

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

% Judgment reserved on: 12.04.2012
Judgment pronounced on: 17.04.2012

+ W.P.(C) 1539/2012

BIJENDER SINGH & ANR.

..... Petitioners

versus

GOVT. OF NCT & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Gulfeshan Javed and Mr. Satish Pandey
For Respondent : Ms. Zubeda Begum and Ms. Sana Ansari

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This writ petition is directed against the order dated 17.11.11 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short 'the Tribunal'), whereby OA 1000/2010, filed by the petitioners, was dismissed. The facts giving rise to the filing of the present petition are as follows:-

Petitioner No.1, Bijender Singh was appointed as a Work Attendant with the Directorate of Training and Technical Education, in the year 1992, whereas petitioner No.2, Rajbir Singh was appointed as Instructor Diesel Mechanic. 14 vacancies in the posts of Foreman Instructors/surveyors/Senior Technical

Assistants were advertised for being filled up by way of direct appointment. 9 out of those 14 vacancies were unreserved. The SSC recommended 12 names for appointment. While making its recommendations, the assessee had also drawn a panel of 5 wait listed candidates. The names of both the petitioners figured in the said panel and both of them had applied for the unreserved posts.

2. Some of the candidates, who were aggrieved by the selection made by SSC for appointments to the posts, preferred an original applications before the Tribunal challenging the selection process. The Tribunal, vide order dated 24.09.1997 allowed the OAs filed by those persons. It was held by the Tribunal that the selections made by the Selection Committee were neither objective nor fair and, therefore, the selections as well as the appointment orders were liable to be quashed and set aside. The respondents were directed to hold fresh selections and make appointments based on the fresh selections.

3. The order passed by the Tribunal was challenged before this Court by way of WP(C) 4199/1997. CM No. 12170/2008 was filed by the petitioners herein before this Court in WP(C) 4199/1997 seeking their impleadment to the litigation. The applicants were allowed to intervene in the matter and make their submissions at the time of hearing.

4. Vide order dated 28.07.2009 passed in W.P.(C) 4199/1997, it was held that there was nothing to suggest that the interviews were conducted and selections

made in a manner that should cast any doubt or suspicion about the authenticity of the selection process. The order passed by the Tribunal was, therefore, set aside. Noticing that two other submissions made by the private respondents had not been decided by the Tribunal, the matter was remanded to the Tribunal to decide on the question whether the successful petitioners were indeed qualified or not.

5. Post remand of the OAs, the Tribunal, vide order dated 09.09.2009 held that the private respondents were indeed qualified and accordingly dismissed the OAs.

6. OA 3188/2009 was then filed by the petitioners herein, claiming that they were also covered by the judgments of the Tribunal dated 09.09.2009. The Tribunal directed respondent No.2 to examine the case of the petitioners, treating the OA as a supplementary representation and pass an appropriate order on it. Vide Memorandum dated 15.01.2011, the representation made by the petitioners was rejected by the respondents. OA 1000/2010 was then filed by the petitioners seeking direction to the respondents to consider them for appointment to the posts of Group Instructor, pursuant to the panel in which they were selected. They also sought consequential benefits with effect from the date of their appointment as Group Instructor. The petitioners contended before the Tribunal that at least 10 vacant posts of Group Instructor had become available after the panel had been drawn. This, however, was rebutted by the respondents who stated that the consequential vacancies referred to in the OA had occurred after several years from

the date of original vacancies, the first replacement vacancy having occurred on 25.5.1999, the second on 30.06.2005 and the third on 30.11.2008. The respondents also stated that in terms of DOPT OM dated 14.05.1987, which was annexure R-2 and OM dated 18.01.1990 which was annexure R-1, the panel could be used only to fill up the replacement vacancies, in contingencies arising due to factors like non-joining of the candidates, events such as resignation or death. The limit of one year had been prescribed even for such contingencies. This was also pointed out that as per the aforesaid instructions issued by DOPT, the reserve lists were not to be used for filling up the fresh vacancies since such practice shuts out the candidates who may not have applied, considering the number and place of vacancies or the candidates who may have become eligible in the meanwhile. The OA was, therefore, dismissed inter-alia on the grounds that, (i) the claim was grossly time barred; and (ii) the panel of reserved candidates could be used only to fill up the replacement vacancies occurring within a limited period and not filling up the fresh vacancies.

7. It is not in dispute that the panel, in which the name of the petitioners was included, was issued on 24.07.1995. The validity of the panel normally is one year which, in certain circumstances can be extended upto 6 months. The Supreme Court in this regard clearly held in **Giridhar Kumar Dadhich & Anr vs. State of Rajasthan & Ors.** (2009) 1 SCC (L&S) 543, that the validity of a select list

ordinarily remains for one year and if the same is extended, the extension has to be done in accordance with law. In the case before us, the panel prepared on 24.07.1995 expired on 23.07.1996. There is no evidence of the validity of the panel having been extended nor has any rule permitting the extension of the validity of the panel beyond one year been brought to our notice. This is not the case of the petitioners that any replacement vacancies on account of reasons such as non-joining of a selected candidate, resignation or death had occurred on or before 23.07.1996. Even if extension of panel by 06 months is presumed, this is not the case of the petitioners that any replacement vacancy had occurred on or before 23.01.1997. In their reply before the Tribunal, the respondents have clearly stated that the first replacement vacancy occurred on 25.05.1999. The validity of the panel had expired much earlier. Therefore, it was not open to the respondents to appoint either of the petitioners against the replacement vacancies which occurred from 25.05.1999 onwards.

