

9/14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 22-5-2002

O.A. No. 38 of 1998

Ajij Ahmed Khan son of Shri Wazid Khan aged 31 years resident of Bharat Colony, Jodhpur.

.. Applicant.

v e r s u s

1. Director General, Indian Council of Agriculture Research, Krishi Bhawan, New Delhi.
2. Director, Central Arid Zone Research Institute, Jodhpur.
3. Jinu Shivdasan son of Shri T.N. Shivdasan.
4. Charanjeet son of Shri ..
5. Jasraj son of Shri Budha Ram
6. Jalam Singh son of Shri Achal Singh



All 3 to 6 T-I (Field Assistant), Central Arid Zone Research Institute, Jodhpur.

7. Khumb Singh son of Shri Khinva Singh T-I (Field Assistant), Regional Station, Cazri Farm, Pali.

Puna Ram son of Shri ... T-I (Field Assistant), Cazri Farm, Pali.

9. Naveen Singh, T-I (Field Assistant), Cazri Farm, Pali.
10. Ashok Kumar, T-I (Field Assistant), Cazri Farm, Pali.
11. Lalit Chaudhary, T-I (Field Assistant), Cazri Farm, Pali.
12. Babu Lal Tajra, T-I (Field Assistant), Beechwal Farm, Near Lalgah Railway Station, Cazri, Bikaner.
13. Pradhan Singh son of Shri Umedaram, T-I (Filed Assistant), Cazri Research Farm, Jaisalmer.
14. Sunil Kumar, T-I (Field Assistant), Cazri Research Farm, Jaisalmer.
15. Dinesh Kumar Nanda, T-I (Field Assistant), Cazri research Farm, Jaisalmer.
16. Randheer Singh Gill, T-I (Field) Cazri Regional Station, Kukama District Kutch Bhuji, Gujrat State.
17. Mangi Lal, T-I (Field Assistant), CAZRI Regional Station, Kukama District Kutch Bhuji (Gujrat State).
18. Hanumanaram, T-I (Field Assistant), Beechawat Farm, Near Lalgah Railway Station, CAZRI, Bikaner.

8/15

19. Dalpat Singh, T-II-3 (Technical Assistant), CAZRI Regional Station, Jaisalmer.
20. Rakesh Pathak, T-II-3 (Technical Assistant), Agrostology, Station Cazri, Jodhpur.
21. Pramod Singh, T-II-3 (Technical Assistant), Cazri Regional Station, Kukama District Kutch Bhuj (Gujrat State).
22. Umaid Singh Rathore, son of Shri Bheru Singh, resident of Village Khariya, District Jodhpur.

.. Respondents.

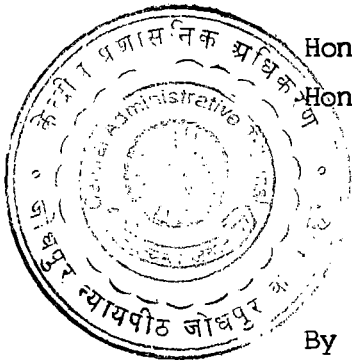
Mr. Vijay Mehta, Counsel for the applicant.

Mr. V.S. Gurjar, Counsel for the respondents Nos. 1 and 2.

Mr. M.S. Singhvi, counsel for the respondents Nos. 3 to 21.

None is present for the respondent No. 22.

CORAM:



Hon'ble Mr. Justice O.P. Garg, Vice Chairman

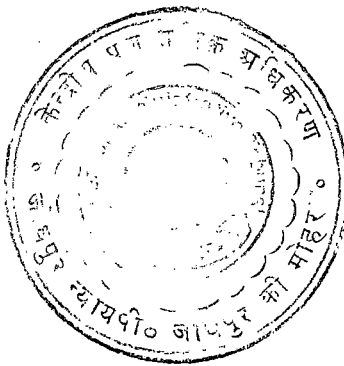
Hon'ble Mr. A.P. Nagrath, Administrative Member

: ORDER :

(Per Hon'ble Mr. Justice O.P. Garg, Vice Chairman)

By virtue of advertisement No. Advt./CAZRI/1-96 dated 05.02.96, the Central Arid Zone Research Institute, Jodhpur, invited applications for filling up five posts of T-I (Field Assistant) and one post of T-II-3 (Technical Assistant - Botany) alongwith many other posts. In clause (iv) of the note appended to the advertisement, it was clarified that there may be a change in the number of posts to be filled. Pursuant to the said advertisement, Ajit Ahmed Khan (present applicant), who is B.Sc. with Botany as one of the subjects and was eligible for being considered for appointment on the aforesaid two posts, was one of the candidates. He was called for interview for both the posts on two different dates, but was not successful as his name did not appear in the merit list of the successful candidates for either of the two categories of the posts.

