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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1240/99

OA 1269/99

OA-1327/99

New Delhi, this 10th day of September, 1999

Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)
Hon'ble Shri R.K. Ahooja, Member(A)

OA-1240/99

Arun Kumar Mishra
Advocate
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New Delhi

.. Applicant

(By Shri H.B. Mishra, Advocate)

-Versus-

1. Chief Secretary
Govt. of NCT of Delhi
5, Shammath Marg, New Delhi
2. Secretary
Union Public Service Commission
Shahjahan Road, New Delhi
3. Director of Prosecution
Govt. of NCT of Delhi
Campus of Tis Hazari Courts, Delhi
4. Cabinet Secretary
Govt. of India, New Delhi
5. Principal Secretary (Home)
Govt. of NCT of Delhi, Delhi .. Respondents

(By Mrs. Avnish Ahlawat with Shri Rajinder Nischol,
Advocates)

OA-1269/99

Anoop Kumar Gupta,
S/o Late Sh. A.L. Gupta,
R/o F/125, Gali No.6,
Pandav Nagar,
Delhi-110091.

...Applicant

(By Advocate Shri H.B. Mishra)

-Versus-

1. Chief Secretary
Govt. of NCT of Delhi
5, Shammath Marg, New Delhi
2. Secretary
Union Public Service Commission
Shahjahan Road, New Delhi

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3. Director of Prosecution
Govt. of NCT of Delhi
Campus of Tis Hazari Courts, Delhi
4. Cabinet Secretary
Govt. of India, New Delhi
5. Principal Secretary (Home)
Govt. of NCT of Delhi, Delhi .. Respondents

(By Mrs. Avnish Ahlawat with Shri Rajinder Nischol,
Advocates)

OA-1327/99

Mashroor Alam Khan,
Advocate, S/o Sh. Jalees Ahmed Khan,
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Sadar Bazar,
Delhi-110054.

...Applicant

(By Shri H.B. Mishra, Advocate)

-Versus-

1. Chief Secretary
Govt. of NCT of Delhi
5, Shamnath Marg, New Delhi
2. Secretary
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Govt. of NCT of Delhi, Delhi .. Respondents

(By Mrs. Avnish Ahlawat with Shri Rajinder Nischol,
Advocates)

ORDER

By Reddy J.

Heard the learned counsel for the applicant and
respondents and also perused the written arguments
submitted by the learned counsel for the applicant.

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2. The facts and question of law raised are common in these cases and hence they are disposed of by a common order.

3. For the purpose of this judgement the facts in OA-1240/99 are stated herein and wherever necessary the distinguishing features found in the other two cases are also mentioned.

4. Applicant seeks declaration that they are entitled for promotion as Assistant Public Prosecutor (APP for short) in the Directorate of Prosecution, Govt. of NCT of Delhi and further to declare the advertisement of UPSC (Annexure A-13) calling for applications for appointment to the posts of APP as ultra-vires of Articles 14, 16 and 21 of the Constitution of India and for other consequential benefits.

5. The facts of the case are as under:

5.1 The Government of NCT of Delhi (hereinafter referred to as R-1) issued notification dated 11-17/2/95 inviting applications for filling up the posts of APP on adhoc basis for a period of six months. In pursuance of the said advertisement, several candidates applied for the post and after interview, selections were also made. Nevertheless, UPSC (hereinafter called R-2) advertised on 13/19.5.95 calling applications for appointment to 49 posts of APP. Applicant had also applied in pursuance of the aforementioned advertisement. Applicant came to know that the UPSC (R-2) had called certain persons for interview but he was not the one among them. Hence he

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had filed OA 420/96 before this Tribunal. By an interim order dated 1.3.96, respondents were directed not to publish the result of the selections. The Tribunal disposed of the OA on 2.4.97 alongwith a batch of other cases filed by ad-hoc appointees directing R-2 to declare the result. R-2 declared the results of 28 candidates and recommended them for appointment to the post of Prosecutors. However, pending their appointment on regular basis in view of the directions by the Tribunal, all the adhoc appointees were also continued to hold the posts on ad hoc basis.

