

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1121/97
T.A. No.

199

DATE OF DECISION 23.12.1997.

P.N.Wali & A.S. Dawara

Petitioner

V.K. Rao

Advocate for the Petitioner(s)

Versus

UDI & Anr.

Respondent

R.P. Aggarwal

Advocate for the Respondent(s)

CORAM

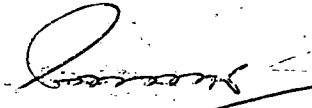
The Hon'ble Mr. Dr. Jose P. Verghese, VC (J)

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes. ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

Cases referred:


(S.P. Biswas)
Member(A)
23.12.97

1. National Instt. of Mental Health and Nueuro Sciences Vs. K. Kalyana Raman (Dr.) AIR 1992 SC 1806
2. S.N.Mukherjee Vs. UOI 1990 (5) SLR 8
3. Shanksarsan Das Vs. UOI 1991 2 SLR 779 SC
4. Balbir Prasad Vs. State of Bihar 1993 (Suppl) (3) SCC 268
5. Om Prakash Vs. Akhileshwar AIR 1986 SC 1043
6. State of AP & Lrs. Vs. G.Sreenivas Rao 1989 (10) ATC 69
7. UOI Vs. E.S.Soundara Rajan AI^R 1980 SC 959

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1121/97

NEW DELHI, THIS THE 23RD DAY OF DECEMBER, 1997

HON'BLE DR. JOSE P. VERGHESE, VICE-CHAIRMAN(J)
HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. Shri P.N. Wali
s/o late Shri D.N. Wali
15/313, Lodi Colony, New Delhi-3

2. Shri A.S. Dawra
s/o Shri Sarcar Nawab Singh
CA-40/1, Tagore Garden
New Delhi-27

... Applicants

(Shri V.K. Rao, Advocate)

versus

Union of India, through

1. Secretary
Department of Tourism
Ministry of Tourism & Civil Aviation
New Delhi.

2. Director General
Department of Tourism
Transport Bhavan, New Delhi

... Respondents

(By Shri R.P. Aggarwal, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

Heard the learned counsel for all the parties.

2. The applicants claim that a set of fresh guidelines circulated on 14.6.96 have been applied to invalidate the selection held on 23.11.95 on the basis of earlier guidelines of January 1990. Main issues that fall for determination are:-

(i) whether qualifications/guidelines now prescribed are tailor-made to suit respondents No.3 to 5 on grounds of mala fides and thereby denying legitimate claims of applicants No.1 and 2 for foreign posting?

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(ii) whether actions of the respondents in not exhausting the panel claimed to have been made in November 1995 or implementing the same partially in favour of persons enjoying patronage of administration are sustainable in the eyes of law?

3. Before we examine the aforesaid crucial issues, brief mention of the factual matrix of the case would be necessary to appreciate the real problems involved. The present procedure and practice being followed for selection of Assistant Directors (A.D. for short) for the purpose of foreign posting involve a 3-tier scrutiny of eligible candidates at different levels. Those in the zone of consideration are interviewed first by a Committee consisting of 3 departmental officers. In the second stage, consisting of 2 levels, recommendations of the above Committee are examined independently by two very senior officers of the level of Director General (Tourism) (DG/T for short) and Secretary (Tourism). In the last stage, list of candidates with written recommendations of the Secretary (Tourism), in particular, are submitted to both the Ministers for final approval. A panel of ADs, equal to the number of vacancies or only a few more, is normally recommended. Guidelines are being used as "Bench Mark" to identify the limited few, out of those short listed, who could be finally selected for posting abroad as ADs. In addition to guidelines, other more important considerations that really go to determine such selections are: personal profile of integrity, decision making capacities, leadership qualities, personalities of the individuals' ability to communicate with foreigners to promote Indian tourism and track record of reputation an individual official carries with him as AD in the department of

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~) Tourism. Very close assessments of Annual Confidential Reports (ACRs) are being resorted to for determining the aforesaid personal qualities.

