
(2015) 10 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 2154 of 2013 (O and M)

Union of India

APPELLANT

Vs

Rajesh Sethi

RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Control of National Highways (Land and Traffic) Act, 2002 — Section 5

Citation : (2015) 4 SCT 730

Hon'ble Judges : Hemant Gupta, J;Sneh Prashar, J

Bench : Division Bench

Advocate : Satya Pal Jain, Additional Solicitor General of India and Deeraj Jain, for the Appellant; Rajbir Sehrawat, Advocates for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J—The present Letters Patent Appeal under Clause X of the Letters Patent is directed against an order dated 09.07.2013 passed by the learned Single Judge of this Court, whereby the writ petition filed by the respondent (hereinafter referred to as "the petitioner") was allowed for the reason that the denial of appointment to the writ petitioner as Presiding Officer of the National Highways Tribunal is arbitrary and unreasonable. Thus, a writ of mandamus was issued to offer appointment to the petitioner against the available vacancy without any further delay.

2. The facts leading to the present writ petition are that in terms of the "Control of National Highways (Land & Traffic) Act, 2002" (for short "the Act") the National Highways Tribunal was established under Section 5 of the aforesaid Act. In terms of the provisions of the said Act, the National Highways Tribunal (Procedure for Appointment as Presiding Officer of the Tribunal) Rules, 2003 (for short "the Rules") were framed. Such Rules contemplate appointment of the Presiding Officers on the basis of Selection Committee which is to be chaired by a Judge of the Supreme Court, as nominated by the Chief Justice of India.

3. Initially, an advertisement dated 09.08.2005 (Annexure P.3) was issued inviting applications for appointment of 7 Presiding Officers of the Tribunal, from the eligible persons. The petitioner was recommended for appointment, his name being second in the list. The candidate at Serial No. 1, named, Chaudhary Satish Kishan was appointed as Presiding Officer, National Highways Tribunal, Mumbai on 06.09.2007. The petitioner was not offered appointment. Such appointment procedure is not in question in these proceedings.

4. Another advertisement was issued on 21.06.2007 for appointment of 7 Presiding Officers of the National Highways Tribunal in which the petitioner had again applied. The name of the petitioner was recommended by the Selection Committee. The Government of India on 29.08.2008 sought consent of the petitioner for appointment at a place anywhere in India. The petitioner did convey his acceptance. The appointment was not made except in the case of Shri Gyan Chandra, who was appointed at National Highways Tribunal, Lucknow

5. The Cabinet Committee on appointments, approved the names of the said 4 candidates, including that of the petitioner vide communication dated 24.06.2009, but only Shri Gyan Chandra from the said list was appointed. The relevant extracts from the written statement would read as under:--

"11. That the Selection Committee, after conducting the interview, recommended the following names in the order, for appointment as Presiding Officers in the National Highways Tribunal and the respective place of their posting:--

12. That the ACC, vide their communication dated 24th June, 2009, approved the names of above four candidates, including the petitioner, for appointment as Presiding Officer of the respective National Highways Tribunals as recommended by the Selection Committee.

13. That as number of cases pending were very few and necessary facilities were only available in Lucknow, the Appointing Authority approved appointment of Shri Gyan Chandra at Lucknow only and accordingly Shri Gyan Chandra was appointed as Presiding Officer of the National Highways Tribunal at Lucknow with effect from 26.11.2009. Subsequently, on attaining the age of sixty two years, Shri Gyan Chandra has demitted the office of the Presiding Officer, NHT, Lucknow with effect from 30.11.2011 (AN).

14. That in anticipating retirement of Shri Gyan Chandra, the position against the post of Presiding Officer in National Highways Tribunal was considered and the Appointing Authority decided that the panel of names of the three candidates awaiting appointment as Presiding officers is quite old, hence the process of appointment of Presiding Officers of NH Tribunal be started afresh. Accordingly, for the purpose of drawing a fresh panel of 7 Officers of the National highways Tribunal, applications were invited vide the Ministry of Road Transport and Highways" letter No. NH-11014/20/2007-P&M dated the 07th April, 2011."

6. It is also averred that Shri Gyan Chandra was due to attain the age of

superannuation on 30.11.2011, therefore, an advertisement was issued on 07.04.2011 to initiate the process of appointment of the Presiding Officer in view of anticipated retirement of Shri Gyan Chandra. The petitioner thereafter sought appointment as a Presiding Officer of the National Highways Tribunal, by way of representation dated 11.7.2011 (Annexure P. 15), which has since been declined vide the order impugned in the writ petition. The petitioner also challenged the advertisement issued in the writ petition.

