

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

+ **W.P. (C.) No. 624/2010**

% **Date of Decision : 01.02.2010**

RAJ KUNWAR Petitioner

Through Mr. U. Srivastava, Advocate

Versus

THE DELHI JAL BOARD Through its Chairman Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

MOOL CHAND GARG, J.

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1. The petitioner by way of this petition is seeking quashing of the order passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') in TA No. 367/2009 dated 09.12.2009 whereby the Tribunal has dismissed the application filed by the petitioner seeking directions against the respondents to consider his case also, being a member of the Select Panel prepared by the respondents in 1983 comprising of 83 persons of which the petitioner was the last person on the plea that as per the Office Memorandum dated 08.02.1982, it was decided by the respondents that the select

panel prepared would remain in existence till such time the entire panel is exhausted even in relation to future vacancies.

2. A writ petition was filed by the petitioner along with one Jai Kumar as he wanted his selection to the post of Junior Engineer (Electrial & Maintenance) classified as a category 'C' post to be filled by selection while working as Work Assistant/ Work Mistry in the department of Water Supply and Sewage Disposal under the Municipal Corporation of Delhi, later transferred to Delhi Jal Board. The writ petition was transferred to the Tribunal. In the said petition, they sought their appointment in respect of vacancies which arose in 1987 based upon the Circular of 1982 on the basis of selection held in the year 1983 and prayed for the following directions:

- (a) directions for appointing the petitioners to the post of JE (E&M) on the basis of their earlier selection.
- (b) directions restraining the respondents from holding fresh selection for the posts of JE (E&M) and
- (c) any other relief deemed fit

3. The claim of the first applicant, namely, Jai Kishore was dropped as he stood appointed. To support his case, the petitioner also filed an additional affidavit on 24.08.2009 stating therein that in 1983 out of the Select Panel, initially 51 persons were appointed from the General Category and 13 were appointed in the reserved category. In 1985, 20 vacancies of General Category and 10 vacancies of SC candidates which arose subsequently were also filled up from the select panel. However,

the case of the petitioner was not considered. It was submitted that since the name of the petitioner is still on the panel he is entitled to be selected for any vacancy which would arise in future including the vacancy which arose in 1987.

4. The petition filed by the petitioner was opposed by the respondents who also filed a counter affidavit. One of the preliminary objections taken by them was that the appointments to the post of Junior Engineer (E&M) are made as per the Recruitment Rules amongst the candidates, who are eligible for being considered for appointment. It is submitted that as per the said Recruitment Rules, 10 per cent of the posts are to be filled on promotion basis and the remaining 90 per cent by way of Direct Recruitment. In case of appointment by promotion, one of the essential requirements is 10 years regular service in the grade of Work Assistants. The respondents also submitted that with effect from 12.5.1985 the panel prepared in 1983 became outdated. On that date fresh applications were invited for appointment to the post of Junior Engineer. The petitioner though considered, was not found fit and as such, he cannot claim appointment as per the panel prepared in the year 1983, which has become outdated.

5. It is stated that as per the rules, the validity of panel is only for a period of one year. A copy of the rules has been placed on record as Annexure 'R-II', which reads as under:-

Extract from Government of India, Cabinet Secretariat, DP & AR O.M. No: 22011/6/75-Estt(D) dated 30.12.1976.

III. PERIOD OF VALIDITY OF PANEL:

1. The panel drawn up by DPC would normally be valid for one year. In any case, it should cease to be in force on the expiry of a period of one year and six months or when a fresh panel is prepared, whichever is earlier.

The date of the commencement of the validity of the panel will be the date of which the DPC meets. In case the DPC meets on more than one day, the last date of the meeting would be the date of commencement of the validity of the panel. In case the panel requires, partly or wholly, the approval of the commission, that date of the validity of panel would be the date of commission's letter communicating their approval of the panel. It is important to ensure that the Commission's approval to the panel is obtained, where necessary with the least possible delay.

