

## THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 36/92  
Tx~~A~~ No.

198

DATE OF DECISION 1.5.92

Shri V. Packiriswamy Petitioner

Miss S. I. Shah Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri A. I. Bhatkar R 1 and Advocate for the Respondent(s)

Shri V. S. Masurkar R3 to 5

CORAM

The Hon'ble xx Ms. Usha Savara, Member (A)

The Hon'ble Shri S. F. Razvi, Member (J)

1. Reporters of local papers may be allowed to see the Judgement? Yes  
2. Is it necessary to refer to the Reporter or not? No

3. Will the Lordships wish to see the fair copy of the Judgement? —

4. Does it need to be circulated to other Benches of the Tribunal? No

MOIPRRWD 12-86-15,000

S. F. RAZVI

(S. F. RAZVI)  
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

(9)

Original Application No. 36/92

Shri V.Packirisamy

.... Applicant.

v/s.

1. The Secretary,  
Union Public Service Commission  
Dholpur House, Shahjahan Road  
NEW DELHI - 110011.
2. The Under Secretary,  
Union Public Service Commission  
Dholpur House, Shahjahan Road  
New Delhi.
3. The Secretary  
Min. of Information and  
Broadcasting,  
Shastri Bhavan, New Delhi.
4. The Chief Producer  
Film Division,  
Ministry of Information &  
Broadcasting, 24, Dr. G.  
Deshmukh Marg.,  
Bombay. 400 026
5. Union of India through  
Respondent No.3.
6. Shri V.S. Nagarajan,  
Director,  
Films Division  
Government of India,  
Min. of Information and  
Broadcasting, 24, Dr. G.  
Deshmukh Marg.,  
Bombay - 400 026.

.... Respondents.

CORAM: Hon'ble Ms Usha Savara, Member (A)

Hon'ble Shri S.F.Razvi, Member (J)

Appearence

Miss S.I. Shah, for  
the applicant.

Mr. A.I. Bhatkar for  
Mr. M.I. Sethna for  
respondent No. 1 and 2.

Mr. V.S.Masurkar for  
respondent No. 3 to 5.

and JUDGEMENT

Dated: 1.5.1992

I Per Shri S.F. Razvi, Member (J) I

<sup>being</sup>  
This application is now disposed of  
at the stage of admission with consent of parties.

AM  
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The applicant is

....2...

1) The applicant is working as Deputy Director, Films Division at Bombay and is aggrieved by the non issue of any appointment order to the post of Director, though his name came to be recommended by the UPSC after selection made, for filling up the posts of Director. The applicant has approached this Tribunal by way of the present application.

2) The case of the applicant, briefly stated is thus:

On being selected by the UPSC on merit, the applicant came to be appointed to the post of Dy. Director (Group A Gazetted) in the Films Division, Ministry of Information and Broadcasting Bombay vide annexure 'A' dated 16.7.91. Pursuant to the advertisement issued calling for applications from eligible candidates to fill up 6 vacancies in the post of Directors by direct recruitment, the applicant applied through the UPSC and appeared for the interview and came to be selected and was accordingly intimated vide Annexure 'C' dated 20.6.91 to the effect that his name is recommended for appointment to one of the post of Directors; <sup>With the results of the</sup> recruitment held to fill up the said 6 posts of Director was published in the weekly " Employment News" of 10 - 16 August 1991 as per Annexure 'E' and as per that news item the applicant was one of those selected, the 4 others being Raghu Krishna, Surinder Kumar Sawhney, M. Elango and Ms. Viplove Rai; that Raghu Krishna was given appointment letter dated 12.9.91 and further one Suresh Menon whose name did not figure in the list of selected candidates as published in the said news item <sup>not</sup> and who also had been selected was also given appointment letter dated 24.9.91 as per Annexures 'F' & 'G' respectively; that the appointment letter in favour of Surendar Kumar Sawhney and Ms. Viplove Rai are likely to be issued after verification and other formalities

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(1)

they being outsiders. Further that Elango who was also selected has been appointed to the vacancy reserved for S.C. It is further the case of the applicant that since he was not issued with any appointment letter inspite of representation, given by him as per Annexure 'H' and 'I' he has been constrained to approach this Tribunal seeking the relief.

3) By an amendment which was allowed, the applicant has further pleaded that respondent No. 6 Nagarajan who was subsequently added has been appointed to the post of Director by respondent No. 3 and that the 6th respondent Nagarajan had not been selected by the UPSC as per the select list published in the News item, ~~in~~ The third respondent arbitrarily issued the order of appointment in favour of respondent No. 6. The applicant has thus challenged the appointment of said respondent No. 6 being illegal and has accordingly sought the relief of quashing the appointment of respondent 6 and for a direction being issued to respondent 3 to issue an appointment order in favour of the applicant.

4) Respondents 1 to 5, contesting the application have filed reply. Respondent 6 Nagarajan, though served, has not appeared and contested this application.

