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**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.2272/2004**

**New Delhi, this the 22<sup>nd</sup> day of February, 2005**

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.K.Naik, Member (A)**

1. Ashok Kumar  
S/o Shri Dayal Singh  
Resident of 26/103, IV 3524  
Street No.10, Vishwas Nagar  
New Delhi – 110 032.
  2. Ravinder Raj  
S/o Shri Prithviraj Solanki  
Resident of 15/C, Type IV  
Ordinance Factory, Jalgaon.
  3. Ravi Ranjan  
S/o Shri S S Prasad  
R/o G-1773, Laxmi Bai Nagar, New Delhi.
  4. Rajender Rawal  
S/o Shri N S Rawal  
R/o H-64, Garhwali Mohalla  
Laxmi Nagar, Delhi.
  5. Anand Kashyap  
S/o Shri Hariprashad  
Resident of A-3, Pandav Nagar  
Delhi.
- ... Applicants

**(By Advocate: Sh. V.Hari Pillai)**

Versus

1. Union of India  
Through The Secretary  
Ministry of Home Affairs  
North Block, New Delhi.
  2. National Crime Records Bureau  
Ministry of Home Affairs  
East Block-VII, R.K.Puram  
New Delhi-110 066.  
Through its Director.
- ... Respondents

**(By Advocate: Sh. M.K.Bhardwaj proxy counsel for Sh.  
A.K.Bhardwaj)**

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**ORDER**

**By Mr. Justice V.S. Aggarwal:**

An advertisement was issued inviting applications for the post of **Data Processing Assistants** (for short 'DPA') Grade 'A' in Computer and Systems Division of Respondent No.2. The first advertisement that was issued in May 2001 was cancelled. It was followed by another advertisement inviting applications for the same post in August 2001. The applicants had applied for the said post of DPA in the office of Respondent No.2. In pursuance of the same, they had taken the test. The applicants were declared successful in the written test. The computer proficiency examination was held on the next date and the applicants were again declared successful. They were called for interview and were selected and it is alleged that they were also informed that their respective appointment letters would be issued in due course. They were subjected to medical examination.

2. After December 2001, the applicants had approached Respondent No.2 to inquire about their appointment letters. When no action was being taken, they had filed Original Application No.1887/2004. This Tribunal had directed that the Director, National Crime Records Bureau should consider the representation and pass an appropriate speaking order preferably within three months of the receipt of a certified copy of the order and communicate it to the applicants.

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3. By virtue of the present application, the applicants seek that respondents should be directed to appoint them to the posts that were advertised because the action of the respondents in this regard is not valid.

4. Needless to mention that while the present application was pending, in pursuance of the directions of this Tribunal in OA 1887/2004, an order has been passed pointing out that vide the umbrella notification of 20.4.1998, the said post had been classified as Group 'B' irrespective of the amendments in the Rules. Due procedure of Group 'B' post had not been adopted and, therefore, the advertisement was not accurate. The reasoning reads:

✓ "WHEREAS the applicants were never issued any offer of appointment/appointment letter, and while referring the individuals for medical and police verification it was clearly mentioned that being asked to undergo a medical examination would not be deemed to be the Bureau's commitment as to final selection; and

WHEREAS, while considering the proposal for appointment of shortlisted candidates against the post of DPA 'A', Department of Personnel and Training observed that the posts in the scale of rs.5500-175-9000/- were classified as group 'B', irrespective of whether amendments to that effect had been carried out in their Recruitment Rules, as per the umbrella notification dated 20<sup>th</sup> April, 1998 issued by DOP&T on the subject, and further that review of the model Recruitment Rules of such post was yet to be completed, and if immediate filling up of these posts was considered necessary by MHA, DOP&T had no objection to the UPSC being approached for suggesting a one time method (with eligibility qualification etc) to fill up these posts; and

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WHEREAS, in accordance with the above, the matter was taken up with Union Public Service Commission (UPSC) who observed that the classification of the posts carrying the pay scale with the maximum of Rs.9000/- as Group 'B' was made vide DOP&T order dated 20<sup>th</sup> April, 1998, while the date of advertisement of the post of DPA 'A' was 25-31<sup>st</sup> August, 2001, and as such the advertisement issued by this Bureau was not accurate; and

WHEREAS, UPSC had also suggested a one-time method of recruitment for the post of Data Processing Assistant Grade 'A' (General Central Service Group 'B', Non-Gazetted, Non-Ministerial) as direct recruitment through Staff Selection Commission, and since the recruitment process adopted in the instant case failed to comply with stipulated Government instructions on the subject, the same is liable to be cancelled; and

NOW, therefore, it is hereby ordered that the entire selection process for the post of DPA Grade 'A', advertised in Employment News dated 5-11<sup>th</sup> May, and 25-31<sup>st</sup> August, 2001, is cancelled due to "administrative and technical reasons", about which the applicants were informed earlier vide this Bureau's communication No.(035)/35/5/ 2001-Ad.II/NCRB dated 2<sup>nd</sup> August, 2004 (copy enclosed).

