

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 636 /1998 Date of Decision: 20 - 8 - 1998

Shri A. P. Aggarwal .. APPLICANT

(By Advocate ~~Shri~~ Avnish Anilawat

versus

Union of India & Ors. .. RESPONDENTS

(By Advocate Shri Ajesh Luthra for
Mrs. Jyostna Kaubhik

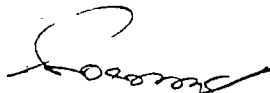
CORAM:

THE HON'BLE SHRI T. N. Bhat, Member (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES ✓

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER
BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member(A)
20.8.98

Cases referred:

1. Dr. R.C. Anand Vs. AIIMS 1997 (III)AD (Delhi) 38
2. R.S. Mittal Vs. UOI 1995 Suppl2 SCC 230
3. State of Bihar & Anr. V. M.M. Singh & Ors. 1993 (5) SLR 601
4. Shankarsan Dash V. UOI 1991 (2) SLR SC 779
5. Jai Singh Dala & Ors. Vs. State of Haryana & Anr. SLR 87 1993 (1) 422
6. State of MP & Ors. R.S. Yadav & Ors. 1994 (28) ATC 255
7. Ashok Kumar & Ors. V. The Chairman Banking Service Rectt. Board & Ors, 1996 (1) SLR 301

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-636/98

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New Delhi this the 20th day of August, 1998.

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri A.P. Agrawal,
S/o late Sh. Mool Chand,
R/o C-134, Nanak Pura,
Moti Bagh, New Delhi. Applicant

(through Mrs. Avnish Ahlawat, advocate)

VERSUS

1. Govt. of NCT of Delhi
through L.G.,
Raj Niwas Marg,
Delhi-54.
2. Secretary (Finance),
Govt. of NCT, Delhi,
5, Sham Nath Marg,
Delhi-54. Respondents

(through Sh. Ajesh Luthra for Mrs. Jyotsna Kaushik)

ORDER

Hon'ble Shri S.P. Biswas, Member(A)

Heard rival contentions of learned counsel
for both the parties.

2. Two important questions of law fall for
determination in this O.A. They are:-

- (i) Whether a specific vacancy against
which an appropriate selection is
held; a panel is made and an
appointment is offered out of said
panel could still be considered to
exist when the person so appointed
resigns after having joined and
functioned in the post for a period
of 6-7 months?

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(ii) Whether the panel formed by empanelling only two officials for filling up of the said single vacancy in 1996 shall continue to have its validity for the purpose of offering appointment to the official at Serial No. 2 of the panel when the official at Serial No.1 of the same panel was earlier appointed but resigned afterwards in a situation where the validity of panel/panels is not specified?

3. The brief background facts, necessary for disposal of the O.A., are as under:-

The applicant, presently working with the Ministry of Law and Justice as Additional Legal Adviser with 31 years of experience, applied for the post of Member/Sales Tax Appellate Tribunal (STAT for short) pursuant to the advertisement (Annexure-B) issued in November 1996. He fulfilled all the eligibility conditions prescribed for the post. The duly constituted Selection Committee prepared a panel on 7.3.97 placing one Shri M.L. Sahni as No.1 and the applicant herein as No.2 in the panel which was approved by the competent authority. Pursuant to the approval of the screening/selection committee recommendations, the appointment order for the post of Member/STAT was issued in favour of Sh. Sahni by the appointing authority i.e. Government of India vide Notification dated 18.6.97 as at Annexure-C. Since

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Sh. Sahni was also selected for the post of Member in Income Tax Appellate Tribunal (ITAT for short) and had accepted the same, he decided to relinquish the charge as Member/STAT around 12.12.97 and joined as Member ITAT. The applicant claims that the panel for appointment to the post of Member/STAT is valid for one year and since his name was approved by the Central Government in a panel at No.2 for the said post, the offer of appointment should have been given to him, when Sh. Sahni resigned. He had sent a few representations setting out the reasons supporting his claim but the respondents decided to turn Nelson's Eyes on them. Applicant is, therefore, aggrieved by (i) the inaction of the respondents in not appointing him to the post of Member STAT/Delhi inspite of the fact that he was duly selected and (ii) respondents resorting to a fresh advertisement on 20.1.98 in "Hindustan Times" inviting applications for appointment for the same post of Member/STAT. Consequently, the applicant seeks relief in terms of quashing the aforesaid public notice leading to the process of fresh selection and issuance of direction to respondents for offering the order of appointment in his favour.

