

(1992) 05 DEL CK 0041

In the Delhi High Court

Case No : Civil Writ Petition No. 2670 of 1987

J.N. Verma and Another

APPELLANT

Vs

Hon"ble Chief Justice Delhi High Court and Another

RESPONDENT

Date of Decision : 19-05-1992

Acts Referred:

Delhi High Court Establishment (Appointment and Conditions of Services) Rules, 1972
— Rule 7

Citation : (1993) ILR Delhi 598 : (1993) LabIC 14

Hon'ble Judges : Sunanda Bhandare, J;Chander Mohan Nayar, J

Bench : Division Bench

Advocate : V.P. Singh, R.K. Saini, S.K. Mishra and S.K. Dubey, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) The petitioners are employees of "his Court. Petitioner No. 1 at the relevant time was working in :he post of Assistant and petitioner No. 2 as Senior Stenographer. The service of the petitioners is governed tinder the Delhi High Court Establishment (Appointment and Conditions of Service) Rules 1972 (hereinafter referred to as the Rules). Items 4 and 5 of Schedule Ii read with Rule 7 of the Rules provide for appointment to the posts of Superintendent and Court Master. The extracts of the said rule at the relevant time read thus:

S.Category of Minimum qualification Mode of appointment No. past prescribed for appointment to the post 1. Xx X 2. X X X 3. X. X X 4. Superintendent 5 years service in any (a) 25% of the vacant (Promotion/ of the posts of categories posts by promotion on Selection Post) 9, 10, 11, 13, 14 and 16 the basis of sincearity of Class Iii mentioned cum-suitability from is Schedule I joint seniority list of categories 9,10,11,13, 14 and 16 of Class Iii mentioned in Schedule 1. 1 2 3 4 (b) 75 ?/, of the vacant posts by selection on merits from categories 9,10,11, 13, 14 & 16 of Class Iii mentioned in Schedule I, on the basis of written test and interview. 5. Court Master (a) For members of the (a) 25 ?/o of the vacant (Promotion/ Establishment of this post by promotion on Selection Post) Court 5

years service the basis of seniority- in any of the categories cum suitability from 9, 10, 11, 13, 14 & 16 joint seniority list Class Iii mentioned in of categories 9,10,11, Schedule 1. 13, 14 and 16 of Class Iii mentioned in Schedule 1. (b) (i) For members of (b) (i) 75 % of vacant the Establishment of this posts by selection on Courts and/or courts merit from categories subordinate to this specified in column 3 Court 5 years service on the basis of written in any of the posts of test and interview. categories 9,10,11,13 14 & 16 of Class Iii mentioned in Schedule I and/or in a post of Assistant, Head Copyist, Branch in charge, Criminal Agency and/or Librarian in the courts subordinate to this Court. (b) (ii) For direct recruits (b) (ii) By direct Graduate recruitment on the basis of written test and interview.

(2) The High Court has been making appointments to the post of Superintendent /Court Master both by way of promotion as well as by selection as provided under the said rule and for that purpose has also been holding tests for selecting candidates. Some such tests were held in the year 1972, 1974 and 1983. The respondent issued a Circular on 27th September, 1985 for holding a test for the purpose of selection of candidates for appointment to the post of Superintendent/Court Master and invited applications from eligible candidates desiring to take the test. In response to the said Circular, the petitioners being eligible to take the test, applied. The test was held and the petitioners and some others qualified in the written test. Interviews were held by the Selection Committee appointed by the Chief Justice and 12 candidates including the petitioners qualified. A list of these 12 candidates was laid before the Chief Justice "for his approval. The Chief Justice approved the list and thereafter the first three candidates from the said list were appointed to the post of Superintendent /Court Master against three leave vacancies which were available at that time vide order dated 28-11-1985. Thereafter the petitioners made a request that they be also appointed as Superintendent/Court Master against the vacancies arising from time to time. A joint representation was filed on 30-11-1985 to that effect. It was submitted in the representation that four more appointments were still required to be made from the selected candidates before the posts could be filled in by way of promotion because under the Rules 25 per cent of the vacancies were to be filled by promotion and 75 per cent of the vacancies by selection. Since there was no response to the said representation, the petitioners again made a representation on 16-4-1986 because by then some more leave vacancies had arisen. A similar representation was also made on 3-6-1986. No decision was taken for a long time on these representations nor were any of the representation its appointed till 20-8-1987, when they were informed that their joint representations were considered and rejected by the Chief Justice. The petitioners feeling aggrieved again filed , another representation on 26-8-1987 which was also rejected vide office memo dated 7-9-1987, however before that on 20th August, 1987 the respondent issued another circular for holding fresh test on 10th October, 1987. The petitioners, Therefore, filed the present writ petition under Article 226 of the Constitution of

India praying for a writ of mandamus directing the respondents I to appoint the petitioners to the post of Superintendent /Court Master and restrain the respondents from making any appointment to the post of Superintendent/Court Master by promotion till at least four candidates out of the list are appointed and further for a direction that the respondents be restrained from holding any further examination for making selection for appointment to these posts.

