

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1649/1990

DATE OF DECISION:11.10.1991

SHRI S.P. SINGH CHAUDHARI

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

OA NO.180/1991

SHRI R.S. MITTAL

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

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

FOR THE APPLICANTS

SHRI P.P. KHURANA, SHRI K.C.MITTAL,
COUNSEL.

FOR THE RESPONDENTS

S/SHRI M.CHANDRASEKHARAN, ADDITIONAL
SOLICITOR GENERAL WITH C.V. SUBRA
RAO, SHRI N.S. MEHTA, SENIOR
STANDING COUNSEL (OA-1649/90)
SHRI P.H. RAMCHANDANI, SENIOR
COUNSEL (OA-180/91).

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

Ael 11.10.91
(Amitav Banerji)

Chairman

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(JUDGEMENT OF BENCH DELIVERED BY
HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

The Original Applications Nos. 1649/90 and 180/91 raise common issues of law and fact and accordingly we propose to dispose them of through this common judgement.

Original Application No. 1649/90 was heard at length and therefore for convenience in disposing of the matters we deal with OA No. 1649/90 first. While dealing with OA No. 180/91 later on we have tried to concentrate on the facts and arguments which are at variance with or are supplementary to the arguments earlier advanced in OA 1649/90.

The applicant who is a Member of the Delhi Judicial Service at present had applied for the post of Judicial Member, Income Tax Appellate Tribunal pursuant to the advertisement in the Press issued by the Ministry of Law and Justice in October, 1987 for three posts. One of the three posts was reserved for a Scheduled Tribe candidate. The applicant sent his application and in course of time, he was interviewed by Selection Board and the applicant understands that he was placed at No.2 in the Select List prepared by the Selection Board

against two posts (unreserved). The post reserved for S.T. candidate could not be filled up at the first instance but later on after fresh advertisement, the same was filled up. The applicant noticed an advertisement issued by the respondent which appeared in the Employment News dated 24th February, 1990 and a letter of request dated 22.2.1990 by the Law Secretary, Government of India to the Chief Justice of each High Court indicating that the respondent contemplated filling up two posts (unreserved) of Judicial Member, Income Tax Appellate Tribunal. The applicant made a representation to the respondent pointing out the harsh treatment meted out to him. There was no response to the representation or to the reminder that followed on 28.6.1990. Aggrieved, he has filed this Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to 'the Act') on 16.8.1990 and prayed for a direction to the respondent to appoint the applicant as Judicial Member, Income-Tax Appellate Tribunal on the basis of the Select List/panel prepared by the Selection Board in 1988, first- before appointing anybody else, and secondly, to quash the advertisement published in Employment News in February, 1990 (Annexure B) and letter dated 22.2.1990 (Annexure C) issued by respondent for filling up the post. Interim relief was also prayed for not to make selection and/or make appointment to the posts of Judicial Member, Income Tax Appellate Tribunal on the basis of the advertisement made in the Press in February, 1990 and the letter dated 22.2.1990.

2. Notice was issued in the O.A. before admission and an interim order was made directing the respondent not to make appointment to one out of the two posts of Judicial Members, Income tax Appellate Tribunal on the basis of the advertisement made in February, 1990. Counter, rejoinder were filed. The interim order was continued

by orders passed on different dates. The matter was heard on a number of dates.