4. Mrs. Aynish Ahlawat, learned counsel for the applicant seeks to justify the reliefs claimed by the applicant on a variety of grounds. We have, however, decided to bring out only those important ones for sharp focus that would have legal bearing with the present case. It was submitted that after Sh. Sahni relinquished the charge of Member STAT on

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12.12.97, the respondent No.2 did prepare a note for invocation of the panel already in existence and had sent applicant's name for approval of respondent No.1. The reason for invocation was that the panel was still valid and in any case it was felt that the post should get filled up expeditiously as this was a post manned by a Single Member, any delay would cause hardship to the general public as there was no one to hear the statutory appeals. After the relinquishment of the charge by Sh. Sahni, the applicant was waiting for his appointment as Member/STAT but was shocked to see the impugned advertisement on 20.1.98 calling for applications for appointment to the same post of Member/STAT. 10

5. The learned counsel for the applicant would also submit that the entire issue was placed before the Lt. Governor with the proposal for fresh selection, but the Lt. Governor reiterated his earlier orders of appointment of the applicant only. She argued that once the Lt. Governor, who acts on behalf of Central Government exercising the powers of the President under Article 239-AA of the Constitution of India, has approved the name of the applicant for appointment to the said post, there was no reason for issuing the advertisement in between excepting that the authorities were interested to consider someone else for extraneous considerations. That while preparing a panel and issuing the appointment letter to Sh. Sahni, the Central Government was aware of the fact that Sh. Sahni, who is also selected for the post of ITAT would join that post, and hence the offer

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of appointment for the post of Member STAT should have fallen automatically on the second man in the panel. This is particularly so when the appointment in case of Sh. Sahni was made for a period of 3 years or till his successor is appointed.

6. To add strength to her contentions, the learned counsel for the applicant drew our attention to the instructions issued by DOP&T in O.M. dated 14.5.87. Those instructions lay down the principles to be followed where the recommended candidate joined a post for a short period and then resigned or where the vacancy occurred on account of the death of the candidate. Para-2 of the said O.M. mentions the following:-

"The matter has been examined in consultation with U.P.S.C. and it has been decided that the reserve lists may be operated in cases where a vacancy is created by a candidate resigning the post or in the event of his death, within a period of six months from the date of his joining the post subject to the condition that such an operation of the lists should be limited in respect of statutory posts and those of scientific, technical, academic or medical nature or other similar nature where it may not be possible to keep the post vacant till the completion of fresh recruitment or to make local arrangements."

7. On the strength of a decision of Delhi High Court in the case of Dr. Raghunath Chand Anand Vs. All India Institute of Medical Sciences (1997 III AD (Delhi) 38), the learned counsel for the applicant argued that the advice rendered by the Statutory Committee is not intended to be ignored. The advice rendered by such a Committee, constituted for specific

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purpose, is intended to be acted upon. On the same analogy the recommendations of the Select Committee, as in the present case, was binding on the appointing authority. Such an advice is mandated by the statute to ensure that bias is eliminated from appointments which are sought to be made. Again, in support of her contention, the learned counsel cited the decision of the Hon'ble Supreme Court in the case of R.S. Mittal Vs. U.O.I. (1995 Supp.(2) SCC 230). As indicated in the head note, their Lordships in this case held that:-

"Although a person on the select panel has no vested right to be appointed to the post for which he has been selected, the appointing authority cannot ignore the select panel or on its whims decline to make the appointment. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel."