5.2 R-1 again issued advertisement on 1997 and on 4.3.98 calling for applications for appointment as APP and applicant applied in pursuance of the said advertisements. Interviews were held by a high powered committee and accordingly select lists were prepared in which applicant's name figured. It is, however, stated that the said lists did not see the light of the day due to malafide reasons.

5.3 R-2 also again in its advertisement dated 27 June/3 July, 1998 (Annexure A-13) invited applications for appointment to 61 temporary posts of APP under R-1. Applicant sent yet another application for the post of APP. In the meantime, Government of India issued a notification on 13.5.98 raising the retirement age by two years and also issued notification dated 21.12.98 raising the upper age limit for entry into Government job by two years. Applicant relying upon the later notification submits that he was eligible to be appointed as APP and that respondents' action in

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not finding him eligible was wrong. He, challenges the selection procedure adopted in Annexure A-13 and also the written test held on 5.6.99.

6. Learned counsel for the applicant submits that he was entitled to be appointed as APP under R-1 and that as he was selected by a high powered select committee the advertisement at Annexure A-13 should be held as invalid as being contrary to R/Rules and also violative of Articles 14, 16 and 21 of the Constitution.

7. A detailed counter affidavit has been filed by the respondents. It was averred by the respondents that 61 posts of APP were notified to by R-1 to R-2 for filling them by direct recruitment on regular basis, in 1998. However, since R-2 was taking some time to fill up these posts, an administrative decision was taken to fill up some posts on adhoc basis till regular appointments were made. Hence R-1 issued advertisement dated 4.3.98 for appointment of certain candidates on adhoc basis. Applications were scrutinised and applicants were interviewed in May, 1998 upon which a select list was also prepared but the said list was not approved by the Hon'ble Lt. Governor, who is the competent authority. In the meanwhile, R-2 also issued advertisement in June, 1998 calling for applications for filling up the posts on regular basis. It was also averred that CWP 3322/98 was filed by eight petitioners seeking directions to publish the results of the interviews, held in the month of May, 1998 in pursuance of the notification dated 4.3.98 and to fill up the

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posts. The CWP was disposed of by the High Court by an order of 9.6.99 with the directions that if by 10.8.99 appointments are not made in accordance with UPSC selection, then the petitioners in CWP be appointed on ad hoc/temporary basis as APP till such time regular appointments are made. Applicant herein is not a party in the CWP. Accordingly R-2 finalised the selection and approved the list of selected candidates by the end of July, 1999. It was also averred that the applicant was found over-aged. The upper age limit as on 16.7.98 was 30 years as per the advertisement (Annexure A-13) whereas the applicant's date of birth is 11.9.67. Hence applicant's candidature was not accepted.

8. The main grievance of the applicant appears to be that as he was interviewed and selected for the post of APP by R-1, there could be no reason for not appointing him. He submits that the action of R-1 was malafide. Hence, he requests that a suitable direction be given to appoint him. This contention, to our mind, lacks substance. The advertisements were made calling for application for ad hoc appointment. It is the case of the respondents that pending finalisation of regular appointments to be made by R-2, R-1 thought of filling up certain posts on ad hoc basis. Hence, the selection was for adhoc appointment till regular candidates could be appointed in pursuance of the notification issued by R-2 in June, 1998, for the candidates have to be regularly selected as per rules. It is pertinent to mention here that in the case filed by ad hoc appointees

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the same relief was sought as prayed for herein. While disposing of the CWP No.3322/98, the Hon'ble High Court directed as under:

"Consequently, if the Government does not make appointments in the light of the recommendations by the UPSC by 10.8.99, then those among the petitioners who have succeeded in the interviews and figure on the select list would be entitled to be appointed within two weeks of 10.8.99. It is made clear that these appointments are purely adhoc/temporary in nature and are subject to the vigilance clearance and verification. Upon the regular appointments made in accordance with the recommendations of the UPSC, the adhoc/temporary appointments shall come to an end forthwith and such adhoc/temporary candidates shall have no claim for continuance once the regularly selected candidates are available and appointed. These appointments of adhoc/temporary of APPs, if made, will be in accordance with the merit reflected in the light of the results of the interviews conducted".

The Hon'ble High Court was pleased to pass the above order holding that the selectees had no right for appointment and that too, the selection made was to be on ad hoc basis till R-2 regularly makes the selection.