4. The undisputed facts are that the candidatures of both the applicants as well as respondents No. 3 to 5 were considered alongwith others by the Committee of selections held in November 1995 and in June 1996. Number of posts to be filled, in the instant case, are only 7 against vacancies arising in 1995-96 (six of 1995 and one of February, 1996) due to completion of tenures of ADs already posted abroad. New guidelines, on the basis of which the second selection took place on 14.6.96, were circulated after the vacancies arose.

5. These two sets of guidelines (Annexure A and Annexure-IV) are summarised as under:-

GUIDELINES AS ON 23.11.1995
(Issued in January 1990)

1. Minimum Experience of 3 years including one field posting in India.
2. Preference:
Weightage to be given for not having gone abroad. Knowledge of foreign language: Due weightage, though it would not be advisable to make it a compulsory Qualification
3. Cooling off period: Three Years.
4. Service left:
ADs with less than 5 years of service for retirement should not be sent abroad.

GUIDELINES AS ON 14.06.96

1. Minimum 3 years regular service in the grade (Ad-hoc service in that grade also to be counted towards this service). 2 years for UPSC direct recruit ADs.
2. Cooling off period: Three Years
3. Service left: 3-1/2 years for retirement before posting abroad

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6. The applicants would allege that two different sets of guidelines to the same employees, in the same department and for the same purpose have been applied and that is in gross violation of Article 14 of the Constitution involving discrimination and favouritism and that guidelines prevalent at the time when the vacancies arose i.e. of 1995 should have been applied.

7. The position of law on the subject is as under:-

Like promotions, one has the right to be considered for such postings according to one's own turn, but there is no inherent right to foreign postings. Chances for such postings, though coveted one, are not conditions of service and are defeasible. Employees possessing good academic records and having broadly needed qualities cannot legally claim foreign posting as a matter of right. While inter-se seniority can be acquired under relevant rules, there is no vested right for a senior to get posted at a particular place of his/her choice. In the absence of statutory rules governing postings under consideration herein, what forms the basis for consideration is administrative instructions/guidelines issued from time to time and those circulated later on wipe out those issued earlier unless mentioned specifically. The applicants have not shown that these guidelines do have force of law. In such selections basic principles of seniority, details of ACRs and other aspects indicated in the guidelines have to be kept in mind for an overall comprehensive view to determine the suitability for such postings and none can question the authorities providing such guidelines. "Fairness" and adherence to "Fair Practice" is the main requirement in matters of such selections by administrative

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authorities. The Selection Committee has to take decision reasonably without being guided by extraneous or irrelevant consideration. If any authority is needed for this proposition, it is available in cases of National Institute of Mental Health and Neuro Sciences Vs. K. Kalyana Raman (Dr) (AIR 1992 SC 1806) decided by the Hon'ble Supreme Court.

8. Since the selections proceeded on the basis of guidelines issued in June 1996, evaluation of ACRs and profile of services rendered by the individual aspirants, we called for the relevant files/documents/ACRs to satisfy ourselves that the principles of "procedural fairness" have been complied with or not. We are also aware that this is a case of selection by assessment of relative merits of rival candidates in course of interview and by assessment of ACRs and hence some subjective considerations are likely to enter in. Safeguards suggested in such sensitive matters by a Constitution Bench of five judges of the Apex Court stipulate compliance of the following:

"except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision" (Authority: S.N. Mukherjee Vs. UOI, 1990(5)SLR 8)

9. We shall examine the basic issues. In respect of applicant No.2 we find that he was not even recommended for such a posting at any stage/level of the three-tier process conducted in November 1995, though his case was considered after short-listing. So far as second selection in June 1996 is concerned, applicant No.2 was found unsuitable on grounds that "he does not have

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qualities which are required for foreign posting i.e. capacity to take independent decision, personality and positive approach towards marketing etc. The background of Shri Dawra is that of Senior Stenographer/Sr. P.A. and subsequently to AD in the house keeping section. It would be desirable to allow him stint in other Divisions of the Department of Tourism to enable him to acquire skill and knowledge which could stand him in good stead for being considered for foreign posting some time in future".

