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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : May 14, 2015

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LPA 261/2015

ROSHAN BHIMRAO PATIL

..... Appellant

Represented by: Mr.Prashant Dahat, Advocate with
Mr.Punit Yadav, Advocate

versus

THE SECRETARY DEPTT. OF
ELECTRONICS AND IT & ORS

..... Respondents

Represented by: Mr.Dev P.Bhardwaj, Advocate for
R-1
Mr.Sanjeev Ralli, Advocate with
Mr.Sahil Sangar, Advocate for R-2
and R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. The second respondent ERNET India is a society established by the Government of India and is under the administrative control of the Department of Electronics and Information Technology. For the post of Accountant it invited applications from qualified and eligible candidates on May 10, 2011. Only one post was advertised to be filled up. On August 05, 2011 a select panel was prepared as per merit position in which the appellant was at serial No.3. One Mr.Gagandeep Singh was at serial No.1 and was offered appointment on August 26, 2011. He accepted the same on September 06, 2011 and after working for only 39 days he tendered a

resignation on November 23, 2011. A letter offering appointment was issued to one Mr.Alok Kumar who was at serial No.2 of the select panel on December 02, 2011 but he did not accept the offer.

2. The appellant filed a writ petition on May 27, 2013 praying that a direction be issued to ERNET India to offer appointment to him, and the claim was premised on an office memorandum dated June 13, 2000 issued by DoPT mandating that reserve panel for posts where selection was through UPSC should be maintained for one year and if requisite number of persons either do not accept letter offering appointment or having accepted the appointment died or resigned during the life of the panel, the appointment should be offered to the other candidates as per their merit position.

3. Vide impugned order dated February 13, 2015 the learned Single Judge has held that once a person accepts a letter offering appointment to a post, the vacancy lapses and the next candidate in order of merit would have no right to the post in question.

4. The conclusion arrived at by the learned Single Judge is correct.

5. In the decision reported as (1999) 3 SCC 696 Virender S.Hooda Vs. State of Haryana, the Supreme Court held that notwithstanding existing vacancies being filled up by the appointed candidates if further vacancies arise and are available within life of the select panel, the empanelled candidates would have a right to be offered appointment. The same view was taken in the decision reported as (2000) 1 SCC 600 A.P.Aggarwal Vs. Government of NCT of Delhi & Anr. In the decision reported as (2002) 1 SCC 113 State of Punjab Vs. Raghubir Chand Sharma & Anr. the Supreme Court held that once a notified vacancy is filled up the select panel lapses. The same view was taken in the decision reported as JT 2002 (2) SC 329 Thrissur District Co-operative Bank Ltd. Vs. Delson Davis P. & Ors.

6. In Virender S.Hooda's case and A.P.Aggarwal's case the Supreme Court held that if a person who has accepted the letter offering appointment to a post but resigns would entitle the next empanelled candidate to be offered appointment if the resignation is within the period of the life of the panel. But in view of office circulars to said effect. In Virender S.Hooda's case the circular in question concerned panels prepared by the Public Service Commission.

7. The two decisions have to be understood in light of the specific facts of the two cases. The specific facts being the existence of circulars mandating that if a person appointed from out of the panel resigns during the life of the panel the next person would be entitled to be offered the post advertised.

8. In Raghubir Chand Sharma's case and Delson Davis P's case, in the absence of any circular of the kind which was applicable in Virender S.Hooda's case, the Supreme Court held that once the advertised post is offered to a candidate who accepts the same and joins, since the vacancy lapses the question of the same being offered to the next candidate upon the first resigning from service does not arise. In fact, in Raghubir Chand Sharma's case the Supreme Court distinguished its decision in Virender S.Hooda's case on said difference in the facts.

9. Thus, the legal position would be that as a general rule of law, if for the post advertised to be filled up the first empanelled candidate accepts the letter offering appointment and joins, the power of the appointing authority to make appointment thereof comes to an end and irrespective of the fact that the person resigns during the validity period of the panel none can claim appointment to the post from out of the panel. The exception to this general rule of law has to be carved out by a specific policy decision to said effect as

was the situation in Virender S.Hooda's case and A.P.Aggarwal's case.

10. The appellant claims an exception to the general rule by placing reliance upon the office memorandum dated June 13, 2000 issued by DoPT, but overlooks the fact that the said memorandum relates only to appointments to be made from out of select panels prepared by the Union Public Service Commission (UPSC).

11. The instant panel has not been prepared by UPSC. The panel has been prepared by respondent No.2.

12. As regards the fact that when Mr.Gagandeep Singh resigned the post was offered to Mr.Alok Kumar, it is obviously an erroneous act of respondent No.2 and cannot be the foundation for a right in favour of the appellant.

13. Under the circumstances the appeal is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MAY 14, 2015
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