2. By means of the present O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the selection process on variety of grounds. It has also been averred that as against the five posts of T-I (Field Assistant) and one post of T-II-3 (Technical Assistant - Botany) as had been advertised, the respondents have illegally made appointments of 16 and 3 persons respectively. He has challenged the appointment of the respondent Nos.3 to 21 on the ground that since the number of posts to be filled as mentioned in the advertisement could not be enlarged, the said respondents were illegally appointed. The relief sought by the applicant is that the selection and appointments of respondents Nos. 3 to 21 made by the respondents Nos. 1 and 2 on the post of T-I (Field Assistant) and T-II-3 (Technical Assistant - Botany) be declared as illegal and void.



3. The official respondents Nos. 1 and 2 have filed a reply maintaining that the select-list and the panel-list has been prepared by the Selection Committee after taking into consideration the performance of the candidates at the interview and their qualification and experience in accordance with the rules and after following the due procedure; that the applicant was not selected for appointment against any one of the two categories of posts. As regards the enlargement of the vacancies, it has been asserted that there was a specific note in the advertisement that number of posts is subject to variation and that the vacancies which were likely to be available in the near future, i.e., within a period of one year, were taken into consideration and the candidates from the panel have been appointed. It has been disclosed that alongwith the impugned posts, the Institute had advertised the posts in February, 1996, alongwith other 29 vacancies and the selection

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9/12

process, i.e., preparing of a statement of the candidates who had applied for different categories and screening of applications etc. took almost a period of one year. In between this period, a number of staff members in the category of T-I either have been promoted to the higher posts against 33½ % promotion quota, selected to the higher posts or placed in category T-II or retired etc., which resulted into availability of more vacancies in T-I posts. These vacancies were also taken into account for selection out of the selected candidates available in the panel drawn by the Selection Committee as per the merit list, maintaining reservation quota for SC/ST and OBC etc. It was further asserted that since the Institute is an old one and every year about 15/20 employees stand superannuated, the number of vacant posts were likely to be increased. The reply further went on to say that some posts in various projects like National Seed Project, Rodent Control, REDA, Post Harvest Technology, Waste Land and Environmental Information System (ENVIS) were likely to come up for recruitment and if the appointments were not made immediately, keeping in view the research activity on the projects, then in that event, the very primary object of the Institute to conduct research at the Institute was likely to suffer badly and consequently, in terms of clause (iv) of the note incorporated in the conditions, number of vacancies could vary as per availability.



4. The private respondents 3 to 21 have also filed a joint reply. They have taken the stand that they have been appointed after due selection in accordance with the Rules and Regulations framed by the department; that the applicant has no right to challenge their appointments. They have also filed certain documents to indicate that after completion of the probationary period, they have been confirmed and have been

9/12

assigned the dates on which the substantive vacancies became available to them.

5. Rejoinder affidavit has been filed by the applicant to the reply of the respondents Nos. 1 and 2.

6. We have heard Shri Vijay Mehta, learned counsel for the applicant as well as Shri V.S. Gurjar, appearing on behalf of the respondents Nos. 1 and 2 and Mr. M.S. Singhvi assisted by Mr. N.K. Khandelwal, appearing on behalf of the respondents Nos. 3 to 21 at considerable length and have given our thoughtful consideration to the law placed by them in the light of the facts as disclosed above.

