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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

O.A. No.327/1989

Date of the order: 23-11-1989..

Between

1. B.Raj Reddy
2. Ahmed Abdul Qayyum
3. P.R.Chandrasekher
4. K.P.Saraswathi
5. M.Muralikrishna Murthy
6. S.Nageshwar Rao
7. K.Mallesham
8. K.Vijay Kumar
9. Syed Sirajuddin Ahmed
10. S.Venkatsatya Ashok

... APPLICANTS

A N D

1. Government of India rep. by  
Secretary to the Government,  
Min. of Defence, Deptt. of Defence  
Productions, New Delhi-110011.
2. The Ordinance Factory Board,  
rep. by Secretary, Ordinance  
Factory Board, Calcutta-700 001.
3. The General Manager,  
Ordinance Factory Project,  
Yeddumailaram, Medak district,  
Andhra Pradesh - 502 205.

... RESPONDENTS

Appearance:

For the applicant : Mr.Y.Suryanarayana, Advocate ✓

For the Respondents : Mr. N.Bhaskar Rao, Addl.CGSC

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The Hon'ble Mr. B.N.Jayasimha, Vice-Chairman  
and

The Hon'ble Mr. D.Surya Rao, Member (Judicial).

(Judgment of the Bench prepared by Hon'ble  
Shri D.Surya Rao, Member, (J) ).

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The applicants state that they were sponsored by

the Employment Exchange, Medak along with others for  
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the poste of L.D.C.s in the IIIrd respondent Project Office in the year 1985. After a written test and Interview a select list was prepared and those found fit and eligible were asked to fill up 3 sets of Attestation forms and report on or before 24-04-1986.✓ After submission of the attestation forms a panel of 72 persons ~~was~~ prepared and the fact informed to the Employment Exchange. The applicants names were in the panel. The panel was <sup>operated</sup> ~~valid~~ till 06-02-1989 and 44 persons appointed from time to time. However by letter No.09112/Admin/OFPM dt.06-02-1989 the IIIrd respondent informed that Employment Office, Sangareddy, Medak Distirct cancelling the earlier panel prepared in 1985. Earlier thereto on 29-12-1988 the IIIrd respondent had notified 20 vacancies of L.D.C.s and requested sponsoring of names for preparing a fresh panel. It is these actions of the 3rd respondent vig., cancelling the earlier panel of 1985 and taking steps to prepare a fresh panel without exhausting the earlier panel of 1985 and taking that are sought to be questioned in the application. The applicant contends that according to the Government of India instructions contained in O.M.No.22011/2/79-ESTT (d) dated 08-02-1982 the existing select list should be exhausted before preparing a fresh panel and there is no time limit for validity of the select list. These instruc-

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tions were communicated to the IIIrd respondent for information and guidance and ~~one being on limit~~ <sup>are binding on him</sup>. It is further contended that operating the panel and appointing some candidates while excluding others is discriminatory and violative of Articles 14 and 16 of the constitution. Further consequent on selection and inclusion in the panel the names of the applicants were deleted from the rolls of the Employment Exchange rendering them ineligible for consideration elsewhere. The applicant ~~have~~ therefore filed the application questioning the letters No.09112/ADMIN/DFPM dated 29-12-1988 and 06-02-1989 ~~and~~ for a direction to operate the panel prepared in 1985 and only thereafter resort to a fresh selection.

2. On behalf of the respondents a counter has been filed. It is not denied that in 1985 a selection took place and that the applicants were selected. It is stated that 82 persons were recommended by the selection Board, that attestation forms were issued to them, that offers of appointment were issued to 52 of those selected and 44 had accepted appointment. It is admitted that the Employment Exchange was informed in 1986 that the waiting list comprises 82 candidates. It is however stated that in 1985 a larger <sup>available</sup> waiting list than the number of vacancies was prepared, that since the select list was 4 years old it was considered advisable to prepare a fresh panel keeping in view the performance of the earlier batch and the revised job re-

quirements. The District Employment Officer was therefore asked to cancel the earlier panel and sponsor fresh candidates for preparation of a fresh panel. It is not denied that Government instructions exist for exhausting the existing panel and then go in for a fresh panel. However since the 1985 panel was prepared on a wrong assessment of the vacancies it was considered advisable to go in for a fresh panel.

