

PETITIONER:

A. TRIPATHI AND ANR. ETC. ETC.

Vs.

RESPONDENT:

J.P. GUPTA AND ORS. ETC. ETC.

DATE OF JUDGMENT 07/01/1993

BENCH:

RAY, G.N. (J)

BENCH:

RAY, G.N. (J)

KULDIP SINGH (J)

CITATION:

1993 SCR (1) 20	1993 SCC (1) 426
JT 1993 (1) 115	1993 SCALE (1) 21

ACT:

Service Law--Constitution of Selection Committee--U.P. Jal Nigam--Superintendent Engineer--Selection for Additional Chief Engineer--Government Order requiring nomination of expert in Selection Committee--Nomination of Chairman Jal Nigam on Selection Committee instead of nomination of an Expert--Validity of--Held in the absence of any indication or order requiring that the expert nominated must be expert in the field of Engineering--Appointment of Chairman Jal Nigam, having special knowledge in administrative set up of Jal Nigam, as expert on Selection Committee was valid.
Words and Phrases : 'Vishesagya'--Meaning of.

HEADNOTE:

A Government Order dated December 14, 1979 provided that the Selection Committee for the post of Chief Engineer in the U.P. Jal Nigam shall, inter alia, consists of an Expert G, working as Superintendent Engineer in the Jal Nigam was selected as Additional Chief Engineer, Level-II by the Selection Committee in 1985 but was not offered appointment. In 1989 fresh selections were held by the Selection Committee in which T and R, working as Superintendent Engineers in the Jal Nigam, were selected and promoted to the post of Additional Chief Engineers. G was not found fit by the Selection Committee.

G filed a Writ Petition in the Allahabad High Court challenging the selections made in 1989 on the ground that the Selection Committee was not properly constituted because instead of nominating an expert, the Chairman U.P. Jal Nigam was nominated as a member of the Committee. During the pendency of the Writ Petition the High Court passed an interim order pursuant to which T and R were reverted from the posts of Additional Chief Engineer. High Court allowed the petition and set aside the selection made in 1989, and directed that G be appointed on the basis of his selection made in 1985. Against the judgment of the High Court, T, R and U.P. Jal Nigam filed appeals in this Court. During the pendency of the proceedings before this Court fresh selections were made in 1992 in

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which T was selected but R was not selected and consequential appointments were also made.

In appeal to this Court It was contended on behalf of T & R that the on Committee was properly constituted because as a long standing practice the chairman of the Jal Nigam was always included as an Expert Member of the Committee; besides the Chairman the Managing Director of the Jal Nigam, who was a technical expert in the field of engineering, was also one of the members of the committee; (2) mere inclusion of a candidate's name in the panel does not confer on him a right to appointment; selection of G made in 1985 came to an end with the lapse of time and (3) both T and R should first be appointed pursuant to the selection made in 1989 and thereafter selections made in 1992 should be given effect to.

On behalf of G it was contended (1) that in the context in which the selection of Additional Chief Engineer is to be made the expression 'Expert' must mean technical expert In the field concerning the Jal Nigam and accordingly the High Court was right in holding that the Chairman U.P. Jal Nigam cannot be held to be an expert; (2) since the Selection Committee of 1989 was not properly constituted G, by virtue of his inclusion in the 1985 panel was entitled to appointment before other eligible officers were considered in 1989.

On behalf of the State it was contended that the pendency of the proceedings before this Court did not stand in the way of making selections in 1992 as also the consequential appointments; (2) in view of altered position in 1992 because of the selection and consequential appointments no further directions should be given by this Court

Disposing the appeals, this court

HELD: 1. In the absence of any indication or any Government Order indicating that in the context of exercise to be made by the Selection Committee to prepare a panel of officers fit to be promoted to the post of Additional Chief Engineer Level-II of the Jal Nigam, the expert to be nominated by the Chief Secretary to the Selection Committee should be an expert in the field of Engineering or for that matter in the particular speciality of Engineering namely irrigation and waterways, it cannot be held that appointment of Chairman Jal Nigam as a 'Vishesagya' was per se illegal and as such the

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constitution of the Selection Committee was invalid and selection made by such committee is liable to be annulled.

