

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.

Date of Decision: 10.9.92

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OA 1091/92

S.S. SHARMA & ORS.

... APPLICANTS.

Vs.

DELHI ADMN. & ANR.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI P.C. JAIN, MEMBER (A).  
THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... SHRI R.VENKATARAMANI.

For the Respondents ... SHRI O.N. TRISAL.

1. Whether Reporters of local papers may be yes. allowed to see the Judgement ?
2. To be referred to the Reporters or not ? yes.

JUDGEMENT

( DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J) )

The applicants in this application have filed a joint application aggrieved by the order dated 24.3.92 issued by the respondent No.2 to all the applicants by which their appointments made to the post of Foot Constable have been arbitrarily cancelled.

The applicants have claimed the relief that the impugned order dated 24.3.92 and similar orders issued to the other applicants by the respondents be quashed and also declare that terms contained in para 1 of the memorandum dated 11.2.92 regarding power to terminate without notice and without assigning reasons is unconstitutional and violative of Article 14 of the Constitution.

The facts of the case are that for the post of Foot Constable, the rules were framed under Article 309 of the Constitution regarding the method of recruitment and qualifications for appointment to the post of Foot Constables. Under the said recruitment rules a copy of which has been filed as Annexure-II to the application, recruitment is to be made 50% by promotion failing which by direct recruitment, and 50% by direct recruitment. Pursuant to the aforesaid rules a decision was taken by respondent No.2 to fill up 48 vacancies by direct recruitment and requisitions were sent by the respondents to the Employment Exchanges in Delhi, calling for names to be sponsored for consideration for appointment to the post of Foot Constable. The applicants received a memorandum issued on behalf of the respondents directing them to report to the office alongwith requisite certificates stated in the memorandum. This memorandum is dated 6.9.91. All the applicants received such memorandum. Thereafter the applicants appeared in the physical measurement-endurance test on 5.12.91. All the applicants succeeded in the said test. Written test, thereafter, was held on 12.1.92. All the applicants qualified in that also. On the basis of merit assessed in the written test a select list was prepared for appointment to the post of Foot Constable. A list of 39 persons consisting of 28 in General Category, 8 in the S.C. Category and 3 ex-service

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men was prepared. On the basis of this select list, on 11.2.92, a memorandum was sent to applicant No.1 offering him to appoint in the post of Foot Constable. All other applicants are said to have received identical memoranda. All the applicants responded and sent their acceptance to the respondents.

On 19.2.92, a memorandum was issued on behalf of the respondents cancelling the aforesaid offer of appointment contained in the memorandum dated 11.2.92 and also the acceptance of the appointment by the applicants. The applicants have filed a true copy of the memorandum dated 24.3.92 (Annexure-VI) and similar memorandum was issued to the applicants and other selected candidates.

The grievance of the applicants is that the said cancellation order of the offer of appointment as well as of the acceptance of the applicants is without any basis and does not on the face of it discloses any reason thereof and as such is arbitrary and illegal. The applicants, therefore, have assailed the aforesaid cancellation of the offer of appointment as well as acceptance of the applicants and also the condition of para 1 of the memorandum dated 11.2.92 to the extent that the service can be terminated at any time without assigning any reason and without notice.

The respondents have contested this application and taken the preliminary objection that the applicants were never appointed to any post nor do they hold any Civil Post. Before the applicants could be appointed, the select list itself was cancelled vide order dated 24.3.92. No right to appointment is conferred on the applicants by mere selection. The respondents have also taken the objection about the jurisdiction of this Tribunal. The respondents have further stated that the applicants, who were sponsored by the Employment Exchanges, were sponsored from the 'spot' list. The result was that the principle of seniority, so far as the registration with the Employment Exchange is concerned, was ignored and the candidates were sponsored in a haphazard manner. It is further stated that the selection committee which made the selection was found not to have been properly constituted inasmuch as there was no Scheduled Caste/Tribe officer in the said committee, though there are standing instructions to the effect that the Govt. Departments should nominate a Schedule Caste/Tribe officer while constituting the Selection Board etc. for the recruitment to the posts under them, particularly where bulk selections for a large number of vacancies, say for 30 or more, at a time are to be made. Thus, the case of the respondents is that the

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names in the list sponsored by the Employment Exchanges were not properly drawn and further, that the Selection Committee was not properly constituted, so the selection has been cancelled as a whole. The impugned order is not malafide and the allegations of abuse of power is also denied.

