

(29)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.1145 of 1995

Decided on:09.02.1999

R.P. Malik and Another.....Applicants

(By Shri P.P. Khurana.....Advocate)

Versus

Union of India and Others.....Respondent(s)

(By Shri S. Mohd. Arif.....Advocate)

CORAM:

THE HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN

THE HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? *yes*
2. Whether to be circulated to the other Benches of the Tribunal? *X*

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1145 of 1995

New Delhi this the 9th day of February, 1999

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. R.P. Malik
S/o Shri Lal Singh
R/o B-275 Lok Vihar, Pritampura,
Delhi-110034.

2. Om Parkash
S/o Shri Gajju Ram
R/o H-629 Sarojini Nagar,
New Delhi.

...Applicants

By Advocate Shri P.P. Khurana.

Versus

1. Union of India
through the Secretary,
Ministry of Urban Development,
Government of India,
Nirman Bhawan,
New Delhi-110001.

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

3. The Director-General of Works,
Central Public Works Department,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

...Respondents

By Advocate Shri S. Mohd. Arif.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

A Limited Departmental Competitive Examination (hereinafter referred to as LDCE) for recruitment to the post of Assistant Engineers (Civil) and (Electrical) was conducted on 23.12.92 by the Union Public Service Commission in pursuance of their notification dated 1.8.92. According to the Recruitment Rules, the post of Assistant Engineers in Group 'B' of the Civil Engineering Service are filled by promotion wherein 50% of the posts are filled by LDCE and the

remaining 50% by promotion on the recommendation of the Departmental Promotion Committee. As per the notification issued by respondent No.2, 227 vacancies of Assistant Engineer (Civil) and 36 vacancies of Assistant Engineer (Electrical) were to be filled on the basis of the aforesaid examination. Admittedly, 366 candidates were declared to have qualified in the written part of the examination and qualified for evaluation of service record. As per the scheme of the examination, the written examination carries 600 marks and evaluation of service records 200 marks. It is on the basis of both the written examination as well as evaluation of service record that the final select list of candidates are to be prepared merit-wise. The respondent No.2 initially recommended 149 candidates for Assistant Engineer (Civil) posts and 31 candidates for Assistant Engineer (Electrical) posts and the final results of these candidates were declared on 6.9.93. As the respondent No.2 intimated that the vacancies reserved for SC/ST candidates against which suitable candidates belonging to these categories were not available even with relaxed standards, the respondents had to de-reserve these vacancies and upon such dereservation, the UPSC recommended further 78 officers in Civil and 5 officers in Electrical to fill up the shortfall against the total notified vacancies and the supplementary lists were declared on 18.7.94. After the declaration of these results, the officers were promoted.

2. The grievance of the applicants is that the respondents have failed to take into account the occurrence of vacancies subsequent to the notified date, namely, 1.8.92 till the declaration of results in September, 1993 and July,

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1994 and in violation of the prescribed procedure, limited the declaration of results and promotion thereon only to the originally notified vacancies. They have, therefore, prayed for a direction to the respondents to fill up the vacancies occurring after 1.8.92 till the declaration of the second results in July, 1994 and take into account the required number of successful candidates who had passed the written examination for the purposes of promotion. The contention of the applicants is that had the respondents taken into account the aforesaid additional vacancies, the applicants by virtue of their qualifying in the written examination would have become eligible for promotion alongwith other candidates who had been promoted on the basis of the results of the same examination. The applicants strongly rely on the Ministry of Home Affairs, Department of Personnel & Training's O.M. dated 8.2.82 in support of their contention.

3. Respondents in their counter-reply have averred that the candidates who are recommended for promotion by UPSC had secured their places in the select list on the basis of their merit/rank to the extent of the declared vacancies required to be filled up on the basis of LDCE, 1992. They contend that it was not incumbent on their part to increase the number of vacancies arising upto the date of declaration of the results of examination and the results have been declared upto the number of notified vacancies. They contend that the vacancies had been filled up as per the notification in accordance with the departmental O.M. dated 10.4.89

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applicable to filling up of vacancies on promotion. The respondents contend that the Department of Personnel's O.M. dated 8.2.82 will not be relevant as the present examination is LDCE for promotion and not for direct recruitment. The respondents further contend that they have followed the procedure correctly at every stage including the declaration of results after the dereservation of vacancies in accordance with the prescribed procedure and they have filled up all the notified vacancies. They further contend that the applicants though qualified in the written examination could not get into the select list on the basis of the overall performance in the written examination and final assessment upto the number of declared vacancies.

4. The learned counsel arguing for the applicants strongly urged that in terms of the Ministry of Home Affairs O.M. dated 8.2.82 it was incumbent on the part of the respondents to take into account the number of vacancies as on the date of declaration of results as provided in the aforesaid OM. Though the respondents had notified 227 vacancies for the Assistant Engineer (Civil) as on 1.8.92, they were required under the procedure to notify to the UPSC so as to finalise the number of vacancies as on the date of declaration of results. The learned counsel contended that the respondents failed to do this as a result of which the number of vacancies in the intervening period were not considered to be filled up by such of those candidates including the applicants who had qualified in the aforesaid written examination. The learned counsel for the respondents on the other hand submitted that there was no requirement in

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the LDCE for promotion to take into account the vacancies upto the date of declaration of results and argued that the respondents had rightly relied on the Ministry of Personnel OM dated 10.4.89 regulating the procedure for filling up the promotional posts. He pointed out that in this case the LDCE Examination is for promotion and not for direct recruitment and he, therefore, submitted that the departmental OM of 8.2.82 relied upon by the applicants, will not be relevant.