[28E-F]

2. Literally the expression 'Vishesagya' in Hindi means a person having special knowledge. Such expression has not been explained either explicitly or by necessary implication. In the circumstances of the case it does not appear that the Vishesagya to be nominated in the Selection Committee must necessarily be a 'Vishesagya' in a particular field of speciality. The Chairman of the Jal Nigam was a person with wide experience in administration over the years and by virtue of his position as Chairman of Jal Nigam, he had also special knowledge in the administrative set up of Jal Nigam. He is, therefore, a 'Vshesagya' particularly from the point of view of administration. [28C-D]

3. Since the selection made by the Committee constituted in 1989 is legal and valid the panel prepared by Selection Committee in 1985 came to an end. Consequently it will not be proper to cancel the selection of T and R made by the Selection Committee constituted in 1989. Further, in view of the fact that the selection made by the Committee of 1985 was not challenged and it is otherwise not illegal and

invalid the life of the panel formed in 1985 had continued till new selection was made by the Selection Committee in 1989. Consequently, it will be unjust and unfair to deny promotion to G also against the available vacancy existing in 1989. [29E, 30A-B]

4. The Administration should not have acted with undue haste ilk appointing persons included in the panel of 1992 before the disposal of the pending appeals before this Court or atleast without taking leave from this Court to fill up such posts. Such appointment having been made during the pendency of these appeals must abide by the result of these appeals. [29F]

4.1. Accordingly, it is directed that against all the available posts of Additional Chief Engineer, Level II prior to selection made by the Selection Committee constituted in 1992, G, T and R should be considered first for appointment by promotion to the post of Additional Chief Engineer, Level II and thereafter on the basis of the respective merit position in the panel recommended by the Selection Committee of 1992, selected candidates should be considered for appointment against the re vacancies. [30C-D]

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4.2. In the matter of inter se seniority amongst G, T and R, G having been included in the panel of 1985 and also being the senior most, should get seniority and thereafter on the basis of merit position in the list prepared by the Selection Committee of 1989, the inter se seniority of T and R should be fixed. T and R should be seniors to other persons to be appointed in terms of selection made in 1992. [30E-F]

State of Haryana v. Subash Chander Marwaha & Ors., [1974] 1 S.C.R. 165; Jatinder Kumar and Ors. v. State of Punjab & Haryana, [1985] 1 S.C.R. 899 and State Bank of India and Ors. v. Mohd Mynuddin, A.I.R. 1987 S.C. 1889, cited.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 940 of 1992. From the Judgment and Order dated 1.5.1991 of the Allahabad High Court in W.P. No.9066 of 1989.

WITH

Civil Appeal No. 941 of 1992.

Harish N. Salve, S.C. Manchanda, Sunil K. Jain, Vijay Hansaria, Ms. Sandhya Goswami, I.M. Quddusi and P.S. Tomar for the Appellants.

Manoj Swarup and Ms. Lalita Kohli for the Respondents.

The Judgment of the Court was delivered by

G.N. RAY, J. Gupta, Tripathi and Rizvi are working as Superintendent Engineers in the service of U.P. Jal Nigam. Gupta was selected for the post of Additional Chief Engineer, Level 11 by the Selection Committee in 1985 and his name was brought on the merit list. Unfortunately, he was not offered the appointment and in 1989 fresh selections were held by the Selection Committee. Tripathi and Rizvi were selected by the Selection Committee in the year 1989 whereas Gupta was not found fit by the Selection Committee on the basis of his service record. Tripathi and Rizvi were promoted to the post of Additional Chief Engineer as a result of their selection in the year 1989.

Gupta challenged the selection made in the year 1989 before the

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Lucknow Bench of the Allahabad High Court by way of a writ petition under Article 226 of the Constitution of India.

The main ground of attack was that the Selection Committee was not validly constituted. Gupta also contended that before the fresh selection could be made in the year 1989 he was entitled to be appointed as Additional Chief Engineer on the basis of the merit list prepared in the year 1985 which was operating even in the year 1989. The High Court allowed the writ petition, set aside the selection made in the year 1989 and further directed that Gupta be given appointment on the basis of his selection made in the year 1985. It may be mentioned that Tripathi and Rizvi were reverted from the posts of Additional Chief Engineer by the interim order of the High Court during the pendency of the writ petition. These appeals by Tripathi, Rizvi and U.P. Jal Nigam are against the judgment of the High Court.

It is not disputed that under the Government order dated December 14, 1979 the Selection Committee for the post of Chief Engineer was to consist of the following persons:

- (i) A Secretary nominated by the Chief Secretary
- (ii) An Expert nominated by the Chief Secretary
- (iii) Secretary Appointment Department
- (iv) Director General Bureau of Public Enterprises
- (v) Secretary of the Department concerned.

