

SUPREME COURT OF INDIA

Union of India & Anr.

Vs.

Pradip Kumar Kedia

C.A.No.6567-6569 of 2010

(P.Sathasivam and A.K.Patnaik,JJ.,)

17.11.2011

JUDGMENT

A.K.Patnaik,J.,

1. These are the appeals against the common judgment dated 20.03.2009 of the Delhi High Court in Writ Petition (Civil) Nos. 7526 of 2008, 7521 of 2008 and 7523 of 2008 (for short 'the impugned judgment').

2. The facts very briefly are that the Government of India, Ministry of Law and Justice, Department of Legal Affairs, by advertisement dated 22.01.2005 invited applications for 9 vacancies in the post of Judicial Member and 13 vacancies in the post of Accountant Member in the Income Tax Appellate Tribunal. The advertisement, however, stated that the number of vacancies indicated in the advertisement was only approximate and was liable to increase or decrease due to unexpected circumstances that may occur upto 31.12.2005. On 07.09.2005, one more vacancy arose in the post of Accountant Member of the Income Tax Appellate Tribunal and this took the total number of vacancies in the post of Accountant Member to 14. Against the 9 vacancies in the post of Judicial Member and 14 vacancies in the post of Accountant Member, the Selection Board in its recommendations placed 18 candidates in the main select list, 7 candidates for the post of Judicial Member and 11 candidates for the post of Accountant Member. The Selection Board in its recommendations also placed 2 candidates, namely, Nandan Kumar Jha and B. Krishna Mohan in the wait list for the post of Judicial Member and 2 candidates, namely, P.K. Kedia and Inturi Rama Rao in the wait list for the post of Accountant Member. Out of the 18 selected candidates, 2 candidates selected for the post of Accountant Member were not cleared by the Vigilance Department and the list of 16 remaining candidates was placed before the Appointments Committee of the Union Cabinet on 26.04.2006. The Appointments Committee approved the appointment of all the 16 candidates but directed the Law Ministry to amend the recruitment rules so as to provide for appointment of the members of the Income Tax Appellate Tribunal for a period of two years.

3. In 2007, the Revenue Bar Association filed Writ Petition No. 8288 of 2007 in the Madras High Court for a mandamus to give effect to the selection list with regard to the posts of Judicial and Accountant Members in the Income Tax Appellate Tribunal pursuant to the advertisement dated 22.01.2005 and by order dated 24.04.2007 the Madras High Court disposed of the Writ Petition with a direction to the appellants to place the matter before the Appointments Committee and with a further direction to give effect to the Selection List as approved by the Selection Board in the light of the decisions in *R.S. Mittal v. Union of India¹* and *A.P. Aggarwal v. Govt. of NCT of Delhi and Another²*, The order of the Madras High Court was challenged by the Union of India before this Court in a Special Leave Petition, but on 17.08.2007 this Court dismissed the Special Leave Petition and directed the Union of India to complete the formalities and to give effect to the Selection List. The Appointments Committee thereafter approved the names of all the 16 selected candidates and appointed them till the date of retirement on attaining the age of 62 years or until further orders in its decision taken on 31.08.2007. In the decision taken on 31.08.2007, the Appointments Committee also decided that the appointment of members of the Income Tax Appellate Tribunal in future will be taken up only after the recruitment rules of Income Tax Appellate Tribunal are amended. In accordance with the decision of the Appointments Committee, the Law Ministry of the Union of India, issued orders for appointment to all the 16 candidates approved by the Appointments Committee.

