

Central Administrative Tribunal, Principal Bench

Original Application No.2281 of 1999

M.A.No.2441/1999

New Delhi, this the 16th day of November, 1999

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Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. R.K. Ahooja, Member (Admnv)

1. Dr. Pawan Kumar Tomar, S/o Shri Iqbal Singh
Sectional Officer, Horticulture Development
Divn.-I, C.P.W.D., B-412, 4th Floor,
Indraprastha Bhawan, New Delhi-110002
 2. Dr. Amarjit Singh Dagar, S/o J.S. Dagar
Sectional Officer, Horticulture Development
Divn.-I, C.P.W.D., B-412, 4th Floor,
Indraprastha Bhawan, New Delhi-110002
 3. Dr. Kushal Pal Singh, S/o Shri Rattan Singh,
Sectional Officer, Horticulture Development
Divn.-I, C.P.W.D., M.S.O. Building, 13th Floor,
Police Headquarters, I.P. Marg, New Delhi-110002
 4. Shri Vinay Kumar, S/o Shri Vijay Pal Singh,
Sectional Officer, Horticulture Development
Divn.-II, C.P.W.D., B-412, M.S.O. Building, 13th
Floor, Police Headquarters, I.P. Marg, New
Delhi-110002
- Applicants
- (By Advocate - Shri Sukumar Pattjoshi)

Versus

1. Union of India through its Secretary, Ministry
of Urban Development, Government of India,
Nirman Bhawan, New Delhi-110011
 2. The Director General of Work, C.P.W.D., Nirman
Bhawan, New Delhi-110011.
 3. The Director (Horticulture), C.P.W.D.
I.P. Bhavan, New Delhi-110002
 4. The Chairman, Union Public Service Commission,
Dhaultpur House, Shahjahan Road, New Delhi-110011.
- Respondents
- (By Advocate Shri D.S. Jagotara)

1. Horticulture Sectional Officers Association,
C.P.W.D., rep. by its General Secretary, Satbir
Singh, Ground Floor, 'A' Wing, Indraprastha
Bhawan, New Delhi.
 2. Balwant Singh, Assistant Director (Hort), East
Division, C.P. W.D., I.P. Bhawan, New Delhi.
 3. S.N. Labh, Assistant Director (Hort),
Horticulture Development Division I, C.P.W.D.,
I.P. Bhavan, New Delhi.
 4. K.V. Singh, Sectional Officer (Hort), North
Division, C.P.W.D., I.P. Bhavan, New Delhi
- Applicants to MA No.2441/91
for impleadment as respondents
- (By Advocate Shri K.B.S. Rajan)

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O R D E R (Oral)

By Mr. R.K. Ahooja, Member (Admnv) -

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The applicants herein are working as Sectional Officers in Horticulture Development Division I/II, C.P.W.D. The next higher post to Sectional Officer, namely, Assistant Director (Horticulture) is, according to the instant rules, to be filled up by direct recruitment to the extent of 1/3rd and by promotion to the extent of 2/3rd. The grievance of the applicants is that while the respondents have filled up the posts of Assistant Director in the promotion quota, they are not filling up the posts in the direct recruitment quota through the Union Public Service Commission (in short 'UPSC').

2. The applicants had earlier come to this Tribunal for the same grievance in O.A.No.341/98 and the same was dismissed in limine vide order dated 12.2.1998, in the following terms :

"3. We are of the view that no such direction can be issued against the respondents. We do not know the reason why the posts are lying vacant. Only when the posts are notified the applicants have a right to apply. If they are not allowed to apply then only they may come before us. Presently, the application appears to be misconceived as also premature. Accordingly, it is hereby summarily dismissed."

The applicants thereafter filed Civil Writ Petition No. 1020 of 1998 before the Delhi High Court against the above order of the Tribunal but the same was dismissed vide order dated 3.3.1998. Thereafter the applicants made a representation to respondent no.2 and on being refused the relief sought for, they again approached the

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Delhi High Court in Writ Petition (Civil) No. 2329 of 1999 & C.M. No.5398/99, which were disposed of on 29.9.1999 by the following orders :

"On 12th February, 1998 the Tribunal dismissed the petition of the petitioner on the ground that direction could not be given to the respondent to indicate why ten vacancies could not be notified to UPSC. Writ against the same was also dismissed. By this writ petition, petitioner now seeks the same direction to the respondent to notify the vacancies to UPSC and for disposal of his representation. We feel that petitioner should first approach the Central Administrative Tribunal, who will look into the grievances of the petitioner as pointed out in this writ petition. Counsel for the petitioner states that in view of this direction, he will approach the Central Administrative Tribunal. The earlier order passed by the Tribunal will not resjudicate the claim now sought by the petitioner.

