

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1433/2000

New Delhi, this the 16th day of February, 2003

(2A)

Hon'ble Dr. A. Vedavalli, Member (J)
Hon'ble Mr. Govindan S. Tampi, Member (A)

Shri G. Vivekanand Swamijee ..Applicant
(By Advocate: Shri Dalip Singh)

Versus

Union of India & Ors.Respondents
(By Advocates: Shri E.X.Joseph, Senior Advocate with
Shri Rajender Khatter)

Corum:-

Hon'ble Dr. A.Vedavalli, Member (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the reporter or not? YES
2. Whether it needs to be circulated to
Benches of the Tribunal? NO

(Govindan S. Tampi)
Member (A)

Govindan S. Tampi

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1433/2000

New Delhi, this the 14th day of February, 2003

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Hon'ble Dr. A. Vedavalli, Member (J)
Hon'ble Mr. Govindan S. Tampi, Member (A)

Shri G. Vivekanand Swamijee
Presently posted as ASW
Office of Chief Engineer (Hqrs.)
Jaipur

(By Advocate: Shri Dalip Singh) ..Applicant

Versus

1. Union of India
through secretary
Govt. of India
Ministry of Railways
Railway Board, New Delhi-11
2. The Secretary to the
Govt. of India
Ministry of Urban Affairs & Employment
New Delhi-11
3. The Director General (Works)
CPWD Nirman Bhawan, New Delhi-11

(By Advocates: Shri E.X.Joseph, Senior Advocate with
Shri Rajender Khatter) ..Respondents

O R D E R

Shri Govindan S. Tampi:

The applicant in this case, is aggrieved that following his success in the Combined Engineering Services Examination, 1995 (CESE 1995), he has not been allotted to his parent Department, i.e., CPWD/Central Engineering Service (CES).

2. Heard S/Shri Dalip Singh, learned counsel for the applicant and E.X.Joseph, learned Senior Advocate with Rajinder Khatter for the respondents.
3. Shri G. Vivekanand Swamijee, the applicant joined CPWD as a Junior Engineer (JE) on 7.4.1984 and was

promoted as an Assistant Engineer (AE) on 17.9.1993. He appeared as a departmental candidate in the Central Engineering Service Examination, 1995. He was granted age relaxation under Rule 5 (b) of the Examination Rules, being a departmental candidate. He had given his preference for appointment in the CES/CPWD. When the results on CESE 1995 were announced, the applicant's name was missing. However, after three years, in March, 1998, following a police inquiry on applicant's antecedents, he represented to UPSC on 14.8.1998 which was replied on 7.12.1998 stating that on account of the slight amendment in the results of CESE 1995, he has also been declared as among those who finally qualified in the examination with his rank at 96. However, on 5.4.1999, he was given offer of appointment as Assistant Supervisor of Works in MES by Ministry of Defence letter dated 5.4.1999 against the specific preference made by him for allocation in CPWD/CES. He felt that his career was in jeopardy by not being given CPWD, but accepted an offer and requested for allocation to his parent Department. He repeated his request as he had been working with the CPWD for 15 years and had been working as Assistant Engineer (AE) a post analogous to that of AEE of the CES, since September, 1993. On 28.6.1999, Ministry of Defence communicated that the allotment of candidates came under the purview of UPSC/Railway Board. Accordingly, he requested the Ministry of Defence for extension of joining time, which was turned down. He had to join MES before 4.10.1999. According to him, he had appeared as a departmental candidate and indicated his preference for allocation in his parent Department. His grievance could have been