4. In 2008, B. Krishna Mohan, who was placed in the wait list of candidates for the post of Judicial Member and Inturi Rama Rao, who was placed in the wait list of candidates for the post of Accountant Member, filed two separate Original Applications in the Hyderabad Bench of the Central Administrative Tribunal and P.K. Kedia, who was placed in the wait list of candidates for the post of Accountant Member, filed Original Application in the Mumbai Bench of the Central Administrative Tribunal and in all the three Original Applications, the applicants prayed for directions for their appointment. The Union of India filed its reply affidavit before the Central Administrative Tribunal saying that the Appointments Committee has decided that no further appointment of members in the Income Tax Appellate Tribunal will be made until the Income-tax Appellate Tribunal (Recruitment and Conditions of Service) Rules 1963 (for short 'the Rules') are amended. The three Original Applications were transferred to the Principal Bench of the Central Administrative Tribunal and on 31.07.2008, the Principal Bench passed a common order allowing the three Original Applications and directing the Union of India to consider the three wait-listed candidates for filling up the advertised vacancies existing in the posts of Judicial Member and Accountant Member in the unreserved category within eight weeks.

5. The Union of India challenged the common order of the Principal Bench of the Central Administrative Tribunal before the Delhi High Court contending that the vacancies in the post of Judicial Member and Accountant Member can be filled up only after the recruitment rules of the Income Tax Appellate Tribunal are amended as decided by the Appointments Committee. In the impugned judgment, the High Court held that the recruitment rules of the Income Tax Appellate Tribunal had already been amended and an amendment had been inserted in Rule 4(a) of the recruitment rules, but there was nothing in the amendment which disqualifies any of the three wait-listed candidates from being appointed as members of the

Income Tax Appellate Tribunal. In the impugned judgment, the Delhi High Court further held that the selection had been conducted by a high-power Selection Board presided over by a sitting Judge of the Supreme Court and no one can doubt the recommendation of the Selection Board which deserved to be given due weightage and consideration. In the impugned judgment, the High Court further held that the only way of reducing the backlog is to fill up the vacancies at the earliest and by not doing so, the Union of India was merely prolonging the agony of a large number of assesses apart from depriving itself of its legitimate dues which depends upon the verdict of the Income Tax Appellate Tribunal in appeals pending before it. The High Court, therefore, did not accept the explanation given by the Union of India in not making appointments and dismissed the writ petition and further directed the Union of India to process the case for the appointment of the 3 wait-listed candidates against the respective vacancies and thereafter place the matter before the Appointments Committee of the Cabinet for further directions within the period of eight weeks.

6. Mr. A.S. Chandhiok, learned counsel for the appellants submitted that it is settled law that the person whose name appears in the select list much less a person who is placed in the wait list, does not acquire any indefeasible right of appointment. In support of this submission, he relied on the decisions of this Court in *Shankarsan Dash v. Union of India*³ *Asha Kaul (Mrs.) and Another v. State of Jammu and Kashmir and Others*⁴ and *Sanjoy Bhattacharjee v. Union of India and Others*⁵ He submitted that in the present case, the Selection Board selected 18 candidates out of whom 2 did not get the vigilance clearance and all the remaining 16 selected candidates were approved for appointment by the Appointments Committee of the Union Cabinet but the Appointments Committee decided not to make any further appointment till the amendment of the Rules. He submitted that out of these 16 selected candidates, one candidate selected for the post of Judicial Member declined to accept the offer of appointment and another candidate though appointed as Judicial Member resigned and as a result there were some unexpected vacancies and in these unexpected vacancies B. Krishna Mohan who was placed in the wait list of the candidates recommended for appointment as Judicial Member could not be appointed because of the decision of the Appointments Committee not to make any further appointment until the amendment of the Rules. He submitted that similarly there were 5 vacancies of Accountant Members in the general quota and 5 candidates were selected but one selected candidate declined and another selected candidate did not get vigilance clearance and Inturi Rama Rao and P.K. Kedia, who were placed in the wait list could not be appointed as the Appointments Committee had taken a view that there will be no further appointments till the rules are amended.