3. In the reply, it was stated that the applicant has alleged that he was selected for appointment as a Judicial Member in the Income-Tax Appellate Tribunal on the basis of the recommendations of a selection Board headed by a Hon'ble Judge of the Supreme Court in the year 1988 and that he was placed at No.2 in a selection panel prepared by the said selection Board and further that he had a right to be appointed as a Judicial Member in the Income Tax Appellate Tribunal. All these averments were denied as mere conjectures and not based on any evidence. It was stated that the panel prepared by the selection Board was a confidential document and that the applicant had no access to the contents of the report. At no time the applicant was informed that he had been recommended for appointment as Judicial Member in the Tribunal nor was he informed about the result of his application. It was stated that selections are made in advance, in anticipation of vacancies, and the number of vacancies are always liable to change - may increase or decrease, and the candidates are not informed of the result of the selection. It is further stated that the number of vacancies given in the advertisement is not specific but approximate and is also liable to be changed. It was then stated even if the name of the applicant was recommended by the selection Board, it does not confer upon the applicant any right for appointment; firstly, because there was no declaration of result and there was no communication from the respondents to the applicant that he had been selected for appointment, and he had been kept in a panel; secondly, there was no requirement/compulsion for the respondents to appoint the applicant even if he was declared successful (which is not the case). The reason given was that a selection by a Selection Board by itself does not decide

the suitability of a candidate and the appointment depends on so many other factors such as the completion of other codal formalities, verification of the character and antecedents of the candidates. It was stated that the number of vacancies advertised in February, 1990 were vacancies anticipated during the year 1990 and 1991. These anticipated vacancies had nothing to do with the selections made in 1988 or with the anticipated vacancies of 1988 and 1989 for which the selection was held in 1988.

4. It was admitted that the Government of India, in October 1987 invited applications through an advertisement in the Press for three posts of Judicial Members in the Income Tax Appellate Tribunal of which one was reserved for Scheduled Tribe candidate. It was pointed out that the number of vacancies were only approximate and liable to alteration. Interview of the applicant was also admitted. The contents of para 4(4) were neither denied nor admitted. It was stated that the panel prepared by the Selection Board was a confidential document. He was never informed that his name had been included in the panel/select list. It was then stated that the applicant had no legitimate claim to be appointed as a Judicial Member in the Tribunal when he had not been declared successful in the selection. The applicant had no legal access to the contents of the Selection Board's report unless and until the respondents communicated the result to him. The stand further was that the respondents were not bound in law to appoint the applicant as averred. The reason given was that mere empanelment does not confer any right on a candidate to be appointed to a post or service. Further stand taken by the respondent was that the number of names placed on panel by the Selection Board was not as per the vacancies advertised. The Selection Board normally recommends the names of some extra candidates so as to take care of eventualities such as:

(i) the unsuitability of any candidates; (ii) the declining of the offer of appointment by a selected candidate and (iii) changes in the number of vacancies subsequent to the selections etc. Reference was made to Rule 4(4) of the relevant Recruitment Rules which provide that the Central Government shall after taking into consideration the recommendations of the selection Board make a list of persons selected for appointment as Members. In other words, it was the stand of the Government that the empanelment of names is not final but is subject to Government's final selection. The respondent's stand further was that the recruitment was for anticipated vacancies and there was a clear statement that the vacancies were approximate and liable to alteration in the advertisement itself. It was further stated that the respondents have not advertised the second post of Judicial Member afresh. What they have advertised in February 1990 was for filling up anticipated vacancies during the year 1990 and 1991. Allegations that the advertisement was malafide, illegal, arbitrary, discriminatory, and violative of Articles 14 and 16 of the Constitution of India was emphatically denied. Lastly, it was urged that the respondents were not bound to appoint the applicant as a Judicial Member even if it was conceded that he was recommended by the Selection Board and included in the panel of names recommended by them, because mere empanelment confers no right on the applicant/candidate to be appointed. In other words it was stated that since the 1988 selection had nothing to do with the 1991 selection, the interim order passed by the Tribunal was not justified. The respondents prayed that the Application be dismissed.

A reply on identical lines was also filed by the respondents in OA No.180/91.

R.S. Mittal's case as projected in OA-180/91 is that he is a practising advocate in Delhi and was registered in the Bar Council of India in the year 1971. He has been dealing exclusively with matters relating to sales tax, wealth tax, income tax, excise etc. He has also been appearing for and on behalf of the Delhi Administration as a Government pleader in the High Court of Delhi and Sales Tax Tribunal. He too applied for the post of Judicial Member in I.T.A.T. against one of the posts advertised in September, 1987. The applicant appeared for the interview on 12.1.1988 and according to his information was placed at S.No.4 on the panel of names prepared for appointment of judicial members in I.T.A.T.