7. Shri Satya Pal Jain, learned Additional Solicitor General of India, appearing for the appellant, has vehemently argued that a candidate being in the select list has got no indefeasible right for appointment. The State for good and bona-fide reasons can deny appointment. Referring to para No. 13 of the written statement, it was pointed out that there was no infrastructure at any other place except Lucknow and that there are few cases.

8. During the course of arguments, Shri Jain, produced office memorandum dated 28.06.2015, whereby it was noticed that only 8 appeals were pending as on 01.04.2013; 7 appeals were filed between 01.04.2013 and 31.03.2014 before the National Highways Tribunal, Mumbai, and that total pendency at the National Highways Tribunal, Mumbai is 15. It is also pointed out that 15 appeals for National Highways Tribunal, Chandigarh and 01 appeal for National Highways Tribunal, Guwahati, have been filed recently, which are held up due to appointment of the Presiding Officer. The relevant extracts from the said note read as under:--

"2. As the number of cases pending had been very few and necessary facilities had only been available in Lucknow, the then Minister for Road Transport and Highways approved appointment of Shri Gyan Chandra at Lucknow only. Accordingly, Shri Gyan Chandra was appointed as PO of NHT, Lucknow with effect from 26.11.2009 and he was assigned additional charge of PO of all remaining NHTs. On attaining the age of sixty two years, Shri Gyan Chandra demitted the office of PO with effect from 30.11.2011 (AN). Anticipating the vacancy vice Shri Gyan Chandra, considering the position against the post of PO in NHTs, it was observed by the then Minister for Road and Highways that the panel of names of the three candidates awaiting appointment as PO was quite old and thus, it was decided to start the process of appointment of PO of NHTs afresh.

3. It may be further clarified that, consequent on sudden demise of late Vinay Srivastava, former PO, NHT, Lucknow, again considering the number of cases pending in various NHTs at that point of time, it was decided to advertise to fill up the post of PO in NHT, Mumbai and also to make a panel of candidates for appointment as PO in other NHTs as and when required. The details of pending cases in various NHTs are as follows:--

* In addition to the above, 15 Appeals for NHT Chandigarh and one Appeal for NHT, Guwahati are held up for registration in absence of PO/Registrar."

9. Thus, it is argued that there were good reasons not to appoint the petitioner

and that the learned Single Judge has erred in law in issuing directions to appoint the petitioner, more so when the writ petition was filed after the expiry of the validity period of the select list.

10. On the other hand, learned counsel for the respondent vehemently argued that though the appointment from the select list candidates can be withheld for bona-fide reasons, yet the reason recorded is not the reason that there is no work, but that the list is old. Since the statutory Rules contemplate that the select list is valid for two years, therefore, the Government cannot take a decision not to appoint the Presiding Officers from the select list merely for the reason that the list is old though it was valid for two years. The process of selection was initiated on 7.4.2011 i.e. within the validity of the first select list as such select list was valid till 23.06.2011.

11. The relevant Rule in respect of the validity of the select list, reads as under:--

"3. Method of appointment of Presiding Officer:

(1) to (5) xxx xxx

(6) The Central Government shall on the basis of recommendations of the Selection Committee make a list of persons selected for appointment as Presiding Officer and the said list be valid for a period of two years. The appointment of Presiding Officer shall be made from the list so prepared."

12. We have heard learned counsel for the parties and find that the present appeal deserves to be allowed.

13. The reasons not to give appointment to the petitioner, in the written statement, are three-fold.

14. The first reason is that the number of cases pending were few. Such fact was not explained in the written statement, but has now been substantiated with the communication dated 28.6.2015. In the absence of any case before the National Highways Tribunal, the Presiding Officer cannot be appointed to do nothing. It would be unnecessary expenditure on the exchequer.

15. The second reason is that necessary facilities were only available at the National Highways Tribunal, Lucknow. The said reason was to be taken into consideration before the posts were advertised, yet the fact remains that the provision of infrastructure is also dependent upon the workload. Since there was no work, therefore, the lack of infrastructure cannot be said to be unjustified for not appointing a Presiding Officer at those places.