7. Mr. Chandhiok submitted that the High Court has held that there was nothing in the amendment inserting Rule 4(a) in the Rules which disqualifies any of the aforesaid 3 wait-listed candidates, namely, B. Krishna Mohan, Inturi Rama Rao and P.K. Kedia from being appointed as the members of the Income Tax Appellate Tribunal and hence the amendment of the Rules was not relevant for denying appointment to the 3 wait-listed candidates as members of the Income Tax Appellate Tribunal. He submitted that Rule 4(a) was already in existence when the Selection Board made its recommendations in 2005 and the Appointments Committee in its decisions was therefore did not have in mind Rule 4(a) of the

Rules when it decided on 31.08.2007 that all further appointments will be made only after amendment of the rules. In this context, he referred to Para 6 of the reply filed by the Union of India before the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1024 of 2008 filed by P.K. Kedia. He submitted that the High Court, therefore, wrongly considered the amendment inserting Rule 4(a) of the Rules and rejected the explanation given by the Appointments Committee in not making appointment.

8. Mr. Vijay Hansaria, appearing for B. Krishna Mohan, submitted that the recommendations of the Selection Board would show that the wait-listed candidates who were to be considered for appointment in case any of the candidates included in the main list of selected candidates were not available or found unsuitable for appointment after antecedents verification and therefore if some of the candidates placed in the main list of selected candidates were either not available or not found suitable for appointment after antecedents verification, the wait-listed candidates have the right to be considered for appointment. He submitted that the advertisement was for filling up not only existing vacancies but also vacancies that may occur upto 31.12.2005 as has been stated in Para 2 of the advertisement. He submitted that well before 31.12.2005, 2 vacancies in the post of Judicial Members occurred and B. Krishna Mohan was entitled to be considered for appointment to the post of Judicial Member of the Income Tax Appellate Tribunal. He submitted that the Madras High Court issued mandamus in Writ Petition No. 8288 of 2007 to the appellants to place the matter before the Appointments Committee of the Union Cabinet and also directed to give effect to the selection list as approved by the selection board. He submitted that the selection list approved by the selection board would include not only the candidates placed in the main selection list, but also the candidates in the wait list.

9. Mr. Hansaria submitted that in *R.S. Mittal v. Union of India* (supra) this Court while interpreting Rule 4 of the Rules has held that when a person has been selected by the Selection Board and there is a vacancy which could be offered to him, keeping in view his merit position, then, ordinarily there is no justification to ignore him for appointment. He also relied on the decision in *A.P. Aggarwal v. Govt. of NCT of Delhi and Another* (supra) in which this Court has reiterated that it is not open to the Government to ignore the panel which has already been approved and accepted by it and resort to a fresh selection process without giving any proper reason for resorting to the same. He cited *Director, SCTI for Medical Science & Technology and Another v. M. Pushkaran*⁷ in which this Court has held that the selectee has no such legal right and the superior court in exercise of its power of judicial review would not ordinarily direct issuance of any writ, but each case must be considered on its own merits and where the Court does not find any reason for the authorities not to offer any appointment to candidate placed in the selection panel, the Court can direct appointment. He submitted that in the present case, since no good reason had been shown by the appellants for not making appointment to the vacancies for the post of Judicial Members in the Income Tax Appellate Tribunal, the High Court rightly directed the appellants to make the appointment of B. Krishna Mohan as a Judicial Member.

10. Mr. A.K. Behera, appearing for P.K. Kedia submitted that as two of the selected candidates recommended for Accountant Member by the selection board were not appointed

to the vacancies in the unreserved quota already advertised, P.K. Kedia, who was placed in the wait list of candidates selected for appointment to the post of Accountant Member has a vested right to be considered for appointment as has been held by this Court in R.S. Mittal v. Union of India (supra). He also relied on A.P. Aggarwal v. Govt. of NCT of Delhi and Another and Director, SCTI for Medical Science & Technology and Another v. M. Pushkaran (supra).