5. We have heard the learned counsel for the parties and have also perused the record placed before us.

6. There is no dispute in regard to the method of recruitment to the aforesaid post. As stated earlier, 50% of the post is filled by Limited Departmental Competitive Examination and the other 50% being filled by selection by holding a Departmental Promotion Committee. Even in the case of LDCE for such promotion, the examination consists of two parts, namely a written examination part for 600 marks and evaluation of service records for ACRs for 200 marks. It is only on the basis of both these written examination as well as evaluation of ACRs that a final select list is prepared on the basis of merit. In regard to the vacancies, as stated, the respondent No.2 had notified 227 vacancies of Assistant Engineer (Civil). We are concerned here in this case only with the posts of Civil Engineering side. Rule 1 of the aforesaid examination stipulates that the number of vacancies to be filled up on the results of the examination will be

specified in the notice issued by the Commission (UPSC). In terms of this rule we find that 227 vacancies were notified by the notice dated 1.8.92. Rule 8 of the aforesaid rules states as follows:-

"8. After the examination, candidates will be arranged by the Commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate; and in that order so many candidates which are found by the Commission to be qualified by the examination shall be recommended for promotion upto the required number. (emphasis added)

7. In a note under the aforesaid rule it is provided as follows:-

" That the examination is a competitive examination and not a qualifying examination and it is also stated that the number of persons to be promoted on the results of the examination is entirely within the competence of the Government to decide and that no candidate will have any claim for promotion on the basis of his performance in this examination as a matter of right".

8. Before the declaration of the results, the firm number of vacancies which the UPSC required to know was communicated to the Commission on 24.2.93, which was as under:-

Assistant Engineer (Civil)	227
Assistant Engineer (Electrical)	36

9. It is true that the respondents had to de-reserve certain vacancies due to non-availability of candidates belonging to the reserved categories even after application of relaxed standards as communicated by the UPSC and, therefore, further 78 posts in the Civil side and 5 posts in

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the Electrical side were dereserved and the results were declared for these posts and the candidates were promoted on this basis. Prima facie, we do not find any infirmity in this procedure. The applicants also do not challenge the declaration of these results against the dereserved vacancies. What they are concerned about is the non-reckoning of vacancies that occurred during the intervening period from 1.8.92 till the second declaration of results in July, 1994. It is stated on behalf of the applicants that the respondents had intimated to the Junior Engineers Association in May, 1993 that there were 133 vacancies representing 50% by promotion quota and there should have been equivalent number of 133 posts to be filled as notified vacancies in addition to the already notified 227 vacancies for filling up through the LDCE. The respondents on the other hand contend that there would be no justification for calculation of vacancies right upto July, 1994 which was, neither on calendar year-wise or financial year-wise basis. They refer to the decision of the Tribunal in RA 35/95 in OA 1541/94 to contend that accommodating the applicants against vacancies arising beyond 31.3.93 would affect the rights of those candidates who in the meanwhile had become eligible to compete in the LDCE and this would be discriminatory of Articles 14 and 16 of the Constitution. We are broadly in agreement with this contention. In the first place this Limited Departmental Competitive Examination is for promotion and not for direct recruitment. In this case apart from the written examination there is also an evaluation of ACRs involved. It is only on the basis of the combined results of the written examination as well as of

evaluation of ACRs that a final select list is prepared merit-wise. Where evaluation of ACRs is involved it has to relate to the period of ACR which is normally written upto the end of financial year ending 31st of March. If the vacancies upto the date of declaration of results are taken into account, this would have enabled the consideration of more officers in the feeder cadre who would have become eligible during the intervening period in terms of Rule 3 of the Rules of Examination but they would not have been in a position to appear at the written examination in 1992 as they would not have been eligible at that point of time. Therefore, in such cases, it is necessary to have some certainty in regard to the number of vacancies as on the specified date relating to a particular examination when the eligibility of candidates for such examination would also be properly determined. Therefore, the O.M. of 8.2.82 cannot be made applicable in a scheme of LDC Examination for promotion where the select list is prepared not only on the basis of the written examination alone but also on the basis of evaluation of ACRs upto the end of financial year, as is normally the case. Therefore, the respondents have rightly reckoned the vacancies in accordance with the instructions relating to the filling up of vacancies in terms of the Department of Personnel and Training's OM dated 10.4.89. The respondents have rightly prepared the select list upto the declared number of vacancies as notified by the respondents and as confirmed by them subsequently also. In view of this, the action of the respondents in preparing a select list for declared vacancies and promoting the candidates on the above

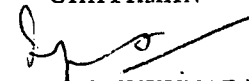
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basis, cannot be faulted.

10. In the conspectus of the above discussion, we do not find any merit in the application. Application is accordingly dismissed. There shall be no order as to costs.



(K.M. AGARWAL)
CHAIRMAN



(K. MUTHUKUMAR)
MEMBER (A)

Rakesh