3. We have heard the arguments of Shri Y. Suryanarayana learned counsel for the applicants and Sri Naram Bhaskar Rao Additional Standing Counsel for the respondents. The short point is whether the respondents are liable to exhaust the existing panel prepared in 1985/1986 before preparing a fresh panel. The Government of India instructions contained in O.M.No.22011/2/79-ESTT(d) dated 08-02-1982 para(3) reads as follows :-

" 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 no further

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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 <sup>the</sup> method of direct recruitment or through a Departmental Competitive Examination".

4. This O.M. Dated 08-02-1982 was considered by the Principal Bench of the Central Administrative Tribunal, Delhi in 1987(4) ATC 932 (Ishwar Singh Khali's case) and it was held that the right to appointment after inclusion of the names in the panel of selected candidates flows out of the instructions dated 8-2-1982 and that the panel continues to subsist and would be valid. Applying the above decision it would follow that the respondents are liable to exhaust the panel before resorting to a fresh selection.

5. The respondents have pleaded that the Original panel prepared in 1985 was in excess of the requirements and due to a wrong assessment of the vacancies. Accepting this argument then the respondents ought to have stopped operating the panel only to the extent of the available vacancies. Instead they have operated the panel upto 52 vacancies. It is not their case that in

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1985 the number of vacancies were 52. <sup>only</sup> ~~it follows that~~ they have operated the panel to the extent it pleased them and thereafter cancelled the panel. There is no rational or principle involved in operating the panel only upto the 52nd selectees and thereafter to cancel the panel. The action of the respondents is clearly arbitrary and violative of the equality clauses enshrined in Articles 14 and 16.

6. The respondents have <sup>also</sup> sought to contend that a fresh panel was considered necessary in view of the performance of the candidates and the <sup>raised</sup> ~~raised~~ job requirements. This contention is most vague. It is not stated how those selected and appointed satisfy the <sup>raised</sup> ~~raised~~ job requirements vis-a-vis those not selected. It is also not stated that a fresh assessment was done and those included in the panel but not given <sup>also</sup> ~~offer of~~ appointments were <sup>also</sup> ~~found~~ unsuitable for appointment. We ~~found~~ therefore see no substance in this contention.

7. For the reasons given above the application is allowed to the extent that the respondents are directed to operate the select list/panel prepared for appointment to the posts of L.D.C.s in so far as the applicants herein are concerned before preparing a fresh panel as proposed in the impugned letter No.09112/ADMIN/OFPM dated 29-12-1988. The fresh panel may be prepared and operated only after giving

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appointment to the applicants. <sup>was herein</sup> ~~wherein~~ the available  
~~vacancies~~. The parties are directed to bear their own  
costs.

*B.N. Jayasimha*  
(B.N. JAYASIMHA)  
Vice-Chairman

*D. Surya Rao*  
(D. SURYA RAO)  
Member (J)

Dt. 23<sup>rd</sup> November, 1989.

AVL.

*S. Venkata*  
DR REGISTRAR. (J) 11/11/89

TO:

1. & The Secretary to the Government, Government of India, Ministry of Defence, Department of Defence Productions, New Delhi-110 011.
2. The Ordinance Factory Board, rep. by Secretary, Ordinance Factory Board, Calcutta-700 001.
3. The General Manager, Ordinance Factory project, Yeddumailaram, Medak district, Andhra Pradesh-502 205.
4. One copy to Mr. Y. Suryanarayana, Advocate, 40, MIGH, Housing Board Colony, Mehdiapatnam, Hyderabad-500 028.
5. One copy to Mr. ~~S. Sankar Rao~~ <sup>N. Bhanu</sup> Rao, Addl. CGSC, CAT, Hyderabad.
6. One spare copy.

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kj.

*11/12/89*