

(2014) 11 DEL CK 0279

Delhi High Court

Case No: Writ Petition (Civil) No. 5789/2003

Nepal Singh

APPELLANT

Vs

N.C.E.R.T.

RESPONDENT

Date of Decision: Nov. 13, 2014**Acts Referred:**

- Administrative Tribunals Act, 1985 - Section 29

Hon'ble Judges: Vipin Sanghi, J; S. Ravindra Bhat, J**Bench:** Division Bench**Advocate:** Aditi Gupta, Advocate for the Appellant; R.K. Singh, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.

The petitioners are aggrieved by a decision of the Central Administrative Tribunal (CAT/ Tribunal) , which dismissed their application T.A. No.16/2002 on 24.10.2002. The petitioners had earlier approached this Court in writ proceedings being W.P.(C.) No.1852/1998 challenging the inaction of the respondent/NCERT in not appointing them as Assistants in the Limited Departmental Examination Category (LDEC) Quota.

2. The facts necessary for deciding this petition are that in the respondent organization, the petitioners were Upper Division Clerk (UDC) with five years of service. The rules of recruitment for the promotional post, i.e. Assistant, indicated two channels of appointment" promotion by seniority to the extent of 50%, and the balance through LDEC quota.

3. On 30.01.1985, the respondent issued a notification calling for eligible candidates to apply and compete in the Limited Departmental Examination for the purpose of filling vacancies. Significantly, the vacancy position was not reflected in the notification.

4. When the matter stood thus, on 23.08.1985, the recruitment rules were amended and the quota for Limited Departmental Examination candidates was reduced to

25% (from the existing 50%) . Such being the case, the test for the LDEC quota notified on 30.01.1985 was held on 30.05.1987. Based on the results of the select list, 10 candidates were initially appointed; they reported to the post. Subsequently, one more candidate Sh. J.L. Malhotra was appointed as Assistant. The petitioners kept representing to the respondent insisting that their candidatures too should be considered since their names figured in the select list and appointment letters ought to be issued to them. After waiting for a considerable period of time, the petitioners approached this Court by filing proceedings under Article 226 being W.P.(C.) No.1852/1998. In those proceedings, inter alia, the relief claimed was for appropriate direction to the respondents to appoint them to the post of Assistant with retrospective effect.

5. During the pendency of those proceedings, the respondent was notified as an organization subject to the Administrative Tribunals Act and pursuant to Section 29, the writ petition was transferred to the CAT. By the impugned judgment and order, the CAT held that there was no arbitrariness in the inaction alleged against the respondent, and dismissed the transferred writ petition" re-numbered as T.A. No.16/2002.

6. It is alleged on behalf of the petitioner by Ms. Aditi Gupta, Advocate that even though the petitioners could not have claimed a vested right to be appointed, nevertheless the respondent had to act in a fair and reasonable manner. It was contended that the select and arbitrary manner in which the initial panel was operated first in 1987, and subsequently in 1989 and the long spell of inaction indicated the respondent's ad-hoc and discriminatory approach. It was submitted that during the pendency of the proceedings before this Court in the writ petition, the respondents" without seeking leave of the Court, sought to cancel/scrap the panel, as was evident from the counter affidavit filed by it. The relevant decision of the respondent cancelling/withdrawing the panel initially drawn sometime after the selection test was held on 30.05.1987 reads as follows:

"Item No.7: To consider the clarification received from the Government of India with regard to the continuance or otherwise of the Select List drawn for the post of Assistant in 1987-88 on the basis of Departmental Competitive Examination.

It was informed that the Establishment Committee, in its earlier meeting held on 20.5.97 had decided to scrap the Select List/Panel drawn for the post of Assistant in 1988 but the decision was reviewed in the light of the directions issued by the Ministry of Home Affairs DOPT O.M. No.22011/2/79/ Estt.(D) dated 8.2.1982.

However, in the instant case, as projected in the agenda item, the Select List prepared in 1988 by the Council was not in accordance with the provisions of the above mentioned OM issued by the DOPT and was violative of the instructions issued by the Government of India. The Establishment Committee decided that the list drawn in 1988 over and above the number of vacancies existing may be

scrapped."

7. Learned counsel relied upon the decision of the Supreme Court in [R.S. Mittal Vs. Union of India \(UOI\)](#), to say that the right of a successful candidate, who figures in the select list is to be considered for appointment, and insisted that the authority should not decline to make the appointment on its whims. The Supreme Court, on that occasion, held as follows:

"10. The Tribunal dismissed the application by the impugned judgment on the following reasoning:

(a) The selection-panel was merely a list of persons found suitable and does not clothe the applicants with any right of appointment. The recommendations of the Selection Board were directory and not mandatory and were not therefore enforceable by issue of writ of mandamus by the Court.

(b) The letter of Ministry of Home Affairs dated February 8, 1982 which extends the life of panel till exhausted is not relevant in the present case. In the circumstances the life of the panel in this case cannot go beyond 18 months and as such expired in July, 1989.

It is no doubt correct that a person on the select-panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select- panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was whole unjustified".

8. Learned counsel also relied upon an earlier judgment of the Supreme Court reported as [Prem Prakash Vs. Union of India \(UOI\) and Others](#), where the Court had insisted that even though the statutory rules may not mandate or require keeping alive a panel if there are executive instructions to that effect, the authority concerned cannot ignore them. On that occasion, the Supreme Court had relied upon a notification of the Ministry of Home Affairs dated 08.02.1982.