5. We have heard Shri P.P. Khurana and Shri K.C. Mittal, learned counsel for the applicants in OA-1649/90 and OA-180/91 and Shri Kapil Sibbal and later on Shri M.Chandrasekharan, Additional Solicitor General in OA-1649/90 and Shri P.H. Ramchandani, senior counsel in OA-180/91 for the respondents respectively.

6. Subsequently there was a prayer by the applicant OA-1649 for the production of following records:-

- (A) Minutes of the Selection Committee in regard to the interview and selection of members of Income Tax Appellate Tribunal, in pursuance of the advertisement issued in October, 1987.
- (B) Roster maintained in respect of the Members (Judicial) Income Tax Appellate Tribunal showing the date of occurrence of vacancies and the dates when filled pertaining to the years 1987, 1988 and 1989.
- (C) File pertaining to the fresh advertisement issued in February, 1990 for appointment of two Judicial Members, Income Tax Appellate Tribunal and the note of the Law Ministry sent to the Members of the Selection Committee.

- (D) File pertaining to the advertisement issued in October, 1987 for appointment of the Members to the Income Tax Appellate Tribunal and note of the Law Ministry sent to the Members of the Selection Committee.
- (E) File pertaining to the appointment of the Members of Income Tax Appellate Tribunal on the basis of select List pertaining to appointment of judicial Member with reference to advertisement issued in October, 1987.

Records of files (A), (D), and (E) were produced before the Tribunal. As regards the prayer (B) it was submitted that the complete details of the vacancies arising in the years 1988 and 1989, their respective positions in the reservation Roster, and the details of their filling up have already been indicated in paras 4 and 6 of the respondent's reply to the applicant's rejoinder. It was stated that the said roster could be produced if desired by the Tribunal. In respect of (C) it was stated that the respondent's reply to the Applicant's rejoinder has clearly spelt out the details of not only the anticipated vacancies during the years 1990 and 1991 but also the details of the actual vacancy position as on 31st August, 1990. If the Tribunal wanted to peruse this file, it would be produced. They made it clear that respondent had no objection for production of the file for perusal of the Tribunal. The Law Secretary filed a reply to the M.P. and clearly stated that there were certain papers containing the notes recorded by the officers of the Department of Legal Affairs at various levels, the minutes recorded by the Minister of Law and Justice and the correspondence portion containing the documents of the correspondence with the office of the Establishment Officer (ACC) and Minutes of the

meeting of the Appointments Committee of the Cabinet.

These could not be produced as these were unpublished official records relating to the affairs of the State, and the production and disclosure of which are protected by Sections 123 and 124 of the Evidence Act. These files contain communications made in official confidence and as such privileged.

7. However, before the above Misc. Petition could be taken, Shri N.S. Mehta, Senior Standing Counsel for the respondent stated that he had no objection to the showing of the report of the Selection Board but had reservation in showing 'notings'. Shri P.P. Khurana, learned counsel for the applicant was allowed to look into the original report of the Selection Board only. After a reply to the Misc. Petition had been filed, learned counsel for the parties were heard. Thereafter Shri P.P. Khurana, learned counsel for the applicant made a statement that the applicant will have no objection if the record in the sealed cover is seen by the Bench where the privilege had been claimed. He further stated that the applicant on his counsel will not claim to see the above.

8. We have looked into the record of the Select Committee. It contains the panel of names and among the names mentioned therein, the name of the applicant is at Sl. No.2 on the judicial side.

