

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1363

Summary Calendar

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SURENDRA K. GUPTA,

Plaintiff-Appellant,

versus

TEXAS INSTRUMENTS, INC.,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas

(3:91-CV-2522-G)

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(January 20, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

I

Texas Instruments, Inc., removed Surendra K. Gupta from his position of employment at the company during a reduction in its workforce. Texas Instruments subsequently refused Gupta's request for educational assistance and did not offer him any of several alternative positions for which he applied. Gupta responded by

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

initiating this suit, claiming age discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 623 et seq., and national origin discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and 42 U.S.C. § 1981. Gupta's only claim on appeal involves his allegation that Texas Instruments discriminated against him on the basis of national origin in refusing to hire him for the position of auditor, job grade 26-28. The trial court, serving as trier of fact, found that Texas Instruments offered a nondiscriminatory basis for rejecting Gupta for the position. The court then ruled in Texas Instruments' favor, finding that the company had not acted in a discriminatory fashion.

## II

The issue on appeal is narrow. Gupta had the initial burden of establishing a prima facie case of discrimination. See U.S. Postal Service Bd. of Governors v. Aikens, 460 U.S. 711, 713-14 (1983). In rendering judgment in favor of Texas Instruments, the trial court assumed arguendo that Gupta had carried this burden. A burden of production then fell on Texas Instruments to offer its nondiscriminatory reason for declining to hire Gupta. See id. at 714. The trial court found that Texas Instruments articulated such a nondiscriminatory reason. Finally, the trial court had to decide as trier of fact whether Texas Instruments' rejection of Gupta's application for employment was discriminatory within the meaning of Title VII. Id. The court concluded that Texas Instruments had not discriminated against Gupta.

Gupta argues on appeal that Texas Instruments never in fact articulated its reason for refusing to hire him. Instead, the company offered several explanations that, in retrospect, could have accounted for its decision. As a result, Gupta argues, the trial court had no basis for reaching the issue of whether Texas Instruments' motivations were discriminatory. We agree.

The burden placed on Texas Instruments was not heavy. The company merely had to offer some statement that it had a nondiscriminatory basis for its actions. The presumption created by Gupta's prima facie case, if indeed he established one, would then have "drop[ped] from the case" and the court could have appropriately assessed the merits of Gupta's claim. Id. at 714-15.

Texas Instruments offered several possible reasons for Gupta's failure to acquire the position of auditor. One person hired in Gupta's place, who arguably was not otherwise as qualified, spoke Spanish, a skill that would be useful when Texas Instruments performed audits in Mexico and Argentina. Moreover, this person had more extensive training in accounting as an undergraduate student than Gupta. Nevertheless, while Texas Instruments offered possible reasons for its action, no witness testified that "these were in fact the reasons for the particular challenged action." Uviedo v. Steves Sash & Door Co., 738 F.2d 1425, 1429 (1984), cert. denied, 474 U.S. 1054 (1986). To the contrary, the witness on whom Texas Instruments relies on appeal, Charles William Smith, disavowed any actual knowledge of the motivations behind the decision not to hire Gupta. Smith testified as to the various

salutary characteristics of Gupta's competitor but his testimony as to Texas Instruments' motives amounted to mere speculation. When asked whether he could explain why Texas Instruments had rejected Gupta, Smith replied, "No. I did not make the decision. I can't tell you, no." Similarly, when asked whether he knew the reasons for rejecting Gupta and selecting his competitor, Smith answered, "No, I do not." When asked whether he knew if either age or race was a determining factor in the decision, Smith replied, "No." Smith's testimony does not suffice as a denial that Texas Instruments discriminated against Gupta. More to the point, Smith did not articulate the nondiscriminatory reason why Texas Instruments in fact reached its decision. As a result, Texas Instruments failed to rebut the presumption that it acted in a discriminatory manner. Id. at 1429-30.

### III

As the trial court did not find that Gupta established a prima facie case of discrimination, we do not resolve this dispute. Rather, we REVERSE and REMAND to enable the district court to find whether a prima facie case was established. The court may accept additional evidence if it chooses to do so.