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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 190/94
MA 228/94

New Delhi, dated the 28th Jan., 1994

Hon'ble Mr. N.V.Krishnan, Vice Chairman(A)
Hon'ble Mr. B.S. Hegde, Member(Judicial)

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... Applicants

(By Advocate Shri G.K. Aggarwal)

Versus

1. Union of India, through Secy.
Ministry of Urban Development,
Nirman Bhawan, New Delhi
2. The Secretary,
Ministry of Personnel,
Public Grievances & Pensions
North Block, New Delhi
3. The Secretary,
U.P.S.C. Shahjehan Road, New Delhi
4. The Director General(Works)
C.P.W.D. Nirman Bhawan, New Delhi

... Respondents

ORDER(ORAL)

(Hon'ble Mr. N.V.Krishnan, Vice Chairman(A))

Applicants have filed MA 228/94 for
filing joint application. Heard. That MA is allowed.

(Signature)

2. We have heard the learned counsel for the applicants
3. He made the following submissions:-
 - 3.1 It is stated that the Ann.A.1 notice dated 1.8.92 was issued by the UPSC for recruitment to the posts of Assistant Engineers(Civil) as 50% of such posts are to be filled up on the basis of the results of such an examination.
 - 3.2 The written examination carries 600 marks and evaluation of record is given 200 marks, as stated in the Appendix to the notice. Evaluation of record of service will be done of only such candidates as may be decided by the UPSC.
 - 3.3. Out of 227 posts notified, 69 vacancies were reserved for Sch.caste and 34 vacancies for Sch.Tribe candidates. After effecting a further 10% economy cut, it is stated that the examination was held for 112 general vacancies.
 - 3.4 Applicants who are general candidates, appeared in the examination and have passed the written examination.
 - 3.5 It is alleged that the UPSC shortlisted 336 Genl.candidates who passed the written examination for considering their service record, on the basis of the marks secured in the written examination so as to prepare a panel, on the basis of descending aggregate

marks, to fill up the 112 general vacancies. That is, the shortlisting is alleged to be thrice the number of vacancies to be filled. It is admitted that the applicants did not fall in this short list.

3.6 The aggregate marks for these 336 candidates for written examination and service record was then prepared and the top most 112 candidate were recommended by the UPSCs for appointment

3.7 It is alleged that, due to non availability of the requisite number of reserved candidates, a decision was taken by Respondent No.1 and 2- Ministry of Urban Development and Ministry of Personnel to reserve 78 reserved vacancies. Thereby, the number of vacancies available for Genl. candidates was increased by this number, stipulating that this could be deducted from the vacancies of the Genl. candidates in the next examination. Therefore, the first respondent asked the UPSC to forward 78 more names from the list of 336 candidate in the descending order of merit based on aggregate marks.

3.8 The applicants are aggrieved by this alleged decision. It is contended that, evidently, 3 times the numbers of vacancies was taken as the yardstick for identifying persons whose service records should be seen. As the vacancies initially were only 112, records of

336 candidates securing the highest marks in a descending order were considered. Now that intake of Genl. candidates has been increased by 78 an additional number of 234 candidates based on descending order of marks in the written examination should be first identified, and their service records should also be considered. Only thereafter, the UPSC should send the 190 names ^{at} for appointment to the General vacancies or, any rate, this should have been done before sending the names of candidates for the additional 78 vacancies. Instead, the UPSC has sent the names of next 78 persons in descending order of aggregate marks, from the original list of 336 candidates.

4. The objection of the applicants to the procedure adopted are as follows:-

- a. " UPSC ought to have enlarged the shortlist made on the basis of marks in written-exam from 336 to 570 in order to draw final merit-list for larger number from 112 to 190, to retain the ratio of 1:3 between number promoted and number shortlisted after written-exam. The Applicants secured lower percentage of marks at written-exam but would get more marks for their better service-record, so as to march over some of those shortlisted without short-listing the Applicants. The Applicants would make it to the list of first 190 in order of merit on aggregate of written and service-marks.
- b. Carry forward of 78 reserved vacancies to next exam would reduce by 78 the number of general vacancies available to the Applicants. UPSC ought to have held a supplementary EXAM for reserved category candidates and, if still requisite number was not available, forfeit the remaining ones to the general category without carry-forward.

c. UPSC or respondent-1 have not held EXAM-93, with the result that vacancies occurring during 1993 that ought to have been available to only those JEs who earned eligibility on, say, 01.08.93, would be available also to those who earned eligibility for the first time later on the date of Notice for EXAM-94. Since there was no EXAM-93, respondent ought to include vacancies upto 31.03.94 to be filled through EXAM-92 by enlarging correspondingly the shortlist based on written-exam from 336 to 3 times the number of vacancies upto 31.03.94."

