

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 384/90
~~XXXXXXXX~~ 615/90

~~XXXX~~

DATE OF DECISION 25.6.92

Shri M. Vijayamohanan Applicant (*) in OA 384/90
Shri V. Gopakumaran Nair " " 615/90

Shri V.B. Unniraj Advocate for the Applicant (*)
in both the OAs.

Versus

The Accountant General (A&E), Respondent (s)
Kerala and 2 others

Shri Mathews J Nedumpara, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan - Vice Chairman
&
The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *ly*
2. To be referred to the Reporter or not? *w*
3. Whether their Lordships wish to see the fair copy of the Judgement? *w*
4. To be circulated to all Benches of the Tribunal? *w*

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

As the facts, circumstances and points of law involved in both these cases are very closely related, these two applications are being considered and disposed of by this common order.

2. Shri M. Vijayamohanan, the applicant in O.A.384/90 and Shri V. Gopakumaran Nair, the applicant in O.A.615/90 are ex-servicemen who had registered their names with the Zila Sainik Welfare Office, Trivandrum, for civil employment. To fill up the posts of Chowkidars (Group D) in the office of the 1st respondent, the respondents 1 & 2

aw

had requested the 3rd respondent, the Rajya Sainik Board, Vikas Bhawan, Trivandrum, to nominate ex-servicemen. As the 3rd respondent forwarded a list of ex-servicemen including the applicants in both these cases, the 2nd respondent invited them for interview. On the basis of the interview held on 3rd and 4th May, 1989, the respondent 1 and 2 have prepared a select list. Shri Vijayamohanan, the applicant in O.A.384/90 claims that he was assigned the 5th rank in the select list and Shri Gopakumaran Nair, the applicant in O.A.615/90 claims that he was assigned the 7th rank in the list. However, only 4 persons from the select list were appointed. Finding that the respondents 1 & 2 were taking steps to make fresh selection to 10 posts of Chowkidars in Group D ignoring the select list which according to the applicants, is still valid without appointing them, the applicants have filed these applications praying that the proceedings of the respondents to make fresh selection for appointment to the post of Chowkidar pursuant to an interview held on 17.4.1990 may be set aside, that it may be declared that the applicants are entitled to be appointed as Chowkidars (Group D) on the basis of the list prepared in May, 1989 and for a direction to the respondents to appoint them in the posts of Chowkidar. The applicants in both these applications have alleged that there were as many as 10 vacancies in the post of Chowkidars at the time when the applicants were interviewed, that after the interview, the applicants were given attestation forms with a direction to fill them and

to forward them to the respondents with their photographs and other testimonials and that the action on the part of the respondents to make a fresh selection ignoring the valid select list already prepared and refusing to appoint the applicants is mala fide, calculated to favour persons of their liking, arbitrary and unsustainable.

3. The respondents in their reply statement have contended that at the time when the applicants in both these cases were interviewed, only six vacancies were anticipated, that, in fact, 4 vacancies alone occurred during the period of validity of the select list which according to the respondents was upto 7.5.90, that 3 general candidates and one SC candidate were appointed to those posts and as the select list which included the names of the applicants at the 6th and 8th places got lapsed, the applicants have no right to be appointed to the posts which arose after 7.5.90. They have further contended that for filling the vacancies which arose after 7.5.90, a fresh panel has already been prepared and reserving two vacancies as per the interim order in these two cases 9 persons have already been appointed.

4. On 7.1.1992, when these applicants were heard in part, we issued a direction to the respondents to produce the rules/instructions on the basis of which it was contended that the panel prepared in 1989 was alive only for a period of one year and also directed ^{them} to indicate whether at any point of time, the names of candidates appointed against the vacancies which arose in 1989 were communicated to the

whether was
3rd respondent and the 3rd respondent informed that the remaining names sponsored by them were not considered for further appointment so as to enable the 3rd respondent to sponsor those names again for subsequent vacancies. They were also directed to file an affidavit indicating the dates on which the 4 vacancies stated to have arisen in 1989 and the vacancies which arose in 1990 with reasons thereon. In response to the above direction, the Deputy Accountant General, Trivandrum, filed affidavits in these two cases indicating that 4 vacancies which arose prior to 7.5.1990 were filled from among the names in the select list prepared on 8.5.1989 and that for 12 vacancies which arose in the later half of 1990 had to be filled by resorting to a fresh selection process for which a fresh requisition was sent to the 3rd respondent. The respondents also produced a copy of a secret circular No.1994-NGE.II/51-71 (III) dated 3.8.1972 issued by the headquarters office of the 1st respondent (Office of the Comptroller & Auditor General of India, New Delhi (Annexure R.1st)) to substantiate their contention that the panel prepared would be valid for a period of one year only.

