

(2008) 02 DEL CK 0310

In the Delhi High Court

Case No : Writ Petition (C) No. 2134 of 1997

Ashok Kumar Khanna

APPELLANT

Vs

Hon''ble the Chief Justice and Another

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Citation : (2008) 150 DLT 172

Hon'ble Judges : J.M. Malik, J;A.K. Sikri, J

Bench : Division Bench

Advocate : R.K. Saini and Nikhil Bhalla, for the Appellant; Viraj Datar and Aditya Jhanji, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—Prelude to this litigation is the judgment of this Court dated 19.5.1992 rendered by a Division Bench in CWP No. 2670/1987 entitled J.N. Verma v. Hon''ble the Chief Justice of Delhi High Court and Anr. In fact, the entire case of the petitioner rests on the shoulders of that judgment inasmuch as the grievance of the petitioner is that directions contained in that judgment are not followed in letter and spirit and had that been done the petitioner also would have been its beneficiary.

2. The petitioner herein is an employee of this Court. He, at the relevant time, was holding the substantive post of Assistant on permanent basis. Next promotion is to the post of Private Secretary/Court Master/Superintendent as these are the equivalent posts in terms of Delhi High Court Establishment (Appointment of Conditions of Service) Rules, 1972. In the year 1985, the Delhi High Court decided to fill up the posts of Superintendent/Court Master and Circular dated 27.9.1985 was issued inviting applications from the eligible employees in this behalf. The petitioner appeared in that test and was declared to have qualified the written examination. Total number of persons who had qualified the written examination were 12. They were all declared qualified in the interview as well. Accordingly, a select list of 12 persons was prepared by the

Selection Committee and this list was approved by Hon''ble the Chief Justice. Name of the petitioner was at S. No. 8 in the select list. At the relevant time, there were three vacancies and, Therefore, the first three candidates from the select list were appointed to the post of Superintendent/ Court Master. The remaining persons, however, made representations to Hon''ble the Chief Justice requesting that they be appointed against the vacancies arising in future as no decision was taken on these representations. Ultimately, these representations were rejected by the Office vide order dated 20.8.1987. At this juncture, two persons who were in the select list at S. Nos. 5 and 6 filed Writ Petition No. 2670/1987 inter alias praying for a writ of mandamus commanding the respondents to immediately appoint them to the post of Superintendent/Court Master and treating them as having been appointed in these posts from the date the post became available. It is this writ petition which was allowed by the Division Bench vide judgment dated 19.5.1992. The Court held that the select panel would be treated as alive for 18 months and all the vacancies in the post of Superintendent/Court Master, which had arisen during the life of the panel, were to be filled from the aforesaid select panel. After the delivery of this judgment, three more persons from the said select list were given the appointments. As the first three candidates from the select list were appointed in the first instance, in this manner in all six persons were appointed from the said select list which contained the names of 12 persons. The petitioner could not get the appointment as he was at S. No. 8., In the present petition, endeavor of the petitioner is to demonstrate that he could also be adjusted during the validity period of the panel and, Therefore, the petitioner also should have been given appointment to the said post as per the directions given by the Court in the aforesaid judgment in the case of J.N. Verma (supra).

3. Though we have narrated the substance of the judgment in J.N. Verma (supra), it would still be appropriate to reproduce the exact directions contained therein to facilitate disposal of this petition. The relevant discussion and the directions are, thus, reproduced below:

