केन्द्रीय
Cen

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL,PRINCIPAL BENCH
NEW DELHI

O.A. No.1794 of 1994 decided on 7.9.1999

Name of Applicant : Smt. Krishna Bhatia

By Advocate : Shri G.D.Gupta

Versus

Name of respondent/s Govt. of NCTD and another

By Advocate : Shri Arun Bhardwaj through proxy counsel Shri Anil Singal.

Corum:

Hon'ble Mr. Justice D.N.Baruah,Vice Chairman
Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes

2. Whether to be circulated to the other Benches of the Tribunal. -No

(N. Sahu)
Member (Admnv)

Central Administrative Tribunal, Principal Bench

Original Application No.1794 of 1994

New Delhi, this the 7th day of ~~August~~ September, 1999

Hon'ble Mr.Justice D.N.Baruah, Vice Chairman
Hon'ble Mr.N.Sahu, Member (Admnv)

Smt. Krishna Bhatia, wife of Shri H.K.Bhatia, Resident of A-69, Vivek Vihar Phase II, Delhi- 110032 - Applicant

(By Advocate - Shri G.D.Gupta)

Versus

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

2. The Director of Education, Government of National Capital Territory of Delhi, Old Secretariat, Delhi-110054 - Respondents

(By Advocate Shri Arun Bhardwaj through proxy counsel Shri Anil Singal)

O R D E R

By Mr.N.Sahu, Member(Admnv) -

The applicant has challenged in this O.A. an order dated 9.2.1994 (Annexure-A-6) by which her representation for appointment to the post of Post Graduate Teacher (Economics) [in short 'PGT (Eco)'] was rejected. The applicant has prayed that the respondents be directed to appoint her as PGT (Eco) (Female) with effect from the due date on the basis of the panel for the post of PGT (Eco) (Female) prepared on 26th July, 1993 with all consequential benefits.

2. The brief relevant facts are as follows :- In the year 1983 applications were invited by the Directorate of Education after circulating vacancies through the Employment Exchange. The applicant's name

was sponsored by the Employment Exchange. She appeared for an interview on 24.7.1983 for the post of PGT (Eco) (Female). A panel of 9 for the said post was prepared on 26.7.1983 with six general female candidates and three reserved candidates. The name of the applicant was shown at serial no.6.

3. The respondents admit in the counter that the panel would have to remain valid till the selected candidates were given appointment. However, the 1984 panels were cancelled as per the letter of the Delhi Administration No. F.2 (7)/84- S.II dated 9.11.1994. As a result while some others in the panel were appointed but when the turn came the applicant could not be appointed. Our attention was drawn to Annexure R-1 dated 22.11.1984 which reiterated the earlier instructions of the Cabinet Secretariat dated 30.12.1976. The instructions are that the panel drawn up by the DPC would normally be valid for one year and in any case it should cease to be in force on the expiry of a period of one year and six months or when a fresh panel is prepared, whichever is earlier. These instructions were applicable only to the panels drawn up by a DPC and not panels drawn on the basis of open competition.

4. The applicant drew our attention to the judgment of the Supreme Court in the case of **Union of India and others** Vs. **Ishwar Singh Khatri & others,** Civil Appeal No. 1900 of 1987 decided on 4.8.1989 wherein it was held that the selected candidates have a right to get appointment till the panels are

exhausted. On the basis of this order the applicant submitted a representation on 15.9.1989. She did not receive any reply. She thereafter submitted representations dated 14.10.1989, 4.11.1989 and 8.12.1989. She also averred in the OA that she met the authorities in September, 1989 and she was told that some other cases about PGTs were pending in the Court and her case would be decided in accordance with the decisions in those pending cases. It is necessary to mention here that the respondents denied this averment at para 11 about her meeting in the office orally and eliciting information about pending cases.