5. We have heard the learned counsel on either side and have also carefully perused the pleadings and documents on record. Regarding the claims of the applicants that the applicant in O.A.384/90 was assigned the 5th rank and the applicant in O.A.615/90 was assigned the 7th rank, the respondents one and 2 have contended that the applicant in

O.A.384/90 was really at rank No.6 and the applicant in O.A.615/90 was assigned rank No.8 only. However, the select list or a copy thereof has not been produced ^{so as to enable us} to ascertain the correctness of the rival contentions. Be that as it may, if the select list prepared on 8.5.1989 is valid for the vacancies which arose even after 7.5.90 even if the applicants in these two cases were assigned 6th and 8th ranks respectively, they would be entitled to be appointed. The respondents 1 & 2 contend that the period of validity of the select list is only one year from the date on which it was drawn up basing on the secret circular No.1994-NGE.II/51-71(III) dated 3.8.1972, a copy of which is produced and marked as Annexure R.1F. We have gone through the circular. This circular relates to the panel for recruitment of UDS/LDCs. There is no indication that this circular relates to the post of Chowkidar included in Group D. It is worthwhile to extract the relevant portion of this circular. It reads as follows:-

"The preparation of very lengthy panels and their extension after their normal periods of operation (one year) is not a healthy practice as apart from denying employment opportunities to fresh persons who have graduated or passed matriculation, the labour and time that has been spent in preparation would prove futile if "the" panels are not utilised to the full extent. The C.R.As and other recruiting authorities may, therefore, ensure that the following instructions are followed scrupulously in future:-

- i) the offices participating in a C.R.A/other recruiting authorities should ensure that the

anticipated vacancies are assessed fairly accurately. This assessment should be made with reference to posts approved for inclusion in the budget estimates, likely promotions to higher grades and average of casualties like retirement, death, resignation etc. As this will be the basis on which the whole recruitment programme would depend, it should be done very carefully.

- ii) the applications received in response to the advertisement/notification should be screened to decide the number to be called for test/ interview. Where a written test is to be followed by interview, the number to be called for test may be restricted to 7 times, the anticipated vacancies. Where there is only one stage of selection (LDCs), the number should be restricted to 4 or 5 times the anticipated vacancies.
- iii) the final select panel should not in any case exceed twice the anticipated number of vacancies."

We have extracted the above portion of the secret circular in order to demonstrate that this has relevance only to the appointments of LDCs and UDSs and to show that there is no direction that inevitably the panel should lapse on the expiry of a period of one year. Therefore, we are not satisfied that the contention of the respondents that as per rules, the panel prepared for appointment to the posts of Chowkidar has validity for a period of one year only has been established. Further, though the Deputy Accountant General in the affidavit indicated that 12 vacancies were anticipated in the later half of 1990, the reasons for which such vacancies arose and the dates on which those vacancies arose have not been indicated. Therefore, we are not convinced considered for that the applicants have no right to be appointed to the posts. The learned counsel for the respondents invited our attention to the decision of a Constitution Bench of the Hon'ble Supreme

: ? :

Court in Shankarsan Dash v. Union of India, Civil Appeal

No.8613 of 1983 decided on 30.4.1991 wherein their Lordships have observed as follows

"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."

Relying on the above observation of the Hon'ble Supreme Court, the learned counsel for the respondents argued that even if vacancies arose during the validity of the panel, the applicants have no legal right to be appointed to the post and that they have no right to challenge the decision of the Government not to fill up those vacancies. But in the same judgement their Lordships have observed as follows:-

"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 ride 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."

Here, the respondents contend that the applicants are not entitled to be appointed solely for the reason that the vacancies arose after 7.5.90 on which date, according to them, the period of validity of the panel expired. But as observed by us earlier, the respondents have not proved by any convincing evidence that there is any rule/instruction

or provision in the recruitment rules which would say that the period of validity of the panel would be only one year. A copy of the recruitment rules published in the Gazette of India dated 20th August, 1988, GSR 662 was made available for our perusal. There is no indication in the recruitment rules that the panel prepared will be valid for a period of one year only.

6. Because the applicants' names were included in the select list prepared on 8.5.89 and as no intimation was given to the 3rd respondent that they were not appointed as the vacancies arose after the validity of the select list in time, the 3rd respondent did not sponsor the name of the applicants again for consideration. In that way, they lost a chance for consideration in the next selection process. In these circumstances, we are of the view that in fairness the applicants who are eligible, qualified and selected should be appointed in the post of Chowkidars. As per the interim orders issued in both these cases, two posts of Chowkidars have been reserved and left unfilled. The learned counsel for the respondents brought to our notice that a person whose rank is No.5 in the select list and another person whose rank is No.7 in the select list have not been appointed and it would not be appropriate if the applicants in these two cases are appointed against the two vacancies reserved on the basis of the interim order.

These two persons have not come before the Tribunal for the redressal of their grievance. Since subsequent selection has already been made and 9 persons have already been appointed, we are of the view that to render justice to the applicants in these cases we have to direct the respondents to appoint them to the two posts reserved on the basis of our interim order in these cases.

7. In the result, the applications are allowed in part, the respondents are directed to appoint the applicants, Shri M. Vijayamohanan and Shri V. Gopakumaran Nair to the two posts of Chowkidars in the office of the 1st respondent which are left unfilled pursuant to the interim order issued in these cases within a period of two months from the date of communication of this order.

8. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER

(N.V. KRISHNAN)
VICE CHAIRMAN

25.6.92