We are not impressed by the contention of the learned Counsel for the petitioners that the panel is alive till all the candidates are absorbed. The Supreme Court in Prem Prakash Etc. (supra) observed that there should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies and once a person is declared successful, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates. The Supreme Court was in that case considering the question of appointment of SC/ST candidates to the Delhi Judicial Services by direct recruitment in the light of Rule 18 of the Delhi Judicial Service Rules 1970 and notification dated 8.3.1982 issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms. The facts of the present case are different because admittedly there is no rule for empanelment in the present case. It cannot, Therefore, be said that the panel was effective till all the selected

candidates in the panel were appointed. Rule 7 came to be amended on 16.3.1988. Once the rule was amended the whole position changed. The quota to be filled in by selection itself got reduced. The empanelled candidates lost their right to be appointed because as per the amended rule, 75% of the posts had to be filled in by promotion on the basis of seniority. The petitioners are thus not entitled to appointment in the vacancies that arose after the amendment of the Rule. In any event, by then the life of the panel had also expired because as observed by the Chief Justice in his note dated 6.8.1987 he considered that a rule which provides that the panel at best could be said to be alive for a maximum period of 18 months is salutary. Since there is no specific rule for empanelment, the Chief Justice was entitled to take a decision regarding the life of the panel which he did on 6.8.1987. However, the question of appointment of empanelled persons in the vacancies that arose when the panel was still alive was not answered. In our opinion the petitioners and other persons on the panel were entitled to be appointed in the vacancies which arose before the amendment of the rule while the panel was still alive i.e. within 18 months of the empanelment.

4. The specific directions that followed are couched in the following terms:

...Furthermore, we are informed that some of the persons in the panel have also been promoted on the basis of their seniority under the new rule. Naturally, those persons who were in the panel must be first appointed in the available vacancies during the 18 months period during which the panel was valid. The respondents will have to work out the vacancies and adjust them accordingly. Such persons who will be appointed will also be entitled to the consequential benefits including seniority.

5. We may point out here that it is not in dispute that 25% posts are to be filled on the basis of seniority-cum-suitability from joint seniority list of certain categories of employees, including Superintendent/Court Master, and remaining 75% posts by selection on merit on the basis of written test and interview. The petitioner and others had appeared in the written test and interview under the said category. As already noted above, panel of successful candidates was prepared on 22.11.1985. Since it was valid for 18 months, the said period was to expire on 22.5.1987. Thus, all these persons in the select list were to be accommodated against the vacancies which arose during 22.11.1985 and 22.5.1987.

6. The petitioner has, in the writ petition, given the vacancy position on the basis of which it is sought to be projected that vacancy became available for him within this period. The description of the petitioner in this behalf, as stated in the writ petition, is to the following effect:

Name Date of Appointment Date of Absorption 1. Gopal Krishan From 8.1.86 against the From November 1989 against deputation vacancy of the vacancy of Shri Shri Govind Ballabh Govind Ballabh having Permanently absorbed in

Central Administrative Tribunal. 2. J.N. Verma i) From 27.1.86 to 31.5.86 From 1.9.86 onwards against the deputation the vacancy of Shri R.N. vacancy of Sh. C.B. Aggarwal, Prabhakar Court Master Court Master. promoted as Assistant ii) From 1.6.86 to 31.8.86 Registrar w.e.f. 13.8.86 against the leave vacancy Note: However from 27.1.86 of Shri B.K. Wadhwa, to 17.7.87 proforma promotion Supdt. on earned leave only, as he was on deputation from 5.4.86 to 31.8.86. to CEGAT during this period.

3. S.R. Sharma From 27.1.86 against the From 1.4.1987 against the deputation vacancy of Shri vacancy caused on the J.N. Sharma on deputation retirement of Shri J.L. Bhamri to CEGAT

4. Bal Krishan From 9.11.86 against the deputation vacancy of Sh. P.K. Sharma, having become available on account of the earlier candidate Shri V.K. Seth being regularly absorbed against the vacancy caused on the retirement of Sh. C.B. Aggarwal 1.6.87 on account of conversion of one post of Interpreter to that of Court Master. 5. A.K. Khanna i) From 10.2.87 to 30.5.87 From 7.7.87 against the against the leave vacancy of regular vacancy caused on the Sh. M.S. Sharma, Court Master. retirement of Shri B.K. Wadhwa. ii) From 1.6.87 to 6.7.87 against the deputation vacancy of Sh. P.K. Sharma having become available once again till 14.7.87 i.e. the date of his return from deputation