9. The principal questions that emerge for our adjudication are:

- (a) whether the inclusion of the name of the applicant in a panel of selected candidates by the Selection Board confers any right on such a person for being appointed as a member of I.T.A.T. subject to availability of vacancy;

- (b) whether the panel prepared by the Selection Board in accordance with Rule 4 (3) of the Recruitment Rules continues to remain valid and active till it is exhausted; and
- (c) whether the select list of the panel prepared in accordance with Rule 4 (3) can be further screened/evaluated to prepare a select list in accordance with Rule 4 (4).

10. The contention on behalf of the applicant was that once a person is empanelled, he is entitled to be appointed subject to availability of vacancy and the life of the panel continues till all the names on the panel get exhausted. In other words, the contention was that once a person is empanelled, he has a right to be appointed as a Member of the I.T.A.T. subject to availability of vacancy either on the Judicial or on the Accounting side, as the case may be.

11. On behalf of the respondent it was contended that the selection of a person by the Selection Board and placement on the panel does not give him any right whatsoever to be appointed as a Member of the I.T.A.T., for the decision of the Selection Board is not final and is subject to the approval by the Central Government, viz., the Appointments Committee of the Cabinet (ACC). Secondly, a person can only be appointed if other things being in his favour, there is a vacancy. If there be no vacancy, the question of appointing him does not arise. Thirdly, the life of the panel is for a limited period of 12 months and can be extended for six months only. It cannot continue till it gets exhausted. The Selection Board recommended names on 25.1.1988 and its life came to an end in July, 1989. Further, the selection is for the vacancies for the years 1988 and 1989 and the Selection Board's recommendations relate to vacancies for these years alone. No sooner a fresh

Selection Board is constituted for subsequent years, the panel of names recommended earlier comes to an end. The select list is in the domain of the Administration. Unless the applicant can point out a right under the Statute he cannot succeed at all. The 'Select List' comes into existence only after the A.C.C. approves his name. This was not done in the applicant's case, and as such he did not acquire any right to ask for relief viz., to be appointed as a member of the I.T.A.T.

12. In order to appreciate the rival contentions, it will be necessary to see Rule 4 of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service), Rules 1963 (hereinafter referred to as the 'Rules'). Rule 4 of the Rules is relevant and is ^his the following words:

"4. Method of Recruitment:

- (1) There shall be a Selection Board consisting of:
 - (i) a nominee of the Minister of Law;
 - (ii) The Secretary to the Government of India, Ministry of Law (Department of Legal Affairs).
 - (iii) The President of the Tribunal; and
- (2) The nominee of the Minister of Law shall be the Chairman of the Selection.
- (3) The Selection Board shall recommend persons for appointment as members from amongst the persons on the list of candidates prepared by the Ministry of Law after inviting applications therefore by advertisement or on the recommendations of the appropriate authorities.
- ④4) The Central Government shall after taking into consideration the recommendations of the Selection Board make a list of persons selected for appointment as members."

The Selection Board consists of:

- (1) A sitting Judge of the Supreme Court who is

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nominee of the Minister of Law.

- (ii) The Law Secretary to the Government of India.
- (iii) The President of the Tribunal.
- (iv) Such other persons, if any, not exceeding two, as the Minister of Law may appoint.

The Chairman of the Selection Board is the nominee of the Minister of Law, viz. a sitting judge of the Supreme Court.

Subrule (3) of Rule 4 of the Rules makes it clear that the Selection Board **shall recommend persons** for appointment as members. The Selection Board's power is, therefore, to recommend the names for appointment as members.

Subrule (4) of Rule 4 of the Rules makes it clear that the Central Government shall after taking into consideration the recommendations of the Selection Board make a list of persons selected for appointment as members.

The language of the Rule indicates that the final choice is that of the Central Government and not of the Selection Board. The names chosen by the Selection Board constituted under Rule 4(1) are recommendatory in nature and not final.

