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Dt 16.9.93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.810/88

V.K. Sharma

Applicant

Vs.

Government of India
Ministry of Home Affairs

Respondents.

None for the Applicants

Shri P.P. Khurana, counsel for the Respondents..

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1. Hon'ble Mr. Justice C.J. Roy, Member (J)
 2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT (ORAL)

(Delivered by Hon'ble Mr. Justice, CJ Roy, Membere(J)

This case was listed on board yesterday. For the sake of convenience the case was adjourned for today so that the applicant or his counnsel may appear. None of them was present. This case is an old matter filed in 1988. Therefore we have chosen to hear the respondents' counsel only and perused his records and disposed of the case on merits.

2. The applicant filed this OA under Section 19 AT Act claiming relief as follows:

(i) Order quashing non selection letter No. F.1/120(14)/85 dated 22 Feb. 1988 of respondent No.2, drew a fresh selection/reserve list on the basis of merit, in proportion to the vacancies existing on 16 Jan. 1987 and vacancies likely to fall vacant in near future and issue selection letter to the applicant as per the interview conducted earlier.

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(ii) Order cancellation of DPC till candidates selected and in the reserve panel drawn afresh are appointed against actual vacancies as on 16th Jan. 1987 and vacancies likely to fall vacant in near future.

(iii) Saddle costs of this application on respondents.

(iv) Any other relief as deemed fit may also be awarded.

3. It may also be noted that the applicant has not claimed any interim relief in this case. The brief facts which led to the filing of this case, ~~are~~ that the applicant applied for the post of Labour Officer in response to UPSC advertisement (which is annexure A). The advertisement has been issued by them is for 48 posts of Labour Officer in the Deptt. of Labour, Ministry of Labour. The applicant fulfilled the eligibility for the post and therefore he responded to the advertisement. He was called for interview on 19.4.86. The applicantt claimed that he fared well in the interview. The result of the interview was declared on 16th January 1987 according to the averment of the applicant. It is claimed, in fact, that the respondent No.3 intimated about 66 vacancies to be filled up to the UPSC. It is also averred that out of the recommended candidates having received appointmentt letters only 40 have joined so far. The applicant averred that he did not receive any further communication of this result from the respondent No.2. After contacting he was assured that he will be sent a reply. The applicant

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also claimed that his name was kept on reserve list as per the existing rules but he was not given any satisfactory reply for not being selected. He claimed that his name is within the selection panel as per the number of vacancies as on 16th January 1987. The rest of the averments made in the application are not germane to the decision of the issue.

4. The respondents filed a counter stating that initially they had sent a requisition to the UPSC for filling up only 48 posts of Labour Officers. Then the respondents had sent another requisition for 66 posts taking into consideration the leave vacancies and training reserve vacancies. The thrust of the respondents is that they can increase or decrease the vacancies and that even if there are vacancies the right is with the government to fill up as many vacancies as they deem fit. The respondents therefore plead that the application be dismissed.

5. ~~After going through the records~~ we have heard Mr. P P. Khurana, counsel for the respondents, ~~and have~~ perused the records. There is also a suit notice issued by the applicant. We have also seen intimation from the UPSC to the applicant dated 22.2.88 informing him that, ".....I regret to inform you that it has not been possible to select you for the post."

6. Short point for consideration is whether the Government has a right to increase or decrease its vacancies and even in the said event whether to fill up all the posts or not. We have seen a judgment in volume

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I of 1992 of Judgment Today in Dr. P.K. Jaiswal Vs. Ms. Debi Mukherjee & Ors. decided on 7.1.1992 in which it is held by their Lordships in para 5 that,

"If the Commission issues an advertisement at the behest of the Government and pursuant thereto calls a candidate for interview, the candidate has a right to be considered for selection but not a right to be selected or to appointment to the post in question., The right to selection crystalises only after the candidate is called for interview pursuant to the advertisement. But in the instant case the question is whether the Government can withdraw the requisition sent to the Commission for initiating the process of selection because at that point of time no right had crystalied in anyone for being considered for selection. If the Govt. is at a given point of time considering the question of amending the recruitment rules with a view to providing for promotion to the post in questioin, the Government can before an advertisement is issued by the Commission and ther process of selectioon is under way request the Commission to withdraw the same till it decides on the quiewtion of amending the rules. The decision of the Government to withdraw the requisition sent to the Commission in November 1989 before the issuance of the advertisement does not interfere with any vested right of selection because that stage had yet not reached. In the instant case, that is exactly what happened. Therefore, before the appellant acquired a right to be considered for selection the Govt. had already intimated that it was examining the question of amending the recruitment rules with a view to providing for


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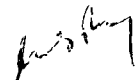
appointment by promotion to the post in question. Once this decision was communicated to the Commission before it had set the process of selection in motion by issuing an advertisement, it was not open to the Commission to insist that it will go ahead with the selection process as the extant rule provided for promotion by direct recruitment and the Govt. could amend the recruitment rules retrospectively, if it so desired, with a view to providing for appointment by promotion. Such an exercise by the Commission would be an exercise in futility, waste of public time and money and hardship to candidates who seek appointment. Whether to provide for promotion as a mode of appointment to the post in question is a matter of policy left to the Government to decide and if it desired that the selection process should be held in abeyance till the question was examined and a final decision was taken thereon, it was not open to the Commission to ignore the communication of the Government in that behalf and proceed to set the selection process in motion. We think the action of the Commission was somewhat hasty and unjustified. The appellant, therefore, cannot claim any vested right as urged by his learned counsel. Nor can the Tribunal's omission to notice that two new layers were created have a bearing on the Government's decision to place the process of selection in hibernation till a final decision is taken on the proposal to provide for proposal to provide for promotion to the post."

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7. It is noted that the applicant is eligible for the post and he was so called for the interview and having failed in the interview he had been informed on 22.2.88. Having appeared and failed in the interview now he cannot assails the non-selection as a ground for partiality. It is also a policy decision of the executive to fill up the post or keep it vacant. They cannot be interefered with ordinarily by the Tribunal. We have also fortified in the observation of the Lordship that, "When the candidate has a right to be considered he has no right to be selected for appointment to the post. It may also be noted that it is a settled law that when a notification for a post is published the government has a right to reduce or increase the number of posts in accordance with the requirement as decided by the executive. Mere fact that one appears in the interview, no right accrues to him even if he is selected and kept on panel unless a letter of appointment is issued to him in accordance with the rules. That is why we are deciding this case on this point alone.. Rest of the allegations and counter allegations are not germane to the case. We are therefore not persuaded to issue a writ in favour of the applicant as he failed to make out the case. In the result the case is dismissed.

No orders as to costs.


(B.K. Singh)
Member (A)


(C.J. Roy)
Member (J)