

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

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OA No.447/87

Date of decision: February 13, 1993

Shri B.M.Sethi ... Applicant  
versus

Delhi Administration  
through its Chief Secretary & ors.. Respondents

CORAM:- THE HON'BLE MR.P.C.JAIN, MEMBER(A)  
THE HON'BLE SHRI J.P.SHARMA, MEMBER(J)

For the Applicant .. Shri G.D.Gupta, Counsel

For the Respondents .. Mrs.Avnish Ahlawat,  
Counsel.

JUDGEMENT

Hon'ble Shri P.C.Jain, Member(A):-

Two posts of Assistant Registrar,  
Cooperative Societies in the Delhi Administration  
were circulated vide Circular dated 11.9.78  
for appointment on ad hoc basis. The applicant  
who was a member of the Delhi Subordinate  
(Ministerial/Executive) Service in Grade III which  
was found in February, 1967, and  
was at that time working as, Inspector of Sales  
Tax, also applied for appointment to one of the  
aforesaid posts. On the recommendations of the  
Departmental Promotion Committee, he was selected  
and appointed as Assistant Registrar, Cooperative  
Societies on ad hoc basis vide order dated 20.2.80  
(Annexure B), for a period of six months or till  
such time regular selection was made whichever  
was earlier. It was also stated in that order  
that the above appointment will not give any  
benefit or claim for regular appointment or

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seniority against this or any other equivalent post in the Delhi Administration to the above officer. This ad hoc arrangement was extended from time to time and at one stage upto 30.6.85 with the concurrence of the U.P.S.C. Thereafter, it was extended by the Chief Secretary, Delhi Administration from 1.7.85 to 31.3.87 and no objection to the provisional pay being drawn by the officer for this period was also issued from time to time. Here, it may be mentioned that in the meantime, three temporary posts but likely to continue of Assistant Registrar, Cooperative Societies, Delhi Administration for regular recruitment under the relevant recruitment rules were advertised for direct recruitment by the U.P.S.C. in 1980 itself. One of these posts was reserved for a Scheduled Caste candidate and the other two were to be filled up from general category candidates. The applicant also applied for the same and he was also called for interview. It needs to be further stated that <sup>C. 4145</sup> before the selection for the post advertised by the U.P.S.C., was finalised, by order dated 15.9.81 (Annexure E) the applicant was ordered to be reverted to his substantive post of Grade-II (Executive) Delhi Administration, Delhi with effect from 4.9.81. However, this reversion order was not given effect

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to and the applicant continued to work as Assistant Registrar, Cooperative Societies on ad hoc basis under sanction<sup>ed</sup>s issued from time to time even though the orders of reversion were not cancelled and the applicant was not relieved from the post of Assistant Registrar which he was holding on ad hoc basis. Ultimately, the aforesaid order of reversion of the applicant was superseded vide order dated 6.10.83 (Annexure G) and applicant's ad hoc appointment was continued from time to time. The post of Assistant Registrar, Cooperative Societies was not included in the cadre of Delhi Subordinate (Executive) Service and as such the appointment of the applicant as Assistant Registrar of Cooperative Societies on ad hoc basis was against an ex cadre post. By an interim order passed by a Bench of this Tribunal on 6.4.87, the respondents were directed not to revert the applicant from the post of Assistant Registrar, Cooperative Societies for a period of two months. This interim order was extended from time to time and by an order dated 15.7.87, it was directed that the same shall continue till the case is finally heard. Accordingly, the applicant claims that he is continuing as Assistant Registrar, Cooperative Societies, Delhi Administration, Delhi.

2. Against one post reserved for the Scheduled Caste, the U.P.S.C. recommended the name of

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Shri Chhote Lal, who was appointed. Against the two general category posts, S/Shri K.K.Garg and G.J.Siddiqui were selected and recommended by the U.P.S.C. for appointment to the post of Assistant Registrar, Cooperative Societies. As Shri Siddiqui was appointed as Labour Officer, one of the two posts fell vacant and the Delhi Administration sent a fresh requisition to the U.P.S.C. on 14.7.82 against the above vacancy and the U.P.S.C. recommended the name of one Shri B.Patnaik from the selection list of 21.8.82 for appointment against the aforesaid requisition. Shri Patnaik was offered the post in September, 1982. But as he neither appeared for medical examination nor joined the appointment, the offer was ultimately cancelled on 3.8.84.