5. Thereafter the applicant referred to the decision of the Tribunal in the case of **Shri Karan Singh** Vs. **Delhi Administration & another**, OA.No. 1462 of 1990 decided on 8.1.1993 pertaining to the PGT (Eco) panel in the Male category. Shri Karan Singh approached the Tribunal in the year 1990 as a similarly situated colleague seeking the benefit as the one in the case of **Smt. Nirmal Kumari** Vs. **Delhi Administration** in OA No. 363 of 1987 decided on 30.10.1988. At para 5 of that order the Tribunal noted that the request of Karan Singh to extend the benefit of judgment of Smt.Nirmal Kumari's case was considered by the respondents and rejected on 23.5.1990 and accordingly the Bench held that the application was not barred by time. In that judgment a reference was made to the minutes of the meeting of the Staff Selection Board held on 18th and 19th April, 1984 wherein the vacancies for 1984-85 were held to be not amenable to a correct assessment and, therefore,

the size of the panel was made in accordance with the vacancies of earlier years and subsequent vacancies. Thereafter, the Tribunal relied on the OM of the DOPT dated 8.2.1982. Reliance was placed also on the decision of the Tribunal in the case of **Ishwar Singh Khatri and others** Vs. **Delhi Administration**, ATR 1987 (1) CAT 502 as well as the decision of the Supreme Court in **Prem Prakash** Vs. **Union of India**, AIR 1984 SC 1831. Since Shri Karan Singh had been empanelled it was held in his case (supra) ~~case~~ that he had a right to be appointed and that he could not be by-passed.

6. That apart the applicant referred to the circular of the Directorate of Education dated 18.7.1991 (Annexure - A-4) in regard to preparation of service particulars of PGTs (Female) promoted from 1.5.1970 to 31.3.1988. In the extract from statement showing the service particulars of PGTs appointed during the academic year 1970-71 onwards, the name of the applicant figured at serial no.1445 and the applicant was shown to have been empanelled as a PGT Economics (Female) on 26.7.1983. She filed a representation dated 22.11.1993 (Annexure -A-5) to the respondents seeking appointment to the post of PGT Economics with consequential benefits. But by an order dated 9.2.1994 (Annexure-A-6) the representation was rejected with the following observations :- ".....I am directed to inform you that the case of Smt. Krishna Bhatia was examined on merits and rejected". She thereafter filed another

representation dated 28.2.1994 (Annexure-A-7) and sought the reasons for rejection. There was no further response to that letter.

7. The respondents submit that the OA is barred by limitation because the recruitment took place in 1984. The panel was prepared during 1983-84. Thereafter the panels prepared in 1984 were cancelled vide order dated 9.11.1984 and fresh recruitments have taken place in 1986, 1987 and also in 1992. The applicant did not approach the Court either in 1984 or 1986-87. The respondents contend that the circular of 1984 was governing the recruitment procedure and, therefore, the life of the panel as prescribed in the circular of 1984 would operate and not as per the circular of 1986. The respondents cited the decision of **S.S.Rathor** Vs. **State of M.P.**, AIR 1990 SC 10 in support of their ground on limitation. The second important ground raised by the respondents is that subsequent judgments and decisions of the Courts could not give any cause of action for filing a petition in the Court. It was pointed out by the learned counsel for the respondents that this application was filed a decade later and, therefore, it has become a stale claim. It is contended that the representation might have been rejected in 1994 on merits but that representation itself was filed very late and rejection either peremptorily or on merits would have no significance. The respondents thereafter referred to the decision of the Supreme Court in the case of **Bhoop Singh** Vs. **Union of India and others**, 1992 (2) SLJ 103 in support of their stand that this OA is

barred by limitation.

8. The learned counsel for the applicant cited other cases wherein the persons empanelled in the same panel were directed by the Courts for giving appointments. The counsel also brought to our notice the order dated 8.9.1994 passed by the Tribunal in this case to keep one post of PGT (Eco) (Female) unfilled.

9. The applicant's counsel also cited the decision of the Delhi High Court in **Pratap Singh and others** Vs. **Shish Pal and another**, 1994 Rajdhani Law Reporter 72 wherein Order 8 Rule 3 of CPC was referred to. The High Court held that "mere taking the plea that he was not the registered owner of the vehicle would not lead to any inference in his favour that he has also taken the plea that he was not the actual owner of the vehicle". This refers to the mere denial, without more, in the counter affidavit of the applicant's meeting with some members of the staff in the Office at para 11 of the counter.

