

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 788/86

199

~~XXXX~~No.DATE OF DECISION 12.7.1991.Shri Gopal Bhargava & Another PetitionerShri G.D. Gupta, Advocate for the Petitioner(s)

Versus


Union of India & Others RespondentShri M.L. Verma, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
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 ? ✓


(AMITAV BANERJI)
Chairman
12.7.91.

(8)

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PRINCIPAL BENCH
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DATE OF DECISION: 12.7.1991.

SHRI GOPAL BHARGAVA & ANOTHER APPLICANTS

VERSUS

UNION OF INDIA & OTHERS RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS

SHRI G.D. GUPTA, COUNSEL

FOR THE RESPONDENTS


SHRI M.L. VERMA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

Shri Gopal Bhargava and Shri P.C. Bhagi, working in the Town and Country Planning Organisation (TCPO), Ministry of Urban Development, Government of India, have filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging inter alia the validity of the seniority list of Investigators, as issued vide memorandum dated 12th November, 1984, showing the applicants junior to Shri K.K. Tandon, arrayed in the application as Respondent No.4, even though the applicants had earlier been assigned seniority above him, vide seniority list issued under memorandum dated 31st January, 1984. They are also aggrieved by the rejection of their representation by the respondents vide memorandum dated 22.8.1985.

2. The facts of the case are that the applicant No.1 and applicant No.2 ^{were} appointed as Investigators on 16.2.1965 and 6.2.1965 respectively after they were selected in the interviews held on 28th and 29th January, 1965. They were among the candidates sponsored by the Employment Exchange.



Another selection was held earlier on 5.12.1964 and one Shri U.C. Saxena was selected and appointed as Investigator on 23.12.1964 from among the 15 names sponsored by the Employment Exchange. In the meantime, some more vacancies in the grade of Investigators became available and the Employment Exchange was called upon to sponsor more names. Interviews were held on 28th and 29th January, 1965. Both the applicants were selected in these interviews and their names were placed at S.No.1 and 2 of the select list. Later two more candidates, viz. S/Shri K.S. Venkataramani (since expired) and Shri K.K. Tandon who were kept in the wait list on the basis of selection held on 5.12.1964 were offered appointments and they joined on 9.5.1965 and 7.5.1965 respectively.

The first seniority list of the Investigators were circulated by Respondent No.2 vide memorandum dated 3rd August, 1968 (1968 seniority list for short) in which Shri U.C. Saxena was shown at S.No.12 and the name of the applicants were shown immediately below him at S.No. 13 and 14. Three other appointees, S/Shri A.L. Narula, H.L. Poddar and K.K. Tandon were shown at S.No. 15,16 and 17 respectively. This indicated that the selection held on 5.12.1964 was treated as separate from the selection held on 28th and 29th January, 1965. Thereafter, another provisional seniority list of investigators as on 28.2.1970 was circulated vide memorandum dated 5th March, 1970. In this seniority list, Shri K.K. Tandon, who was at S.No. 17 of the 1968 seniority list was shown senior to the applicants who are at S.No. 13 and 14 of that seniority list. The disturbance in the 1968 seniority provoked applicant No.2 to make a representation on 18th March, 1970 when he was advised vide memorandum dated 16.4.1970 by the

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respondents that Shri Tandon (respondent No.4) has been assigned higher seniority as he was selected by the Selection Committee in the interviews held on 5.12.1964. Since he was appointed on the basis of earlier selection he has been assigned higher seniority correctly. (Annexure-D). This, however, did not satisfy the applicants as Shri K.K. Tandon had not been appointed along with Shri U.C. Saxena, who had been selected and appointed on the basis of 5.12.1964 selection. Hence, further representations were made against the finalised seniority list as on 1.7.1970 circulated vide memorandum dated 28th July, 1970, but the same were rejected first in September, 1971 and later in February, 1972. The applicant No.2 further persisted and the matter came to be referred to the Department of Personnel and the Ministry of Law, which ultimately resulted in issue of provisional seniority list vide memorandum dated 31st January, 1984 (January list) restoring the applicants to the seniority assigned in the 1968 list. The said memorandum stipulated that "the seniority of S/Shri Gopal Bhargava, P.C. Bhagi and K.K. Tandon in the grade of Research Assistants has been refixed in accordance with the verdict of the Department of Personnel and Administrative Reforms and the Law Ministry on the seniority of the grade of Investigators."

