61

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.512/1999 with OAs No.2293/99, 2301/99, 2302/99, 2359/99, 2360/99, 2361/99, 2362/99, 2363/99, 69/2000, 137/2000, 199/2000, 200/2000, 2303/99, 2606/99, 2605/99 and 2294/99 and 2173/2003

New Delhi, this the 10th day of October, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

OA 2293/99

Birendra Singh
Appraiser (Direct recruit Civil Services Examination, 1992)
ICD, Ballabgarh, Haryana

.. Applicant

OA 2301/1999

Sunil Kumar
Appraiser (Direct recruit Civil Services Examination, 1992)
New Custom House, New Delhi

.. Applicant

OA 2302/1999

Sanjiw Kumar Mishra
Appraiser (Direct recruit Civil Services Examination, 1992)
New Custom House, New Delhi

.. Applicant

OA 2294/1999

Mrs. Smita Tripathi
Appraiser (Direct Recruit Civil Services Examination, 1992)
ICD, Tuglakabad, Delhi

.. Applicant

OA 2173/2003

Pramod Kumar
Appraiser (Direct Recruit Civil Services Examination, 1991) at present working in Directorate of Systems & Data Management under Central Board of Excise & Customs, Ministry of Finance
New Delhi

.. Applicant

(by Shri R.L.Agarwala, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Finance
North Block, New Delhi

(62)

2. Chairman
Central Board of Excise and Customs
Ministry of Finance
North Block, New Delhi

3. Commissioner of Customs
New Custom House
Ballard Estate, Bombay .. Respondents

OA 512/1999

Ashok Kumar Pandey
Appraiser (Direct recruit Civil
Services Examination, 1991)
Custom House, Calcutta .. Applicant

vs.

1. Union of India, Service
through the Secretary
Ministry of Finance
North Block
New Delhi.

2. Central Board of Excise
and Customs,
Service
Through it's Chairman
Ministry of Finance
North Block
New Delhi.

3. Commissioner of Customs
Custom House
15/1, Strand Road
Calcutta.

4. M.R.Remi Reddi
Indian Customs and Central Excise Service
(I.C.& C.E.S.)
Dy.Commissioner, Vijaywada Division
204, Diva Ram Towers
Praja Shakti Nagar
Vijaywada, Andhra Pradesh

5. Sandeep Mohan Singh Puri
Indian Customs and
Central Excise Service (I.C.& C.E.S.)
Under Secretary, Central Excise-7
Section, Central Board of Excise and Customs
Jeevan Deep Building
New Delhi.

6. Sandeep Raj Jain
Indian Customs and Central Excise
Service (I.C.& C.E.S.)
Dy.Commissioner
Office of the Commissioner of Custom
(GEN) New Customs House
Near IGI Airport
New Delhi.

7. Subedar Ram Gaulam
Indian Customs and
Central Excise Service (I.C.& C.E.S.)
Assistant Commissioner
Central Excise, Kanpur-I
C/o Office of Commissioner of Central Excise
117/7, SArvodya Nagar
Kanpur.

8. G.Chandra Sekarai
Indian Customs and Central Excise Service
(I.C.& C.E.S.)
Dy.Commissioner
Vedodara Division-IV
Central Excise and Customs Building
5th Floor, Race Curse Circle
Vadodara-7, Gujarat. ... Respondents

OA 2359/1999

Rajesh Kumar
Appraiser (Direct recruit Civil
Services Examination, 1995)
Custom House, Calcutta .. Applicant

OA 2360/1999

Vinod Kumar Ahirwar
Appraiser (Direct Recruit Civil
Services Examination, 1995)
Custom House, Calcutta .. Applicant

OA 2361/1999

Subodh Singh
Appraiser (Direct Recruit Civil Services
Examination, 1995), Custom House
Calcutta .. Applicant

OA 2362/1999

Pravin Kumar Agrawal
Appraiser (Direct Recruit Civil Services
Examination, 1989), Custom House
Calcutta .. Applicant

