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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 20/90

DATE OF DECISION: 21.5.1990

SHRI NARENDER KUMAR

APPLICANT

SHRI A.K. SIKRI

ADVOCATE FOR THE APPLICANT

VERSUS

DELHI ADMINISTRATION & ORS

RESPONDENTS

SHRI M.M. SUDAN

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

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

JUDGEMENT

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member (A))

Shri Narender Kumar has filed this application aggrieved by the action of the respondents in not appointing him to the post of Assistant Project Officer (APO), Urban Basic Services Programme (UBSP) on the basis of the select list prepared pursuant to the interviews held on 4.6.1988 and 11.6.1988. The Selection Committee vide its minute dated 21.6.1988 placed 12 candidates in the order of merit who had obtained 65% or more marks, on the panel for appointment as APO. Thirteenth slot reserved for Scheduled Tribe candidate was left vacant as no Scheduled Tribe candidate was available. The panel was framed in accordance with the decision of Selection Committee treating 65%

marks as the bench mark for qualifying in the selection. At the same time vide paragraph 7 of the minutes of the meeting of the Selection Committee proceedings, Selection Committee it was decided that 10 candidates from S.No. 13 to 22 be kept on the panel "in the event of any post falling vacant during the course of one year, i.e. upto June, 1989". For this purpose a separate list was prepared which was not to be disclosed to any candidate.

The applicant is at S.No.3 in the list of 10 candidates kept on the panel for filling up any post which might fall vacant during the period of one year ending June, 1989. This wait list was, however, not to be disclosed. The 2 candidates placed above the applicant in the wait-list to meet future contingencies, were appointed to the post of APO later during the life of the panel. When the third post fell vacant consequent to the resignation of one of the APOs, the applicant was, however, not offered the appointment, as he had obtained only 62% marks against the qualifying marks of 65%.

2. The learned counsel for the applicant submitted that the decision of the respondents that only those candidates, who had 65% or more marks from the panel of 10 candidates recommended for meeting the contingencies during the life of the panel was an after thought, as the panel itself indicates that a candidate with 55% marks was also kept on the panel. If 65% marks was the cut-off line then the candidates with lower than 65% should not have been kept on the panel at all.

The learned counsel cited Kuldeep Singh and Ors. Vs. Punjab & Sindh Bank and Ors - 1989(3)JT - 285. This case is

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distinguishable as the Punjab and Sindh Bank had arrived at a settlement, in accordance with the direction of the court, under which the vacancies of officers in the cadre of Junior Management Grade-I were to be filled - 75% by internal promotion - 25% by direct recruitment. The bank failed to comply with the undertaking and therefore the Hon'ble Supreme Court ordered that unless and until all the employees in the panel are promoted in terms of the settlement, the bank is not entitled to hold fresh tests or make fresh panel.

The second case cited by him relates to Shri A.V. Bhogeswarudu Vs. Andhra Pradesh Public Service Commission and another - JT-1989(4)SC-130 is also distinguishable, as the matter related to filling up of notified vacancies, remaining unfilled, due to non-joining of selected candidates. In the facts of the case the Hon'ble Supreme Court ordered:-

"We accordingly dispose of this appeal by directing that the number of vacancies remaining to be filled up on account of non-joining of selected candidates for whatever reason shall be out of the present list."

The respondents in paragraph 4.9 of the written statements have given the details of the 10 candidates placed on the panel. While candidates at S.No.1 & 2 had obtained 65% marks, the applicant at S.No.3 had obtained 62% marks. The next six candidates in the wait list had 60% marks while the last one had obtained 55%. The respondents submitted that a conscious decision was taken to offer appointment only to those who had

obtained 65% marks. What remains unanswered is that if the qualifying marks were to be 65%, why was a wait list panel of 10 candidates drawn to meet future contingencies during the period ending June, 1989 when 8 out of them had lower than 65% marks.

Paragraphs 4 and 7 of the Selection Committee record note relating to select list which are relevant to issue before us are reproduced below:-

"4. The selection committee decided 65% as the qualifying marks for selection to the post of Assistant Project Officer. Accordingly following 12 candidates qualified in the order of merit, as per list at flag 'A'."

"7. At least 10 candidates from S.No. 13 to 22 would be kept on panel in the event of any post falling vacant during the course of one year i.e. upto June, 1989. A separate list has been prepared at flag 'B', which would not be disclosed to any candidate."

A simple reading of the above gives the understanding that while the panel of filling up available vacancies was restricted to the candidates who scored 65% or more, the bench mark was not considered an absolute cut off limit for the wait list panel. It follows that candidates with 55% or more score were also found acceptable for the post.

The case of Shri Ishwar Singh Khatri and Ors. Vs. UOI & Ors. - ATR-1987-I-CAT-502 to which our attention was drawn by the

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learned counsel for the respondents is of no assistance as the facts and circumstances are distinguishable.

4. Having considered the arguments of the learned counsel of both the parties and gone through the record, we find that the UBSP is centrally sponsored scheme financed in the ratio of 40:40:20 between the Delhi Administration, UNICEF and the Ministry of Urban Development. As the scheme is substantially financed by the government of India we are not impressed by the argument that the matter is not within the jurisdiction of the Tribunal on account of 40% money being provided by UNICEF.. We also do not find any distinction between the disclosed and undisclosed panel, as the learned counsel for the respondents tried to make. In our view, the bench mark of 65% marks decided by the Selection Committee mentioned in the record note dated 21.6.1988 was only to provide the basis for the 12 candidates recommended in the order of merit for filling up the existing vacancies. The bench mark of 65% marks however is not relevant for the candidates kept on wait list which was to be operated for filling up the posts falling vacant during the course of one year i.e. upto June, 1989 obviously the wait list candidates with lower percentage of 55% were accepted to cater for the vacancies arising during the life of the panel.. The decision of the respondents, therefore, to offer appointments to only the first two candidates on the wait-list (as they happen to have a score of 65%) and denying the appointment to others when the vacancy(ies) was available is irrational and discriminatory.

5. In the facts and circumstances of the case, we order and

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direct the respondents to offer appointment to the applicant for the post of Assistant Project Officer, in accordance with the rank in the wait-list, prepared by the Selection Committee, against the existing vacancy. We are not going into the allied issues raised by the applicant as they are no longer relevant in view of the relief ordered as above.

There shall be no orders as to the costs.

Arulugum
(I.K. Rasgotra) 13/9/90
Member (A)

21.5.90
(T.S. Oberoi)
Member (J)