10. The learned counsel for the applicant cited the decision of the Supreme Court in the case of **Prem Devi** Vs. **Delhi Administration**, I (1989) ATLT (SC) 730. The learned counsel laid emphasis on para 4 of the observations of the Hon'ble Supreme Court. The said observations are extracted herein -

> "The facts as are not in dispute the case of one of the employee having been decided by this Court it was expected without resorting to any of the methods the other employees identically placed would have been given the same benefit which would have avoided not only unnecessary litigation but also of the

waste of time and the movement of files and papers which only waste public time."

11. The learned counsel for the applicant argued that the orders of the Tribunal in Ishwar Singh Khatri (supra) and Smt. Nirmal Kumari (supra) were followed in the case of Shri Karan Singh (supra). The view taken is that the applicants, in those cases, having been empanelled had the right to be appointed and could not be by-passed. Those were cases also where the posts had been kept vacant by virtue of the interim orders passed by the Tribunal. He, therefore, contends that the applicant in the instant case should be given the same benefit.

12. We are unable to agree with this contention of the learned counsel for the applicant. Before we come to the specific facts, we shall briefly state the law laid down by the Apex Court on the question of the right of an empanelled candidate. We have the decision of the Constitution Bench in **Shankarsan Dash** Vs. **Union of India**, (1991) 3 SCC 47 = 1991 SCC(L&S)800 = (1991) 17 ATC 95 wherein it was held that -

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the

vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

13. The matter has come up again before a three Judge Bench of the Supreme Court in **Union of India** Vs. **K.V.Vijeesh**, (1996) 3 SCC 139: 1996 SCC (L&S) 683 That was also a case where the respondents applied and were selected and empanelled. The Railway Recruitment Board invited applications for 308 vacancies for the post of Diesel Assistants and the respondent's rank in that case was 172. Yet he had not been given appointment but persons lower in rank were appointed. The correctness of respondent's rank as 172 was questioned. The Railway took a policy decision to reduce the number of vacancies and consequently a certain number of bottom persons were removed from the select list and the remaining selectees were given appointment according to their comparative merits. The CAT observed that those of the selectees who could not be accommodated as a result of reduction in number of vacancies could be employed subsequently when the vacancies arose. The Tribunal relied on the decision of the Supreme Court in **Prem Prakash** Vs. **Union of India**, AIR 1984 SC 1831= 1984 Supp SCC 687 in coming to this conclusion. The essence of that decision is as under :-

"Once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of the vacancies

undergoes a change, after his name has been included in the list of selected candidates."

14. The Supreme Court held that the reliance on the case of Prem Prakash (supra) was wholly misplaced because in the case of Prem Prakash **the notification regarding the recruitment specifically provided that once a person was declared successful according to the merit list of selected candidates the appointing authority had the responsibility to appoint him even if the number of vacancies had undergone a change after his name had been included in the list of selected candidates**(emphasis supplied by us). The notification further provided that where selected candidates were awaiting appointment recruitment should either be postponed till all the selected candidates were accommodated or, alternatively, intake for the next recruitment be reduced by the number of candidates awaiting appointment. It was in the background of this notification that the case of Prem Prakash was decided. The Supreme Court in K.V.Vijeesh case reversed the order of the CAT and held that the law on the subject has been laid down in Shankarsan Dash's case (supra). Thus, Prem Prakash's case (supra) stood distinguished and was only valid in terms of the notification on which the decision was based. There is no such notification in the present case.