11. Mr. Behera next submitted that the Madras High Court in its order dated 24.04.2007 directed the appellants to give effect to the selection list as approved by the Selection Board and against this order of the Madras High Court the appellants filed Special Leave Petition (Civil) No. 13681 of 2007, but on 17.08.2007 this Court dismissed the Special Leave Petition and directed the appellants to give effect to the selection list as approved by the Selection Board within eight weeks. He submitted that the grounds which were urged in Special Leave Petition No. 13681 of 2007 have been reiterated in the present Special Leave Petition and this was not permissible in law. He argued that this is therefore a fit case in which this Court should dismiss the Civil Appeal.

12. Mr. V. Kanakraj, learned counsel appearing for Inturi Rama Rao, submitted that the rules do not prohibit preparation of a wait list. He submitted that the recommendation of the Selection Board would show that some of the candidates were placed in the wait list because the Selection Board did not want to recommend candidates in the main select list in excess of the notified vacancies. He submitted that the candidates placed in the wait list therefore also had merit and deserve to be appointed. He finally submitted that the candidates placed in the wait list had a legitimate expectation of being considered for appointment to the vacancies as and when they arose.

13. Selection and recruitment of members of the Income Tax Appellate Tribunal, both Judicial and Accountant, is made under Rule 4 of the Rules which is quoted hereinbelow:

"4. Method of Recruitment:-

(1) There shall be a Selection Board consisting of -

(i) a nominee of the Minister of Law;

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

(iii) The President of the Tribunal; and

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

(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 therefore 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. "

14. Rule 4 of the Rules quoted above was considered by this Court in *R.S. Mittal v. Union of India* (supra) and this Court held that a person on the select panel has no vested right to be appointed to the post for which he has been selected, but he has a right to be considered for appointment. This Court also held in the aforesaid decision that the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims and when 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. In the aforesaid decision, this Court has held that there has to be a justifiable reason to decline to appoint a person who is on the select-panel. The question of filling up the post of Member in Sales Tax Appellate Tribunal constituted under the Delhi Sales Tax Act, 1975 arose for consideration in *A.P. Aggarwal v. Govt. of NCT of Delhi and Another* (supra) and this Court observed that it was not open to the Government to ignore the panel which has already been approved and accepted by it and resort to a fresh election process without giving any proper reason for resorting to the same.

15. The Madras High Court has disposed of writ petition No. 8288 of 2007 on 24.04.2007 with a direction to the appellants to place the matter before the Appointments Committee and further directed to give effect to the selection list as approved by the Selection Board in the light of the decision in *R.S. Mittal v. Union of India* (supra) and *A.P. Aggarwal v. Govt. of NCT of Delhi and Another* (supra). Against these directions of the Madras High Court, though the appellants carried a special leave petition, this Court dismissed the special leave petition on 17.08.2007 and directed the Union of India to complete the formalities and give effect to the selection list. Hence, we are required to consider whether the selection list has been given effect to by the appellants in the light of the decisions of this Court in *R.S. Mittal v. Union of India* (supra) and *A.P. Aggarwal v. Govt. of NCT of Delhi and Another* (supra).

16. So far as the candidates placed in the main select list, there is no dispute that out of the 18 candidates placed in the main select list, 2 were found unsuitable and the remaining 16 were found suitable and all the 16 candidates found suitable were approved for appointment by the Appointments Committee of the Union Cabinet in its decisions dated 26.04.2006 and 31.08.2007. The difference between the decisions of the Appointments Committee of the Union Cabinet taken on 26.04.2006 and 31.08.2007 was that on 26.04.2006 the Appointments Committee approved the appointment of 16 candidates found suitable for a period of 2 years and further decided that the rules be amended for making such appointment for a period of 2 years, whereas on 31.08.2007 after the Supreme Court dismissed the Special Leave Petition against the order of the Madras High Court, the Appointments

Committee approved the appointment of the 16 candidates for a full tenure upto 62 years as provided under Rule 11 of the Rules. Hence, the main list of the selected candidates recommended by the Selection Board has been given effect to in accordance with the directions of the Madras High Court as upheld by this Court.

