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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

DECISION

Date of Order : March 25, 1992.

Applicants.

- | | |
|--------------------|------------------------|
| 1. O.A. No. 397/87 | ARJUN SHARMA |
| 2. O.A. No. 398/87 | GANNO SINGH |
| 3. O.A. No. 11/88 | MAHAVIR SINGH & OTHERS |
| 4. O.A. No. 46/88 | SURESH CHAND & ANOTHER |
| 5. O.A. No. 101/88 | VEER SINGH & OTHERS |
| 6. O.A. No. 779/88 | DRONACHARYA |
| 7. O.A. No. 818/88 | MAHENDRA SINGH |
| 8. O.A. No. 115/89 | HARPAL SINGH |

Vs.

UNION OF INDIA & OTHERS Respondents.

Mr. M.S. Singhvi ... Counsel for Applicants.

Mr. H.N. Calla ... Counsel for Respondents.

CORAM :

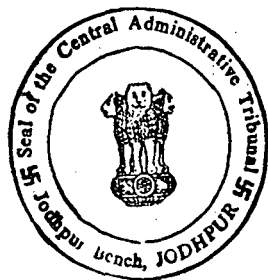
Hon'ble Mr. B.B. Mahajan, Adm. Member.

Hon'ble Mr. Maharaj Din, Judl. Member.

Mr. Maharaj Din, Judl. Member :

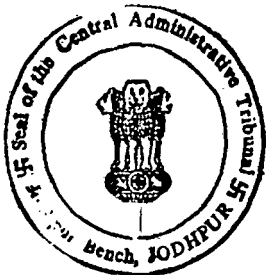
In all the above 8 applications moved
under section 19 of Administrative Tribunals Act, 1985

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common question of law and facts are involved and can be conveniently dealt with by a common order. ,

2. All the applicants have prayed for the relief of a direction against the respondents challenging the validity of the order dated 31.8.87 Annex. A/7 (In case of Arjun Sharma) and the order dated 19.08.87 marked as Annex. R/1 (In case of Arjun Sharma).



3. All the applicants were enrolled with the employment exchanges Jaipur, Bharatpur, Swai-Madhopur and Dholpur. They all were called for selection to the post of Majdoors in the year 1984 and 1985 and they all were selected. The applicant Arjun Sharma was placed in the panel prepared on the 27th March, 1985 and remaining applicants were placed on the panel prepared on 04.04.1987. The applicant Arjun Sharma when was not given appointment, then he submitted a representation. He at the first instance was informed that he had not been selected, but subsequently he was informed that he was selected and placed on panel. The appointment letter was issued to this applicant on 07.03.1987, and was also asked to submit the requisite information but subsequently, vide order

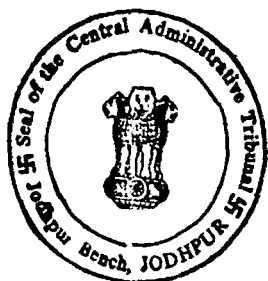
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dated 31.08.87 his appointment letter was cancelled. The respondents thereafter in the year 1987 held a fresh selection without considering the cases of all the applicants and mentioned that this time the respondents had called the names from the employment exchange Alwar only. The applicants were informed by the respondents vide communication dated 19.08.1987 that their panel was prepared during the ban period therefore, it was declared null and void., and vide communication dated 31.08.87 they were also informed that the panel had been cancelled on account of change in the policy of recruitment. According to the applicants both the reasons given by the respondents are incorrect and, therefore, the order dated 31.8.87 and 19.8.87 as well as order dated 7.5.87 are liable to be set aside.

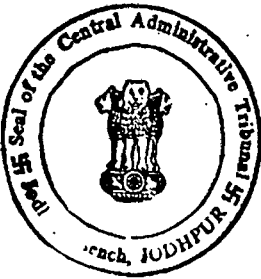


4. The respondents filed the reply and have admitted that in order to fill up the posts of Majdoor the selection was made and the names of the applicant were included in the panel of the selected candidates. Their appointment could not however be made due to imposition of ban. It is said that as per directions received from the higher authorities, the panels drawn during the period 1984-85 were declared null and void and the appointment letters issued to the applicants had been cancelled vide communication dated 31.08.1987.