OA 2363/1999

Ms. Seema Chowdhary
Appraiser (Direct Recruit Civil Services
Examination, 1991), Custom House
Calcutta .. Applicant

OA 69/2000

Sunil Kumar Kedia
Appraiser (Direct Recruit Civil Services
Examination, 1994), Custom House
Calcutta .. Applicant

64

OA 137/2000

Manish Kumar
Appraiser (Direct Recruit Civil Services
Examination, 1995), Custom House
Calcutta

.. Applicant

versus

1. Secretary
Ministry of Finance
North Block, New Delhi

2. Chairman
Central Board of Excise and Customs
Ministry of Finance
North Block, New Delhi

3. Commissioner of Customs
Custom House
15/1, Strand Road, Calcutta

4. Amita Dhaiya (Singh)
Indian Customs and Central Excise
(I.C.& C.E.S.)
Dy.Commissioner, Division-I
Civil Lines Telang Khedi Road
Nagpur-1.

5. Upender Singh Rawat
Indian Customs and
Central Excise Service (I.C.& C.E.S.)
Dy.Commissioner
Satara Division
Plot No.P/11 & P/14
Old MIDC, Satara
Maharashtra-4.

6. R.Vittal Vivekanandan
Indian Customs and
Central Excise Service (I.C.& C.E.S.)
Assistant Commissioner
Office of Commissioner of Customs
(Airport) Custom House-33
Rajaji Salai, Chennai-1.

7. R.Karunakaran
Indian Customs and Central Excise Service
(I.C.& C.E.S)
Assistant Commissioner (Anti Evasion)
Office of Commissioner of Central Excise
No.1, Williams Road, Trichy
Tamil Nadu (TN)
Pin 620001.

8. N.Shashi Dharan
Indian Customs and Central Excise
(I.C. & C.E.S.)
Assistant Commissioner

(65)

Office of Assistant Commissioner
(Central Excise)
Hyderabad-X Division
Posnett Bhawan
Tilak Road, ABIDS,
Hyderabad. ..... Respondents

OA 199/2000

Pankaj Jain
Appraiser (Direct Recruit Civil Services
Examination, 1991)
New Custom House, New Delhi .. Applicant

OA 200/2000

Nalin Kumar
Appraiser (Direct Recruit Civil Services
Examination, 1990)
ICD, Ballabgarh, Haryana .. Applicant

OA 2303/1999

Bhushan Lal Garg
Appraiser (Direct Recruit Civil Services
Examination, 1991)
Custom House, Chennai .. Applicant

OA 2606/1999

Kurrisambi Reddi
Appraiser (Direct Recruit Civil Services
Examination, 1992)
Custom House, Chennai .. Applicant

OA 2605/1999

Polamraju V.K.Raja Sekhar
Appraiser (Direct Recruit Civil Services
Examination, 1993)
Custom House, Chennai .. Applicant

(Shri G.D. Gupta, Sr.Counsel and Shri P.P.Khurana, Sr.Counsel with S/Sh. G.K.Masand, A.Saran, D.P.Mann, P.K.Singh, Mahesh Srivastava, Pankaj Srivastava and Seema Pandey, Advocates for applicants)

versus

1. Secretary
   Ministry of Finance
   North Block, New Delhi

2. Chairman
   Central Board of Excise and Customs
   Ministry of Finance
   North Block, New Delhi

66

3. Commissioner of Customs
Custom House
33, Rajaji Salai, Madras-600 001 .. Respondents

(Shri Madhav Panicker, Advocate for all respondents in all OAs)

