CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(13)

O.A. No. 1212/93 **199**
T.A. No.

DATE OF DECISION 10.6.1994

Shri S.P. Singh Chaudhari **Petitioner**

Shri P.P. Khurana **Advocate for the Petitioner(s)**

Versus

Union of India **Respondent**

Shri P.H. Ramchandani **Advocate for the Respondent(s)**

CORAM

The Hon'ble Mr. N.V. Krishnan, Vice-Chairman(A)

The Hon'ble Mr. B.S. Hegde, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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(N. V. Krishnan)
Vice-Chairman(A)

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No.1212 of 1993

10th Day of June 1994

Shri N.V. Krishnan, Vice-Chairman(A)

Shri B.S. Hegde, Member (J)

Shri S.P. Singh Chaudhari, Applicant
R/o D-2/1, Court Lane,
Delhi.

By Advocate Shri P.P. Khurana

Versus

1. Union of India through
   Secretary, Ministry of Railways,
   Rail Bhavan,
   New Delhi.

2. Chairman,
   Railway Board,
   Rail Bhavan,
   New Delhi. Respondents

By Advocate Shri P.H. Ramchandani. with Sh. B.K. Agarwal

O R D E R

Shri N.V. Krishnan, Vice-Chairman(A)

The Railway Claims Tribunal is established under the Railway Claims Tribunal Act, 1987. The Tribunal consists of a Chairman, four Vice-Chairmen and such numbers of Judicial Members and Technical Members as the Central Government may deem fit This O.A. concerns the selection of a Judicial Member in pursuance of the proceedings initiated by the

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Annex.A letter dated 5.9.1990 from the Ministry of Railways (the 1st Respondent) to the Registrar of the High Court of Delhi. The contention of the applicant is that the respondents are obliged to bring the proceedings to a final conclusion and appoint him as a Judicial Member because he has been selected by the Expert Body appointed to make the selection. This has been contested by the respondents.

2. The brief facts giving rise to this claim are as follows:

2.1 Admittedly, in pursuance of the letter dated 5.9.1990 (Annex.A) addressed to the Registrar of the High Court of Delhi, a High Powered Selection Board chaired by an Hon'ble Judge of the Supreme Court, was appointed. Annex. I to that letter contained extracts of Section 5 and Section 7 of the Annex. As the latter is important, it is reproduced below:-

> "SECTION 7: Term of Office.
>
> The Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains, -
>
> (a) in the case of the Chairman, the age of sixty-five years; and
>
> (b) in the case of the Vice-Chairman or any other Member, the age of sixty-two years,
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> whichever is earlier."

2.2 The applicant, who is a member of the Delhi Higher Judicial Service, sent his application for consideration. He was, admittedly, interviewed on 13.5.1991.

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2.3 Thereafter, nothing was heard about the matter. Surprisingly, by the letter dated 25.11.1992 (Annex.C) to the Registrar, High Court of Delhi, the respondents invited applications for appointment of Judicial Members, Vice-Chairmen in the Trilbunal against the existing and future vacancies. This included the vacancies which were earlier notified by the Annex.A letter.

2.4 Thereupon, the applicant made a representation on 18.12.1992 (Annex.D) to the Minister of Railways complaining that without exhausting the panel already prepared in pursuance of the Annex.A advertisement, the preparation of another panel had started, which was illegal. He pointed out that his name was recommended by the Selection Board and that his name was included in the list of selected candidates. He requested for appointment as a Judicial Member to which he claimed to be entitled. A reminder issued on 4.1.1993 (Annex.E) did not produce any results.

2.5 Hence, this O.A. has been filed for a direction to appoint the applicant as a Judicial Member of the Railway Claims Tribunal on the basis of the panel prepared by the Selection Board after interviewing him in May, 1991 and restrain the respondents from taking any steps for preparation of another panel or appointing a Judicial Member from a subsequent panel until the applicant has been first appointed.