redressed only by allocating him there, but the Railway Authority on 15.3.2000 had declined to do so. According to him, in terms of Rule N.B. (iv) of Rule 2 and Rule 15 of the Ministry of Railways, Railway Board Rules, the applicant, being a departmental candidate, was entitled to be allocated to his parent Department. In terms of Rule 15 successful candidates were to be considered for appointment on the basis of order of merit and departmental candidates could be first considered for appointment in their own department subject to merit position and only in the event of non-availability of vacancies, they were to be considered for other Departments. As, according to the applicant, he was the only successful departmental candidate that year, he was entitled as of right to be allocated to his parent Department. His allocation to MES was in violation of Rule 15, representations of the applicant have been rejected illegally. The letters issued by the Railway Ministry and Defence Ministry were arbitrary and illegal and according to him, his case was clearly covered by the judgment of the Hon'ble Supreme Court in the cases of Union of India & Ors. Vs. Parmanand [1996 (5) SLR 313 and Rajinder Singh Vs. Union of India & Ors. (OA-1869/96) decided on 12.5.1997 by the Tribunal. In view of the above, he states that the Ministry of Defence letter No. PC/3(3)/94/MES/D(Apptts.) dated 5.4.1999 as well as letter No. 75628/3057/EIB (Cadre)/ 796/D (Aptts) dated 28.6.1999 and Ministry of Railway's letter dated 15.3.2000 should be quashed and set aside and he be allocated to CES/CPWD.

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4. In the counter reply filed on behalf of the respondents, it is pointed out that applicant's name did not originally figure in the list of recommended candidates on the basis of the CESE 1995. Subsequently, following the rectification of certain errors, three more candidates were added to the list, including the applicant. While the UPSC conducts the CESE for filling engineering posts in as many as 55 Departments/Ministries of Central Govt., the work of allocation of all the qualified candidates on the basis of the notified criterion which envisages rank, preferences exercised by the candidate, medical fitness, etc. was entrusted to Railway Ministry. Selected individuals/candidates' cases are taken up subject to their medical fitness and their preference and depending on the availability of vacancies, services. While considering the allocation successful departmental candidates are generally considered for allocation in their parent department, depending on their relative merit so that the experience gained by them is made available to the Department without compromising the merit. The allocation of departmental candidate was not different from the open market candidate and when the turn of allocation came, he was first considered for his Department for which he may or may not have given his first preference. But the same would depend on his position in the merit list. In the normal circumstances, the person is considered for his own Department as he had appeared in the examination with age relaxation and this was meant as a restriction rather than a benefit compromising the merit position in the list. The applicant, in this case, came as a departmental candidate with age relaxation for the CESE

1995 and obtained 96th rank in the merit list. He was the last but third candidate to be included in the selection. His case was considered for CES wherfrom he came but could not be allocated, as he was very much lower down in the merit list and the only two vacancies in the general category - unreserved - were available for the year 1995 for CPWD/CES, they were filled by the candidates holding the 19th and 20th positions by merit. He was, therefore, allocated to MES for being posted as Assistant Surveyor of Works (ASW). The applicant in this case was seeking allocation to CES which has been denied to candidates from 21st to 25th ranks merely because he originally held from the said Department. He has thus claiming not only age relaxation but also reservation for post for which was not provided for. The applicant had claimed that his case was similar to those of Shri Parmanand and Shri Rajendra Singh candidates of 1989 Examination. In terms of Rule 15 of 1989 Rules, Departmental candidates are to be first considered for allotment to their own department without any restriction, subsequently, Rules of 1990 have provided that allocation should be on the basis of merit. Parmanand took the examination in 1989 though he was lower in the merit list and preferred allocation of Department which was denied. On his approaching this Tribunal in OA-1565/1991, his claim was endorsed by the Tribunal on plain reading of the rule. Hon'ble Apex Court upheld the Tribunal's order on the ground that without the nomenclature "subject to merit" in the rule departmental candidates enjoyed overriding priority in the matter of allocation of department in the Engineering Services Examination 1989. The aspect of merit had not

formed part of the notified rules for that year concerned. The case of Rajendra Singh similar. However, the rule position had undergone a change with the instructions of CESE 1990 onwards whereby the concept of merit was brought in. That being the case, the applicant cannot plead that his case was covered by the rules and that he should have been given CPWD/CES, he had asked for, as he was originally from CPWD.

