

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1904/2002

with

O.A. No. 1783/2003

New Delhi, this the 20th day of April, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

O.A. No. 1904/2002:

Shri R.K. Ahluwalia
s/o Sh. R.D. Ahluwalia
r/o RZ 95, Street No.5
Geetanjali Park
New Delhi - 110 046.

... Applicant

(By Advocate: Sh. George Paracken)

Versus

1. The Secretary
Department of Personnel & Training
North Block, New Delhi - 110 001.
2. The Secretary
Ministry of Urban Development & Poverty
Alleviation, Nirman Bhawan
New Delhi - 110 011.
3. Chairman
Union Public Service Commissioner
Dholpur House
New Delhi - 110 011. .. Respondents

(By Advocate: Sh. R.N. Singh)

O.A. No. 1783/2003:

1. Abhijit Chakraborty
s/o Late Shri A.N. Chakraborty
r/o K-I/83, C.R. Park
New Delhi - 110 019.
2. Praveer Kumar Saxena
s/o Shri Prem Kumar Saxena
r/o 4A/3094, Vasundhara
Ghaziabad (UP). .. Applicants

(By Advocate: Sh. George Paracken)

VS.

1. Union of India through
The Secretary
Department of Personnel & Training
North Block, New Delhi - 110 001.
2. The Secretary
Ministry of Home Affairs
North Block
New Delhi - 110 011.

3. Chairman
Union Public Service Commissioner
Dholpur House
New Delhi - 110 011. Respondents

(By Advocate: Sh. R.N.Singh)

O R D E R

Justice V.S. Aggarwal:-

By this common order, two Original Applications No.1904/2002 and 1783/2003 can conveniently be disposed of together. The controversy in both the applications is identical. Therefore, for the sake of convenience, we are taking the facts in the case of Sh. R.K. Ahluwalia in O.A.No.1904/2002).

2. Applicant in OA No.1904/2002 had earlier filed OA No.666/2002 alleging that there has been a wrong fixation pertaining to the number of vacancies in the year 1998. He was working as Assistant in the Ministry of Urban Development & Poverty Alleviation. He was an aspirant for promotion to the post of Section Officer and had passed the Limited Departmental Competitive Examination. When the earlier application was filed, this Tribunal directed to respond to the representation of the applicant by issuing a detailed and reasoned order. The representation of the applicant has since been rejected. Therefore, by virtue of the present application, he seeks a direction to Respondent No.1 to re-fix the size of the Select List of 1998 to Section Officers Grade in accordance with the actual number of vacancies and to direct Respondent No.1 to issue a Supplementary List for the year 1998 taking into consideration the actual number of vacancies of the Section Officers' Grade that were available. He further prays that Respondent No.3 should nominate the

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additional qualified candidates in relation to the number of actual vacancies for the Limited Departmental SO Grade Examination 1998.

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3. As per Rule 5 of the Central Secretariat Service Rules, 1962, the grades of Section Officer and Assistant have been decentralised into 33 cadres. Vacancies in each cadre are to be filled up in the ratio of 40:40:20 earmarked for seniority quota, departmental examination and direct recruitment respectively. As referred to above, the applicant had passed the Limited Departmental Competitive Examination and he contends that since the number of vacancies for the year 1998 were not indicated which actually existed, therefore, reliefs claimed should be granted.

4. The applications have been contested. The respondents plead that appointments/promotions to the aforesaid grades are made cadre-wise by the cadre controlling authorities. Respondent No.1 (Department of Personnel and Training) only co-ordinate the process of recruitment/promotion to the said grades. The cadre controlling authorities are required to report the number of vacancies in the Section Officers' grade to be filled through direct recruitment and promotion even on the basis of departmental examination besides seniority-cum-fitness. The total requirement of the cadre authorities is communicated to the Union Public Service Commission for recommending candidates against direct recruitment/departmental examination quotas. Following the procedure, the total requirements for

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departmental examination quota vacancies in the Section Officers' Grade for the year 1998 was informed by the Ministry of Urban Development and Poverty Alleviation to Department of Personnel and Training. Department of Personnel & Training ascertained the vacancy position from other cadre controlling authorities as well and communicated to the Union Public Service Commission. The size of the select list for various years has been fixed on the basis of vacancies reported by different cadre controlling authorities calculated on the basis of policy decisions/orders that were issued from time to time. It is in accordance with the said procedure that the vacancies during the years 1997 to 1999 were calculated and intimated to Department of Personnel & Training and as per the guide-lines and the procedure, certain persons were promoted.

