

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No. 1125/97

New Delhi, this the 28th day of May, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)  
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

1. Latif Mohd. s/o late Boota Khan,  
139/3, Sector-1, M.B. Road,  
Pushap Vihar, New Delhi.
2. Gian Singh Thakran s/o R.K. Thakran,  
r/o C-30, A Budh Vihar, Phase-1,  
Delhi. .... Applicants

(By Advocate: Shri P.M. Ahlawat)

Vs.

Union of India through

1. The Secretary,  
Ministry of Health & Family Welfare,  
Nirman Bhawan, New Delhi.
2. The Director General,  
Health Services,  
Nirman Bhawan,  
New Delhi.
3. The Medical Superintendent,  
Safdarjang Hospital,  
New Delhi. ... Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R

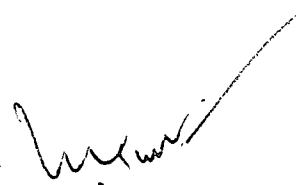
Hon'ble Shri T.N. Bhat, Member (J)-

1. The applicants in this O.A. are working as Store Keeper and Pharmacist, respectively, in the office of Medical Superintendent, Safdarjang Hospital, New Delhi. Claiming promotion to the post of Assistant Superintendent (Stores) they have assailed the action of the respondents in issuing the Circular dated 22.4.1997 for conducting limited departmental competitive test and calling names from eligible Store Keepers/Pharmacists and UDCs having

*Signature*  
28.5.98

regular service of three years or more to sit in the examination. The applicants' counsel states that earlier both the applicants had appeared in the departmental competitive test held on 19.4.1996 when there were two existing vacancies and the names of the applicants were included in the select list against anticipated vacancies while the names of other two persons were included for filling up the existing vacancies. The applicants rely upon the Circular dated 6.4.1996, as at annexure A-2, for this purpose. According to the applicants a fresh departmental competitive test can be held only after both the applicants have been absorbed and, that, therefore the Circular for holding the test is invalid and illegal. Reliance is also placed on the O.M. dated 8.2.1982 issued by the Department of Personnel & Administrative Reforms, Govt. of India.

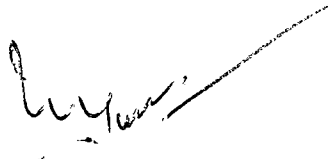
2. The respondents have resisted the O.A. on the ground that on the earlier occasion there were only two posts available for being filled up on ad hoc basis and the Departmental Promotion Committee had at that time recommended only two persons who have already been appointed. According to the respondents the list of selected candidates has to be based on the number of existing vacancies at the time of declaration of the result. It is further averred by the respondents that for appearing in the departmental competitive test only those candidates who fulfil the requisite qualification and eligibility criteria are eligible. Further they should also be in the feeder cadres.



3. The applicants have filed rejoinder wherein the averments made in the O.A. have been reiterated and reference has also been made to certain judgements of the Hon'ble Supreme Court.

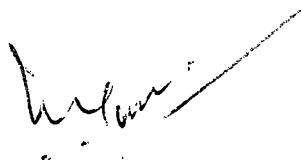
4. We have heard the learned counsel for the parties and have perused the material on record. We have also gone through the departmental records furnished by the learned counsel for the respondents.

5. According to the Office Memorandum issued by the Ministry of Personnel, recruitment should take place only when there are no candidates available from an earlier list of selected candidates and the learned counsel for the applicants vehemently argues that in the instant case two candidates from the earlier list are still available and, therefore, no fresh selection can be held by the respondents. In reply, the respondents' counsel has contended that the names of the applicants were not included in the select list and that those who found a place in the select list have already been appointed. The applicants have not produced any proof of the fact that their names were included in the select list prepared in pursuance of the Department of Personnel & Training held on 19.4.1996. All that they have produced is a Circular dated 6.4.1996 by which certain persons including the applicants had been asked to assemble in the Safdarjang Hospital, Lecture Hall on 19.4.1996 at 2.15 P.M. to appear in the departmental competitive test.



6. Even assuming that the respondents had prepared a list of four persons including applicants in pursuance to the aforesaid competitive examination, the question arises as to whether the respondents could have validly done that. To seek an answer <sup>to</sup> of this question the judgement of the Hon'ble Supreme Court in N.Mohanan vs. State of Kerala & Ors reported in (1997) 2 SCC 556 may be referred to. In that case against only one vacancy, a list consisting of more than 13 names had been prepared and the name of the petitioner before the Apex Court figured at Sl. No. 13, but he was not appointed. On approaching the Court he obtained an interim order and on the basis of the interim order he was appointed, but eventually he was not successful in the final decision of the High Court. The Apex Court held that the petitioner in that case was not ipso facto entitled to continue in service or to regularisation. It was further held that the period of life of a waiting list should not exceed one year and that this was so for the reason that other qualified persons are not deprived of their chances of applying for the posts in the succeeding years. We further find from the 'guidelines issued by the Department of Personnel that the panel for promotion drawn up by the D.P.C. could only be valid for one year and that it should cease to be in force on the expiry of one year. In the instant case the impugned Circular was issued on 22.4.1997 i.e. more than one year after the earlier selection, which was held on 19.4.1996.

7. Even on the question whether the respondents had validly included the names of the applicants in the select list prepared in 1996, the

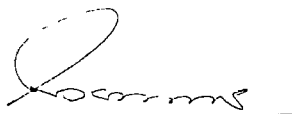


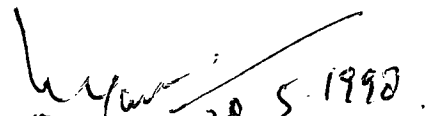
applicants do not seem to have a good case. In Prem Singh & Ors. vs. H.S.E.B. & Ors., a judgement on which the learned counsel for the applicants places reliance, the action whereby as many as 212 candidates were included in the select list against only 62 existing posts and as many as 137 out of that list were appointed has been deprecated by the Apex Court. The Apex Court held that ~~the~~ selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. In that case it was found on facts that the concerned Electricity Board had by oversight failed to anticipate 25 additional anticipated vacancies 13 of them because of retirement and 12 because of death and that the vacancies which are likely to arise as a result of retirement should have been reasonably anticipated by the Board. The Apex Court took a lenient view as regards the vacancies which arose because of deaths. As a result, the action of the Electricity Board in appointing more than 62 persons was validated only to the extent of 87 vacancies and the remaining appointments were held invalid. We have also examined the departmental records and found that the names of the applicants herein were included for the purpose of filling up future vacancies which could not have been done. It was clearly mentioned that this panel shall be operative only for one year. We may also state that the vacancies available at that time were being filled up only on ad hoc basis and while giving appointment to the selected candidates it was specifically mentioned that their ad hoc appointment will not confer on them any right of regularisation or benefits such as seniority etc. on a future date.

*h. y. m.*

8. For the foregoing reasons we find no merit in this O.A. The O.A. is accordingly dismissed. The applicants may, if so advised, give their willingness to participate in the limited departmental examination afresh and if they do so within one month from the date of receipt of a copy of this order, the respondents shall not reject their request for being allowed to participate in the examination on the ground of delay.

9. With the above direction, this O.A. is disposed of, leaving the parties to bear their own costs.

  
(S.P. Biswas)  
Member (A)

  
(T.N. Bhat)  
Member (A)  
28.5.1998

na