The contention before the High Court was that instead of nominating an expert on the Selection Committee the Chairman of the Jal Nigam was nominated as a member of the Committee. The High Court accepted the contention and set aside the selection on the ground that there was no expert on the Selection Committee. The High Court rejected the contention that the Chairman Jal Nigam, having vast experience in the field of selection to various offices of Jal Nigam, was an expert and in his presence no other expert was necessary.

Mr. Salve, learned Senior counsel appearing for the appellants in Civil Appeal No. 940 of 1992 namely Shri A. Tripathi and Shri M.A. Rizvi has contended that the High Court on a very flimsy ground has held that the Selection Committee was not properly constituted because no expert

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was nominated in the Selection Committee and the Chairman, U.P. Jal Nigam Shri Venkataramani, could not be held to be an expert. He has submitted that nowhere it has been mentioned that any member not having expertise in any particular field can not be treated as an expert. There is no manner of doubt that the then Chairman U.P. Jal Nigam, Shri Venkataramani being a very senior I.A.S. Officer had wide experience in the administration of Jal Nigam and by virtue of his vast experience in the administrative set up he was entitled to be treated as an expert. He has further submitted that it was stated in the counter affidavits of the State Government and also of the Jal Nigam that as a long standing practice, the Chairman of the Jal Nigam was always included as an expert member of the Committee and besides the said Chairman, the Managing Director of Jal Nigam who had technical expertise in the field of engineering was also one of the members of the committee.

Mr. Salve has contended that even assuming for argument's sake that expert as contemplated under the Government Order in question should be a technical expert and not an expert in the administrative set up, the Managing Director being a technical Expert was already there in the Committee. Mr. Salve has contended that the selection to the post of Chief Engineer which is one of the very top posts in the hierarchy, was essentially a selection on merit and not on the basis of seniority. For the purpose of being selected, the candidate must have an outstanding record all through. It has been very specifically stated in the counter

affidavits filed on behalf of the State Government and also on behalf of the U.P. Jal Nigam that Shri Gupta, had no outstanding record and he had suffered adverse remarks in 1983-84, 1984-85 and 1985-86 and even prior to that he was warned. Adverse remark for 1985-86 was however expunged on his representation but the other adverse entries in the service record remained in force. Coming to the question of his selection made in 1985, Mr. Salve has contended that such selection even if any came to an end with the lapse of time. He has stated that it has been persistently followed that the selection list will remain in force for about a year. He has further contended that in any event, such question becomes academic because though he was included in the panel of selected candidates, the Writ Petitioner, Sri. Gupta, could not be given appointment in view of his lower position in the merit list against the available vacancies. As subsequently a new selection list was made, in November 1989 before he could be absorbed, the said list of 1985 had, came to an end. Mr. Salve has contended that it was really unfortunate that the appellants had to be

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reverted from the post of Additional Chief Engineer Level II because of the interim order passed by the High Court in the said Writ Petition. Mr. Salve has also stated that in 1992 when the Special Leave Petitions was pending in this Court, a fresh selection was made and seven persons have been selected. The appellant, Shri Tripathi has been included in the said selection list but, unfortunately, Shri Rizvi has not been included in this selection list. He has submitted that if the Writ Petition is dismissed and the selection made in 1989 is upheld, the subsequent selection made in 1992 cannot operate against the appellants in Civil Appeal No. 940 of 1992, particularly the appellant Shri Rizvi. He has submitted that both Shri Tripathi and Shri Rizvi should first of all be appointed pursuant to the valid selection made in 1989 and thereafter against any other available vacancy the effect of the subsequent selection made in 1992 should be given. Mr. Salve has further submitted that the Selection Committee of 1989 was constituted by the Bureau of Public Enterprise. Such Selection Committee was quite legal and no interference is called for against the selection made by the said Selection Committee. He has also submitted that even for the sake of argument that the Writ Petitioner, Sri Gupta, was entitled to get the advantage of his inclusion in the said list of 1985 because, such list remained in force until subsequent valid selection was made, the High Court clearly erred in directing to give the appointment to Sri Gupta to the post of Additional Chief Engineer Level II. Mr. Salve has contended that merely because a candidate's name has been included in the panel such candidate has no right to claim appointment by way of mandamus. In this connection, reliance has been placed on the decisions made by this Court in the cases of State of Haryana v. Subash Chander Marwaha and others, reported in [1974] 1 SCR 165 and Jatinder Kumar and others v. State of Punjab and others reported in [1985] 1 SCR p.899. Mr. Salve has contended that the direction of the High Court to appoint Sri Gupta is contrary to the decision of this Court made in the case of State Bank of India and others v. Mohd Mynuddin reported in AIR 1987 SC 1889.

