

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.680/88

Date of decision: 9.9.1993.

SHRI S. AWTAH SINGH GROVER & ANOTHER ...PETITIONERS

VERSUS

UNION OF INDIA THROUGH THE
SECRETARY, MINISTRY OF
URBAN DEVELOPMENT, NIRMAL BHAWAN,
NEW DELHI & OTHERS ...RESPONDENTS

CORAM:- THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)
THE HON'BLE MR. B.S. HEGDE, MEMBER (J)

FOR THE PETITIONERS SHRI R.K. KAMAL, COUNSEL.

FOR THE RESPONDENTS SHRI N.K. DHINGRA, UNDER
SECRETARY & SHRI D.S. JASSAL,
UNDER SECRETARY.

Whether to be referred to the Reporter ?

Whether reporters of local newspapers may be
allowed to see the judgment ? *yes*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.680/88

Date of decision: 9.9.1993.

SHRI S. AWTAR SINGH GROVER & ANOTHER ...PETITIONERS

VERSUS

UNION OF INDIA THROUGH THE
SECRETARY, MINISTRY OF
URBAN DEVELOPMENT, NIRMAN BHAWAN,
NEW DELHI & OTHERS ...RESPONDENTS

CORAM:- THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)
THE HON'BLE MR. B.S. HEGDE, MEMBER (J)

FOR THE PETITIONERS

SHRI R.K. KAMAL, COUNSEL.

FOR THE RESPONDENTS

SHRI N.K. DHINGRA, UNDER
SECRETARY & SHRI D.S. JASSAL,
UNDER SECRETARY.

JUDGEMENT (ORAL)
(HON'BLE MR. I.K. RASGOTRA)

We have heard Shri R.K. Kamal, learned counsel for the petitioners. The petitioners Shri A.S. Grover and Shri Manjit Singh are working as Junior Engineer (Electrical) in the Central Public Works Department (CPWD). The petitioner No.1 joined service on 15.3.1971 and his date of birth is 1.8.1947. The petitioner No.2 joined service on 2.7.1975 and his date of birth is 21.2.1953. They are aggrieved by the appointment of Shri Govind Bhatia, respondent No.4 as Assistant Engineer in C.P.W.D. He was also working as Junior Engineer like the petitioners having joined the service on 6.1.1976. His date of birth is 19.3.1952. The petitioners and

al

respondents No.4 appeared in the Limited Departmental Competitive Examination (LDCE) held in 1982 for selection for the post of Assistant Engineer(D). The result of the said examination was declared by the Union Public Service Commission (UPSC) on 3.11.1983. While 50 vacancies had been notified the UPSC recommended only 49 candidates for appointment to the grade of Assistant Engineer (Electrical) on the basis of the LDCE, 1982. Shri Awtar Singh Grover, petitioner No.1, Shri Manjit Singh, petitioner No.2 and Shri Govind Bhatia, respondent No.4 each obtained 490 marks in aggregate in the LDCE 1982. The grievance of the petitioners is that while Shri Govind Bhatia was subsequently recommended for appointment against a vacancy which arose in consequence of one of the 49 candidates declining to join, their cases were ignored. Had their cases been considered carefully and a rational and logical method adopted in selecting the candidate for recommendation against the vacancy which arose subsequently, one of the petitioners would have been recommended by the UPSC.

2. Shri R.K. Kamal, learned counsel for the petitioners submitted that the petitioners had filed a representation commending their claim over Shri Govind Bhatia, respondent No.4. The said representation was, however, rejected by the respondents vide their letter dated 10.12.1987. According to the said letter, rejecting their representation the respondents examined the case of the petitioners in consultation with the UPSC. Even though it was conceded that Shri Manjit Singh

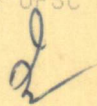
2

has obtained the same marks as Shri Govind Bhatia in the 1982 LDC, they were informed that Shri Govind Bhatia had secured a higher merit position than Shri Manjit Singh, petitioner No.2, "in accordance with the well established principles followed by the Commission." Shri R.K. Kamal, learned counsel for the petitioners contended that UPSC had not followed any rational criteria for determining as to which of the three candidates who had secured equal marks in the aggregate should be recommended for appointment to the vacancies which arose consequent to one of the 49 recommended candidates not taking up the appointment. The UPSC and the respondents have refused to divulge the rationale which they followed. All they say is that they are following the well established principles for breaking the tie in such cases. The learned counsel further submitted that the petitioner No.1 is a graduate (AMIE) while the petitioner No.2 is a diploma holder and so is the respondent No.4. Their dates of birth are 1.8.1947, 21.2.1953 and 19.3.1953 respectively. If the qualification was taken as the criterion the petitioner No.1 would have been recommended instead of respondent No.4. If the age was to be followed as the criterion in that case the oldest in age, i.e., petitioner No.1 would again find favour. If neither of the two are followed the third criterion would be that the senior person in the feeder category should be recommended. It was submitted that the petitioners No.1 and 2 are senior to respondent No.4. Thus, respondents have neither followed the criterion of qualification nor of age nor of seniority. The learned