16. The third reason which weighed with the learned Single Judge as well, is that the panel of names of three candidates awaiting appointment as Presiding Officers is quite old, hence the process of appointment was started afresh. It may be noticed that the appointment of the Presiding Officer is a time consuming process. The Presiding Officer of Lucknow Bench of the National Highways Tribunal was attaining the age of superannuation on 30.11.2011. Therefore, the

process was started in advance to fill up the vacancy. The validity of select panel would have come to an end by the time the recommendations in respect of appointment were to be finalized. Though one would agree that the reason recorded that the panel is quite old, is not proper keeping in view the status of the post and the manner of appointment, but only due to the inappropriate word used, the real reason of not appointing a Presiding Officer out of the select list, cannot be ignored. The name of the petitioner was approved for appointment on 24.06.2009 but only one candidate, namely, Shri Gyan Chandra was offered appointment and joined as such. The name of Gyan Chandra appears at Serial No. 2 of the list. The list prepared, admittedly, is not as per merit. The recommendations of the candidates for appointment are against the specific Tribunal. The name of the petitioner for appointment as Presiding Officer of the National Highways Tribunal, Chennai, appears at Serial No. 4. The validity of the list in terms of the Rule 3(6) of the Rules is two years i.e. upto 23.06.2011. There was not a single case pending before the National Highways Tribunal, Chennai in the year 2011 or even now in the year 2015. Thus, the reason for non appointment is that no case is pending before the Tribunal against which, the name of the petitioner was recommended for appointment. The consent sought from the petitioner to be posted anywhere in India was in view of the recommendations of the Selection Committee. Such consent enables the Appointing Authority to transfer a Presiding Officer to another Tribunal. But it does not create any right in his favour to seek appointment against any Tribunal.

17. Though some work stands generated in the year 2015, yet the petitioner who was recommended for appointment in the year 2009 cannot be appointed in respect of the Tribunal which has no case to decide even in the year 2015. The select list was valid for a period of two years and the validity of such selection list came to an end on 23.06.2011. The petitioner cannot be directed to be appointed in the year 2015 against a post out of a select list, the validity of which has come to an end.

18. We find that the attention of the learned Single Judge was not drawn to para No. 13 of the written statement that the number of cases pending were very few and that the facilities were not available at other places except Lucknow. The learned Single Judge noticed only one fact that the list is quite old. The Learned Single Judge referred to the judgments of the Hon'ble Supreme Court in *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, (1993) 2 JT 688 : (1993) 2 SCALE 545 : (1993) 2 SCC 573 ; *R.S. Mittal Vs. Union of India (UOI)*, (1995) 3 JT 417 : (1995) LabIC 1775 : (1995) 2 SCALE 433 : (1995) 2 SCC 230 Supp : (1995) 2 SLJ 177 ; *Shankarsan Dash Vs. Union of India*, AIR 1991 SC 1612 : (1991) 62 FLR 981 : (1991) 2 JT 380 : (1991) LabIC 1460 : (1992) 2 LLJ 18 : (1991) 1 SCALE 848 : (1991) 3 SCC 47 : (1991) 2 SCR 567 : (1991) 2 UJ 212 ; *Dir. S.C.T.I. for Med. Sci. and Tech. and Another Vs. M. Pushkaran*, AIR 2008 SC 559 : (2008) 1 CLT 106 : (2007) 13 JT 315 : (2007) 3 SCALE 424 : (2008) 1 SCC 448 : (2008) 1 SCC(L&S) 258 : (2007) 12 SCR 465 , *Surinder Kumar & Others v. State of H.P. & another*, 2009(8) SLR 667 ; *Food*

Corporation of India and Others Vs. Bhanu Lodh and Others, AIR 2005 SC 2775 : (2005) 3 ESC 297 : (2005) 105 FLR 1058 : (2005) 2 JT 562 : (2005) 3 SCC 618 : (2005) SCC(L&S) 433 : (2005) 2 SCR 350 : (2005) 2 SLJ 198 : (2005) 2 UJ 783 and Jitendra Kumar and Others Vs. State of Haryana and Another, (2007) 14 SCALE 125 : (2008) 2 SCC 161 : (2008) 1 SCC(L&S) 428 to grant directions for appointment but, we find that in the facts of the present case, such directions are not warranted. The judgments referred to are not applicable to the facts of the present case.

