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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~XXXXXX~~ TR 83/87
~~XXXXXX~~

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DATE OF DECISION 14 Sept. 1990

Smt. Emilia Barreto & 3 ors. Petitioner

Shri A.F.Rebello Advocate for the Petitioner(s)

Versus

Kum. Victoria Lobo & 5 Ors. Respondent

H.R. Bharne Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.Y. Priolkar, Member (A)

The Hon'ble Mr. N. Dharmadan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY
CAMP AT PANAJI

Transfer No.83/87

Smt. Emilia Barreto & 3 others ... Applicants

vs.

Kum. Victoria Lobo & 5 others ... Respondents

CORAM : Hon'ble Member (A), Shri M.Y.Priolkar
Hon'ble Member (J), Shri N. Dharmadan

Appearances:

Shri A.F.Rebello, Advocate,
for the applicants and Shri
H.R. Bharne, Advocate, for
the respondents.

ORAL JUDGEMENT:

Dated : 14 Sept. 1990

(Per. Shri N.Dharmadan, Member(J))

This is a case in which four applicants, who were working as Assistants in the Sachivalaya (Secretariat), of Government of Goa, Daman and Diu, approached the High Court attacking Annexure-B promotion of respondents 1 to 3. Later after the Administrative Tribunals Act, 1985, it^{was} transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985.

2. The case of the applicants is that by order dated 13.7.83 a seniority list of Assistants has been issued in which the petitioners are at serial numbers 1, 2, 3 & 5 respectively. Exhibit-A is the seniority list. But, without considering the seniority and better claims of the petitioners for promotion, respondents 1, 2 & 3 have been promoted and posted as Superintendents in the Secretariat as per Exhibit-B order dated 6.9.1984. The petitioners submitted representations challenging the above appointment. It was rejected. Hence they have approached the Court for relief. According to the

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applicants petitioner No.1 stands at serial no.6 of the order of seniority amongst Assistants, ~~and~~ ² Petitioner No.2 was appointed as Assistant on 25.4.1979. He stands at Sl.No.8 in the seniority list. As per the recruitment rules if a proper selection is made ~~and~~ ² on the basis of the ~~correctly~~ departmental promotion committee procedure one of the applicants would have come within the zone of consideration and respondents 1 to 3 ought not have been considered. The petitioners further submitted that at the time when the Departmental Promotion Committee met on 5.9.84 there was only one clear vacancy on account of the promotion of one Shri K.N. Nambiar. Petitioners further submitted that one Shri O.K.S. Menon ~~was~~ ² was appointed as Private Secretary to the Minister with effect from 3.8.84 and his vacancy is a vacancy to be earmarked to ¹⁶ Stenographers and not Assistants. The third vacancy was only a short term vacancy, ^{which is} ~~arose~~ on account of leave taken by one Shri A. Manerkar; so much so there are no clear vacancies for being directed to the DPC for selection of three candidates. If the Government had ^{accepted by} ~~assessed~~ the vacancy as only one clear vacancy the zone of consideration ought ~~not~~ ⁶ ² have been limited as five, in which case the first respondent's case ought not have been placed for consideration before the DPC. There is also further case that the third respondent has not completed five year period as Assistant on the date of the meeting of the DPC.

3. The respondents filed a detailed counter affidavit and denied all the allegations raised in the application.

4. At the time of the arguments the learned counsel for the applicant produced before us an O.M. dated 30.12.76 dealing with the procedure of the DPC and vehemently contended that there should be clear vacancies when DPC ^{makes his selection and assessment of} ~~assessed~~ the merits of the candidates for promotion. He has placed considerable reliance on paragraph 4 of the said O.M. which is extracted for convenience of reference:

"It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion of incumbents of one post/grade to higher post/grade and vacancies arising from creation of additional posts on a long term basis and those arising out of deputation. As regards vacancies arising out of deputation, it is clarified that for the purpose of drawing up a select list for promotion, vacancies arising out of deputation for periods more than one year should be taken into account, due note, however, being kept also of the number of the deputationists ~~are~~ likely to return to the cadre and who have to be provided for. Purely short term vacancies arising as a result of officers proceeding on leave, on deputation for a shorter period, training etc. should not be taken into account for the purpose of preparation of a panel."

5. Relying on the above paragraph the learned counsel contended that only vacancies arising ^{on} ~~due~~ on account of death, retirement, resignation, regular long term promotion alone can be taken into consideration. On the other hand, in this case respondents have taken into consideration a short term vacancy of four months and thereby they have violated the procedural formalities contemplated

in the O.M. Hence the entire proceedings of the DPC were illegal. According to him this is a vacancy which should have been filled up by ad-hoc appointment by finding out a suitable person who is sufficiently senior according to the seniority.

6. The learned counsel for the respondents relied on before us for consideration the statements in para 14 of the counter affidavit. The relevant portion reads as follows:

"I say that as on the date when the DPC had met the vacancy of said Shri Manerkar was available as it was not certain as whether he would resume the duties or not and that the same post could not be kept vacant indefinitely and in view of the fact that the said post could not be kept vacant indefinitely and as there was not certainty as to when or whether the said Manerkar would resume to his duties it was but natural that DPC had to consider the said three vacancies which were available. It is therefore submitted that there were three vacancies as on the date when the DPC had met on 5th September 1984."

According to the learned Government counsel there were three clear vacancies existing at that time. On an assessment of the vacancies the Government came to the conclusion on the basis of existing materials the three vacancies should be filled by selecting officers through DPC. Accordingly they had placed the papers relating to eight officers coming within the zone to be considered according to seniority by the DPC and there is no illegality in the procedure followed in this case.

7. In the course of the arguments the learned counsel for the applicant further submitted that if a short term vacancy is to be filled by assessing the

merit of the person by the DPC in the manner in which it has been done in this case there will be prejudice to the applicants and their chances of promotion will be jeopardised. In order to verify whether the third vacancy was only a short term vacancy as contended by the learned counsel for the applicant and whether the Government was having a clear idea as to the existence of the three vacancies at the time of DPC meeting we have examined the files placed by the Government before the DPC. In the note submitted before the DPC there is a clear statement to the following effect:

"One more vacancy has arisen due to proceeding on long leave by one Supdt. in the Secretariat and he is likely to voluntarily retire later without joining. Hence in all there will be 3 vacancies of Supdts. in the Secretariat to be filled on ad-hoc basis!"


We are satisfied and

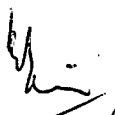
From this, it is very clear that at the time when the DPC met on 5.9.84 the Government was fully satisfied that there were three existing vacancies to be filled by selection by the DPC. This decision was not alleged to be a malafide one. The applicants also have not raised any allegation of malafides against the DPC.

8. The further contentions of the learned counsel for the applicants that the third respondent had not completed 5 years for being considered for selection at the time of DPC meeting was also answered in the reply affidavit by stating that she had completed the period before the DPC meeting. So the order impugned in this case is unassailable and we uphold the same.

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9. In this view of the matter we are of the ^{opinion by} ~~view~~ that there is no merit in the application and it is only to be dismissed. Accordingly we do so. There will be no order as to costs.


(N. Dharmadan) ... 14.9.90.
Member (J)


(M.Y. Priolkar)
Member (A)