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3. The respondents have filed a reply contending that the applicant is not entitled to any relief. (As the annexures of the applicant and of the respondents are identified by the same alphabets, prefix R is used to distinguish the annexures filed in reply). While the basic facts are admitted, respondents state that the panel of names sent for consideration of the Govt. was neither 'declared' nor was the applicant's name 'declared'. It is stated that the panel sent by the Selection Board was not finally approved and accepted because the Govt. of India had decided to amend the provisions relating to eligibility conditions for appointments to Tribunals in general, including Members of the Railway Claims Tribunal. This is clear from the d.o. letter dated 13.5.1992 from the Additional Secretary, Deptt. of Personnel & Trailning to the Chairman, Railway Board (Annex.R-D) which reads as follows:-

> "Please refer to your predecessor's d.o. letter No.89/TC(RCT)/4/11 dated 23.9.91, regarding the panel for making appointment to the posts of Judicial Members in the Railway Claims Tribunal.
>
> The above proposal was submitted to the ACC for its consideration.
>
> The P.M., while considering the proposal in the ACC has directed that the following principles should be observed while making appointments to various statutory commissions, tribunals, quasi-judicial bodies and other similar organisations under the Central Government:
>
> i) No retired Government official should be appointed.

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ii) A person ~~xxx~~ to be appointed to any post in these bodies should have a maximum tenure of 5 years in all the posts to be held in a particular organisation or the person attaining the age of 60 years, whichever is earlier.

4. The P.M. has also ordered that the appointments to be made to these bodies should be on the basis of the criteria as indicated above and all the existing statutes and rules should be amended to conform to these principles.

5. All the Ministries/Departments have been requested in this Department's OM No.18(4)EO/92 (SM) dated 8.5.92, a copy of which is enclosed for ready reference, for taking a note of the above directions while sending proposals for the approval of the ACC.

6. In view of the above-mentioned position, the Selection Board may be requested to suggest a fresh panel.

7. Ministry of Railways (Railway Board) may take necessary action accordingly.

8. CR dossiers of S/Shri P.G. Nair, Abdul Majid, S.P.S. Chaudhari, Dr. M.K. Mishra & Smt. D. Sreedevi, are returned herewith, the receipt of which maky please be acknowledged."

Relevant portions of the O.M. dated 8.5.1992 (Annex. R-D) referred to above sent to all Ministries, are reproduced below:-

"(i) No retired Government official should be appointed.

(ii) A person to be appointed to any post in these bodies should have a maximum tenure of 5 years in all the posts to be held in a particular organisation or the person attaining the age of 60 years, whichever is earlier.

2. The Prime Minister has also ordered that the appointments to be made to these bodies should be on the basis of the criteria as indicated above and all the existing statutes and rules should be amended to conform to these principles.

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4. As a result of this decision, fresh action for preparing a panel of names for appointment as Vice-Chairmen and Judicial Members was initiated. Accordingly, Annex.R-B letter dated 25.11.1992 (Annex. C) was issued, pending amendment of the Act. In the Annexure to that letter, it was indicated, inter alia, that the Vice-Chairman and other Member shall hold office for five years or until he attains the age of 60 years, whichever is earlier and that further, the age of candidates should not exceed 57 years as on 31.12.1992.

5. Subsequently, the Government of India again modified the policies and a directive was issued in January, 1993 in this regard (Annex.R.E). Adverting to the earlier Memorandum dated 8.5.1992 (Annex R.D), the authorities were informed that on reconsideration, Government have decided that no amendment needs to be made in the relevant Acts or Rules" in order to reduce the retirement age or restrict the tenure." The O.M. dated 8th May, 1992 was stated to be modified to this extent.

6. In pursuance of this fresh decision, advertisements were issued in the Press on 1.6.1993 and the letter dated 20.5.1993 (Annex.R-C) was sent to the Registrar of the High Court, inviting applications for the posts of Vice-Chairmen and Judicial Members of the Tribunal. The term of office was shown as five years, or till the date of attaining the age of 62 years, whichever is earlier. It was also

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provided that the age of the candidates as on 31.12.1992 should not exceed 57 years.

7. It is contended that "neither the selection of the applicant was declared and approved by the appointing authority, nor was he offered any appointment and as such, he has no cause of action." It is pointed out that the persons in the panel prepared by the Selection Board do not acquire any legal right till it is declared after approval by the competent authority. In the present case, the panel was neither approved nor declared.

8. The jurisdiction of the Tribunal is also questioned as the matter is not connected with the service of a Government servant, but pertains to a judicial appointment by the President. This, however, was not pressed during the arguments.