8. The contention of the learned counsel for the petitioners was that as many as 13 posts of Foreman Instructors had fallen vacant between 25.07.1995 and 02.07.1996 and, therefore, the petitioners ought to have been appointed against those vacancies. The contention, however, is untenable for the simple reason that none of these vacancies was a replacement vacancy. The vacancies which had arisen subsequent to 24.07.1995 and were not replacement vacancies having

occurred on account of a selected candidate not joining duty or resigning or dying and hence the petitioners could not have been considered against those vacancies.

9. In **Mukul Saikia v. State of Assam: (2009) 1 SCC 386**, the Supreme Court held that “if the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised”. The select list “got exhausted when all the 27 posts were filled”. Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The “currency of select list had expired as soon as the number of posts advertised were filled up, therefore, appointments beyond the number of posts advertised would amount to filling up future vacancies” and the said course is impressible in law.

10. In **Rakhi Ray & Ors vs. High Court of Delhi & Ors. (2010) 1 SCC (L&S) 652**, the Supreme Court, inter-alia, held as under:-

“It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such

a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide **Union of India and Ors. v. Ishwar Singh Khatri and Ors.** (1992) Supp 3 SCC 84; **Gujarat State Deputy Executive Engineers' Association v. State of Gujarat and Ors.**: (1994) Supp 2 SCC 591; **State of Bihar and Ors. v. The Secretariat Assistant S.E. Union 1986 and Ors.** AIR 1994 SC 736; **Prem Singh and Ors. v. Haryana State Electricity Board and Ors.** (1996) 4 SCC 319; and **Ashok Kumar and Ors. v. Chairman, Banking Service Recruitment Board and Ors.** AIR 1996 SC 976).”

11. In **State of Orissa And Another v. Rajkishore Nanda And Others** (2010) 6

SCC 777, the Supreme Court inter alia held as under:

“It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide **State of Bihar and Ors. v. The Secretariat**

Assistant S.E. Union 1986 and Ors.: AIR 1994 SC 736; **Prem Singh and Ors. v. Haryana State Electricity Board and Ors. :** (1996) 4 SCC 319; **Ashok Kumar and Ors. v. Chairman, Banking Service Recruitment Board and Ors.:** AIR 1996 SC 976; **Surinder Singh and Ors. v. State of Punjab and Ors.** AIR 1998 SC 18; and **Rakhi Ray and Ors. v. High Court of Delhi :** AIR 2010 SC 932).

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A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

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A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the Court at a belated stage. (Vide **J. Ashok Kumar v. State of Andhra Pradesh and Ors.** (1996) 3 SCC 225; **State of Bihar and Ors. v. Md. Kalimuddin and Ors.:** AIR 1996 SC 1145; **State of U.P. and Ors. v. Harish Chandra and Ors.:** AIR 1996 SC 2173; **Sushma Suri v. Government of National Capital Territory of Delhi and Anr.:** (1999) 1 SCC 330; **State of U.P. and Ors. v. Ram Swarup Saroj:** (2000) 3 SCC 699; **K. Thulaseedharan v. Kerala State Public Service Commission, Trivendrum and Ors.:** (2007) 6 SCC 190; **Deepa Keyes**

v. Kerala State Electricity Board and Anr. (2007) 6 SCC 194; and **Subha B. Nair and Ors.** (supra).”

12. In **Shankarsan Dash v. Union of India**: (1991) 3 SCC 47, a Constitution Bench of the Supreme Court held that appearance of the name of a candidate in the select list does not give him a right of appointment. Mere inclusion of the candidate’s name in the select list does not confer any right to be selected. Even if some of the vacancies remained unfilled, the candidate concerned cannot claim that he has been subjected to hostile discrimination.

13. In view of the proposition of law laid down in the above referred cases, the petitioners could not have been considered for appointment against the fresh vacancies which had accrued after 24.7.1995, though they could have been considered against the vacancies, if any, arising on account of someone appointed against the notified vacancies, not joining or resigning. Admittedly, no vacancy of the said nature occurred at any time during the validity of the panel, in which the petitioners were placed. The first replacement vacancy having arisen on 25.5.1999 and the panel having expired on 23.7.1996 or at best on 23.1.1997, it was not permissible for the respondents to consider the petitioner for appointment against the vacancies which occurred on or after 25.5.1999. We, therefore find no fault on this account, in the order of the Tribunal.

14. The validity of panel expired on 33.7.1996 or at best on 23.1.1997. OA No. 1000/2010 wherein the impugned order has been passed was filed sometime in the year 2010. In view of the provisions contained in Section 21(1) of Administrative Tribunals Act, the OA could have been filed within one year from the date of the cause of action having accrued. The OA filed in the year 2010 was patently barred by limitation prescribed in the Act. Even OA 3188/2009 was filed much beyond the period of limitation prescribed in Section 21(1) of the Act. The Tribunal was, therefore, also right in holding that the OA was barred by limitation.

15. During the course of arguments, it was contended by the learned Counsel for the petitioners that the vide order dated 4.2.2009 passed in CM No. 12170/2008 in WPC 4199/1997 the petitioners were allowed to intervene in OA No. 1577/1995, and therefore, it cannot be said that the OA was barred by limitation. The contention, to our mind, is wholly misconceived. The question which arose for consideration of the Tribunal in OA No. 1000/2010 was not the subject matter of OA No. 1577/1995 wherein the selection process was challenged by the unsuccessful candidates. The question whether the petitioners were entitled to be considered for appointment against the vacancies arising subsequent to 24.7.1995 was not even remotely in issue in OA No. 1577/1995.

Therefore, the petitioners having been allowed to intervene in the aforesaid OA would not save the limitation.

For the reasons given in the preceding paragraphs, we find no merit in the writ petition, which is hereby dismissed, without any order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

APRIL 17, 2012

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