

Chandra Ballabh and anr. Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Dec-18-1998

Reported in : 1999IIAD(Delhi)838; 77(1999)DLT327; 1999(48)DRJ23

Judge : Vijender Jain, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.W.P. No. 1187 of 1997

Appellant : Chandra Ballabh and anr.

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Mr. Ravinder Sethi, ; Mr. Mukul Rohtagi, Senior Advocate, ;

Advocate for Pet/Ap. : Mr. G.D. Gupta, Adv

Judgement :

Vijender Jain, J.

1.Two writ petitioners aggrieved by the selection of respondent No. 2 to the post of Commissioner (Planning) by the respondent No.1 has filed the present writ petition.

Mr. G.D. Gupta, learned Counsel appearing for the petitioners, has contended that in terms of column 10 of the Regulation, the method of recruitment for the post of

Commissioner (Planning) is 'by transfer on deputation/promotion failing which by direct recruitment'. Recruitment Regulation is at page-52 of the paper book. In column 11 in the case of transfer on deputation the following requirement is given:

By transfer on deputation of officers holding:

(i) Analogous post;

(ii) Post in the scale of Rs.1800-2000 with two years service in the grade;

(iii) Post in the scale of Rs. 1500-2000 with five years experience in the grade. Under the Central or State Government of Development/Planning Authorities and possessing qualifications prescribed for the post of Commissioner (Planning); the Director (Planning)/Chief Architect in the Delhi Development Authority with two years service in the grade rendered after appointment thereto on regular basis will also be eligible to be considered and if the departmental officers mentioned above is selected for appointment to the post it will be treated as having been filled by promotion (Period of Deputation ordinarily not exceeding three years).

2. On the basis of the aforesaid Clauses of the recruitment regulations, Mr. Gupta has contended that the process of selection to the post of Commissioner (Planning) by direct recruitment without first exhausting the channel of promotion/deputation was illegal, mala fide and unreasonable. In support of his arguments, Mr. Gupta has relied upon S.S. Sodhi Vs . State of Punjab & Ors. : AIR 1990 SC1064 and Gujarat Housing Board Engineers Association & Anr. v. State of Gujarat & Ors. 1994 (1) SLR 55. The second bone of contention of the learned Counsel for the petitioners was that the Establishment Order dated 21.1.1997 is illegal, arbitrary and discriminatory as the senior selection board was wrongly constituted by the respondent No. 1-Delhi Development Authority (for short 'DDA') and it was in contravention of the recruitment regulations. It was also contended before this Court by the learned Counsel for the petitioners that for the same post the constitution of DPC is provided in column 12 of the said Regulation, which includes:

Vice-Chairman, DDA - Chairman Finance Member, DDA - Member One Expert on planning to be nominated by Ministry of Works Housing - Co-opted Member Secretary, DDA - Member Director (Personnel), DDA - Member

3. Mr. Gupta has contended that on the basis of the constitution of DPC, having been provided under column 12 of the Regulations, the senior selection board ought to have consisted of the members as mentioned in the said Schedule. Mr. Gupta has contended that, as a matter of fact, in the senior selection board the provision is provided for the inclusion as a member of a Joint Secretary/Director (DD) from Ministry of Urban Affairs and Employment, however, contrary to the said provision, one Mr. S.P.S. Parihar, Deputy Secretary Ministry of Urban Development in the pay scale, which was lower than the post for which selection was to be made, participated in the interview as a member of selection board. Mr. Gupta has contended that the participation of Mr. Parihar in the selection board has vitiated the recommendation of the selection board. Another point on which the recommendation of the selection board has been challenged by Mr. Gupta is the participation of one Mr. A.P. Konvinde. Counsel for s has contended that as per the practice followed by the respondents, senior selection board to select a suitable candidate for the purpose of Commissioner (Planning) comprises of the following:

(i) Vice-Chairman, DDA - Chairman (ii) Finance Member, DDA - Member (iii) Engineer Member, DDA - Member (iv) Jt. Secretary/Director (DD) - Member Ministry of Urban Affairs and Employment (v) Shri EFN Riberio, Former Chief-Planner, TCPO & Former Commissioner (Planning) DDA - Expert (vi) Shri Mesh Ram, Chief Planner, TCPO - Expert (vii) Commissioner (Personnel) DDA - Member Secretary

4. Mr. Gupta, therefore, has contended that absence of the Joint Secretary/Director (DD) on the panel of selection board and participation of Mr. Parihar, who was Deputy Secretary as well as participation of Mr. Konvinde in the Selection Board has vitiated the selection of respondent No. 2.

The third limb of the arguments of the learned Counsel for the petitioner was that Mr. Konvinde was not even qualified planner, who was allowed to participate as

third expert on planning. He has contended that Mr. Konvinde was not a post graduate in town/city/urban planning and had close connection with the candidate, who was actually selected and had personal commercial interests in the DDA and in support of his arguments, Mr. Gupta has cited the case of Raj Kumar & Others Vs . Shakti Raj & Others : AIR 1997 SC2110 .