Consequently, Respondent No.4, who had been promoted as Assistant Economist on adhoc basis w.e.f. 1st January, 1984 was reverted keeping in view the fresh seniority assigned vide memorandum dated 31.1.1984. The applicant No.1, who was the seniormost Investigator after Shri U.C. Saxena was appointed as Assistant Economist w.e.f. 1.2.1984 in the scale of Rs. 650-1200. The matter, however, did not end here and the respondents issued another revised seniority list on 12.11.1984 (November




seniority list) when respondent No.4 was again shown senior to the applicants herein without assigning any reasons. This gave rise to another set of representations from the affected persons. These representations were rejected by the respondents on 22.8.1985 advising Shri P.C. Bhagi, then working as Research Assistant that:

"the matter relating to the fixation of seniority in the grade of Investigator in the TCPO was examined in depth by the Department of Personnel and Administrative Reforms in consultation with the Ministry of Law and it was decided that the persons selected on the basis of selection held in 1964 should rank senior to those selected in 1965 and those two selections could not be combined and treated as one for the following reasons:

i) If the intention was to have a common selection, the first select list itself should have been scrapped and all the persons interviewed earlier and those called for subsequent interview should have been assessed together.

ii) If both the interviews pertained to the same selection, Shri P.C. Bhagi, who had obtained higher marks should have been placed even above Shri U.C. Saxena, which was not the case.

iii) If it is the case that the interviews held on two different dates relates to the same selection, the representation made by Shri K.K. Tandon in the year 1969 to the Works and Housing Ministry should have been rejected, whereas the same was considered and he was given seniority above the five persons selected in the interviews held in January, 1965.



In view of the position explained above, Ministry of Works and Housing have decided not to re-open the seniority case again and Shri Bhagi's representations in this regard are rejected.

It is made clear to Shri Bhagi that no further representation in the matter of seniority since decided will be entertained."

The above detailed and final order however failed to give ~~quietus~~ to the seniority issue and further representations were made by the applicants. They too were rejected vide memorandum dated 19.3.1986. This brought the applicants to the Tribunal to seek redressal of their grievance.

3. By way of relief the applicants have prayed that the impugned seniority list of 12th November, 1984 and the memorandum dated 22.8.1985 and 19.3.1986 rejecting the representations of the applicants be declared arbitrary illegal, ineffective and void, and accordingly set aside.

4. The respondents in their written statement have raised the preliminary objection that the application is not maintainable as the applicants are challenging the selections made in December, 1964 and January, 1965. which is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. On merits they submit that Respondent No.2 placed a requisition dated 14.7.1964 on the Employment Exchange for one post of Investigator. On 1.8.1964 three more posts were notified to the Exchange. In response the Employment Exchange sponsored 15 candidates in batches. On 13.11.1964 one more vacancy was reported to the Exchange with the request to sponsor more candidates for filling up of the vacancies. In response the Employment Exchange asked the respondents to submit a requisition in the prescribed proforma which was done on



25.11.1964. They submit that the candidates nominated by the Exchange in respnse to first requisition were interviewed on 5.12.1964, when the Selection Committee drew up a panel of three candidates in the following order:

1. Shri U.C. Saxena 50 marks
2. Shri K.S. Venkataramani 49 marks
3. Shri K.K. Tandon 48 marks

The Selection Committee further decided that Shri U.C. Saxena may be appointed forthwith and the other two may be kept on the wait list to be considered along with those who may be found suitable in the next selection. Accordingly, the first candidate in the panel Shri Saxena was offered the post and he joined the organisation on 23.12.1964. Subsequently, 93 candidates nominated by the Exchange were interviewed on 28th and 29th January, 1965 and the following candidates were selected:

Name	Marks obtained
1. Shri Gopal Bhargava	55 marks
2. Shri P.C. Bhagi	60 makrs
3. Shri Prabhakar Sharma	49 marks
4. Shri A.L. Narula	49 marks
5. Shri H.L. Poddar	49 marks
6. Shri V.V. Ramachandran	46 marks
7. Shri D.P. Sharma	46 marks
8. Shri Anand Prakash	45 marks