19. In Shankarsan's case (supra), the Constitution Bench of the Hon'ble Supreme Court has held that the successful candidates against the notified vacancies, do not acquire any indefeasible right for appointment. It was further held that though the State is under no legal duty to fill up any or all vacancies, yet it does not mean that the State has to act in an arbitrary manner. The decision to fill up or not to fill up any post has to be taken up for bona-fide and proper reasons. The Court observed as under:--

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. 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. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in The State of Haryana Vs. Subash Chander Marwaha and Others, AIR 1973 SC 2216 : (1974) LabIC 1212 : (1973) 2 LLJ 266 : (1974) 3 SCC 220 : (1974) 1 SCR 165 : (1973) 5 UJ 723 , Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others, AIR 1987 SC 169 : (1987) 54 FLR 652 : (1986) JT 445 : (1987) LabIC 34 : (1986) 2 SCALE 435 : (1986) 4 SCC 268 : (1986) 3 SCR 785 : (1987) 1 SLJ 195 : (1986) 2 UJ 739 , or Jatinder Kumar and Others Vs. State of Punjab and Others, AIR 1984 SC 1850 : (1984) 49 FLR 412 : (1984) 2 SCALE 513 : (1985) 1 SCC 122 : (1984) 2 SLJ 477 : (1985) 17 UJ 73 .

8.....In this background it was observed that it is, of course, open to the government not to fill up all the vacancies for a valid reason, but the selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancies and the availability of qualified candidates; and, there must be a conscious application of mind by the government and the High Court before the number of persons selected for appointment is restricted. The fact that it was not for the Public Service Commission to take a decision in this regard was

emphasised in this judgment. None of these decisions, therefore, supports the appellant."

20. In Asha Kaul's case (supra), the Hon'ble Supreme Court was considering the action of the Government in not approving the seven names while approving the first thirteen recommended by State Public service Commission. The Court held that it is misleading to assert that in the matter of selection and appointment the Government has an absolute power. Such an argument does violate the constitutional scheme. It was held that Rules do not confer an absolute power upon the Government to disapprove or cancel the select list sent by the Public Service Commission. Where, however, the Government is satisfied, after due enquiry that the selection has been vitiated either on account of violation of a fundamental procedural requirement or is vitiated by consideration of corruption, favouritism or nepotism, it can refuse to approve the select list. In this background, the Court held that there is an obligation on the part of the Government to act fairly. The whole exercise cannot be reduced to a farce. The Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. The Court held as under:--

"8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (The State of Haryana Vs. Subash Chander Marwaha and Others, AIR 1973 SC 2216 : (1974) LabIC 1212 : (1973) 2 LLJ 266 : (1974) 3 SCC 220 : (1974) 1 SCR 165 : (1973) 5 UJ 723 ; Mani Subrat Jain and Others Vs. State of Haryana and Others, AIR 1977 SC 276 : (1977) LabIC 52 : (1977) 1 SCC 486 : (1977) 2 SCR 361 : (1977) 9 UJ 89 ; State of Kerala Vs. Smt. A. Lakshmikutty and others, AIR 1987 SC 331 : (1986) JT 819 : (1986) 2 SCALE 773 : (1986) 4 SCC 632 : (1987) 1 SCR 136) but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category,--in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government--the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today....."

21. In State of U.P. and Others Vs. Rajkumar Sharma and Others, (2006) 109 FLR 286 : (2006) 3 JT 167 : (2006) 2 SCALE 785(1) : (2006) 3 SCC 330 : (2006) SCC(L&S) 565 : (2006) 3 SLJ 81 , the Supreme Court has held that mere inclusion of the name of a candidate in the select list does not confer any right of selection in his favour and that if denied offer of appointment, the candidate cannot allege hostile discrimination. It was held as under:--