5) In the reply filed both on behalf of UPSC and respondents 3 to 5 the pleas taken <sup>are</sup> the same though the replies have been filed by them separately. The case of the respondents is that out of the six candidates selected, three of them namely Raghu Krishna, M. Elango and Suresh Menon have already joined the posts of Director and that on completion of pre appointment formalities appointment orders will be issued in favour

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(12)

of other three persons selected and who have accepted the posts. It is further their case that M.Elango who was selected on general merit and as per O.M. dated 22.5.89 Annexure 'A' the said Elango came to be adjusted against an unreserved post and consequently the UPSC released one more name of SC candidate i.e. respondent 6, Nagarajan, from the reserved list against the reserved post for SC candidate and that in this process the applicant who was at the bottom of the list of the recommended candidates against unreserved posts had therefore become surplus and accordingly the UPSC advised the Ministry to accommodate the applicant in the future vacancy or to give appointment if one of the general recommended candidates selected does not accept the offer of appointment. On these pleas the respondents have sought for the dismissal of the application.

6) We have heard the learned counsel appearing for the parties and also perused the original records pertaining to the selection produced for our perusal by the contesting respondents.

7) It is common ground that the applicant came out successful in the selection to the post of Director and was shown in the list in Annexure 'E'. He was placed below Miss Viplove Rai i.e. Sl.No.5 in the list published. It is not disputed that Suresh Menon had also been selected but his name did not come in the select list because his date of birth was yet to be verified. After verification of the date of birth and as he was found eligible and had ranked better than the applicant, he came to be placed above the applicant in the select list. We have looked into the proceedings relating to the selection and we found that there is no illegality in the selection of the candidates and the final list published. Even otherwise no contention has been put before us challenging the mode of selection. It was

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submitted on behalf of respondent that even the other two candidates i.e. Surinder Kumar Sawhney and Ms. Viplove Rai have accepted the offer of appointment and of then Ms. Viplove Rai has already joined the post of Director while Surinder Kumar Sawhney is concerned, it was submitted by the respondents that he is yet to be relieved from the parent department and he has already given the acceptance and on getting relieved from the parent department he will join the post of Director. It is also not in dispute that Ekango whose name figures at sl. No. 3 of Annexure 'E' came to be selected on merit and as per the provisions of O.M. dated 22.5.89 at Annexure 'A' filed along with the reply, he came to be brought in the general list though he is SC. Nagarajan out of the reserved list came to be posted to the vacancy reserved for SC category. It is thus evident that out of the 6 posts for which selection was made, 5 posts were ~~un~~ reserved category and one reserved for SC and the first 6 candidates selected by the UPSC have accepted offer of appointment and except Surinder Kumar Sawhney all the other 5 candidates have already joined the post of Director. At present, it is submitted by the respondents that, there is no post of Director vacant and available for being offered to the applicant. We may point out here that the recommendation of the UPSC was that if any of the candidates selected on merit do not accept the offer of appointment, the applicant should be appointed to one of these posts or the applicant should be given the future vacancy. The learned counsel for the applicant submitted before us that a clear vacancy is available consequent upon the resignation of one Arun Sakte, Director, Films Division, Delhi. The respondents counsel submitted that he is not aware of the vacancy arising consequent up on the resignation of said Arun Sakte. There were 6 posts for selection, and first 5 candidates on merit and 6<sup>th</sup> respondent

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(14)

Nagarajan having been selected for the reserved vacancy of SC, the applicant who came to be put in the bottom of Sl.No.7 could not be provided with the appointment though he came to be selected and the UPSC has recommended for his appointment. In the facts and circumstances of the case we feel that the present application is liable to be disposed of with the direction to the respondents that in case Surinder Kumar Sawhney does not join the post even though he has accepted the offer of the appointment and has not been relieved from parent department, the respondents should accommodate the applicant for filling up that vacancy. In case Surinder Kumar Sawhney joins the post of Director and if there is any existing vacancy available consequent upon the resignation of Arun Kumar Sakhate, respondents should accommodate the applicant in such vacancy forthwith provided the respondents take a decision to fill up such vacancy. If ~~the~~ <sup>no</sup> vacancy exists now, and future vacancy occurs in the post of Director <sup>and</sup> ~~the~~ <sup>as</sup> respondents should take a decision to fill up such future vacancy, they should give preference to the applicant, and accommodate him for filling up such future vacancy as recommended by the UPSC. We do not think that any other relief can be awarded to the applicant.

8) In the facts and circumstances of this case and for the reasons above said we <sup>dispose of</sup> allow this application on the above terms and direct that respondents to implement <sup>given</sup> the afore said directions in para 7. No costs.

9) The ~~counsel~~ for the applicant prayed for furnishing of certified copy of this order at an early date. A copy of this order may be given to the learned counsel for the applicant at the earliest as per rules.

S F RAZVI  
11/5/92  
( S F RAZVI )  
MEMBER (A)

M. Savara  
1.5.92  
(Ms. USHA SAVARA )  
Member (A)