



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.1308/2020

This the 08stday of October, 2020

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Grishma Goyal

D/o Rajiv Goyal
EW-3, Top Floor, Mianwali Nagar,
Paschim Vihar, New Delhi-110087

..Applicant

(By Advocate: Sh. A. K. Behra)

Versus

1. Union Public Service Commission

Through
The Secretary
Dholpur House,
Shahjahan Road, New Delhi-110069

Through Standing Counsel Mr. R. V. Sinha
Email: sinhaadvocate@hotmail.com Mob. 9868230464

2. Union of India

Through
The Secretary, Ministry of Finance
Department of Economic Affairs
North Block, New Delhi- 110001

Through Standing Counsel Mr. Mohamed Muqeem
Email: mohamedmuqeem@gmail.com Mob. 9999864964

....Respondents

(By Advocate: Sh. Agarwal & Sh. Gyanendra Singh)



ORDER (Oral)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman:

The applicant has taken part in the selection for induction into the Indian Economic Service undertaken by the Union Public Service Commission. The selection process comprised of written test, and interview/interaction of the candidates within the zone of consideration. She secured 547 marks and belongs to unreserved category. The last candidate who was selected under that category was the one, who secured 547 marks. The applicant could not make it to selection on account of a tie and invocation of the procedure under the relevant rules.

2. The selection was for 32 vacancies in the Ministry of Finance. Even before the process of appointment started, the applicant moved the user department, ventilating her grievance. At that stage the department expressed their inability, by stating that the selection is undertaken by the UPSC and she lost on account of tie break, and they cannot help. Shortly thereafter it emerged that one candidate from the unreserved category by name Ms. Sumedha Pandey expressed her inability to join the service. Referring that development and the request of the applicant herein, the Ministry addressed a letter to UPSC with a



request to consider her case. In reply the UPSC addressed a letter dated 04.09.2020 stating that the applicant cannot be accommodated since there is no provision for maintaining the waiting list under the Rules. This OA is filed challenging the order dated 04.09.2020.

3. The applicant contends that she lost the selection to the post just on account of tie break once a clear vacancy has arisen at the threshold itself, there was absolutely no basis for not considering her candidature. She contends that the mere absence or of non maintenance of waiting list cannot be a factor to deny her the benefit of the performance in the examination, particularly when the rights of no other candidates are involved. The applicant further contends that apart from not causing any hardship to the administration, her appointment would avoid the marathon exercise that would ensue for selection of a candidate in the next round of selection. Various other grounds are also urged.

4. On behalf of UPSC a detailed counter affidavit is filed. The basic facts as regards the taking part of the applicant in the selection process and the marks obtained by her are not denied. They have reiterated the stand taken in the

impugned order. Reference is also made to the judgement of the Hon'ble High Court of Delhi in the case of **Satishkanth Singh Vs. Union of India in W.P.7054/2013** dated 23.09.2014.



5. We heard Sh.A.K.Behra, learned counsel for the applicant and Sh.Agarwal and Sh.Gyanender Singh, learned counsel for the respondents in detail.

6. The basic facts are not in dispute. The applicant took part in the process, initiated for selection of candidates for induction into Indian Economic Service. She secured 547 marks and incidentally, that was the cut off mark for the unreserved candidates. The UPSC has framed its own guidelines to break the tie, in the event of more than one candidates securing the same marks. The applicant lost the chance, in the process.

7. The selection was for 32 candidates and the dossiers of selected candidates are forwarded to the Ministry. Naturally being anxious about her losing the chance just in the tie break the applicant made representation to the Ministry. They initially expressed their helplessness, but addressed letter dated 07.08.2020 mentioning that one candidate by name Ms. Sumedha Pandey did not join the service and in view of the development,

the case of the applicant can be considered. The letter reads as



under :

"The undersigned is directed to refer to UPSC's Letter No.16/01/2019-C.VII dated 10 th January, 2020 whereby the final results of 32 unsuccessful candidates of the Indian Economic Service 2019 were shared with this Department.

2. *In this regard, it is to inform that out of 32 candidates, 31 have accepted the offer of appointment and finally joined the Indian Economic Service on 03rd August 2020 (FN). One candidate, Ms. Sumedha Pandey, Rank-5, General Category has refused to join IES conveyed her refusal via email dated 21.07.2020 (copy enclosed).*

3. *Earlier this year, Ms. Grishma Goyal has made a representation (copy enclosed) to this Department for considering her candidature as a successful candidate. It was informed that her candidature for the IES 2019 was not considered due to the "tie-breaking principle".*

4. *Therefore, in view of the refusal by one successful candidate in IES 2019 Exam and the representation by Mr. Grishma Goyal, it is requested to examine the candidature of Ms. Grishma Goyal for IES 2019, as per the relevant Rules by the Commission.*

5. *This issues with the approval of Competent Authority".*



8. Had the Ministry been reluctant to consider the case of the applicant or had they been of the view that the curtains stood drawn with the forwarding of the list by the UPSC, the occasion to address the said letter would not have arisen. Out of sheer respect for the UPSC they sought their views so that the feasibility of filling the 32nd vacancy can also be considered. The reply given by the UPSC reads as under :

"The undersigned is directed to refer to the M/o Finance letter No. 11012/1/2019-IES dated 07.08.2020 on the above noted subject wherein you have requested to examine the candidature of IES Exam, 2019 not finally recommended candidate Ms. Grishma Goyal.