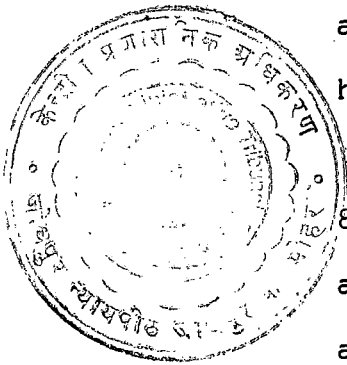
7. To begin with, it may be mentioned that the applicant who has not been successful in finding a place in the select-list, has no right to challenge the selection process, or the appointment of the respondents Nos. 3 to 22. A reference was made on behalf of the respondents to a decision of the Division Bench of Rajasthan High Court (Jaipur Bench) in the case of Umesh Chand & Anr. vs. The State of Rajasthan and Anr. reported in WLR 1997 Raj page 373, in which it was held that the appellant having applied for the post and after being allowed to appear in the written examination could not succeed in the same and, as such, he is not entitled to challenge the whole process of selection. A reference was also made to the decision dated 20.01.2000 of the learned Single Judge of the Rajasthan High Court at Jodhpur, in the case of Bhagwan Singh and Others vs. State of Rajasthan in S.B. Civil Writ Petition No. 3691/1997. After surveying and taking into consideration the law on the point, it was held that the applicants were not



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719

entitled to challenge the selection process or the appointment of the candidates who had been selected. Reliance was also placed on a decision of the Division Bench dated 08.09.87 in D.B. Special Appeal No. 338 of 1985, Shiv Lal vs. The Jalore Central Co-operative Bank Ltd., Jalore and Anr., and other connected Special Appeals, to fortify the submission that the candidates, who appeared before the Selection Committee, had no control over constitution of the Selection Committee formed for making the selection. The Committee did comprise of persons who were required to be in it. The Chairman of the Committee was present and so on. In the said decision, it was held that if in such a situation the appointments are held invalid, it would not promote the object with which the directions were given, but on the other hand would cause serious injustice to the employees after the appointment has been effective for more than three and a half years, for no fault of theirs, since they, admittedly, had no control over constitution of the Selection Committee.



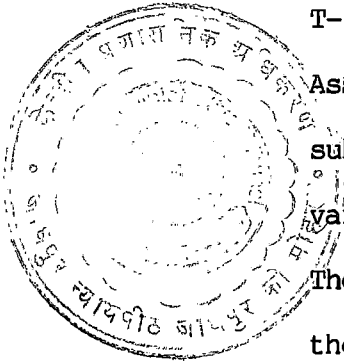
8. In view of the decisions aforesaid, we find that the applicant has no locus standi whatsoever, to challenge the appointment of the respondents Nos. 3 to 21. Since his name did not find in the select list, he could not be appointed even against the enlarged vacancies which came into being after the advertisement and before the selection process was over. The interest of the respondents Nos. 3 to 21 who were duly selected, appointed and confirmed after satisfactory completion of the probationary period, cannot be adversely affected for no good reason and without any corresponding advantage of the applicant who in no case is going to be appointed as he did not meet with any better luck in finding his name in the merit list of the candidates or the panel prepared by the Selection Committee.

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9/20

9. In view of the fact that the applicant, who was not successful in securing a place in the list of successful candidates is not entitled to maintain the present O.A. to challenge the appointments of respondents Nos. 3 to 21, the question whether the respondents were legally entitled to vary and enlarge the number of vacancies as advertised turns out to be mere academic. Nevertheless since both the parties have addressed us on the point at some length and have placed reliance on a plethora of the decisions of the Apex Court, we would do well to consider the said controversy also though it would hardly have any effect on the ultimate outcome of the present O.A.

10. It is an indubitable fact that as against five posts of T-I (Field Assistant) and one post of T-II-3 (Technical Assistant - Botany), which were originally advertised, of course subject to the note that the number of posts advertised may vary, sixteen and three appointments were respectively made. The main thrust of the learned counsel for the applicant is that the appointments made over and above the number of posts advertised are bad in law. According to Shri Vijay Mehta, if the appointments were confined and restricted to the number of posts advertised, the applicant had a fair chance of being considered against the left over posts which could be advertised later on. In support of his contention, Shri Mehta placed reliance on the decision of the Apex Court in the case of Surinder Singh and Ors. etc. vs. State of Punjab and Another etc., 1997 (5) SLR page 269. Though in this case, the question of appointment of the candidates in the waiting list was considered and in this context, it was held that the candidates in the waiting list had no vested right to be appointed except to the limited extent that when a candidate selected against the



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27

existing vacancy does not join for some reason and the waiting list is still operative, a candidate from the waiting list may be considered for appointment, the question whether the appointments over and above those advertised could be justified also came to be considered in para 12 of the report. The earlier decision in the case of Prem Singh and Others vs. Haryana State Electricity Board and Others, 1996 (4) SLR page 661 (SC) was considered. Para 25 of the decision in Prem Singh's case (supra) contains the concise statement of law, as follows:

25. From the above discussion of the case law it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the Court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case."