The Selection Committee then considered the 2 wait list candidates viz. S/Shri K.S. Venkataramani and K.K. Tandon and decided to place them in the select list as prepared above in the following order of merit:

1. Shri Gopal Bhargava
2. Shri P.C. Bhagi
3. Shri Prabhakar Sharma
4. Shri A.L. Narula
5. Shri H.L. Poddar
6. Shri K.S. Venkataramani

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7. Shri K.K. Tandon
8. Shri V.V. Ramachandran
9. Shri S.D.P. Sharma
10. Shri Anand Prakash

The following persons were appointed from the above panel as Investigators from the dates indicated against each:

- | | |
|----------------------------|-------------|
| 1. Shri Gopal Bhargava | 16.2.1965 |
| 2. Shri P.C. Bhagi | 6.2.65 |
| 3. Shri A.L. Narula | 8.2.65(AN) |
| 4. Shri H.L. Poddar | 23.4.65(AN) |
| 5. Shri K.S. Venkataramani | 9.5.65 |
| 6. Shri K.K. Tandon | 17.5.65(AN) |

The respondents submit that Shri Tandon pressed his case for assignment of seniority based on the earlier selection held on 5.12.1964 and represented that he should be placed senior to the applicants who were selected in the subsequent selection held on 28th and 29th January, 1965. After considering the matter the seniority of the applicants was revised and they were shown junior to Shri Tandon in the finalised seniority list circulated in July, 1970. This decision made the applicants represent against the July, 1970 seniority list and the case was considered in consultation with the Department of Personnel and Ministry of Law. This resulted in the revision of the seniority list in January, 1984 placing Shri Tandon junior to the applicant as was in 1968 seniority list. Consequently their seniority in the next higher grade of Research Assistant was also revised. Now it was the turn of Shri Tandon to represent against the January, 1984 seniority list and the matter is again said to have gone to Department of Personnel and the Law Ministry. The seniority list was again reopened and revised in consultation with the Department of Personnel and Ministry of Law for the reasons indicated in memorandum dated 22.8.1985 extracted above.

Shri G.D. Gupta, learned counsel for the appli-

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cants submitted that the interview held on 5.12.1964 was to fill up one vacancy and therefore, Shri Venkataramani and Shri K.K. Tandon cannot be considered as having been selected in the first selection as the said vacancy was filled by Shri U.C. Saxena. If, however, the selections held on 5.12.1964 and 28th & 29th January, 1965 are to be considered as one, then the Applicant No.1, Shri Gopal Bhargava had scored the highest marks and should have been assigned the top position in the select list. He, therefore, repudiated the reasons given in Memorandum dated 22.8.1985 for assigning the applicants seniority below Shri K.K. Tandon (Shri K.S. Venktaramani having already expired).

6. The thrust of the argument of Shri M.L. Verma, learned counsel for the official respondents is that the application is not maintainable as it seeks reliefs against the selection held as early as in 1964 and 1965.

We are, however, not impressed by this argument. The cause of action arose with the issue of seniority list on 12th November, 1984 and rejection of the representations vide memorandum dated 22.8.1985. It is not the selections held on 5th December, 1964 and 28th and 29th January, 1965 which are under challenge.

7. As the facts of the case were found to be obfuscated in the pleadings and nor did they emerge in the argument of the learned counsel, we considered it proper to direct the respondents to produce the necessary record with a view to determine whether selections held on 5.12.1964 and later on 28th and 29th January, 1965 constituted one selection or two separate selections. On perusal of the relevant records produced by Shri M.L. Verma, we find that the respondents placed a requisition

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tion on the Employment Exchange on 14/16.7.1964 for filling up vacancy in the unreserved category. In response the Employment Exchange sponsored six names vide letter dated 12.8.1964 and six additional names vide letter dated 17.8.1964 and another three names against the above requestion for the vacancy vide their letter dated 25.9.1964. Thus in all 15 names were sponsored by the Employment Exchange. As two names were found to be repeated in the three lists sent by the Employment Exchange 13 candidates were called for interview scheduled to be held on 28.11.1964 vide letter of even number dated 21.11.1964. Actually, 7 candidates turned up and they were interviewed by the Selection Committee on 5.12.1964. In its minutes the Selection Committee recorded that "the following three candidates were considered suitable for appointment in the order of merit:

S/Shri

1. U.C. Saxena
2. K.S. Venkataramani
3. K.K. Tandon

As we have already asked more names from the Employment Exchange and would be considering more candidates for appointment. It was decided by the Selection Committee that Shri U.C. Saxena may be appointed forthwith and the other two may be kept on the waiting list, to be considered alongwith those who may be found suitable in the next selection."

