

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 632/89
~~XXXXXX~~No.

198

DATE OF DECISION 31st July 1990.
 " " "

Shri V.T.Patil Petitioner

Shri G.S.Walia Advocate for the Petitioner(s)

Versus

Union of India & anr. Respondents

Sh.S.R.Atre for Sh.P.M.Pradhan Advocate for the Respondent(s)

CORAM

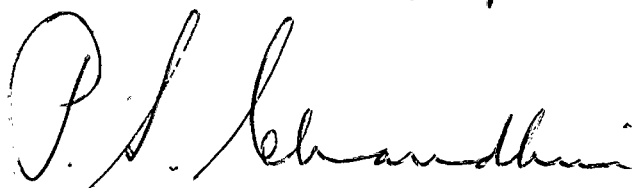
The Hon'ble Mr. P.S. Chaudhuri, Member (A)

The Hon'ble Mr. T.S. Oberoi, Member (J)

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

Yes

Yes


 (PS CHAUDHURI)

②
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

OA.NO. 632/89

Shri V.T.Patil

... Applicant

vs.

Union of India & anr.

... Respondents

CORAM: Hon'ble Member (A) Shri P.S.Chaudhuri
Hon'ble Member (J) Shri T.S.Oberoi

Appearance

Mr.G.S.Walia
Advocate
for the Applicant

Mr.S.R.Atre (for Mr.P.M.Pradhan)
Advocate
for the Respondents

JUDGEMENT

Dated: 31st July, 1990.

(PER: P.S.Chaudhuri, Member (A))

This application under Section 19 of the Administrative Tribunals Act, 1985 was filed on 3.10.1989. In it, the applicant, who applied for the post of Assistant Supervisor in the India Security Press, Nasik Road is challenging the respondents' failure to appoint him to the said post.

2. By an advertisement in 'Employment News' dated 7.2.1987 applications were invited for 45 posts of Assistant Supervisor in the India Security Press. Of these 45 posts, 28 posts were for unreserved candidates. The applicant applied for this post and appeared for the interview. By order dated 21.9.1987 the applicant was informed that he had been selected. It is the admitted position that he was placed at Sr.No. 30 in the merit list for unreserved candidates.

It is the applicant's grievance that he was not offered appointment and hence he submitted a representation on 11.7.1989 to which he has not received any reply. Thereafter, the applicant came to know through special advertisement No. 9/89 (Ex. 'G' to the application) that the respondents intended to make a fresh recruitment for 16 posts of Assistant Supervisors of which 11 posts were for unreserved candidates. Being aggrieved, he filed the present application on 3.10.1989.

3. The respondents have opposed the application by filing their written statement. We have heard Mr. G.S. Walia, learned advocate for the applicant and Mr. S.R. Atre, holding the brief of Mr. P.M. Pradhan, learned advocate for the respondents.

4. Mr. Walia bases his case on paras 3 & 4 of an Office Memorandum dated 8.2.1982 (Ex. 'D' to the application). These paragraphs are reproduced below :-

"The matter has been carefully considered. Normally recruitment whether from the open market or through a Departmental Competitive Examination should take place only when there are no candidates available from an earlier list of selected candidates. However, 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 appointment. 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 the method of direct recruitment or through Departmental Competitive Examination.

10

Once a person is declared successful according to the merit list of 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. Thus, where selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting appointment should be given appointments first, before starting appointments from a fresh list from a subsequent recruitment or examination."

It was his contention that by this Office Memorandum the respondents are precluded either from reducing the number of vacancies for which the selection was held in 1987 or from resorting to further recruitment till the applicant, who is an available selected candidate, is absorbed. It is his case that in their written statement the respondents have indicated that 29 candidates have been appointed from the panel and so the applicant is the next person awaiting for appointment.

5. Mr. Atre attempted to controvert this position by submitting that the number of vacancies should be deemed to be the number of vacancies available on the date of the advertisement ~~issued~~. It was his case that ^{on that date} there were only 15 vacancies. We are unable to see any merit in this submission. We have no difficulty in holding that the reference to "declared number of vacancies" refers to the number of vacancies for which the advertisement was issued.

6. With his characteristic fairness, Mr. Atre also showed us the complete record of the selection. It is clear beyond doubt that the applicant's name was "included in the list of selected candidates". We have no doubt in our mind that he thus comes within the ambit of Office Memorandum dated 8.2.1982.

7. Mr. Walia contended that once selection of a suitable candidate is made for direct recruitment, Government has responsibility to make appointment of that candidate. He cited K.L.PRASHAR v. UNION OF INDIA & OTHERS - (1987) 5 ATC 590 in support of his contention. He also submitted that once a candidate was included in the panel according to the declared number of vacancies, he could not be denied appointment by resorting to preparation of a fresh panel. He cited SMT.NIRMAL KUMARI & ANOTHER v. DELHI ADMINISTRATION & ANOTHER - (1990) 12 ATC 125 in support of this contention.

8. In support of his contention Mr. Walia also cited A.V.BHOGESHWARUDU v. ANDHRA PRADESH PUBLIC SERVICE COMMISSION & ANR. - JT 1989(4) S.C. 130 - In this case the Supreme Court has held that :-

"The only point which requires consideration is as to whether if out of the names recommended for appointment, some candidates do not join, whether the vacancies remaining unfilled should or should not be filled up from out of the remaining successful candidates. We see no justification in the stand of the State Public Service Commission that instead of filling up the vacancies by recommending the candidates next in order of merit out of the present list why a fresh selection should be made. We accordingly dispose of this appeal by directing that the number of vacancies remaining to be filled up on account of non-joining of selected candidates for whatever reason shall be out of the present list."

This ratio fairly applies in the present case.

9. Mr. Walia also submitted that the grant of the relief prayed for by the applicant could be given to him irrespective of anybody else. In this regard he cited NEELIMA SHANGLA Ph.D v. STATE OF HARYANA - 1986(3)SLR SC 389. in which the Supreme Court has held :-

"As a result of our finding a few more candidates would also be entitled to be included in the Select List and ordinarily we would have directed their inclusion in the list. But having regard to the fact that most of the others have not chosen to question the selection and the circumstance that two years have elapsed we do not propose to make any such general order as that would completely upset the subsequent selection and create confusion and multiplicity of problems. The cases of any other candidate who may have already filed a writ petition in this court or the High Court will be disposed of in the light of this judgement. Those who have not so far chosen to question the selection will not be allowed to do so in the future because of their laches."

10. In this view of the matter we are of the opinion that this application deserves to be allowed.

11. We, accordingly, direct that the respondents shall appoint the applicant as Assistant Supervisor in the scale of Rs.425-640/1400-2300 from the date that the first vacancy of such a post was filled after the 29th unreserved candidate from the panel had been so appointed.

31.7.96
(T.S.OBEROI)
MEMBER (J)

P.S. Chaudhuri
(P.S.CHAUDHURI)
MEMBER (A)