

(2004) 10 DEL CK 0003

In the Delhi High Court

Case No : CW 390 of 1991

Shri Santosh Kumar

APPELLANT

Vs

Rajya Sabha Secretariat and Another

RESPONDENT

Date of Decision : 15-10-2004

Acts Referred:

Citation : (2004) 115 DLT 165 : (2006) 1 SLJ 377

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : N.S. Dalal, for the Appellant; J.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner was not appointed to the post of Senior Assistant in Rajya Sabha Secretariat after he was placed on merit list prepared pursuant to an advertisement given in May, 1988 which is impugned by him in this petition. Validity of merit list was extended from time to time up to 30th June, 1991. He says that no new merit list could be made even after expiry of the validity of select list till all the persons in the merit list had been appointment to the posts of senior Assistant in the Secretariat of Rajya Sabha.

2. Brief relevant facts are that the applications were invited in May 1988 for the posts of Senior Assistant in the Rajya Sabha Secretariat for preparing a panel for vacancies. At that time approximate vacancies were 10 (4 reserved for SC and 2 for ST).

The petitioner applied pursuant to said advertisement and he was interviewed. Two merit lists of 31 candidates had been prepared which included the name of the petitioner also. The case of the petitioner is that in July 1990 his police verification was done. Thereafter he received a letter dated May 15, 1991, to contact the office of respondent no.1 up to May 27, 1991. Petitioner contacted the office of respondent no.1 on May 23, 1991 and he was asked to undergo a medical examination. Petitioner underwent a medical examination and a

provisional medical certificate issued to him was handed over by him to the office of respondent no.1. The petitioner contends that thereafter he waited for his appointment but he was not appointed. However, later on he saw an advertisement dated November 23rd, 1991 inviting applications for 30 post of Senior Assistants in Lok Sabha and Rajya Sabha Secretariats. The petitioner, Therefore, challenged the action of the respondents in inviting fresh applications for the post of Senior Assistant without exhausting the merit lists wholly and filed the present writ petition alleging that after having been empanelled after completion of formalities like interview, police verification and medical examination, he has acquired a right to be appointed to the post of Senior Assistant in Rajya Sabha Secretariat. The petitioner has sought quashing of advertisement dated November 23rd, 1991 and has also prayed for a writ of mandamus seeking direction to respondent no.1 to give appointment to the petitioner to the post of Senior Assistant in Rajya Sabha Secretariat.

3. The respondents have contested the petition and have contended that advertisement for preparation of a select panel for the posts of Senior Assistant was given in May 1988. The advertisement stipulated for preparation of a panel for future vacancies as the exact number of vacancies were not known at that time and in the advertisement approximate number of vacancies were given. The relevant portion of the advertisement given in May, 1988 is as under:

??Applications are invited for the post of Senior Assistants in the Rajya Sabha Secretariat, for preparing a panel for future vacancies. The approximate number of vacancies as at present is 10 (4 are reserved for SC and 2 for ST subject to availability of suitable candidates).??

4. The respondents contended that on the basis of recruitment examination held on 12th, 13th and 14th October, 1988 and subsequent interview held on 27th, 28th, 29th and 30th March 1989, two merit lists were prepared. Merit list of general category candidates contained 23 candidates who had secured 50% and above marks in the written test as well as in the interview. Another merit list for SC/ST candidates was prepared which had the names of those SC/ST candidate who had secured 40% and above marks in the written test and interview. It was further contended that initially the number of vacancies which were proposed to be filled were 10 only and the number of persons placed in the two merit lists of general candidates and SC/ST candidates were 23 and 9 respectively and they were in order of merit. It was categorically stipulated in the counter affidavit that larger merit lists were drawn just to cover up the drop out so that all the vacancies could be filled up and other vacancies which could have arise during the validity of merit lists.

