

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 28/ 1985
T.A. No.

DATE OF DECISION 29.8.1986.

Mrs. Rajeshwari and others

Petitioners

Shri G.D. Gupta

Advocate for the Petitioner(s)

Versus

Delhi Administration through Respondent
its Chief Secretary and another.

Mrs. Avanish Ahlawat

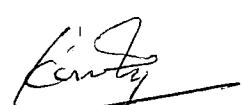
Advocate for the Respondent(s)

CORAM :

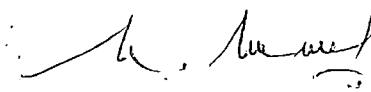
The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

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? No.
4. Whether to be circulated to other Benches? Yes.


(K. Madhava Reddy)

CHAIRMAN. 29.8.86.


(Kaushal Kumar)

MEMBER. 29.8.86.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. No. 28/85.

DATE OF DECISION: 29.8.1986.

1. Mrs. Rajeshwari.
2. Mrs. Manjit Kaur.
3. Mrs. Satinder Kaur.
4. Mrs. Manjeet Kaur.
5. Miss Chanchal.
6. Mrs. Yash Wanti.
7. Mrs. Sanjida Begam.
8. Miss Krishna Nandwani.

9. Mrs. Anita Gaur. Petitioners.

Shri G.D. Gupta Advocate for the Petitioners.

VERSUS

1. Delhi Administration through its Chief Secretary.
2. The Director of Social Welfare, Delhi Administration.

Respondents.

Mrs. Avnish Ahlawat Advocate for the Respondents.

CORAM:

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.
The Hon'ble Mr. Kaushal Kumar, Member.

(Judgment of the Bench delivered by the Hon'ble Member, Mr. Kaushal Kumar.)

JUDGMENT

The applicants in this case have challenged the scrapping of the panel drawn by the Delhi Administration, Department of Social Welfare, for the posts of Supervisor, which was prepared in June, 1983 and have prayed for an order restraining the respondents from calling for fresh names from the Employment Exchange and/or holding fresh interviews for the vacancies for which the panel had already been prepared in June, 1983 and also for a direction to the respondents to fill the posts of Supervisor to the extent of number of persons on the panel prepared in June 1983 from the said panel.

A. Kumar

2. In June 1983, a panel was prepared in the Directorate of Social Welfare, Delhi Administration, for the posts of Supervisor in the scale of Rs.425-700. In response to a requisition sent by the Directorate of Social Welfare, Delhi Administration, on 24.1.1983 to the Employment Exchanges for 22 posts of Supervisor, 160 candidates were sponsored by the Employment Exchange; besides 136 Anganwari workers had also applied. The Staff Selection Board comprising of Director, Social Welfare, as Chairman and two other officers as Members, prepared a panel of 23 names. The minutes of the Selection Board show that the first 10 candidates were recommended for appointment against regular vacancies and these included four Scheduled Caste candidates. Three candidates were recommended for ad-hoc appointment against vacancies for which Scheduled Caste and Schedule Tribe candidates were not available. Ten candidates were recommended to be kept on panel "in order to meet the emergency arising by officials proceeding on leave or on training or due to non-acceptance of the appointment and also for future vacancies". The nine applicants herein are included in this panel and they were offered appointments against short-term vacancies. They worked for varying periods as shown in the Statement - Annexure 'B' to the petition. In September 1983, there was a ban imposed on filling up vacancies, which was lifted in March 1985. However, the panel was scrapped on 16.5.1985 and the respondents wanted to hold fresh selection for filling up the nine posts.