9. The applicant has filed a rejoinder. It is stated that the respondents did not have any right to vary the term of office, contrary to Section 7 (vide para.2.1 supra.). Therefore, there was no valid ground to ignore the panel prepared by the Selection Board in 1991. Realising this, the attempt to prepare a panel with the stipulation regarding the term of office that the Vice-Chairman/Members should have to retire at the age of 60 years (Annex.R-B) - which is contrary to Section 7 of the Act - was given up. Finally, respondents have now commenced fresh proceedings (Annex.R-C) on 20.5.93 conforming

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to the provisions of Section 7 of the Act. In other words, the consideration of the panel prepared in 1991 has either been postponed or abandoned for no reason. This is not permissible.

10. It is further contended that the issue of the letter dated 25.11.1992 (Annex.R-B) and 20.5.93 (Annex.R-3) for the same vacancies notified earlier (Annex.R-A) on 5.9.90 is a contravention of the O.M. No.22011/2/79-Est.D dated 8.2.82 of the Department of Personnel (Annex.F).

11. We have heard the learned counsel for the parties and perused the records. The learned counsel for the applicant contends that the main purpose of issuing the second advertisement was to restrict the age of retirement to 60, which is illegal because it is contrary to Section 7 of the Act. Though the respondents state that a decision to amend the Act was taken, yet they admit that this decision was abandoned. In the final advertisement issued in 1993 (Annex.R-F), the age of retirement continues to be 62 years as provided in Section 7 of the Act. Therefore, the entire exercise of reissuing the advertisements in 1992 and 1993 was futile. These cannot defeat the right which accrued to the applicant on his selection by the Selection Board in 1991.

12. The learned counsel relies strongly on the decisions of the Supreme Court in Umesh Chand Shukla

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Vs. Union of India (A.I.R. 1985, S.C. 1351), Mrs. Asha Kaul Vs. State of J & K (J.T. 1993 (2) S.C. 688) and Prem Prakash Vs. Union of India (1984 (Suppl.) S.C.C. 687).

13. On the contrary, the learned counsel for the respondents contends that no right accrues to the applicant until the panel prepared by the Selection Board is first approved and then declared by the competent authority, ~~an approved panel is declare~~ and the applicant is informed about his inclusion in that panel.

14. He also relies on the decisions of the Supreme Court in the cases of Mrs. Asha Kaul and Prem Prakash. In addition, he relies on the judgements in Shanker Saran Das Vs. Union of India (J.T. 1991 (2) S.C. 380) and State of Haryana Vs. Subhash Chander Marwah, 1974 (3) SCC 220.

15. We have to first consider whether there was any justification to abandon, as it was, the selection proceedings initiated by the Annex.A Memorandum dated 5.9.1990 ending with the preparation of a panel by the High Powered Selection Board which, admittedly, was sent to the A.C.C. for approval. It would appear from the O.M. dated 8.5.1992 issued by the Department of Personnel & Training and annexed to the d.o. letter dated 13.5.1992 (Annex.R-D) addressed to the 2nd respondent, that certain major policy decisions were

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taken when this proposal came to be considered by the A.C.C. Obviously, those decisions were general in nature, applicable to all the Tribunals set up by the Government. The three crucial decisions taken were (i) no retired Government official should be appointed, (ii) the maximum term should be only five years, and (iii) in any case, the person concerned would have to retire on attaining the age of 60 years. As these represent major policy decisions which the Government of India was entitled to take, we are of the view that the direction in the Annex.R-D d.o. letter to the Chairman, Railway Board that the Selection Board be requested to suggest a fresh panel, cannot be faulted. However, we are unable to appreciate how the Ministry of Railways issued the second advertisement dated 25.11.1992 (Annex.R-B) which stipulated that the retirement shall be at the age of 60 years. This is plainly contrary to the provisions of Section 7 of the Act. The Railway Ministry should have brought this to the notice of the authorities concerned before issuing the second advertisement.

16. Apparently, this must have been done subsequently for the O.M. dated 8.5.1992 was modified in this regard and it was intimated that there was no need to amend the relevant Acts and Rules in order to reduce the retirement age or restrict the tenure in such organisation. However, it was decided that

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the other restriction that no retired government official should be appointed, should be implemented and hence, the next advertisement (Annex.R-F) speciied that the age of the applicants should not exceed 57 years as on 31.12.1992.

17. In the circumstance, we are of the view that the postponement of a decision in respect of the first panel was entirely justified.

