

R.S. MITTAL
v.
UNION OF INDIA

MARCH 27, 1995

[KULDIP SINGH AND B.L. HANSARIA, JJ.]

Service Law :

Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 : Rule 4.

Income Tax Appellate Tribunal—Judicial Member—Selection—Recommendation by Selection Board—Government's obligation to process—Held Government should take prompt and immediate action—Held selected candidate has no vested right to appointment but Government cannot decline appointment but for justifiable reasons.

A Selection Board, constitution under sub-rules (1) and (2) of Rule 4 of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 and headed by a sitting judge of the Supreme Court, prepared a panel of selected candidates for the posts of Judicial Members, Income Tax Appellate Tribunal in which the appellant was placed at No. 4. On January 25, 1988, the Selection Board sent its recommendation to the Central Government for consideration but no appointment was made as a fresh advertisement was issued on February 22, 1990 inviting applications for the same post. The appellant filed an application before the Central Administrative Tribunal seeking a direction to the respondents to appoint him on the basis of 1988 panel. The Tribunal dismissed the application holding that the preparation of panel does not clothe the applicant with any right of appointment; the recommendations of the Selection Board being not mandatory were not enforceable by a writ of *mandamus*.

Against the judgment of the Tribunal, an appeal was preferred in this Court. From the counter-affidavit filed by Government of India it was clear that two vacancies become available on August 14, 1988 and June 5, 1989 respectively but there was nothing to show as to why the Central Government could not initiate action for appointment. However, on the

A basis of the action initiated on February 28, 1989, an offer of appointment was sent to candidate at Sl. No. 1 but he did not join. Thereafter, no further offer was made to any other candidate. Candidate at S. No. 2 also initiated legal proceedings for seeking appointment but later withdrew his appeal.

B Dismissing the appeal, this Court

C HELD : 1. 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 penal 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. [1133-F]

D 2. 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 within a reasonable time of availability of the vacancy. The Central Government's approach in this case was wholly unjustified. However, in the circumstances it would not be appropriate to issue any direction at this point of time in favour of the appellant. [1133-G-H, 1134-A]

F 3. Any recommendation of a Selection Board which is headed by a sitting Judge of this Court must be given prompt and immediate attention. G Once there is a recommendation by such a Selection Board, nothing should intervene between the recommendation and the consideration by the Appointment Committee of Cabinet (ACC). The Ministry/Secretary in the Administrative Department is under a legal obligation and is duty bound to process the recommendation of the Selection Board by giving it a top priority and place the same before the ACC within a reasonable time. The recommendations of the Selection Board headed by a sitting Judge of this Court must be placed before the ACC expeditiously and preferably within two months from the date of recommendation. [1131-G-H, 1132-A]

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5155 of 1993.

From the Judgment and Order dated 11.10.91 of the Central Administrative Tribunal, New Delhi in O.A. No. 180 of 1991. A

P.P. Rao, M.P. Jha and Anil K. Chopra with him for the Appellant in C.A. No. 5155/93.

Raju Ramachandran for the Appellant in C.A. No. 5156/93. B

N.N. Goswamy, Mr. Hemant Sharma and C.V.S. Rao with him for the Respondent.

The following Judgment of the Court was delivered by :