15. A similar view had been taken by the Supreme Court in the case of **State of Bihar** Vs. **Mohd. Kalimuddin**, (1996) 2 SCC 7. In that case an embargo was placed by the State Government on making appointments from the panel with a view to revise the

reservation policy. The Supreme Court justified the right of the Government to do so. Their Lordships held as under :-

> "Even if vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire an indefeasible right to be appointed, unless the relevant rules indicate to the contrary. It is indeed expected of the State to act bona fide and for valid reasons in refusing to make the appointments after the selection process has been gone through. It is not possible to subscribe to the view that the State had acted arbitrarily and irrationally in refusing to make appointments from the select list. In the first place, the select list had lapsed on the expiry of one year. Secondly, the process of appointment was halted as the reservation policy was intended to be amended or modified. A decision to adopt a different policy with respect to the reserved vacancies can be a justifiable cause for halting further appointments from the panel or select list and such an action cannot be condemned on grounds of arbitrariness and/or illegal discrimination. In the instant case the Government was desirous of amending or modifying the reservation policy and, therefore, it took a decision to suspend all further appointments from existing panels or select lists. The ultimate out come of that exercise is not fully brought out on record but it is obvious that the State Government was not acting mala fide and merely with a view to denying appointment to the respondents herein. Merely because notwithstanding the availability of trained personnel the State Government was inclined to change the rules in that behalf does not appear to be a valid ground for contending that the Government had acted malafide."

16. In a similar case the Supreme Court in the case of **State of Haryana** Vs. **Ajay Walia**, (1997) 6 SCC 255 has laid down as under :-

> "When requisition was made for recruitment of only four candidates, the Services Selection Board had no power and jurisdiction to select as many as 28 candidates and to recommend their names to various departments for appointment. In the circumstances, when the Superintending Engineer of a particular Circle had not

(19)

requisitioned appointment of that many candidates, he rightly did not accede to and returned the list to the Board. In these circumstances, the direction asking the Superintending Engineer to appoint the respondent, issued by the High Court is obviously illegal. **Moreover, the selection was made in 1982 and writ petition came to be filed in 1995, i.e. after an inordinate delay. Representations repeatedly given to various authorities do not furnish a fresh cause of action to file a writ petition.** The High Court was wholly unjustified to have entertained and allowed the writ petition." (emphasis supplied by us)

17. The fact remained that at least two fresh recruitments had taken subsequently once in 1986-87 and the next in 1992. The respondents in this case are on record that they have scraped the panels of 1984. Once a panel is scraped and fresh recruitments have taken place, the panel has no validity. It is also very clear that when the recruitment process began in 1983-84, the real life of the panel was one year subsequently extendable by six months as per the then operative and existing instructions. Therefore, it cannot be held that the panel of 1984 is perennially valid for all time to come.

18. The next ground is of limitation. We are satisfied that the cause of action arose in 1984 when several persons in the panel were appointed, in 1986 when the panel was scrapped and when fresh recruitment took place. The applicant comes to this Court very late on 10.8.1994. As mentioned above, the applicant made three representations in 1989 and since he did not receive any reply she had waited for so long and again started making representations subsequently. Successive judgments and decisions of the Court will not give any cause of action for filing an application

in this Court. As observed above, the Hon'ble Supreme Court in the case of Ajay Walia (supra) has held that repeated representations given to various authorities do not furnish a fresh cause of action to file a writ petition.

19. To sum up, we hold that the filing of the OA is delayed and suffers from laches. It is also barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Inordinate and unexplained delay or laches is by itself a ground to refuse relief irrespective of the merits of the claim. The decision in another case does not give right for fresh lease of time is borne by the decision of Constitution Bench in **M/s.Tirlokchand Motichand and others** Vs. **H.B. Munshi, Commissioner of Sales Tax and another**, AIR 1970 SC 898. Majority decision is as under :-

> "that the petitioner could not take advantage of the Supreme Court decision in the Gujarat case after a lapse of a number of years. His contention that the ground on which the statute was struck down was not within his knowledge and therefore he could not pursue it in this Court would not stand, since the law will presume that he knew the exact ground of unconstitutionality. It was his duty to have brought the matter before the Supreme Court for consideration."

20. In **Administrator of Union Territory of Daman and Diu and others** Vs. **R.D.Valand**, 1995 (Supp) 4 SCC 593 the facts before the Supreme Court were that the applicant was reverted from the post of Section Officer but again promoted to the post in the year 1979 w.e.f. 28.9.72. He made a representation in the year 1985 for promotion to the post of Assistant Engineer w.e.f. August,1977 when some persons junior to him had been promoted. This was rejected as also

subsequent representations. In such circumstances the application filed by him before the CAT in 1990 was held to be time barred.