3. Initially, the Ministry of Home Affairs, Government of India had imposed embargo sometimes in August, 1982 for filling up the vacant post of Assistant Registrar, Cooperative Societies (the post against which the name of Shri Patnaik was sponsored and he was offered the post) as the Government was considering encadring the post of Assistant Registrar, Cooperative Societies, Delhi Administration in the Delhi Andaman Nicobar Civil Islands/ Service (for short DANI) but sometimes in 1986, the Ministry of Home Affairs also supported

the stand of the Delhi Administration requesting the U.P.S.C. to sponsor any name from the panel for appointment against the vacancy which was offered to Shri Patnaik who did not join. However, after 30.6.85, the U.P.S.C. neither agreed to give its consent for the continued ad hoc appointment of the applicant nor agreed to give any other name from the so called reserve list from which the name of Shri Patnaik is stated to have been offered. According to the reply of the respondents, the U.P.S.C. operates the reserve list for a period of 18 months and the name of Shri Patnaik was sponsored within the aforesaid period of 18 months, but any new name was not sponsosred as the period of 18 months had expired when the Delhi Administration sent the requisition after cancellation of the offer of appointment to Shri B.Patnaik as also on the ground that the reserve list had been destroyed in terms of the period of retention of the record prescribed.

4. What follows from the above narration of events is that the applicant who was initially selected for appointment to the post of Assistant Registrar on ad hoc basis and was appointed in February, 1980<sup>c</sup> till a regularly selected hand became available, has continued to work on the post on ad hoc basis till today. In the

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meantime, the post has been encadred in the DANI Civil Service. Even under the old recruitment rules which were notified in 1963, the recruitment to this post was 100% by direct recruitment. The applicant who competed for direct recruitment to the general category posts advertised by the U.P.S.C. in 1980, was not selected as one of the two candidates for these two posts. The U.P.S.C. did not agree after 30.6.85 to the applicant's continued ad hoc appointment nor did it agree to sponsor the name of the applicant who claims that his name was at Sl.No.4 of the panel prepared by the U.P.S.C. for two general category posts. It is in this background that the applicant<sup>filed</sup>/this OA under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- "(a) to allow this application of the applicant.
- (b) to issue appropriate order or orders, direction or directions:
  - (i) quashing the impugned acts/orders/letters as mentioned above and quashing the order of reversion of the applicant, if already passed.
  - (ii) declaring the applicant entitled to be appointed to the post of Assistant Registrar on regular basis against one of the three posts which were advertised and, in fact, against the post which was offered to Shri Patnaik from the date from which the offer given to him was cancelled.
  - (iii) restraining the respondents from reverting the applicant and declaring the applicant entitled to continue in the post of Assistant Registrar, Cooperative Societies and that too on regular basis from the date the offer was given to Shri Patnaik with all consequential benefits.

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(iv) declaring the applicant to be encadred in DANI Civil Service against one of the 11 permanent posts of Assistant Registrars encadred in DANI Civil Service with all consequential benefits.

(c) to issue such other order or orders, direction or directions as deemed fit and proper by this Hon'ble Tribunal in the circumstances of the case to meet the ends of justice."

It may be mentioned here that the relief prayed for in para (b) (i) as above, was held by a Bench of this Tribunal in its order dated 6.4.87 as "too vague", and the counsel for the applicant had undertaken to make appropriate amendment in so far as that relief was concerned but no such amendment has been made so far.