13. Learned counsel for the applicant vehemently argued that while the Central Government cannot travel beyond any name recommended by the Selection Board, it cannot also make any deviation in the order of merit of the candidates recommended by the Selection Board. In other words, his contention was that if there was a panel drawn up, the names of Members, quite high up in that panel, cannot be ignored or bypassed to take some other names on the panel. Either the A.C.C. has to come to the conclusion that out of the names recommended by the Selection Board, one or more of them are not fit for appointment or to select a name or names for appointment, subject to availability of vacancies.

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14. Learned counsel for the applicant further argued that the Central Government had an obligation to issue appointment to those persons who were high up in the list and were eligible to be appointed subject to availability of vacancies. In case there were two vacancies of Judicial Members, the first two persons had to be issued appointment letters and as such, the very inclusion of their names in the panel clothed them with a right to be appointed and it was beyond the power of the Central Government to bypass any of them. He cited the following case law:

1. Prem Prakash V. UOI & Ors. 1984 (supp.) SCC 687 AIR 1984 SC 1831.
2. Ishwar Singh Khatri & Ors. V. UOI & Ors. (1987) 4 ATC 932.
3. V.R. Gopinathan & Ors. V. UOI & Ors. (1989) 11 ATC 178.
4. G. Vishwanathan V. UOI & Ors. (1990) 12 ATC 120
5. Nirmal Kumari & Another V. Delhi Admn. & Another 199091) SLT (CAT) 347.

15. Most of these cases have been referred to in the cases of G. Vishawnathan (supra) and Nirmal Kumari & Another (supra). In the case of G. Vishwanathan (supra) the Bench of the Tribunal was considering the life of a panel and Office Memorandum No. 22011/2/79-Estt(d) dated 8.2.1982 issued by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms. The matter for consideration was in respect of limited Departmental Competitive Examination in which a panel of selected candidates was prepared after examination. The Division bench held that the life of panel could not be restricted to one year and that a fresh panel could not be operated unless all candidates included in the previous panel were

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appointed. The Division Bench relied on the decision in **Prem prakash V. UOI & Ors. (supra)** where the very same Office Memorandum dated 8.2.1982 had come for consideration. The Supreme Court in the case of **Prem Prakash V. UOI (supra)** observed as follows:

"It is clear from the 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."

The Division Bench also referred to the case of **S. Govindaraju V. K.S.R.T.C. (ATR 1986) 2 SC 362** where their Lordship observed:

Once a candidate is selected and his name is included in the select list for appointment in accordance with the regulations he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequences entail as he forfeits his right to employment in future. In such a situation even though the regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and

the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary. Giving an opportunity of explanation would meet the bare minimal requirement of natural justice."

The Division Bench concluded that there was no validity period for a panel of successful candidates in the case of direct recruitment/departmental competitive examination and referred to the case of **Ishawar Singh Khatri V. UOI & Ors. (supra)**.

In the case of **Ishwar Singh Khatri and Ors. (supra)**, a Division Bench of the Tribunal referred to the O.M. No. 22011/2/79-Estt.(D) dated 8.2.1982 issued by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms and held that right to appointment after inclusion of the names in the panel of selected candidates flows out of instructions issued by the Ministry of Home Affairs, Department of Personnel & Administrative Reforsm O.M. dated 8.2.1982. The panel therefore continues to subsist and would be valid.

This Office Memorandum dated 8.2.1982 had come in for consideration in the case of **Prem Prakash (supra)**.

In the case of **Nirmal Kumari & Another V. Delhi Admn. & Another (supra)**, a Division bench of the Tribunal was considering the effect of the empanelment and the right created in the applicant by inclusion of his in the panel. The views taken in the cases of **Ishwar Singh Khatri (supra)** and **Prem Prakash V. UOI (supra)** were followed and the Bench held that the applicants having been empanelled has a right to be appointed and they cannot be bypassed as such.

16. The case of **Shri V.R. Gopinathan and Ors. (supra)** is distinguishable on facts as it deals with issues which are not related to the one before us.