(3) During the pendency of "he writ petition in March, 1938 the relevant Rule 7 was amended and the position was reversed. Under the amended Rules, 75 per cent of the vacancies were to be filled in by promotion on the basis of seniority-cum-suit-ability and only 25 per cent of the vacancies were to be filled in by selection by merit on the basis of written test and interview from "he eligible categories. The petitioners ,Therefore, amended the writ petition praying that at least those vacancies which were available before the amendment of the Rules should be filled in. from the selected candidates.

(4) I" was contended by the learned counsel for the petitioners that under the Rules as applicable at the relevant time "5 per cent of the posts of Superintendent/Court Master had to be filled by selection on merit from categories specified in column 3and 25 per cent of the vacant posts had to" be filled by promotion on the basis of seniority-cum-suitability from the joint seniority list of categories 9. 10. 11, 13, 14 and 16 of Class Iii mentioned. in Schedule 1. There is also a provision for appointment to the post of Court Master by direct recruitment to the post of Court Master by direct recruitment. However, no such direct recruitment was ever made. Learned counsel submitted that when selection were made in the year 1972, 1974 and 1983 all the persons who were placed" in the panel were appointed as and when vacancies arose. However, only this time though the election Committee had prepared a list of 12 candidates ,after appointing "he first three candidates, the respondent did not appoint the other candidates from the panel despites the "fact that vacancies were available. Learned counsel submitted, "hat once the persons were put on the panel or select list a right accrued to them for being appointed as soon as a vacancy arose. Learned counsel submitted that once a person is declared successful after appearing in written examination and interview and his name is put in the merit list of selected candidates be is the qualified person for appointment to the post and can be appointed at any time as and when the vacancy arises. Learned counsel submitted that the reception of the representations and refusal to make appointments from the panel has resulted in violation of petitioners fundamental right guaranteed to them under Articles 14, 16 and 21 of the Constitution of India. Learned counsel submitted that it was unnecessary to hold" fresh test when the selected persons were available. It was pointless to subject the petitioners to go through the same exercise once again because they had already qualified and selected by the Selection Committee.

(5) The respondents have filed a counter affidavit. Learned council for the respondents did" not dispute that the petitioners and 10 others were the

successful candidates in the test held on 26-10-1985. It was submitted that "there were 24 posts of Superintendent (23 Permanent and 1 Temporary) and 30 permanent posts of Court Master which includes three posts of Interpreters converted as Court Masters on the category strength of Delhi High Court at the relevant time. In August 1985, five vacancies became available. Since at the relevant time 25 per cent of the vacancies had to be filled in by seniority, two posts of Court Master were filled against the quota by order of the Chief Justice dated 5-9-1985 and for filling up the remaining posts against 75 per cent vacancies, a Committee of three Judges was appointed by the Chief Justice. A test was held of the eligible candidates on 26-10-1985 and interview was held of the successful candidates by the Committee on 21-11-1985. On the basis of marks obtained by the candidates in the written test and interview the Committee declared the following 12 candidates arranged in the order of merit, qualified :

1. Shri Govind Ballabh
2. Shri V. K. Seth
3. Shri Shiv Kumar
4. Shri Gopal Krishan Sharma
5. Shri J. N. Verma
6. Shri S. R. Sharma
7. Shri Bal Krishan
8. Shri A. K. Khanna
9. Shri O. P. Sharma
10. Shri Faquir Chand
11. Shri R. K. Jain
12. Shri P. L. Karwal

The Chief Justice on 22-11-1985 approved the list and on 26-11-1985 first three persons were appointed as officiating Superintendent/Court Master against available three vacancies. The following vacancies occurred subsequently for the period of one year from 22-11-1985 to 21-11-1986 and during the next six months i.e. from 22-11-1986 to 21-5-1987:

- (i) Deputation vacancy of Sh. Govind Ballabh, Offg, Court Master w.e.f. 8-1-1986
- (ii) Deputation vacancy of Shri R.N. (Librarian's post is technical Madan, Librarian w.e.f. 8-1-1986. one in its nature". Sh. Kashmir Singh, Assistant working in the Library has been appointed on ad hoc basis)
- (iii) Leave vacancy of Sh. B.K. Wadhwa, Supdt. from 5-4-86 to 31-8-86
- (i.) Deputation vacancy of Sh C.B. Selected test candidate namely Aggarwal. Court Master from 27-1-86 Sh.

