

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1040/98.

Date of Decision: 24th May, 1999.

Sunil Ghanshyam Tiwari, Applicant.

Shri M. S. Ramamurthy, Advocate for Applicant.

Versus

Union Of India & 2 Others, Respondent(s)

Shri V.S. Masurkar for Respondent No. 1 & 2.

Shri M.I. Sethna alongwith Shri V.D. Vadavkar for Respondent No. 3. Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri. D. S. Baweja, Member (A).

(1) To be referred to the Reporter or not? *72f*

(2) Whether it needs to be circulated to other Benches of the Tribunal? *✓10*

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, 4TH FLR, PRESCOT RD, FORT,

MUMBAI - 400 001.

ORIGINAD APPLICATION NO:1040/98.

DATED THIS 7th DAY OF MAY, 1999.

CORAM:Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri D.S.Baweja, Member (A).

Sunil Ghanshyam Tiwari
serving as Mechanical
Supervisor (senior) in the
Fisheries Survey of India,
Sassoon Docks, Colaba,
Mumbai - 400 005.

... Applicant.

By Advocate Shri M.S.Ramamurthy.

v/s.

1. Union of India,
through the Secretary
The Government of India,
Ministry of Agriculture,
Department of Animal Husbandry & Dairy,
Krishi Bhavan,
NEW DELHI - 110 001.

2. Director General,
Fishery Survey of India,
Botawala Chambers,
Sir P.M.Road,
Mumbai - 400 001.

3. Union Public Service Commission,
Dholpur House,
Shahajan Road,
NEW DELHI-110 001.

... Respondents.

By Advocate Shri V.S.Masurkar for R-1 and 2.

By Advocate Shri M.I.Sethna

alongwith Shri V.D.Vadhavkar for R-3.

I O R D E R I

[Per Shri R.G.Vaidyanatha, Vice Chairman]

This is an application filed under section 19 of
Administrative Tribunals Act. Respondents have filed reply.
We have heard Shri M.S.Ramamurthy, the learned counsel for
applicant and Shri V.S.Masurkar, learned counsel for respondent,
Nos.1 and 2 and Shri M.I.Sethna alongwith Shri V.D.Vadhavkar
for respondent No.3.

2. Few facts which are necessary for disposal of
this application are as follows:-

The applicant is working as a Mechanical Supervisor

in the Fisheries Survey of India. He applied for the post of Service Engineer(Mechanical), for selection by direct recruitment. The UPSC considered the application and conducted interview and selected one Shri G.S. Kumaran for that post. Thus offer of appointment was given to G.S. Kumaran. G.S. Kumaran did not accept the offer since he was selected for some other post in a different department. Then the department of Fisheries Survey of India wrote to UPSC to release candidate from the reserve list. There was some correspondence between the department and the UPSC. The UPSC insisted that unless the appointment of G.S. Kumaran is cancelled, no candidate from reserve panel will be released. Ultimately, the department cancelled the appointment of G.S. Kumaran by order dated 12/8/98. Then the UPSC was asked to release candidate from the reserve panel. Then the UPSC took a stand that since selection has already started for preparing panel for subsequent vacancies and panel is already prepared, no candidate from the reserve list from the previous panel can be released.

The applicant's grievance is that his name was in the reserve panel and the UPSC unreasonably did not release the applicant's name from the reserve panel to the department and consequently the department could not issue appointment order to the applicant.

Therefore, the applicant has approached this Tribunal for a direction to the respondents to consider his appointment on the basis of his name being included in the reserve panel and issue appointment order for the vacancy caused by G.S. Kumaran declining the post and for other consequential reliefs.

3. The department namely, respondent Nos.1 and 2, has stated that they have done everything on their part and wrote reminding letters to UPSC to release candidate from reserve panel and hence there was no inaction on their part.

4. The U.P.S.C. has taken same stand that when selection process has commenced and selection panel has been prepared for subsequent vacancies, the previous reserve panel cannot be operated and no name can be released from the reserved panel. The U.P.S.C. also denied the allegation of the applicant that his name is included in the reserved panel and stated that the reserved panel is a confidential document and nobody knows as to whose name is included in the panel.

5. In the light of the arguments addressed before us and the pleadings, the only question for consideration is, whether the applicant has made out a case for a direction to the respondents to release the name in the reserved panel for appointment to the post of Service Engineer (Mechanical)?

