

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH ,
NEW DELHI.

O.A.NO. 1541/94

New Delhi: January 6th, 1995. (2)

HON'BLE MR. S.R.ADIGE , MEMBER(A).

HON'BLE MRS. LAKSHMI SWAMINATHAN , MEMBER(J)

1. Shri Prem Chand Sharma,
s/o Shri Shiv Dutt Sharma,
aged about 40 years,
r/o J-606, Mandir Marg,
New Delhi.

2. Shri S.N.Jaiswal,
s/o Shri R.P.Jaiswal,
aged about 29 years,
r/o Qr. No.4, CPWD, Service Centre,
Netaji Nagar,
New Delhi -110023.

.....Applicants.

By Advocate Shri B.B.Raval

Versus

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

2. The Secretary,
Union Public Service Commission,
Dholpur House,
Shah Jehan 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 K.C.Sharma.

JUDGMENT

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

In this application, Shri Prem Chand Sharma and another, both Junior Engineer (Civil), Central Public Works Department(CPWD) , have prayed for a direction to publish the final result/list of successful candidates for promotion from Junior Engineer

(3)

(Civil) to Assistant Engineer(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 declaration of the result, in piece-meal including the final instalment which was still to come.

2. Admittedly, the Recruitment Rules for Central Engineering Service Group 'B' provide for filling up the posts of Asstt. Engineers(Civil) by promotion by two methods viz. 50% by promotion and 50% through a Limited Departmental Competitive Examination(LDCE) conducted by the UPSC. A minimum of four years regular service in the grade of Junior Engineer is required for promotion and it is not disputed that both the applicants have completed the requisite number of years of service and were eligible for promotion by both the methods viz. promotion by seniority as well as through the LDCE. The vacancies of the years 1990-91 and 1991-92 pertaining to LDCE quota had remained unfilled because during those years, the LDCE could not be held by the UPSC. Accordingly, in the LDCE, 1992, the vacancies pertaining to 1990-91, 1991-92 as well as 1992-93 (anticipated) were to be filled and the UPSC was informed on 15.6.92 that tentative number of vacancies i.e. 227, calculated on yearwise basis will be filled up through this Competitive Examination. The written examination was held on 23.12.92 and upon the UPSC's request to know the firm number of vacancies to be filled on the basis of final result of the said examination, they were informed on 24.2.93 that 114 General Candidates; 69 Scheduled Caste candidates; and 44 Scheduled Tribe candidates i.e. 227 posts of Assistant Engineers(Civil)

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were to be filled. The final result was declared on 6.9.93 and the UPSC recommended 114 Gen. candidates, 34 ST candidates and 1 ST candidates i.e. 149 qualified candidates for promotion. All the officers thus recommended by the UPSC were promoted on 16/17.9.93.

In so far as the short fall of 35 SC and 43 ST vacancies was concerned, the UPSC informed the Urban Development Ministry that they had not been dereserved, and requested the Ministry to take a conscious decision on the question of dereservation of unfilled vacancies for filling them up from the General candidates, by following the prescribed dereservation procedure. The Ministry after following the prescribed procedure dereserved the unfilled 78 vacancies of Assistant Engineers(Civil) and requested the UPSC on 19.1.94 to recommend the names of General candidates against these 78 vacancies which the UPSC did on 18.7.94 and all these officers were promoted on 28.7.94 and thus 78 more General Candidates were promoted against these earlier reserved and now dereserved vacancies.

3. The applicants, who could not come within these 114 + 78 = 192 General category candidates who were selected for promotion on the basis of their performance in the LDCE, 1992, but who apparently had qualified for evaluation of the service records on the basis of their performance in the said examination, in this O.A. have prayed that they be promoted against the vacancies that must have arisen thereafter.

4. We have heard Shri B.B.Raval for the applicant and Shri K.C.Sharma for the respondents.

(15)

5. The respondents have pointed out that the period for which the vacancies are computed is a matter of policy which is the exclusive jurisdiction of the executive authority. The scheme of LDCE consists of two parts; viz. written examination = 600 marks and evaluation of service records (ACRs) = 200 marks and for promotion purposes, the vacancies are calculated financial yearwise because ACRs are also written and maintained financial yearwise. The 227 vacancies identified for being filled up through the LDCE 1992 were for the years 1990-91, 1991-92 and 1992-93 (anticipated) upto 31.3.93. All these vacancies were notified by the UPSC and were filled up in accordance with the rules.

6. We agree with this argument and after giving careful consideration to the matter, we are of the considered view that there is absolutely no justification for filling up the vacancies, if any, arising beyond 31.3.93 from amongst the candidates of LDCE, 1992 merely to accommodate the applicants as prayed for by them. The LDCE held in 1992 was competitive in character and the merit list was confined to the number of vacancies declared. The applicants appears along with other eligible candidates in that examination but could not secure a high enough position to be promoted. Accommodating the applicants against the vacancies arising beyond 31.3.93 would affect the rights of these candidates who in the meanwhile have become eligible to compete in the LDCE, which would be discriminatory and violative of Articles 14 & 16 of the Constitution. Shri Raval has relied upon the contents of DPAR O.M. dated 14.7.67, but that O.M. is not relevant to the facts of this case as it deals with direct recruitment,

(16)

whereas the LDCE is not to make direct recruitment but to fill up the vacancies by promotion. The respondents have pointed out that they have calculated the vacancies in accordance with DPAR O.M. dated 10.4.89, and the applicants have not produced any evidence to controvert this averment. Shri Raval has also relied upon the ruling in Raj Singh Naulakha & others Vs. UOI (O.A.No.897/91, decided on 28.1.92 by the Tribunal), but in that judgment, the Tribunal had set aside the action of the respondents in arbitrarily reducing the number of vacancies already notified to the UPSC. No such action had been taken in the present case and the number of vacancies remained unchanged and, therefore, that ruling has no relevance to the facts of the present case.

7. In the result, we see no reason to interfere in the matter and this application fails and it is accordingly dismissed. No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

S.R. Adige
(S.R. ADIGE)
MEMBER (A).

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