17. The wait list of candidates recommended by the Selection Board, however, has not been given effect to. Under sub-rule (3) of Rule 4 of the Rules quoted above, the Central Government after taking into consideration the recommendations of the Selection Board make a list of persons selected for appointment as members. Thus, until the Appointments Committee approved the list of wait-listed candidates, such wait-listed candidates are not persons selected for appointment. Appointments Committee in its meetings held on 26.04.2006 and 31.08.2007 had taken a view that any further appointment after the 16 selected candidates can be made after the amendment of the Rules. The Central Government is both the rule making authority as well as the appointing authority of any member of the Income Tax Appellate Tribunal under the Income Tax Act, 1961. Hence, if the Central Government has taken a decision through the Appointments Committee of the Union Cabinet to undertake appointments in future after amendment of the rules, it is difficult for the Court to hold that the reason given by the Central Government in not making any further appointments because of the proposed amendments to the rules was not a justifiable or proper reason and that the decision of the Central Government in not approving the wait list of candidates recommended by the Selection Board is not in accordance of this Court's decisions in *R.S. Mittal v. Union of India (supra)* and *A.P. Aggarwal v. Govt. of NCT of Delhi and Another (supra)*.

18. The High Court, however, has held that the amendment inserting Rule 4(a) of the Rules did not in any way disqualify the three candidates placed in the wait list to be appointed as Members of the Income Tax Appellate Tribunal. The High Court lost sight of the fact that Rule 4(a) had already been inserted in the Rules by notification dated 26.04.2004 and therefore this could not be the amendment which was in the mind of the Appointments Committee when it took the decisions on 26.04.2006 and 31.08.2007 to make further appointments only after the Rules were amended. Para 6 of the short reply on behalf of the Union of India filed before the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1024 of 2008 has made a reference to the proposed amendment discussed in the meeting of the Appointments Committee and is quoted hereinbelow:

"Para 6 - The ACC approved appointment of 16 candidates for a period of not exceeding 02 years from the date of assumption of charge of the post or until further orders and also it directed the respondent No.1 for amendment of the Recruitment rules. Since the existing recruitment rules do not have provision of appointment of members for a period of two years except in the case of appointment to the temporary benches, the matter was under correspondence between the respondent and the ACC."

19. As has been held by this Court in *Director, SCTI for Medical Science & Technology and Another v. M. Pushkaran (supra)* each case must be considered on its own merits and where the Court does not find any reason for the authorities not to offer any appointment to the

candidate placed in the selection panel the Court can direct appointment. In the facts of the present case, the Madras High Court did not see any justification on the part of the Central Government in not giving effect to the select panel when there was a very large pendency of cases in the Income Tax Appellate Tribunal resulting in hardship to the litigant public as well as loss to the exchequer, but after the Appointments Committee approved appointments of 16 selected candidates found suitable for appointment as members of the Income Tax Appellate Tribunal, the immediate need for filling up the vacancies was met and if the Appointments Committee has taken a view that any further appointments will be considered only after the rules are amended, the Court should not compel the Central Government to make the appointments from the wait-listed candidates recommended by the Selection Board by a writ of mandamus. In our considered opinion, the circumstances in which this Court dismissed the Special Leave Petition against the order of the Madras High Court no longer subsisted after the Appointments Committee approved the appointment of the 16 selected candidates so as to warrant a direction by the Delhi High Court to the Central Government to appoint the 3 wait-listed candidates as members of the Income Tax Appellate Tribunal.

20. We accordingly set aside the impugned judgment of the Delhi High Court and the common judgment of the Central Administrative Tribunal, Principal Bench, in O.A. Nos. 1024 of 2008, 1036 of 2008 and 1037 of 2008 and dismiss the Original Applications. The appeals are allowed, but there shall be no order as to costs.

Judgment Referred.

¹1995 Supp. (2) SCC 0230

²(2000) 1 SCC 0600

³(1991) 3 SCC 0047

⁴(1993) 2 SCC 573

⁵(1997) 4 SCC 0283

⁶(2008) 1 SCC 0448