17. Shri Chandrasekharan, Additional Solicitor General, however, contended that in view of the fact that the recommendations of the Selection Board was recommendatory, there was no finality to the names recommended by the Selection Board. The ultimate authority who has to decide as to who will be appointed rests with the Central Government and not with the Selection Board. Until the Central Government indicated to any person that he is likely to be appointed, no right accrues to him even though he might have been recommended by the Selection Board. In support of his argument, he relied on the language of sub-rule (4) of Rule 4 of the Rules.

Learned A.S.G. further urged that since the finality of the selection came about only after the Government made its choice and not before that, the same does not confer a right on the applicant to file the present O.A. and as such, he pointed out that the cases cited by the learned counsel for the applicant were inapplicable for the applicant's name was not included in the 'Select List' and as such, it conferred no right on the applicant whatsoever. The statute gives right to the Government to choose a member for appointment. If the applicant is not on the Select List, he can get no relief. But only if there is no discretion in the Government in the matter, then the applicant can succeed. The learned Solicitor General further urged that the applicant has prayed for a mandamus but he cannot be given the same, since he has no statutory right. The advertisement of 1987 shows that there were three vacancies one for S.T. and 2 for unreserved. He stated that the panel life is for 18 months and the Government had ultimate choice as to whom they would choose for appointment.

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18. Shri K.C. Mittal, who appeared for the applicant in OA 180/91 urged that the applicant comes within the number of four vacancies for general candidates (2 advertised in September-October, 1987 and 2 advertised in February, 1990.)

The learned counsel contended that the applicant has a right to be appointed against one of the vacancies, as he had been placed in the 1988 panel and until that panel is exhausted, subsequent panel cannot be operated upon. The thrust of his argument again was that the life of the panel for direct recruits remains active and alive till it is fully exhausted. He has also placed his reliance on the judicial pronouncements listed in paragraph 14 above. The learned counsel further submitted that in view of the fact that the life of the panel does not expire after 18 months, Rule 4(3) and Rule 4(4) do not make any impact on the reliefs prayed by the applicant herein. . He urged that in fact there is only one selection which takes places under Rule 4(3) of the ITAT Recruitment Rules and it is that panel alone, which is operated by the respondents and that there is no separate select list prepared under Rule 4(4). The learned counsel sought to buttress his argument by

drawing our attention to the fact that Shri A.V. Murgad, who was on the top of the panel recommended by the Selection Board was offered appointment first and not anyone else. It is a different matter that Shri Murgad ultimately declined to accept the offer.

He further stated that according to his information the applicant is placed at S.No. 4 of the panel of names recommended by the Selection Board and he has a right to appointment against one of four vacancies, by virtue of being on the panel of selected persons.

19. Shri P.H. Ramchandani, Senior Counsel appearing for the respondents, however, refuted the arguments of the learned counsel for the applicant and submitted that the applicant has no right to come before the Tribunal as he is not even within the number of vacancies which were available for the year 1988-1989. Only those persons have a samblance of right to claim the appointment who are

(a) within the number of vacancies advertised in 1987; and

(b) who are declared to be successful

Referring to the Ministry of Home Affairs, DP&AR OM No. 22011/2/79-Estt(D) dated 8th February, 1982, the learned senior counsel submitted that to claim a right of appointment, the declaration of the result against specific number of vacancies is sine qua non. The said O.M. of 8.2.1982 clearly states that:

"....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."

Referring to the judgement in **Prem Prakash V. UOI (supra)**, the learned senior counsel pointedly drew our attention to the following distinguishing features of the above case:

- (i) exact number of vacancies in the above case were advertised;
- (ii) the result of the competitive examination was declared and communicated to the successful candidates.

