

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1466/88

Decided on: 15.10.93

Harmohinder Singh

...

Applicant

Versus

Union of India through
Secretary, Ministry of
Home Affairs, New Delhi,
And 3 others..

...

Respondents

CORAM: HON'BLE MR. J.P.SHARMA, MEMBER(J).
HON'BLE MR. B.K.SINGH, MEMBER(A).

For the applicant ... None.

For the official respondents Shri P.P.Khurana,
Counsel.

For the private respondent no.4 Shri S.C.Luthra,
Counsel.

JUDGMENT
(HON'BLE MR.J.P.SHARMA, MEMBER(J)):

The applicant at the time of filing this application was working as Assistant in Intelligence Bureau, Ministry of Home Affairs. The applicant is aggrieved by the Section Officers' Grade Limited Departmental Examination, 1987, for Intelligence Bureau (IB) (annexure A). The relief claimed by the applicant is that only 10 vacancies should be filled up from the examination of 1987 as were notified by the IB to the Union Public Service Commission (UPSC) before the commencement of the of the said examination and the rest of the vacancies is to be filled up through the next Section Officers' Grade Limited Departmental Examination to be held in 1988.

A notice was issued to the respondents who contested the application and filed the reply opposing the grant of the relief. During the pendency of the

case, Shri M.K. Gopinathan was also impleaded as respondent no.5 and he has also filed the reply opposing the grant of the relief.

There are two channels of promotion of Assistants to the grade of Section Officer. One is by 50% by promotion of departmental Assistants on seniority-cum-merit and the other by 50% by limited departmental examination to be conducted by UPSC open to the Assistants and Stenographers Gr.II of the IB. The Assistants/Stenographers Gr.II of IB who have put in more than 5 years approved and continuous service are eligible to compete in the said examination. At the time of notification for the said examination, the IB had notified only 10 vacancies in the rank of Section Officers which was given publicity in the newspapers and UPSC notice. This second examination was conducted from December 8 to 11, 1987. After the conclusion of the said examination, the IB had requested the UPSC to increase the posts of Section Officer from 10 to 30. The averment of the applicant in the application is that according to OM dated 14.7.61 and 13.3.69 of Ministry of Home Affairs, the departments have to assess carefully on an annual basis the number of vacancies required to be filled during a particular recruitment year. Any addition of vacancy could be notified to the Commission before the result of the examination is declared. The respondents in their reply have stated that UPSC in their notice for the examination had indicated that the number of vacancies, i.e., 10 is liable to alteration. The

notification of vacancies earlier was only tentative.

After the written examination of December, 87, the UPSC asked for the firm number of vacancies on 8.1.88. So, the UPSC was informed on 22.2.88 that the firm number of vacancies was 30. The respondents have given detailed reasons for giving the firm number of vacancies in para 3 of the reply, which is reproduced below :

" 3. The difference in the number of vacancies intimated on 17.3.87 (10) and 22.2.88 (30) is because of the following unforeseen circumstances:--

(a) The seniority list of Assistants was in dispute and the case was pending in the Supreme Court. The Supreme Court had in its judgment dated 30.9.86 set aside the judgement of the Delhi High Court and had directed that all promotions should be reviewed in accordance with the instructions contained in their judgement. Prior to the Supreme Court judgement dated 30.9.86, the Resps had drawn seniority list of Assistants as per the directions of the High Court and promotions to the rank of S.O. were made on the basis of this seniority list. Supreme Court judgment had resulted in the setting aside of the seniority list of Assistants drawn on High Court directions and review of all promotions made on the basis of that seniority list was required to be made. By the Supreme Court judgment many Assistants who were shown as junior earlier became senior to some of those who were already officiating as S.O. The Resps were, thus, required to promote all Assistants who had now become senior. The number of vacancies that would be required to promote the senior assistants in compliance with the Supreme Court judgement was obviously not known when the vacancies were notified as 10 on 17.3.87 because the case regarding holding of DPC on the basis of revised seniority list of Assistants was still in process at that time. Although the number of vacancies were intimated on 17.3.87 to UPSC, yet it was decided to release only 10 vacancies tentatively and review the position when the UPSC will ask for firm number of vacancies because by that time the result of Supreme Court case would be known.

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(b) On 30.1.88, 23 Section Officers were promoted as Assistant Director (Non-Police) thus creating 23 vacancies in the rank of S.O. These vacancies were not anticipated when tentative number of vacancies were intimated in March, 1987. This is so because the seniority list of Assistants was in dispute. After the revision of the seniority list of Assistants, promotions were made to the rank of S.O. Thereafter the seniority list of S.O. was to be prepared, circulated and objections met before it was finalised. After finalisation of the seniority list of SOs the review DPCs for promotion of SOs to the rank of AD were to be convened by the UPSC. It was not clear as to how long the entire exercise would take before the SOs were actually promoted as AD thus creating vacancies in the rank of SOs. Since 23 SOs were promoted in January/February, 1988 and in accordance with the Recruitment Rules 50% of the vacancies were to be filled up through S.O. Grade Limited Departmental Examination, 12 vacancies were to go to Examination quota. These 12 vacancies could not be anticipated when tentative number of vacancies was intimated in March, 1987 and these 12 vacancies were taken into account when the firm number of vacancies was intimated on 22.2.88.

The Applicant himself was a candidate for this examination and according to him he dropped out of the vacancies which speaks volumes about his preparation for the examination. Since now he is out of the race he wants to deprive the benefits of the increased vacancies to other candidates also. According to the applicant himself (Ann.A-4) the number of vacancies had been increased for a number of years and he was thus well aware of the possibility that such increase was likely to be made for the year 1987 examination also. Knowing this fully well, he had taken the examination, but dropped out. "

The private respondent has also contested the application almost on the same grounds.

Since this was an old matter and the counsel for the respondents appeared but the applicant did not appear, so we heard the case on merit and perused the pleading of the parties on record.

Firstly, we find that the applicant has taken

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the selection himself and he cannot have any grievance because he himself was a candidate and subsequently he dropped out. Secondly, there is no mala fide alleged on the part of the respondents. The administrative instructions referred to by the applicant are guidelines and they are to be followed. However, in the circumstances, pointed out by the respondents and quoted above go to show that at the time when the notification was sent earlier to the UPSC only the number of vacancies were arrived at tentatively and the firm number of vacancies were given after the examination. This has not prejudiced the case of the applicant as he had already participated in the selection. It is ~~not~~ ^{also} the case that the vacancies were ~~not~~ ¹² as a result of revision of seniority list. Thus, the applicant has no case at all.

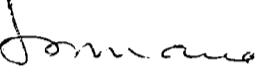
In the rejoinder, the applicant has only ~~not~~ reiteration of the stand taken by him in the original application. The rejoinder has also gone beyond the scope of the grievance of the applicant. The applicant has referred to the fact that how the vacancy position in between March '87 and Feb. '88 could be changed as revision of the seniority list on the basis of judgment of the Supreme Court. Learned counsel for the official respondents stated that the judgment of the Supreme Court dated 13.9.86 had made the lot of difference in the number of vacancies to be filled up through examination

quota.

Thus, in the facts and circumstances of the case, we find no merit in the case and the same is dismissed leaving the parties to bear their own costs.


(B.K.SINGH)

MEMBER(A)


(J.P.SHARMA) 15.10.93

MEMBER(J)

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