5. The respondents contended that merit lists framed on May 15th, 1989 were valid, initially for a period of one year, i.e., up to May 14th, 1990. During this period, 7 candidates at Serial nos. 1 to 4, 7 and 9 and 22 (SC) of merit list for general category candidates were appointed. It is the case of the respondents that since all the vacancies advertised and which arose thereafter could not be

filled up, the validity of two merit lists was extended for a further period of one year, i.e., up to May 3, 1991. During this period, one more candidate at Serial number 11 of the merit list of general category candidates and one candidate at Serial no.1 from select list/merit list of SC/ST candidates were appointed. The contention of the respondents is that since some of the vacancies advertised had remained unfilled, the validity of merit lists were extended till June 30th, 1991. During the validity of the merit lists 10 persons from the merit list for general category candidates and one person from the merit list for SC/ST candidates were appointed. The petitioner could not be appointed as the vacancies which were available during the validity of the merit lists had been filled up by persons higher to petitioner in the merit list and no vacancy remained. In the general category candidates up to Serial number 13 were appointed whereas the petitioner was at Serial number 18. Since no more vacancies had arisen during the validity of merit lists the petitioner could not be appointed.

6. The respondents further contended that the advertisement in November 1991 was for 30 vacancies for the post of Senior Assistants in Lok Sabha and Rajya Sabha and not for earlier vacancies which had arisen during the validity of merit lists prepared in 1989. The relevant portion of advertisement of 23rd November 1991 whose quashing has been sought by the petitioner is as under:

""Applications are invited for the posts of Senior Assistant in Lok Sabha and Rajya Sabha Secretariats. Number of vacancies - 30 (6 reserved for SC and 4 for ST candidates).""

7. The respondents categorically contended that no legal right vests with the petitioner for appointment to the post on account of his placement in the merit list. As all the vacancies during the validity of merit lists were filled without the petitioner getting appointment according to his seniority in the merit list, Therefore, petitioner could not be appointed and the petitioner can not claim any right for appointment to the post of Senior Assistant in the facts and circumstances. The respondents contended that formalities of police verification and medical examination of candidates were completed not only in respect of petitioner but all the candidates of both the merit lists so that any vacancy which would have arisen during the validity of the merit lists could be filled.

8. The question which needs determination in the circumstances is whether the petitioner gets an indefeasible right to be appointed to the post of Senior Assistant in Rajya Sabha Secretariat on account of his name being in the merit list prepared by the respondents. The argument of the learned counsel for the petitioner is that pursuant to advertisement in 1988, the merit lists were made for future vacancies, Therefore, till all the persons on the merit lists could be appointed, the validity of merit list would have continued.

9. Reliance has been placed by the petitioner on judgment, Prem Prakash Vs. Union of India (UOI) and Others, . In this matter two candidates selected for appointment in judicial service against the vacancies reserved for SC and ST in

1980 were refused appointment for the reason that two candidates who had been wrongly excluded from the reserved appointments of 1979 had to be accommodated in the merit list of 1980 and that as per the quota fixed on the basis of qualified candidates for the general seats, vacancies in reserved category were not available. It was held that justice to one group at the expense of injustice to another is perpetuation of injustice in some form or the other. It was held that availability of vacancies for the reserved category could not be made to depend upon the accidental circumstances of how many candidates had qualified for general seats and which were intended to be filled at any particular point of time. In the circumstances relying on a notification D/-8-2-1982 of the Ministry of home affairs, it was held that there should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. The facts of petitioner are clearly distinguishable. The vacancies which had arisen during the validity merit list had been filled from the candidates according to their seniority from the merit lists. This is not the case of the petitioner that thirty vacancies for senior assistants in Lok Sabha and Rajya Sabha for which advertisement was given on 23rd November, 1991 had arisen during the validity of merit lists whose validity was extended from time to time till 30th June, 1991. The petition filed by the petitioner does not have such a plea that the 30 combined vacancies of Lok Sabha and Rajya Sabha advertised on 23rd November, 1991 had arisen during the validity of the earlier merit lists prepared in 1989 for future vacancies.

