

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2725 of 1993

New Delhi this the 27th day of November, 1995.

HON'BLE SHRI N. V. KRISHNAN, ACTING CHAIRMAN

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Anil Kumar Sharma S/O
Maya Ram Sharma,
R/O 308 Masjid Moth,
New Delhi - 110049.

... Applicant

(By Shri Sunil Malhotra, Advocate, though none present)

-Versus-

1. Union of India through
Secretary, Ministry of
Home Affairs, Govt. of
India, New Delhi.

2. The Commissioner of Police,
PHQ, MSO Building,
IP Estate,
New Delhi.

... Respondents

(By Shri Raj Singh, Advocate)

O R D E R (ORAL)

Shri N. V. Krishnan, Act. Chairman :-

The applicant is aggrieved by the fact that he has not been offered appointment to the post of Head Constable (Ministerial) in the Delhi Police, though he has been selected.

2. The undisputed facts are that 330 vacancies were notified through the employment exchange in the cadre of Head Constable (Ministerial), Annexure-A, the break-up of which is Scheduled Caste - 56, Scheduled Tribe - 72, General - 150, Ex. Servicemen - 52 : total 330. A list of selected candidates had been prepared which is filed at Annexure-B to the reply of the respondents. That contains 224 names. It is explained that this includes 150 general candidates,

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56 SC candidates, 1 ST candidate and 17 Ex. Servicemen candidates. In other words, while in respect of the vacancies notified for the general candidates, the select list of an equal number of candidates could be prepared, in respect of ST and ex-servicemen vacancies the number of candidates available were much less. Admittedly, a waiting list of general candidates and SC candidates was also prepared, (Annexure-C to the respondents' reply). This includes 60 general candidates and 9 SC candidates. The name of the applicant figures at sl. No.39 in this list.

3. It is the contention of the applicant that in view of this circumstance, until all the names in this list are exhausted, there cannot be fresh recruitment and that the applicant has a right to appointment based on the above consideration. It is further contended that the panel so prepared cannot be scraped without absorbing the applicant first. Reliance is placed on the judgment of the Tribunal in Ishwar Singh Khatri & Ors. vs. Delhi Administration : ATR 1987 (1) CAT 502 which was upheld by the Supreme Court. Reliance is also placed on the Supreme Court's decision in Prem Prakash vs. Union of India : AIR 1984 SC 1831, and also on another unreported judgment of the Tribunal in O.A. No. 366/87.

4. The respondents have filed a reply in which the above facts have been mentioned. It is their contention that the applicant's name was not in the list of 150 general candidates who were ^{U Selected} appointed against the 150 general category vacancies. His name was included only in the waiting list of general candidates. As

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the total number of general vacancies were only 150, only the general candidates in the select list could be appointed. If any of them refused appointment then candidates in the waiting list in the order of merit were to be considered for such appointment. It is stated in the reply that 14 candidates from the select list of 150 general candidates could not join for one reason or the other and accordingly, the first 14 general candidates from the reserve list were called for appointment. With their appointment, all the 150 vacancies were filled up and hence, the reserve list of general candidates had no further use and was not required to be operated upon thereafter. The applicant's name therein was at sl. No.39 and hence, he has no right to be appointed.

5. When the learned counsel for the applicant argued on 21.11.1995, we wanted him to clarify whether when the number of vacancies have been notified and a panel of names equal to that number has been prepared with a separate waiting list to cover the eventualities of back outs, the persons in the reserve or waiting list can have a claim even after all the vacancies notified have been filled up. We wanted him to look into the judgment of the Supreme Court on this point. Unfortunately, he is not before us today.

6. In so far as Ishwar Singh Khatri's case (supra) is concerned, the learned counsel for the respondents has produced for our perusal the order of the Supreme court in that case. The main consideration therein was that the panel indicated that the appointment will be in the order of merit; that the appointment will be

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made from the select list till the last candidate is appointed. Minutes of the staff selection board also stated that the life of the panel of selected candidates will be valid for a period till all the candidates are offered appointments. No doubt, against 654 notified vacancies the panel contained 1492 names. The Tribunal held this was done deliberately because the Director of Education himself was on the selection board. The Supreme Court stated the principle that "the selected candidates ordinarily will have a right to appointment against vacancies notified or available till the select list is prepared." The Court wanted to ascertain the number of vacancies that existed when the panel was prepared. As the information was not made available, it concluded that 1492 vacancies were available and hence upheld the right of the selected candidates to appointment. By implication, this would mean that, thereafter, none will have a right of appointment, even if his name is included in a waiting list.

7. We had in mind the decision of the Supreme Court in State of Bihar & Ors. vs. Secretariat Assistant Successful Examinees Union, 1986 and Ors. : 1994 SCC (L&S) 274. The headnote of the case which reads as follows makes it clear that the appointment of candidates against future vacancies would prejudicially affect candidates who would have become eligible in future for appointment against such vacancies :-

"The Bihar State Subordinate Services Selection Board issued an advertisement in the year 1985 inviting applications for the posts of Assistant falling vacant upto the year 1985-86. The number of vacancies as then existed was announced on August 25,

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1987, the examination, held in November, 1987 and the result, published only in July, 1990. Immediately thereafter, out of successful candidates 309 candidates were given appointments and the rest, empanelled and made to wait for release of further vacancies. Since the vacancies available up till December 31, 1988 were not disclosed or communicated to the Board, no further appointments could be made. The empanelled candidates, after making an unsuccessful representation to the State Government, approached the Patna High Court, which directed them to be appointed in vacancies available on the date of publication of the result as well as the vacancies arising upto 1990. On the State's appeal, partly setting aside the High Court's decision, the Supreme Court

Held:

The direction given by the High Court for appointment of the empanelled candidates according to their position in the merit list against the vacancies till 1991 was not proper and cannot be sustained. Since, no examination has been held since 1987, persons who became eligible to complete for appointments were denied the opportunity to take the examination and the direction of the High Court would prejudicially affect them for no fault of theirs. At the same time, the callousness of the State in holding the examination in 1987 for the vacancies advertised in 1985 and declaring the result almost three years later in 1990 has caused great hardship to the successful candidates."

8. This is all the assurance that is contained in the O.M. dated 8.2.1982 (Annexure-J) on which reliance is placed. Para 2 of that O.M. shows that a select list is prepared equal to notified vacancies and others are placed in the waiting list. It is with reference to this select list that para 4 says that it will remain in force till exhausted, even if there is a shrinkage in the vacancies notified. That is also the purport of the judgment of the Supreme Court in Prem Prakash's case (supra).

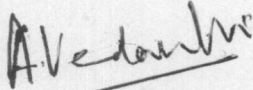
9. In the circumstances, the persons included in the waiting list have a right to be considered only if

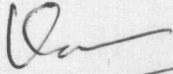
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persons in the regular select list do not accept appointment. There^{after}~~fore~~, the waiting list can be scrapped and the candidates can have no claim for appointment. That is the situation in the present case. Only 14 candidates backed out and only the first 14 candidates from the reserve list had a right to appointment.

10. In the circumstances, we do not find any merit in the O.A. It is accordingly dismissed. No costs.


(Dr. A. Vedavalli)
Member (J)


27.11.85
(N. V. Krishnan)
Act. Chairman

/as/