

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WRIT PETITION (CIVIL) NO. 1568 OF 2007

Reserved on : March 20 , 2008.

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Date of Decision: March 31, 2008

Union of India

..... Petitioner

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Through Mr. Gopal Subramaniam, ASG, with
Mr. Rajeeve Mehra and Ms. Rachita
Priyanka, Advocates.

versus

\$ Dr. Santokh Singh and others.

..... Respondents

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Through Mr. Sarup Singh, Sr. Adv. With
Mr. Kuldip Singh & Mr. R.K.Pandey,
Advocates for Respondent No.1.

CORAM:

*** HON'BLE MR. JUSTICE MANMOHAN SARIN**

*** HON'BLE MR. JUSTICE MANMOHAN**

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the Reporter or not? | Yes. |
| 3. Whether the judgment should be reported in the digest? | Yes |

J U D G M E N T

MANMOHAN, J:

1. The petitioners have filed the present writ petition under Article 226 of the Constitution of India praying for issuance of a writ of certiorari and/or any other appropriate

writ, order or direction for quashing the judgment and order dated 17th August, 2006 passed by the Central Administrative Tribunal (for short “the Tribunal”) in O.A. No. 2709/2005.

2. The Tribunal in its judgment has held that there was delay in initiating the process of holding Departmental Promotion Committee (for short “DPC”); which delay was solely attributable to the Petitioners herein for which Respondent No.1 cannot be made to suffer. The Tribunal has further directed the Petitioners herein to re-examine the claim of Respondent No.1 in the light of O.M. No. 22011/9/98 (for short “the said OM”) issued by the Department of Personnel and Training and its observations for ante dating the promotion of Respondent No.1 on notional basis in the post of JS&LA of ILS from the date the process, as envisaged and instructions as per the model calendar, should have been completed.

3. The learned ASG, Mr. Gopal Subramaniam, appearing for the Petitioners contended that the said OM did not apply as the Respondent No.1 was promoted against an unanticipated vacancy for the year 2004-2005. He further contended that the said OM placed a duty on the Petitioners to convene DPC in advance so as to utilize the prepared panel as and when the vacancies arise during the course of the vacancy year. Learned ASG also submitted that the Hon’ble Supreme court’s judgment in *Union of India vs. N.R. Banerjee and others*, reported in (1997) 9 SCC 287 relied upon by the Tribunal, clearly stipulated that filling up of posts in advance are only for clear or anticipated vacancies arising in the year.

4. Mr. Sarup Singh, learned Senior Counsel appearing for Respondent No.1, while placing strong reliance on the said OM, urged that the process for filling up of anticipated

vacancies (specially on Mr. B.L. Nishad's impending superannuation) should have commenced in July, 2003 for the recruitment year 2004-2005. He further contended that had this procedure been scrupulously adhered to, Respondent No.1 would not have suffered. According to him, compliance with Rules and promotions coming in routine in the Legal Affairs Department has resulted in Respondent No.1 and others suffering on this account for the future promotional posts of Additional Secretary. Mr. Sarup Singh also referred to and relied upon counter affidavit filed by UPSC to show that his interpretation of the said OM was in consonance with the UPSC's interpretation.

5. As the dispute primarily revolves upon interpretation of the said OM, we consider it appropriate to reproduce hereinbelow the relevant portion of the same :

“**3.1** Keeping the aforesaid objective in view, it has been considered imperative to provide for a time-schedule for convening DPCs not only in time but in sufficient advance so as to utilize the prepared panel as and when the vacancies arise during the course of the vacancy year. For practical reasons, it is also considered desirable to have separate time-schedules for cases requiring approval of the Appointments Committee of the Cabinet and cases which do not require such approval. Accordingly, in order to complete all required action, including the approval of the Competent Authority well in time (before the commencement of the panel or vacancy year), the administrative action for convening DPCs, in the cases requiring approval of the ACC (ACC cases), could, as such, be initiated at least eight and a half months before the commencement of the vacancy year and, similarly, DPCs in such cases could be held at least four months before the commencement of the vacancy year. This means that there would be a clear period of the first three and half months of the year immediately preceding the vacancy/panel year available for completion of the ACRs etc, followed by another four and a half months' time for holding of DPCs. The next one month could be devoted to the post-DPC follow-up administrative action by the Administrative Ministry/Department. The final three months' period prior to the commencement of the vacancy year could be left for approval of the Competent Authority (ACC).”

6. According to us, the said OM obliges the Petitioners to prepare an advance panel of officers only for anticipated or notified vacancies. The Petitioners cannot be asked to convene a DPC and prepare in advance a panel of officers for vacancies which are not likely to arise.

7. Consequently, the issues that now arise for consideration are – firstly as to whether the Respondent No.1 has been appointed against an unanticipated or anticipated vacancy and secondly even if the said OM were to apply, is the Petitioners' conduct of such a nature as to warrant a finding and/or direction as the Tribunal has given in its impugned judgment.

8. For finding an answer to these issues, we would have to examine the facts of the present case. Briefly stated the material facts of the present case are that the Ministry of Law and Justice has two Departments, namely, Department of Legal Affairs and Department of Legislative Affairs. On 16th April, 1996, the Respondent No.1 joined as Deputy Legal Adviser in Grade-III of Indian Legal Service in the Department of Legal Affairs on DR basis. On 11th December, 1998, the Respondent No.1 was promoted as Additional Legal Adviser in Grade-IV of the Indian Legal Service in the Department of Legal Affairs. On 5th July, 2001, the Respondent No.1 joined as Joint Secretary and Legislative Counsel in the Legislative Department on deputation basis for a period of three years.

