

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 20 101/96

Date of Decision: 20-8-1997

A.Y.Kamble

Applicant.

Mr.G.S.Walia

Advocate for
Applicant.

Versus

U.O.I. & anr.

Respondent(s)

Mr.V.G.Rege


Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.S.Hegde, Member(J)

Hon'ble Shri. P.P.Srivastava, Member(A)

- (1) To be referred to the Reporter or not? \times
- (2) Whether it needs to be circulated to other Benches of the Tribunal? γ


(B.S.HEGDE)
M(J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.101/96

20th this the Wednesday day of August 1997

CORAM:

HON'BLE SHRI B.S.HEGDE, MEMBER(J)

HON'BLE SHRI P.P.SRIVASTAVA, MEMBER(A)

A.Y.Kamble,
Layout No.4,
Plot No.43/A-2,
Baba Jarag Nagar,
Kolhapur - 416 007

By Advocate Shri G.S.Walia

.. Applicant

-versus-

1. Union of India,
through
The General Manager,
Nasik Road,
Maharashtra.

2. Administrative Officer,
India Security Press,
Nasik Road,
Maharashtra.

By Counsel Shri V.G.Rege

.. Respondents

-: O R D E R :-

(Per B.S.Hegde, Member(J))

Heard Mr.G.S.Walia for the applicant
and Mr.V.G.Rege for the respondents. Applicant
in this O.A. prays for issue of writ of mandamus
to appoint the applicant as an Asstt.Supervisor
with immediate effect against one of the posts
advertised in the Employment News dt. 7-2-1987
with all consequential benefits such as seniority,
increment, back-wages etc.

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2. Learned counsel for the applicant submitted that as per the advertisement in Employment News dt. 7-2-1987 for the purpose of filling up of 45 posts of Asstt. Supervisors in the pay scale of Rs. 425-640 applications were invited from eligible candidates. The applicant fulfilled all the eligibility conditions and accordingly applied for one of the posts. Applicant belonged to SC and there were 10 posts reserved for SC and 28 posts were unreserved. The applicant appeared for interview and accordingly he was orally informed that he has been selected and his name was kept in the waiting list. Since he belonged to SC community he was given assurance that he would be duly appointed. Since he did not get any appointment within the eligible time he sent representation dt. 10-7-1989. He did not receive any letter of appointment nor he received any reply. Therefore, he contends that the action of the respondents is arbitrary, illegal and unconstitutional in not appointing the applicant. Further it is contended that the respondents are under obligation to appoint the applicant within the advertised number of vacancies and the respondents did not have right to reduce the vacancies after they advertised the vacancies.

3. In reply the learned counsel for the respondents submitted that after undergoing the process of selection the requisite select-list

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containing the names of the candidates who were considered fit for appointment was prepared some time in the month of September, 1987. Thereafter the first appointment came to be made in February, 1988. One Shri V.T. Patil whose name was included in the select-list approached this Tribunal by filing O.A. 632/89 for seeking directions to the respondents for his appointment as Asstt. Supervisor in view of his name having included in the select-list. The said application was disposed of by this Tribunal vide judgment dt. 31-7-1990. This Tribunal directed the respondents to appoint the said applicant, V.T. Patil, as Asstt. Supervisor from the date the first vacancy of such a post was filled in after 29 unreserved candidates had been so appointed. Thereafter some other candidates namely K.A. Jayaprakash Reddi and U. Sambasiva Rao approached the Hyderabad bench of this Tribunal by filing O.A. 374/90. The Hyderabad Bench of this Tribunal was pleased to dispose of the said application by its judgment and order dt. 4-9-1991. In yet another application filed before the Hyderabad Bench by another candidate, O.A. 1009/91, the Tribunal vide its order dt. 10-6-93 directed the respondents to appoint the applicant within three months.

4. The applicant filed this O.A. on 4-12-95. Thereafter he filed an MP 307/96 seeking condonation of delay stating that the respondents have reduced the number of vacancies which cannot be done and which is impermissible under the rules.

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The applicant further stated in the MP that he was waiting for the appointment and any delay in filing this OA may be condoned.

