

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of order: 22.04.2003

OA No.380/2002

Laxman Prasad Meena s/o Shri Nathi Ram Meena, r/o Village
Manyaka Bass, Post Roni Jathan, Tehsil Kathumar, District
Alwar, Rajasthan.

.. Applicant

VERSUS,

1. Union of India through the Secretary, Health Services, Govt. of India, Nirman Bhawan, 2nd Floor, New Delhi.
2. The Director General, Health Services PH (CDL) Section, Nirman Bhawan, New Delhi.
3. The Director, National Institute of Communicable Diseases DGHS- 22 Shyam Nath Marg, Delhi.
4. The Director, Staff Selection Commission, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Block No.12, Kendriya Parivaya Parisar, Lodhi Road, New Delhi.

.. Respondents

Mr. Ajay Fastogi & Mr. Saugat Roy, counsel for the applicant

Ms. Shalini Sheoran, proxy counsel to Mr. Bhanwar Bagri, counsel for the respondents.

CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

The applicant is aggrieved of the inaction of the respondents for not appointing him to the post of

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Statistical Assistant. In relief, he has prayed for appropriate directions to the respondents to appoint him on to the post of Statistical Assistant based on the selection by the Staff Selection Commission (SSC), on various grounds stated therein.

2. The case of the applicant as made out, in brief, is that:-

2.1 He did his B.A. (Economics) in second division in the year 1995 and belongs to Scheduled Tribe (ST) community. Two posts of Statistical Assistants were advertised by the SSC based on the requisition sent by the respondents. Out of two posts, one post was reserved for ST candidate.

2.2 The written examination was held on 21.3.99 and he was declared successful in the said written examination and thereafter he was interviewed on 9th June, 1999. He was finally declared successful and recommended for appointment on the post of Statistical Assistant by the SSC vide their Memorandum dated 8th September.99 (Ann.A3) and was informed that he is likely to get appointment in two months from the office of National Institute of Communicable Disease (NICD). He was also informed through the said memorandum that if he does not get the offer of appointment in two months, he may approach the office failing which SSC be approached.

2.3 He reported to the office of respondent No.3 i.e. NIDC but no order was passed. When he reported to the office of SSC they sent another letter on 2nd February, 2000 (Ann.A4) asking the respondent No.3 to expedite the appointment in favour of the applicant but no action was taken. Therefore, he again met the competent authority in

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the office of respondent No.4 and another letter was sent to the office of respondent No.3 asking for expediting the matter and for issuance of offer of appointment to the selected candidates. For the first time, the respondent No.3, vide their letter dated 15th October, 2000 (Ann.A6) addressed to respondent No.2 and copy to him stating that due to non-revival of the post of Statistical Assistant, offer of appointment could not be sent. It was stated that main file was sent on 21.6.2000 and it was requested to issue the letter of appointment to the selected candidates at the earliest. After sometime, he again approached in the office of respondent No.3 and again he was informed that the post of Statistical Assistant at the Institute is under revival process and as soon as the revival order is received, the post will be offered to him.

2.4 The respondent No.4 i.e. SSC, sent another letter dated 21 February, 2002 (Ann.A8), to the office of respondent No.3, stating therein that in all fairness and in the interest of justice, it is again requested that the matter may be sorted out on priority basis and strenuous efforts be made to resolve the issue so that both the selected candidates could get offer of appointment without further loss of time, but the respondents No.3 did not take any action. Accordingly, he sent a notice of demand for justice dated 24th July, 2002 (Ann.A9). In response to the said notice, the SSC again asked the respondents to expedite the issue of offer of appointment to the selected candidate on top priority vide their letter dated 1st August, 02 (Ann.A10). However, the respondent Nos. 1 to 3 did not respond to the notice of demand for justice and hence this OA.

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3. The respondents in their reply, briefly stated, have submitted that:-

3.1 4 posts of Statistical Assistant fell vacant on 3.1.97, 12.3.97, 25.3.97 and 1.7.97. As per recruitment rules, 50% of the vacancies are required to be filled by direct recruitment and balance 50% by promotion. Accordingly, a requisition was sent to the SSC to nominate 2 candidates against direct recruitment quota vide their letter dated 12.3.97. The SSC nominated two candidates including the applicant vide their letter dated 1.9.99.

3.2 As per the Government instructions, any post lying vacant for more than one year deemed to have lapsed. Approval is required for revival from the competent authority. Since all the 4 posts of Statistical Assistant were lying vacant for more than one year, the proposal for revival of these posts is under process. In the absence of revival of post, the appointment could not be made to the applicant. It is prayed that the respondents may be absolved from the responsibility to offer the post of Statistical Assistant to the applicant till the post(s) is revived.

4. The applicant has not filed rejoinder.

5. Heard the learned counsel for the parties and perused the record.

5.1 Based on orders as per ordersheets dated 4.2.03 and 5.3.03, the learned counsel for the respondents produced two Office Memorandums, one dated 12.6.97 issued by the Finance Division of respondent No.1 ~~dated 12th June, 97~~ and the second dated 31st October, 2001 issued by the Ministry of Finance. In the OM dated 12th June, 97,

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issued by the Finance Division of Ministry of Health and Family Welfare, it has been mentioned that as per the instructions contained in the the OM of Ministry of Finance dated 3.5.93, if a post is held in abeyance or remains unfilled for a period of one year or more it would be deemed to be abolished. While reiterating the further instructions of the Ministry of Finance, it has been/ stated that in future such posts should not be filled even when recommendations of the recruiting agency is available before getting the post revived/created.

