved candidates cannot be made to depend on the fortuitous circumstance as to how many candidates have qualified for the general seats.



The reserved quota must be fixed on the basis of the total number of vacancies which are to be filled at a given point of time. Thirdly, the notification of 1982 is good authority for adjusting the petitioners against the reserved vacancies for the year 1980. The statutory rules and administrative instructions have to be read together by reason of Rule 28.

19. We, accordingly, direct that the High Court and the Delhi Administration will take expeditious steps for notifying the appointments of the petitioners. Dal Chand Anand and Prem Prakash, to rank higher than the latter because that was their order of seniority in the original merit list of 1980. Since they have not actually worked, as Sub-Judges during the intervening period, they will not be entitled to any remuneration for that period. They will however rank for seniority in the Delhi Judicial Service on the footing that they were appointed when they ought to have been appointed, that is to say, when the other candidates were appointed on the basis of the result of the 1980 examination. In all other respects, including probation, their appointment will be subject to the provision of the relevant rules and regulations.”

20. Recently, the High Court of Himachal Pradesh in the judgment of **Krishan Chand vs. Dr. Y.S. Parmar, CWP No. 6640 of 2010**, decided on 09.11.2011, dealt with a case in which a reserved vacancy was filled up by an unreserved candidate. In the context of granting relief, it was directed that in the next selection, the unreserved vacancy shall be made available to the concerned reserved category. The judgment of the Hon’ble Supreme Court in **R.K. Sabharwal & Ors. Vs. State of Punjab & Ors.** (1995)2 SCC 745, which mandated that the reservation shall be post based and not



vacancy based, was taken note of. It is also mentioned that the principle of replacement mandated by the Hon'ble Supreme Court would come into play only when required percentage of reservation has already been reached.

21. In the ultimate analysis, one has to maintain the subtle distinction between –

- (a) implementation of reservation in the process of making appointments, on the one hand; and
- (b) making appointments in the process of implementation of reservation, on the other.

22. In the instant case, when no policy decision was taken, for implementation of the reservation, much less any roster was prepared, the occasion to reserve any particular post does not arise.

23. We are of the view that same approach as adopted by the High Court of Himachal Pradesh in **Kishan Chand's** case (supra) can be taken recourse, in this case.

24. We, therefore, allow the OA and set aside the impugned order dated 29.12.2016. As a result, the applicant shall be entitled to join the duty within 15 days from the date of receipt of a copy of this order. In case, the respondents have decided to implement the reservation in



favour of the OBC for the post of Joint Secretary, the next available vacancy in the direct recruitment category shall be earmarked for that category.

Pending MA, if any, shall also stand disposed of.
There shall be no order as costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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