5. On the other hand, Mr. Ravinder Sethi, learned Counsel appearing for the respondent No. 1-DDA, has contended that the Vice-Chairman of the respondent No. 1-DDA with the approval of Lt. Governor of Delhi inducted an additional expert, i.e. Mr. Konvinde, from M/s. Konvinde Raj & Chowdhary in the Selection Board. According to the respondent No. 1, Mr. Konvinde was a known reputed and distinguished professional in the field of architecture, planning and urban design and enjoys considerable national as well as international fame.

As a matter of fact, the Court directed the Vice-Chairman, DDA to file an additional affidavit as to in what circumstances, Mr. Konvinde was added in the selection board. Pursuant to the directions of the Court additional affidavit was filed on behalf of Mr. P.K. Ghosh, Vice-Chairman, DDA and this is how he has dealt with this aspect in para-6 of the additional affidavit:

'That the deponent was appointed as Vice-Chairman, DDA vide Government Order dated 3.1.1997. The deponent had taken over his appointment as Vice-Chairman of the DDA on 16th January, 1997. The selection to the post of Commissioner (Personnel) was scheduled to be held on 20.1.1997. The deponent had come from Ahmedabad and did not know any one in the Delhi Development Authority. The deponent had thought it fit in these circumstances to have another expert Shri A.P. Konvinde, an Architect of M/s. Konvinde Rai & Chowdhary also included as one of the experts in the Selection Panel. Mr. A.P. Konvinde is known reputed and distinguished person in the field of architecture planning and urban design who enjoy considerable national and international fame. The copy of the Govt. order dated 3.1.1997, charge-report dated 16.1.1997, and Establishment Order of the Personnel Branch of the DDA dated 16.1.1997 are annexed hereto and marked as Annexures-R1, R2 & R3 respectively.'

6. However, the deponent on enquiry was informed that Shri E.F.N. Rebeiro, one of the experts was an ex-employee of the DDA and deponent keeping in view all the circumstances felt proper to have another independent expert on the selection panel. It was in these circumstances that Shri A.P.Konvinde was invited to be a member of the Selection Board consists of 8 members including three experts. After Selection Board had recommended a panel of three persons in order of merit for the post of Commissioner (Planning). The file and also the records were sent to the Lt. Governor of Delhi and it was put up in the note that Shri A.P. Konvinde was also called as expert with the approval of the deponent herein and approval in respect thereto was sought from the Lt. Governor. The Lt. Governor gave his approval on 20.1.1997 itself. That there were no mala fide in respect of including Shri A.P. Konvinde in the Selection Board as also in the selection process. The decision of the Selection Board was unanimous.

7. With regard to the contention of the petitioners that a Deputy Secretary, Mr. Parihar, participated in the said selection board, the stand of the respondent was that a request was sent to Ministry of Urban Affairs to nominate one Joint Secretary/ Director (DD) for the said Selection Board and the Ministry nominated Shri S.P.S. Parihar, Deputy Secretary to participate in the said Selection Board on behalf of Ministry vide its letter dated 17.1.1997. The copy of the same has also been filed on record. In view of the aforesaid contention, learned Counsel appearing for the respondent has contended that no favouritism was shown to the respondent No. 2 by bringing in Mr. S.P.S. Parihar or Mr. A.P. Konvinde in the Selection Board.

8. Learned Counsel for the respondent has further contended that the power of recruitment by promotion was first considered but none of the Additional Commissioner including petitioners were found eligible on account of non-completion of two years service in the grade as provided in Regulation. As none of the departmental officers were found eligible, it was decided by the Chairman, DDA to fill up the post of Commissioner (Planning) by way of direct recruitment and accordingly said post was advertised by a Press Note dated 3.12.1996. It would be evident from the noting on the file of the respondent that, as a matter of fact, it was in order to accommodate the petitioners direct recruitment was

resorted to. The note of the then Vice-Chairman dated 26.12.1996 is to the following effect:

'The post of Commissioner (Plg.) would fall vacant in the month of January when Shri Arun Mhaisalkar would revert back to CIDCO. We, therefore, need to fill up the post of Commissioner (Plg.) early.

2. As pointed out by Commissioner (Pers.) in his note on prepage, this post cannot now be filled up by promotion as the three Addl. Commissioners (Plg.) have not yet completed two years in their grade. The post of Commr. (Plg.), therefore, would need to be filled up on deputation/direct recruitment basis.

3. As was suggested by L.G., I checked up with Shri Mesh Ram, Chief Town Planner, TCPO; he is not willing to a shift from Central Organisation to DDA. I also discussed the matter with Secretary (UD), who suggested the name of Shri R.C. Aggarwal, Chief Regional Planner, NCR Planning Board. A copy of the bio-data of Shri Aggarwal is placed opposite. He has a very good reputation, both as a professional as well as a manager. No other person appears to be in sight. Under the circumstances, we shall need to evaluate the case of Shri Aggarwal vis-a-vis our three Addl. Commissioner (Plg.) who possess more or less equal experience and qualifications and are also eligible for appointment on direct recruitment basis. This evaluation can best be done by inviting applications through open advertisement as was done last time when we selected Shri Arun Mhaisalkar to be appointed on deputation basis.