8. The respondents, on the contrary, have resisted the claims. Shri Luthra, learned proxy counsel for the respondents submitted that it would be wrong to say that the life of the panel so prepared was for one year. It has been denied specifically that the respondent No.2 prepared a note for invocation of the panel already in existence because the panel was still valid. In fact, a note was submitted for filling up the likely vacancy of Member/STAT either by inviting applications through advertisement or by appointing the present applicant to avoid delays in filling up the post. The later

course suggested was not accepted by the Government and it was decided to invite fresh applications for wider choice.

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9. Respondents have further submitted that Sh. Sahni was appointed as Member STAT for a period of three years or till such time his successor joins after following due procedure as laid down under Section 13 of Delhi Sales Tax Act 1975 and he functioned in that capacity from 14.7.97 to 4.1.98. As he was also duly selected later on as Judicial Member/ITAT, intended to join the said post and was hence spared accordingly. The respondents have specifically denied that Lt. Governor had directed/ordered for appointing the applicant herein as Member STAT. On the contrary, a decision was taken to notify the vacancy for reasons recorded on the file. To buttress his arguments, the learned proxy counsel for the respondents cited the judgement of the Hon'ble Supreme Court in the case of State of Bihar & Anr. Vs. Madan Mohan Singh & Ors. (1993(5) SLR 601). That was the case where the High Court of Patna had finalised selection for filling up of 32 vacancies only and had sent a list of 32 candidates in order of merit. However, a further resolution was passed that if any further vacancy was required to be filled up within the time of one year, the same would be done by recommending the candidates in order of merit from amongst ~~to~~ the remaining candidates in the merit list. It was held that the merit list prepared on the basis of written test as well as viva voce will hold good only for the purpose of filling up of 32 vacancies as

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notified and no further because the said process of selection for those 32 vacancies got exhausted and came to an end.

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10. We shall now elaborate the position of law on the subject. The appointment of a Member STAT is governed by Section 13 of Delhi Sales Tax Act, 1975. Under sub-section(3) of Section 13 of the Act, the period for which a Member of the Tribunal could hold the office has been stipulated. We extract below only the relevant sub-sections of Section 13 of the Act for our purpose:-

"13. Appellate Tribunal - (1) The Central Government shall, as soon as may be after the commencement of this Act, constitute an Appellate Tribunal consisting of one or more members, as it thinks fit, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by or under this Act:

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(3) Subject to the provisions of sub-section (1), the qualifications and other conditions of service of the member or members constituting the Appellate Tribunal and the period for which such member or members shall hold office, shall be such as may be determined by the Central Government.

(4) Any vacancy in the membership of the Appellate Tribunal shall be filled up by the Central Government as soon as practicable."

11. It is well settled in law that a candidate whose name appears in the list/panel does not acquire any indefeasible right of appointment as a Government servant even if there is a vacancy. It is open to the Government that on a subsequent date not to fill up the post or to resort to fresh selection and make appointments on revised criteria. The

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Government is entitled to conduct selection in accordance with the changed rules and make final recruitments. No candidate acquires any vested right against the State. Therefore, the State is entitled to withdraw the Notification by which it had previously notified the recruitment and issue fresh notification in that regard on the basis of amended rule. The only thing that has to be ensured^{is} that the decision not to fill up the posts/vacancies has to be taken for bona fide reasons. If any authority is required for these propositions, it is available in the judgements of the Hon'ble Supreme Court in the case of Shankansan Dash Vs. U.O.I. (1991(2) SLR SC 779); Jai Singh Dalal & Ors. Vs. State of Haryana & Anr. (SLR Vol.87 1993(1) 422); & State of M.P. & Ors. Vs. R.S. Yadav & Ors. (1994(28) ATC 255)

12. It is in the light of the details of legal position aforesaid, we are to determine the legality of applicant's claim. It is not in doubt that by amendment of the relevant portion of Delhi Sales Tax Act 1975, the word "Central Government" appearing in Section 13 was substituted by the words "Lt. Governor" w.e.f. 28.1.98. The power of appointment for the post of Sales Tax Appellate Tribunal, therefore, vested with the Lt. Governor but only after January 1998. In the instant case, that power was to be exercised by the Central Government since the post for which the empanelment was made in July 1997 arose in November 1996. To satisfy ourselves, we called for the records to see if the Lt. Governor had directed/ordered for appointing the

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applicant as Member STAT as alleged by the applicant. A perusal of the relevant records revealed that there has been no such direction or order.

