

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

OA No.556/88, date of decision: 22-11-93

Hon'ble Shri C.J. Roy, Member(J)  
Hon'ble Shri P.T.Thiruvengadam, Member (A)

1. Shri Yakoob Ahmed  
s/o Shri Lal Mohd.  
Village & PO Kapasia, Aligarh-204215 ..
2. Shri Vinod Kumar Sharma  
s/o Shri Raghubir Parshad Sharma  
Village Basain, Post Basgoi, Dt. Aligarh
3. Shri Anis Ahmed  
s/o Shri Abdur Rashid, Ganj No.2, Bettiah, West  
Champaran, Bihar
4. Shri Durginder Singh  
s/o Somvir Singh  
55B, Pocket II, Phase II  
Mayur Vihar, New Delhi .. Applicants

By Shri G.D. Gupta, Advocate

VERSUS

Union of India, through

1. Secretary  
Ministry of Water Resources  
Sharam Shakti Bhawan  
New Delhi
2. Chairman  
Central Water Commission  
Sewa Bhavan, R.K.Puram  
New Delhi
3. Superintendent Engineer  
North Eastern Investigation Circle  
Central Water Commission  
"Nuhome" Nong, Shillong .. Respondents

by Shri M.L. Verma, Counsel

ORDER

Hon'ble Shri C.J. Roy, Member(J)

The above mentioned four applicants have filed this application under Section 19 of the CAT Act, 1985 challenging the act of the respondents in not appointing them as Junior Engineer/Supervisor (Civil & Mechanical) even though their names have been included in the select panel prepared in April, 1986 and holding fresh selection without exhausting the panel prepared in April, 1986. They have also challenged the act of the respondents in not giving the applicants an opportunity of appearing in interview held for the fresh selection.

2. The undisputed facts of the case are that the applicants, holding diploma in Civil/Mechanical Engineering from Aligarh Muslim University, were appointed as Apprentices and underwent training for one year during 1985-86, in the Central Water Commission. While being there, they applied for the post of Junior Engineer in the North Eastern Investigation Circle, Shillong in response to a circular dated 14.2.86. They attended the interview at Shillong in April, 1986. They claim that their names were included at Sl.No.41, 60, 69 and 66 in the select list of 79 candidates and while offers of appointment have been issued to about 46 candidates, the applicants were not issued with the offer of appointment. They allege that fresh select panels were prepared in June, August and October, 1986 ignoring the one prepared in April, 1986. The applicants made a representation on 26.9.86 but no reply is stated to have been received by them. The applicants' claim is that without exhausting the panel prepared in April, 1986, the respondents could not have resorted to fresh selection. Hence this application.

2. The respondents have filed their counter stating that applicants were only trainees and not Central Government employees and therefore the application is not maintainable. However, they agree that the applicants' names were included in the select panel and appointment orders were issued to 43 candidates, including those belonging to SC/ST, in the order of merit and the rules governing SC/ST recruitment. They aver that the applicants were far below the merit and could not be covered. They have also raised the point of limitation.

3. The applicants have filed a rejoinder reasserting what they have stated in the OA.

4. The case of the four applicants is that without exhausting the select panel, the respondents should not have resorted to fresh selection, as per the instructions contained in Department of Personnel & Administrative Reforms' (Ministry of Home Affairs), O.M.No.22011/2/79-Estt(D) dated 8.2.1982 on the subject of "validity period of list of selected candidates prepared on the basis of direct recruitment/Departmental Competitive examination, which is reproduced below:

" The undersigned is directed to say that references are being received from time to time from Ministries/Departments enquiring as to what should be the validity period of a list of selected candidates prepared on the basis of direct recruitment or Departmental Competitive examination.

2. Normally, in the case of direct recruitment a list of selected candidates is prepared to the extent of the number of vacancies (other persons found suitable being put on a reserve list, in case some of the persons on the list of selected candidates do not become available for appointment). Similarly, in the case of Departmental Competitive Examinations, the list of selected candidates has to be based on the number of vacancies on the date of declaration of results, as the examination is competitive and selection is based on merit. A problem may arise when there is a fluctuation in the vacancies after the list of selected candidates is announced.

3. The matter has been carefully considered. Normally, recruitment whether from the open market or through a Departmental Competitive Examination should take place only when there are no candidates available from an earlier list of selected candidates. However, there is a likelihood of vacancies arising in future, in case, names of selected candidates are already available, there should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next

examination should take into account the number of persons already on the list of selected candidates awaiting appointment. Thus, there would be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies, either by the method of direct recruitment or through a Departmental Competitive Examination.

4. 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 vacancies undergoes a change, after his name has been included in the list of selected candidates. Thus, where selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting appointment should be given appointment first, before starting appointments from a fresh list from a subsequent recruitment or examination.

5. Ministry of Finance etc. are requested to bring the instructions to the notice of all the appointing authorities under them for information and guidance."