KULDIP SINGH, J. This Appeal is sequel to the selection of candidates for appointment to the post of Judicial Member, Income-tax Appellate Tribunal, made by a Selection Board headed by a sitting Judge of this Court. The Selection Board was constituted under sub-rules (1) and (2) of Rule 4 of the Income-tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 (the 'Rules'). The Selection Board prepared a panel of selected candidates which included the name of the appellant and sent its recommendations on January 25, 1988 to the Central Government for consideration under sub-rules (3) and (4) of Rule 4 of the Rules. The Central Government did not make any appointment and issued fresh advertisement on February 22, 1990 inviting applications for the same post. The appellant filed Original Application before the Central Administrative Tribunal seeking a direction to the respondents to appoint him as Judicial Member, Income-tax Appellate Tribunal on the basis of the select-panel prepared by the Selection Board in 1988. The Tribunal by its judgment dated October 11, 1991 dismissed the Application. This appeal by way of Special Leave is against the judgment of the Tribunal. C
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The appellant is an advocate having registered himself with the Bar at Delhi in the year 1971. In September, 1987, Ministry of Law and Justice issued an advertisement inviting applications for three posts of Judicial Members, Income-tax Appellate Tribunal. One post was reserved for Scheduled Tribe candidate and the remaining two posts were to be filled up from the general category. It was further stated in the advertisement that the three posts were temporary in nature, but were likely to continue and further that the number of vacancies was only proximate and liable to alteration. Before the Tribunal and also in this Court, the stand of the G
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A Central Government is that the advertisement was for the three vacancies which were anticipated in the year 1988-89. The appellant applied for one of the posts in response to the advertisement. The interviews were held on January 12, 1988. It is not disputed that the Selection Board sent its recommendations to the Central Government on January 25, 1988. We have been informed at the Bar that Mr. Murgod was at No. 1, Mr. S.P. Singh Chaudhary at No. 2 and the appellant at No. 4 of the select-panel recommended by the Selection Board. The Selection Board could not find any suitable Scheduled Tribe candidate and as such suggested for re-advertisement of the vacancy. According to the respondents, the reserved vacancy was re-advertised on March 28, 1988 and was subsequently filled up on January 25, 1990.

The Government of India has filed counter by way of an affidavit of Mr. S.A. Russel, Deputy Secretary to the Government of India, Ministry of Law, Justice and Company Affairs, Department of Legal Affairs, New Delhi. It is averred therein that the three vacancies anticipated during the year 1988-89 were to fall vacant on the retirement of T.V. Venkatappa, on February 21, 1988 (ST); H.S. Ahluvalia on September 27, 1988; and F.C. Rustogi on October 17, 1988. It further states that the two vacancies belonging to the general category which were expected to arise on September 27, 1988 and October 17, 1988 respectively did not materialise as the age of retirement of members of the Income-tax Appellate Tribunal was raised by the Government from 60 years to 62 years with effect from September 8, 1988. The expected vacancy position, thus, got materially altered.

The counter affidavit filed by the Government of India further states that two vacancies which were not anticipated in the year 1988-89 did become available, because Sri K.L. Thanikachalam, a Judicial Member of the Tribunal was elevated to the High Court with effect from August 14, 1988 and another Judicial Member of the Tribunal Sri A.K. Das sought reversion to his parent cadre with effect from June 5, 1989. There is thus no difficulty in reaching the conclusion that two vacancies became available on August 14, 1988 and June 5, 1989 respectively which could be offered to the candidates on the select-panel in accordance with their merit on the panel.

H The Central Government has, however, contended that out of the

two vacancies which became available, one was to be kept reserved for one P.J. Menon, who was on deputation abroad. According to the Government, he did not resume duties in India on expiry of his deputation period and disciplinary proceedings were initiated against him. Since the Officer had a lien in the Tribunal, without prejudice to the disciplinary proceedings, the post was to be kept for him as he was free to resume duties in India at any time. We do not agree with the contention of the Central Government. All appointments to the post of Judicial Member, Income-tax Appellate Tribunal, were made against the existing vacancies. P.J. Menon must have been appointed Member, Income-tax Appellate Tribunal, against an existing vacancy. He could not have been appointed without their being a vacancy. His lien if any could only be kept in the post against which he was initially appointed. We are, therefore, of the view that there were two clear vacancies to be offered in accordance with the Rules to the candidates on the select-panel recommended by the Selection Board.

Assuming that there was only one vacancy as claimed by the Central Government, there was gross delay on the part of the Central Government in initiating action to fill the same. The vacancy became available on August 14, 1988 and, according to the chart placed on record by the Central Government, the action was initiated on February 28, 1989. We fail to understand what the Government meant by the expression 'initiating action'. The character and antecedents verifications, if any, should have been got done as soon as the recommendation of the Selection Board was received. No material has been placed on record and none was brought to our notice during the course of arguments to show as to why the Central Government could not initiate action as soon as the vacancy was made available. Needless to say that the recommendation of the Selection Board headed by a sitting Judge of this Court was gathering dust in the records of the concerned Ministry since January 25, 1988. We take serious view of the matter and we direct that any recommendation of a Selection Board which is headed by a sitting Judge of this court must be given prompt and immediate attention. Once there is a recommendation by such a Selection Board, nothing should intervene between the recommendation and the consideration by the Appointments Committee of Cabinet (ACC). The Minister/Secretary in the Administrative Department is under a legal obligation and is duty bound to process the recommendation of the Selection Board by giving it a top priority and place the same before the ACC within a reasonable time. In the present case though the action was stated