With these observations, the petition stands disposed of."

The applicants have now again approached the Tribunal in the present O.A. in terms of the aforequoted order of the Delhi High Court.

3. We find that in the proceedings before the Delhi High Court, as reproduced by the applicants in para 4.26 of the present OA, the respondents in their counter affidavit dated 19.8.1999 had submitted as follows :

"No direct recruitment to fill up the post of Assistant Director (Hort.) can take place through UPSC without amendment of the recruitment rules in terms of the order dated 11.11.96 passed by the Hon'ble CAT, New Delhi."

4. The applicants submit that there was no direction by the Tribunal in OA No.1388/93 prohibiting the respondents to fill up these posts in the direct recruitment quota.

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5. We find from the order dated 11.11.1996 passed by the Tribunal in RA No. 2266/95, MA No.969/96 in OA No.1388/93 (copy at Annexure- A-7) that a submission was made by the respondents that a final decision was likely to be taken on the proposed amendment of the recruitment rules within a period of two months. The Tribunal also recorded the submission of Shri V.S.R.Krishna, counsel for the respondents therein as follows :

"4.....Shri V.S.R.Krishna, states that this apprehension is unfounded because no action to fill up the post of Assistant Director (Horticulture) has been taken on the basis of the unamended recruitment rules ever since the OA was filed on 8.9.95 and it is wholly unlikely that the respondents will now take steps to fill up that post, within the next two months by which time a final decision would have been taken on the amendment."

The learned counsel for the respondents has made a statement, on instructions, before us that the amended rules have since been sent for publication and they are likely to be notified within a week's time.

6. It has been contended by the learned counsel for the applicants before us that even if the recruitment rules are amended, as stated by the respondents, the vacancies which had already become available in the direct recruitment quota have to be filled up in accordance with the pre-amended rules. We do not agree with this contention. A Constitution Bench of the Hon'ble Supreme Court in the case of Shankarsan Dash Vs. Union of India, (1991) 3 SCC 47 has held that "[U]nless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies." It is, therefore, the option of the executive to decide as to whether particular vacancies

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should be filled up or not, and no person much less an outsider can have an enforceable right to claim that such vacancies should be filled up and he should be considered against the same. A three judge bench of the Hon'ble Supreme Court has also held in Dr.K.Ramulu and another Vs. Dr.S. Suryaprakash Rao and others, (1997) 3 SCC 59 that where the Government had taken a decision to amend the recruitment rules and had also taken a conscious decision not to fill the vacancies till then then there was no vested right to be considered under the relevant recruitment rules. In the present case even a promotee would not have a vested right to be considered under the unamended rules in the face of respondents' decision not to fill up the posts till the rules were amended. An aspirant for direct recruitment would have even a lesser claim on the rules of the service of which he was yet to become a part.

7. As regards the claim of the applicants that the existing vacancies in the cadre of of Assistant Director (Horticulture) should not be filled up on the basis of promotion of Sectional Officer (Horticulture) but on direct recruitment basis, we are of the view that the applicants cannot seek a direction that the State should fill up the posts by recruitment as required under the existing/pre-amended recruitment rules. If the claim is made on the basis of efficiency of the department then it would be in the nature of public interest litigation, which is not maintainable before the Tribunal. The applicants otherwise would have an equal right to compete for the vacancies as may be available under the amended rules along with other persons who are eligible and, therefore, they cannot

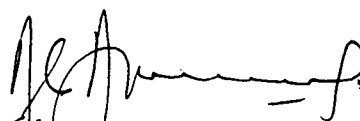
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claim that they have been discriminated against in any manner. 7

8. Shri K.B.S.Rajan, learned counsel who has filed MA No.2441/99, has brought to our notice that 10 posts of Assistant Director (Horticulture) have since been abolished by the respondents vide their order dated 23.9.1999 (Annexure-4 to MA 2441/1999). We also noticed that in their OA 341/1998 the applicants have also mentioned about the 10 vacancies of direct recruitment quota in the cadre of Assistant Director (Horticulture). In view of this position, it is of course not clear as to whether all these posts fall within the direct recruit quota or also include the promotion quota. However, the adjustment of these posts will have to be done in terms of the recruitment rules which the respondents are going to be notified shortly as per their statement.

9. In view of the above facts and circumstances, we do not consider that the relief sought for can be granted by us. We also find there was no embargo as such on the respondents not to fill up the post of the Assistant Director (Horticulture) but the Tribunal could not give a direction to the respondents to fill up these posts if they had decided otherwise. The O.A. is accordingly dismissed. No order as to costs.

10. In view of the above, MA 2441/99 also stands disposed of.


(Ashok Agarwal)
Chairman


(R.K. Anooja)
Member (Admin)