3. According to the respondents, there were only 13 posts of Supervisor in June 1983, out of which five posts were reserved for Scheduled Caste and two for Scheduled Tribe candidates. The Staff Selection Board considered 160 candidates sponsored by the Employment Exchange and 136 Anganwari candidates, out of which 12 candidates belonged

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to S/C and two candidates belonged to S/T. However, before the Selection Board no S/T candidate appeared. From amongst the Scheduled Tribe candidates, only four were selected as per the Recruitment Rules. It is the contention of the respondents that nine applicants were included in the panel only for ad-hoc appointments against leave vacancies and it was made clear in their appointment letters that they would not have any claim or right for regular appointment to the said posts and seniority in the said grade. It is further contended that on the basis of instructions dated 9.11.1984 issued by the Delhi Administration in which it was specifically mentioned that the life of a panel was one year and it could be extended maximum for another six months, the panel prepared in 1983 was scrapped on 16th May, 1985. It is also stated in the counter-affidavit that in June, 1985, nine new posts of Supervisor were created for which the Administration wanted to draw a fresh panel.

4. The short point for determination in this case is regarding the validity of the panel prepared in June 1983. It was pointed out by Shri G.D. Gupta, learned counsel for the applicants that the instructions issued by Delhi Administration on 9.11.1984, which were based on the instructions of the Government of India, Department of Personnel & Administrative Reforms contained in their O.M. No. 22011/6/75-Estt. (D), dated 30th December, 1976 regarding the period of validity of panel, applied to panels drawn up by Departmental Promotion Committees for promotions and these instructions did not apply to selections through direct recruitment. The Delhi Administration was under the mistaken impression that 'no instructions exist regarding the validity of the panel drawn on the basis of the open competition', as stated in para 2 of their circular letter

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No.F.2(67)/84-S.II, dated 9.11.84 - Annexure 'E' to the paper book. This position was further confirmed by the fact that these instructions were subsequently superseded by the Delhi Administration through their circular No.F.2(67)/84-S.II, dated 14.2.86. The correct position was that the validity period of panel prepared on the basis of direct recruitment/Departmental Competitive Examination was covered by the instructions contained in the Government of India, Ministry of Home Affairs, Department of Personnel & A.R. Office Memorandum No. 22011/2/79-Estt(D), dated 8.2.1982.

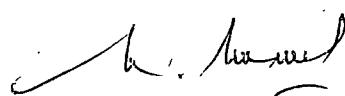
The same is reproduced below: -

"Sub: - Validity period of list of selected candidates prepared on the basis of direct recruitment/Departmental Competitive Examination.

The undersigned is directed to say that references are being received from time to time from Ministries/Deptts. enquiring as to what should be the validity period of a list of selected candidates prepared on the basis of direct recruitment or Departmental Competitive Examination.

Normally, in the case of direct recruitment a list of selected candidates is prepared to the extent of the number of vacancies (other persons found suitable being put on a reserve list, in case some of the persons on the list of selected candidates do not become available appointment). Similarly, in the case of Departmental Competitive Examinations the list of selected candidates has to be based on the number of vacancies on the date of declaration of results, as the examination is competitive and selection is based on merit. A problem may arise when there is a fluctuation in the vacancies after the list of selected candidates is announced.

The matter has been carefully considered. Normally, recruitment whether from the open market or through a Departmental Competitive Examination should take place only when there are no candidates available from an earlier list of selected candidates. However, there is a likelihood of vacancies arising in future: in case



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names of selected candidates are already available, there should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons already in the list of selected candidates awaiting appointment. Thus, 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.

Once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of the vacancies undergoes a change, after his name has been included in the list of selected candidates. Thus, where selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting appointment should be given appointments first, before starting appointments from a fresh list from the subsequent recruitment or examination.

Ministry of Finance, etc. are requested to bring the above instructions to the notice of all the appointing authorities under them for information and guidance.

Sd/- (J.K. Sharma)
Director. "

5. Shri Gupta also relied upon the ruling of the Supreme Court in Prem Prakash etc. v. Union of India & others (1984(2) All India Services Law Journal - 376). With reference to the above mentioned O.M., the Supreme Court held:

"It is clear from this 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



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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." (para 15).