Justice V.S. Aggarwal ORDER

Shri Kishori Lal Bablani (for short, "Shri Bablani") appeared in the Indian Administrative Service and Allied Services Examination 1974. He was placed at Sl.No.221 in category III. Candidates upto S.No.198 were accommodated in Class I service on basis of the available vacancies. Shri Bablani was accommodated in Class II in the Customs Department. He joined in 1976 and worked as Customs Appraiser (Class II). In 1983, he made a representation to the effect that in 1974 when the Department of Customs and Excise had notified available vacancies to be filled in by the candidates who qualified in the Indian Administrative Service and Allied Services Examination, the number of vacancies had wrongly been notified and intimated. Initially, the Department had intimated 35 vacancies for Class I posts. This figure was finally revised to 40 vacancies. According to him, 97 vacancies should have been notified . Had it been so done, he would have been appointed to Class I post in the Department in 1974. He filed a writ petition in the Bombay High Court which was transferred to the Bombay Bench of this Tribunal. The petition was allowed by the Bombay Bench. The Supreme Court while deciding the Civil Appeal No. 1328/1995 on 3.12.1998 against the decision

VS Agg—e

67

of this Tribunal held:-

"6. The appellants submitted before us with some justification, that in a writ petition which was filed in the year 1985, appointments which were made as far back as in the year 1974, ought not to have been disturbed. If a similar relief is to be granted to all those who were in the merit list of 1974 of I.A.S. and Allied Services examination and who were placed in Class II posts because of wrong notification of vacancies in the year 1974, there would be a complete disruption in the postings and positions of persons appointed as far back as in the year 1974 who are now occupying various posts not merely in this department but in other various Allied Services as well. The same would be the position if the vacancies for any subsequent years from 1975 to 1990 are now recalculated and the initial posting given to a large number of candidates during these years are now disturbed. They are, undoubtedly, right about this apprehension. Delay defeats equity is a well known principle of jurisprudence. Delays of 15 and 20 years cannot be overlooked when an applicant before the Court seeks equity. It is quite clear that the applicants for all these years had no legal right to any particular post. After more than 10 years, the process of selection and notification of vacancies cannot be and ought not to be reopened in the interest of the proper functioning and morale of the concerned services. It would also jeopardise the existing positions of a very large number of members of that service. The respondent, however, submitted that he has, in fact, been given the relief by the Tribunal. As a result, various orders have been issued granting him Group A appointment and subsequent promotions though these are made subject to the outcome of this appeal. The only question is, whether having upheld the merits of his contention, we should now take away the benefit which the respondent has actually obtained under the orders of the Tribunal.

7. We do not think that it would be fair to the respondent to take away the benefit which he has secured on the basis of the contentions which are accepted as justified. We, therefore, maintain the relief which has been granted to the respondent. But obviously after this lapse of time, such relief cannot be granted to anybody else.

As Agre

68

8. One intervention application is before us which was filed in the 1996 by a person who was recruited in the year 1975. The appellants have also pointed out that after the decision of the Tribunal in the present case, they have received a number of representations from other persons who were appointed during the period 1974 upto 1990. Such belated applications cannot now be considered. We, therefore, dismiss the intervention application. We make it clear that the present order will operate only in respect of the respondent for reasons which we have set out earlier. We also make it clear that in notifying vacancies available to direct recruits the appellants are bound to take into account permanent as well as temporary vacancies of long duration as per the office memorandum of 20.4.1953 and 8.6.1967 (Emphasis added).

In this process, the Supreme Court had not approved the findings of this Tribunal. It was also held that delay would defeat equity. But keeping in view that Shri Bablani had been granted the benefit, the Supreme Court did not take away the said benefit after lapse of time. However, the said benefit was declined to the other persons who had been recruited in the year 1975.

2. It is this decision in the case of Shri Bablani which has prompted the present applicants to file OA Nos.512/1999, 2293/1999, 2294/1999 2301/1999, 2302/1999, 2303/1999 2359/1999, 2360/1999, 2361/1999, 2362/1999, 2363/1999, 69/2000, 137/2000, 199/2000, 200/2000, 2606/1999 and 2605/1999 and OA 2173/2003 which we propose to dispose of by this common order. For the sake of facility, we shall be taking the facts from the case of **Ashok Kumar Pandey v. Union of India and others** in OA No.512/1999.