The second OM dated 31.10.2001 issued by the Ministry of Finance, Deptt. of Expenditure is reproduced as under:-

"Sub.: Filling up of posts - clarification regarding.

As per existing instructions, posts vacant for more than one year are deemed to have been abolished. However, a number of references are being received in this Department for revival/filling up of posts which have been vacant for more than one year and where the recruitment action has been finalized by the UPSC/SSC. Since recommendations from UPSC/SSC have become available in such cases, this Ministry is left with no option but to agree to filling up of such posts.

2. All Ministries/Departments are, therefore, advised that in cases where recruitment action has been initiated within the period of one year of the post falling vacant but has not resulted in finalization of panel etc. during this period,

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the approval of Department of Expenditure may be obtained before pursuing the recruitment action further. While referring the proposal, the exact status of recruitment action and functional justification for filling up of the post may be brought out. Further, in case where recruitment action has not been initiated within the period of one year of the post falling vacant, no recruitment action may be initiated."

5.2 During the course of arguments, the learned counsel for the respondents submitted that the case was sent to the Ministry of Finance for revival of the post. She further submitted that till date, the approval of the Ministry for revival has not been received. She also submits that based on the extant instructions, if the post is lying vacant for over a year, it is deemed to have been abolished and, therefore, the respondents had taken the matter through their administrative Ministry with the Ministry of Finance for revival of the post. She further submitted that as per extant instructions, the respondents cannot fill up the posts unless the approval of the Ministry of Finance is obtained for revival of these posts as these could not be filled within one year of their falling vacant.

5.3 During the course of arguments, the learned counsel for the applicant submitted that it will be arbitrary and illegal if in spite of having qualified the selection through the SSC, the applicant is made to suffer for offer of appointment for about 3½ years for want of approval of the Ministry of Finance. He also submitted that it is not the case of the respondents that they do not require the services of Statistical Assistant or they

do not wish to fill up the post. It is apparent from record that, but for the instructions of the Ministry of Finance, the respondents would have offered appointment to the applicant. He further submitted that the recruitment process was initiated immediately after the vacancies arose and that it normally takes about 2 years for the SSC, as would also be evident in this case, to make a final recommendation because of the various formalities in the selection process. Having been selected, if the applicant is not offered an appointment more so when the delay is not on the part of the applicant, it will be clear violation of Article 14, 16(4) (b) and 21 of the Constitution and also principles of natural justice. He further submitted that it is evident from Para 1 of the Ministry of Finance OM dated 31.10.01 that in all cases of selection by the UPSC/SSC, the Ministry had been agreeing for filling up the posts. This is so as the UPSC/SSC takes invariably more than one year in recommending the names when written examination and interview is held based on open advertisement. Finally he submitted that condition imposed by the Finance Ministry as reiterated by the respondents in their OM dated 12.7.97 is without proper application of mind as it is impossible to fill a vacancy through SSC/UPSC arising out of death/resignation/removal etc., within one year when written examination and viva-voce are involved based on open advertisement.

6. We find substantial force in the submissions of the learned counsel for the applicant. It is an admitted fact that the requisition was sent to the SSC for filling up 4 vacancies of Statistical Assistants on 12.3.97 which arose/likely to arise during January and July, 97. The posts were advertised by the SSC and based on a written

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examination and interview, case of the applicant was recommended by the SSC for appointment in September, 1999. The respondents want to fill up the post and they would have done so but for the approval of the Ministry of Finance. It is over 3 years since the recommendations of the SSC are pending with the respondents. The SSC has been repeatedly requesting the department to issue the offer of appointment to the applicant. As per the learned counsel for the respondents, the matter has been taken up with the Ministry of Finance through their administrative Ministry. In Para 1 of the Ministry of Finance letter dated 31.10.01, it is stated that for posts which remain unfilled for more than one year and where recommendation have become available from the UPSC/SSC, in such cases, the Ministry is left with no option but to agree for filling up of such posts. It is not clear as to why the approval of the Ministry of Finance was not available in this case as the recommendations of the SSC are dated 1.9.99 and the Ministry of Finance has been giving approval in such cases, as is evident from their letter dated 31.10.01.

6.1 Having undergone the process of recruitment, the name of the applicant was recommended by the SSC. The applicant has been waiting for the offer of appointment for the last 3½ years. The case is pending with the Government for the decision with regard to the revival of posts. It is not the case of the respondents that there is no requirement of the post. It is apparent from Para 1 of the Ministry of Finance OM dated 31.10.01 that in case of recruitment through UPSC/SSC, the Ministry has been giving approval for filling up the post even after one year when the recommendations of SSC/UPSC become

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available. It appears to us that such approval is inescapable because of the time involved in selection process where the selection is made through open advertisement and consists of written examination followed by advertisement. Since the Ministry of Finance has been approving revival of posts in all such similar cases at least till the issue of their OM dated 31.10.01 and that the recommendations of the SSC were pending with the respondents since September, 99, the approval of the Ministry of Finance would deem to have been granted.

7. In view of above discussions, the OA is allowed. The respondents are directed to issue offer of appointment to the applicant within two months from the date of receipt of this order. No order as to costs.



(M.L.CHAUHAN)

Member (J)



(H.O.GUPTA)

Member (A)