The above minutes make it abundantly clear that Shri U.C. Saxena alone was selected for appointment on the basis of selection held on 5.12.1964 and the other two candidates were kept on the wait list, to be considered along with those who may be found suitable

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in the next selection. The wait listed candidates had no right to appointment on the basis of their earlier selection held on 5.12.1964 as they were to be evaluated along with others to be interviewed for additional vacancies. Right to appointment in their case would arise only after they had been considered along with those who may be found suitable in the next selection.

The respondents notified 4 general vacancies and 1 reserved vacancy to the Employment Exchange vide requisition dated 25.11.1964. In response the respondents received 93 names from the Employment Exchange to whom interview letters were issued on 18.1.1965 and the interviews were held on 28th and 29th January, 1965. The minutes of the Selection Committee are reproduced below:-

"There were six vacancies for the post of Investigator, out of which one was reserved for Sch. Caste. 13 candidates sponsored by the Employment Exchange were invited for interview on 5.12.1964 (List on pages 81-83/Cor.). Those ticked in the list actually turned up for interview. The following three candidates were considered for appointment in the order of merit:-

- 1) Shri U.C. Saxena
- 2) Shri K.S. Venkatramani
- 3) Shri K.K. Tandon

It was decided to appoint Shri Saxena immediately and to consider the other two candidates along with further candidates to be sponsored by the Employment Exchange and to be interviewed later. Shri Saxena was accordingly offered the appointment and appointed w.e.f. 23.12.64.

Further lists of candidates were received from the Employment Exchange and 93 candidates were invited for interview on 28th and 29th January, 1965 (please see lists on pages 149-162/Cor.) Those

ticked turned.

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The following candidates were considered suitable out of the batches interviewed on the 28th and 29th January, 1965:

- 1) Shri Gopal Bhargava
- 2) Shri P.C. Bhagi
- 3) Shri Prabhakar Sharma
- 4) Shri A.L. Narula
- 5) Shri H.L. Poddar
- 6) Shri V.V. Ramachandran
- 7) Shri S.D.P. Sharma
- 8) Shri Anand Prakash

It was decided by the Selection Committee to place the candidates including S/Shri K.S. Venkatarmani and K.K. Tandon, selected in the interview on 5.12.64 in the following order of merit:-

- 1) Shri Gopal Bhargava
- 2) Shri P.C. Bhagi
- 3) Shri Prabhakar Sharma
- 4) Shri A.L. Narula
- 5) Shri H.L. Poddar
- 6) Shri K.S. Venkatramani (since expired)
- 7) Shri K.K. Tandon
- 8) Shri V.V. Ramachandran
- 9) Shri S.D.P. Sharma
- 10) Shri Anand Prakash

There were five Sch. Caste candidates who were called for interview, but only two, namely, Shri Ajit Singh and Kumari K. Bharthy turned up. They could not get even 40% marks in the interview and were not considered fit for appointment.

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It was decided to offer appointments to the first five candidates against the existing vacancies including one reserved for Sch. Caste which could be adjusted later whenever a suitable Sch. Caste candidate becomes available. The other five candidates will remain on the waiting list and will be offered appointments in case any of the first five candidates refuses the offer or if any more vacancies become available."

