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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No. 193/2004
T.A.No.

DATE OF DECISION 21-7-2004

Ombir Singh Petitioner (s)

S.K.U. Srivastava Advocate for the
Petitioner (s)

Versus

Govt. of NCT of Delhi & Ors petitioner (s)

Mrs. Poojma Gupta Adocate for the
respondent (s)

CORAM:

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S.A.Singh, Member (J)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? Yes

S. Raju
(Shanker Raju)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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OA NO. 193/2004

This the 21st day of July, 2004

HON'BLE SH. SHANKER RAJU, MEMBER (J)
HON'BLE SH. S.A.SINGH, MEMBER (A)

Ombir Singh, S/o Sh.Sukh Pal,
R/o Vill. & PO: Gurana, Tehsil Baraut,
Distt. Baghpat, U.P.

...Applicant.

(By advocate: Shri U.Srivastava)

Versus

Govt. of NCT Delhi through,

1. The Chief Secretary,
Govt. of NCT Delhi,
5 Sham Nath Marg,
New Delhi.
2. The Commissioner of Police
Police Head Quarters,
I.P. Estate New Delhi.
3. The Dy.Commissioner of Police
IInd Bn. DAP, New Delhi.

...Respondents.

(By Advocate: Mrs.Protima Gupta)

ORDER (ORAL)

By Shri Shanker Raju:

Heard the counsel for the parties.

2. The applicant who was selected for the post of Constable (Executive) in Delhi Police, impugns cancellation of his candidature vide order dated 14.10.2003 on the ground that his name has not been registered with the Employment Exchange at least a month on or before 13.3.2003.

3. Learned counsel for the applicant assails the impugned order on the ground that denial of appointment on non-registration through Employment Exchange is not

reasonable and is contrary to the decision of the Apex Court in the case of Excise Superintendent, Malkapatnam vs. K.B.N.Visweshwara Rao & Others JT 1996(9) SC 638 where the following are the observations:

Leave granted.

2. We have heard learned counsel on both sides.

3. These appeals by special leave arise from the order dated April 21, 1992 of the Andhra Pradesh Administrative Tribunal in OA No.9501/92 and batch. The admitted position is that the respondents were not sponsored through the employment exchange for selection to the 723 posts sought to be filled up from the candidates sponsored through the medium of employment exchange. The respondents independently applied for consideration of their claims but they were not considered. Consequently, they approached the Tribunal and sought direction for their appointment. Interim directions were issued to consider their cases and to appoint, if selected by the selecting authority. Though the Tribunal held that sponsorship of the candidates through the medium of employment exchange was valid and not violative of Article 14 and 16 of the Constitution, since many of the candidates came to be selected in terms of the interim direction, orders were issued to appoint the selected candidates. There is a difference of opinion in this behalf. Whereas the majority of two members held that it is not violative of Articles 14 and 16 of the Constitution, the minority view was that it was violative. Thus, these appeals by special leave.

4. This Court in Union of India & Ors. vs. N.Hargopal & Ors. [1987] 3 SCC 308; [1988(1) SLR 5 (SC)], noted the contention of counsel appearing for respondents therein that excluding the candidates who were not sponsored through medium of employment exchange and restricting the choice of selection to the candidates sponsored through the medium of employment exchange, would offend the equality clause of Articles 14 and 16 and held that the contention was attractive and it was not open to the Government to impose restriction on the field of choice. But in view of the fact that even the paper publication would not reach many of handicapped who would be unable to have access to the newspaper, it was held that the

sponsorship through the medium of employment exchange would not violate Articles 14 and 16. On the other hand, it would advance the rights to the handicapped. In that view, this Court upheld the restriction imposed by the State and Central Governments to consider the cases of the candidates through medium of employment exchange, while holding that such a restriction was not intended to be applicable to the private employment as held in para 6 of the judgement.