7. Name of the petitioner is at S. No. 5 above. The attempt of the petitioner is to demonstrate that there was a leave vacancy of Shri M.S. Sharma, Court Master from 10.2.1987 to 30.5.1987 and the petitioner could have been accommodated against that leave vacancy with effect from 10.2.1987. From 1.6.1987 to 6.7.1987 another vacancy became available as one Shri P.K. Sharma had gone on deputation to some other department in the aforesaid period and he returned on 14.7.1987 from deputation. In the meantime, on 7.7.1987, a regular vacancy arose on the retirement of Shri B.K. Wadhwa. The petitioner has, thus, tried to contend that had he been promoted as Superintendent/Court Master from 10.2.1987 to 30.5.1987 against the leave vacancy of Shri M.K. Sharma, Court Master and thereafter from 1.6.1987 to 14.7.1987 against the vacancy caused on account of Mr. P.K. Sharma proceeding on deputation, he would have worked continuously from 10.2.1987 to 14.7.1987 and, in the meantime, could have been adjusted against regular vacancy which arose on 7.7.1987. This kind of farfetched plea raised by the petitioner is neither sustainable under law nor can be treated as the outcome of the judgment of this Court in J.N. Verma (ibid).

8. The ratio of J.N. Verma (supra) is clear, namely, the validity of select panel would be 18 months and, Therefore, mandate was to fill up all those vacancies which arose during this period from the select panel formed on 22.11.1985, which was valid till 22.5.1987. Therefore, occurrence of a regular vacancy before 22.5.1987 was a pre-condition to be fulfilled before the petitioner could be promoted. Even as per the petitioner's own showing, a regular vacancy arose only on 7.7.1987, i.e. much after the life of the said panel came to an end. It is

not the case of the petitioner that he was appointed as Superintendent/Court Master on 10.2.1987 against the vacancy of Shri M.S. Sharma or thereafter from 1.6.1987 against the vacancy of Shri P.K. Sharma. The petitioner, in fact, was never appointed as Superintendent/Court Master at any time. The petitioner is trying to stretch his case beyond limits on certain suppositions and conjectures. Such a reasoning is not even admissible in law. As mentioned above, there has to be a regular vacancy available during the currency of the panel before an incumbent can be appointed from the said panel.

9. A Division Bench of this Court in *Praveen Kumar Babbar and Ors. v. High Court of Delhi through Registrar General*, WP (C) No. 3541/2007 decided on 27.8.2007, of which one of us is a Member (A.K. Sikri, J.), had occasion to discuss the law on the subject. In the said case, the case of J.N. Verma (ibid) along with certain other cases decided by this Court as well as some judgments of the Supreme Court, relevant to the issue, were considered and discussed in depth. The issue involved in *Praveen Kumar Babbar* (supra) was as to whether it was necessary to appoint all persons from the select list even against future vacancies or only the vacancies which were available and notified as on the date of holding the examination were to be filled. Taking note of subsequent Division Bench judgment in the case of *Hon'ble Chief Justice Delhi High Court Vs. Gajender Pal Vohra*, , which had decided similar issue and had in extenso considered the dicta of earlier judgment in J.N. Verma (ibid). It would be apt to reproduce relevant discussion therein which has bearing on this case as well:

