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**(2007) 09 CAL CK 0061**

**Calcutta High Court**

**Case No:** W.P.C.T. No. 159 of 2007

Lt. Governor and Others

APPELLANT

Vs

M. Deepa and Another

RESPONDENT

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**Date of Decision:** Sept. 5, 2007

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2008) 1 CHN 607 : (2007) 115 FLR 835

**Hon'ble Judges:** Subhro Kamal Mukherjee, J; Kalidas Mukherjee, J

**Bench:** Division Bench

**Advocate:** Ashok Banerjee and Anil Kumar Chakraborty, for the Appellant; Anjili Nag, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Subhro Kamal Mukherjee, J.

This is an application under Article 226 of the Constitution of India against the judgment and order dated May 21, 2007 passed by the Central Administrative Tribunal, Calcutta Bench (Circuit at Port Blair) in Original Application No. 26/AN/2007.

2. The relevant facts leading to filing of this application before this Court are summarised as under:

(a) There were seven vacancies in the post of "Computer", which has been re-designated as Junior Investigator, in the Directorate of Economics and Statistics, A & N Administration. The administration invited applications from the eligible candidates to fill up such vacancies. Such vacancy notice was published in the Daily Telegram dated September 30, 2005.

(b) Pursuant to such vacancy notice, Ms. M. Deepa, the applicant before the Central Administrative Tribunal, applied for her appointment in the said post of "Computer".

By memorandum dated January 5, 2006 she was directed to be present in the interview for selection in the said post. The selection committee comprised of the Special Secretary (Statistics), the Assistant Director/Research Officer and one Dr. B. Prabhuram, Professor of Jawaharlal Nehru Rashtriya Mahavidyalaya. While the said Special Secretary acted as the Chairman, the Assistant Director/Research Officer was the member and Dr. P. Prabhuram was co-opted as the member of the said selection committee.

(c) The selection committee conducted interview of 266 candidates and recommended names of seven candidates for appointment against the said posts on the basis of their performances in the interview and considering their academic qualifications. The selection committee, also, recommended names of more candidates, to be kept in the panel, for appointment against above vacancies, if someone fails to join out of the select list.

(d) It is not in dispute that Ms. M. Deepa was on the top of the said waiting list. Undisputedly, all the said seven selected candidates joined, but one Ms. Geeta Devi tendered her resignation on or about September 9, 2006, which was accepted by the administration.

(e) Ms. M. Deepa applied before the administration for her appointment against the vacancy caused by resignation of Ms. Geeta Devi. She relied upon one office memorandum issued by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Government of India, being No. 410/9/18/97-Estt(B) dated June 13, 2000.

(f) However, the administration rejected her claim on the ground that the selection committee recommended names of seven candidates and as all of them joined, the question of appointing her from the reserve list could not arise due to resignation of one of the selected and appointed candidates.

(g) Being aggrieved, Ms. M. Deepa moved the Central Administrative Tribunal and the Central Administrative Tribunal by judgment and order dated May 21, 2007 allowed the application filed by her and directed the Administration to offer her appointment.

(h) Being aggrieved, this application under Article 226 of the Constitution of India is filed.

3. Mr. Ashok Banerjee, learned Senior Counsel, appearing for the petitioners, submits that the prayer for appointment by Ms. M. Deepa against the vacancy caused due to the resignation of Ms. Geeta Devi is misconceived. He submits that once all the appointments were made pursuant to the recommendation of the selection committee, the panel has lost its force and on account of vacancy due to resignation of one of the appointed candidates, she could not be offered appointment against such vacancy. Mr. Banerjee submits that the administration is likely to get

better candidate if a fresh vacancy notice is published. Mr. Banerjee contends that the office memorandum, referred to hereinabove, has no legal force. In support of his contention Mr. Banerjee cites the decision of the Supreme Court of India in the case of [Union of India \(UOI\) and Others Vs. B. Valluvan and Others, .](#)

4. Mrs. Anjili Nag, learned Advocate appearing for Ms. M. Deepa, respondent No. 1 in this application, however, submits that her client is entitled to be appointed against the vacancy due to resignation of one of the appointed candidates as she was placed at the top of the reserve list when such appointed candidate resigned within one year of her appointment. She, in her turn, relied upon a decision of the Supreme Court of India in the case of [Gujarat State Dy. Executive Engineers" Association Vs. State of Gujarat and Others, .](#)

5. Therefore, the short point involved in this writ petition is whether the respondent No. 1 has any legal right to be appointed out of the reserve panel for appointment?