5. Respondents submitted that the averments made in the OA are vague, without any particulars and therefore the same cannot be sustained. It is further submitted that the applicant sent a representation on 10-7-89. Even if he had sent the representation after lapse of six months he should have approached the Tribunal which he did not do. It is true that the first appointment was made ~~on~~ in the month of Feb. 1988, and that some of the candidates approached this Bench of the Tribunal as well as the Hyderabad Bench of this Tribunal by filing applications during the years 1989 to 1993 shows that the concerned candidates who applied pursuant to the said Employment notice dt. 7-2-1987 were fully aware of the select list having prepared in the month of September, 1987. That by itself would not give any cause of action to the applicant to file this belated application after a gross delay of nine years. It is further stated that advertisement for filling up 45 vacancies of the post of Asstt. Supervisor (28 Un-reserved, 10 Scheduled Caste and 7 Scheduled Tribe) was issued in February '1987. The vacancies were inclusive of some anticipated vacancies against the expected sanction from the Govt. for creation of posts of Asstt. Supervisors under modernisation and expansion programme, of

Currency Note Press. In response to the advertisement applicant was one of the candidates amongst the candidates who were called for the interview. The recruitment committee conducted the interview and prepared the merit list of candidates, categorywise. Applicant stood at Sr.No.10. The vacancies as notified i.e. 28 UR, 10SC and 7 ST have been filled in but there was no vacancy to accommodate the applicant. The waiting list was also prepared and candidates placed in waiting list were to be called for taking up the appointments only if any one of the persons earlier to them in the select list refuses to accept the appointment. Mere fact that the applicant was called for filling the attestation forms does not entitle the applicant for any appointment. The applicant does not acquire any right for being appointed to the post of Assistant Supervisor merely because the applicant was requested to fill in the attestation form. Since the applicant could not be appointed against the number of vacancies available, the applicant cannot be said to have acquired the vested right for appointment merely because his name was kept in the reserve list. The number of vacancies available were only 8 and the panel drawn by the Departmental Promotion Committee is valid only for one year or ^{till} a fresh panel is prepared. The panel in the ~~xxx~~ present

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case was prepared during the month of September, 1987 and the same ceased to be in force in the month of February, 1989. Thereafter another advertisement was issued in the year October, 1992 for filling up the posts of Assistant Supervisor for which the interviews were conducted in June, 1993. The Departmental Recruitment Committee selected 25 candidates and all the candidates were appointed against that panel. Therefore, the applicant cannot claim for appointment after 8 years. It is pointed out that they have not appointed any junior of the applicant of their own accord as alleged by the applicant. It was only in due compliance of judgment and order dt. 10-6-93 in O.A. No. 1009/91 of Hyderabad Bench. In the light of the facts and pleadings of the parties the question to be decided is whether application filed by the applicant is sustainable in law.

6. Firstly the panel formed cannot be indefinitely kept alive. Respondents have clearly stated that for want of vacancy he could not be appointed and his name was kept in the waiting list. After expiry of the panel the respondents again called for interview in the year 1992 for filling up the post of Asstt. Supervisor. Learned counsel for the applicant cited two decisions viz. V.T. Patil vs. U.O.I., O.A. 632/89 of New Bombay Bench and Laxman Das v. U.O.I. (1988) 6 ATC 609.

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Both the decisions are judgment Persona and not judgment in Rem. The Apex Court in Bhoop Singh vs. U.O.I, JT 1992(3) SC 322 has held that "the judgment and orders of the court in other cases do not give cause of action. The cause of action has to be reckoned from the actual date." In the instant case cause of action arose in 1987 whereas the applicant filed the O.A. only in 1995. Applicant has not made out any case for delay in filing the O.A. The only contention is that he stood in the waiting list and he should be appointed.

The Apex Court, in Shankarsan Dash v. U.O.I. 1991(2)SLR 779 has held that "A candidate whose name appears in the merit list on the basis of a competitive examination does not acquire any indefeasible right of appointment as a Government servant even if a vacancy exists. However it does not mean that State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons." In view of the above decision in the instant case vacancy existed at the relevant time is only 8. Applicant's number in the ~~xxxxxxx~~ merit list was 10. Therefore, he could not be appointed. After the expiry of the panel the respondents again advertised for the post in the year 1992 whereby the applicant has no right to claim the post on the basis of earlier panel

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after the publication of new advertisement.

7. In the result we do not find any merit in the O.A. and the same is dismissed.



(P.P. SRIVASTAVA)
Member(A)



(B.S. HEGDE)
Member(J)

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