Ans

5. We have heard the learned counsel for the parties and carefully perused the record of the case.

6. It is admitted case of the respondents that the panels were prepared after making selection for the appointment to the post of Majdoors but they said that the same were declared null and void vide communication dated 19.08.1987 and further, the said panels were cancelled vide communication dated 31.08.87. The main reason for declaring the panels null and void or to cancel was that a ban on creation as well as filling up of the existing vacancies was enforce till 30th Sept. 1984 which was further extended up to 31st March, 1985 as would appear from Exhibit R/3 filed in OA No. 398 of 1987. This ban was regarding filling up of the existing vacancies or creation of more vacancies but it was not for making the selection or preparing the panels. As per record of the respondents shown at the time of arguments the panels could be prepared but appointments could not be made during the ban period. This is also clear from Annex.R/3 dated 12.12.1984 referred to above by which 45 post of Majdoors and 5 post of Chowkidars were released to further action with the direction that these will not be filled up till the



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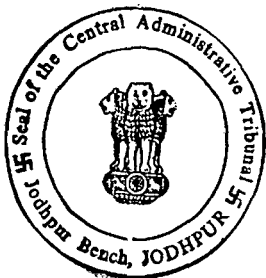
ban is relaxed by the Government. These cases are squarely covered by the decision of this tribunal in the case of Raj Kumar and others V. UOI & ors. OA No. 488/88 decided on 24.04.91 in which it has been held that the selections under-taken during the ban period were valid and the ban was only in regard to the appointment and not on selections.

7. In aforesaid case Raj Kumar and four other applicants filed a joint application under section 19 of the Administrative Tribunals Act 1985 challenging the act of the respondents Union of India and others in not making their appointments to the post of Majdoors. The applicants had been in the list of panel prepared for the said posts in the month of April 1985 and they challenged the act of the respondents of fillingup the said post by resorting to a fresh direct recruitment, on the ground that the panels already prepared were null and void and were cancelled. The application (OA No. 488/88) was allowed with the direction to appoint the applicants on the basis of the recruitment made in the year 1986 before any subsequent panel is acted upon. Thus, because of the imposition of the ban the panels already prepared for the appointment of Majdoors cannot be declared to be null and void.

8. Another point which has been urged on behalf of the respondents is that the reason for

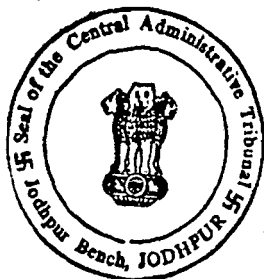


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cancellation of the panels is that on account of change in the recruitment policy the earlier selections have been cancelled. In this connection it is to be made clear that once the process of selection has started on a particular criteria, then it has to be completed and the selections so made cannot be vitiated or permitted to be cancelled on the ground that there is a subsequent change in the policy. For this purpose the learned counsel for the applicant has placed reliance on "Y.V.Rangaiah and others Vs. Sreenivas Rao and others 1983(3) SCC 284" in which it has been clearly laid down that a subsequent amendment in the rules will not effect the vacancies of the earlier years. This was, however, a case of filling of vacancies by promotion. In "A.A.Colton Vs. Director of Education AIR 1983 SC 1143, it was held in a case where proceedings for selection had been commenced prior to coming in-to force- () - of an amendment Act that in the absence of specific provision the amendment would not have retrospective effect ^{on} on selections already under process. The learned counsel for the applicants also relied upon "P.Mahendran Vs. State of Karnataka AIR 1990 SC 405". This was a case of direct recruit in which the selections had been started under the unamended rules and during the pendency of the selections the rules were changed. It was held by the Hon'ble Supreme Court that

subsequent amendment in the rules will not vitiate the selections which had already commenced and those selections will have to be completed in accordance with the unamended rules. The names of the applicants were called from the employment exchanges by the respondents and after having interviewed their names have been placed in the panel and they have also been informed that they have been selected. Therefore, even if, there was ban on recruitment, the selections undertaken by the respondents cannot be said to be illegal for that reason because the applicants had no control over the process of selection and they had been selected. On inclusion of the names of the applicant in the panel lists the respective employment exchanges were duly informed and the names of the applicants were struck off from the list of the unemployed candidates, depriving the applicant of their further opportunities of employment in other departments of the government.