Ag

69

3. The Union Public Service Commission had advertised the Civil Services Examination, 1992. The number of vacancies to be filled on the results of the examination was expected to be approximately 950. So far as the applicant is concerned, he was said to have been ranked at Sl.No.538, during the submissions.

4. The Indian Customs and Central Excise Service Group 'A' Service Rules had been framed in the year 1987 (for short, "the Rules"). They clearly mention that "examination" under Rule 2 (d) means a combined competitive examination consisting of preliminary examination conducted by the Commission for recruitment to Service or such other service as may be specified by the Commission. The "post" has been explained under Rule 2(g) to mean any post whether permanent or temporary specified under Rule 4. Rule 3 explains about the constitution of the service and reads:-

"3. Constitution of the Service - (1) The service shall consist of the following persons, namely:-

(a) members of the Indian Customs Service appointed to that service before the 15th Aug. 1959;

(b) Members of the Central Excise Service, Class I appointed to the service before the 15th Aug. 1959;

(c) Persons who were appointed to the service after the 15th Aug. 1959 and before the commencement of these rules; and

(d) persons recruited to the Service in accordance with the provisions of these rules."

(70)

(2). The cadre of the Service shall be controlled by the controling authority."

Rule 5 further tells us about the methods of recruitment to the Service. The vacancies in Grade VI of the Service have to be filled up 50% in accordance with the provisions in Part III of these Rules and 50% in accordance with the provisions in Part IV of these Rules. The said rule reads:-

" 5. Methods of recruitment to the Service and percentage of vacancies to be filled in certain grades of the service.

(1) Recruitment to the Service shall be made by the following methods, namely:-

(a) by examination, in accordance with the provisions in Part III of these rules;

(b) by promotion in accordance with the provisions of Part IV of these rules

(2) Vacancies in Grade VI of the Service shall be filled in the following manner:-

(i) 50% of the vacancies shall be filled in accordance with the provisions in Part III of these rules; and

(ii) 50% of the vacancies shall be filled in accordance with the provisions in Part IV of these rules

(3) Notwithstanding the provisions contained in sub-rules(1) and (2) above, Government may recruit to any of the grades when so required from other sources, for good and sufficient reasons to be determined in consultation with the Commission, of persons having qualifications or experience in any speciality;

Provided that when such recruitment is made to Grade VI of the Service, the number of persons so recruited shall count against the percentage of vacancies to be filled by direct recruitment."

At this stage, therefore, it becomes necessary to refer to the rule pertaining to appointment by promotion Part VI of the Service . The same is incorporated in Rule 18 of the Rules in the following words:-

" 18. Appointed by promotion to Grade VI of Service: (1) Appointment to the vacancies in Grade VI of the Service required to be filled by promotion under sub-rule 2(ii) of rule 5 shall be by promotion of the following categories of Group B officers in the Central Excise, Customs and Narcotics Departments who have completed three years regular service in the Group B posts of -

(a) Superintendents of Central Excise in the Central Excise Department and District Opium Officer or Intelligence Officers or Superintendents (Executive) in the Narcotics Department.

(b) Appraisers of Customs in the customs Department

(c) Superintendents of Customs (Preventive) in the Customs Department

(2)(a) The vacancies to be filled by promotion shall be filled in accordance with the common seniority list of the three Group B categories of the officers mentioned in sub-rule (1) above.

(b) The seniority of the Officers in Group B feeder categories of service for eligibility for promotion to Group A shall be determined on the basis of their regular length of service in their respective Group B categories, subject to the condition that the inter-se seniority in each feeder category of service shall be maintained.

(3)(a) The promotions shall be made on the principle of selection on merit basis.

(b) The Commission shall be consulted for making promotion to Grade VI."