The learned counsel for the State of U.P. has however, stated that since the Chairman was not a technical expert, the consideration of Selection Committee has been held illegal by the High Court and it has also been held that the inclusion of the Managing Director in the

Committee could not cure the defect of nominating an expert in the Committee inasmuch as such Managing Director was not appointed qua expert. As the Administration was suffering for not filling up the vacant posts of Additional Chief

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Engineer Level II the Selection Committee was again constituted in 1992 and steps have been made. The learned counsel has submitted that pendency of the proceeding before this Court did not stand in the way of making selection in 1992 and giving appointments pursuant to such selection. He has therefore, submitted that in view of the altered position in 1992 because of the selection and consequential appointments in 1992 no further direction should be given by this Court. He has also submitted that although there were adverse remarks in the service record of Sri Gupta but in the selection made in 1985 he was included in the panel of selected Officers. The learned counsel has made it clear that the State Government or Jal Nigam has no objection if the Writ Petitioner, Sri Gupta, is considered for promotion because of his earlier selection made in 1985. The learned counsel appearing for the Writ Petitioner, Sri Gupta has contended that the plea of long standing practice should not be accepted because the rules clearly indicate how the Selection Committee is to be constituted. He has also stated that under the existing rules and the Government orders, the penal of the selected candidates should remain in force until the same is exhausted or a new selection is made. Since the Selection Committee of 1989 was not properly constituted, the petitioner reminded in the panel by virtue of his inclusion in 1985 and admittedly there was a vacancy when the new Selection Committee was sought to be constituted in 1989. It was therefore a bounded duty of the authorities of the Jal Nigam and the State of U.P. to give appointment to the writ petitioner, Sri Gupta, to the post of Additional Chief Engineer, Level II before making exercise of considering the cases of other eligible officers against available vacancies by constituting a Selection Committee. The learned counsel has submitted that a just claim of Sri Gupta, should not be frustrated by any approach. He has submitted that the selection to the Post of Additional Chief Engineer Level II in the Jal Nigam was meant to select proper persons having sufficient technical expertise to man a high post in the hierarchy. In such circumstances, the expert to be nominated in the Selection Committee must be a person having technical expertise and not expertise in any other field or in the field of administration. In the context in which the selection of Additional Chief Engineer Level II is to be made, the expression 'expert' must mean technical expert in the field of the Jal Nigam. In the aforesaid circumstances, the High Court has correctly read the expression 'expert' and has held that the

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Chairman, U.P. Jal Nigam cannot be held to be an expert as contemplated in the rules. The learned counsel has further contended that if the statutory rule indicates the manner in which the Selection Committee must be constituted, any departure from such manner must be held to be illegal and void. The mere fact that the Managing Director was also one of the members of the Selection Committee having technical expertise, his inclusion in the Committee could not cure the defect because admittedly the said Managing Director was not nominated by the Chief Secretary, Government of U.P. as an 'expert member' in the Committee.

After considering the facts and circumstances of the case

and the submissions of the learned counsels appearing for the parties it does not appear to us that 'Vishesagya' to be nominated in the Selection Committee must necessarily be a 'Vishesagya' in a particular field of speciality. Such expression has not been explained either explicitly or by necessary implication. Literally the expression 'Vishesagya' in Hindi means a person having special knowledge 'Vishes' means special and 'Agya' means person having knowledge. Mr. Venkataramani was a person with wide experience in administration over the years and by virtue of his position as Chairman of Jal Nigam, he had also special knowledge in the administrative set up of Jal Nigam. He is, therefore, a 'Vishesagya' particularly from the point of view of administration. In the absence of any indication or any Government Order placed before us that in the context of exercise to be made by the Selection Committee to prepare a panel of Officers fit to be promoted to the post of Additional Chief Engineer Level 11 of the Jal Nigam, the expert to be nominated by the Chief Secretary to the Selection Committee should be an expert in the field of Engineering or for that matter in the particular speciality of Engineering namely irrigation and waterways, it cannot be held that appointment of Mr. Venktaramani as a 'Vishesagya' was per se illegal and as such the constitution of the Selection Committee was invalid and selection made by such committee is liable to be annulled. Since the exercise to be made by the Selection Committee is to find out suitable persons to be promoted to the post of Additional Chief Engineer Level II, it is reasonably expected that the Committee should be constituted in such a manner that technical expertise of the selected candidates in the field of operation to which their services will be required may be reasonably assessed. It is quite likely that since the Managing Director of the Jal Nigam having technical expertise in the field of engineering was included in the Committee, the Chairman who is also an expert in general ad-