10. Reliance has also been placed on *Sushil Kumar Vs. State of Haryana and another* ; 2003 (5) SLR 455. In this case, the candidate was selected but was placed under waiting list and the appointment letter was issued only for 32 posts. Later vacancies for the same post had arisen within six months and in the circumstances the Hon'ble Supreme Court held that vacancies were required to be filled up from waiting list maintained from earlier select list and the petitioner was held entitled for consideration for appointment to the said post. In the case of petitioner, the validity of merit list was extended from time to time till 30th June, 1991 and the vacancies were filled from the merit list. Petitioners and some persons above him in the merit could not be appointed as no vacancies were available till 30th June, 1991 when the validity of merit list expired and I was not extended further. The petitioner's plea that no future vacancies could be advertised till the petitioner and other persons from the earlier merit lists, whose validity was extended from time to time up till 30th June, 1991, could be appointed, can not be inferred on the ratio of case of *Sushil Kumar* (supra).

11. Reliance has also been placed by the petitioner on, *Harjit Kaur (Smt.) and others Vs. State of Haryana and others*; 1998 (1) SLR 198. In this case the Board had not forwarded the entire select list to the department and re-advertised the vacant posts and did not fill them from the select list. The petitioners in this case had contended that although they fulfilled the conditions of eligibility and vacant posts continue to remain available with the respondents in different districts and they had not been appointed by the department with

ulterior motives. The petitioners, who were in the select list, claimed a legal as well as a constitutional right to be appointed against the vacant posts which remained unfilled due to the failure of the respondents to offer appointments to the candidates of their category or which remained unfilled due to non-joining of selected candidates who were offered appointment. The ratio of this case is, however, of no assistance to the petitioner. In the present case no vacancy remained unfilled and the petitioner and some more persons above him in the merit list were not appointed. In order to fill up the vacancies, the validity of the merit list was extended from time to time till 30th June, 1991. By that time all the vacancies which had arisen during the validity of the merit list had been filled and the petitioners and some other persons in the merit lists could not be appointed. The ratio of this case also does not support the plea of the petitioner.

12. The petitioner has also placed reliance on, N.M. Siddiki Vs. Union of India; 1978 (1) All ISLJ 576. It was observed in this case that inclusion of name of the employee in the panel for promotion, gives a limited right to the person concerned. It was further held that facts subsequent to the formation of panel, may also render such a person unfit for promotion though he was included in the panel for promotion. The ratio of this case also does not support the plea of the petitioner that he is entitled for appointment once his name was included in the merit list.

13. The respondent to support their plea that after expiry of validity of the merit list on 30th June, 1991 the petitioner was not entitled for appointment on the basis of merit lists prepared in 1989, have relied on M.P. Electricity Board, through the Chief Engineer, M.P.E.B. and another Vs. Virendra Kumar Sharma, 2002 (2) SLR 324. In this matter, out of a panel of 38 selected persons only 22 persons were appointed. The persons who remained without appointment, filed a writ petition in the High Court. The High Court took the view that in absence of any statutory rule requiring waiting list to lapse beyond a prescribed limit, the action of the Electricity Board was arbitrary and gave a direction to consider the cases of the persons on the select list for appointment. In appeal the Hon'ble Supreme Court held that any scheme for selection depends upon the terms on which selections are made. Since in that case scheme provided for the panel to be valid during current year, for a particular period only, Therefore, after that period the list would lapse and fresh panel had to be prepared. It was observed,

""5.----- Moreover, the validity/currency of panel was for a particular period, that is a salutary principle, behind that rule so that after the selections are made and appointments to be made may take long time, it is possible that new candidates may have become available who are better or more qualified than those selected, and if they are appointed, it would be in the best interest of the institution. Hence, there was no justification for the High Court to interfere in the matter and directed appointments of the respondent. The order made by the High Court is set aside and writ petition filed by the respondent shall stand dismissed. The appeal is allowed accordingly.""