18. The only question is whether, when Government now finally decides to make appointments to the posts of Judicial Members, the claims of the applicant, who is alleged to have been selected in 1991, can be ignored. The learned counsel for the applicant points out that, in any case, the applicant satisfies all the requirements stipulated in the fresh R-F advertisement issued in 1993. In other words, he was neither 57 years of age when he was interviewed in May, 1991 by the Selection Board, nor as on 31st December, 1992. Therefore, he should be considered for appointment.

19. Before we proceed further, we should decide one issue, viz., whether the applicant was selected by the Selection Board in 1991. The respondents have neither admitted nor denied the averment made by the applicant in this behalf because they have taken the stand that there is no panel, in the approved sense, in existence. We are of the view that if

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the applicant's name had not been recommended and his name had not been included in the panel prepared by the Selection Board, the respondents would surely have been prompt enough to point out to us that such being the case, the applicant had no cause of action at all. Therefore, we consider this O.A. on the footing that the applicant's name was included in the panel prepared by the Selection Board.

20. Evidently, the panel prepared by the Selection Board was returned without any decision thereon by the A.C.C., for fresh reconsideration (Annex.R-D). Therefore, the respondents assert that the panel has neither been declared nor has inclusion of the applicant's name in it been notified. The question is what rights accrue to the applicant in such circumstances. This can be decided only after considering the judgements ~~which are~~ cited at the Bar.

21. The decision of the Supreme Court in Prem Prakash case (1984 (Suppl.)SCC 687) gives the claim of the applicant an appearance of reasonableness. Hence, we consider this decision first.

22. The facts of that case are somewhat involved and are, therefore, being avoided. Two facts stand out. Firstly, two S.C. candidates, Ajaib Singh and Ram Swaroop, who had qualified in 1979 for appointment to the Delhi Judicial Service, were not appointed due to a miscalculation of the reserved vacancies.

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The duration of the 1979 panel had also expired. The Supreme Court directed that, despite this, they should be appointed. Hence, they were appointed against the 1980 vacancies. Prem Prakash and another petitioner, Dal Chand, both SCs, who qualified in the 1980 examination, could not, therefore, be appointed despite their selection. Secondly, there was a mistake in computing the vacancies reserved for SCs. The High Court reckoned that, as only 7 general candidates were appointed on the basis of the 1980 examination, the reserved vacancy available could be only 15 per cent of 7 = 1, though the 16 vacancies notified for the 1980 examination included two vacancies for SCs and three vacancies for STs, of which two were interchangeable with SCs.

23. Prem Prakash & Dal Chand, therefore, filed writ petitions before the Supreme Court. The Supreme Court held as follows:-

> "18. These writ petitions must therefore succeed. Our reasons for allowing the petitions may be summed up thus: In the first place, in the process of remedying injustice which was done to the two Scheduled Caste candidates of 1979, no injustice can be caused to the petitioners who had qualified for the reserved seats in the examination held in 1980. Secondly, the quota of seats available for reserved candidates cannot be made to depend on the fortuitous circumstance as to how many candidates have qualified for the general seats. The reserved quota must be fixed on the basis of the total number of vacancies which are to be filled at a given point of time. Thirdly, the notification of 1982 is good authority for adjusting the petitioners against the reserved vacancies for the year 1980. The statutory rules and administrative instructions have to be read together by reason of Rule 28."

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24. The notification of 1982 referred to above — actually it is an office memorandum - (i.e. Annex.F of this O.A.)--was reproduced in para.15 of that judgement. That notification contains the following guidelines:

> "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 from a fresh list from the subsequent recruitment or examination."
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> (emphasis ours)

Therefore, the Supreme Court held as follows:-

> "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 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."
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> (emphasis ours)

25. It is on this O.M. and this interpretation that the learned counsel for the applicant heavily relies to contend that as the selection had already

taken place, the persons included in that panel, like the applicant, should first be considered for appointment and it is only thereafter that other persons can be considered for the remaining vacancies in accordance with the fresh panel of 1993.