9. There is another aspect of the matter that when the applicants were selected and empanelled, the right has accrued to them for being considered for appointment. The same view was taken in S. Govinda Raju Vs. Karnataka State Road Transport Corporation "Once a candidate is selected and his name is included in the select list for appointment in accordance with the regulations, he gets a right to be considered for appointment as and when the

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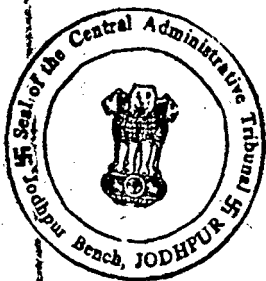
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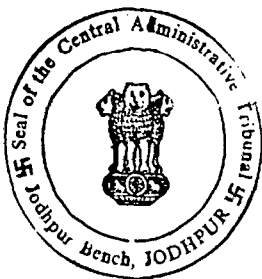
vacancy arises. On the removal of his name from the select list serious consequences intend as he forefeits his right to employment in future....".

10. Further the Hon'ble Supreme Court in "Prem Prakash Vs. UOI & others AIR 1984 SC 1831" has held that the Government has to exhaust the list prepared first before holding the subsequent selections and that is based on the notification issued on Feb. 8, 1982 by the Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms.

11. The learned counsel for the respondents referred "Shankarsan Lash Vs. UOI AIR 1991 SC 1612" which does not support the contention of the respondents, rather in this case the Hon'ble Supreme Court has observed that the State Government does not have any licence of acting in an arbitrary manner in refusing appointment and the decision not to fillup the vacancies has to be taken bonafide for appropriate reasons. It has been further observed that if the vacancies or any of them are filled-up the State is bound to respect the comparative merit of the candidates as reflected at the recruitment test and no discrimination can be permitted. It has been further observed that the state is not under an obligation to fill up the vacancies unless the



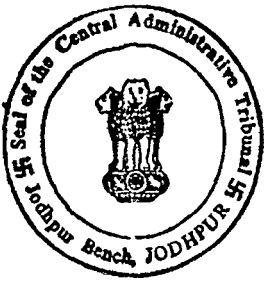
relevent recruitment rules so indicate. So far as the case of the applicants is concerned the respondents have to exhaust list prepared first before holding the subsequent selection as has been held in Prem Prakash Vs. UOI (supra). Therefore, the case cited by the learned counsel for the respondents does not support the case of the respondents. The applicants have filed the applications seeking the relief against the orders of cancellation of the panels and have claimed that the respondents may be directed to give appointment because of the respondents have been filling up the vacancies in the year 1987.



12. So, in view of the discussion made above and considering the legal aspect, we are of the view that the applicant having already been empanelled, had a right to be appointed and they cannot be by-passed. Accordingly, all the applications of the applicants are allowed and the impugned orders dated 7.5.87, 19.8.87 and 31.8.87 are quashed and the respondents are directed to appoint the applicants to the post of Majdoors within three months of receipt of this order if vacancies exist, otherwise, they should be appointed in future vacancies before any subsequent panel is acted upon. There will be no order as to costs.

Order

13. All the Original Application's No.
397/87, 398/87, 11/88, 46/88, 101/88, 779/88,
818/88 & 115/89 will be governed by this common
judgment. The copy of this order be placed in
the record of all the Original Application's
mentioned above.



Sd/-
(Maharaj Din)
Judl. Member

Sd/-
(B.B. Mahajan)
Adm. Member

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Attested
[Signature]
26.3.92
Section Officer (Judl.)
Central Administrative Tribunal
Jodhpur Bench, JODHPUR.

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