

Central Administrative Tribunal
Principal Bench

New Delhi, dated this the 18th September, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. O.A. No. 1486 of 1997

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S/Shri

1. Anupam Mathur,
LDC,
Central Bureau of Investigation,
CGO Complex, Lodi Road,
New Delhi.
2. R.S. Gosain,
L.D.C.
C.B.I., New Delhi.
3. Harish Nanda,
Sr. Clerk Steno,
C.B.I., New Delhi. .. Applicants

(By Advocate: Shri A.K. Behera)

Versus

1. The Secretary,
Ministry of Personnel, Pension &
Public Grievances,
North Block,
New Delhi.
2. The Director,
Central Bureau of Investigation,
Block No. 3, CGO Complex,
Lodi Road,
New Delhi. .. Respondents.

(By Advocate: Shri K.C.D. Ganwani)

2. O.A. No. 1296 of 1997

1. Shri Harish Nanda,
Sr. Clerk Steno.,
C.B.I., New Delhi.
2. Ms. Uma Sharma,
L.D.C.,
C.B.I., New Delhi. .. Applicants

(By Advocate: Shri A.K. Behera)

Versus

1. The Secretary,
Ministry of Personnel, Public Grievances
and Pensions,
North Block, New Delhi.

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2. The Director,
Central Bureau of Investigation,
Block No. 3, CGO Complex,
Lodhi Road, New Delhi.
3. The Administrative Officer (Estt),
C.B.I.,
Block No. 3, CGO Complex,
New Delhi.
4. Shri Gulshan Mohan,
S/o Shri Azad Singh Rathi,
R/o House no.50,
Vill. Raj Pur Khurd,
Post Maidan Garhi,
New Delhi-110068.

.. Respondents

(By Advocate: Shri K.C.D. Gangwani)

Shri M.M. Sudan for Pvt. Respondent No.4)

3. O.A. No. 1534 of 1997

1. Shri R.S. Gosain,
L.D.C.,
C.B.I., New Delhi.
2. Shri Anupam Mathur,
L.D.C., C.B.I.,
New Delhi.
3. Shri P.V.S.N. Raju,
Sr. Clerk Steno.,
C.B.I., Visakhapatnam.
4. Shri P.V. Seetharam,
L.D.C.,
C.B.I., Visakhapatnam.
5. Shri A.V. Ramana,
L.D.C.,
C.B.I., Visakhapatnam.
6. Shri Prashant Sharma,
Constable,
C.B.I., Anti Corruption Branch,
Jammu, J & K.
7. Shri B.L.Sood,
L.D.C.,
C.B.I., Chandigarh

.. Applicants

(By Advocate: Shri A.K. Behera)

Versus

1. The Secretary,
Ministry of Personnel, Public Grievances
and Pensions,
North Block, New Delhi.
2. The Director,
Central Bureau of Investigation,
C.G.O. Complex,
New Delhi.

3. The Administrative Officer (Estt.),
C.B.I., New Delhi. .. Respondents

(By Advocate: Shri K.C.D. Gangwani)

ORDER

S.R. ADIGE, VC (A)

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These three O.As are being disposed of by
this common order.

OA-1296/97 and OA-1534/97

2. In these two O.As applicants impugn respondents' letter dated 25.4.97 (Ann. A-1 in both O.As), and seek a direction to respondents to operate the panel of qualified candidates for appointment to posts of Sub-Inspectors for existing and future vacancies as they may arise.

3. Heard both sides.

4. Admittedly as per C.B.I. Group 'C' and Group 'D' Executive Posts Recruitment (Amendment) Rules, 1991 recruitment to the post of Sub-Inspector of Police in C.B.I. is made

- i) 25% by promotion
- ii) 60% by direct recruitment through Staff Selection Commission failing which by transfer on deputation/transfer
- iii) 15% through L.D.C.E. from amongst departmental candidates (later raised to 25%)

from amongst eligible candidates.

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4. As per submissions made by applicants' counsel Shri A.K. Behera during hearing, respondents notified limited departmental competitive examination in September, 1991 but number of vacancies for which the same was being held, was not specified. The examination was held in January 1992 and in August, 1992 the results were declared and a merit list was prepared in which 32 candidates were stated to have qualified. 21 out of these were appointed as S.I. of Police in August, 1992 and the remaining 11 candidates were appointed in September, 1993. During hearing we were informed by official respondents' counsel Shri K.C.D. Gangwani that these 11 candidates were appointed pursuant to Court order.

5. Shri Behera stated further that after a gap of over four years, the next LDCE was notified on 15.8.1995, but again the number of vacancies were not specified. The examination was held in December, 1995 and the results were declared in November, 1996. Applicants in these two O.As participated in the aforesaid LDCE, and according to Shri Behera amongst the 54 candidates who were declared qualified in the published merit list, applicants stood at Sl. No. 7, 9, 11, 14, 29, 34, 35, 39 and 42. However, only 9 candidates (5 general and 4 reserved) were appointed in November, 1996 as a result of this LDCE, and as all the ^{applicants} ~~candidates~~ belong to general category none of them could be appointed.

