

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1093/96

New Delhi this the 21th day of May, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Hon'ble Shri R.K. Ahooja, Member (A)

Shri Dinesh Kumar Tiwari,
s/o Shri Harish Chandra Tiwari,
Assistant Public Prosecutor,
Patiala House Courts, New Delhi.

(By Advocate Shri B.S. Mainee) ... Applicant

-Vs.

1. The Govt. of National Capital Territory of
Delhi, 5 Sham Nath Marg,
Delhi-110054 through the Chief Secretary.

2. The Union Public Service Commission
Dholpur House, Shahjahan Road, New Delhi
110011 through its Secretary.

(None for the Respondent No.1)

(By Advocate Shri M.M. Sudan, Counsel for
Respondent No.2) ... Respondents.

ORDER (ORAL)

[Hon'ble Shri R.K. Ahooja, Member (A)]

The applicant in response to advertisement issued by Respondent-No1 for appointment to the post of Assistant Public Prosecutor on ad hoc basis had applied and was selected after being interviewed. He was appointed as per order Ann. A.1 w.e.f. 4.3.96 as Assistant Public Prosecutor (APP). Respondent No.2, UPSC subsequently invited applications for the 49 posts of Assistant Public Prosecutor as per advertisement Ann.A.3. In terms of the advertisement, the applicant also applied for regular appointment. He submits that his case was ignored on the plea of shortlisting of candidates and he was not called for interview by Respondent No.2. He submits further that Respondent No.2 has failed to take into consideration that he had already been selected for the post of Asstt. Public Prosecutor by a duly constituted selection Board and a letter of appointment had already been issued to him. He points out that some of the others similarly

02

(16)

situated ad hoc APPs had also come before this Tribunal in OA 297/1996- Manoj Kohli & Others V. Govt. of NCT of Delhi through Chief Secretary and others. By way of an interim measure, the Tribunal issued a direction to Respondent No.2 to interview them. However, as the appointment letter of the applicant was sent later, he could not be interviewed and as such the applicant has not been able to get the benefit of the interim order issued by this Tribunal. He submits that one another colleague Ms Kiran Bala filed an OA 433/96. In this case, an interim order had been passed directing the respondents to interview her also by Respondent No.2. He now seeks a direction to the respondents to consider his case for regularisation on the basis of his qualifications, service record and the fact of his having been selected by a duly constituted board for the post of Asstt. Public Prosecutor under Respondent No.1

2. Respondent No.1 in his reply states that the applicant was appointed as Asstt. Public Prosecutor purely on ad hoc/contract basis for an initial period of six months only or till such time the candidates are appointed through UPSC on regular basis. Respondent No.1 further submits that the R.R's provide recruitment to the post of APPs through UPSC on regular basis. In that order to avoid delay in Court work, therefore, the recruitment of APPs was made on ad hoc/contract basis till such time the candidates are appointed through the UPSC. The respondents further state that Respondent No.2 fixed its own criteria for shortlisting the applicants for calling them to attend the interview and the applicant could not make grievance of this issue.

3. Respondent No.2 (UPSC) submits that the Commission is vested with the powers to devise its own procedures when the number of applications received are substantially more than the number of posts and it is not found convenient or possible for the Commission to interview all the candidates and, therefore, the Commission restricted number of candidates to a reasonable limit on the basis of either qualifications and experience higher than the minimum prescribed in the advertisement. He further submits

14

that in response to the advertisement, 786 applications were received. However, 491 applications from the Genl. categories were received. Therefore, it was necessary that the shortlisting should have to be undertaken. The contention that he was initially enrolled as an advocate on 19.4.1992 is incorrect. In fact, he was enrolled on 10.8.91. He was also appointed as Assistant Public Prosecutor on 4.3.96 and not 7.3.96. The closing date of receipt of the application in the Commission's Office was 1.6.95. Further, in his application he had not mentioned that he was employed. They also state that applicant cannot claim any special concession because he was appointed by Respondent No.1 as Asstt. Public Prosecutor on the basis of a duly constituted Board.

4. We have heard the learned counsel for both the parties. None appeared for Respondent No.1 either today or on the previous occasions except on 14.1.1997. We have, therefore, not been able to avail the assistance of Respondent No.1. However, we have perused the records and find that this matter can be disposed of at the admission stage itself. Shri Mainee, learned counsel has drawn our attention to the judgment of this Tribunal in OA 297/96 and related cases delivered on 2-4-97 in which the case of Ms Kiran Bala in OA 433/96 has also been considered. The Tribunal in its order has given the following directions:-

"In OA No. 297/96, the applicants therein will continue on ad hoc basis to hold the post till their candidature has been considered against the additional number of vacancies now made available by the Respondents, unless they have been interviewed on the basis of the interim orders of this court. In the event they have taken part in the test and interview and the result is declared and in the event that they are found fit and the result is in their favour, they may be recommended for appointment against regular vacancies and those candidates whose names have not been recommended, will have no right to regularisation on the basis of their adhoc service."

(2)

(3) The applicants in OA 416/96 and 433/1996 will also be entitled to same directions as given by us in OA No. 297/1996."

n

Shri Mainee, learned counsel submits that the applicant

18

is a similarly situated person as that of others particularly MS Kiran Wala, who was given appointment on 22.2.97 i.e. 10 days prior to the applicant. For these reasons, learned counsel submits that the same reliefs may be granted to the applicant to continue on ad hoc basis with Respondent No.1 till such time he will be considered for regularisation against the additional posts of APPs which are notified by Respondent No.1 to Respondent No.2.

5. We have considered the arguments of the learned counsel for both the parties. We do not consider that the case of the applicant is ~~on~~ all fours with that of the applicants in OA 433/96 and other connected cases which were decided by the Tribunal on 2.4.1997. The applicant was also not given any interim relief by way of direction to Respondent No.2 for being interviewed as was done in respect of MS Kiran Bala (OA 433/96). This O.A. has been filed after the interviews were over/completed by Respondent No.2. As the applicant is still continuing as Assistant Public Prosecutor on ad hoc basis in terms of State of Haryana V. Piyara Singh (1992(3) SLJ 34, he cannot be replaced by other ad hoc appointees. It is open to the applicant to apply for the additional posts of APPs to Respondent No.1 in terms of the advertisement issued again for the same. In this view of the matter, we find that no further directions are necessary in the matter and accordingly, this O.A. is disposed of as above. No order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

sk