

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.8200/2007**

% **Date of Decision: 17.12.2009**

R.S. MEWATI Petitioners

Through: Mr. L.R. Khatana, Advocate

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. R.V. Sinha and Mr. R.N. Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

VIPIN SANGHI, J.

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1. The petitioner assails the order dated 27.08.2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.149/2007 titled "***R.S. Mewati v. Union of India & Ors.***". By the impugned order the aforesaid Original Application filed by the petitioner to seek direction to the respondents, inter alia, to adhere to the select panel prepared by the respondents for making appointment to the post of General Manager, Delhi Milk Scheme, wherein the petitioner had

been placed at serial No.2, has been dismissed on a finding that the no reserve panel or waiting list had been prepared by the selection committee. The challenge to fill up the said vacancy by the petitioner on the ground that he was on the waiting list/reserve panel was, therefore, rejected.

2. The petitioner, at the relevant time, was working as Joint General Manager in Ordnance Cable Factory, Ministry of Defence. The respondent, Government of India, Ministry of Agriculture vide their O.M. dated 16.03.2005 circulated the post of General Manager to be filled through officers of All India Service or Central Service Group 'A' on deputation basis. The petitioner being eligible applied for the said post. The Selection Committee placed the three applicants in order of merit. One Sh. S.K. Srivastava was placed at No.1 and the petitioner was placed at No.2 position. Sh. S.K. Srivastava was offered the post of General Manager, DMS, which he joined on 27.04.2006. However, within a period of less than six months i.e. on 30.09.2006 he was repatriated to his parent department.

3. The petitioner upon learning of the repatriation of Sh. S.K. Srivastava staked his claim for the post of General Manager, DMS by claiming that the Selection Committee had prepared a select panel and that he was next in line for being offered the said position as Sh. S.K. Srivastava had vacated the said position within six months. He submitted that on the basis of the office memorandum dated

13.06.2000 issued by the DoP&T, Ministry of Personnel, Public Grievances and Pensions, Government of India, the respondents were obliged to operate the reserve panel and that they could not have treated the vacancy created by the repatriation of Sh. S.K. Srivastava as a fresh vacancy and undertaken a fresh process of recruitment.

4. The respondents opposed the Original Application and stated that the petitioner was neither empanelled nor selected. Only one name i.e. of Sh. S.K. Srivastava was recommended by the Selection Committee in its meeting held on 23.12.2005 for appointment to the post of General Manager, DMS. While accepting the recommendation of the Selection Committee, the competent authority had taken a decision to appoint Sh. S.K. Srivastava only for a period of six months since a proposal of handing over of the DMS to Rajasthan Cooperative Dairy Foundation was under consideration at that time and it was expected that a final decision would be taken within a period of 3 to 4 months. It was also stated that the selection committee did not recommend any panel and only one name i.e. of Sh. S.K. Srivastava was recommended. The Selection Committee had not stated anything about further consideration of the remaining two names, out of which one was that of the petitioner.

5. The Tribunal, while rejecting the petitioner's Original Application, held that a perusal of the minutes of the Selection Committee meeting leaves no doubt that the said Committee considered

the three officers, who had applied for the post, but recommended only one officer, namely, Sh. S.K. Srivastava for the post of General Manager, DMS on deputation basis. No reserve list/waiting list was prepared by the committee and the petitioner's claim that he was in the waiting list had no merit.

6. Before us the submission of Mr. Khatana, learned counsel for the petitioner, is that the Selection Committee had arranged the names of the eligible candidates in order of merit and he also placed reliance on the aforesaid O.M. dated 13.06.2000. Mr. Khatana has placed reliance on the decision of the Supreme Court in "**Gujarat State Dy. Executive Engineers' Association v. State of Gujarat & Ors.**" (1994) Supp. 2 SCC 591, wherein the Supreme Court had considered the issue as to what constitutes a waiting list.

7. On the other hand learned counsel for the respondents has supported the order of the Tribunal and he contends that the Selection Committee merely recommended one name i.e. of Sh. S.K. Srivastava and did not prepare any reserve panel which could be operated upon in the event of the initial appointee quitting the post in question within a period six months.

8. Having heard learned counsel for the parties, perused the impugned order as well as the relevant documents and the decision cited by the petitioner, we are of the view that there is no merit in this

petition and the same deserves to be dismissed. The finding of the Tribunal that there was no reserve panel/waiting list prepared by the Selection Committee appears to be perfectly reasonable and does not call for interference.

9. In ***Gujarat State Dy. Executive Engineers' Association*** (supra) in paragraph 8, the Supreme Court considered the question as to what is a waiting list. The said paragraph reads as follows:

“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. She 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.”

10. From the above extract, it is clear that normally a select panel/waiting list is prepared where there are multiple vacancies/posts to be filled, and the occurrence of vacancies in the posts is a regular phenomena. In that situation, the authority making the selection/recruitment may prepare a panel so as to deal with the problem of some of the selected candidates either not accepting the offer of appointment, or quitting within a short period of their joining the post or vacancies arising in the near future on account of retirements or resignations. With a view to save time and effort in making a fresh recruitment, a panel is prepared in such situations in accordance with the rules governing the process of selection and recruitment, to tap into the already identified and evaluated talent. However, the same considerations would not normally be applicable in the case of selection

for and appointment to a single post. For a single post, which may be filled only upon the vacancy arising, and not frequently/regularly, the number of eligible candidates may not be enough to present a worthwhile choice to the employer. Even in the present case, there were only three eligible candidates considered by the Selection Committee. It is for this reason, the Supreme Court also drew a distinction between a situation involving recruitment and selection for multiple posts for which recruitments are held on a regular basis, and that involving a single post.

11. Reliance placed by the petitioner on the O.M. dated 13.06.2000 also appears to be misplaced. Paragraphs 2 & 3 of the said OM relied upon by the petitioner read as follows:

“2. 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 one year from the date of his joining**, if a fresh panel is not available by then.

Such a vacancy should not be treated as fresh vacancy.

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

12. The aforesaid office memorandum presupposes a situation where a reserve panel is prepared under the rules. The said OM does not oblige the Government and its departments as a matter of rule, to prepare a reserve panel while making an appointment for a single post. Therefore, in our view, the office memorandum does not advance the case of the petitioner that in all cases, including those involving recruitment to a single post, the respondents are obliged to prepare a reserve panel/waiting list. The petitioner has not brought to our notice any rule to say that a reserve panel wait list should have been prepared for making recruitment to the post of G.M. D.M.S.

13. A perusal of the minutes of the Selection Committee meeting shows that the Selection Committee merely arranged the names of the three competing candidates in order of merit and, thereafter, recommended the name of the person found most meritorious. In any selection process which is based on merit, the Selection Committee

would obviously prepare a merit list to justify the recommendation that it may make. However, it does not mean that the merit list prepared gets transformed into a reserve panel/waiting list on its own. There has to be a conscious decision of the Selection Committee to prepare a reserve panel founded upon the relevant rules and instructions, and a merit list prepared as a result of evaluation of the various candidates by the Selection Committee does not tantamount to a reserve panel/waiting list in all situations.

14. For the aforesaid reasons, we find no merit in this petition and dismiss the same leaving the parties to bear their own costs.

ANIL KUMAR, J.

DECEMBER 17, 2009
'K'/'rsk'

VIPIN SANGHI, J.