9. Mr. R.K. Singh, learned counsel for the respondent has produced the relevant files. He submits that whilst there is no controversy about the fact that the initial notification asking eligible candidates to apply for the LDEC quota was issued on

30.01.1985, and the test was held pursuant to that notification on 30.05.1987, and the further fact that pursuant to such selection process 26 candidates were, in fact, placed in the select list (18 from the general or unreserved category, and 8 belonging to the reserved category), the fact remained that during the interregnum new rules were brought into force on 23.08.1985. It was contended that the select list was operated in strict accordance with merit in two lots; the first set of appointments took place in 1987" 10 candidates (7 general category and 3 reserved category) were appointed, and another candidate, again in accordance with the merit, one Sh. J.L. Malhotra was appointed pursuant to a selection process held by properly constituted committee in its meeting dated 28.07.1988. It was contended that although there was some delay in taking the final decision about scrapping the panel, the fact remains that there were no intervening appointment" either based upon select list of 1987, or subsequently, and in these circumstances the petitioners cannot claim a right to be appointed on the basis of a panel prepared almost 25 years ago.

10. Learned counsel urged that this Court should reject the writ petition and also relied upon the decision of the [Government of Orissa through Secretary, Commerce and Transport Department, Bhubaneswar Vs. Haraprasad Das and Others,](#). The Supreme Court had then held as follows:

"It should have been appreciated by the Tribunal that mere empanelment or inclusion of one's name in the selection list does not give him a right to be appointed. So also if the Government decides not to make further appointments for a valid reason, it cannot be said that it has acted arbitrarily by not appointing those whose names are included in the selection list. Whether to fill up post or not is a policy decision and unless it is shown to be arbitrary it is not open to the Tribunal to interfere with such decision of the Government and direct it to make further appointments. The Tribunal in directing the Government to make further appointments on the efficiency ground of public administration went beyond its jurisdiction. While giving such a direction what the Tribunal failed to appreciate was that the decision of the "Government not to make further appointments was not challenged as arbitrary and it was challenged only on two grounds viz : (1) In between 9.8.1994 and 13.1.1995 there was no ban and, therefore, the Government could have appointed the respondent on the vacant posts and (2) The Government had made appointments in the same Press from out of a panel of Distributors, Binders, Type Suppliers, etc, which was prepared about 7 years back and, therefore, the Government had meted out discriminatory treatment to the respondents".

11. The above narrative would disclose that the petitioners had competed successfully and were included in the select list prepared pursuant to the test held on 30.05.1987 for appointment to the LDEC quota. Undoubtedly, the rules underwent a change on 23.08.1985; nevertheless that could not have ipso facto influenced the decision in preparing a panel. Apparently, the respondent did not

take that into consideration and, instead, went ahead with the selection process and published a select list in 1987. The records produced before this Court indicate that the select list was prepared strictly on the basis of merit; it comprised of two parts" general category candidate and reserved category candidate. In the first instance, there is no dispute that 10 such employees were appointed" on the basis of merit (7 seven from the general category and 3 from the reserved category) . The decision of the Supreme Court in [Shankarsan Dash Vs. Union of India,](#) is an authority for the proposition that successful candidates whose names figure in the merit list have no vested right to claim promotion or appointment to the post. Empanelment on the basis of a test or eligibility" for the purpose of appointment, itself does not amount to a selection or create a vested right. At the same time, the Supreme Court cautioned that the decision of the executive authority not to appoint from the panel should be based on some rationale and should not be arbitrary. The scope of controversy before this Court is thus narrow, i.e. if the decision of the respondent not to operate the select list after 28.07.1988" (when the last meeting of the selection committee was held) , needs examination, i.e. whether it can be categorized as arbitrary.

12. The petitioners argue that even if the recruitment rules are silent" on the question of appointing those included in the Panel or Select list," as long as office memoranda and administrative instructions require such course, they have to be followed. Such executive instructions, they say, supplement statutory conditions and cannot be disregarded.

13. In this case, the select list was operated in two parts "as noticed earlier. In the first instance, 10 candidates were appointed and in the second instance one candidate was appointed to the post. Could the inaction of the respondent, and its eventual decision not to operate the panel and rather to cancel the panel" be characterized as arbitrary or unfair? This, in the opinion of the Court, has to be answered in the negative. A select list is expected ordinarily to have a finite lifespan. Wherever rules exist with regard to preparation of panels, containing conditions "such as keeping a panel alive or preparation of a waitlist, a further condition with respect to the time period for which such panel would be kept alive is also prescribed. However, there could be instances where the rules might not prescribe the time limit for the panel of waitlist, or the rules might be entirely silent as to what is to be done with the select panel. In such cases, the Courts have to take guidance from the principles underlining Article 14. If the petitioner"s contention were to be accepted, and select list prepared were to be kept alive indefinitely, then that would generate another source of recruitment" a position which is unacceptable in law. The dynamics of administration and nature of public employment it is that "with each passing year, the number of candidates who might qualify to apply for the post or become eligible to compete in the LDEC quota for the posts, as in this case, would increase. The acceptance of the petitioner"s argument, therefore, would completely blight the chances of such candidates; equally, public employers right and the public

interest to ensure that better candidates get a chance to compete and secure appointment is thus lost. These considerations weighed with the Supreme Court in clarifying the position in its subsequent decisions reported as [Babita Prasad and Others Vs. State of Bihar and Others,](#); and [Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others,](#) and the decisions cited by the CAT in Govt. of Orissa (supra) that no selected candidate has a right to insist that he ought to be appointed. In the present case, the respondent's record reveals that the select list prepared originally in 1987 was operated in two parts" the first time in 1987, when 10 appointments were made and the second time, when one appointment was made in 1989.

14. Having regard to these facts, the ultimate decision to scrap the panel/ select list "though taken rather belatedly in 1997, and proceed afresh in accordance with the amended rules, cannot be termed as arbitrary or discriminatory. The writ petition cannot succeed and is, accordingly, dismissed.