5. During the personal hearing, Shri Dalip Singh, learned counsel for the applicant referred to Rule 15 ibid with specific reference to the decisions in the OA filed by the Parmanand, which was should get the benefit of allocation to CES. According to him, the expression "by merit" brought in the Rules from 1990 onwards, including 1995 Examination, wherein he was a candidate, did not alter the situation in any way. According to him, this was only meant to deal with tie between two departmental candidates and not between the departmental candidates on the other hand and the open market candidates on the other. The concept of distinction could be only when more than one departmental candidate, apply for the CES/CPWD any other department to which he originally belonged. Departmental candidates right was absolute as far as selection to CES/CPWD was concerned. Reading anything further into it to deny the above the benefit to him would amount to violation of the orders of the Hon'ble Supreme Court in the case of Parmanand (supra) and would render the provisions of Rule 15 redundant. This was impermissible. Learned counsel emphasised that the insertion of the expression "by merit" in the Rules of 1990 onwards, including in Rules

of 1995, did not alter the basic structure of the scheme for providing the benefit of allocation of the applicant to his own Organisation keeping in mind his preference. In fact only, with the CESE, 2000, the concept of the departmental candidates gaining special treatment in allocation was given up and, therefore, till 2000, those like the applicant, should have been given benefit, pleads Shri Dalip Singh. According to him, having worked in the Department for about 16 years and having gained experience in the field and also having been employed in an equivalent post of AE for nearly 6 years there was no reason why the applicant could not have been allocated to CES/CPWD, as the rules specifically provided for. Denial of the above was illegal and arbitrary urges Shri Singh.

6. Replying on behalf of the respondents, Shri E.X.Joseph, learned Senior Advocate stated that the scheme of things, relating to the departmental candidates appearing for Engineering Service Examination, had undergone a sea change over the years. Upto 1989, Rules permitted the departmental candidates with age relaxation to be considered first for the vacancies available in their parent engineering department irrespective of their position in the merit list, but after 1990, including 1995, which is the relevant year under dispute, the concept of merit had been brought in. With the result the question of individuals being adjusted in their own organisation on the basis of their experience without reference to their performance in the examination, did not arise as the individuals had been given adequate compensation by granting them age relaxation. Therefore, the unconditional benefit of allocation in their own,

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which has been granted to those, like the applicant till 1989, became a restricted one w.e.f. 1990 and thereafter, subject to the relative merit of the candidates. This concession was totally abolished in 2000. The applicant not having secured a deserving high rank, cannot as of right, merely because he belongs to the CPWD, and be granted allocation in CES/CPWD irrespective of his merit position. Grant of such a permission would be against accepted canons of law and justice, points out Shri E.X.Joseph.

7. We have given anxious and deep consideration to the points raised by the rival contenders. We have also seen the papers brought on record.

8. The applicant in this case had appeared as a departmental candidate in the CESE 1995 with the relaxed age conditions and came to be included in the select list and was placed at 96th rank. He had given his preference for CPWD/CES, wherfrom he originally came, but as there were only two vacancies in the CES for the year, the same had gone to candidates placed at 19th and 20th ranks. The applicant's plea is that being a person from the Department originally, in terms of the Examination Rules, his case should have been considered for allocation to CES. He states that as has been happened in the cases of Parmanand and Rajendra Singh (supra), his case would merit inclusion in the CPWD/CES. However, we find that the relevant rules regarding the examination had undergone certain changes. In para 15, the Engineering Service Examination Rules of 1989 provided as follows:—

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"15. Subject to other provisions contained in these rules, successful candidates will be considered for appointment on the basis of the order of merit assigned to them by the Commission and the preferences expressed by them for various Service/posts at the time of their application.

DEPARTMENTAL CANDIDATES WILL, HOWEVER, BE FIRST CONSIDERED FOR APPOINTMENT TO SERVICES/POSTS IN THEIR OWN DEPARTMENT AND ONLY IN THE EVENT OF NON-AVAILABILITY OF VACANCIES THEREIN OR MEDICAL UNFITNESS OF SUCH CANDIDATES FOR THE SERVICES/POSTS UNDER THEIR OWN DEPARTMENTS. THEY SHALL BE CONSIDERED FOR ALLOTMENT TO THE SERVICES/POSTS IN OTHER MINISTRIES/DEPARTMENTS ON THE BASIS OF PREFERENCES EXPRESSED BY THEM."