5. The short argument advanced was that the number of vacancies were under reported because according to the learned counsel, the respondents in an arbitrary manner did not follow the proforma for reporting of the vacancies. As a result of this, large scale under-reporting had taken place in the years 1997, 1998 and 1999. In the year 1994, 277 vacancies were reported. It was 292 in the year 1995; 256 in the year 1996, 175 in the year 1997; 45 in the year 1998 and 50 in the year 1999. According to the learned counsel, if there was no under-reporting, the applicant might have a chance to be promoted.

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6. The procedure in this regard with respect to preparation of the select list is not in dispute. In view of the same, it has been placed on the record. It provides that each cadre shall firstly determine the number of select list vacancies. The total number of duty posts have to be seen on the 1st July of the year of Select List. One has to see the number of officers who are likely to revert before 30th June of the year of Select List, the number of requirements due and number of vacancies likely to arise as a result of the fresh deputations and promotions. The Select List for the year 1998 had been drawn on the basis of the information and the size of the Select List had been re-fixed at 18 on the basis of the information that was received from 33 cadres in accordance with the post based roster.

7. It is on the strength of these broad facts that the applicant contends that because of the under-reporting, he has suffered and as such he has claimed.

8. Reliance on behalf of the applicant was placed on the decision of the Supreme Court in the case of S.G. JAISINGHANI v. UNION OF INDIA AND ORS., [1967] 2 S.C.R. 703. We are not delving into the facts that were before the Supreme Court because they have little effect on the facts that are before this Tribunal. The Supreme Court held:

..... It is not disputed that rule 4 of the Income-tax Officers (Class I, Grade II) Service Recruitment Rules is a statutory rule and there is a statutory duty cast on the Government under this rule to determine the method or methods to be employed for the purpose

of filling the vacancies and the number of candidates to be recruited by each method. In the letter of the Government of India dated October 18, 1951 there is no specific reference to rule 4, but the quota fixed in their letter must be deemed to have been fixed by the Government of India in exercise of the statutory power given under rule 4. Having fixed the quota in that letter under rule 4, it is not now open to the Government of India to say that it is not incumbent upon it to follow the quota for each year and it is open to it to alter the quota on account of the particular situation (See para 24 of the counter affidavit of respondents 1 to 3 in Writ Petition No.5 of 1966). We are of opinion that having fixed the quota in exercise of their power under rule 4 between the two sources of recruitment, there is no discretion left with the Government of India to alter that quota according to the exigencies of the situation or to deviate from the quota, in any particular year, at its own will and pleasure. As we have already indicated, the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice, it will be difficult to hold that the seniority rule i.e., rule 1(f)(iii) & (iv), is not unreasonable and does not offend Art. 16 of the Constitution. We are accordingly of the opinion that promotees from Class II, Grade III to Class I, Grade II Service in excess of the prescribed quotas for each of the years 1951 to 1956 and onwards have been illegally promoted and the appellant is entitled to a writ in the nature of mandamus commanding respondents 1 to 3 adjust the seniority of the appellant and other officers similarly placed like him and to prepare a fresh seniority list in accordance with law after adjusting the recruitment for the period 1951 to 1956 and onwards in accordance with the quota rule prescribed in the letter of the Government of India No.F.24(2)-Admn.I.T./51 dated October 18, 1951. We, however, wish to make it clear that this order will not affect such Class II Officers who have been appointed permanently as Assistant Commissioners of Income Tax. But this order will apply to all other officers including those who have been appointed Assistant Commissioners of Income Tax provisionally pursuant to the orders of the High Court."

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The aforesaid would clearly show that the reliefs granted were different from what is being prayed by the applicant. In fact, the Supreme Court held that the order passed by it will not affect such Class II Officers who have been appointed permanently as Assistant Commissioners of Income Tax but would only apply to those who have been appointed provisionally pursuance to the orders of the High Court. Therefore, it is obvious from the aforesaid that the cited decision is patently distinguishable and in any event does not come to the rescue of the applicant.