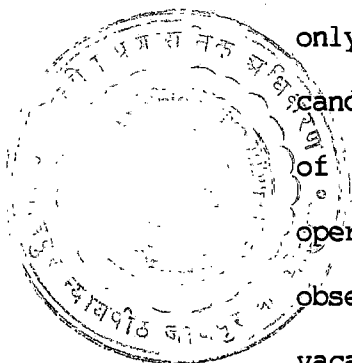


In Prem Singh's case (supra), the earlier decisions rendered by the Apex Court in the case of Ashok Kumar Yadav and Others vs. State of Haryana, 1985 (3) SLR 200 (SC), Hoshiar Singh vs. State of Haryana, 1993 (5) SLR (36) SC, State of Bihar vs. Secretariat Assistant Successful Examinees Union 1986 and Others, 1993 (5) SLR 598 (SC), State of Bihar vs. Madan Mohan Singh and Others, 1993 (5) SLR 60 (SC) and Madan Lal and Others vs. State of J&K, 1995 (2) SLR 45 (SC) were considered. The gamut of all these decisions is that the number of appointments could not exceed the number of posts advertised. The note in the advertisement notification that the number of posts advertised is subject to

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9/22

variation cannot be stretched to illogical limits by multiplying the appointments to any extent. In certain special circumstances, marginal variation may be permissible, but if the appointments are made out of proportion to the number of posts advertised, they would be invalid. The impelling reason to lay down this principle of law is that the appointments to the additional posts on the basis of selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. In case of Madan Lal and Others vs. State of J&K (supra), only 11 vacancies were advertised. A merit list of twenty candidates was prepared. The Apex Court held that at the time of giving actual appointments, the merit list had to be so operated that only 11 vacancies were to be filled up. It was observed: "It is easy to visualise that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the Office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated, he may like to compete. Consequently, the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11 who are lower in merit list of candidates can only be treated as wait-listed candidates in



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923

order of merit to fill only the 11 vacancies for which recruitment has been made, in the event of any higher candidate not being available to fill the 11 vacancies, for any reason. Once the 11 vacancies are filled by candidates taken in order of merit from the select list that list will get exhausted, having served its purpose".

11. The position of law that the appointments cannot exceed the number of posts advertised and the appointments made in excess of the posts advertised are invalid, is well embedded. Nevertheless, in view of the special facts and circumstances of the case, the Apex Court had not thought it proper to invalidate the appointments made in excess of the number of posts advertised. What relief should be granted in such case would depend upon the facts and circumstances of each case. In Ashok Kumar Yadav's case (supra), the posts advertised were 61. A list of 119 candidates was prepared by the Service Commission. The High Court of Punjab and Haryana set aside the selection for more than one reasons. The Apex Court also agreed with the view taken by the High Court, yet it had not thought it proper to set aside the selections made by the Service Commission as by that time, two years had passed and the candidates selected were already appointed to various posts and were working on those posts since about two years. In the case of Gujarat State Dy. Executive Engineers' Association vs. State of Gujarat, 1994 (2) SLR 710 (SC), the Apex Court on equitable consideration did not set aside the appointments of those candidates, who were appointed in pursuance of the decision of the High Court, but gave an appropriate direction for securing ends of justice.

12. On proper analysis of the various decisions of the Apex

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324

Court referred to above, the legal position which emerges is that it is in no uncertain words that the Apex Court has held that it would be improper exercise of power to make appointments over and above those advertised. It is only in rare and exceptional circumstances and in emergent situation that this rule can be deviated from. It should be clearly spelled out as to under what policy such a decision has been taken. Exercise of such power has to be tested on the touch-stone of reasonableness. Before any advertisement is issued, it would, therefore, be incumbent upon the authorities to take into account the existing vacancies and anticipated vacancies. It is not as a matter of course that the authority can fill up more posts than advertised. On equitable considerations and in exceptional circumstances, the appointments if made in excess of the posts advertised, may not necessarily be invalidated.



