IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH

Date of Order: 7.2.96

i) OA No. 87/95

Kanwara Ram ...Applicant.

Vs.

Union of India & ors. ...Respondents.

ii) OA No. 88/95

Bhanwar Lal ...Applicant.

Vs.

Union of India & ors. ...Respondents.

iii) OA No.89/95

Bhanwar Lal Naik ...Applicant.

Vs.

Union of India & ors. ...Respondents.

iv) OA No. 93/95

Rajendra Kumar ...Applicant.

Vs.

Union of India & ors. ...Respondents.

CORAM: HON'BLE MR. N.K. VERMA, MEMBER (A).
HON'BLE MR. RATTAN PRAKASH, MEMBER(J).

For the applicants - Mr. R.C. Gaur, advocate.
For the respondents - Mr. B.S. Rathore, advocate.

O R D E R
(Hon'ble Mr. N.K. Verma, Member(A)

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As the facts and circumstances in these OAs are similar, these OAs are being disposed of by a common order.

2. In these OAs the applicants have prayed for a direction to the respondents not to make any selections

of Mazdoors and if they have made any selection on 27.2.95, the same should be quashed in toto till such time the selected panel containing the names of the applicants with the respondents is not exhausted. They have also prayed for an interim order for staying the selection on 27.2.95. Alternatively, vacancies may be reserved for the applicants. The prayer for the interim order was negatived on the first day when this matter was presented before the Tribunal on 1.3.95.

3. As for the main relief sought in these OAs, the facts of the case are that the applicants appeared before an earlier selection made in 1987 in which they were included in the select list or panel prepared by the respondents. However, they were not given any appointments, even though a similarly situated person by name Rajendra Singh was appointed consequent upon his filing an OA in this Tribunal and getting a direction to that effect. The applicants also had filed a similar OA under No. 158/94 which was disposed of with the direction that if the panel survives and that the surviving panel is consistent with the law and the applicants names find place within the zone of vacancies, applicants and others should be appointed in the unit where they were selected. However, inspite of these directions, the respondents have not appointed the applicants. In their reply the respondents have stated that in compliance to the orders of this Tribunal they had examined the applicants' request and had informed the applicants vide letter dated 17.10.94 that no select panel for the year 1987 is surviving and the total vacancies released during that year stood fully utilised and filled up. Hence the

question of offering appointment against the vacancies released subsequent to 1987 to the applicants is not tenable and, therefore, could not be acceded to.

4. During the course of proceedings, the learned counsel for the applicants had prayed for production of records pertaining to the selection. The same were produced before the Tribunal for our perusal. The short question involved in this litigation is whether a panel prepared in 1987 against the declared vacancies for that year could be said to be surviving even when the panel was erroneously prepared to include a very large number of names and had no co-relationship with the declared number of vacancies.

5. At the very outset the learned counsel for the applicants brought to our notice a Govt. notification dated 28.9.83 wherein it has been stated in para 3 that there will be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies, either by method of direct recruitment or through a departmental competitive examination. That Office Memo. had clearly stipulated that "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 the 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 same Office Memo. has conveyed the Government's decision in this regard by saying that if there is a likelihood of vacancies arising in future, 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 of persons already on the list of selected candidates awaiting appointments. 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 method of direct recruitment or through a departmental competitive examination." This Office Memo. further says that once a person is declared successful according to the merit list of the 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 vacancies undergoes a change after his name has been included in the list of selected candidates.

Shri Gaur, learned counsel for the applicant based his entire arguments on the directions given by the Govt. of India in this Office Memo. which has also been upheld by this very Tribunal in the two judgments and also endorsed by the Hon'ble Supreme Court in the case of Prem Prakash etc. Vs. Union of India & ors, AIR 1984 SC 1831. Shri Gaur also stated that this very Tribunal had in the earlier case of Rajendra Singh found that the panel was not exhausted and, therefore, the names surviving on that panel prepared in 1987, has to be considered for appointment till the whole list is exhausted. He further brought to our notice that the select list which has been prepared by the respondents is not a genuine one as the requisition for sponsoring the names to the three Employment Exchanges were issued on 6th July, 95

and the list of selected candidates was prepared on 7th July, 95. By no stretch of imagination, a Govt. department can act as fast as this that the names of nearly 100 people are obtained from one Employment Exchange overnight and the selection is also decided within 24 hours. Shri Gaur further brought to our notice a recent judgment delivered by this very Bench of the Tribunal in the case S. Sadasivan & ors. Vs. Union of India & ors (OA No. 433/91) where an identical matter was assailed before the Tribunal and the relief was given to the applicant therein. Shri B.S. Rathore, learned counsel for the respondents on the other hand filed an affidavit signed by an officer of the unit of the respondents saying that a total number of 98 vacancies for local recruitment sanction were released by the Chief Engineer, Jaipur on 27.10.87 which was for the following units:-

i) Jodhpur 58

ii) Jaisalmer 20

iii) Barmer 20

The names for recruitment were called from three Employment Exchanges vide letter dated 6.7.87 and a Board was convened by the Chief Engineer under his orders dated 7.7.87. The above Board prepared a merit list for each station for separate categories like General, ST, SC and Ex-servicemen. Against the vacancies of Jodhpur i.e. 58 a merit list of 96 persons was prepared and candidates from Sr. Nos. 1 to 59 were appointed. The number of candidates appointed exceeded the vacancies of 58 by one because one of the candidates did not report and the other person waiting on the list was appointed.