"14. Selectees cannot claim the appointment as a matter of right. Mere inclusion

of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination. (See *Shankarsan Dash Vs. Union of India*, AIR 1991 SC 1612 : (1991) 62 FLR 981 : (1991) 2 JT 380 : (1991) LabIC 1460 : (1992) 2 LLJ 18 : (1991) 1 SCALE 848 : (1991) 3 SCC 47 : (1991) 2 SCR 567 : (1991) 2 UJ 212 ; *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, (1993) 2 JT 688 : (1993) 2 SCALE 545 : (1993) 2 SCC 573 ; *Union of India Vs. S.S. Uppal and another*, AIR 1996 SC 2340 : (1996) 1 JT 258 : (1996) 1 SCALE 266 : (1996) 2 SCC 168 : (1996) 1 SCR 230 : (1996) 1 UJ 393 ; *Hanuman Prasad and Others Vs. Union of India (UOI) and Another*, (1996) 7 AD 445 : (1996) 74 FLR 2517 : (1996) 8 JT 510 : (1996) 7 SCALE 270 : (1996) 10 SCC 742 : (1997) SCC(L&S) 364 : (1996) 5 SCR 599 Supp ; *Bihar Public Service Commission and another Vs. State of Bihar and others*, (1996) 9 AD 186 : AIR 1997 SC 2280 : (1997) 75 FLR 200 : (1996) 10 JT 579 : (1996) 8 SCALE 581 : (1997) 3 SCC 198 : (1996) 9 SCR 144 Supp : (1997) 1 UJ 211 : (1997) AIRSCW 2154 : (1996) 8 Supreme 809 ; *Syndicate Bank and others Vs. Shankar Paul and others*, AIR 1997 SC 3091 : (1997) 7 JT 155 : (1997) 2 LLJ 814 : (1997) 5 SCALE 313 : (1997) 6 SCC 584 : (1997) 2 UJ 487 : (1997) AIRSCW 3132 : (1997) 7 Supreme 60 ; *Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others*, (1997) 4 SCALE 263 : (1997) 1 SCALE 301 : (1997) 10 SCC 264 : (1997) SCC(L&S) 1265 : (1996) 10 SCR 175 Supp : (1997) 1 UJ 778 ; *Punjab SEB v. Seema*, 1999 SCC (L&S) 629 ; *All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc.*, AIR 2001 SC 1851 : (2001) 89 FLR 1051 : (2001) 5 JT 42 : (2001) LabIC 1726 : (2001) 3 SCALE 378 : (2001) 6 SCC 380 : (2001) 2 SCR 1183 : (2001) 3 SLJ 84 : (2001) AIRSCW 1720 : (2001) 3 Supreme 427 ; *Vinodan T. and Others Vs. University of Calicut and Others*, AIR 2002 SC 1885 : (2002) 94 FLR 72 : (2002) 1 JT 352 Supp : (2002) LabIC 1688 : (2002) 4 SCALE 165 : (2002) 4 SCC 726 : (2002) 3 SCR 530 : (2002) 2 SCT 1046 : (2002) 3 SLJ 116 : (2002) 2 UJ 784 : (2002) AIRSCW 2025 : (2002) 4 Supreme 60 ; *S. Renuka and Others Vs. State of Andhra Pradesh and Another*, AIR 2002 SC 1523 : (2002) 93 FLR 1141 : (2002) 3 JT 246 : (2002) LabIC 1451 : (2002) 3 SCALE 85 : (2002) 5 SCC 195 : (2002) 2 SCR 697 : (2002) 2 SCT 568 : (2002) 3 SLJ 186 : (2002) 1 UJ 590 : (2002) AIRSCW 1406 : (2002) 2 Supreme 618 and *Baitarani Gramiya Bank Vs. Pallab Kumar and Others*, AIR 2003 SC 4248 : (2004) 1 CTC 459 : (2003) 8 JT 121 : (2004) 1 LLJ 184 : (2003) 7 SCALE 394 : (2004) 9 SCC 100 : (2004) SCC(L&S) 715 : (2003) 3 SCR 571 Supp : (2003) AIRSCW 4884 : (2003) 6 Supreme 621

22. In *Pushkaran's* case (supra), the Hon'ble Supreme Court held that mere inclusion of the name of a candidate in the select list is no ground to offer him an appointment and that the State may deny such right for a bona-fide reason. While referring to *R.S. Mittal's* case (supra), it was held that a selectee as such has no legal right and the superior court in exercise of its power of judicial review would not ordinarily direct issuance of any writ in the absence of any pleading

and proof of mala fide or arbitrariness on the part of the employer. It was held to the following effect:--

"11. The law operating in the field in this behalf is neither in doubt nor in dispute. Only because the name of a person appears in the select list, the same by itself may not be a ground for offering him an appointment. A person in the select list does not have any legal right in this behalf. The selectees do not have any legal right of appointment subject, inter alia, to bona fide action on the part of the State. We may notice some of the precedents operating in the field.

12. xx xx xx

13. Yet again in R.S. Mittal Vs. Union of India (UOI), (1995) 3 JT 417 : (1995) LabIC 1775 : (1995) 2 SCALE 433 : (1995) 2 SCC 230 Supp : (1995) 2 SLJ 177

"10....It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

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16. It is, therefore, evident that whereas the selectee as such has no legal right and the superior court in exercise of its power of judicial review would not ordinarily direct issuance of any writ in absence of any pleading and proof of mala fide or arbitrariness on the part of the employer. Each case, therefore, must be considered on its own merit."