5. The learned counsel submits that if in the Annex notice, it had been indicated in the first instance itself that there were 190 vacancies for the general candidates, the UPSC would have shortlisted 570 names (i.e. multiple of 3) on the basis of the descending marks in the written examination. The procedure adopted by the UPSC has deprived the 234 candidates, following the first lot of 336 candidates, of a right of consideration. It is just possible that some of them could have secured more marks in the aggregate than some in the list of 336. When the vacancy was increased after the process of evaluation was complete the evaluation should have been reopened to consider more candidates.

6. The reliefs sought by the applicants are based on allegations, not proved by documents. Applicants have prayed for exempting them to produce the impugned order as they are not communicated to them

7. We have considered the matter. The arguments advanced look attractive but on a deeper consideration, they are not found to have any substance.

8. Para (1) of the U.P.S.C.'s notice (Ann.A-1) states that the examination will be conducted in accordance with the Rules notified by the Ministry of Urban Development on 1.8.1992, which is annexed to the notice. Rule 8 (without the proviso) reads as follows:-

"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 as are found by the Commission to be qualified by the examination shall be recommended for promotion up to the required number"

In the appendix to the Rules it is provided as follows:-

"The examination shall be conducted according to the following plan:-

Part-I Written examination which will be job-oriented carrying a maximum of 600 marks in the subjects as shown in para 2 below.

Part-II Evaluation of record of service of such candidates as may be decided by the Commission carrying a maximum of 200 marks."

9. It has to be noted that the U.P.S.C. has been left free to decide as to whose records should be evaluated. This does not contain any stipulation as to in what manner the UPSC would short list the

← candidates on the basis of their performance in the written examination for further considering whether their service records should be evaluated. It is not stated that the service record of candidates equal to 3 times the vacancies will be considered. This is purely an internal matter of the U.P.S.C.

10. Allegedly, the UPSC considered the service records of 336 candidates ranked according to the marks in the written examination and then prepared a list as required in Rule 8 reproduced supra. It should be clarified that though Rule 8 seems to suggest that the aggregate marks of all the candidates who appeared in the examination has to be worked out and arranged in the order of merit, this is not so. For, as pointed out above the service records of all candidates are not to be evaluated. This evaluation can be restricted to such candidates only as may be decided by the U.P.S.C.

U.P.S.C.

11. In fact, the / could not have been faulted even if it, ^{had} decided to consider the cases of 112 candidates only, in the descending order of marks in the written paper, for evaluation of their service record and then rearranging them on the basis of aggregate marks, for being appointed to the 112 vacancies, notified in the first instance. In other words, the notice

of the U.P.S.C. and the Rule of the Ministry do not even oblige the UPSC to consider the claims of candidates in excess of the vacancies. The U.P.S.C. could very well have held that due to the preponderance of the marks for the written examination the performance in that examination should determine selection, subject to variation in rank after - seeing the service record. If, therefore, the UPSC allegedly adopted a multiple of 3 times for this purpose, it does not mean that when 78 more vacant posts, already notified, are to be filled up by general candidates due to reservation, the UPSC was obliged to consider another lot of 234 candidates. The Ann. i notice and the Rules do not confer any right on any candidate in this behalf.

12. The learned counsel submitted that the facts would become clear only if a notice was issued to the U.P.S.C. This is also devoid of merits. The applicants do not allege that some or all of them have secured more marks in the written paper than any of the 336 candidates, whose aggregate marks were worked out. In fact they have admitted that this is not the case. A notice would have been justified only if such an allegation had been made.

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13. The grounds (b) and (c) urged in the OA
vide para 4 supra do not require consideration
as they contradict the prayer made, which is that
the UPSC should extend the short list to 570
candidates for the reasons given in ground (a)

14. For these reasons we find that a prima facie
case for adjudication has not been made out. Hence OA
is dismissed at the admission stage.

B. Hegde
(B.S. Hegde)

Member(J)

N. V. Krishnan
(N.V. Krishnan)

Vice Chairman(A)

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