Subsequently, Rajendra Singh was also appointed as per the Tribunal's order. Shri Rathore stated at the Bar that no other candidates below the 59th position with exception of Rajendra Singh has been appointed so far by the respondents. The names of applicants in this OA appeared after Sr. No. 59 in the list. Hence they cannot have any grievance on that score that there has been pick and choose. Out of the total vacancies of 58 declared for Jodhpur only 30 were for the General category, the rest being for Ex-servicemen, SC and ST. The reason why such a big list was prepared, however, could not be explained by the respondents, but it is clear from the fact that the posts were filled up as per the merit list and as per the declared vacancies and whoever was on the merit list and could not be appointed against the vacancies of 1987, those candidates lost their right as the panel did not survive after a year and vacancies for the subsequent years had to be filled up by calling fresh names from the Employment Exchanges.

6. We have heard both the parties at length and we have also perused the records.

7. We agree that the action of the respondents in requisitioning the number of candidates from three Employment Exchanges on the 6th July,95 followed by convening a Board for selection of the candidates casts doubt about the veracity of the statement made by an officer authorised by the respondents. The affidavit filed on behalf of the respondents is also by somebody who is not authorised under the Govt. instructions to file replies. The Respondent No. 5 in this case is the Commander Works

Engineer and an affidavit in this regard should have been filed by him or at least the Garrison Engineer in whose unit the appointments were made. Firstly, we would like to observe that such type of affidavits filed by total stranger to the matter are not expected to be filed for passing judicial decisions.

8. We have perused the proceedings of the Board and the records. We have also perused the list which has duly been signed by the Commander Works Engineer as the Presiding Officer of the Board and two other Members. In this list the name of the applicants appear as under:-

i)	Sh. Kanwara Ram	87
ii)	Sh. Bhanwar Lal	71
iii)	Sh. Bhanwar Lal	96
iv)	Sh. Rajendra Kumar	70

The entire claim of the applicants is based on the fact that one Rajendra Singh who was similarly situated candidate with his name in the select list beyond the actual number of vacancies had secured an appointment under the orders of this Tribunal in the O.A. No.399/92 decided on 7.12.1993. It was contended by Shri Gaur that the Tribunal in that O.A. had held that the panel was a justly prepared and cannot be said to be excessive panel. A person whose name finds place in the panel, gets ordinarily appointment whenever the vacancy occurs and the panel should not be considered as exhausted unless the authorities are of the view that the panel is not according to the Rules. The Tribunal held "In the circumstances, we are of the view that the panel cannot be said to be a long panel or cannot be said to be against

the rules as far as the applicant's case is concerned his name finds place at S.No.34. (emphasis supplied) He should be appointed whenever the vacancy occurs prior to giving the appointment under the new panel." Shri Gaur stated that since this very bench of the Tribunal has held that panel of 1987 not to be excessive and also not against the rules, the panel should be operated upon and the applicants whose names find place therein should be appointed against the vacancies which have occurred during the subsequent years and for which fresh panels have been prepared by the respondents. We find that the D.B. which disposed of the O.A.No.392/92 had also ascertained that the total number of vacancies available for general category candidates was 30 whereas the applicant in that O.A. was placed at S.No.34. It was in this context that the Bench held the view that the panel cannot be considered to be long or against the rule as far as the applicant's case was concerned and accordingly gave him the relief of being appointed against the vacancies existed at that point of time before operating the new panel.

9. We are of the confirmed view that a panel as per the directions to the respondents under the Government of India instructions is required to be prepared with reference to the actual number of vacancies on the date of declaration of the results. However, such panel can also absorb the fluctuations on account of vacancies which may arise after the list of selected candidates is announced. But certainly this fluctuation cannot be very wide and can only allow certain leeway for the administration to appoint officials from a select list available with it for

