

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1725/1991

Date of decision: 28.05.1993

Shri V. Narayanan & Others

... Applicants

Versus

Lt. Governor, Delhi & Others

... Respondents

For the Applicants

... Shri M.M. Sudan, Counsel

For the Respondents

... Shri R.S. Chaudhary, departmental
representative.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN

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

1.

To be referred to the Reporters or not? *yes*

JUDGMENT (ORAL)

(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman)

There are 4 Polytechnics under the Directorate of Technical Education. Two vacancies exist for the post of Principal of the Polytechnics. The first occurred with effect from 1.6.1990 on account of voluntary retirement of one Shri Baldev Raj (first vacancy). The second occurred with effect from 1.5.1991 on the retirement of one Shri Saghir Ahmed (second vacancy). The two posts had been filled up by promoting departmental candidates. The three petitioners before us are holding positions in three of the four Polytechnics. They are claimants to the said posts of Principal. Their case is that both the posts should also be filled up by the method of promotion. The respondents' case is that now the method of direct recruitment should be adopted wherein the departmental candidates too will be given a chance to compete.

2. The matter is governed by Recruitment Rules. The method of recruitment as prescribed is: "by promotion or by direct recruitment. The method to be determined in each case in consultation with the Commission". It is common ground that the Commission referred to in the Rules, is the Union Public Service Commission. Correspondence between the Joint Director (Technical Education) and the Secretary of the Commission / *ensued.* A letter dated 7.9.90 was sent by the Jt. Director to the Secretary of the Commission / *stating therein that the first vacancy had*

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occurred. A request was made that the said vacancy may be advertised and the recommendations of the Commission may be sent to the Directorate.

3. On 19.12.1990, Smt. B. Prasad, Secretary (Technical Education) addressed a letter to Shri M.P. Singh, Joint Secretary of the Commission drawing his attention to the two modes of recruitment. This letter was confined to the first vacancy. It was emphasised therein that the post of a Principal was a critical one, in an institution it was desirable to have a person with a wider experience and knowledge and it was necessary to infuse fresh blood at that level to provide the necessary leadership and dynamism required for the growth and development of the institution. She recommended that the first vacancy may be filled up by direct recruitment and the departmental candidates should also be given an opportunity to compete with outsiders.

4. On 8.1.1991, the Under-Secretary of the Commission wrote to Smt. B. Prasad that a complete and upto date seniority list of all the officers in the feeder grade may be sent to his office for processing the case. This letter indicates that till then the Commission had not agreed with the suggestion of Smt. B. Prasad that the first vacancy should be filled up by the method of direct recruitment.

5. On 16.1.1991, the Joint Director (Technical Education) sent another communication to the Joint Secretary of the Commission emphasising therein the view point of Smt. B. Prasad that the post should be filled by direct recruitment. The original record shown to us indicates that on 31.1.1991 the Under-Secretary conveyed to the Director of Technical Education the approval of the Commission that the first vacancy be filled up by the process of direct recruitment.

6. On 21.3.1991, the Joint Director informed the Secretary of the Commission of the second anticipated vacancy. He requested that an advertisement may be issued in respect of the second vacancy.

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It is not in dispute that the Commission issued two advertisements for the two vacancies after 21.3.1991.

7. It is urged on behalf of the petitioners that no occasion arose for reversing the earling decision that the two posts of Principal should be filled up by the method of departmental promotion. It is urged that such a decision had been arbitrarily taken. We have already referred to the reason given by Smt. B. Prasad for requesting the Commission to agree to the method of direct recruitment. It is on record that the earlier decision had been taken in the interest of departmental promotees. It is apparent that it was later on felt that it was in the wider interest of the institution that the post of the Principal should be manned by a person having a wider horizon and better experience etc. The considerations which operated in the minds of Smt. B. Prasad ✓ and the Commission were neither irrelevant nor extraneous nor ~~not~~ germane to the purpose for which the post of a Principal exists in the Polytechnic. No definite allegation of any mala fides has been made against any person and against Smt. B. Prasad in particular. The rule as extracted above posits that the method has to be determined in each case. This means that whenever a vacancy occurs and has to be filled up there has to be a fresh determination of the method to be adopted for doing so. It is implicit in the rule that a decision once taken regarding the method to be adopted is not sacrosanct. It has to be reviewed from time to time having regard to the exigencies of the situation. We do not find any element of arbitrariness in the decision taken.

8. The expression "determined" as used in the rule not only indicates an application of mind, but also an objective consideration of the matter. There can be no getting away from the fact that Smt. Prasad applied ~~here~~ mind objectively in taking the decision that the first vacancy should be filled up by the method of direct recruitment. The Commission was duly consulted and it agreed with the proposal of Smt. B. Prasad. Therefore, there can be no escape from the conclusion that the decision with respect to the first vacancy was taken in accordance with the rules.

9. We have gone through the record shown to us. We could neither find nor could the departmental representative (Shri R.S. Chaudhary) show us any material to indicate that either the Directorate determined that the second vacancy too should be filled up by the process of direct recruitment or the Commission applied its mind in that behalf. Assuming, in the request of the Joint Director to the Secretary of the Commission that the second post may also be advertised, such a determination or decision was implicit, it cannot be argued by any stretch of imagination that the Commission accorded its approval with respect to the procedure to be adopted for filling up the second vacancy merely because it advertised the post which came into existence on account of that vacancy. "Consultation" in the context and ~~studying~~ of the rule ~~means~~ must be effective consultation. Therefore, the advertisement pertaining to the second vacancy cannot be sustained. We accordingly quash the same.

10. There are two posts. One of them has to be filled up by direct recruitment. With respect to the other, a decision should be taken in accordance with the rules. If it is decided that to the other post, the method of departmental promotion should be applied, it will be open to the respondents to proceed with the selection of a Principal in the first vacancy. If, however, a decision is taken that the other post too should be subjected to the method of direct recruitment, then ^a the fresh advertisement has to take place. It will be desirable that there should be a common selection for both the posts so that the merits, inter se and all the eligible candidates are examined and the best two candidates are selected.

11. The departmental representative, Shri R.S. Chaudhary

made a statement to us that he had informed the learned counsel Shri R.L. Dhawan that this OA will be taken up for hearing today by us. He stated that Shri Dhawan conveyed to us through him that he had no further arguments to advance.

12. With these directions, this application is disposed of finally but without any order as to costs.

Subrata
(I.K. RASGOTRA)
MEMBER A()
28.05.1993

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(S.K. DHAON)
VICE CHAIRMAN
28.05.1993

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