6. The office memorandum dated June 13, 2000, inter alia, provides as under:

The Fifth Central Pay Commission in para 17.11 of its Report, has recommended that with a view to reduce delay in filling up of the posts, vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled immediately by the candidate from the reserve panel, if a fresh panel is not available by then. Such a vacancy should not be treated as a fresh vacancy. This recommendation has been examined in consultation with the UPSC and it has been decided that in future, where a selection has been made through UPSC, a request for nomination from the reserve list. If any, may be made to the UPSC in the event of occurrence of a vacancy caused by non-joining of the candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of the year from the date of his joining, if a fresh panel is not available by then. Such a vacancy should be treated as fresh vacancy.

3. It has also been decided that where selections for posts under the Central Government are made through the recruiting agencies such as Staff Selection Commission by the Ministries/Departments directly and the reserve panels are similarly prepared, the procedure for operation of reserve panels maintained by UPSC described in para 2 above will also be applicable for reserve panels maintained by the other recruiting agencies/authorities.

7. Undisputedly, the selection committee prepared the list of seven successful candidates as also recommended names of five more candidates to be kept in the panel for appointment against the vacancies if someone failed to join out of the above select list. Undisputedly, all the seven candidates joined, but one of them, Ms. Geeta Devi, tendered her resignation within one year of her appointment.

8. The office memorandum, as aforesaid, was issued as a policy decision and is based on the recommendation of the Fifth Central Pay Commission. The said office

memorandum, inter alia, provides that with a view to reduce delay in filling up the posts, vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled immediately by candidates from the reserve panel if a fresh panel be not available by then. Such a vacancy should not be treated as a fresh vacancy. It, further, provides that even where selections are made through staff selection commission the similar procedure should be followed.

9. Mr. Banerjee submits that the office memorandum has no legal force, but Ms. Nag points out that such objection was not taken by the petitioners either before the Central Administrative Tribunal or even before this Court in the writ petition.

10. We are of the opinion that it is not open to the petitioners to take such objection for the first time in the writ petition against the order of the Central Administrative Tribunal. To permit a party to take a new point, on facts, at the stage of argument, causes injustice to the other side. Moreover, on the face of such policy decision, the legal right of the incumbent cannot be brushed aside.

11. The decision cited by Mr. Banerjee in *B. Valluvan (supra)* is distinguishable. In the said case advertisement was published for only three vacancies and, accordingly, list of three candidates was prepared by the selection committee. The said three selected candidates accepted the offer and joined services and the committee was, therefore, directed to be cancelled. The selection committee prepared list of candidates for future vacancies, which was never indicated in the advertisement. In the aforementioned background the Apex Court, inter alia observes that the life of a panel ordinarily is one year. The same can be extended only by the State and that too if the statutory rule permits to do it. The High Court ordinarily would not extend the life of a panel. Once a panel stands exhausted upon filling up of all the posts, the question of enforcing a future panel would not arise. It was for the State to accept the said recommendations of the selection committee or reject the same.

12. On the contrary, the decision cited by Ms. Nag in *Gujarat State By. Executive Engineers' Association (Supra)* is squarely applicable in the facts and circumstances of this case. The relevant observations are quoted below:

8. Coming to the next issue, the first question is what is a waiting list?; can it be treated as a source of recruitment from which candidates may be drawn as and when necessary?; and lastly how long can it operate? These are some important questions which do arise as a result of direction issued by the High Court. A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Reason for it is that whenever

selection is held, except where it is for single post, it is normally held by taking into account not only the number of vacancies existing on the date when advertisement is issued or applications are invited but even those which are likely to arise in future within one year or so due to retirement etc. it is more so where selections are held regularly by the Commission. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. He has no vested right except to the limited extent, indicated above or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.

13. In this case although all the selected candidates accepted the offer for appointment, but one of them resigned within a short span of time. As the vacancy arose due to resignation within one year of the appointment and as the respondent No. 1 was on the top of the reserve list, she should be offered appointment by the administration when the fresh panel was not available by the time when the successful candidate resigned. It is not a case of filling up vacancy over and above the number of vacancies advertised nor such vacancy should be treated as a fresh vacancy requiring fresh selection process upon advertisement.

14. We, therefore, do not find any invalidity or infirmity in the order of the Central Administrative Tribunal requiring interference by this Court under Article 226 of the Constitution of India.

15. We, therefore, reject this application under Article 226 of the Constitution of India. However, the parties are directed to bear their respective costs in this application.

Kalidas Mukherjee, J.

I agree.