We have heard the learned counsel for the parties at length and have gone through the records of the case. As regards the jurisdiction of the Tribunal, the applicants have been duly empaneled in a select list and they have also been issued an offer of appointment and an acceptance of offer has also been communicated to the respondents. Thus, it is a service matter of the employees and is fully covered under Section 14 of the Administrative Tribunals Act, 1985 which needs adjudication whether the action of the respondents in not issuing a formal appointment letter is justified or not ? The learned counsel for the respondents, however, during the course of the hearing could not show nor cited any precedent in support of their contention on this point. It is, therefore, held that the Tribunal has jurisdiction in this matter.

The Recruitment Rules for the post of Foot Constable specifically laid down the qualifications as well as method of recruitment mentioned in column 10 that

50% of the posts are to be filled by promotion failing which by direct recruitment and 50% of the remaining posts are to be filled by direct recruitment. There is no dispute about this fact. The respondents also do not dispute educational and other qualifications required for direct recruitment. The respondents also do not dispute the issue of Memorandum dated 6.9.91 wherein the applicant No.1 was called upon to appear on 18.9.91 alongwith all certificates of academic qualifications, Caste Certificate alongwith a passport size photograph. This Memo also shows that the name of applicant No.1 was also sponsored by the Employment Exchange for the post of Foot Constable. Similar memorandum were issued to other applicants in this case. The stand taken by the respondents in passing the impugned order dated 24.3.92 is as follows:-

"The Commissioner Transport hereby cancel the offer of temporary post of Foot Constable in the pay scale of Rs.300-15-1010-E8-20-1150 offered to Shri Shambhu Saran Sharma vide this department Memorandum No. F/Admin/TPT/92/970 dated 11.2.92. Consequently his acceptance for the temporary post of Foot Constable dated 17.2.92 is also cancelled."

The above memorandum does not show any reason whatsoever as to why cancellation of offer of appointment as well as of acceptance of offer has been done. It did not state anywhere that the name sponsored by the Employment Exchange were not in order. The stand taken by the respondents in this respect is only for the first time in their reply. The respondents have also not

substantiated this averment in the reply by any document either of the Employment Exchange or from their own records. What the respondents have stated and the learned counsel for the respondents argued is that the names of the applicants were sponsored in a haphazard manner from the 'spot' list. What the spot list means, has not been established either from the record or from any administrative instruction on the point. The learned counsel argued that the names by the Employment Exchange should have been sponsored on the basis of seniority i.e. those who have been registered since 1980 should have also been sponsored but the name sponsored in the list contained the names of even those candidates who were registered in 1990 and 1991. Though, this contention of the learned counsel for the respondents has not been substantiated by placing any material on record, but looking to the maximum age of eligibility which is 25 years and the applicants all come within that age limit, it may be partly true. However, if a person was 18 years of age in 1980 then he could not have been eligible to take the examination in 1991. Moreover, nobody is shown to have made any grievance of not having been sponsored by the Employment Exchange and thus it is the own creation suo-moto of the respondents. In fact, when the list was received by respondent No.2 from the Employment Exchange, it was open to the respondent to make a scrutiny of the same before holding the selection and offering appointments. The respondents issued a Memo clearly mentioning to each of the applicants and other

similarly situated candidates to appear with the original certificates for check up regarding other academic qualifications and caste certificate. The respondents, therefore, at that initial stage of commencement of selection were aware of date of registration of the applicants and other similarly situated candidates and it is not open to them after the selection process has ended to go back and cancel the select list after issuing the offer of appointment on this basis. It is not the case of the respondents that some of the persons were not sent by the Employment Exchanges though they were otherwise eligible. It cannot be presumed that certain persons who too could have applied for the said post of Foot Constable have been arbitrarily left out from the aforesaid selection. This contention of the learned counsel, therefore, has no force. The second contention of the learned counsel is that the selection committee was not duly constituted and in that connection the learned counsel has referred to the Department of Personnel and Administrative Reforms OM No.27/4(iii)70-Estt.(SCT) dated 2.9.70 and No.16/1/74 Estt.(SCT) dated 23.5.75. The said OM is reproduced below:-

"17.4 Departmental Promotion Committees, Selection Boards etc.

(i) Departmental Promotion Committees. Selection Boards or recruiting authorities, are generally constituted with the departmental officers of appropriate status and background, keeping in view the nature of the post/posts for which recruitment/ promotion is to be made. The Ministries/ Departments may endeavour to the maximum extent possible to nominate a Schedule Caste/Tribe Officer while constituting the Departmental Promotion Committees.

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Selection Boards, etc., for the recruitment/ promotion to posts/ services under them. Particularly, where a Selection Board or Departmental Promotion Committee has to make bulk selections for a large number of vacancies say for 30 or more at a time no effort should be spared in finding a Scheduled Caste or Scheduled Tribe officer for inclusion in the Selection Board/ Departmental Promotion Committee."