26. The fallacy of this argument is two-fold. In the first place, in the advertisement issued in respect of the first selection (i.e., Annex. A dated 5.9.1990), the exact number of vacancies were not notified, which appears to be necessary to invoke the benefit of the aforesaid O.M. That apart, the benefit of that O.M. will enure only if a panel approved by the competent authority has been finalised and notified or declared, as is clear from the emphasised portions of the extracts of the O.M. and the Supreme Court's judgement. It is this declaration or intimation that confers a right on the selected candidates. In the present case, the panel prepared by the Selection Board was not considered by the competent authority for the reasons already mentioned and a fresh panel was directed to be prepared. Hence, neither the panel, nor the name of the applicant having been declared, this judgement of the Apex Court does not apply. Nor is the Annex.F O.M. dated 8.2.1982 of any help to the applicant.

27. The applicant has also relied on the judgement of the Supreme Court in Umesh Chander Shukla Vs.

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Union of India, A.I.R. 1985 S.C. 1351, and more particularly, on the following passage in that judgement:-

> ".....The candidates who appear at the examination under the Delhi Judicial Service Rules acquire a right immediately after their names are included in the list prepared under R.16 of the Rules which limits the scope of competition and that right cannot be defeated by enlarging the said list by inclusion of certain other candidates who were otherwise ineligible by adding extra marks by way of moderation....."

This passage has been relied upon to contend that the applicant, who was selected by the Selection Board, acquires a right for appointment.

28. We have seen that judgement. That does not lay down any such law. That is clear from the following further observations immediately following the above observation:-

> ".....In a competitive examination of this nature the aggregate of the marks obtained in the written papers and at the viva voce test should be the basis for selection. On reading R.16 of the Rules which merely lays down that after the written test the High Court shall arrange the names in order of merit and these names shall be sent to the Selection Committee, we are of the view that the High Court has no power to include the names of candidates who had not initially secured the minimum qualifying marks by resorting to the device of moderation, particularly /when there was no complaint either about the question papers or about the mode of valuation. Exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness....."

29. Thus, the applicant does not derive any support from this judgement also. This only lays down the principle that the appointing authority cannot tamper /with the list proposed.

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30. In our view, the judgements relied upon by the respondents seem to be more relevant for consideration of the issues involved in this case.

31. The legal position in this regard has been set out in the Apex Court's judgement in Shankarasan Dash Vs. U.O.I., J.T. 1991 (2) S.C. 380. That was a stronger case. The applicant therein could not make the grade for appointment to I.P.S., but he was appointed to the Group 'B' Police Service. As there were dropouts in this Service, he became the seniormost. There were similar dropouts in the I.P.S. also and 14 vacancies arose. The three vacancies in the reserved category were filled up by reserved candidates appointed to the Group 'B' Service. But the 11 general vacancies in the general category were not filled up likewise, and the applicant, though senior-most in Group 'B' was not appointed. Hence his petition.

32. Dismissing the appeal of the petitioner, the Apex Court clarified the law in paras 7 and 8 of the judgement as follows:-

> "7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate

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the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination ca be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana Vs. Subhash Chander Marwaha and others: (1974) 1 SCR 165, Miss Neelima Shangla Vs. State of Haryana and Others: (1986) 4 SCC 268, or Jitendra Kumar and Others Vs. State of Punjab and Others: (1985) 1 SCR 899.

8. In State of Haryana Vs. Subhash Chander Marwaha and others (supra) 15 vacancies of Subordinate Judges were advertised, and out of the selection list only 7, who had secured more than 55% marks, were appointed, although under the relevant rules the eligibility condition required only 45% marks. Since the High Court had recommended earlier, to the Punjab Government that only the candidates securing 55% marks or more should be appointed as Subordinate Judges, the other candidates included in the select list were not appointed. They filed a writ petition before the High Court claiming a right of being appointed on the ground that vacancies existed and they were qualified and were found suitable. The writ application was allowed. While reversing the decision of the High Court, it was observed by this Court that it was open to the Government to decide how many appointments should be made and although the High Court had appreciated the position correctly, it had "somehow persuaded itself to spell out a right in the candidates because in fact there were 15 vacancies". It was expressly ruled that the existence of vacancies does not give a legal right to a selected candidate. Similarly, the claim of some of the candidates selected for appointment, who were petitioners in Jitendra Kumar and others Vs. State of Punjab and others, was turned down holding that it was open to the Government to decide how many appointments would be made. The plea of arbitrariness was rejected in view of the facts of the case and it was held that the candidates did not acquire any right merely by applying for selection or even after selection. It is true that the claim of the petitioner in the case of Miss Neelima Shangla Vs. State of Haryana, was allowed