A to be initiated on February 28, 1989 the reference to the ACC was made on May 1, 1989. We direct that the recommendations of the Selection Board headed by a sitting Judge of this Court must be placed before the ACC expeditiously and preferably within two months from the date of recommendation.

B It is stated by the Central Government that the offer of appointment was sent to Mr. Murgad on January 30, 1990. He did not join till May 4, 1990 and as a consequence, the offer was cancelled. Thereafter no further offer was made to any other candidate and the matter was closed.

C Apart from the appellant, Mr. S.P. Singh Chaudhary, who was at No. 2 in the select-panel also sought similar relief from the Central Administrative Tribunal. His application having been dismissed, he filed Civil Appeal No. 5156 of 1993 in this Court. Sri S.P. Singh Chaudhary was a member of the Delhi Judicial Service and was posted as Additional District and Sessions Judge at the relevant time. At the hearing of the appeal, we were informed that Sri S.P. Singh Chaudhary sought voluntary premature retirement from judicial service, which was granted by the Delhi High Court. He later on withdrew his appeal, which was disposed of as such by this Court on November 15, 1994.

E At this stage, we may refer to Rule 4 of the Rules which is reproduced hereunder :

"4. *Method of Recruitment* : (1) There shall be a Selection Board consisting of -

F (i) a nominee of the Minister of Law;

(ii) The Secretary to the Government of India, Ministry of law (Department of Legal Affairs);

G (iii) The President of the Tribunal; and

(iv) Such other persons, if any, not exceeding two, as the Minister of Law may appoint.

H (2) The nominee of the Minister of Law shall be the Chairman of the Selection Board.

(3) The Selection Board shall recommend persons for appointment as members from amongst the persons on the list of candidates prepared by the Ministry of Law after inviting applications therefor by advertisement or on the recommendations of the appropriate authorities.

(4) The Central Government shall after taking into consideration the recommendations of the Selection Board make a list of persons selected for appointment as members."

As mentioned above, a sitting Judge of this Court being a nominee of the Minister of Law was the Chairman of the Selection Board.

The Tribunal dismissed the application by the impugned judgment on the following reasoning :

(a) The selection-panel was merely a list of persons found suitable and does not clothe the applicants with any right of appointment. The recommendations of the Selection Board were directory and not mandatory and were not therefore enforceable by issue of a writ of *mandamus* by the Court.

(b) The letter of Ministry of Home Affairs dated February 8, 1982 which extends the life of panel till exhausted is not relevant in the present case. In the circumstances the life of the panel in this case cannot go beyond 18 months and as such expired in July, 1989.

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. Murgod within a

A reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was whole unjustified.

On the facts this case, it is not necessary for us to go into the question of applicability of various instructions relied upon by the Tribunal. Even if there are any instructions which provide that a select-panel shall remain operative for one and a half year, the said period in our view is sufficient for the Central Government to exhaust the select-panel of the type with which we are concerned in this case. We have already indicated the time-bound procedure to be followed in dealing with the select-panel of this type.

Sri Murgod who was at No. 1 of the select-panel did not accept the appointment. Sri S.P. Singh Chaudhary has already withdrawn his appeal and he is out of run. We are not sure about the stand of the person who is at No. 3 of the select-panel. Under the circumstances it would not be appropriate to issue any direction at this point of time in favour of the appellants who are at No. 4 of the select-panel.

While reversing the findings given by the Central Administrative Tribunal, to the extent indicated above, we dismiss this Appeal. In the circumstances of this case, we direct the respondent, Central Government, to pay cost of these proceedings to the appellants, which we quantify as Rs. 30,000.

T.N.A.

Appeal dismissed.