The learned counsel averred that the provisions made in the OM dated 8.2.1982 regarding the life of the panel are not applicable in the present case

as neither the exact number of vacancies was declared, nor the panel of selected names was restricted to that number of vacancies. In fact the panel was much larger. Further the result of the selection was neither declared nor communicated to the applicant. Referring to various other judicial pronouncements listed in paragraph 14 and relied upon by the applicant, the learned senior counsel added that in each and every case the selection was held against the declared number of vacancies and the list of candidates selected was published/communicated to the candidates. It is only when these conditions are fulfilled that the panel remains active till exhaustion. Even in such cases, the learned senior counsel contended that the selected candidates do not have a legal right to appointment, as the appointment is subject to a variety of other conditions like medical examination and character & antecedents verification etc. To fortify his contention the learned counsel referred us to the decision of three-judge Bench of the Hon'ble Supreme Court in **Jatinder Kumar & Ors. V. State of Punjab & Ors. AIR 1984 SC 1850**. In the above case the Hon'ble Supreme Court dealt with the recommendations made by the Public Service Commission in the context of the provisions made in Article 320 of the Constitution. The facts of the case were that in March, 1978, the Inspector General of Police sent a requisition to the Subordinate Service Selection Board (SSSB) to recommend 7 suitable persons for the post of Assistant SubInspectors of Police. While the matter was pending consideration 50 more posts of Assistant Sub-Inspectors of Police became available. Accordingly SSSB was requested to recommend 57 suitable persons for these posts. Later on after the interviews were over but before the select list was finalised, the

I.G. of Police, sent a request to the SSSB for 170 more persons in addition to 57 in anticipation of further vacancies likely to occur as a result of expected reorganisation of the Police Force. Thus in all 227 candidates were to be selected by the SSSB for the post of Assistant Sub-Inspectors of Police. The SSSB however recommended a panel of 144 candidates. In the meantime the proposal for additional 170 posts was turned down by the Government and therefore, those vacancies did not materialise. Accordingly the I.G. of Police issued appointment letters to only 57 selected candidates. Since the remaining candidates recommended by the SSSB were not appointed, they approached the Hon'ble Supreme Court. The stand taken by the petitioners was that:

- (a) vacancies had already been communicated to the SSSB and the SSSB had recommended their name for appointment and the State was therefore bound to appoint them on the basis of the recommendation of the SSSB; and
- (b) the action of the Government in not appointing them pursuant to the recommendation of the Board is violative of Article 14 and 16 of the Constitution. Succinctly, the point under consideration of the apex Court was, if the applicants by virtue of their names having been placed on the panel had acquired a right to appointment. Their Lordships of the Hon'ble Supreme Court observed:

"The selection has to be made by the Commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission adhering to the order of merit in the list of

candidates sent by the Public Service Commission. The selection by the Commission, however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus the Government is made answerable to the House for any departure vide Article 323 of the Constitution. This, however, does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz. bad conduct or character. The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. We are supported in our view by the two earlier decision of this Court in **A.N.D.**

Silva V. Union of India 1962 Supp (1) SCR 968: (AIR 1962 SC 1130) and State of Haryana V. Subash Chander Marwaha (1974) 1 SCR 165 (SIR 1973 SC 2216). The contention of Mr. Anthony to the contrary cannot be accepted. "

In Subhash Chander Marwaha & Ors. V. UOI

1974(3) SCC 220 referred by their Lordships in **Jatindra Kumar (supra)** case, the Court observed:-

"The advertisement that there are 15 vacancies to be filled does not also give him a right to be appointed. It may happen that the Government for financial or other administrative reasons may not fill up any vacancies. In such a case the candidates, even the first in the list, will not have a right to be appointed. The list is merely to help the State Government in making the appointments showing which candidates have the minimum qualifications under the Rules. The stage for selection for appointment comes thereafter, and it is not disputed that under the Constitution it is the State Government alone which can make the appointments. The High Court does not come into the picture for recommending any particular candidate. After the State Government have taken a decision as to which of the candidates in accordance with the list should be appointed, the list of selected candidates for appointment is forwarded to the High Court then will have to enter such candidates on a Register maintained by it.