5. A case of similar nature had come up for consideration before their Lordships of Supreme Court, viz. Prem Prakash Vs. Union of India (AIR 1984 SC 1831), in which their Lordships had observed as under:

"It is clear from this Notification that if selected candidates are available from the previous list, there should either be no further recruitment until those candidates are absorbed or in the alternative vacancies which are declared for the subsequent years should take into account the number of persons who are already in the list of selected candidates who are still awaiting appointment. The notification further showed that there should be no limit on the period of validity of the list of selected candidates

the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates".

6. Besides, it is seen from the records that a similar case of Shri Ishwar Singh Khatri and Others Vs. Delhi Administration (Civil Writ No.1178/85)-T462/85 (i) ATR 1987 (i) CAT 502, was decided by a Division Bench of this Tribunal in favour of the applicants. Shri G.D. Gupta, learned counsel for the applicant also stated that the Delhi Administration had filed an SLP in which leave was granted and the Civil Appeal No.1988/87 was heard by their Lordships and their Lordships dismissed the Civil Appeal of the Union of India and others by judgement dated 4.8.1989.

7. The case of the applicants is that while issuing offers of appointment from panel, inter-se order of merit had been ignored, inasmuch as that while the applicants' names appear at Sl.No.41, 60, 69 & 66, persons appearing at Sl.No.43, 45, 46, 59, 50, 56, 71 73, 76 and 79 have already been issued offers of appointment. They also contend that further selections were held in June, August and October, 1986 and even subsequently. The respondents claim that the juniors in the panel belong to SC/ST category.

8. Shri M.L. Verma, learned counsel for the respondents states that the applicants are not appointed because their names appear far below in the merit list. We are not impressed with this argument because some more general candidates were appointed subsequently.

9. It is also relevant to mention here that the case of Smt. Nirmal Kumari & Shri Malkhan Singh Vs. Delhi Administration in OA 363/87 decided by this Tribunal on 30.10.1989, wherein it was held that "we are, therefore, of the view that the applicants having been exmpanelled had a right to be appointed and they can not be bypassed. In the circumstances, the application is allowed but there will no order as to costs. The order may be implemented within a period of three months". In this case also, reliance was made on the cases of Ishwar Singh Khatri and Others Vs. Delhi Administration and Prem Prakash Vs. Union of India, as stated supra.

10. It was then argued by the learned counsel for the respondents that as per CWC's OM No.2/1/86-Estt. IV dated 29.8.86, the Superintendent Engineers of the various circles are competent to make recruitment and the panels for this purpose are to be made by them. The impugned panel of April, 1986 was initiated by the Superintendent Engineer of NE Division Circle, Shillong, and the subsequent panel was made by him. In other words, there were no further vacancies in the circle and hence the question of non-consideration of the applications did not arise. This argument was refuted by the learned counsel for the applicants who referred to the OM of CWC No.2/2/85-Estt.(IV) (Vol.II) dated 24.3.84 as per which the various Superintendent Engineers were to prepare individual panels for onward transmission to the Commission who would interpolate all the names and prepare a combined panel. The preparation of panel of April, 1986 in which the applicants figured was based on March, 1984 instructions and unless this panel is exhausted, the decentralisation process can not commence. The applicants argue<sup>that</sup> they

should be considered against all vacancies in all regions. We find there is force in this argument.

11. It is mentioned in the rejoinder also that subsequent postings were made ignoring the claim of the applicants, which shows there are still vacancies. The applicants have stated in the preliminary objection that the case is not barred by limitation. The representation made by the Hon'ble Member of Parliament on behalf of one of the applicants herein and the reply received is not taken into consideration for the purpose of limitation. The panel was prepared in April, 1986 the applicants made several representations, the latest being 26.9.86 and they have filed this OA in March, 1988. We are not inclined to agree with the point of limitation, as stated by Shri M.L. Verma, but we are inclined to accept that it is not barred by limitation and even if it is barred by limitation, we are inclined to condone the delay, since the applicants have approached the Tribunal after waiting for a reasonable period for their appointment orders after the publication of the panel. As the names in the panel of selected candidates is not exhausted by the respondents, it can be presumed that it continues to be cause of action for the applicants. So the delay condonation is allowed.

12. We are, therefore, of the view that the applicants having been empanelled in the merit list and in view of the categorical assertion of the Hon'ble Supreme Court, as stated supra, we are fortified in coming to a conclusion that the applicants have made out a

case, we are inclined to give the following direction.

13. In the circumstances, the application is allowed and the respondents are directed to appoint the applicants to the posts for which they are empanelled, against the next available vacancies in any region, as envisaged in para 7 of CWC's OM No.2/2/85-Estt.IV (Vol.II) dated 24.3.1984. No ~~objection~~ *any*

*P. T. Thiruvengadam*  
(P.T.Thiruvengadam)  
Member (A)

*C. J. Roy*  
(C.J. Roy)  
Member (J)  
22/11/93

/tvq/