6. The dispute in this case lies in a narrow campus. All facts are admitted. The fact that G.S. Kumaran was selected by the U.P.S.C. is admitted. Accordingly, the department issued an offer of appointment to him as could be seen from the O.M. dated 05.09.1997 (page 27 of the paper book). Within a few days, to be exact, on 22.09.1997 Shri G.S. Kumaran declined this appointment by his letter exhibit 'E' which is at page 31 and dated 22.09.1997. He clearly says in this letter that he is withdrawing his acceptance for the post since he has already been appointed in another department. Rightly, the department issued a letter to the U.P.S.C. intimating the fact that the selected candidate, G.S. Kumaran, has declined the offer and, therefore, U.P.S.C. was

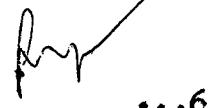
requested to release the name of the candidate from the reserved list. It is on record that the department wrote number of letters to U.P.S.C. to release the name of the candidate from the reserved list since the selected candidate had declined the offer. But the U.P.S.C. went on writing to the department to first cancel the appointment of G.S. Kumaran and then make a request for release of a candidate from the reserved list. After these correspondences for a few months, ultimately the department issued the order dated 12.08.1998 formally cancelling the appointment of G.S. Kumaran since he has declined the offer. Then a request was made to U.P.S.C. to release the name of the candidate from the reserved panel. But now, the U.P.S.C. took ^{not} a stand that the reserved panel can be operated when a new panel has been prepared due to a subsequent selection for filling up subsequent vacancies in the same grade, as could be seen from its letter dated 11.09.1998 (vide page 26 of the paper book). In this letter the U.P.S.C. says that the name of one Shailender Kumar Jaiswal has been recommended for appointment by the U.P.S.C. as per letter dated 15.04.1998 and, therefore, the earlier panel dated 05.08.1997 of previous selection cannot be operated. Therefore, the stand of the U.P.S.C. is, that since in April 1998 fresh selection has been made for subsequent vacancies, the previous reserved panel cannot be operated. The contents of this letter are contrary to the earlier letters of the U.P.S.C.

For instance, in the letter of the U.P.S.C. dated 16.03.1998 (page 53 of the paper book), the U.P.S.C.

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called upon the department to formally cancel the appointment of G.S. Kumaran and then the name of the candidate from the reserved panel will be released. Then we come to another letter of U.P.S.C. dated 14.07.1998 (page 54 of the paper book) which is produced by the U.P.S.C. itself alongwith its written statement wherein again it is stated that the appointment order of G.S. Kumaran be cancelled and on getting that reply the request for another candidate will be considered. That means, as late as 14.07.1998 the U.P.S.C. is informing the department to formally cancel the appointment of Mr. Kumaran and then seek release of a candidate from the reserved panel. Promptly the department issued the order dated 12.08.1998 cancelling the appointment of G.S. Kumaran and then wrote a letter seeking replacement of a candidate from the reserved panel. Now the department says in its letter dated 11.09.1998 that the reserved panel cannot be operated in view of the subsequent panel prepared on 15.04.1998.

Inspite of the preparation of subsequent panel on 15.04.1998 we have the letter of U.P.S.C. three months later in writing dated 14.07.1998 asking the department to cancel the appointment of Mr. Kumaran so that the name from the reserved panel can be released. If the old reserved panel had lapsed after the preparation of subsequent panel on 15.04.1998, then U.P.S.C. could not have written this letter dated 14.07.1998 still insisting cancellation of appointment order of Mr. Kumaran so that a candidate from the reserved list can be released.



If the reserved panel had lapsed after 15.04.1998, the U.P.S.C. could not have written this letter dated 14.07.1998. When in pursuance of letter dated 14.07.1998 the department cancelled the appointment order by order dated 12.08.1998, the U.P.S.C. took a different stand by letter dated 11.09.1998 that the previous reserved panel has lapsed on 15.04.1998 due to formation of second panel. This contention, on its face value, has no merit in view of the subsequent letter dated 14.07.1998. In our view, the stand of U.P.S.C. is hyper-technical. The U.P.S.C. itself has produced its internal circular No. 17 at page 56 of the Paper Book alongwith the office note to show the policy decision taken by U.P.S.C. that when once a subsequent panel has been formed, the previous panel cannot be operated. If we go through the office note, this decision was taken to avoid controversy about seniority. The office note shows that if a candidate has been appointed due to a subsequent panel and if later the name of a candidate is released from an earlier panel, then there will be serious dispute regarding seniority and hence it is desirable that no name should be released from the earlier panel. Therefore, the U.P.S.C. has taken an internal decision in order to avoid conflicting claim about seniority. It is not a statutory rule. It is only an internal decision taken by the U.P.S.C.