When vacancies are to be filled the High Court will send in the names of the candidates in accordance with the select list and in the order they have been placed in that list for appointment in the vacancies. The High Court, therefore, plays no part except to suggest to the Government who in accordance with the select list is to be appointed and in a particular vacancy."

20. Shri P.H. Ramchandani, Sr. Counsel submitted that the applicants have no legal right for appointment to a post merely on the ground that his name has been placed on the panel containing the names found suitable for consideration for appointment. The recommendations of the Selection Board constituted under Rule 4 of the ITAT Recruitment Rules are recommendatory and they cannot be enforced by a mandamus from the Court. The only constraints on the Government are that it should not travel outside the panel of names recommended by the Selection Board and should strictly adhere to the order of merit in which the names are placed by the Selection Board. Regarding the life of the panel, the learned senior counsel submitted that the panel of direct recruits, where the exact number of vacancies is not declared and where the result is not published and communicated to the candidate, the panel would expire normally after one year and after 18 months, if it is extended by six months in accordance with the rules.

21. We have given our careful consideration to the submissions made by the learned counsel for the applicants and the respondents in both the cases OAs discussed above. Our conclusions with reference to the

three issues raised in paragraph 9 are:

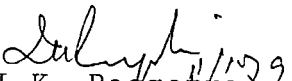
- (a) The judicial pronouncements referred to by the learned counsel for the applicants relate to cases where the selection was made to fill up the exact number of vacancies and the results of the selection so made were declared and communicated to the successful candidates. In the case before us, the panel of selected candidates was larger than the available vacancies. Consequently the results of the selection were neither communicated to the candidates nor published. The panel is merely a list of persons found suitable and does not clothe the applicants with any right of appointment. The recommendations of the Selection Board are directory and not mandatory and are not therefore enforceable by issue of a mandamus by the court. It is, the sole right of the Government to make appointment from the panel of names recommended by the Selection Board. The only constraint on the Government would be that it cannot travel outside list of names included in the panel by the Selection Board and it cannot deviate from the order of merit in which the names are placed in the panel.
- (b) The 8.2.1982 letter of the Ministry of Home Affairs which extends the life of panel till exhausted is not relevant in the present case as the prerequisites for the life of the panel remaining active till exhaustion viz., (i) the selection is made for the exact number of vacancies and (ii) the results of selection


are either communicated to the candidates or published, are not fulfilled. In the circumstances, the life of the panel in this case expired in July, 1989. We note that the panel was not operated after that date. The offer of appointment made to Shri Murgad was processed for approval of the Appointments Committee of the Cabinet before the expiry of the life of the panel; We further find that the procedure followed in 1988 is not different than what was done in 1986 where too the panel of 1986 expired after 18 months.

- (c) Admittedly the panel of names recommended for appointment is prepared by the Selection Board in accordance with Rule 4(3) of the Recruitment Rules. It is not subjected to any further evaluation. A perusal of the papers shown to us by the respondents makes it clear that the select list as mentioned in Rule 4(4) is nothing but the names picked from the panel in the order of merit for obtaining the approval of the Appointments Committee of the Cabinet to fill up the available vacancies. This however, cannot be construed to fetter the final authority of the Government for making appointment. The recommendations made by the Selection Board are directory and not mandatory. We, however, trust that whenever any deviation is made, from the panel recommended by the Selection Board, it will be done for valid reasons to be recorded in writing to avoid the possibility of any arbitrariness in appointments. While the rules do not make any provision for

checking such deviations the respondents may consider the desirability of bringing such deviations as and when they are made, to the notice of the Chairman of the Selection Board.

In the above conspectus of the case, we do not see any merit in the applications and the same are disallowed and dismissed with no orders as to costs.


(I.K. Rasgotra)
Member (A)


11.10.91
(Amitav Banerji)
Chairman

/SSM/