

(a)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 363
T.A. No.

1987.

DATE OF DECISION 30.10.1989.

Smt. Nirmal Kumari _____ Petitioners.
Shri Malkhan Singh _____

Shri G.D.Gupta, _____ Advocate for the Petitioner(s)

Versus

Delhi Administration & Another _____ Respondent(s).

Shri M.M.Sudan, _____ Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether to be circulated to other Benches? *yes* *al*

(Amitav Banerji)

Chairman

30.10.1989.

(5) (8)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.363/87

Date of Decision: 30.10.1989.

Smt. Nirmal Kumari

... | Applicants

Shri Malkhan Singh

Vs

Delhi Administration & another .. Respondents

Coram:

Hon'ble Mr Justice Amitav Banerji, Chairman

Hon'ble Mr. B.C. Mathur, Vice Chairman(A)

For the Applicants

.. Shri G.D. Gupta, counsel

For the Respondents

.. Shri M.M. Sudan, counsel

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji, Chairman)

Two Applicants, Smt. Nirmal Kumari and Shri
Malkhan Singh have filed this Application under Section 19
of the Administrative Tribunals Act, 1985 challenging the
act of the Respondents, Delhi Administration not making
appointment to the post of Post Graduate Teacher (PGT) in
various subjects including the subject of Sanskrit
and Economics. The Applicants had been enlisted in the
panel to the said posts of P.G.Ts prepared in January,
1984 and July, 1984 and they have challenged the act
of the respondents seeking to fill the said posts by
resorting to fresh direct recruitment vide Circular
dated 4th September, 1986 as wholly illegal, arbitrary
and violative of Articles 14 and 16 of the Constitution.

The undisputed facts of the case are that the Applicant, Smt. Nirmal Kumari was selected by the Delhi Administration for the appointment as Post Graduate Teacher in the subject of Sanskrit. The second Applicant, Shri Malkhan Singh was likewise selected for appointment as Post Graduate Teacher in Economics for various government schools in the Directorate of Education under the Delhi Administration. Their names were included in the panel for appointment. The name of Applicant No.1 was entered at Sl. No.22 and that of Applicant No.2 at Sl. No. 8 of their respective panels. This was done in January, 1984 and July, 1984 respectively. The panels had not been exhausted even on 4.9.86 when applications were invited for the posts of PGTs in various subjects including Sanskrit and Economics. The Applicants sent representations but received no reply except an acknowledgement dated 30.12.86 from the Executive Councillor (Education).

The Applicants' case is that without exhausting the existing panel the respondents could not resort to fresh selections of PGTs. In support of their case, the learned counsel for the Applicants, Shri G.D. Gupta stated that a similar case of Shri Ishwar Singh Khatri & Ors vs Delhi Administration (Civil Writ No. 1170 of 1985)=
(1) T.No. 462 of 1985 was decided by a Division Bench of this Tribunal in favour of the Applicants. The points raised and the decision made in the aforesaid cited case completely

covers the case of the Applicants. Mr. G.D. Gupta further stated that Delhi Administration had filed a Special Leave Petition in which leave was granted and the Civil Appeal No. 1900 of 1987 was heard by their Lordships and ~~xxx~~ their Lordships dismissed the Civil Appeal of the Union of India & Others by judgement dated 4 August, 1989. He urged that the view taken by the Tribunal was upheld. He further prayed that the prayer made by the Applicants be, therefore, allowed and the respondents be directed to issue appointment letters to the Applicants accordingly.

Mr. M.M. Sudan, appearing for the Delhi Administration accepted the position that the Supreme Court has decided the matter in favour of Shri Ishwar Singh Khatri and Others but sought to argue the matter that the panel does not have indefinite life. He further argued that the number of persons empanelled in Sanskrit and Economics was far in excess of the requirement and further as more than two years have elapsed since the empanelment was done, the panel cannot continue indefinitely.

We are not impressed by this line of argument. The point had also been raised before the Supreme Court. The Supreme Court considered this aspect of the matter in the following words:

"But in the present case, it cannot be said that the anticipated vacancies arising upto the preparation of panels were not taken into consideration by the Selection Board while preparing

the panels for recruitment. The Tribunal after examining the entire matter has concluded that the selection board headed by the Director of Education or the Additional Director on a few occasions was aware of the number of vacancies then available for finalisation of the panels of selected candidates."

The Supreme Court also expressed the view that the selected candidates have a right to keep the appointment and they, therefore, saw no reason to disturb their appointments. Their Lordships then observed:

"It is made clear that the Administration shall fill up all the existing vacancies within one month from today till the panels in question are exhausted. With this direction, the Appeal is disposed of."

We are of the view that this judgement concludes the matter. It is applicable to the facts of the present case as well. The Application must succeed.

In this context a reference may also be made to a Notification dated 8th February, 1982 issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms regarding validity period of list of selected candidates prepared on the basis of direct recruitment/Departmental Competitive Examination. The rule is, once a person is declared successful according to 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.

The matter had come up for consideration before their Lordships in the case of Prem Prakash v. Union of India (AIR 1984 SC 1831). Their Lordships laid down:

"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 shows that there should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. Once a person is declared successful according to the merit 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."

It will be relevant to mention here that in the order dated 28.4.87, a Division Bench passed an interim order, the relevant part of which reads as follows:

"The Applicants also state that this case is covered by our Judgement in T-462/85 (CW 1170/85) - Ishwar Singh Khatri vs. Union of India and others. Hence, there shall be a direction to the respondents to keep one post of PGT vacant in Sanskrit and one post of PGT vacant in Economics pending further orders on this petition."

Since the posts have been kept vacant for the Applicants, there should be no difficulty in appointing them to the said posts.

We are, therefore, of the view that the Applicants having been empanelled had a right to be appointed and they cannot be by-passed. In the circumstance, the Application is allowed but there will be no order as to costs. The order may be implemented within a period of three months.

B.C. Mathur
(B.C. Mathur)
Vice Chairman(A)
30.10.1989.

AB
(Amitav Banerji)
Chairman
30.10.1989.

* BDS *