9. Thus, it is seen that the Hon'ble High Court has refused to grant the relief prayed for by the petitioners in the abovesaid CWP but directed that if UPSC fails to publish the result by 10.8.99, only then the petitioners may be given short appointment, that too on ad hoc basis. The petitioners in OA Nos.1327 and 1269/99 are petitioners in the CWP. The petitioner in this case though not a petitioner therein, falls in the same category. Respectfully agreeing with the findings and the decision of the Hon'ble High Court in the case we are constrained to reject the prayer sought by the

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respondents. The Hon'ble Supreme Court has held in a catena of cases that a selected person has no right for being appointed and no such direction could be granted by courts (vide 1991 (3) Supp. SCC 47 and 1999 (1) SCC 422). The contention of the learned counsel for the applicant is, therefore, rejected.

10. Allegations of malafide are also wholly unfounded. The only reason assigned was that the father of the applicant who is a Senior Counsel has been appearing against R.1 in many cases. This allegation is not substantiated by any material. It is easy to level allegations but difficult to prove. We find it difficult to accept this allegation.

11. The next serious contention is as to the validity of selection procedure adopted by R-1 in the recruitment of APPs. It is the case of the applicants that the selection and appointment should be made by R-1 in accordance with the procedure prescribed under Section 25 of Cr. PC and that giving a go bye to such a procedure, R.1 has illegally empowered the UPSC to make selection and appointment in accordance with the recruitment rules framed under Article 309 of the Constitution. Learned counsel for the respondents, however, submits that R.1 being not a State within the meaning of Article 1 readwith 1st Schedule of the Constitution, the procedure prescribed under Section 25 Cr.P.C. has no application for appointment of APPs.

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12. Under Section 24 (3) Cr. P.C. the State Govt. shall appoint a Public Prosecutor and one or more APPs for the District. Sub Section (4) contemplates the District Magistrate sending a panel of names for such appointment. However, Sub Section (6) enables the State where there exists a regular cadre of Prosecuting Officers in a State to appoint a Public Prosecutor/APPs only from among the persons constituting such cadre. If there is no such suitable candidate in the panel available, then a Public Prosecutor or APP may be appointed from the panel prepared by the District Magistrate under sub Section (4). Section 25 (1) mandates the State to appoint, in every district, one or more APPs for conducting the cases in the courts of Magistrates. It is, therefore, contended that a duty is enjoined upon State to appoint the APPs; the Govt. of NCT of Delhi being a State under the Constitution has to appoint the Asstt. Public Prosecutors in accordance with Section 25 of the Cr. PC and not as per the procedure that is now adopted by R-1. We do not agree. NCT Delhi is not one of the 'States' enumerated in Article 1 of the Constitution. Article 1 reads as follows:

"1.(1) India, that is Bharat, shall be a Union of States.

(2) The States and the territories thereof shall be as specified in...the First Schedule.

(3) The territory of India shall comprise--

(a) The territories of the States;

(b) The Union territories specified in ...the First Schedule and

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(c) such other territories as may be acquired."

13. It is clear that India comprises of States and the Territories which shall be as specified in the first schedule. Delhi is not enumerated in the list of States enumerated whereas it is enumerated as the Union Territory in First Schedule. It is administered by the Lieutenant Governor. Article 239 (AA) is a special provision dealing with Delhi. It says that the Union Territory of Delhi should be called as NCT of Delhi with its administrator as Lieutenant Governor.

14. Under the recruitment rules framed under Article 309 of the Constitution it is one of the requirements that the selection and appointment should be made after consultation with the UPSC. Under this Article it was provided that the UPSC should be consulted among other things in all matters concerning recruitment to the civil service and civil posts. Accordingly, at the request of the NCT Delhi the UPSC issued the notice calling for the application for appointment and after holding the examination the candidates were selected and they were sent to R-1. Thus what the UPSC had done was only the holding of examination for the purpose of proper selection of the candidates. The UPSC, it should be noticed, is constituted mainly for the purpose of selecting the candidates for public posts. Expert people have been appointed as Chairman and members who are trained in the art of selecting proper candidates for the public posts.