13. We find that the learned counsel for the applicant has relied upon the O.M. issued by the Government of India dated 14.5.87, the judgements of Hon'ble High Court in the case of Dr. Raghunath Chand Anand (supra) and of the Apex Court in the case of R.S. Mittal (supra). The instructions in the Government of India O.M. are only recommendatory in nature. The reliance of the applicant on the judgement of the Hon'ble High Court is apparently misconceived. That was the case where the selection was made by the Committee minus the Chairman who participated in selection process but much later. The issue that fell for determination before the High Court was whether the advice of the Statutory Advisory Committee was required to be accepted particularly when the Chairman was not present during the whole proceedings. The Hon'ble High Court felt that the Governing Body has to act in accordance with the recommendations of the Select Committee and that it is not permissible for the Governing Body to ignore the advice. The facts and circumstances of the case decided by the High Court do not have much relevance for the present case simply for the reason that the Hon'ble High Court was confronted with the problem of determining the legality and entitlement of the official at Sl. No.1 of that panel for the post of Medical Superintendent. The issues in the present case are entirely different.

14. The decision of the Hon'ble Supreme Court in the case of R.S. Mittal does not render any help to the applicant herein. This is because the select panel in that case was held to be valid for a year and a half and that the selection therein proceeded for empanelment of candidates against multiple vacancies. The issues the Hon'ble Supreme Court had to decide in that case related to (i) legality of inordinate delays in implementing the select panel and that (ii) the recommendations of the select board which is headed by a Sitting judge of Hon'ble Supreme Court or High Court must be given prompt attention and nothing should intervene between the recommendation and the consideration by the ACC. That the Minister/Secretary of the Administration Department is under an obligation to process the recommendations of the Select Board.

15. In the present case, the Select List was prepared by a duly constituted committee for the purpose of filling up of only one vacancy as notified. The said process of selection for one vacancy got exhausted and came to an end when the appointment was made. If the same list has to be kept subsisting for the purpose of filling up other vacancies also that would only amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process. In other words, once a panel is formed by due process pursuant to a Notification and an official is appointed as per vacancy/vacancies so notified, the

panel comes to an end (emphasis added). It is not disputed that Annexure-C appointment order dated 18.6.97 was in pursuance of Annexure-B Notification in November 1996. In the present case, therefore, the panel ceases on 18.6.97 when the appointment was made, ~~for, howsoever~~, ^{that} the short period it could be. Even if we consider ^{that} there arose a vacancy after 4.1.98, that would be a subsequent vacancy and could not be covered/adjusted against the earlier Notification of November 1996 (emphasis added). In holding this view, we get direct support in the judgements of the Apex Court in the case of State of Bihar & Anr. Vs. Madan Mohan Singh & Ors. (1993(5) SLR 601) and Ashok Kumar & Ors. Vs. The Chairman Banking Service Recruitment Board & Ors. (Vol.III 1996(1) SLR 301). It would be apposite to bring out the relevant portion of the Hon'ble Supreme Court judgement in Ashok Kumar's case. In para-5 it has been held that:-

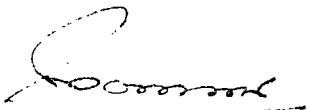
"Article 14 read with Article 16(1) of the Constitution enshrine fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16 (1) of the Constitution. The procedure adopted, therefore, in appointing the persons kept in the waiting list by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional."

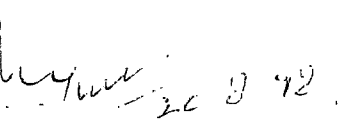
We find that the applicant's case, on all fours, fits into facts and circumstances of the aforesaid judicial pronouncement.

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16. In the background of detailed discussions herein above, our answers to the two questions, as in para 2 aforementioned, would be in the negative only.

17. In the result, the application merits no consideration and is accordingly dismissed, but in the circumstances, without any order as to costs.


(S.P. Biswas)
Member(A)


(T.N. Bhat)
Member(J)

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