There is no ambiguity that two separate requisitions were placed on the Employment Exchange and that the Candidates sponsored against the first requisition were interviewed on 5.12.1964 and names received against the second requisition were interviewed on 28th and 29th January, 1964. It is also apparent that Shri K.S. Venkataramani and Shri K.K. Tandon were not selected against the first requisition. They were to be considered along with other candidates to be sponsored by the Employment Exchange and to be interviewed later. They cannot be, therefore, deemed to have been selected against the first selection held on 5.12.1964. Accordingly their names were interpolated according to their performance in the interview held on 5.12.1964 in the select list prepared on the basis of interview held on 28th and 29th January, 1965. The fact that they were kept on the wait list on the basis of selection held on 5.12.64 but were to be considered along with further candidates sponsored by the Employment Exchange against the second requisition does not give them any right to claim seniority with reference to their earlier selection. In fact right to appointment accrues to them only after they find a place in the merit list prepared on 29th January, 1965. Correctly speaking, they should have been subjected

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the interview afresh along with the others and evaluated by the Selection Committee on 28th and 29th January, 1965. Their interpolation on the basis of their performance in the interview held on 5.12.1964 was inappropriate.

A view can be taken that the Selection Committee in accordance with the minutes extracted in paragraph 7 above considered the process of selection as one commencing from 5.12.1964 and ending with the selections on 28th & 29th January, 1965. This argument is fallacious inasmuch as the Selection Committee did not choose to incorporate the name of Shri U.C. Saxena in the select list prepared on 29th January, 1965. They only interpolated the names of late Shri K.S. Venkataramani and Shri K.K. Tandon in the select list. If it was one selection extending over three dates against six vacancies Shri U.C. Saxena should also have been placed according to his merit in the select list prepared on 29.1.1965. We are, therefore, not persuaded to consider that the entire process constituted one selection. On the other hand there were two separate requisitions placed on the Employment Exchange, one for one post and the second for five posts. The names against the two requisitions were sent by the Employment Exchange with reference to each of the requisitions separately. There was, therefore, no reason for the Department to take an ambivalent view from time to time resulting in disturbing the seniority, at least thrice, and causing unnecessary anxiety and harrassment to the applicants.

We find from the file No.A 23022(1)/TCPO/Adm that after considerable prodding, some facutal information was presented to the Law Ministry in the note dated 7.12.1983 at page 34-36 on which the Law Ministry very clearly opined as under:-

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"In this case, it appears to us that the selection was done in two stages - one in December, 1964 and the other in January, 1965. As a result of the interviews held in December, 1964, only Shri U.C. Saxena was appointed. The Selection Committee decided that the other two candidates, namely, S/Shri Venkataramani and K.K. Tandon might be kept on the waiting list to be considered along with those candidates who may be found suitable in the next selection. In short, S/Shri Venkataramani and Tandon were not selected for appointment at the interview held in December, 1964. Subsequently, interviews were held in January, 1965 and eight candidates were selected. S/Shri Venkataramani and Tandon were included in the select list at the appropriate place on the basis of the marks obtained by them. In view therefore, Shri U.C. Saxena should be No.1 in the order of seniority, and the seniority of the others should be determined on the basis of the marks awarded to them by the Selection Committee."

Thereafter, there was no apparent reason for the Department to go back to Department of Personnel and Ministry of Law, Department of Legal Affairs every time a representation was made.

Our conclusion as above also finds its echo in the opinion of the Law Ministry extracted above. We feel that the wait listed candidates should have been interviewed along with others on 28th and 29th January, 1965, which was a separate selection with

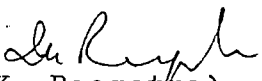
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reference to the second requisition placed for five posts on the Employment Exchange, and should not have been interpolated in the Select List prepared on 29th January, 1965 on the basis of their performance in the selection held on 5.12.1964. We would not however like to unsettle the settled facts at this distant date. At the same time we do not find any reason whatsoever to tamper with the select list prepared by the Selection Committee dated 29th January, 1965.

In the facts and circumstances, as brought out above, we allow the application and quash the seniority list of 12th November, 1984. We further direct that the inter se seniority of the applicants shall be fixed in accordance with the order of merit as per the select list prepared by the Selection Committee on the basis of interview held on 28th and 29th January, 1965. Shri K.K. Tandon, respondent no.4 shall, therefore, have to take his seniority below the applicants and others who had been placed above him in the select list by the Selection Committee on 29th January, 1965. The applicants shall also be entitled to all consequential benefits. We also consider that this is a fit case in which the costs should be awarded in favour of the applicants and order accordingly that the respondents shall pay Rs. 1000/- towards costs to the applicants.

The OA is disposed of as above.


(I.K. Rasgotra)
Member(A) 12/7/91


(Amitav Banerji)
Chairman