5. We have given our careful consideration to the rival contentions of the parties. The main contention of the applicant is that the panel had been prepared by the U.P.S.C. in which his name appeared at Sl.No.4 against two posts of the general category and while the name of Shri Patnaik who was at Sl.No.3 of the panel was sponsored by the U.P.S.C., his name was not sponsored after Shri Patnaik did not join the post and the offer to him was cancelled. This action of the U.P.S.C. is said to be arbitrary, illegal, mala fide, unconstitutional, ineffective and discriminatory. In support of this contention, the learned counsel for the applicant has relied upon Office Memorandum dated 8.2.82(Annexure T)

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issued by the Department of Personnel and Administrative Reforms on the subject of validity period of list of selected candidates prepared on the basis of direct recruitment/Departmental Competitive Examination. We consider it appropriate to reproduce the above OM as below:-

" The undersigned is directed to say that the 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 of 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 Examination the list of selected candidates has to be based on the number of vacancies on the date of declaration of results, as the examination of competitive selected candidate 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 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 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.

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

6. From a reading of the above OM as a whole, it appears to us that the list of selected candidates against declared number of vacancies alone has been given a protection in these orders and not the reserve list as such which might be prepared by the U.P.S.C. or the D.P.C.. The declared number of vacancies for the unreserved category in the advertisement and against selection of which the applicant claims the relief, were only two. Two people had been selected and were given appointment. A question arises that if at any point of time one of the selected/appointed candidates leaves the post for any reason, <sup>Can</sup> ~~and at any point of time,~~ can the reserve list, if any, legally or under the relevant Government instructions be required to be operated and if so till what time. It appears from the reply filed by the respondents that apart from three candidates selected and recommended to the Delhi Administration for

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appointment to the three posts which were advertised by the U.P.S.C, 9 candidates were kept in the reserve list which was prepared on 27.3.81 and not on 9.4.81 as contended by the applicant. It is also stated in the counter that the U.P.S.C. has stated that it is not aware of the source on the basis of which the applicant contends that his name was at Sl.No.4 in the panel since the reserve list is a confidential document. It, however, appears from the rejoinder filed by the applicant that Miss Neeru Nanda, the then Registrar of the Cooperative Societies was also on the interview board and that on the basis of the interviews, the Commission had drawn a panel list of 12 candidates, out of which, the Commission recommended three candidates on 9.4.81 and, thus, kept 9 in the reserve list. There is no specific denial in the reply filed by the respondents that the name of the applicant was either not in the reserve list or it was not at Sl.No.4. Be that as it may, the basic question, as already stated above, is whether the applicant is legally entitled to a regular appointment on the basis of the selection held by the U.P.S.C. in 1981 merely on the ground that his name appears at a particular position in the reserve list. He would have had such a right if his name was included as one of the selected candidates to the extent of the

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the declared vacancies. This admittedly is not so as his name was not included among three names <sup>by who were</sup> ~~included~~ <sup>and</sup> selected, recommended for appointment against three posts advertised by the U.P.S.C. Even under the Department of Personnel & Administrative Reforms instructions in OM dated 8.2.82 for this very reason he does not get even an administrative right. According to the U.P.S.C., the reserve list is kept operative for a period of 18 months, as stated in the counter reply. On the face of it, this period appears to be a reasonable period. We are not in a position to uphold any contention to the effect that such a reserve list should continue to be valid or operative till all the persons in the reserve list have a chance of getting appointed to the post as and when it happens to fall vacant even after appointment of the selected candidates against the advertised posts. It is possible that a selected candidate may not join or after having joined may leave the post, he may leave it shortly after his appointment or after a longer period either due to his selection/appointment/promotion to another post or for personal reasons. <sup>C.</sup> The reserve list cannot obviously be kept open for operation for an indefinite period of time. One could argue that it should be for a period less than 18 months or more than 18 months as