V.K. Seth earlier Offg, to 31-5-86. He retired on 31-8-86 against the deputation vacancy of Sh. P. K. Sharma, Supdt. was regularly absorbed against the vacancy of Sh. C.B. Aggarwal w.e.f. 9-11-1986. (v) Sh. M.S. Sharma" Court Master took Sh. M.S. Sharma, Court leave for the following period: Master proceeded on short E.L. 10-3-86 to 21-3-86 periods of leave in the year 21-3-86 to 27-5-86 Commuted Leave 1986. However, he took long leave only in the year 1987. El 12-11-86 to 28-11-85 El IC-2-87 to 30-5-87 El 1 1-6-87 to 3-7-87 (vi) Vacancy of Court Master on account of appointment of Shri R.N. Prabhakar, Court Master as Offg., Assistant Registrar w.e.f. 14-8-86 (vii) Sh. J.L. Bhambri, Supdt., retired from service w.e.f. 31-3-1987

However since there had been no orders for keeping a panel, the candidates in the list could not be appointed. The file was put up by the office before the Chief Justice on 7-12-1985 whereon the then Chief Justice passed orders, on 21-12-1985 "Place it before my successor". Against the matter was put up by the office on 9-1-1986 and the Registrar made a noting on 30-1-1986 "H.C. J. has desired that this case be put up after sometime." Again, another representation was made by the effected candidates which was placed before the Chief Justice on 3-4-1986 and the Registrar conveyed on 20-5-1986 as follows:

"H.C.J.has desired to put up the latest position regarding vacancy in the cadre of Superintendents on permanent I temporary basis and on account of deputation."

THE complete vacancy position as desired was put up by the office and the Registrar ordered that the file be put up before the Chief Justice after vacation. Once again another representation was received on 3-6-1986 and the file was put up before the then Chief Justice and on 16-8-1986 once again the Chief Justice observed "Place before my successor." The file was again put up before the Chief Justice on 24-10-1986 and on 6-8-1987 the following order was passed by the Chief Justice.

THE duration of a panel is stated in Rule 12 contained in appendix 29 in Chaudhry's Compilation of the Civil Service Regulations, Volume Iii, 13th Edition at page 557. The rule reads as follows :

"THE panel drawn by D.P.C. 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 of one year whichever is earlier."

I think ,this is a salutary rule, and can see no reason for not following it. As more than 18 months have passed" since the panel in this case was prepared, it cannot be allowed to continue.

Consequently, direct that steps be taken for holding a competitive departmental examination as early as possible.

IT follows from the decision I have taken that I cannot accede to the representations dated 14th Mach. 1986 and 3rd June, 1986 made by Mr. O. P. Sharma and others and hence, they are rejected".

(6) Learned counsel for the respondents submitted that there cannot be automatic empanelment and that though the Selection Committee had prepared a list of successful candidates, in fact there was no panel. thus, on the appointment of first three persons on the list, the list came automatically to an end. In order to have a panel there has to be a specific order by the Chief Justice. In fact, for this reason the file was put up" before the Chief Justice for directions whether a panel should be prepared. It is for the Chief Justice to feel the administrative necessity to have the panel and if he had not taken the decision it cannot be presumed that he had ordered a panel. Learned counsel submitted that undoubtedly if there was a panel prepared, the persons on the panel would be entitled to be appointed as and when the vacancy arose at least during the life of the panel. Learned counsel submitted that in any event after the amendment of Rule 7, none of the petitioners and similarly placed persons are entitled to be appointed. Learned counsel submitted that the approval granted by the Chief Justice was for the result and not for the select list.

(7) In rejoinder, learned counsel for the petitioners contended that the word "panel" is not sacrosanct. The words "select list" and "panel" are one. and the same and once the Chief Justice had approved the list there was no" question of Further orders to be given regarding empanelment of the persons. He further submitted that there is no question of giving retrospective effect to the amended Rule and the panel did not expire at any time because there is no such rule which states that the panel would be valid only for a particular number of days and thus even after the amendment if the vacancy arose the selected candidates had a right to be appointed in those vacancies. Learned counsel relied on Prem Prakash Vs. Union of India (UOI) and Others, , unreported judgment of the Supreme Court (2) in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, . Union of India (UOI) Vs. Mohan Lal Capoor and Others, . and D.K. Trivedi and Sons and Others Vs. State of Gujarat and Others, .

(8) Thus, the first question for consideration before us is whether there was a panel prepared of the selected candidates for appointment to the posts of Superintendent/Court Master from the quota of 75 per cent to be appointed by selection.