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ministration was appointed in the committee as an expert member. The Additional Chief Engineer is reasonably expected to look after administrative set up under its control besides the technical works involved in the field of his activities. It has been specifically stated in the counter affidavits of the State of Uttar Pradesh and the Jal Nigam that the Chairman of the Jal Nigam was earlier appointed as an expert member in the Selection Committee. The Selection Committee of 1989 was constituted by the Bureau of Public Enterprise. This high power committee has made all the exercises to select officers to be included in the panel and on such selection, recommendations were made to the State Government and the State Government has also approved the panel. No other officer coming in the zone of consideration except the Writ Petitioner Sri Gupta, has challenged the constitution of the Selection Committee and the validity of the panel of the selected officers. Such challenge has been made just at the nick of time when the selected officers were going to be appointed pursuant to their merit positions in the selection list. But for the Writ proceedings, and interim order passed therein, both Sri Tripathi and Sri Rizvi, would have got the appointments in the post of Additional Chief Engineer Level II, and would have continued in such post. As a matter of fact, they had been given appointments to the post of Additional Chief Engineer but in view of the interim order passed in the Writ proceedings such order were recalled and they were reverted to the post of Superintending Engineer. In the facts of the

case, we do not think that it will be proper to cancel the selection of Sri Tripathi and Sri Rizvi, made by Selection Committee constituted in 1989. Since the selection made by the Committee constituted in 1989 is legal and valid the panel prepared by Selection Committee in 1985 came to an end. It also appears to us that the Administration should not have acted with undue haste in appointing persons included in the panel of selected officers on the basis of recommendations made by the Selection Committee constituted in 1992 before the disposal of the pending appeals before this Court or atleast without taking leave from this Court to fill up such posts. Such appointments having been made during the pendency of these appeals must abide by the result of these appeals. It however appears to us that Sri Gupta was included in the list of selected officers in 1985 and if diligent steps had been taken to fill up available vacancies on the basis of merit positions in the select list of 1989, Sri Gupta should have been absorbed even before exercise of selecting suitable officers fit for promotion was made by the Selection Committee of 1989.

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Admittedly there were vacancies available in 1989 when such exercise was made. Since selection made by the Committee of 1985 was not challenged and it is no body's case that such selection is otherwise illegal and invalid, we are inclined to hold by accepting the contention of the learned counsel of Sri Gupta that the life of the panel formed in 1985 had continued till now selection was made by the Selection Committee in 1989.

Consequently, it appears to us that it will be unjust and unfair to deny promotion to Sri Gupta to the post of Additional Chief Engineer, Level II of U.P. Jal Nigam against the available vacancy existing in 1989. We therefore, direct that against all the available posts of Additional Chief Engineer, Level II prior to selection made by the Selection Committee constituted in 1992 the Writ Petitioner Sri Gupta and appellants in Civil Appeal No. 940 of 1992 namely Sri Tripathi and Sri Rizvi should be considered first for appointment by promotion to the post of Additional Chief Engineer, Level II of U.P. Jal Nigam and thereafter on the basis of the respective merit position in the panel recommended by the Selection Committee of 1992, selected candidates should be considered for appointment to the said post of Additional Chief Engineer against the remaining vacancies. In the absence of any challenge about the validity of the Constitution of Selection Committee of 1992 and selection made by it, we assume that the panel prepared by such Committee and approved by the concerned authority is a valid panel. In the matter of inter se seniority amongst Sri Gupta, Sri Tripathi and Sri Raizvi Sri Gupta having been included in the panel of 1985 and also being the senior most, should get seniority and thereafter on the basis of merit position in the list prepared by the Selection Committee of 1989, the inter se seniority of Sri Tripathi and Sri Rizvi should be fixed. By way of abundant caution it is made clear that Sri Tripathi and Sri Rizvi should be seniors to other persons to be appointed in terms of selection made in 1992.

The appeals are accordingly disposed of without any order as to cost.

T.N.A.

Appeals disposed of.

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