21. The important question in this OA is that the applicant's representation dated 22.11.1993 was rejected on merits on 9.2.1994. We emphasise that the applicant had made similar representations four to five times in 1989. They were presumably unanswered. The question is whether if the representation was rejected on merits in 1994 would it extend limitation by giving rise to a cause of action? Our view is that it would not. If aggrieved Government servant has already allowed his remedy to become time barred he cannot get a fresh lease of life merely by filing repeated or successive representations. Such representations not provided for in the service rules i.e. non-statutory representations cannot have the effect of extending the period of limitation. In S.S.Rathor (supra) it was held that the right to sue first accrued not when the original adverse order was passed but when that order was finally disposed of by a higher authority on appeal or on representation made by the aggrieved employee in exhaustion of statutory remedy and where no such final order was made the right to sue accrued on the expiry of six months from the date of appeal or representation. In this case there is no statutory remedy. The applicant should have filed a representation when the panel was not acted upon although vacancies existed in the year 1984. Having filed the representations in 1989 and having not got an answer even after six months, there

was another cause of action which he did not avail of. No fresh right has accrued to file an OA simply because the Government disposed of a subsequent representation filed 10 years after the cause of action by adding the word 'on merits'. Whatever may be the law under the Limitation Act, we are governed by the law under the Administrative Tribunals Act, 1985. Section 20 and Section 21 of the AT Act are a self-contained code and within the strict terms of these two provisions we are satisfied that this case is hopelessly barred by limitation. On equity also, we cannot subscribe to the view that the right to file an OA will extend to any length of time. On the basis of a court judgment some other affected persons in the panel, who have not been appointed yet might file another OA in the 21st century and claim his/her right to the 1984 panel. In our view this is totally opposed to the decision of the Hon'ble Supreme Court in Bhoop Singh's case (supra). On merits it offends common sense to say that once a panel is scrapped and fresh recruitments are held, people empanelled in the scrapped panel can claim a right to be appointed. This is contrary to the law laid down by the Hon'ble Supreme Court as cited above.

22. Shri Gupta, learned counsel for the applicant questioned the right of the Government to scrap the panel although in 1984 the promise was made to exhaust the panel. In **Govt. of Orissa** Vs. **Haraprasad Das**, 1998 (1) SCC 487 there were some vacant posts of Copyholders and candidates were empanelled and recommended. Reversing the decision of

the Tribunal the Supreme Court held that mere empanelment does not give the candidate a right to be appointed. It was further held that "if the Government decides not to make further appointments for a valid reason, it cannot be said that it has acted arbitrarily by not appointing those whose names were included in the selection list. To fill up or not to fill up a post, is a policy decision and unless it is shown to be arbitrary, it is not open to the Administrative Tribunal to interfere with such a decision". This decision of the Supreme Court is a direct authority which supports the decision of the Government not to appoint anybody from 1984 panel after it was scrapped and fresh recruitments were held. That is an administrative policy decision which cannot be questioned. We do not want to comment on the decision of this Tribunal in other cases as explained above. Those decisions are based on the Supreme Court's decision in Prem Prakash (supra). As explained by the Constitution Bench the decision in Prem Prakash is on its peculiar facts, namely, the open promise given in the notification itself to exhaust the panel. Such a situation does not exist in this case. Even otherwise the Supreme Court has held in Haraprasad's case (supra) that a subsequent change of mind by the Government for valid reasons is a policy decision and can not be questioned. The applicant could have appeared in the fresh recruitment three times conducted after 1984, in 1986, 1987 and 1992. She cannot hang on to a scrapped panel for enforcement of her right a decade later. As we want to repeat: this process can go on and some other

aggrieved person may come in the next millenium for his/her right. This cannot be defended either on equity or on law or on merits.

23. For the above reasons,the O.A. is dismissed both on merits as well as on limitation.

(N. Sahu)
Member(Admnv)

(D.N.Baruah)
Vice Chairman

rkv.