5. The applicant had taken the Civil Services Examination pursuant to the advertisement referred to

72

above. The results of the examination had been declared on 13.9.1992. As referred to above, the rank of the applicant was 538. He was selected and recruited in Civil Services Group 'A' and 'B' in pursuance of the instructions of the Department of Personnel and Training dated 26.9.1992. He joined the foundational course at S.V.P. National Police Academy, Hyderabad. On conclusion of the said course, he was allocated, the Customs Appraisers Service Group 'B'. A formal letter of appointment was issued on 8.2.1993 wherein his date of joining was given with retrospective effect i.e. 12.10.1992 when he joined the foundational course.

6. An affidavit was filed by the Central Board of Excise and Customs before the Supreme Court. The relevant portion of the same reads:-

> "It is further submitted that:
> Promotion quota vacancies in IC&CES are required to be determined for each year right from 1980 onwards and apportioned in the ratio of 6:1:2 amongst Supdt. of Central Excise. Supdts. of Customs (P) & Customs Appraiser respectively. This has also been done.
>
> From 1980 to 1996, there have been 2476 appointments to IC&CES by promotion and 873 appointments to the Service by Direct recruitment. The total appointments to IC&CES from 1980 to 1996 have thus been to the tune of 3349 and these figures have to be taken as the total vacancies in IC&CES during the period from 1980 to 1996. Going by the formula of 50:50 the share of promotees and DRs comes to 1679 for each. As against 1675 vacancies for promotees, the actual appointments of this category to the service from 1980 to 1996 has been to the extent of 2476. Thus 801 vacancies of DRs were diverted for appointment of

(73)

not releasing actual vacancies which were meant for direct recruits.

7. All these applicants had filed Original Applications before this Tribunal since the action of the respondents was contrary to the Rules. The applicants contended that Bablani had filed an application where appropriate relief had been granted and in fact his case was on a weaker footing than the applicants.

8. Applications were being contested. This Tribunal had on earlier occasion dismissed the same on 28.2.2001 holding that the applications are barred by time and further that persons who were likely to be affected, if the applications were allowed, had not been arrayed as parties. Aggrieved by the same, they preferred Civil Writ Petition No.5529/2001 which was disposed of by the Delhi High Court on 12.7.2002. The Delhi High Court set aside the findings of this Tribunal on both the counts and thereupon the matter had been remitted to this Tribunal for fresh consideration. Therefore, the questions which have already been agitated in the abovesaid controversy cannot be re-agitated afresh.

9. On behalf of the applicants, as is apparent from the resume of the facts given above, the main contention was that they had come to know from the affidavit which we have reproduced above about the maximum number of

promotee officers during the period from 1980 to 1996."

74

Applicant contended that he came to know from the affidavit that 801 posts of Assistant Commissioner of promotee quota had been diverted from 1980 to 1996. He also came to know that 92 officers were promoted to the posts of Assistant Commissioner from various feeder cadres just 10 days prior to the declaration of the final results by the Union Public Service Commission and even 185 ad hoc promotions had been made from July 1991 to September 1992. The contention of the applicants is that whereas number of direct recruits as per 1991 examination was only 60 and as per allocation list maintained on basis of Civil Services Examination 1991, candidates only upto rank 534 were absorbed in Group A Service. Had the correct number of vacancies been intimated as per Rules, according to the applicant, having regard to the fact that services had not been allotted at the time of joining the foundation course, there existed a fair chance of their being allotted the Central Civil Services Group A. The applicant was not aware about the existence of split vacancies in a particular year with the result that successful candidates accepted allocation in the hope that every thing must have been fair with the system of allocation of services in the absence of transparency. Having regard to the lack of transparency, the actual number of vacancies existing in particular service were not known. It is claimed that the respondents have been protecting the vested interests by

(75)

vacancies being informed/notified. The information had not been given in accordance with the instructions. The Ministry had not carefully calculated the same. If that had been so done, the applicants would have been allocated to Central Civil Service Group 'A' and that it was only a modus operandi available to promotees. It was also pointed that in OA No.2302/1999 certain notices had been given to certain affected parties but they have not cared to contest. In this view of the matter, the contention further proceeded by the learned counsel was that it would amount to fresh selection.