The perusal of the aforesaid OM goes to show that a Scheduled Caste/ Tribe officer should be in the selection Board or Departmental Promotion Committee where a bulk selection for a large number of vacancies, say for 30 or more, at a time has to be made. In the present case, it is not denied by the respondents that in the select list there are 28 candidates of General Category, 8 in the S.C. Category and 3 ex-service men. In the list of 39 selected persons none of the Scheduled Caste candidate who has been left out of the list has made any grievance departmentally or in any other manner. There is no document to substantiate that the selection committee did not exercise proper discretion in selecting from among the Scheduled Caste candidates. The case of the respondents is that after the issue of the offer of appointment sometimes in the month of March, the then Secretary of the Department of Transport stood transferred and the present incumbent assumed office. It cannot, therefore, be said that the Secretary, in whose period the selection has been done, did not exercise proper care to observe the relevant rules. Though, the OM cited above laid down that every effort should be made to procure the presence of a Scheduled Caste/Tribe officer in the

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selection committee, yet this OM cannot be deemed to have statutory force. The direction is directory in nature and the same is not specifically provided in the recruitment rules which could go to the root of the case. In view of the above facts, the objection taken by the learned counsel for the respondents cannot be sustained.

It may, however, be emphasized that for the post of Foot Constable there was no interview and the process of selection included only physical/ endurance test and the written test on the basis of which the merit list of selected candidates was prepared. When there was no interview after the written test it cannot be said that the interests of the Scheduled Caste candidates was not properly watched or cared for. There is no objection to the written examination conducted by the selection committee nor during the course of the arguments no such record from the concerned file was shown to give an impression that the selection process in any way was prejudicial to the interest of Scheduled Caste candidates. Among the applicants also there are Scheduled Caste candidates. Applicant No.3,4,9 and 11 are the candidates of a Scheduled Caste category. In view of these circumstances, the Constitution of the selection committee may be irregular but cannot be said to be in violation

of the statutory recruitment rules for the post of Foot Constable, or in violation of the principles of natural justice.

The learned counsel for the respondents also argued that by mere selection no right has accrued to the applicants for getting an appointment and in this connection the learned counsel has referred to the decision of Devinder Singh & Ors Vs. State of Punjab (1982(2)SLR 249). The Lordships of Punjab & Haryana High Court held that mere recommendation of names of candidates by Commission gives no right to appointment and Govt. is not bound to fill up the post. In this authority, the case of State of Haryana Vs. Subhash Chand Marwah (AIR 1973 SC 2216) has also been relied upon. A reference has also made in this case to the case of Kashmiri Lal Bhatia Vs. Secretary, Haryana Public Service Commission & Ors. (1973 (1) SLR 310). In both the authorities relied upon in the aforesaid decision it is laid down that mere fact that the candidates' name appears in the list does not entitle him to be appointed. It is for the Appointing Authority to make appointments in accordance therewith or not. If the Appointing Authority does not make appointment in accordance with those recommendations, the candidates recommended have no right to come to the court and claim that their legal right has been infringed.

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We have considered the above preposition of law as well as the authority of UOI Vs. Mohan Lal Kapoor & Ors. (1973 (2) SCC 836. At page 852 of the reports in para 25 it has been observed, as follows:-

"A place on the approved select list certainly confers a right to be appointed, according to Rules 8 and 9, to cadre posts. Although, the process of assessment by the Selection Committee, and, thereafter, approval by the Union Public Service Commission does not involve observance of the "audi alteram partem" rule in all its rigour and with all its implications, yet, it seems unfair to deprive a person suddenly of either an expectation to be placed, and, even more, of a place on a finalised select list, which confers certain valuable rights on him, without informing him of even the reasons for his proposed supersession before its approval. At any rate, Art. 16 of our Constitution gives rights to Government servants to be treated fairly and squarely, reasonably and impartially in matters relating to service."

The learned counsel for the applicants has also referred to the authority of Shri Ishwari Singh Katri Vs. UOI & Ors. (1987 (2) SLJ 73). The Principal Bench of CAT observed that it is not mandatory to appoint only those candidates who are sponsored by the Employment Exchange. It has been further observed on the basis of the authority of UOI & Ors. Vs. M/s Anglo Afghan Agency (AIR 1968 SC 718) that Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of

the circumstances in which the obligation has arisen. Further, in the case of M/s. Mohan Lal Padam Pat Sugar Mills & Ors. Vs. State of Uttar Pradesh & Ors. (AIR 1979 SC 62), it has been held "under our jurisprudence the Govt. is not exempt from liability to carry out the representation made by it as to its future conduct." Thus, the law be taken to be settled that where a Government makes a promise intending that it can be acted at and, in fact, promisee, acting in reliance on it, alters his position, Government could be also bound by the promise and the promise would be enforceable against the Govt. at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of formal contract as required by Article 298 of the Constitution.