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6. It was further contended by Shri Behera that the next LDCE was notified on 12.4.1997, but again the number of vacancies was not specified. The examination was held on 29.5.97 and a merit list was published in which 22 persons were declared qualified all of whom were appointed as SIs.

6A. Applicants' main grievance in these two O.As is that before respondents notified the LDCE on 12.4.1997 they should have considered applicants' claim for appointment against the available vacancies on the basis of their position in the merit list ^{of 1995 LDCE} which stood at 7, 9, 11, 14, 29, 34, 35, 39 & 42.

7. In this connection Shri Behera's contentions were two fold. Firstly he contended that the names from the merit list of the 1995 LDCE (Shri Behera called it a panel) ought to have been to be fully exhausted before respondents resorted to the next LDCE in 1997 for filling up the available vacancies. Reliance in this connection was placed on the Supreme Court's ruling in Prem Prakash etc. Vs. Union of India & Others AIR 1984 SC 183 cited by CAT, P.B. in order dated 10.10.91 in O.A. No. 1008/91 Krishna Kumar & Others Vs. Union of India & Others. Secondly it was contended by him that in filling up only 9 vacancies on the basis of the 1995 LDCE, respondents had grossly underestimated the number of available vacancies that could have been filled up, and for the proper calculation of vacancies, all

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those vacancies which had occurred between the date of publication of the results of the 1991 LDCE i.e. 10.8.92 and the date of holding the 1997 LDCE i.e. 29.5.97 should have been taken into account. On the basis of various promotion orders etc. issued during this period and filed with the pleadings he contended that as many as 206 vacancies had become available during this period and on the basis of 15% - 25% of those 206 vacancies, which fell within LDCE quota, he averred that many more than 42 vacancies would have become available under LDCE quota, and thus even the last applicant who was at Sl. No. 42 of the merit list could have been easily appointed as S.I. ~~of~~ ² ~~before~~ before respondents resorted to a fresh LDCE in 1997.

8. In so far as Shri Behera's first contention is concerned, both Shri Gangwani on behalf of official respondents and Shri Sudan on behalf of private respondents have, in our opinion correctly pointed out that ^{the} list in which applicant find their names at Sl. 7, 9 etc. is neither a panel nor a list of selected candidates, but only a list showing the marks obtained by the candidates who appeared in the LDCE. Such a list has neither the status of a panel, nor that of a list of selected candidates, and hence Prem Prakash's case (supra) would not be relevant. Such a mark list by itself does not give applicants a legally enforceable right to compel respondents to consider them for appointment on the basis of their ^{or} position in that list.

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9. In so far as the alleged incorrect calculation of the vacancy position in respect of 1995 LDCE is concerned, by our order dated 26.4.2001 we had directed official respondents to file a clear affidavit setting out respondents' stand in this regard. Despite several opportunities granted to respondents they did not file the same although this case had been adjourned from time to time as part heard. On 7.9.2001 when the case came up for hearing official respondents' counsel Shri Gangwani sought to file the affidavit across the bar and to hand over a copy to applicants' counsel Shri Behera, who objected, stating that the same should have been filed much before hand to enable him to study its contents. This objection is sustained.

10. However, even without referring to the contents of official respondents' aforesaid affidavit, we find it difficult to accept that the number of vacancies that became available for being filled up through 1995 LDCE was sufficient to accommodate the last of the applicants. Basing such calculations on the promotion orders that have been issued from time to time is fraught with risk, because even if a promotion order is issued, situations may arise when the person so promoted does not actually vacate the post before the date of vacancy is to be reckoned, or the promotion is not lien free, or for any other reason. There may be several situations, (the above examples are merely illustrative and not exhaustive) when despite a promotion order having been issued, a clear vacancy

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has not arisen before the due date for, being filled up, and hence to go merely on the basis of such orders may not be appropriate. If there was some small difference between the number of vacancies officially intimated, which initially was 6, and was later increased to 9 (5 general and 4 reserved), and the number claimed by applicants, it would have been understandable, but it is difficult to accept applicants' contention based on such promotion orders alone, unsupported by other corroborative material that the number of vacancies for being filled up through 1995 LDCE was well over 42, and that all the applicants could, therefore, have been accommodated against those vacancies.

11. As mentioned earlier, as the list containing the marks obtained by the candidates who appeared in 1995 LDCE and on the basis of which applicants base their claim is neither a panel, nor a list of selected candidates applicants have no enforceable legal right to compel respondents to operate and exhaust the same before resorting to 1997 LDCE. The two O.As, therefore, warrant no interference.

O.A. No. 1486 of 1997.

12. In this O.A. applicants impugn respondents' order dated 12.4.97 (Ann. A-1) scheduling the LDCE for 1997 already referred to in Para 5 above.