10. As regards applicant No.1, at the initial level of second stage of first selection, a decision was taken that he has an edge over Shri Gandhi in terms of confidence and personality and applicant No.1 was thus recommended by DG/T besides six others for posting at Singapore. This was in February, 1996 and at the first level of second stage even before the proposal could be sent to Secretary (T), where the selection at the second stage ends. Around this time, complaints from various sources started pouring in about non-compliance of guidelines and there were even mentions in Parliamentary forums. Respondents assured the Parliamentary Consultative Committee that prevalent guidelines (of 1990/1995) would be followed. The recommendations so made at the preliminary level of the second stage were itself subjected to thorough scrutiny. On re-examination at the level of Secretary(T), decision was taken, with reasons recorded, that only those who fulfilled all the conditions in the guidelines as on 23.11.95 shall be sent abroad. Four persons including the applicants out of seven, did not fulfill one or the other pre-requisites of 1995 guidelines. Applicant

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No.1, as per respondents, lacks conditionality of field posting. Applicants, however, would contend that this requirement cannot be insisted upon so far as they are concerned because of their working in the administrative wing. Similarly, respondents No.3 to 5 would argue that they fulfill all the stipulations of 1995 guidelines excepting the fact that they had stints of foreign postings before. But the fact remains that neither the applicants No.1 and 2 nor the respondents No.3 to 5 fulfill all the requirements under 1995 guidelines as they are. That is how only proposal of 3 officers out of seven so recommended at the initial level (that of ✓ DG/T only) of the second stage of first selection, went to both Ministers for final approval. That was on 31.3.96. The case of the applicants was never sent to the Minister for final approval in the first selection. Shri Wali (applicant No.1)'s submission dated 8.4.97, therefore, is without any foundation.

11. In the first stage of second selection Shri Wali's name was recommended at Sl.No.12 in order of merit and at the second stage his performance was rated to be "average" based on the recommendations of the three-member interview committee and it was felt that "his approach and communication skill do not match with other competitors". This view was apparently accepted at the third and final stage as well.

12. We find that official respondents have recorded reasons as to why those four candidates (including applicant No.1) could not be considered. Without closing the doors for subsequent considerations for those "not considered" for the time being, three ADs

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were sent to Milan, Frankfurt and Sydney because of administrative exigencies as recorded with reasons. We find applicants went wrong in assuming that fulfillment of stipulations in the guidelines alone meant last "word" on the selection. It is not in dispute that both the applicants were interviewed in November, 1995 and if guidelines were the only criteria they could not have been called for November, 1995 interview. Other considerations played important role in both selections. The nature of those factors and the need for emphasis upon them have been brought out in para 3 of this order. Not that those other factors/qualities are alien for considerations of a "home posting" but the need to identify them in an individual specially for a "foreign posting" cannot be overemphasised. Respondents cannot, therefore, be faulted in following the present procedure.

13. Applicants also erred in presuming that the recommendations of seven candidates by DG/T at the first level of second stage amounted to preparation of a panel. We find no panel was ever prepared arising out of selection held in 1995, nor there has been any definite ear-marking of post at New York and Los Angeles being made assessable only to those working in the administrative wing. Neither do the pre-revised guidelines specifically mention of there being any exemptions of field training for ADs like applicants herein nor have the applicants been rejected forever. Admittedly, respondents are prepared to consider them for future postings if found suitable as per the guidelines. Applicants got over-agitated when they

found that three candidates out of the said recommendation were allowed to be posted outside causing a feeling of discrimination for them.

14. The question would then arise whether the actions of the respondents are illegally sustainable in implementing part of the recommendation and declining offer the similar benefits to those who also formed part of the same recommendation. We find that respondents had applied their mind and since four of them did not fulfill some condition or other of 1995 guidelines, only those three were allowed, who fulfilled the criteria in toto. Such a step was necessitated by the respondents in the background of commitment made to Parliamentary forum as aforementioned. The decision not to issue the orders in respect of rest of the four were taken on validly recorded considerations. The reasons recorded read as under:

"It was found that certain officers selected were not fulfilling the existing guidelines. In view of the commitment already made to the Parliament in replies to questions as well as Consultative Committee to the effect that we follow the guidelines for foreign postings, it was felt that if we post these officers there would be clear violation of the commitment as stated above. In view of this position it was recommended by Secretary that we may keep the postings decided pending in respect of where there is violation of the commitment, and other postings of officers where there was no violation of guidelines (namely Shri A.N. Chowdhary, Shri V. Elumalai and Shri Jagdish Chander) the proposal was recommended for approval of MOS(T) and Minister (T). It was therefore also decided by Secretary(T) on 22.3.1996 to examine the existing guidelines again separately and put up for approval of the Minister and thereafter hold another interview".