6. We may initiate our discussion from the judgment of this Court in *Gajender Pal Vohra* (supra) as earlier Division Bench judgment in the case of J.N. Verma (supra) is also discussed in this case. Understanding of this case will, Therefore, clear our path and suggest the course of action we are supposed to take. The Court clarified the legal position as per Article 229 of the Constitution of India which empowers the Chief Justice of the High Court or such other Judge or Officer of the Court, which the Chief Justice may direct, to appoint officers and servants of a High Court. The object of this Article is to secure the independence of the High Court. The Bench clarified that the Constitution confers exclusive jurisdiction on the Chief Justice so far as appointment of officers and servants of a High Court is concerned and no appointment can be made unless sanctioned or ordered by the Chief Justice. That case was concerned with the appointments to the post of Superintendent/Court Master. The Court noted that the Chief Justice had directed only two vacancies in Selection Quota in the cadre of Superintendent/Court Master to be filled and, on this direction, a notification inviting applications for appointment on the two posts was issued on 28.8.1990. Writ petition was filed seeking appointment of at least 5 persons who cleared the selection test, held on 16.9.1990, as admittedly there were 5 vacancies for the Selection Quota available by that time, notwithstanding the fact that selection process was started for filling up 2 vacancies, which only were available at the relevant time of issue of notification dated 28.8.1990. Single Judge allowed the writ petition against which LPA was filed and the aforesaid issue was, thus,

considered by the Division Bench having regard to the aforesaid factual background. The Court opined that the selection and appointment to be made could not exceed 2 vacancies which were notified. For arriving at this conclusion, the Division Bench referred to four judgments of the Supreme Court, namely:

- i) State of Bihar and Others Vs. Secretariat Assistant Successful Examinees Union 1986 and Others, ;
- ii) 1996 VII AD 622 (SC) ;
- iii) State of Bihar and another Vs. Madan Mohan Singh and others, ; and
- iv) Prem Prakash v. Union of India 1984 (Sup) SCC 687.

Each of these judgments are discussed in the following manner:

6. In the case of State of Bihar v. Madan Mohan Singh (supra), the appellant-Government had invited applications on 29.9.1989 for filling up 32 vacancies. After conducting interview in November, 1990 a panel of 32 candidates was drawn up. On 24.11.1990, a resolution was passed that any further vacancy within one year would be filled up from the merit list already prepared. A question arose whether the appointments can be made from the panel already drawn up or fresh recruitment process was required to be resorted to for filling up future vacancies. Their Lordships held that the crucial question was whether, in fact, the advertisement and the initial decision taken was meant to fill up 32 vacancies only. It was held:

The temporary vacancies arose subsequently but even otherwise in the view we are taking namely that the particular advertisement and the consequent selection process were meant only to fill up 32 vacancies and not to fill up the other vacancies, the merit list prepared on the basis of the written test as well as the viva voce will hold good only for the purpose of filling up those 32 vacancies got exhausted and came to an end. If the same list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process.

7. In State of Bihar v. Secretariat Assistant Successful Examinees Union (supra), advertisement inviting applications for vacancies falling up to 1985-86 was issued in the year 1985. Examination was held in November, 1987 and the result published in July, 1990. The empanelled candidates who were left out after filling up vacancies up to 1985-86 approached the High Court seeking appointment against vacancies available on the date of the publication of the result as well as the vacancies arising up to 1991. The High Court allowed the prayer. In an appeal before the Supreme Court their Lordships held that the direction given by the High Court was not proper and could not be sustained.

8. In Harjinder Singh Sodhi's case (supra), their Lordships have held that those who had sought for nomination to the post available in 1991 can be considered

only for appointment to nine posts which arose in 1991 and could not be considered for selection for subsequent vacancies because that would have the effect of adversely affecting the candidates who became qualified later.

9. Prem Prakash v. UOI, (supra) also lends support to the same view. Two previously selected persons were sought to be appointed against vacancies occurring in a later year. Their Lordships held that this must be avoided because that results in ouster of two newly selected persons. Justice to one group at the expense of injustice to another is perpetuation of injustice in some form or the other, held their Lordships.