13. The grounds of challenge pressed by Shri Behera were

- i) Ineligible staff, including EDP personnel and even departmental canteen employees who were not Executive and Ministerial staff of CBI were allowed to participate in the LDCE.
- ii) The two hours English Language Paper scheduled (immediately after the General Knowledge paper) from 3 P.M. to 5 P.M. on 29.5.97 was cancelled abruptly because in some halls invigilators had given the candidates 3 hours to write the paper. Thereafter without giving the candidates a suitable break, the aforesaid examination was rescheduled in the afternoon of 30.5.97 itself immediately after the 3 hours Law Paper held earlier in the forenoon of that day.
- iii) The results of the written examination were made known by 3.30 P.M. of 31.5.97 which was much too short a time for fair and proper evaluation of the written papers.
- iv) The 98 candidates who had qualified in the written examination were interviewed in the space of 8 hours commencing from 4.00 P.M. on 31.5.97 which was much too short a time for proper assessment.

14. In this connection admittedly applicants appeared in the written test, and on the basis of their performance in the same, were called for interview, but ultimately failed to secure sufficient marks to be appointed.

15. In so far as ground (i) is concerned, even if EDP and canteen staff were not eligible to appear in the LDCE, admittedly neither category of staff was eventually appointed, as they were not successful in the examination. Applicants also were not successful and were not appointed. Meanwhile certain eligible categories of staff who did appear in the LDCE, and were successful, were appointed.

Consequent to their appointment certain valuable rights have accrued to them. As stated above, even if EDP/Canteen staff were not eligible to sit in the LDCE, as none of them were eventually successful, merely because they were allowed to sit for the LDCE is not sufficient justification to quash the entire examination and thereby deprive those successful candidates to whom valuable rights have accrued, more particularly as applicants themselves appeared in the examination but were unsuccessful. Hence this ground is rejected.

16. As regards ground (ii) applicants themselves in the O.A. state that it was an English Language Paper. It was not an examination in English Literature for which detailed preparation was required. Under the circumstances if others could appear in the rescheduled English language paper examination on 30.5.97 and do well enough to be successful, there is no reason why applicants could not. In any case the disadvantage if any was common to all and not to applicants alone. Hence this ground also fails.

17. As regards Ground (iii) we were informed that 251 candidates took the written paper. As there were three written papers (G.K.; English Language and Law) that would mean that approximately 753 written papers had to be valued. We were informed that there were 6 senior officers of S.Ps rank who were overall in charge of invigilation as well as entrusted with the valuation of papers. During

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hearing Shri Behera contended that after invigilation these senior officers would have been so mentally exhausted that they would have been unable to evaluate the written papers properly. We are unable to agree with this contention. 753 papers divided between 6 senior officers comes to approximately 125 papers per officer. In our view it is not outside the capacity of a senior officer to evaluate 125 papers between the evening of 30.5.97 and the afternoon of 31.5.97 more particularly as the General Knowledge and English Language Papers were general in nature and did not require any detailed knowledge of the text. Hence this ground is also rejected.

18. As regards ground (iv), as per applicants' own averments 98 candidates were interviewed commencing from 4.00 P.M. on 30.5.1997 within a span of 8 hours (Para 5(f) of O.A.). In our view it is possible for a team of senior and experienced officials to size up a candidate in a few minutes of interview and it is not always necessary for the interview to be prolonged over a period of time for proper assessment. Indeed as all the candidates were departmental candidates, it would have been possible for the Departmental Selection Committee consisting of senior and experienced officers to assess how far the candidates would fulfil the requirement of the post of S.I. for which they were being interviewed, in the first few question itself,, obviating the need for detailed questioning which may be necessary when the candidates are first entering service. Applicants'

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counsel has relied upon CAT, Patna Bench order dated 28.7.95 Surendra Prasad Sinha & Others Vs. Union of India (1996)33 ATC 123 in which it was held that the CRs of 264 officers could not have been assessed, and graded by the Selection Committee in the course of a single day for the purposes of promotion to the IAS., with proper application of mind. In our view that order does not lay down any law. Even if CRs of 264 officers could not have been properly assessed and graded by the Selection Committee in the course of one day for purposes of promotion to the IAS, it does not necessarily follow that interviews by the Departmental Selection Committee of 98 candidates within a span of 8 hours for considering suitability for promotion as S.I. displays non-application of mind, illegality or unfairness.

19. In the result O.A. No. 1486/97 also warrants no interference.

20. In the result these three O.As are dismissed. Before parting with the cases, however, we would call upon respondents to ensure scrupulously hereafter that

(i) Only those candidates are called upon to participate in the LDCE who squarely possess all the eligibility qualifications as prescribed in the Recruitment Rules and no candidate is called upon to participate in the LDCE who is not fully eligible.

(ii) whenever LDCE, or for that matter every other type of test, examination, competition is being held for filling up vacancies, in which the participation of the candidates is necessary, the number of vacancies/slots/openings for which the same is being held is widely advertised, so that all concerned are made aware of

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the same.

No costs.

A. Vedarathi
(Dr. A. Vedavalli)
Member (J)

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Antoligi
(S.R. Adige)
Vice Chairman (A)