10. On the contrary, on behalf of the respondents, it has been urged that the applicants had accepted the Group 'B' posts of Appraiser and they should, therefore, be estopped from claiming Group 'A' posts. Applicants have no legal right to be appointed to Group 'A' service. If the claim is accepted, it would tantamount to fresh selection in 1999 instead of 1991.

11. We have carefully considered the said submissions. In the first instance, we refer with advantage to a fact that the Delhi High Court had at two places mentioned that it is not disputed that before the Tribunal, the respondents had not raised any contention on merits. It appears that these particular important observations occurring in the judgement of the Delhi High Court were basically confined to the number of vacancies and the factual position thereto. It is obvious from the

MS Ag e

(76)

nature of events already stated on merits of the matter that the same had been contested tooth and nail. This is for the added reason that the Delhi High itself had deemed it appropriate to remit the case for consideration of this Tribunal after setting aside the findings pertaining to the facts which we have already referred to above in the preceding paragraphs. It is this fact that prompted us to re-consider the matter on merits.

12. In the opening paragraph, we have already referred to the decision rendered by the Supreme Court in the case of Bablani. The facts in the case of Bablani were almost identical. Therein also before the Supreme Court, it had been conceded that as per the recruitment rules (already reproduced above), there is quota of 50% for direct recruitment and 50% for promotees. The vacancies which have to be considered for applying the quota of 50% for direct recruits are not just permanent vacancies but are temporary vacancies of long term duration. However, by mistake upto the year 1990, only permanent vacancies which were available to direct recruits were notified. That position is stated to have been rectified in the year 1990. Keeping in view these facts, this controversy (Bombay Bench) had allowed the application of Bablani. We have reproduced above the relevant portion which clearly shows that the Supreme Court had not approved the findings of the Tribunal for various reasons, including that the appointments which

VS Ag

77

were made way back in 1974 ought not to have been disturbed. If similar relief was directed to be granted to all those who were in the merit list of 1974 of Indian Administrative Service and Allied Services Examination and who were placed in Class II posts because of wrong notification of vacancies, there would be a complete disruption in the postings and positions of the persons appointed. Therefore, it is obvious that the Apex Court had already disapproved the type of relief claimed by the applicants.

13. Learned counsel for the applicants in that event had urged that the applicants are only a few in numbers and and can be accommodated. However, others who have not cared to come to the Court, necessarily would not be entitled to the benefit thereto. He has specifically drawn our attention towards a decision of the Supreme Court in the case **Ashok Alias Somanna Gowda & another v. State of Karnataka by its Chief Secretary & others,** (1992) 1 SCC 28. In the said case, the Govt. of Karnataka had invited applications for recruitment of Assistant Engineers for Public Works Department. Selections were to be made on basis of marks obtained in the qualifying examination and the marks secured in the interview in accordance with the Karnataka State Civil Services (Direct Recruitment by Selection) Rules 1973. There was some controversy pertaining to the marks to which we need not pay any attention, but those private individuals had filed an application before the

GSAg

78

Administrative Tribunal on the assertion that the percentage of marks for viva voce as 33.3% was excessive. While discussing the said matter, the Supreme Court held that selection process was unconstitutional, but the other candidates who had not approached the Supreme Court were not entitled to their relief. Identical was the view expressed by the Supreme Court in the case of **State of Orissa & others v. Prajnaparamita Samanta & others,** (1996) 7 SCC 106. Therein, the Supreme Court held that the results cannot be kept in limbo and almost in similar terms concluded:-

> " 8. Admittedly, the petitioners and the appellants in question had approached either the High Court or this Court after the decision of the High Court on 27.3.1992. The High Court has rightly set down the said date as a cut-off limit and directed consideration of the answer books only of those examinees who had approached the High Court till that date. It is only those who are diligent and approach the court in time who can be given such relief. The academic year cannot be extended for any length of time for the benefit of those who choose to approach the court at their sweet will. The consideration on the basis of which relief is granted in such cases is always circumscribed by the tenure of the academic year(s) concerned. We, therefore, do not see anything wrong if the High Court has laid down the said date as the cut-off date for the purpose. In the circumstances, there is no merit in these writ petitions and the civil appeals, and they are dismissed with no order as to costs."