7. It is not and cannot be disputed that the life of a panel is one year. Here, well within the panel period, since the selected candidate declined the offer, the department placed indent on U.P.S.C. to release the name of the selected candidate. U.P.S.C. could have immediately released the name of the selected candidate

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but it went on insisting that there should be a formal order of cancellation of appointment. When the candidate himself had declined the offer and gave a letter in writing that he is declining the offer, insistence of formal order of cancellation by U.P.S.C. and delay due to correspondence should not come in the way of releasing the name of candidate from the select list. The rules must be interpreted and applied having regard to the object of the rule.

8. The procedure is to prepare a select list and a reserve list. The object is that ^{if} the candidate in the select list does not accept the offer, then the candidate in the reserve list should be appointed. In the present case, Mr. Kumaran has declined the offer and he has taken some other appointment, hence there was no legal impediment to release the name of the candidate from the reserve panel. The applicant claims that his name is in the reserved list. The U.P.S.C. only says that it is confidential. Whether it is the name of the applicant or somebody else, in our view, the name should be released from the reserved panel for appointment. As already stated, the U.P.S.C. is concerned about the office note with regard to possible seniority dispute. The Learned Counsel for the applicant, on instructions, fairly submitted that applicant will not claim any seniority over the candidature of Jaiswal, who is selected in the subsequent panel. Even otherwise, while granting relief, this Tribunal can impose a condition that applicant will

get seniority only from the date of his actual appointment and assumption of charge.

9. In this connection we may make useful reference to a decision of the Apex Court in the case of State of U.P. & Ors. V/s. Harish Chandra & Others reported in 1996 (2) SC SLR 723. That was a case where there was a selection of candidate in the main list and one candidate in the reserved list. The candidate in the main list was appointed and he retired in three months. Then the candidate in the reserved list was appointed. Some other non-selected candidate challenged that selection and appointment of the candidate from the reserved list. Infact, in that case, the High Court held that when once the candidate in the select list has accepted appointment and was appointed, the list is exhausted and therefore the reserved panel cannot be operated. But the Supreme Court ruled that the life of a select list and reserve panel is for one year and if during that year vacancy arises, then a candidate in the reserved list can be appointed, though the candidate in the main list had already been appointed and retired.

Similarly, the in the present case the panel had a life of one year. The selected candidate declined the offer, hence there was no legal impediment to appoint the candidate in the reserved list. It may also be noted that the subsequent panel was in respect of subsequent vacancies and not in respect of the vacancy caused by declining of offer by Mr. Kumaran. If for the same vacancy subsequent selection of panel had taken place, then the matter would be different. The stand of U.P.S.C. is, subsequent panel is prepared for subsequent vacancies and therefore the previous panel cannot be operated.

For the reasons already mentioned, we cannot accept the contentions of U.P.S.C. We have already pointed out the inconsistent stand taken by U.P.S.C. by writing letter dated 14.07.1998 even after selection panel of subsequent selection and then suddenly changing the view in the subsequent letter dated 11.09.1998. Having regard to the facts and circumstances of the case we feel that the respondents should be directed to release the name from the select panel and to appoint a candidate, whether it is applicant or somebody else.

10. In the result, the application is allowed as follows :

- (i) The U.P.S.C. is directed to release the name of the candidate in the reserved panel (whether it is the name of the applicant or somebody else) and then on getting the name of the candidate from the reserved panel, the Respondent Nos. 1 and 2 should issue the appointment order for the post of Service Engineer(Mechanical), Fishery Survey of India.
- (ii) Whether it is the applicant or somebody else who stands appointed as per the name released from the reserved panel shall get seniority in the cadre from the date of assumption of charge of the post.
- (iii) The U.P.S.C. shall comply with this order

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within one month from the date of receipt of a copy of this order and thereafter respondent nos. 1 and 2 should comply with this order within 30 days.

(iv) In the circumstances of the case, there will be no order as to costs.


(D. S. BAWEJA)

MEMBER (A)


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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