CAB

Thus, it is not right to contend that the NCT of Delhi and the UPSC was consulted only for the purpose stated above.

15. The contention as to the validity of the 'short listing' is also unacceptable. It is an accepted principle in all the competitive examinations where large number of applications are received, to hold a screening test for the purpose of short listing the number of candidates. Such a screening test is held on the basis of either qualifications or experience higher than those mentioned in the advertisement. Hence the cream of the candidates would be afforded an opportunity to appear in the competitive examination and in the interview. In the advertisement itself this procedure was mentioned. No decision has been cited in support of the contention by the learned counsel why the method of short listing was illegal. Hence, we have no hesitation in holding that notification at Annexure A-13 and the recruitment rules and the selection and appointment of APPs made accordingly are valid.

16. The last contention is as to the eligibility of the applicant. As the applicant was found ineligible being over-age, on the relevant date, his candidature was rejected by R-2. It is the contention of the learned counsel for the applicant that the entry age limit of 30 years was deemed to have been enhanced w.e.f. 2.5.98 for a period of two years commensurate with the notification issued by Government of India on 2.5.98, raising the age of superannuation of Government servants. We do not find any such note in

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the advertisement. The upper age limit as per the advertisement was 30 years as on 16.7.97. The date of birth of the applicant is 11.9.67. Admittedly, he was above 30 years as on the relevant date. In the notification dated 21.12.98, Rules for age relaxation were made applicable only to all Central Civil Services and civil posts under the Central Government and these rules are called "Central Civil Services and Civil Posts (Upper age-limit for Direct Recruitment) Rules, 1998. They came into force from 1.4.99. It is clearly mentioned therein that these rules shall not apply to direct recruitment to any central civil service or civil posts under the Central Government for which action for recruitment was initiated through open advertisement or otherwise before 1.4.99. Under Rule 3, the upper age limit was increased by two years. Thus, these rules will not apply to the present case since the recruitment process was initiated through open advertisement in June-July, 1998 though the selection was made thereafter. Therefore, the applicant cannot claim any age relaxation and the action of respondents in rejecting the candidature of the applicant cannot be faulted. The fixation of upper age limit for entry into Government service is a policy decision. When it is specifically mentioned that the rules would come into force from 1.4.99, this court will not be right in preponing their enforceability w.e.f. 2.5.98 or any other date. We do not find any substance in the contention.

CAJ

17. Lastly, before we part with the case, it is necessary to consider the contention raised by the learned counsel for the applicants. It is contended by the learned counsel for the applicants that the applicants having been selected by the NCT Delhi after undergoing a selection process by the competent selection authorities, they ought to have been appointed at least on ad hoc basis in the posts of APPs till all the posts of APPs are filled up. It is the case of the applicants that even after the candidates recommended by the UPSC are regularly appointed still there would remain number of posts of APPs vacant/unfilled. The learned counsel for the respondents, however, contends that the Government has no intention to fill up the posts on ad hoc basis and also that there would be no vacancies available as on today. It must be seen that out of 106 posts of APPs available, as shown in Annexure A-3 as early as in 1995 the NCT Delhi is now seeking to fill up only 69 posts under the impugned advertisement. Thus, it can be said that the vacancies might be available in the NCT of Delhi. The applicants stated that they have been selected and their names figured in the select list but they were not appointed only on the ground that the UPSC would be making regular appointment. On the other hand, the learned counsel for NCT Delhi submitted that some of the posts have been sanctioned in anticipation of decentralization of district judiciary and the resultant expansion of the posts of Metropolitan Magistrates. As the position regarding further vacancies is thus not clear we do not consider it appropriate to give any direction more than


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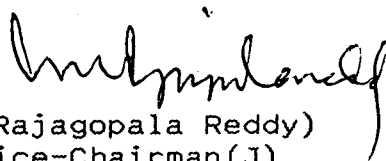
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that if NCT Delhi makes any ad hoc appointments, they will also consider the applicants in terms of the results of the selection made by them.

18. We do not, therefore, find any merit in the OAs. The OAs, are, therefore, dismissed, in the circumstances no costs.


~~(R.K. Ahoja)
Member(A)~~

"San."


(V. Rajagopala Reddy)
Vice-Chairman(J)