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by this Court, but not on the ground that she had acquired any right by her selection and existence of vacancies. The fact was that the matter had been referred to the Public Service Commission which sent to the Government only the names of 17 candidates belonging to the general category on the assumption that only 17 posts were to be filled up. The Government accordingly made only 17 appointments and stated before the Court that they were unable to select and appoint more candidates as the Commission had not recommended any other candidate. In this background, it was observed that it is, of course, open to the Government not to fill up all the vacancies for a valid reason, but the selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancies and the availability of qualified candidates; and, there must be a conscious application of mind by the Government and the High Court before the number of persons selected for appointment is restricted. The fact that it was not for the Public Service Commission to take a decision in this regard was emphasised in this judgement. None of these decisions, therefore, supports the the appellant." (emphasis ours)

33. This judgement is particularly relevant in the present O.A. because the panel prepared by the Selection Board in 1991 was not considered at all by Government. We have already held earlier that this was not an arbitrary decision and it was not as if the respondents acted whimsically. Due to a change in policy, they felt that it would not be desirable to consider the panel so prepared by the Selection Board.

34. A question may be raised whether the panel prepared by the Selection Board in 1991 could not itself have been considered by the Government and the candidates who fulfilled the new policy norms

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chosen from those included in the panel for appointment. The respondents have not indicated any special reasons why this course of action was not followed.

35. We have, however, considered the matter. It appears to us that once a Selection Board has prepared a panel, Government cannot pick and choose from that panel the persons who are to be appointed by adopting a criterion not notified to the Selection Board. That would be the position if Government had to choose from the panel those persons who, (i) had not retired, or (ii) who had not attained the age of 55 years, so that after a tenure of five years, they would retire at the age of 60 years. These stipulations were not notified to the Selection Board. This would have resulted in inmterfering with the selection made by the Selection Board, which kis not permissible, as held by the Supreme Court in Shankarasan Dash vide para.32 supra.

36. The judgement in State of Haryana Vs. Subhash Chander Marwaha (1974 (3d) SCC 220) had already been referred to in the extracts of the judgement of the Supreme Court in Shankarasan Dash in para.32 supra. Hence, there is no need to consider it again.

37. In Mrs. Asha Kaul (J.T. 1993 (2) SC 688), Government chose to appoint the first 13 persons in a list of 20 names recommended by the U.P.S.C., but refused to give appointment to the remaining 7 persons on the ground that there has been a number of irregularities. It was held that if the Government wanted

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to disapprove or reject the list, it should have been done within a reasonable time for reasons to be recorded. Not having done so and having approved the list partly, by appointing 13 persons, they cannot disapprove the remaining seven names.

38. Therefore, picking out persons from the 1991 panel who satisfy the revised eligibility conditions decided upon by Government, would have been illegal. A fresh panel had, therefore, necessarily to be prepared.

39. The only other question that remains is what happens to the list first prepared in 1991 but not accepted, when the vacancies are advertised again for the second or third time to be filled up on practically the same eligibility conditions as notified on the first occasion, with the addition of only one more condition regarding the upper age limit of the candidate. The decisions referred to above, do not cover such a situation directly. In our view, however, the answer to this question is also provided in the decisions already rendered, by implication. If, for any valid reason, the panel prepared by the Selection Board has not been considered by the appointing authority, it is not necessary for that authority to look into that panel again, even when the same vacancies or additional vacancies are advertised at a later date. This appears to be the legal position

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for two reasons. Firstly, the first panel, admittedly, was not prepared keeping in mind the stipulation regarding age. Secondly, persons from that panel who satisfy the new norms cannot be pcked out for the reasons already given earlier. Therefore, when the panel first prepared has not been considered at all for valid reasons and action has been taken to prepare a fresh panel, the former panel does not remain in existence at all. If it is held that the decision to ignore the first panel is not an arbitrary exercise of power, it naturally follows that the first panel ceases to exist for any further consideration. That is the situation in the present O.A. 40. For the foregoing reasons, we are of the view that the applicant has not established any right, whatsoever, for being appointed as a Judicial Member of the Railway Claims Tribunal on the strength of his selection as a Judicial Member by the Selection Board, 1991. Therefore, we find no merit in this O.A. which is dismissed. No costs.

(B.S. Hegde)
Member(J)

16/6/94

(N.V. Krishnan)
Vice-Chairman(A)

Camp:Bombay.