2. In this regard, it is mentioned that the ISSION VIDE IES/ISS Exam, 2019 final result press note dated 10.01.2020 has already recommended 32 candidates against the 32 vacancies intimated by the Ministry for the IES Exam, 2019. Further there is no provision of waiting list in the Rules of the IES Examination, 2019. Therefore, request of Ms. Grishma Goyal to consider her candidature, cannot be acceded to."

Yours faithfully,

Sd/-
(T.K.Das)
Under Secretary (IES/ISS Exam)
Union Public Service Commission



The only basis mentioned therein is that there is no provision for preparation of waiting list.

9. In the selection process for many posts, there exists a provision for maintenance of waiting list, so that the vacancies do not remain unfilled in the event of selected candidates do not join for whatever reason. There is a clear purpose for this. The selection process for each vacancy involves a stupendous exercise. For each vacancy hundreds of candidates appear and after thorough filtration, some of them are interviewed. If the selected candidate did not join, not only the process of selection goes waste, but also the post remains vacant, adversely effecting the functioning the ministry or the department. It is a different matter, in case the resultant vacancies arise long after the selection process was concluded. In such an event, the factors such as notification of the vacancies to the selecting agency in the next year, would arise. A vacancy once notified, cannot be filled by the reminder of the candidates in the previous selection. In the instant case all the developments took place hardly within days from the communication of the selection list. The Ministry was also anxious enough to ensure that the post does not remain vacant.



10. The observations made by the Hon'ble High Court in **Satishkanth Singh Vs. Union of India in W.P.7054/2013** were in the facts of that case. We find a set of peculiar and special circumstances in the instant case, such as the applicant loosing selection in the tiebreak, the Ministry informing the UPSC within days from the last date fixed for joining of the selected candidates and the applicant making her efforts both with the UPSC and the Ministry, right from the beginning. We are of the view that no prejudice would be caused either to any private individuals or Ministry or UPSC, in case, her candidature is considered against the resultant vacancy. On the other hand the Ministry would have the advantage of the appointment of a candidate instead of the post remaining vacant till the next selection takes place. On its part, UPSC does not have to undertake any further exercise except that it has to approve the status of the applicant, in view of the various developments. This can be treated as a special and peculiar case, without treating it a precedent or any deviation from the rules framed by the UPSC.

11. We are fortified in our view, with the judgement of the Hon'ble Supreme Court in **Manoj Manu Vs. Union Of India**



(2013) 12 SCC 171. Dealing with almost identical situation their Lordships' held as under :

13. *The Court after making reference to the decision of the Supreme Court in the case of State of Haryana vs. SubhashChanderMarwah reported in (1972) IILLJ266 SC further observed as under:*

“However, as we said, the selection cannot arbitrarily be restricted to a few candidates, notwithstanding the number of vacancies and the availability of qualified candidates. There must be a conscious application of the mind of the Govt., and the High Court before the number of persons selected for appointment is restricted. Any other interpretation would make Rule 8 of Part D meaningless.” (Emphasis supplied)

14. *It is, thus, manifest that though a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once, it is found that the decision of the Government is based on some valid reason, the Court would not issue any Mandamus to Government to fill up the vacancies.*

15. *In the present case, however, we find that after the UPSC sent the list of 184 persons/recommended by it, to the Government for appointment six persons out of the*



said list did not join. It is not a case where the Government decided not to fill up further vacancies. On the contrary DoP&T sent requisition to the UPSC to send six names so that the remaining vacancies are also filled up. This shows that in so far as Government is concerned, it wanted to fill up all the notified vacancies. The requisition dated 20th November 2009 in this behalf was in consonance with its Clause 4(c) of O.M. dated 14th July 1967. Even when the Government wanted to fill up the post, the UPSC chose to forward names of three candidates.

16. There is a sound logic, predicated on public interest, behind O.M. dated 14th July 1967. The intention is not to hold further selection for the post already advertised so as to save unnecessary public expenditure. At the same time, this very O.M. also stipulates that the Government should not fill up more vacancies than the vacancies which were advertised. The purpose behind this provision is to give chance to those who would have become eligible in the meantime. Thus, this OM dated 14th July 1967 strikes a proper balance between the interests of two groups of persons. In the present case since the requisition of the DoP&T contained in communication dated 20th November 2009 was within the permissible notified vacancies, the UPSC should have sent the names of six candidates instead of three.

17. This Court in Sandeep Singh vs. State of Haryana &Anr. (2002) 10 SCC 549 commended that the vacancies available should be filled up unless there is any statutory embargo for the same. In



Virender S. Hooda & Ors. Vs. State of Haryana & Anr.
 AIR 1999 SC 1701, 12 posts for direct recruitment were available when the advertisement for recruitment was made which was held in the year 1991. Some of the selected candidates did not join in this batch almost similar to the present case, the Court held that the appellant's case ought to have been considered when some of the candidates for reasons of the non-appointment of some of the candidates and they ought to have been appointed if they come within the range of selection.

Almost identical situation arises in the present case also.

12. We, therefore allow the OA and set aside the impugned order. We direct the UPSC to forward the profile of the applicant to the Ministry, in case she is found to be next in the merit after the list of 32 candidates, within two weeks from the date of receipt of the order. If the profile is forwarded to the Ministry, necessary steps shall be taken thereon within two weeks thereafter.

There shall be no order as to costs.

(MOHD.JAMSHED)
MEMBER (ADMN.)
 sd

(JUSTICE L.NARASIMHA REDDY)
CHAIRMAN