(9) The respondents produced the file in court and we have had the occasion to look at it. Undoubtedly after the Selection Committee declared the list of selected candidates, the Registrar met and again sought directions from the different Chief justices regarding preparation of the panel of these candidates but no decision came to be taken for a very long time. Rather right from 22-11-1985, i.e. the date of declaration of the result till 6-8-1987 the position remained in efflux .Neither the petitioners nor the representations similarly placed were appointed nor any appointments were made on the basis of promotion in the vacancies that had arisen during this period. the Chief Justice on 6-8-1987 relied on the observations contained in Chaudhry's compilation of the Civil Service Regulations. Volume Iii, 13th Edition at page 557 and observed that the rule

which provides that a panel be drawn up by a Dpc would normally be valid for one year and in -any case should cease to be in force on the expiry of period of one year and six months or when a fresh panel is prepared, whichever is earlier is a salutary rule. The Chief Justice Therefore observed that since more than 18 months had passed after the panel in this case was prepared, it cannot be allowed to continue and accordingly directed that steps be taken for holding fresh competitive departmental examination as early as possible and consequently rejected the representations made by the candidates in the list. Thus. the Chief Justice considered the representation of the petitioners for appointment on the basis that there was a select list or panel prepared.

(10) Learned counsel "for the respondents submitted that due to some mistake or misreading of the record for the first time in a note prepared by the Register for consideration of the Chief Justice, the list of candidates prepared on 21-11-1985 was referred to as the select list. and, Therefore, the Chief Justice also examined the matter in that light and came to the conclusion that as more than 18 months have passed, the panel cannot be allowed to continue.

(11) We find this Explanation given by the learned counsel for the respondents rather unconvincing because when the Chief Justice considered the representations, the whole file was placed before the Chief Justice and he must have taken into consideration all the aspects of the matter. In fact, in the past when examinations were held and candidates selected for appointment to the post, there was a panel prepared. In 1983. 29 persons were put on the panel and as and when the vacancy arose the persons from the panel were appointed. Thus, as per the prevalent practice a panel had to be prepared. Now admittedly when the circular was issued, the number of vacancies available at that time were not specified and, Therefore, the Selection Committee prepared a list of all the successful candidates. If the circular had been issued for selection of candidates in the specified available vacancies only as many number of persons to be appointed in the available vacancies would be selected. As would be seen from the facts narrated above even the first three candidates were appointed in the leave vacancy available at that time and were not in the regular vacancy available at that time and were not in the regular have a panel ready in order that the vacancies could be filled in expeditiously. In the very nature of things it is not practical to hold written examination and interview every time a vacancy arises and, Therefore, a panel is prepared. The Chief Justice on 11-9-1985 made the following noting :

"IT is known sufficiently well in advance what posts are to fall vacant. They fall vacant normally either on the retirement of some officials or when the official goes on deputation or on leave for not less than a month. In either case the office is fully aware when the vacancy is to fall vacant. I feel that in such cases it is the normal expectation of the staff that such vacancies would be filled up. The office should start processing .such cases and see that such posts should not be kept vacant for more than a couple of days. In cases of leave vacancies for a

period of not less than a month proposal for leave arrangement should be simultaneously put up for orders. I would Therefore suggest that steps should be taken to immediately fill up all the vacancies which are at present lying vacant."

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 arise. 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 a "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 a Selection Committee to select candidates without specifying the number and furthermore 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 , 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.

(12) The next question for consideration is whether these persons on the panel are entitled to be appointed now despite the fact that the rule has been amended and now only 25per cent of the posts have to be filled in by selection.

(13) 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 lo appoint him even if the number of vacancies undergoes a change after his name is include 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 13 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 a promoted . 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 empanelled lost their right to be appointed because as per the amended rule, 75 per cent 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 others persons on the panel were entitled to be a promoted in He vacancies which arose before the amendment of the rule while the panel was still alive, i.e., within 18 moths of the empanelment.

(14) Learned counsel for the petitioners submitted that the respondents now propose to amend the rule once again and restore the original quota but in their case the appointments were deliberately delayed because the respondents wanted to give benefit to 3. few persons as per the amended rule. Undoubtedly, the delay ought to have been avoided but we. find no force in the contention that it was done mala fide. However, . we are constrained to note that the long delay in taking the decision in going to result in reversion of some persons who were promoted as per the new rule during the pendency of the writ petition in vacancies that should have been filled in before the amendment of Rule 7 and while the panel was alive. fortunately, the number may not be large and in any invent the respondents have made only ad hoc appointments. 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.

(15) Tie writ petition is allowed to the extent indicated hereinabove .There will be no order as to costs.