6. It was, thus, submitted that since the panel prepared in 1983 became outdated w.e.f. 12.05.1985, the petitioner was left with no claim and was informed accordingly. More so, when fresh applications were invited the petitioner also participated but was not found successful.

7. Relying upon judgments delivered by the Apex Court in the case of Shankarsan Dash Vs. Union of India 1991 3 SCC 47, State of Madhya Pradesh Vs. Sanjay Kumar Pathak (2008) 1 SCC (L&S) 207, & S.S. Balu & Anr. Vs. State of Kerala & Ors (2009) 1 SCC (L&S) 388 the Tribunal observed that the selected candidates do not have a legally enforceable right to be appointed. It was also observed that there is no indefeasible right to appointments and the Government is free to fill up or not to fill up vacancies. Merely, because a candidate is included in rank list he cannot obtain mandamus unless arbitrariness or discrimination is established. Nothing has been shown by the petitioner that any

arbitrariness and discrimination qua the petitioner has been exercised by the respondent. The administrative authorities are absolutely within their legitimate domain to make or not to make appointments even after notified vacancies. Thus, there was no occasion to have any judicial intervention into the matter.

8. The Tribunal also held that the circular of 1982 was an outdated one inasmuch as the life of a select panel, at the most, can be two years and it cannot be for a indefinite period. We have gone through the judgment delivered by the Apex Court in the case of *Girdhar Kumar Dadhich & Anr. (Supra)* wherein it has been observed that:

16. Furthermore, the select list would ordinarily remain valid for one year. We fail to understand on what basis appointments were made in 2003 or subsequently. Whether the validity of the said select list was extended or not is not known. Extension of select list must be done in accordance with law. Apart from a bald statement made in the list of dates that the validity of the said select list had been extended, no document in support thereof has been placed before us.

9. In this case, as observed by the Tribunal, no records were available for verifying the claim of the petitioner regarding extension of panel for such an indefinite period as was sought to be addressed.

10. In the case of *General Manager, Uttranchal Jal Sansthan Vs. Laxmi Devi & Ors. with Uttaranchal Jal Sansthan & Ors. Vs. Kishore Chandra Pandey (2009) 2 SCC (L&S) 304* also relied upon by the petitioner where also reliance was placed upon a similar circular as is sought to be placed upon by the petitioners before us, the Apex Court

held that unless the circular has any force of law, the same is not binding.

11. In *Shankarsan Dash Vs. Union of India (supra)*, where also the appellant, who was in the select panel against a general category but was not appointed whereas some Scheduled Caste candidates were appointed, the Court held that adoption of different policy of filling reserved vacancies was not arbitrary in view of the special circumstances explained on behalf of the State. It was held as under:

Even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.

12. The Tribunal in paragraph 9.4 of the impugned order has taken note of the entire facts of this case and has observed as follows:-

9.4. As per the respondents, both in 1980 and 1983 the appointments had been made as per the availability of vacancies and from the list of select panel – during its validity – in the order of merit. A self serving statement by the learned counsel for the applicant about all the remaining candidates having been appointed from the panel of 1983 without any reliable documentary proof would not help to press the claims raised in this TA. In any case, the applicant No.2 whose claims have been agitated

before us, was admittedly at serial NO. 83 the last candidate in the category of General Candidates. There is no averment of any appointment being made superseding the valid claim of a candidate higher in merit by one with lower merit. Even the host of information obtained through the RTI and sought to be relied upon does not help to press the claims of the applicants.

13. The petitioner to support his plea that the panel which was prepared in 1983 should also be used in 2010 has not placed anything to show that such panel is to be kept alive for future vacancies as noticed by the Tribunal also. Moreover, after the Circular issued by the respondents in 1987 calling for fresh applications and the petitioner having participated in the process of selection but having not been found fit is left with no right to claim his appointment on the basis of an out-dated panel. Thus, we do not find it to be a fit case to interfere while exercising our jurisdiction under Article 226 of the Constitution of India. The writ petition is, accordingly, dismissed.

MOOL CHAND GARG, J.

FEBRUARY 01, 2010

'ag/anb'

ANIL KUMAR, J.