

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 1293 of 1994

New Delhi this the 24th day of November, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.K. Singh, Member

1. Shri Varinder Singh
R/o GG-III/39, Vikas Puri,
New Delhi.
2. Shri Janardan Sharma
R/o House No.7, Pataudi House,
Canning Road, New Delhi. ...Applicants

By Advocate Shri V.S.R. Krishna

Versus

1. Union of India through
the Secretary,
Min. of Urban Development,
Nirman Bhavan,
New Delhi.
2. The Director General (Works),
Central Public Works Department,
Nirman Bhavan,
New Delhi.
3. The Chairman,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi. ...Respondents

By Sr. Advocate Shri N.S. Mehta

ORDER (ORAI)

Mr. Justice S.K. Dhaon, Vice-Chairman

The controversy pertains to the appointment of an Assistant Engineer (Civil).

On 01.08.1992, the Union Public Service Commission (the Commission) issued a notice that a limited departmental competitive examination for promotion of Junior Engineers (Civil)/(Electrical) to Assistant Engineers Grade (Civil/Electrical) in the Central P.W.D. will be held on a certain date. The notice also indicated that the approximate number of vacancies to be filled on the results of the examination will be: Assistant Engineer (Civil) - 227

9

.2.

(including 69 vacancies reserved for Scheduled Castes and 34 vacancies for Scheduled Tribes candidates). The advertisement apparently, is in conformity with the rules published by the Ministry of Urban Development on 01.08.1992. Rule 1 thereof states that the number of vacancies to be filled on the results of the examination will be specified in the notice issued by the Commission. Reservation shall be made for candidates belonging to the Scheduled Castes and the Scheduled Tribes in respect of vacancies as may be fixed by the Government.

A counter-affidavit has been filed on behalf of the respondents. A rejoinder-affidavit too has been filed.

The undisputed facts are these. Even before the commencement of the examination, the Ministry concerned had indicated that the vacancies reserved for SC and ST candidates could be treated as unreserved if suitable candidates belonging to these communities were not available. The result of the written part of the examination was announced by the Commission on 31.05.1993 whereby, a total of 365 candidates (including Scheduled Castes - 34, Scheduled Tribes - 1 and general category - 331) were declared qualified for evaluation of Confidential Reports. The final result was announced on 6.9.1993, whereby a total of 149 candidates (SCs-34, STs-1 and general category - 114) were recommended for appointment to the grade of Assistant Engineer (Civil). No candidates were recommended against 78 vacancies reserved for SCs and STs as suitable candidates belonging to these communities were not available even after applying the relaxed

2/11

standards. Instead of complying with the direction already given by the Ministry concerned, the Commission did not dereserve the vacancies and instead referred the question of dereservation again to the cadre controlling ministry for taking a conscious decision in this regard. The question of filling of the aforesaid 78 unfilled reserved vacancies was accordingly considered by the Cadre Controlling Ministry after announcement of the final result of the examination and a conscious decision was taken by them to dereserve these vacancies and fill them by general category candidates.

Under our direction, an additional affidavit was filed by Shri V.K. Ahuja, Under Secretary in the Union Public Service Commission. In paragraph 3 of the affidavit, it is categorically stated that both the applicants did not qualify in the written part of the examination of Assistant Engineer (CPWD) limited Departmental Competitive Examination, 1992 for civil group. Therefore, their Annual Confidential Reports were not called for and examined. Learned counsel for the applicants has urged that in the facts and circumstances of the case, a fresh examination should have been conducted for filling up the remaining 78 vacancies. He also contended that a ~~so~~ finality came into existence and, therefore, no candidate who had appeared in the examination concerned, could be considered for filling up the remaining 78 vacancies from that list. In substance, his argument, is that there should ^{been} have a fresh exercise. His further contention is that in any case, the zone of consideration should have been widened and this having not

sm

sm

been done, the cases of the applicants were seriously prejudiced.

The first question to be considered by us is, that in the facts and circumstances of the case, whether the applicants have any locus standi to maintain this application? So far as the argument of undergoing a fresh exercise is concerned, the same stands concluded by a decision given by this Tribunal in O.A. 520 of 1994 decided on 16.03.1994. This very Limited Departmental Competitive Examination was under challenge at the instance of some candidates who had not been found fit to be appointed as Assistant Engineer (Civil) from amongst the general category. We repelled the contention and took the view that the process of the selection had not come to an end merely because reserved candidates were not available and the vacancies reserved for them had been dereserved with the consequence that the same were transferred to be filled by candidates falling within the general category.

So far as the question of locus standi is concerned, that question too has been answered in O.A. No. 630 of 1994 decided on 20.05.1994. We have taken the view that a candidate, who does not obtain the limited qualifying marks, can not enter the arena at all and, therefore, he cannot have any grievance.

84

.5.

Sm

Learned counsel has placed reliance for the applicant upon a judgment of Gujarat State Deputy Executive Engineers' Association Vs. The State of Gujarat and Others, JT 1994 (3) SC 559. Counsel has tried to pick out certain passages out of the context and divorced from the facts of the case and has tried to urge that the same are apposite so far as the present O.A. is concerned. The facts of the case are to be found in paragraph 1 of the judgment. There, a circular had been issued by the State Government providing therein that the waiting lists, which were prepared on the basis of the result of the competitive examination by the Commission, shall remain in force till the date of result of the subsequent examinations are declared. The Hon'ble Court pose the question that the real issue that arises is whether such a waiting list could remain alive for 10 years and could furnish source of recruitment. The other question that their Lordships pose is whether the High Court could issue a direction to appoint candidates from the waiting list to future vacancies as the quota for direct recruits had not been worked out by applying correct principles. Present is not a case of future vacancies. Here, the process of selection had not come to an end. Certain vacancies still remained to be filled for a particular year. The feature was that, since suitable number of SC and ST candidates were not available, the vacancies reserved for such categories were


Sm

13

dereserved and were transferred to the general category. This case is, therefore, distinguishable.

This application has no substance and is dismissed but without any order as to costs.


(B.K. SINGH)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

RKS