14. In the present case, there were 18 such applications, but during the pendency of the same 2 more applications were filed. They also pray that they be

79

given the same relief as the other applicants. Since this is the dicta of the Supreme Court, we hold that in case there was any relief that was to be granted, necessarily.it can only be confined to the applicants.

15. We have already referred to the basic argument that according to the applicants, the number of direct recruits as per 1991 Examination was only 60 and as per the the allocation list maintained, specific number of persons has been absorbed in Group 'A' Service. According to the applicants, had the correct number of vacancies been intimated, they would have been allotted to the Central Civil Services Group 'A'.

16. We have already reproduced above the affidavit that was filed before the Apex Court by the Chairman, Central Board of Excise and Customs. It indicates that from 1980 to 1996, there had been 2476 appointments by promotion and 873 appointments by direct recruitment. Acting upon the formula of 50:50, the share of the promotees had far exceeded the number of direct recruits that had been appointed.

17. Since this fact is being relied upon by the applicants, we do not dispute the same. In face of the aforesaid, it would be patent that this Tribunal will not be aware as an when and in which year the vacancies arose. It cannot be that if there was a shortfall in the

CS Ag

vacancies indicated in the year 1991 then all the vacancies should be placed in one basket for the benefit of persons who took the test for that year. It had been a continuous affair in this regard. In this process, therefore, further probing will not be material not only for the reasons to be recorded herein but also that specific and precise figures are not being calculated are not brought to our notice.

18. During the course of submissions, the method of selection in service had been explained. Options are given to the candidates and they have to exercise the same giving their preferences for a particular service in the year in which they like. When the results are declared and merit list is drawn, the names of the candidates are despatched as per their options and the merit list. No person in this process has a right to a post. Applicants also cannot insist that they have a right to a particular post. It is only hypothetical manner that they apprehend that they may get Class 'A' post in the same service. There is no mala fide imputed nor any allegations. A specific number of vacancies had been advertised and this was so on basis of requisition for the number of posts in the Customs & Excise Department. There is no order verifying the number of posts notified. Consequently the posts have to remain the basis and in accordance with the posts that were advertised and requisitioned by different Departments, allocations have been made. There is thus little scope for interference.

19. In **Ashok Kumar Pandey's case** which we are taking as a test case, we are informed by the respondents' counsel that last cut-off candidate was at Sl.No.225 in Class A post and the said applicant was at Sl.No.538. With so much of difference that existed, the settled things need not be unsettled after so many years because if the exercise which the applicant seeks us to undertake is done, it would mean total re-allocation of posts even for others. We find no just reason, keeping in view the observations made in in the preceding paragraphs, to do so.

20. Otherwise also, the plea that the Custsoms & Excise Department was bound to indicate the precise number of posts is without merit. Our attention in this regard had been drawn to the fact that there has to be timely finalisation and reporting of the vacancies. An extract from Customs and Central Excise Administration Bulletin appearing in 1969 July-September Edition was read to us and a copy of the same was brought on record. It pertains to timely finalisation of Rules and reporting of the vacancies. It refers to what the Commission has brought to the notice of the concerned Ministries/ Departments that they did not furnish in time the necessary information. It reads:-

> "3. The Commission have also brought to the notice of this Ministry that the Ministries/Departments concerned do not always furnish in time the necessary information regarding number of vacancies. In this

connection, attention is invited to the following observations made by the Commission in their sixteenth Report:-