14. In the present case two merit lists were prepared on 15th May,1989 which were valid for a period of one year up to 14th May,1989. During this period of one year 7 persons at Serial No. 1 to 4, 7 and 9 and 22 (sc) of the merit list for general category were appointed and seven vacancies were filled. As all the vacancies advertised could not be filled the validity of two merit lists was extended for a further period of one year i.e up to 31st May,1991. During this period one more person at Sl.No.11 of the merit list of general category candidate and one candidate at Sl. No.1 of the merit list of SC/ST were given appointment. Since some of the vacancies remained unfilled, the two merit lists were extended up to 30th June,1991. By 30th June,1991 10 persons from the merit list of general category and one 1 person from merit list of SC/ST were appointed and thus all the vacancies were filled. The turn of the petitioner did not reach since the available vacancies were filled from the persons who were above petitioner in the select list. The petitioner was at Sl.no. 18 whereas the vacancies were filled up till Sl no. 13 from the merit list of general candidates.

15. The respondents have also placed reliance on Vinodan T. and Others Vs. University of Calicut and Others, holding that panel of selected candidates can not be scrapped during the period of its validity except for well founded reasons. The respondents contends that the persons in the select list can not claim an absolute right to appointment. A select list can be scrapped even during the period of validity for well founded reasons, however, in the present case the appointments were made during the validity of the select list and its period of validity was extended from time to time and the vacancies which had arisen had been exhausted. The petitioner could not claim that the validity of the select list should have been extended till the availability of vacancy for his appointment. Reliance can also be placed on Shankarsan Dash Vs. Union of India, to contend that the candidate in the select list/merit list has no indefeasible right to appointment. The Supreme Court had held that even if a number of vacancies are notified for appointment and adequate number of candidate are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. It was further held that 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. Reliance can also be placed on 1984 (1) SLJ 628 ALL IND ; S.C Anand Vs Union of India to contend that since no vacancy was available during the life span of the select list for the appointment of the petitioner, he is not entitled to appointment to the post of Senior Assistant in Lok Sabha and Rajya Sabha for which another advertisement dated 23rd November,1991 was given subsequently. In the case of S.C.Anand (Supra) it was observed, ""26. The principal argument raised by the petitioner is that no regular vacancy was available for the appointment of Balakrishnan during the life span of the panel. March,1979 vacancy, he said, was not a regular vacancy. Against February,1980 vacancy Balakrishnan could not be appointed because of life of he panel had expired. He contended that the normal life of the panel is 12 months and it would be unreasonable to extend it to a 18 months. He

referred me to N.Srinath Vs State of Mysore and Surender P. Gupta Vs D.E.SU. 27. Now the rule on the life of the panel is this. By O.M No. 1/25/65/Estt. (D) dated 11.10.1966 it was laid down that a select list drawn by the D.P.C should normally be operative only for one year and in any case it shall cease to be in force after 18 months or when the fresh list is prepared whichever is earlier. The effect of this circular is that every officer included in the panel who at the time of expiry of the validity of the earlier panel or at the time of the fresh D.P.C does not hold a regular promotion post needs to be reconsidered and every officer who holds such a post on these crucial dates need not be so considered by the D.P.C. When Balakrishnan was adjusted with effect from 30-5-1979 against March, 1979 vacancy the panel was still valid because beyond 12 months its life could be extended by another six months. This is the short answer to the petitioner's main contention. From the office order dated 30-3-1981 it is clear that he was given the deemed date of promotion with effect from 30-5-1979. For the period from 30-5-1979 to 28-7-1980 he was not to be paid the pay of grade I. This pay he was to draw with effect from 29-7-1980 only."''

16. The plea of the petitioner that once he was placed on the merit list whose validity was extended from time to time up till June 30, 1991, he acquired a right to be appointed and ought to have been appointed as Senior Assistant cannot be accepted on consideration of facts and circumstances of the case and relying on the cases cited by the parties. The number of vacancies given in the advertisement in 1988 were approximate which were 10 (4 for SC and 2 for ST, subject to availability of suitable candidates). Since the vacancies were approximate at that time, it was stated in the advertisement that the panel is being prepared for future vacancies. The merit lists, in the first instance, were valid up to May 14th, 1990, as two merit lists were framed on May 15, 1989 - one for general category and other for reserved categories. During the first year up till May 14, 1990, only 7 vacancies were filled up. As all the vacancies could not be filled up, the validity of merit lists were extended for one more year up till May 31, 1999, during which period one more person of the merit list of general category and one candidate at Sl.No.1 of the reserved category were given appointments. Since some of the vacancies remained unfilled, the validity of merit lists was further extended up to June 30th, 1991 and 10 persons from the merit list of general category and one person from the merit list of the reserved category were appointed. Though all the candidates from the merit lists could not be appointed as the number of vacancies were less, however, all the candidates from the merit lists had been asked to complete the formalities of police verification and medical examination. The police verification and medical examination of the candidates on the merit lists did not give the candidates any indefeasible right to appointment to the posts of Senior Assistant.