However, Para 15 of Engineering Services Examination, Rules 1990 reads as follows:-

"DEPARTMENTAL CANDIDATES WILL, HOWEVER, BE FIRST CONSIDERED FOR APPOINTMENT TO SERVICES/POSTS IN THEIR OWN DEPARTMENT SUBJECT TO MERIT POSITION AND ONLY IN THE EVENT OF NON-AVAILABILITY OF VACANCIES THEREIN OR MEDICAL UNFITNESS OF SUCH CANDIDATES FOR THE SERVICES/POSTS UNDER THEIR OWN DEPARTMENTS. THEY SHALL BE CONSIDERED FOR ALLOTMENT TO THE SERVICES/POSTS IN OTHER MINISTRIES/DEPARTMENTS ON THE BASIS OF PREFERENCES EXPRESSED BY THEM."

(emphasis supplied)

Para 15 issued by the Ministries of Railway (Railway Board) reads as under:-

"15. Subject to other provisions contained in these rules, successful candidates will be considered for appointment on the basis of the order of merit assigned to them by the Commission and the preferences expressed by them for various Services/Posts at the time of their application."

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This would show that there has been a gradual change on the part of the policy makers in respect of the facilities to be extended to departmental candidates. Upto 1989, the departmental candidates were given the concession of age relaxation as well as the benefit of adjustment in their own Departments, provided they cleared the examination, irrespective of their final ranking. The Administration, having felt that this concession was more than what was intended, sought to restrict the position for the 1990 Examination, wherein they have brought in the concept of merit. This meant that the departmental candidates would be considered for adjustment of their own Departments, provided the merit is not compromised and they have obtained high, rank. After 2000, that also has been changed and no distinction whatsoever between the departmental and the open market candidates was made in the matter of allocation of service. There is nothing improper or incorrect about the modification of the policy and this policy would have to be upheld. The applicant was attempting to show that the decision of the Tribunal in the case of Parmanand (supra), which was later upheld by the Hon'ble Supreme Court~, was permitting him to agitate the case, stating that he also should be considered for the allocation to CES/CPWD, irrespective of his rank. This, however, is not cared. The Tribunal had, while examining the issue, in that case clearly referred to the position both with reference to 1989 and 1990, and observed as under:-

"7. We have considered the arguments of Ld Counsel on both sides and have gone through the pleadings as well as the 1989 and 1990 Rules. The 1989 Rules in our view very specific in as much as the departmental

candidates are clearly made eligible to be first considered for appointment to services/posts in their own department. We do not agree with the arguments advanced by the Ld Counsel for the Respondent that this Rule was intended to resolve a tie between a departmental or non-departmental candidate in the event of both getting the same merit position. The interpretation of the Rules has to be done in their normal grammatical sense and in this case the meaning is clear when it is said that "departmental candidates will however be first considered for appointment to services/posts in their own department." there is no mention here of merit. The provision in respect of departmental candidates follows and is in the nature an exception to the general rule which states that subject to other provisions contained in these Rules, successful candidates will be considered for appointment on the basis of the order of merit. Clearly thus an exception has been provided in the case of the departmental candidates regarding their allocation to their own department, the only bar thereto being the non availability of a vacancy. To suggest as the learned counsel for the respondent has done that availability of vacancies is to be reckoned after the preferences of all candidates have been satisfied, would be to nullify the specific provision for departmental candidates.

8. We are also fortified in our conclusion by the fact that the respondents themselves have found it necessary to amend the relevant provisions in the 1990 Rules by introducing the requirement of merit allocation of the departmental candidates to their own department. If there was a need for removing the ambiguity then it is a clear admission that the rules which were promulgated in 1989 were upon to a different interpretation than what the respondents intended."