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against norms said to have been adopted by the U.P.S.C. and on the basis of which the name of Shri Patnaik was sponsored, but we have no doubt in our mind that in so far as the reserve list is concerned, it cannot be allowed to be valid and operative for an indefinite period. It would also appear to be outside the scope of judicial review for the courts to lay down any period for that purpose. <sup>What</sup> But the courts can do is if the norms adopted by the selection agencies are found to be arbitrary or mala fide or against any provisions of rules having statutory force, or in the absence of statutory rules against the administrative instructions which might be issued by the competent authorities in this regard, then to quash the same. Though the applicant has contended that the action of the U.P.S.C. in not sponsoring his name from the reserve list is mala fide, he has not placed any material which could substantiate this allegation. Mere fact that the Delhi Administration suggested to the U.P.S.C. <sup>to</sup> ~~not~~ to sponsor the name of the applicant or the Ministry of Home Affairs also supported such a request is not enough to substantiate the contention <sup>as</sup> mala fide. If the action of the U.P.S.C. in not sponsoring the name of the applicant from the reserve list after a period of 18 months from the date of preparation

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of the select list<sup>is</sup> in view of the norms adopted by it, the said action cannot be said to arbitrary. The allegation of action of the U.P.S.C. being unconstitutional, discriminatory or illegal are also without any sound basis. The applicant has not shown any rule having a statutory force which might have been violated by the U.P.S.C. in not sponsoring the name of the applicant from the reserve list. As such the question of the action of the U.P.S.C. being illegal does not arise. It cannot be said to be discriminatory also as the applicant was not equally placed with Shri B. Patnaik, firstly because Shri Patnaik's name appeared at Sl.No.3 i.e. before the name of the applicant, and secondly, the name of Shri Patnaik was sponsored within the period of 18 months of the preparation of the list i.e. within the norms prescribed by the U.P.S.C.

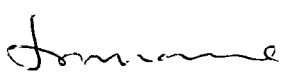
7. In the light of the foregoing discussion, the relief prayed for by the applicant for a declaration to be entitled to be appointed to the post of Assistant Registrar on regular basis against one of the three posts which were advertised by the U.P.S.C. cannot be granted to him. Similarly, the relief declaring the applicant to be encadred in DANI Civil Service against one of the 11 ~~permanent~~ posts of Assistant Registrar encadred in DANI Civil Service with

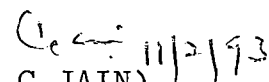
all consequential benefits cannot be granted to him as only those who were holding the post on regular basis were appointed against the posts encadred in the DANI Civil Service. Neither party has placed before us a copy of the recruitment rules of the DANI Civil Service and the applicant has not established or shown that on the basis of those rules, he is entitled to this relief. The <sup>fact</sup> remains that the applicant was selected by a D.P.C. for appointment on ad hoc basis at the time this post was an ex cadre post, in February, 1980 and he has continued to work on ad hoc basis on this post under orders issued from time to time, upto 30.6.85 with the concurrence of the U.P.S.C. even though normally concurrence of the U.P.S.C. is required and accorded for ad hoc appointment only for a period of one year; thereafter from 1.7.85 to 31.3.87 under orders issued by the Delhi Administration, and after that period under the interim orders passed by the Tribunal. It is also a fact that the orders for reverting the applicant from the post of Assistant Registrar, Cooperative Societies issued on 15.9.81 were not implemented and later on were superseded. These facts, however, do not entitle the applicant to claim regularisation as his initial appointment was not in accordance

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with the relevant recruitment rules which have a statutory force and under which the post to which he was appointed on ad hoc basis was required to be filled 100% by direct recruitment. In this connection, we rely on the judgement of the Principal Bench in the case of Dr.Promila Srivastava Vs.Director General Health Services (ATR 1992(2) (CAT) 752) to which one of us(Hon'ble Shri P.C.Jain) was a <sup>Co-party</sup> member.

8. In the light of the foregoing discussion, the relief prayed for by the applicant cannot be allowed and the OA is accordingly dismissed leaving the parties to bear their own costs. We make it clear that this decision shall not prevent the applicant from administratively representing <sup>us</sup> this case to the competent authority.

  
(J.P.SHARMA)  
MEMBER(J)

  
(P.C.JAIN)  
MEMBER(A)

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