13. In the backdrop of of the above legal position, now let us analyse as to under what circumstances, the respondents came to deviate from the principle of limiting the number of appointments advertised. The circumstances in which the appointments could not be restricted to the number of posts advertised, have been explained and highlighted in para 4.4 of the reply of the respondents Nos. 1 and 2. In para 3 of this judgement, these details have been incorporated. Shri V.S. Gurjar, learned counsel for the official respondents, placed reliance on the decision of the Apex Court in the case of Benny T.D. and Others vs. Registrar, Co-Operative Societies and Another, AIR 1998 SC 2012, and invited our attention particularly to para 18 of the judgement, which reads as follows:

18. Coming to the question as to whether appointment had been made in excess of the staff

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9/25



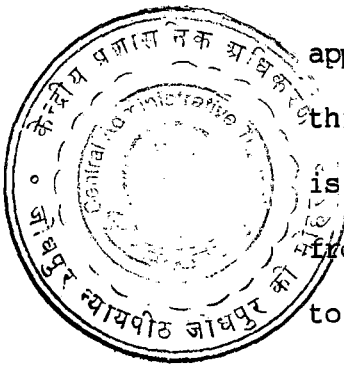
strength approved by the Registrar, it appears that apart from the above statement made by the Registrar in his order no material has been brought on to the record to support the aforesaid conclusion of the Registrar. Merely because in the advertisement issued by the Bank probable number of vacancies had been indicated to be lesser than the number of persons finally appointed, one cannot jump to the conclusion that there has been an excess appointment beyond the staff strength approved by the Registrar. It is well known that during the time when an advertisement is issued and by the time when process of selection starts and ultimately appointment orders are issued on account of several factors the number of posts may be increased, the factors being retirement of persons on attaining superannuation, death of several employees, promotion of employees to higher posts and for variety of other grounds. In such contingencies, when appointments are made depending upon the vacancies available and in excess of the vacancies advertised it cannot be said that the appointment has been made in excess of the strength of the cadre approved. There is neither any allegation nor any material to sustain the finding of the Registrar that in fact appointment has been made in excess of the posts approved by the Registrar. The said conclusion, therefore, must be held to be a conclusion based on no evidence and accordingly cannot be sustained."

We have viewed the above observation in the context they came to be made. It was a case where it was alleged that there has been an excess appointment beyond the staff strength approved by the Registrar. It was found that the appointments were not made in excess of the strength of the cadre approved. The observations quoted above in Benny T.D.'s case (supra) are of no help to the applicant and we have no hesitation to record the finding that the respondents have over-stepped by overlooking the well settled proposition of law that the appointments could not be made far in excess of the number of posts advertised. It was not a case of "marginal variation" but a blatant disregard of the law of the land, for instance, against five advertised posts of T-I (Field Assistant), 16 appointments were made, i.e., more than three times of the vacancies of the posts advertised. The respondents should have done well to restrict the appointments to the number of posts advertised with a marginal variation of one or two posts, that too in compelling circumstances.

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126

14. In spite of the above finding, we do not think that, at this stage, we should interfere in the matter and set the clock back particularly when it has come to our notice that the respondents Nos. 3 to 21 have put in service of more than 3 years and after completion of the probationary period, have been confirmed against the substantive posts. The applicant has miserably failed in securing a position in the merit list or the panel prepared by the Selection Committee. He could not have been appointed even against the enlarged number of vacancies and, therefore, it would be highly inequitable to invalidate the appointments of the respondents Nos. 3 to 21. On account of this equitable consideration and the fact that the present O.A. is not maintainable at the instance of the applicant, we refrain from interfering with the appointment of the respondents Nos. 3 to 21 or of those persons who were appointed in excess of the number of posts advertised.



15. In the conspectus of the above facts, the present O.A. turns out to be devoid of any merits and substance. It is accordingly dismissed without any order as to costs.

(A.P. Nagrath)
Adm. Member

(Justice O.P. Garg)
Vice Chairman

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Part II and III destroyed
in my presence on 12-2-62
under the supervision of
section officer as per
order dated 12/2/62

Section officer (Record)

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