6. Mrs. Avanish Ahlawat, learned counsel for the respondents contended that the above mentioned O.M. of February 1982 regulated appointments only with reference to declared number of vacancies as at the time of preparing the panel. She pointed out that as per the minutes of the Staff Selection Board, which prepared the panel in June 1983, there were only 13 posts available for direct recruitment and as such the instructions in the aforesaid O.M. did not entitle the applicants who were placed last in the panel of 23 names to claim regular appointments. In any case, they were included in the panel only for ad-hoc appointment. It is further contended that the additional nine posts of Supervisor were created only in June 1985, to which the petitioners had no claim for appointment on the basis of the panel drawn up in June 1983.

7. It is clear from the Office Memorandum dated 8.2.82 that normally recruitment from the open market or through a Departmental Competitive Examination should take place only when there are no candidates available from an earlier list of selected candidates. In case names of selected candidates are already available, there should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number

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of persons already in the list of selected candidates awaiting appointment. Thus, 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. The O.M. further envisages that once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him or her even if the number of vacancies undergoes a change, after his or her name has been included in the list of selected candidates. Thus, where selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively the intake for the next recruitment should be reduced by the number of candidates already awaiting appointment and the candidates awaiting appointments should be given appointments first, before starting appointments from a fresh list.

8. The position in regard to the number of vacancies being only 13 at the time when the panel was prepared is belied by the requisition sent to the Employment Exchange in January 1983, which clearly stated that there were 22 posts of Supervisor required to be filled by direct recruitment. In fact, the requisition also gave a break-up of the posts reserved for S/C, S/T, physically handicapped and unreserved categories. It is difficult to accept the position that in all there were only 13 posts available for direct recruitment. The learned counsel for respondents, during the course of the arguments, stated that 50% of the total number of posts were required to be filled by Departmental Promotions and as such the number of vacancies which was to be filled by direct recruitment was reduced subsequently. However, there is nothing on record to show that after this mistake was detected,

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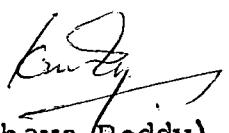
any corrigendum to the requisition was sent to the Employment Exchange reducing the number of posts. In the circumstances, the declared number of posts available for direct recruitment has to be taken as 22 which was notified to the Employment Exchange. It is also admitted that out of the posts which were filled up on a regular basis by a panel drawn in June 1983, three vacancies had occurred on a regular basis because of termination of services or resignation and on date there would appear to be at least 12 posts available for being filled up on a regular basis. The position is not quite clear as some of these posts may be required to be filled up by promotion and some of them may also be reserved for S/C / S/T candidates. Be that as it may, as the applicants were included in a regularly drawn up panel for direct recruitment on the basis of 22 vacancies notified to the Employment Exchange and as the minutes of the Selection Committee also clearly state that the applicants were included in the last 10 names of the panel and could be considered "also for future vacancies", they have become entitled for regular appointment against existing and future vacancies to the extent these are available for direct recruitment of candidates of general category i.e., not reserved for Scheduled Caste / Scheduled Tribe or handicapped persons.

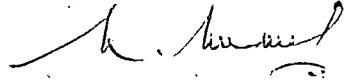
9. In the light of the above discussion, the petition is allowed and a direction shall issue that the panel of June 1983 shall continue to remain valid till it is exhausted for purposes of direct recruitment to the posts of Supervisor. There shall be a further direction that the applicants shall be appointed against existing and future vacancies of Supervisors to the extent that these are available for being filled up by direct recruitment of candidates from the general or unreserved category. Absorption of the applicants against regular vacancies

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of Supervisors shall take precedence over appointments of candidates from any fresh panel prepared for direct recruitment against existing or future unreserved vacancies. In the circumstances of the case, there shall be no order as to costs.


(K. Madhava Reddy)
CHAIRMAN. 29.8.86.


(Kaushal Kumar)
MEMBER. 29.8.86.