9. On 6th September, 2004, the Respondent No.1 joined back his regular cadre post of Additional Legal Adviser in the Department of Legal Affairs on repatriation from the deputation post of Joint Secretary and Legislative Counsel in the Legislative Department consequent on expiry of his deputation term there on 4th July, 2004 and after availing earned

leave from 5th July, 2004 to 3rd September, 2004. On 16th August, 2004, one unanticipated vacancy occurred in the grade of Joint Secretary and Legal Adviser (JS & LA) consequent on the unexpected appointment of Shri A. Sinha, JS&LA as Principal Adviser (Legal) in TRAI on deputation basis. Approval of the Minister of Law and Justice was sought to fill up two vacancies in the grade of JS&LA. These two vacancies included one unanticipated vacancy which fell vacant with effect from 16th August, 2004 and the one anticipated vacancy which was due to become available with effect from 1st February, 2005 consequent on the superannuation of Shri B.L. Nishad, JS&LA.

10. On 25th November, 2004, on the directions of Ministry of Finance, an order was issued for abolition of one post of JS&LA with effect from 1st January, 2005 which was encadared in Ministry of Commerce. Shri YPC Dangay who was a regular JS&LA in the Department of Legal Affairs was incumbent to the said encadared post of JS&LA in the Ministry of Commerce. Consequently, on 7th December, 2004, approval of the Minister of Law & Justice was again obtained to fill up one anticipated vacancy of JS&LA which was expected to arise on 1st February, 2005 consequent on the superannuation of Shri B.L. Nishad, JS&LA. On 13th January, 2005 the said proposal for filling up one post of JS&LA was sent to UPSC.

11. However, on 28th February, 2005, one unanticipated vacancy occurred consequent on the appointment of Shri R.N. Poddar, then JS&LA, as Member of the Appellate Tribunal of Foreign Exchange. Consequently, the proposal sent earlier on 13th January, 2005 was revised and on 31st March, 2005 a fresh proposal for filling up four vacancies was sent to UPSC which included one anticipated vacancy vide Shri B.L. Nishad, already reported to UPSC, one unanticipated vacancy of Shri R.N. Poddar on 28th February, 2005 and two

anticipated vacancies pertaining to the vacancy years 2005-2006 which were due to arise with effect from 1st December, 2005 consequent upon the superannuation of Shri M.L. Ganvir and Shri A.P. Aggarwal, both JS&LAs.

12. On 31st May, 2005, the Respondent No.2 herein, namely, UPSC, asked for deficient Confidential Records (CRs) of some of the officers who were in the zone of consideration. The CRs of all the officers were finally complete by 3rd October, 2005 and the same were sent to UPSC on 4th October, 2005.

13. On 30th November, 2005, the Respondent No.1 herein preferred an OA being O.A. No. 2709/2005 praying the Tribunal to direct the Petitioners herein to conduct DPC without any delay and consider Respondent No.1 for promotion to the post of JS&LA. While the said OA was pending, the UPSC convened the DPC and the recommendations of the said DPC were received by the Petitioners on 19th December, 2005. The Minister of Law and Justice accepted the recommendations of the UPSC on 21st December, 2005. Within a week's time, the proposal for accepting recommendations of the UPSC were sent to ACC which granted its approval on 2nd March, 2006. On 3rd March, 2006, four officers viz Shri B.S. Meena, joined as JS&LA against the anticipated vacancy of 2004-2005, Respondent No.1 joined as JS&LA against the unanticipated vacancy of 2004-2005; Shri M.A. Khan Yusufi and Shri S.S. Chahar both joined JS&LA against the anticipated vacancies of 2005-2006.

14. Thus, from the above narrated facts it would be apparent that Respondent No.1 has been granted promotion against an unanticipated vacancy of Mr. R.N. Poddar.

Consequently, no prior action could have been initiated by the Petitioners for filling up of this unanticipated vacancy. Delay, if any, in filling up the vacancy of Mr. B.L. Nishad could be of no assistance to the Respondent No.1. Moreover, we are of the view that there is no wanton infraction of the said OM by the Petitioners to afford any relief to Respondent No.1. Therefore, we set aside the findings of the Tribunal that the Petitioners delayed the initiation of the process of Respondent No.1's DPC.

15. Before we part, we may also refer to the judgment of *N.R. Banerjee* (supra) on which both the Tribunal and the Respondent No.1's counsel had placed strong reliance. According to us, a reading of the said judgment in its entirety, it is apparent that the Hon'ble Supreme Court has also held that the preparation of a panel in advance has only to be to the extent of notified, anticipated or certain vacancies. Since Respondent No.1 has been granted promotion against an unanticipated vacancy on 20th April, 2005, the Tribunal's reliance on the above referred Supreme Court's judgment is misconceived on facts and untenable in law. Consequently, the impugned judgment and order dated 17th August, 2006 passed by the Tribunal in O.A. No. 27089/2005 are hereby quashed and set aside. The writ petition is allowed. Parties are left to bear their own costs.

[MANMOHAN]
Judge.

[MANMOHAN SARIN]
Judge.

March 31, 2008.
jt.