

Central Administrative Tribunal
Principal Bench, New Delhi

RA 35/1995
in
OA 1541/1994

(8)

NEW Delhi: 14th February, 1995

Hon'ble Mr S.R.Adige, Member (A)
Hon'ble Mrs Lakshmi Swaminathan, Member (J)

1. Prem Chand Sharma
R/o J-606 Mandir Marg
New Delhi

2. S.N.Jaiswal
R/o Or.No.4, CPWD Service Centre
Netaji Naqar
New Delhi-23

....Applicants

(By Advocate: Shri B.B.Raval)

Versus

1. Union of India through
The Secretary
Ministry of Urban Development
Nirman Bhavan
New Delhi-110 001.

2. The Secretary
Union Public Service Commission
Dholpur House
Shah Jehan Road
New Delhi

3. The Director Generaal of Works
Central Public Works Dept.
Ministry of Urban Developmt
Nirman Bhavan
New Delhi.

....Respondents

IN ORDER
REHEARING (BY CIRCULATION)

Hon'ble Mr S.R.Adige, Member(A)

In this Review Application dated 30.1.95 filed by Shri P.C.Sharma and another, it has been prayed to review our judgement dated 6.1.95 in OA No. 1541/94 PC Sharma & another Vs. UOI.

2. In that OA, the applicants, both J.E's (Civil), PWD had sought a direction to the respondents to publish the final result/list of

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successful candidates for promotion from JE (Civil) to AE (Civil) from the list of 366 already declared successful covering the remaining vacancies that would have arisen from the date of advertisement of the vacancies and the delcaration of the result in peacemeal, including the final instalment which was still to come.

3. After hearing both parties, the OA was dismissed on the qround that the Limited Departmental Competitive Examination which was held in 1992 to fill up vacancies of AE's(Civil) by promotion of JE's(Civil) for the year 1990-91, 1991-92 & 1992-93 (anticipated), that is vacancies upto 31.3.93 had before it 227 vacancies to be filled up. This Limited Dept.Comp. Examination was competitive in character and the merit list was ~~limited~~ to the number of vacancies declared. The applicants appeared alongwith other eligible candidates, but could not secure a high enough position to be promoted. Accommodating the applicants against vacancies arising beyond 31.3.1993 would affect the rights of those candidates who in the meanwhile had become eligible to compete in the L.D.C.E., which would be discriminatory and violative of Articles 14 & 16 of the Constitution.

4. The first qround taken is that the conflicting claims of the parties regarding the number of actual vacancies of AE's (Civil) were not put to test. As stated above, the respondents in their reply to the CA had stated that the total number of vacncies for the years 1990-91, 1991-92 and 1992-93 upto 31.3.93 was 227. The applicants have neither in their rejoinder in the OA, nor in the review petition stated, what according to them, the number of vacancies should be. In the absence of any effective rebuttal by the applicants as to the number of vacancies of AE's (Civil), we have no good reasons to doubt the correctness of the figures supplied by the respondents. This ground therefore fails.

5. The second ground taken is that we did not rely upon the

interpretation given to the DPAT's office memorandum dated 14.7.1967 in OA No.897/93 R.S.Naulabha Vs. UOI & anr. In our impugned judgement we have mentioned that the said office memorandum has no application to the facts of the present case as it relates to recruitment. while the present case is one of promotion. The fact that the OM dated 14.7.67 relates to recruitment and not promotion is clear from paragraph 7 of the judgement in Naulabha's case (Supra) quoted by the applicant himself in the review petition, wherein extracts of the OM dated 14.7.67 read as follows:

"a) The Ministries/Departments making recruitments through competitive examinations held by the Commission....."

The ruling in Naulabha's case (Supra) also does not help the applicant, because as stated in our impugned judgement, the Tribunal in Naulabha's case had set aside the respondents' action in arbitrarily reducing the vacancies already notified to the UPSC, but no such action had been taken by the respondents in the present case. In this review petition, reference has also been made to paragraph 6.4.2 of Swamy's Compilation on Establishment & Admn. 5th Edition page 695 but a plain reading of this paragraph extracted by the applicant makes it clear that it relates to convening of DPC for filling up further vacancies arising during the course of the year, due to death, resignation, voluntary retirement and other unforeseen circumstances. The convening of DPC is not the issue under consideration here. This ground therefore also fails.

6. The next ground taken is that the Tribunal has erred ⁱⁿ _{the applicants} treating the process of LDCE as a promotion process and claim it has all the trappings of an open competitive examination. The applicants themselves in paragraph 8 (1) of the OA regarding the relief, have sought a direction to the respondents to publish the final result/list of successful candidates for promotion from the

rank of JEs to AES. It is clear that the LDCE is also one of the promotion methods, the other being seniority cum fitness. No error has been committed and this ground also fails.

7. None of the grounds taken in the review application bring it within the scope and ambit of Order 47 Rule 1 CPC under which alone a review is permissible. This application is therefore rejected.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Member (A)