(Emphasis Supplied)

23. In S.S. Balu and Another Vs. State of Kerala and Others, AIR 2009 SC 1994 : (2009) 122 FLR 54 : (2009) 2 JT 26 : (2009) 1 SCALE 723 : (2009) 2 SCC 479 : (2009) 1 SCC(L&S) 388 : (2009) 1 SCR 196 : (2009) 2 SLJ 480 : (2009) AIRSCW 1644 , the Hon"ble Supreme Court held that as the State being an employer has a right to fill or not fill up the posts, the candidate concerned will have no legal right for obtaining a writ of mandamus, unless the action of the State suffers from arbitrariness. It was held as under:--

"12. There is another aspect of the matter which cannot also be lost sight of. A person does not acquire a legal right to be appointed only because his name appears in the select list. (See *Pitta Naveen Kumar and Others Vs. Raja Narasaiah Zangiti and Others*, (2006) 12 JT 459 : (2006) 9 SCALE 298 : (2006) 10 SCC 261 : (2007) 1 SCC(L&S) 92 : (2006) 6 SCR 230 Supp : (2007) 2 SLJ 149 The State as an employer has a right to fill up all the posts or not to fill them up. Unless discrimination is made in regard to the filling up of the vacancies or arbitrariness is committed, the candidate concerned will have no legal right for obtaining a writ of or in the nature of mandamus. (See *Baitarani Gramiya Bank Vs. Pallab Kumar and Others*, AIR 2003 SC 4248 : (2004) 1 CTC 459 : (2003) 8 JT 121 : (2004) 1 LLJ 184 : (2003) 7 SCALE 394 : (2004) 9 SCC 100 : (2004) SCC(L&S) 715 : (2003) 3 SCR 571 Supp : (2003) AIRSCW 4884 : (2003) 6 Supreme 621 In *Shankarsan Dash Vs. Union of India*, AIR 1991 SC 1612 : (1991) 62 FLR 981 : (1991) 2 JT 380 : (1991) LabIC 1460 : (1992) 2 LLJ 18 : (1991) 1 SCALE 848 : (1991) 3 SCC 47 : (1991) 2 SCR 567 : (1991) 2 UJ 212 a Constitution Bench of this Court held: (SCC pp. 50-51, para 7)

"7."

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17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal there-against, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner(s) approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In *New Delhi Municipal Council Vs. Pan Singh and Others*, AIR 2007 SC 1365 : (2007) 113 FLR 338 : (2007) 4 JT 253 : (2007) 4 SCALE 204 : (2007) 9 SCC 278 : (2007) 2 SCC(L&S) 398 : (2007) 3 SCR 711 : (2008) 3 SLJ 130 : (2007) AIRSCW 1705 : (2007) 3 Supreme 743 this Court held: (SCC p. 283, para 16)

"....."

24. Reiterating the said view, the Hon"ble Supreme Court in *State of Orissa and Another Vs. Rajkishore Nanda and Others etc. etc.*, (2010) 126 FLR 441 : (2010) 6 JT 33 : (2010) 6 SCALE 126 : (2010) 3 SLJ 48 , held that the select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list. It was held as under:--