7. It was, thus, concluded that the selection and appointment to be made cannot exceed the number of vacancies notified. The Division Bench was also of the view that when the Chief Justice had directed only 2 appointments to be made, on the basis of which the process was initiated, directing the Chief Justice to make 5 appointments instead of 2, where the Chief Justice was neither constitutionally nor legally obliged to make such number of appointments, would amount to exceeding the limits of judicial review and transgressing upon the constitutional power of the Chief Justice enshrined in Article 229 of the Constitution. In para 14, the Division Bench summed up the reasons in support of this view by giving reasons, which reads as under:

14. The direction made by the learned Single Judge cannot be sustained for several reasons. Firstly, such a direction would tantamount to usurping the power which the Constitution has chosen to vest exclusively in the Chief Justice. Secondly, it is not in conformity with the law laid down by the Supreme Court consistently in the cases referred to hereinabove. Thirdly, the selection process initiated in the year 1990 for only two vacancies had a limited zone of consideration by including therein a limited number of employees, eligible till then; while a selection process initiated with five vacancies would have provided a wider zone of consideration from amongst the eligible employees by reference to the date on which 5 vacancies became available. The right of employees to be considered for selection who had become eligible by the time five vacancies became available has been taken away for no fault of theirs. Fourthly, the right of the employer i.e. the High Court to have a wider number of eligible candidates to choose from has been prejudiced.

8. The Court distinguished the earlier judgment of the Division Bench in J.N. Verma (supra) on the ground that "number of vacancies available at the time when the selection process was initiated was not specified and the Selection Committee had prepared a list of successful candidates". The Court also took note of the fact that when the matter was placed before Hon^{ble} the Chief Justice, His Lordship had on 11.9.1985 directed that steps be taken up immediately to fill up all the vacancies which were lying vacant at that time. It was because of this order of Hon^{ble} the Chief Justice, in J.N. Verma's case (supra), the Court had held as under:

This noting further strengthens the case of the petitioners that when selection is made pursuant to a circular which does not specify the available vacancies the idea in preparing the list is to make appointments as soon as vacancy arises. Undoubtedly under Article 229 of the Constitution of India appointment of officers and servants of a High Court has to be made by the Chief Justice. Thus, the Chief Justice must feel the Administrative necessity to have a panel. In the facts of the present case however we find that since the Chief Justice directed issuance of a circular without specifying the vacancies and appointed Selection Committee to select candidates without specifying the number and further more approved the list prepared by the Selection Committee shows that the Chief Justice did feel the administrative need to have the panel. It was thus not necessary for the Chief Justice to once again reiterate the decision to maintain a panel. The noting of the Chief Justice dated 6.8.1987 further makes the position abundantly clear that the list prepared by the Selection Committee was in fact a panel of selected candidates.

Taking note of the aforesaid facts and observations in J.N. Verma (supra), the court in the case of Gajender Pal Vohra (supra) drew the following distinction:

11.3 It is, Therefore, clear that in the case of J.N. Verma the selection was not against a specified number of vacancies. A panel of selected candidates was intended to be prepared so as to make available suitable candidates to fill up vacancies as and when they occur. Thus the selection process was initiated and meant for filling up vacancies in contemplation. Such is not the case at hand. On the contrary, the fore-quoted extracts go to support the case of the appellant before us rather than the respondent's.

9. It is clear from the reading of the said judgment that, as a principle of law, the employer is to fill up only those vacancies which are notified and for which selection process has taken place and the selection and appointment is not to exceed the number of vacancies notified. However, where the vacancies are not notified and selection is made to fill up all the vacancies and panel of selected candidates is prepared so as to make available suitable candidates to fill up vacancies as and when they occur, the appointment is not to be confined to the number of vacancies available at the time of initiation of selection process, but those vacancies which arise thereafter are also to be filled up.

The SLP preferred against the aforesaid judgment was dismissed by the Supreme Court.

10. If one has regard to the legal position narrated in the aforesaid judgment, the conclusion is obvious, viz. from any angle the matter is to be looked into, the petitioner has not been able to make out a case for interference.

11. This writ petition is accordingly dismissed.

No costs.