
(1985) 04 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Appeal No. 225 of 1985

Heminder Singh Bisht

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 19-04-1985

Acts Referred:

Citation : (1985) RLR 444

Hon'ble Judges : Yogeshwar Dayal, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : K.L. Budhiraja, R.K. Saini, N.S. Sistani and G.S. Sistani, for the Appellant;

Judgement

Kirpal, J.

(1) This judgment will dispose of 2 petitions being C.W. No. 225/85 and Cw 551/85 wherein the challenge is to the non-implementation of a panel which is stated to have been prepared by the respondent for making appointment to the posts of Junior Engineer (Electrical).

(2) Briefly stated, the admitted facts, in so far as they are relevant for the disposal of these petitions are. Both the petitioners held Diploma in Mechanical Engineering. They got themselves registered with Employment Exchange. It appears that respondent wanted to make appointments to the post of Junior Engineer (E & M). The respondent-Authority asked for names of eligible candidates from the Employment Exchange. It also circulated a notice amongst its own employees to the effect that they could apply for the post of Junior Engineer (E & M) if they satisfied the eligibility condition.

(3) It is an admitted case of the parties that for the said posts selection was held by a Committee during January and March, 1984. About 600 candidates appeared for the said selection. According to the respondent the Selection Committee drew up a panel of 160 candidates from general category and 14 of the reserved candidates. The names of the petitioners were included in the said

panel which was drawn up in order of merit. Reminder Singh Bisht was at Serial No. 61 and Mehtab Singh was at No. 65 in the said panel.

(4) On the receipt of the aforesaid panel from the Selection Committee, the respondent began taking steps to make appointments there from. 60 letters of appointment were issued by the respondent to the first 60 successful candidates. Out of these 52 officials have already reported for duty.

(5) The case of the petitioners is that on 17.10.84 appointment letters to the next 23 persons on the select panel, including the petitioners, were issued. While these appointment letters were in the process of being dispatched, the respondent suddenly stopped the same from being sent. According to the respondent the appointment of these 23 candidates could not be carried out due to an administrative decision having been taken. It is the case of the respondent that with a view to promote departmental candidates and in order to avoid their stagnation, it was imperative that their promotional avenues were not clogged by the outsiders. It was primarily for this reason that an administrative decision was taken by the Vice-Chairman not to effect any appointments of non-departmental candidates included on the said panel.

(6) The challenge in the present writ petition is to the non-implementation of the said panel which included, as already noted, the names of both petitioners.

(7) Admittedly no statutory recruitment rules for appointment to the said post of Junior Engineer (E & M) have been framed u/s 56 of Delhi Development Act, 1957. Nevertheless, on 13.11.63 a resolution was passed by the Dda purporting to lay down recruitment rules for the post of Section Officer. Mr. Sistani, the learned counsel for the respondent stated at the Bar that the post of Section Officer has now been re-designated as Junior Engineer. According to the aforesaid resolution the method of recruitment to the said post was only to be by direct recruitment. It is further conceded by the learned counsel that the said resolution dated 13.11.63 has not been rescinded or superseded by the Authority. The submission of Mr. Sistani was that there being no statutory rules, the Vice-chairman could take an administrative decision to scrap the panel. Furthermore, it is not incumbent upon the respondent to make appointments on the basis of the panel of outside candidates.

(8) In our opinion, the decision of the respondent to ignore the panel and to make appointments of only departmental candidates included on the said panel, irrespective of their position on the panel, is not valid.

(9) As already noted herein above, the D.D.A. by a valid resolution dated 13.11.63 had decided on the mode of recruitment. The mode prescribed was only direct recruitment. It is true that this is not a statutory rule but it is nevertheless an administrative decision of the Authority. The Vice-chairman is a functionary of the Authority. In our opinion, unless and until the D.D.A. rescinds, abrogates or modifies the said decision, the Vice-chairman cannot disregard the said resolution and act contrary to what has been resolved by the Authority. It is

open to the Authority to change its mind and decide that recruitment to the post of Junior Engineer will only be made from amongst departmental candidates, but this decision has to be taken by the Authority by passing an appropriate resolution, for it is only by passing another resolution that the earlier resolution dated 13.11.63 can be substituted. The decision to ignore the resolution dated 13.11.63 and not to make selection of direct recruits, though they have been on panel, would appear to us to be arbitrary. Heminder Singh Bisht vs. D.D.A.

(10) There is one other ground on which the petition must succeed. As already noted, a panel of 160 general category candidates and 14 reserved candidates had been prepared. A panel, whenever it is prepared, is only a recommendation to the appointing authority. It is open to the appointing authority to accept or reject that recommendation, but if the authority accepts the recommendation and makes appointments then it has to make appointments in order of merit as recommended by the Selection Committee. In this connection reference may be made to a recent decision of the Supreme Court in *Jatinder Kumar and Others Vs. State of Punjab and Others*, . In that case the Subordinate Service Selection Board was asked by the I.G. of Police, Punjab to recommend 7 persons for the post of A.S.I. of Police. While this matter was pending, 50 more posts become available and the Board was requested to recommend 57 suitable persons for the said post. After the candidate had been interviewed, but before a select list could be finalised, the said Board was requested to recommend 170 more persons, in addition to 57 already under consideration of further vacancies likely to occur as a result of expected re-organisation of the Police Force. For the 227 candidates who were thus proposed to be recruited, the Board recommended a panel of 144 candidates. Subsequently, because of the decision of the Govt. the anticipated 170 vacancies of Asi did not come into existence. Out of the earlier 57 posts, 9 were offered to the wards of the deceased Police Officers and the remaining 48 posts were offered to the candidates recommended by the Board in order of merit determined by the said Board. The remaining candidates filed a petition u/ Art. 226 of the Constitution of India before the High Court, as they were not appointed as A.S.Is. The said petition was dismissed by the single Judge. The L.P.A. also failed. The case came up, by way of Slp, to the Supreme Court. The Supreme Court, while dismissing the appeal, observed :

"THE Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission, the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus the Government is made answerable to the House for any departure vide Article 323 of the Constitution. This, however, does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz, bad conduct or character. The

Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. We are supported in our view by the two earlier decisions of this Court in A.N. D'silva Vs. Union of India (UOI), and The State of Haryana Vs. Subash Chander Marwaha and Others, . The contention of Mr. Anthony to the contrary cannot be accepted."

(11) From the aforesaid observations of Supreme Court, it would, Therefore follow that if the vacancies are to be filled by the respondent then they can be filled only by strictly adhering to the order of merit contained in the panel prepared by the Selection Committee. The respondent cannot, while making appointments, omit the outside candidates and appoint departmental candidates who are lower down in the merit list. It was open to the Authority not to fill more than a certain number of vacancies and to amend the rules and thereafter fill up the remaining vacancies." But if the Authority chooses to fill up vacancies then the appointments have to be made strictly in the order of merit as recommended by the Selection Committee. It is evident that in the instant case the respondent did not disregard the recommendation of the Selection Committee. 60 appointment letters were issued and 23 were under dispatch. It is clear, Therefore, that the recommendations of the Selection Committee were in fact accepted. The subsequent decision to fill up vacancies only from amongst the departmental candidates, irrespective of their position in the merit list, cannot be justified. Petition allowed.