17. During the arguments, it has been contended on behalf of the petitioner that some of the vacancies for which the advertisement dated November 23rd, 1991, was given, had also arisen during the validity of two merit lists prepared on May 14, 1989 and which were valid up to 30th June, 1991. Perusal of the writ petition

makes it apparent that it is an after thought and the said plea can not be permitted. The respondents have also denied the same. The plea taken was that without exhausting the earlier merit lists, inviting fresh application for the post of Senior Assistant was arbitrary, illegal and discriminatory. The judgments relied on by the petitioner are also of no help to him. In the case of Sushil Kumar (supra), the vacancies which were not filled on the basis of the select list had arisen within six months and the candidates, in the said case, were also placed on the waiting list and, under such circumstances, the Hon'ble Supreme Court had directed for filling the vacancies from the candidates of the waiting list. Similarly the ratio of the case of Harjit Kaur (Smt.) and others (supra) is also of no assistance to the petitioner, as in that case the Board had not forwarded the entire select list, though the vacant posts continued to remain available and the eligible candidates were not appointed. The case of N.M. Siddiki (supra) relied on by the petitioner also laid down that inclusion of the name of the employee in the panel for promotion gives a limited right to the person concerned. The case of Prem Prakash (supra) was also in respect of the vacancies of SC and ST and for filling the vacancies which had arisen during the validity of the select lists and for such vacancies for reserved category which arise during the validity of the select list there should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. None of the cases relied on by petitioner, thus support his pleas.

18. The word "future" vacancies referred to those vacancies which would have arisen during the validity of the merit lists. The interpretation that future vacancies connotes and gives a right of appointment to the posts of senior Assistant to all the candidates who had been placed on merits lists, is also not born out from any of the authorities relied on by the petitioner nor it can be said that he acquired an indefeasible right to appointment to the post of senior assistant on being placed in the merit list prepared by the respondents. The validity of the merit lists was extended from time to time till June 30th , 1991 and the vacancies which had occurred till that time were filled, as approximate 10 vacancies were advertised in 1989, however, the vacancies which had arisen till June 30th, 1991, were more than 10 vacancies, which were filled from the candidates from the merit lists. The petitioner, did not have a right to get the validity of the merit lists extended till appointment of all the candidates on the merit lists as all the vacancies which had arisen during the validity of merit lists had been exhausted. The petitioner, in any case, has not pleaded that the validity of the merit lists ought to have been extended till all the candidates could be appointed from the merit lists. The petitioner does not have an indefeasible right to be appointed to the post on being placed in merit list. It has been held that a select list can even be scrapped during the period of validity for well founded reasons. If that be so, the petitioner cannot claim that he is entitled for appointment even though the vacancies had not remained and the validity of the merit lists had also expired. Taking it from any angle, the inference is inevitable that the petitioner who though was placed on the merit list, is not entitled for

appointment to the post of senior assistant as all the vacancies which had arisen, had been filled. Not only the petitioner but some other candidates above him in the merit lists were also not appointed to the post of Senior Assistant as no vacancies had remained during the validity of the merit lists.

19. In the circumstances, the petitioner is not entitled for issue of any appropriate writ order or direction for quashing the advertisement dated November 23rd, 1991 (Annexure C") nor he is entitled for any direction to respondent number one to appoint the petitioner to the post of Senior Assistant in the Rajya Sabha Secretariat.

20. The writ petition is without any merit and the same is dismissed. In the facts and circumstances, the parties are left to bear their own costs and the interim order passed in the writ petition is vacated.