> " The Commission consider it essential that in the matter of all recruitments, and particularly of those through competitive examinations, the appointing authorities should plan their man-power needs well in advance of the actual requirements, with due regard to all relevant considerations including inter alia the period of training of the recruits before they become available for actual posting. A clear and well-considered policy in this regard would go a long way in ensuring proper manning of the Services.
>
> "The Commission experience considerable difficulty whenever the Ministries/Departments concerned are not able to intimate to them in proper time the number of vacancies required to be filled through an examination. It is considered necessary in the larger public interest that the vacancies should be computed as accurately as possible and intimate to the Commission well in time to be notified by them in their notice for the information of prospective candidates. The response of candidates depends in a large measure on the number of vacancies available for being filled up. There have, however, been occasions when the Commission, in the absence of any information from the Ministries concerned, could not indicate the number of vacancies even approximately, and they had to say in the notices for the examinations that the vacancies would be notified later. The Commission consider that this is not a satisfactory arrangement. Difficulties also arise when the actual requirements of Government turn out to be either far in excess of those notified or much less than those intimated to prospective candidates."

Thereupon the Ministry of Home Affairs had taken a decision that there should be timely information pertaining the vacancies arisen and about to arise. The same also reads:-

"(a) The Ministries/Departments making

(83)

recruitment through competitive examinations held by the Commission should asses carefully the number of vacancies required to be filled during a particular recruitment year, with due regard to all relevant considerations, including the vacancies likely to occur as a result of retirements, promotions, etc. and to report these to the Commission in time for being notified by them in their Notice for the information of prospective candidates, so that, as far as possible, the necessity of taking more or less candidates than originally notified does not arise.

(b) Any vacancies arising thereafter, but before the results are announced, should be notified forthwith to the Commission. In other words, firm requirements are required to be intimated to the Commission well before the results are announced.

(c) Once the results are published, additional persons should not normally be taken till the next examination. Nor should vacancies reported before declaration of the results, be ordinarily withdrawn after declaration of results. If, however, some of the candidates recommended/allotted for appointment against the specific number of vacancies reported in respect of a particular examination do not become available for one reason or another, the Commission may be approached, within a reasonable time, with request for replacement from reserves, if available. When replacements may not be available, the vacancies that may remain unfilled should be reported to the Commission for being filled through the next examination."

21. These instructions indicate only that to avoid inconvenience, there should be timely notification of the vacancies in the Commission. It does not indicate that they would fluctuate in case the number of vacancies indicated are less. In fact, the Ministry of Home Affairs Office Memorandum dated 13.3.1969, copy of which is at Annexure A-8 indicating that there should not be sporadic recruitment at one time.

As Agree

22. Vacancies are notified as per the requirement of the concerned Ministry/Department and thereafter acting on the same, Civil Services Examination held. Normally, said vacancies had to be adhered to. It confers no right on any person to insist that more vacancies must be notified and if not notified, the same must be given to him increasing the number of notified vacancies. This is because of the well settled principle that a person only has right of consideration rather than a right to appointment.

23. Our attention has been invited to a decision of the Supreme Court in the case of **Miss Neelima Shangla v. State of Haryana & others**, (1986) 4 SCC 268. Therein the petitioner (Neelima Shangla) was not included in the select list. The Supreme Court had found that she was entitled to be appointed against the post kept vacant pursuant to the Court's interim order. Direction had been given to appoint her. It was further held that since other candidates had not questioned the same, they cannot be held entitled to general order.

24. It is obvious that the case of Miss Neelima Shangla (supra) was on a different premise and was confined to its peculiar facts. It was not the similar controversy before us. It is totally distinguishable.

25. A feeble attempt on behalf of some of the applicants had been made that their seniority would

85

be affected. We find no reason to act upon the plea. Nor does it require further detailed examination. The insistence of seniority will only arise if a person is allotted to a particular service. When the applicants are not allotted to Group 'A' service, as desired by them for reasons recorded above, they cannot raise such a plea.

26. No other argument has been advanced.

27. For these reasons, all the applications being without merit must fail and are dismissed. No costs.

(S.K. Naik)
Member(A)

(V.S.Aggarwal)
Chairman

SNS