catering to requirements which had not been anticipated at the time of announcement of vacancies. Certainly that situation cannot allow the vacancies to be increased to cater to requirements of subsequent years also for which a select list has to be prepared separately. There are government instructions and catena of judgments of this Tribunal and the Hon'ble Supreme Court that a select list has to be prepared only for the vacancies declared for each year. Once all the appointments are made from a particular select list and the next years select list is required to be prepared there after, the previous select list get lapsed and all persons borne on that select list therefore lose their chance of appointment. In the instant case the respondents had erroneously placed a very large number of candidates although the total number of vacancies was only 58. The last candidate in the list is one of the applicants Shri Bhanwar Lal at S.No.96. When the case for Rajendra Singh came up, his position was at serial no. 66 which was only 7 points below the last candidate appointed. Addition of 15% to the declared vacancies due to exigency of service cannot be said to be very long or against the rule. The Govt. of India has so far not prescribed a very clear cut rule regarding the size of panel to be worked out precisely for each year. Some amount of flexibility has been allowed taking into account the administrative convenience. Ideally a panel has to be only for the total number of vacancies declared, but administrations have to carry on the work smoothly and some adjustments are necessary to meet with the situation which are not predicted or are not predictable at the time when the select list are prepared.

(16) I

10. The learned counsel for the applicant had drawn our attention to the judgement given by the Principal Bench of the C.A.T.in the case of Nirmal Kumari & anr. v. Delhi Administration, 1990(1)(CAT) AISLJ 347 and G. Vishwanathan v. Union of India given by the Ernakulam Bench of the C.A.T. cited at 1990(1)(CAT)AISLJ 520 and lastly the case of S.Sadasivan & ors. decided by this very Bench recently. The facts and circumstances of these cases are very different. In the case of Nirmal Kumari there was no mention as to the number of vacancies declared and the number of candidates on the select list. The entire burden of the case is on the number of declared vacancies and the panels declared accordingly. The Government of India has laid special emphasis on the panel to be worked out on the basis of declared vacancies. Obviously, the declared vacancies in the instant case was 58 and panel declared with 96 names could not be considered a reasonable panel and a panel prepared in accordance with the Rules. Our arguments also finds support from the judgment delivered by the Hon'ble Supreme Court in the case of The State of Haryana v. Subash Chander Marwaha cited at AIR 1973 S.C.2217 wherein the Hon'ble Supreme Court refused to give a writ of mandamus to fill up the posts of Subordinate Judge in the Haryana Civil Services (Judicial Branch) even when the vacancies existed, on the ground that there is no constraint on the government fixing a higher score of cut off marks in the written examination, in the interest of maintaining high standards of judicial competence. This position has been further supplemented in a recent judgment in Madan Lal v. State of Jammu & Kashmir given by the Hon'ble Supreme Court cited at 1995 (2) SLR 209 wherein the headlines state that "Life of select list prepared by Commission -- Requisition by State Government to Public Service Commission for selecting candidates for 11 vacancies -- List gets exhausted if 11 candidates are appointed or if all not selected then it will remain in force only for one year." The ratio of this judgment clearly indicate that the select list should be restricted to only the declared number of vacancies or alternatively the life of the select list is only for one year after its declaration.

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11. We also like to add here that the applicant has not made out a case for any discrimination against him or mala-fides by showing that anybody else has been appointed after the appointment of Rajendra Singh who was or were at lower position than the applicants in the select list. Besides we can also quote the Hon'ble Supreme Court judgment in Shankarsan Dash v. U.O.I. in which it has been held that :

> "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, 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 fill up the vacancies has to be taken bonafide 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 can be permitted."

12. We have ascertained with reference to the records and the repeated affidavits by the respondents that there were only 58 vacancies for Jodhpur unit and the names of the applicants in this O.A. were far below the zone of consideration for appointment. The case of Rajendra Singh was considered by this Bench taking into account the totality of the facts at the time of the hearing of the matter. The relief given to the Rajendra Singh cannot be extended to others who came before this Tribunal only after the favourable decision in that matter was given by this Tribunal. It is a settled law that a claim cannot be based on a decision in an O.A. The select list was

(17) I/19

prepared and appointments made there on in the year 1987 and the cause of action if any arose at that time the matter was agitated before this Bench by the present applicants also in the O.A. No.158/94, 159/94, 160/94 and 161/94 which were disposed of by a common order dated 22.6.94 with the direction that the respondents shall consider the matter in the light of the directions made therein regarding the survival of the panel and had being consistent with law. It is our view that the panel with 96 names there on against the vacancies of 58 cannot be said to be as per the rules and was excessively inflated. The panel got exhausted after the appointments were made upto the serial no. 59 taking into account one case in which the candidate did not respond. Thereafter the panel did not survive. However, the respondents appointed Rajendra Singh in view of the order of this bench in the earlier OA 399/92. The ratio of that judgment however cannot be made applicable to the other candidates whose names are available in the select list including those of the applicants.

13. In view of the above, there is no merit in the case and therefore, all the four O.A.s fail and are dismissed with no order as to costs.

Sd/-
(RATAN PRAKASH)
JUDICIAL MEMBER

Sd/-
(N.K. VERMA)
ADMINISTRATIVE MEMBER

प्रमाणित सही प्रतिलिपि

अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

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