9. Reliance further is being placed on the decision of the Supreme Court in the case of MISS.

NEELIMA SHANGLA v. STATE OF HARYANA AND OTHERS, AIR 1987 SC 169. In the cited case, under the rules regarding the appointment of Subordinate Judges in Haryana, it was found that the duty of the Public Service Commission was confined to holding a written examination and viva voce test. It had to arrange in the order of merit according to the marks amongst the candidates who had qualified. Thereafter, Public Service Commission was required to publish the results in the Gazette and make it available to the Government. The Public Service Commission was not required to make any further selection from the qualified candidates. It was the duty of the Commission to make available to the Government complete list of the qualified candidates. Thereafter, it is for the Government to make the selection strictly in accordance with the merit list in which they have been placed. It was held that it

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is open to the Government not to fill up all the vacancies for a valid reason. As that had not been done, the Supreme Court had directed:

"3. We direct the first respondent (Government of Haryana) to include the name of the petitioner (Miss Neelima Shangla) in the 1984 List of candidates selected for appointment as subordinate judges in the Haryana Judicial Service (Judicial Branch) and forward the same to the High Court of Punjab and Haryana for inclusion in the High Court Register maintained under R.1 of Part D of the Rules. She will be entitled to her due place in the Seniority List of the 1984 batch. The petitioner will be entitled to her costs which we quantify at Rs.5000/-."

10. The decision rendered in the case of Miss. Neelima Shangla (*supra*) also is distinguishable because as would be apparent from the present facts, that was not the controversy before the Supreme Court. The Supreme Court had found that she was entitled to be appointed against the post kept vacant in pursuance of the Court's order.

11. Our attention was also drawn to the Supreme Court decision in the case of SHANKARSAN DASH v. UNION OF INDIA, AIR 1991 SC 1612. The Supreme Court held that if number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire the indefeasible right to be appointed. Notification merely amounts to an invitation. The findings of the Supreme Court reads:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely

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amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And 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. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, (1974) 1 SCR 165: (AIR 1973 SC 2216), Miss Neelima Shangla v. State of Haryana, (1986) 4 SCC 268: (AIR 1987 SC 169), or Jitendra Kumar v. State of Punjab, (1985) 1 SCR 899: (AIR 1984 SC 1850)."

Thus, it is patent that the decision not to fill up the vacancies had to be taken bona fide for appropriate reasons.

12. In this backdrop, we revert back to the facts of the present case. We have already pointed above that the vacancy position is found by giving information to all the cadres and it is on basis of the same that the information is given to the Union Public Service Commission. Thus, if there was any mistake, it will not confer any right on the applicant that he is entitled to be promoted because of not indicating the correct number of vacancies. There was no such indefeasible right available to the applicant. No persons junior to him in the merit list of the category of the applicant have been promoted.

13. In addition to that, there are no malafides that have been shown in the facts of the present case. When such an action is taken bona fide

and there is some mistake i.e. under-reporting of the vacancies, for the reasons already recorded, the applicant cannot claim a right.

14. There is another way of looking at the matter. Under-reporting of the vacancies was not only in the year 1998. There could be such vacancies so under-reported in the past years. If all the under-reported vacancies are to be filled in the manner in which the applicant wants, we are not shown as to what would be the final outcome. Therefore, on this premise alone, the plea must fail. In addition to that, admittedly thereafter three more promotions in the category of the applicant have taken place. Those persons are not even parties before us. The applicant had a right to be considered on the basis of the number of vacancies that had been reported. The right now being claimed is presumptive and, therefore, we have little hesitation in concluding that the reliefs claimed cannot be granted.

15. A similar situation had arisen before this Tribunal in the case of SHRI BIRENDRA SINGH v. UNION OF INDIA & OTHERS, O.A.No.2293/1999, decided on 10th October, 2003. The application was dismissed holding:

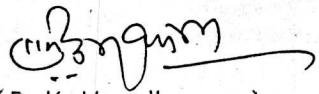
"17. Since this fact is being relied upon by the applicants, we do not dispute the same. In face of the aforesaid, it would be patent that this Tribunal will not be aware as to when and in which year the vacancies arose. It cannot be that if there was a shortfall in the vacancies indicated in the year 1991 then all the vacancies should be placed in one basket for the benefit of persons who took the test for that year. It had been a continuous affair in this regard. In this process, therefore,

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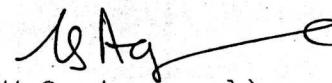
further probing will not be material not only for the reasons to be recorded herein but also that specified and precise figures are not being calculated are not brought to our notice."

16. The net result would be that the number of vacancies as indicated by different cadres had been given to the Union Public Service Commission. If incidentally there was some under-reporting, the applicant cannot claim a right as in the present case.

17. As a corollary of the reasons recorded, both the applications must be held to be without merit. They must fail and are accordingly dismissed.


(R.K. Upadhyaya)

Member (A)


(V.S. Aggarwal)

Chairman

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