

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2457/89
T.A. No.

1989

DATE OF DECISION 13.12.1989.

Shri R.V.S. Mani _____ Applicant (s)

Shri B.T. Kaul _____ Advocate for the Applicant (s)

Versus

Union of India _____ Respondent (s)

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(of the Bench delivered by Hon'ble Shri P.K.Kartha, V.C.)

The applicant, who is working as an Assistant in the Office of the Ministry of Industry (Respondent No. 2), has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) To restrain the respondents from withdrawing his Admission Certificate.
- (ii) To direct the respondents to allow him to appear in the examination and consider him for appointment to the post of Section Officer on the basis of results in the said examination.
- (iii) To declare that the applicant is eligible in all respects and therefore entitled to

appear in the said examination under the rules applicable.

(iv) To set aside the advice of respondent Nos. 1 and 2 to respondent No. 3.

(v) Any other relief that the Hon'ble Tribunal may deem necessary.

2. The application came up for admission on 12.12.89 when we went through the records of the case and heard the learned counsel for the applicant. We feel that the application could be disposed of at the admission stage itself.

3. The facts of the case in brief are as follows. The applicant passed the Assistants' Grade Examination in 1984 and joined as Assistant on 17.7.1986. The next higher post for him is that of Section Officer. Respondent No.3 (U.P.S.C.) issued a notification on 1.7.1989 notifying that a combined examination for the year 1989 would be conducted for the post of Section Officer. He submitted his application for the said examination to respondent No.2 with a request that the same may be forwarded to respondent No.3. He has been given Admission Certificate permitting him to appear in the examination commencing from 14th December, 1989. On 4.12.1989, respondent No.2 informed him that his request for appearing in the examination was considered in consultation with the Department of Personnel and Training and it has been decided not to accede to his request and that the Union Public Service Commission was being informed accordingly. Being aggrieved of the said decision, the applicant has filed the present application.

On

4. The applicant has raised the following contentions:-

(i) Having been selected in 1985, he has put in 4 years of approved and continuous service which makes him eligible for appearing in the examination. In this context, reliance has been placed on the decision of the Supreme Court in H.V. Pardasani, etc., Vs. Union of India, 1985(1) SLJ 395.

(ii) Persons junior to him have been permitted by respondent No.3 to appear at the said examination. Denial of opportunity to him to appear at the examination, is violative of Articles 14 and 16 of the Constitution.

5. The applicant has not given the particulars of the persons junior to him who are said to have been allowed to appear at the examination. In his representation dated 4th August, 1989, he has, however, stated that some of his juniors who are not regular in the Grade like him, have already been allowed to appear in the examination on previous occasions. In the absence of any particulars of such juniors and without impleading them as parties to the application, the allegations made in this regard cannot be adjudicated upon by us.

6. The contention of the applicant that he fulfils the eligibility criteria, is based on the observations contained in the judgement of the Supreme Court in Pardasani's case. In that case, the petitioners had challenged the combined seniority list of the Section Officers belonging to the Central Secretariat Service and had asked for a direction that the Select List in

Grade I of the Service be recast. They had also asked for a further direction that some of the direct recruits included in the eligibility list of Section Officers should be omitted from it and a direction should be issued from the Court to appoint promotees to Grade I w.e.f. the date on which junior directly recruited Sections Officers had been appointed to Grade I. They had also assailed the vires of the Note below Rule 12, Rule 13(5) and Regulation 3(3) of the Fourth Schedule to the Central Secretariat Service Rules as being ultra vires Articles 14 and 16 of the Constitution. According to the petitioners, the seniority between the direct recruits and promotees in the Grade of Section Officers had to be fixed on the basis of length of service in the Grade and not by the process envisaged under the rules and the relevant regulations.

7. It will be noticed that the decision of the Supreme Court in Pardasani's case related to the question of determination of inter se seniority of Section Officers belonging to two categories - promotees, and direct recruits. One of the contentions of the petitioners was against the vires of the Note No.1 appearing under Rule 12(5) which is to the following effect:-

"In case of persons included in the Select List for the Section Officers' Grade 'approved service' for the purpose of this rule shall count from the 1st July of the year in which the names of the officers are included in the Select List. In the case of direct recruits to the Section Officers Grade, such service shall count from the 1st July of the year following the year of the competitive examination on the results of which they have been recruited provided that where there is a delay of more than three months in the appointment of any candidate, such delay is not due to any fault on his part."

8. The Supreme Court upheld the validity of the aforesaid Note. In our opinion, the decision of the Supreme Court in Pardasani's case is of no assistance to the applicant in the instant case which relates to the Rules for eligibility to appear in the limited departmental competitive examination.

9. The learned counsel for the applicant has also drawn our attention to the definition of the expression 'approved service' in Rule 2(c) of the Central Secretariat Service Rules, 1962 which again is not relevant to the instant case. The said definition refers to the service rendered "after selection" which indicates that it is not applicable to a period anterior to joining Government service.

10. It is evident that under the Rules for the Limited Competitive Examination for which the applicant has applied, the eligibility criterion prescribed is that he should have rendered not less than four years' approved and continuous service in the Grade of Assistant. Approved service would commence from the date of joining the service as Assistant and not from the date of passing of the Assistants' Grade Examination. In our opinion, the definition of 'approved service' in Rule 2(c) of the Central Secretariat Service Rules, 1962 or in the Note No.2 appearing under Rule 12(5) of the said Rules would not be relevant for interpreting the rules of the Limited Competitive Examination. These definitions may be relevant only to those who have become members of the Service. In the instant case, the applicant became a member of the Service only on 17.7.1986 and not when he passed the Assistants' Grade Examination in 1985. In this view of the matter, he cannot be said to have rendered four years of approved and continuous service in order to make him eligible to appear at the examination to be held in

On

7

December, 1989.

11. The applicant has stated in the application that the Section Officers' Grade Limited Departmental Examination is conducted by respondent No.3 annually. The applicant, who is at the threshold of his career, will have the opportunity to appear at the examinations to be held in future years. He has also not averred that any direct recruit Assistant similarly situated like him has been made eligible to appear at the forthcoming examination.

12. In the facts and circumstances of the case, we see no merit in the present application and the same is dismissed in limine. There will be no order as to costs.

D. K. Chakravorty
13/1/89
(D. K. Chakravorty)
Administrative Member

P. K. Kartha
13/1/89
(P. K. Kartha)
Vice-Chairman(Jud1.)