In view of the above, L.G. may kindly approve our initiating the process of direct recruitment to the post of Commr. (Plg.)

Sd/

(Anil Kumar)

Vice-Chairman,

26.11.96

L.G. All right.(in c.c.)Sd/

27.11.96

(P.K. Dave)

Lieut. Governor

Delhi.

9. Controverting the argument of the petitioners that respondent No. 2 was not eligible for consideration for the post of Commissioner (Planning) as respondent No. 2 was not Additional Commissioner but was only Director (Planning), respondent has contended that in the direct recruitment respondent No. 2 was eligible to be considered as per Recruitment Regulation . It was further contended that respondent No. 2 as well as petitioners who were holding the post of Director (Planning) and Additional Commissioner (Planning) respectively were within the same grade of pay i.e. Rs. 4500-5700. Lastly, it was contended on behalf of the respondent that having participated in the interview without any demur and protest the petitioners cannot now turn round and challenge the selection by the same Selection Board before whom they have also taken their chances for selection and in this connection, Counsel for respondent has cited Dr. G. Sarna Vs . University of Lucknow & Ors. : (1977)ILLJ68SC and Madan Lal & Ors. Vs . State of J&K; & Ors. : [1995]1SCR908 .

10. I have given my careful consideration to the submissions advanced by the learned Counsel appearing for both the parties. The Recruitment Regulations provided the procedure for filling up the post by transfer on deputation/promotion failing which by direct recruitment. In the present case, as per the stand of the respondent they first tried the first method i.e. by promotion. Petitioners, who have not completed two years in their grade, were not eligible for being considered to the post of Commissioner (Planning), therefore, the challenge of the petitioners that respondents have directly gone for direct recruitment is wrong. From the perusal of the file of the respondent it has also been seen that the respondent wanted to fill up the post by transfer on deputation also. In the note dated 26.11.1996 of the Vice-Chairman of the respondent No. 1-DDA, it is recorded that as suggested by the Lt. Governor, it was checked up that Shri Mesh Ram, Chief

own Planner, TCPO was not willing to shift from Central Organisation to DDA. The matter was further discussed with the Secretary, Urban Development who suggested the name of Shri R.C. Aggarwal, Chief Regional Planner, NCR Planning Board. However, at that stage the other three Additional Commissioners (Planning) were also considered for the post of Commissioner (Planning), who were possessing more or less equal experience and qualifications and were also eligible for appointment on direct recruitment basis. It was thought and considered that they should also be given a chance to participate through open advertisement. No mala fide could be attributed to this act of the respondent as it was with the intention of giving the petitioners a fair chance to be evaluated and considered by the selection board for appointment to the post of Commissioner (Planning). Pursuant to the advertisement, the petitioners participated in the process of selection, having failed in the selection after taking their chances can the petitioners maintain this petition. The Selection Board met on 20.1.1997 and interviewed the petitioners and the petitioners were not found fit by the Selection Board. Petitioners cannot be permitted to challenge the composition of selection board and appointment made pursuant thereto.

11. The authorities cited by the learned Counsel for the petitioners, i.e. S.S. Sodhi v. State of Punjab & Ors., (supra) and Gujarat Housing Board Engineers Association & Anr. v. State of Gujarat & Ors. (supra), cannot help the case of the petitioners. There cannot be any dispute to the proposition of law as enunciated by the Supreme Court in the aforesaid authorities. Question is whether the petitioners who took chance to get themselves selected by the Selection Board having found themselves not successful, whether they can initiate this petition. Supreme Court in Madan Lal & Ors. v. State of J&K; & Ors.'s case (supra) dealt with same question and held:

'Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the

petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palpable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla* it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.'

12. Even in *Dr. G. Sarna v. University of Lucknow & Ors.*'s case (supra) Supreme Court held:

'We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee. This view gains strength from a decision of this Court in *Manak Lal's* case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:

'It seems clear that the appellant wanted to take a chance to secure a favourable report from the Tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.'

13. Petitioners can be non-suited on this score alone that they have taken their chances before the Selection Board have appeared and after being unsuccessful have challenged the appointment of respondent No. 2 and have challenged the constitution of the Selection Board. Having taken chance to participate in the Selection Board, the petitioners are now estopped to challenge the constitution and result thereof. From the additional affidavit filed by the Vice-Chairman, DDA, I have no hesitation in holding that induction of Mr. A.P. Konvinde in the Selection Board was neither mala fide nor arbitrary. The reliance placed by the learned Counsel for the petitioners on the constitution of DPC has no relevance for the constitution of the Selection Board which in this case was done by the Chairman of respondent No. 1-DDA, who happens to be the Lt. Governor Delhi and who was the Appointing Authority of the post. Even otherwise, for the previous Selection Board sometimes 7, sometimes 8 persons were members of the Selection Board as per the documents filed on record by the respondent along with their counter affidavit. Petitioners did not bring on record any statutory rule or regulation restricting the power of Appointing Authority in the matter of constitution of Selection Board which puts fetters on the power of Chairman, DDA not to have three experts but only two. I do not see any infirmity in the impugned order of, appointment of respondent No. 2.

For the reasons stated above, the writ petition is dismissed with no order as to costs.

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