9. The same has been duly upheld by the Hon'ble Supreme Court while disposing of SLP (C) No.18256 of 1996 on 19.8.1996. The Hon'ble Apex Court had held as below:-

"It is contended for the petitioners that the intention of the Government was that such of the candidates who have been in the department but secured higher ranking should be adjusted in the existing vacancies in the order of merit. If

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candidates do not come up in the merit, they have to be adjusted in other departments. Since the respondent had secured 295th rank as against others who were also similarly selected as reserved candidates, the respondent cannot get adjusted and appointed in CPWD. We find no force in the contention. It is true that as per list-annexure III his name was downgraded as against others whose names found place at Sl. Nos. 259 and thereafter. But the reading of the list would indicate that the candidate who secured higher merit position than the respondent had been allotted in the order of merit to CPWD. In that behalf, they relied upon the rule as amended in 1990 and sought to support the action taken thereunder. The Tribunal has rightly found that as on the date Rule 15 of the Rules was in vogue which envisages that when the recruitment comes to be made and candidate is duly selected, he should be appointed and adjusted also in the vacancies existing in the department in which he had worked. It clearly indicates that the candidates working in the respective departments are first required to be adjusted unless there is no vacancy existing or they are found medically unfit to hold that post. In that event, they are required to be adjusted in other departments. The subsequent amendment does not have any effect of taking away his right to be adjusted when the Rule was in vogue. The Tribunal was, therefore, right in giving direction as indicated above."

(emphasis supplied)

10. The reading of the above two judgments would make it very clear that on the basis of 1989 Rules, the departmental candidates, once they cleared examination, were expected to be adjusted in the Department to which they preferred, and that subsequent amendments in the rule did not have retrospective effect and they could not be denied the due. This was the only new which could have been taken, in the face of the rules as they did exist at the relevant time. By not adhering to the rules, and denying the benefit to Parmanand, seeking shelter under the 1990 Rules. Respondents had acted

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incorrectly and hence the decision by the Tribunal and the Apex Court. However, once the revised rules have come into being and notified in 1990, they have to be followed. The present applicant cannot expect the Tribunal to read into the new rules any concept which was not present, merely because it suits his case. Learned counsel for the applicant had asserted that the introduction of the concept of merit was only to settle the tie between the two departmental candidates and not that between the departmental candidates and the open market candidates. This has no basis in law, as there is only one merit list and whether a candidate was from the Department or otherwise, he was placed in the merit list on the basis of the marks obtained by him that the Tribunal or the Court shall not interpret rules in such a manner as to make any expression or intent of a Rule redundant. This also is not correct. In fact it is the applicant who is seeking to do so. The concept of merit introduced in 1990 Rules on avail, including in Rule 1995, (under which the applicant took the exam and cleared) has brought in the concept of merit and the applicant is, by calling upon the Tribunal to read into it the earlier provisions prior to 1990, seeking to make latest provision superfluous. The same cannot at all be accepted.

11. We have also had the benefit of going through the relevant Departmental files. We find that the UPSC had, by its letter dated 17.4.1997, informed the Ministry of Railways that subject to the shifting of three OBC candidates, who were originally shown against general candidates, three more vacancies have arisen in the

results of the Exam of 1995. On account of which three general candidates, namely, S/Shri G.Vivekanand Swamijee (the present applicant), Akhilesh Shukla and Mukesh Kumar have also been declared as having cleared 1995 examination. It means, therefore, that the applicant, along with two others, are among the last of the persons, who have been declared successful in the CESE of the said year. The results show that the applicant was placed at rank 96 having obtained 702 marks out of a total of 1200 marks. The two individuals, who were allotted to the CPWD/CES were Priyanka Mittal at rank No.19 with 751 marks and Manish Kumar at rank 70 with 750 marks. It is also seen that these individuals had given preferences for CES/CPWD. The instant applicant had given his first preference as CES/CPWD. There have been a number of other candidates, who had also asked for CES/CPWD ahead of him who could not be given the CPWD/CES because of their merit position. It would not have been possible for the allocating authorities to grant the applicant the same without causing prejudice to the persons with higher ranks in the examination who had indicated their preference. We find that the respondents have 'acted correctly in accordance with the Rules in force and in total fairness. There is, therefore, no reason why the same could be found fault with.

12. We are, thus both in principle and on facts, convinced that the applicant has not at all made any case for Tribunal's interference. OA fails and is accordingly dismissed. No costs.

(Govindan SV Tampi)
Member (A)
/sunil/

(Dr. A. Vedavalli)
Member (J)

A. Vedavalli
14/2/2003