"14. A person whose name appears in the select list does not acquire any

indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

15. A Constitution Bench of this Court in *Shankarsan Dash Vs. Union of India*, AIR 1991 SC 1612 : (1991) 62 FLR 981 : (1991) 2 JT 380 : (1991) LabIC 1460 : (1992) 2 LLJ 18 : (1991) 1 SCALE 848 : (1991) 3 SCC 47 : (1991) 2 SCR 567 : (1991) 2 UJ 212 held that appearance of the name of a candidate in the select list does not give him a right of appointment. Mere inclusion of the candidate's name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. The candidate concerned cannot claim that he has been given a hostile discrimination. (See also *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, (1993) 2 JT 688 : (1993) 2 SCALE 545 : (1993) 2 SCC 573 ; *Union of India Vs. S.S. Uppal and another*, AIR 1996 SC 2340 : (1996) 1 JT 258 : (1996) 1 SCALE 266 : (1996) 2 SCC 168 : (1996) 1 SCR 230 : (1996) 1 UJ 393 ; *Bihar Public Service Commission and another Vs. State of Bihar and others*, (1996) 9 AD 186 : AIR 1997 SC 2280 : (1997) 75 FLR 200 : (1996) 10 JT 579 : (1996) 8 SCALE 581 : (1997) 3 SCC 198 : (1996) 9 SCR 144 Supp : (1997) 1 UJ 211 : (1997) AIRSCW 2154 : (1996) 8 Supreme 809 ; *Simanchal Panda Vs. State of Orissa and Others*, AIR 2002 SC 2444 : (2002) 2 JT 17 : (2002) LabIC 2331 : (2002) 1 SCALE 438 : (2002) 2 SCC 669 : (2002) 2 SCT 105 : (2002) AIRSCW 2689 : (2002) 1 Supreme 345 ; *Punjab State Electricity Board and Others Vs. Malkiat Singh*, AIR 2004 SC 5061 : (2004) 8 JT 526 : (2004) 8 SCALE 655 : (2005) 9 SCC 22 : (2004) AIRSCW 5768 : (2004) 7 Supreme 394 ; *Union of India (UOI) and Others Vs. Kali Dass Batish and Another*, AIR 2006 SC 789 : (2006) 108 FLR 746 : (2006) 1 JT 170 : (2006) 1 SCALE 190 : (2006) 1 SCC 779 : (2006) SCC(L&S) 225 : (2006) 1 SCR 261 : (2006) 2 SLJ 201 : (2006) AIRSCW 227 : (2006) 1 Supreme 187 ; *Divisional Forests Officers and Others Vs. M. Ramalinga Reddy*, AIR 2007 SC 2226 : (2007) 5 JT 353 : (2007) 5 SCALE 494 : (2007) 9 SCC 286 : (2007) 2 SCC(L&S) 410 : (2007) 4 SCR 1068 : (2007) 1 UJ 551 : (2007) AIRSCW 3896 ; *Subha B. Nair and Others Vs. State of Kerala and Others*, AIR 2008 SC 2760 : (2008) 3 CLT 269 : (2008) 118 FLR 318 : (2008) 8 JT 585 : (2008) 9 SCALE 16 : (2008) 7 SCC 210 : (2008) 2 SCC(L&S) 409 : (2009) 2 SLR 457 ; *Mukul Saikia and Others Vs. State of Assam and Others*, AIR 2009 SC 747 : (2008) 12 JT 414 : (2009) 1 SCC 386 : (2009) 1 SCC(L&S) 186 : (2010) 3 SLJ 197 and *S.S. Balu and Another Vs. State of Kerala and Others*, AIR 2009 SC 1994 : (2009) 122 FLR 54 : (2009) 2 JT 26 : (2009) 1 SCALE 723 : (2009) 2 SCC 479 : (2009) 1 SCC(L&S) 388 : (2009) 1 SCR 196 : (2009) 2 SLJ 480 : (2009) AIRSCW 1644).

16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list. If the selection process is over, select list has expired and appointments had

been made, no relief can be granted by the court at a belated stage."

(Emphasis Supplied)

25. In the present case, there was no inaction on the part of the Government in not offering appointment. Initially there was no work in the year 2011 but even now, the work is only recently generated at the Tribunals at Chandigarh and Guwahati. Therefore, if there is no work, we find that the appointment of the Presiding Officer of the National Highways Tribunal would be unwarranted. The reason for not giving appointment is lack of work. The use of the expression that the list is quite old is in the context of the fact that the incumbent officer was due to attain the age of superannuation in the month of November, 2011 and by that time the list would be more than 2 years old. Still further, the petitioner has made grievance only in the month of July, 2011, when the validity of the list had come to an end. Such list is not a reservoir for appointment at the subsequent stages. The facts of the case do not warrant issuance of any direction for appointment of the petitioner as Presiding Officer.

26. Having said so, we must observe that the Central Government has advertised 7 posts of the Presiding Officers in the year 2005; in the year 2008 and again in the year 2011, though there was no work for more than one Tribunal. The Central Government should have advertised as many posts as the Presiding Officers were required to be appointed so that there does not arise any legitimate expectations after undergoing the rigorous selection process.

27. With the above observation, we find that the order passed by the learned Single Judge is not sustainable in law. Consequently, the present appeal is allowed; the impugned order passed by the learned Single Judge, is set aside and the writ petition filed by the petitioner is dismissed.