5. Shri Ram Kumar, learned counsel for the State, contended that in view of the above decision, the direction issued by the Tribunal is not in accordance with law. On the other hand, S/Shri Shanti Swarup and L.R. Rao, learned counsel appearing for the respondents, contended that the restriction of the field of choice to the selected candidates sponsored through the medium of employment exchange prohibits the right to be considered for employment to a post under the State and many people cannot reach the employment exchange to get their names sponsored and the employment exchanges are not adopting fair means and procedure to send the names strictly according to seniority in their record. So, the better course would be to adopt both the mediums, viz., of employment exchange and publication in the newspaper as that would subserve the public purpose better.

6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidates are unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment, should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news-bulletins; and then

consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

7. The appeals are accordingly disposed of. No case is made out to disturb the directions issued by the Tribunal for appointment of the selected candidates. Therefore, the directions survive. No costs."

4. In the above backdrop, it is contended that the only object sought to be achieved by registration with Employment Exchange is to give due notice the vacancies notified. Whereas there are other modes like Newspapers, Television and Employment News for this purpose.

5. As such relying upon the decision of the Tribunal in OA 1170/2000 decided on 19.1.2001 in the case of Jagbir Singh vs. Lt.Governor and Anr., applicant contends that his case is in all fours covered by the ratio laid down therein.

6. On the other hand, Mrs.P.K.Gupta vehemently opposed the contentions raised by the applicant and contended that one of the conditions for appointment is that the candidate should have been registered with the Employment Exchange on or before 13.3.2002. As the applicant has not fulfilled the requisite criteria, he has not been appointed. It is lastly contended that one has no indefeasible right to be appointed.

7. We have heard the rival contentions of the learned counsel and deliberated on the issue. We find that Section 27 of the Delhi Police (Appointment &

Recruitment) Rules, 1980 provides that the vacancies which are not filled through UPSC or by competitive examination or by departmental promotion or transfers should invariably be notified in good time through the employment exchange.

8. The only reasonable and literal interpretation which could be given to the above provision which is not in consistent with the law that on a competitive examination, recruitment is to be made against notified vacancies. There is no requirement^h of registration with the Employment Exchange. The basic purpose to notify the vacancy is to give wide publication which has been done in the present case. Accordingly the ground of cancellation of candidature of the applicant is irrational as well as unreasonable also. This is also repugnant to the decision of Apex Court in Malkapatnam (supra).

9. In the light of decision of the Apex Court (supra) which is binding precedent, respondents' action of cancelling the candidature of the applicant and denial of appointment to the applicant on the ground that he was not registered with the Employment Exchange on or before the cut off date on 13.3.2002 is also ultravires and does not pass the twin test of intelligible differentia and the reasonable nexus with the object sought to be achieved. It offends the principles of equality enshrined under Article 14 of the Constitution of India

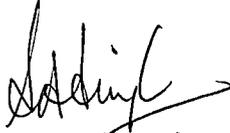
denying equal opportunity to the applicant in the matter of employment.

10. The Constitution Bench of the Apex Court in the case of D.S.Nakara Vs. Union of India 1983 (1) AISLJ 131 held cut off date as unreasonable in pension. We have seen the ground taken by the respondents and find that this cut off date 13.3.2002 and the requirement of registration with the Employment Exchange has no reasonable nexus with the appointment of candidates as Constable (Executive) in Delhi Police.

11. It is trite law that on selection one has no infeasible right of appointment but it is also settled that on unreasonable grounds as well on arbitrary action one cannot be denied appointment, the present is the case.

12. As regards the wide repercussion of this decision and opening of flood gates for others is concerned, we as the Tribunal, redress the grievance of a person, who is aggrieved and approaches us for redressal. If the action of the Government offends Constitution of India, the same has to be remedied. Unlike the Apex Court under Article 142 of the Constitution of India, it is beyond our jurisdiction to declare our decisions as not binding precedents.

13. In the result, we allow this OA. Impugned order is quashed. Respondents are directed to offer appointment to the applicant from the date others had joined in the batch. He shall also be entitled to all the consequential benefits. Respondents are further directed to comply above directions within three months from the date of receipt of a copy of this order. No costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

/kdr/