22

counsel, therefore, submitted that the Tribunal should peruse the record of the case and satisfy itself whether the criteria followed by the respondents is rational, objective and logical or was it arbitrary. In case the criteria followed is arbitrary the appointment of respondent No.4 should be set aside and quashed and one of the petitioners recommended in accordance with the rational and objective criteria which may be determined by the Tribunal.

3. The next point urged was that even the appointment of respondent No.4 is not set aside and quashed and is found to be justified in accordance with the principles followed by the UPSC, even then one of the petitioners merits to be recommended against the 1982 vacancies, as admittedly 50 vacancies were announced. To fill up the 50 vacancies the UPSC recommended only 49 candidates. Thus there was a vacancy for the year 1982. Since the said vacancy cannot be carried forward as per the stand of the respondents in the counter affidavit the same has to be filled from amongst the candidates who came in the order of merit in 1982. In that view of the matter one of the petitioners would have been recommended by the UPSC to fill up the 50th vacancy. The learned counsel further submitted that besides the above there were two more vacancies which arose consequent to the resignation of one Shri Virendra K. Manchanda and Shri Virinder Dev Grover. The former resigned from service on 6.6.1983 while the latter resigned from service on 12.7.1984. It was further pointed out that the UPSC was




asked to fill up the vacancy caused due to the declining of promotion by Shri Dilip Ranjan Dass only in 1984 and respondent No.4 was appointed to the post of Assistant Engineer(E) only in November, 1985. It was, therefore, urged that these vacancies should have also been appropriated for filling up from the 1982 LDCE.

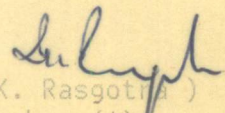
4. When this matter was heard on 13.8.193 we had directed the Registry to issue an emergent notice to respondents No.3, Secretary, UPSC to produce the relevant record, as stated in their counter-affidavit. S/Shri N.K. Dhingra and D.S. Jassal, Under Secretaries appeared on behalf of the respondent No.3, Secretary, UPSC and showed us the well establishment system which is followed by the UPSC to break the tie in such cases. Admittedly the main issue before us is as to what should be the criteria for breaking the tie and whether such criteria as adopted by UPSC is rational and objective. The documents shown to us by the UPSC leave no doubt in our mind that the criteria followed to break the tie in such cases is rational, objective and logical. There is nothing arbitrary about it. We are fully satisfied with its rationality and objectivity. Once this hurdle is out of the way, the next point which needs to be sorted out as to what happened to the 50th vacancy. The record shown to us indicates that initially 50th candidate was not recommended, as the assessment in the case of one of the candidates was not complete when the result was declared. Later on when the assessment was completed and the said candidate did not make the grade, an alternative

2

candidate viz. Roll No.38 who had secured 491 marks was recommended for appointment. Thus, against the 50 vacancies UPSC, respondent No.3 in fact recommended 50 candidates. This issue, therefore, does not survive. The last point urged was in regard to the two vacancies which arose consequent to the resignation of two other persons who were recommended by the UPSC. This issue has been brought out only in the rejoinder filed by the petitioners and need not detract us in any case at this point of time. We cannot go outside the pleadings. The relief prayed for by the petitioners in the O.A. is that "order of the Director General of Works, New Delhi NO.28(187)/85-EC-3 dated 18.11.1985 be quashed and the applicant No.1 may be declared promoted as Assistant Engineer (Electrical) from the same date and applicant No.2 may be declared the next person to be promoted as Assistant Engineer against the posts lying vacant for which U.P.S.C. held the examination in the year on the basis of seniority." The impugned order is in regard to the appointment of Shri Govind Bhatia, respondent No.4. As stated earlier, the appointment of Shri Govind Bhatia, respondent No.4 cannot be faulted having regard to the criteria followed by the UPSC for tie breaking. The said order, therefore, cannot be quashed. If that order cannot be quashed the case of promotion of petitioners No.1 and 2 does not arise.

5. In view of the above facts and circumstances of the case, the O.A. fails and is accordingly dismissed. No costs.


(B. S. Hegde)
Member (J)


(I. K. Rasgotia)
Member (A)