15. In fact, neither the applicants No.1 and 2 nor respondents No.3 to 5 fulfill all the requirements of 1995 guidelines. In view of this, charge of

arbitrariness will not hold good, particularly since the persons recommended had not acquired any indefeasible right to appointment merely by being recommended at some stage. The principle enunciated by the Hon'ble Supreme Court in the case of Shankarsan Das Vs. UOI (1991 2 SLR 779 (SC) and Balbir Prasad Vs. State of Bihar 1993(Suppl) (3) SCC 268 support the above stand. Not only for those found unsuitable, adequate reasons have been adduced for those selected. We do not get any basis to question them.

16. We shall next examine if the new guidelines circulated in June, 1996 were merely designed to accommodate a favoured few particularly to bring in Shri Basheer in the eligibility zone. From the records made available to us, we find that need for revising the guidelines arose long before the second selection was scheduled. Deficiencies were noticed in the 1995 guidelines in respect of leaving behind ADs working in the administrative side on grounds of field posting. Secondly, it was noticed that out of 38 posts of AD in the cadre, bulk of the posts as well incumbents were of ad hoc nature. It would have been thus unfair to keep them out of zone of consideration. Based on reasons aforementioned as well as the need to extend the zone of consideration, the above guidelines were finally approved by the Minister on 6.5.96 but circulated by mere coincidence only on the date of interview on 14.6.96. It was not thus intended to exclude any particular individual out of consideration. Moreover, it is well settled in law that one cannot challenge selection after having participated in it. The applications suffers from this infirmity. (See Om Prakash Vs. Akhileshwar, AIR 1986 SC 1043).

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17. Ultimately, the question boils down to this:-

What is the right of an official and where does he find that right. One cannot claim such a right by means of vague comparison with others or by establishing an illegality in the claims of others. Discrimination arises only when there is a right and a law supporting that right. Where there is no right, there is no discrimination and there cannot be a cause of action. We find that applicants have spent more energy and time in establishing how Respondents No. 3 to 5 should not have been considered instead of trying to establish their own claims on legal basis. We cannot assent to submissions of the applicants that the alleged ineligibility of Respondents No. 3 to 5 is by itself an affirmation of their legal rights. Differences on facts - often nonactionable ones - do not give rise to a cause of action in law. The Hon'ble Supreme Court in comparable circumstances held in the case of State of AP & Ors. Vs. G. Sreenivas Rao 1989(10)ATC 69 that differences per se is not discrimination. We are also reminded of yet another case decided by the Apex Court in UOI Vs. E.S. Soundara Rajan, AIR 1980 SC 959 wherein it was held that an apparent discrimination was not a discrimination in the fact and circumstances of the case. The same situation prevails here. We are satisfied that the laws/principles laid down by the Apex Court in the case of Kalyana Raman and S.N. Mukherjee (supra) stand complied with.

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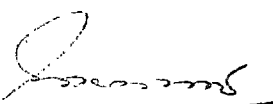
18. Because of the reasons aforementioned, the applicants have failed to come out with good valid reasons, much less convincing ones, to substantiate their claims. In the circumstances, we do not find it a fit case to exercise our discretionary jurisdiction under Article 226 of the Constitution and interfere in the selections made. The OA is dismissed with the following orders:

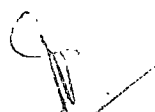
(i) Deliberations of the Selection Committee held on 14.6.96 shall hold good;

(ii) Since some time has been taken in deciding these matters, respondents shall consider providing necessary relaxation for the purpose of posting abroad, if needed, in deserving cases of those selected through the aforesaid selection.

(iii) The respondents shall have also the liberty to consider the candidatures of the applicants in future in terms of rules/guidelines.

(iv) There shall be no order as to costs.


(S.P. Bhatnagar)
Member(A)


(Dr. Jose P. Verghese)
Vice-Chairman(J)

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