10. This order issues in compliance with the Tribunal's direction dated 6<sup>th</sup> August, 2004 in OA No.1887/2004 in MA No.1607/2004."

5. In the reply filed, the respondents contend that while considering the proposal for appointment of short-listed candidates against the posts of DPA 'A', it was observed that the posts in the scale of Rs.5500-9000 has been classified as Group 'B' post. This was irrespective of the Recruitment Rules being not been amended. As per the umbrella notification of 20.4.1998, the procedure had to be so adopted. It is being stated that the applicants had never been



issued any offer of appointment. They were only sent for medical examination mentioning and that it will not confer them any right of appointment.

6. During the course of submissions, on behalf of the respondents, it was pointed that the order rejecting the representation of the applicants has now been passed on 11.11.2004, which has not been challenged.

7. All the same, this technical plea, in our opinion, should not stand in the way of deciding this particular matter because the net result of the relief would be the same. The applicants seek that respondents should be directed to appoint them on the post that had been advertised. In fact, on 2.8.2004, an order was issued that written test held on 16.12.2001 has been cancelled. Thereafter, the applicants had preferred an MA 1778/2004 in OA No.1887/2004 and they were permitted to challenge the letter of 2.8.2004. Therefore, we find no reason to accept the plea of the respondents because once the ultimate relief claimed, as we have referred to above, is a technical plea necessarily it should not come in the way.

8. On behalf of the applicants, it was contended that an offer of appointment even had been given but so far as this particular contention is concerned, it must be rejected. This is for the reason that after the result was declared, a medical examination was directed to be conducted. It was clearly mentioned therein that undergoing a medical examination will not be deemed to be the

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commitment by Respondent No.2 for the final selection. The said contention of the applicants is, therefore, devoid of any merit.

9. Strong reliance on behalf of the applicants was placed on the decision of the Supreme Court in the case of **R.S. MITTAL v. UNION OF INDIA AND OTHERS**, (1995) Suppl. (2) SCC 230. In the cited case, the selection was for the post of Judicial Member in the Income Tax Appellate Tribunal. The Selection Board had been constituted. A panel was prepared. The Central Government did not make any appointment and issued a fresh advertisement. An application was filed seeking direction to the respondents to appoint the selected candidates. The Supreme Court held:

"10. The Tribunal dismissed the application by the impugned judgment on the following reasoning:

- (a) The selection panel was merely a list of persons found suitable and does not clothe the applicants with any right of appointment. The recommendations of the Selection Board were directly and not mandatory and were not therefore enforceable by issue of a writ of mandamus by the Court.
- (b) The letter of Ministry of Home Affairs dated 8-2-1982 which extends the life of panel till exhausted is not relevant in the present case. In the circumstances the life of the panel in this case cannot go beyond 18 months and as such expired in July 1989.

It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then,

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ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

From the abovesaid decision of the Supreme Court, it is obvious that once a person is on the select panel, he should normally be appointed unless there are justifiable reasons to do so.

10. In the present case before us, the reasons forthcoming are that though the Recruitment Rules had not been amended but still vide the umbrella notification of 20.4.1998, the post in the scale of Rs.5500-9000 was classified as Group 'B' post. The procedure for filling up of Group 'B' post was not followed and the posts were, inadvertently, directly advertised. In our considered opinion, this is a valid reason in this regard.

11. However, one fact that cannot be lost sight of is that the advertisement had been issued in August, 2001 while the examination was finally cancelled in August, 2004 and that too when after the applicants had put in the OA No.1887/2004. One fails to understand as to why such a long time has been taken to inform the selected candidates. We were told that some of the candidates even have become overage. Therefore, scales have to be kept even. In the case of **R.S.Mittal (supra)**, even the Supreme

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✓ Court while dismissing the petition and not granting the relief, had awarded Rs.30, 000/- as costs to be paid to **Shri R.S. Mittal** to which we have referred to above. The analogy must apply in the present case because not only, as referred to above, some of the applicants have become overage but their just expectancy to be selected is also being lost after many years. Consequently, we dispose of the present application directing that:

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- a) The Original Application is dismissed.
  - b) The respondents should pay **Rs.30,000/- (Rupees Thirty Thousand Only)** as costs to each of the applicant because of their acts in this regard.
  - c) If new test is to be held, the claim of the applicants, who might have become overage, shall be taken care of and if rules permit, age relaxation should be granted to them.

  
(S.K.Naik)  
Member (A)

  
(V.S.Aggarwal)  
Chairman

/NSN/