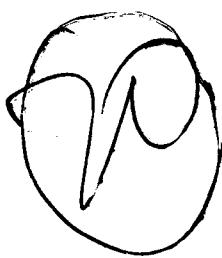
The learned counsel for the applicant argued that the principles of natural justice have not been followed inasmuch as the order dated 24.3.92 is a clear case of malafide and particularly malice in law, being an abuse of power. Acting on extraneous or obviously misconceived ground of action would be a case of malice in law, and the learned counsel has referred to the authority of State of Mysore Vs. P. Kulkarni (1973 (3) SCC 597) highlighting para 7 at page 600 and 601 and Regional Manager Vs. Pawan Kumar Dubey (1976 (3) SCC 334 highlighting para 13 at page 341. The counsel of both

parties have relied on a recent decision of the Hon'ble Supreme Court in S.Govind Raju Vs. Karnataka State Road Transport Corpn. (1986 (3) SCC 273). The reliance has been placed on para 7 of the report. The learned counsel for the respondents desired to distinguish this authority on the fact that the petitioner of that case had been appointed and subsequently his services were terminated. The contention of the learned counsel for the applicant is that when the name of the applicants have figured in the select list that confers on them a right to be appointed subject of course to in the valid terms and conditions that could be imposed under law. However, the learned counsel for the applicant has assailed the violation of principles of natural justice because the applicants have not been given any opportunity to show cause against such cancellation. The impugned order of cancellation of select list as well as the offer of appointment and also acceptance of the offer does not disclose any reason germane to be exigencies of service.

The learned counsel for the applicant has also argued that the respondents cannot take benefit of their own wrong and penalise the applicants for no fault of theirs. If the respondents have not been vigilant of their own instructions then those who have already gone through the process of selection and to the extent that they have been given offer of appointment cannot be denied

the fruits of their labour. It is not the case of the respondents that nonappointment of a Scheduled Caste/Tribe officer as a member of the selection committee has in any manner prejudiced the selection of the Scheduled Caste/Tribe candidates. OUT of the total seats in number, 48% filled in the selection, a list of only 39 persons have been prepared, of which 28 belongs to General Category. Though no seat of Scheduled Tribe candidate has been filled up but the vacancies have been left out which have not been filled up by any of the General Category candidate. The General Category candidate who have been issued offer of appointment were issued in their own quota and that has not in any way effected the rights of reserved category candidates.

The learned counsel for the respondents has emphasized only the fact that since no right by virtue of selection has vested in the applicants so they cannot pray for a mandatory order or direction for their appointment. Here the case is bit different. After the select list was prepared and declared, the respondents have issued an offer of appointment to the applicants. The applicants having received officer of appointment have unconditionally submitted their acceptance which has been duly received by the respondents. At this stage, the respondents are expected to appoint these candidates for the post for



which offer of appointment was given with the conditions they have mentioned in their offer of appointment. The offer of appointment normally precedes the actual appointment and so a right has vested in the applicants to claim appointment to the post for which they have been duly selected and such appointment, on the facts and in the circumstances of the case, could not be denied except in accordance with the due process of law.

The applicants have also assailed the condition of para 1 of the offer of appointment dated 11.2.92. It is not necessary to deal with this aspect of the matter because when the applicants get the appointment on purely temporary basis then they are governed by the relevant service Rules. Any infringement of the rule will give right to affected persons and that can be adjudicated at that stage. It shall be premature to deal with this matter and give a finding on that aspect. There are a number of conditions laid down in the offer of appointment dated 11.2.92 and the applicants have given their acceptance regarding these conditions.

In view of the above facts and circumstances, the present application is partly allowed and the impugned order dated 24.3.92 is quashed and the respondents are directed to appoint the applicants on the existing vacancies for the posts of Foot Constable in accordance

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with the terms and conditions in the offer of appointment made to them and which were accepted by them. These directions shall be complied by the respondents within a period of two months from the date of receipt of a copy of this order. It is made clear that the appointment as aforesaid will have prospective effect.

In the circumstances, the parties are left to bear their own costs.

J. P. Sharma  
( J.P. SHARMA ) 18.9.92  
MEMBER (J)

C. C. Jain 18.9.92  
( P.C. JAIN )  
MEMBER (A)