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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 897/91

Date of decision: 28.01.1992.

Shri Raj Singh Naulakha & Ors. ... Applicants

Vs.

Union of India through the ... Respondents
Secretary, Ministry of Urban
Development & Others

For the Applicant

... Shri M. Chandrasekharan,
Sr. Counsel with
Shri G.K. Aggarwal,
Counsel

For Respondent Nos. 1 and 2

... Shri M.L. Verma,
Counsel

For Respondent No. 3

... Shri P.P. Khurana,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporters or not? Yes

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The 27 applicants who are working as Junior Engineers (Civil) in the Central Public Works Department (CPWD) are aggrieved by the decision of the respondents to fill up lesser number of vacancies in the post of Assistant Engineer based on the result of the Limited

Competitive Examination held in 1989, than those which were disclosed before this Tribunal in OA 149/90.

2. The Relevant Recruitment Rules provide that the post of Assistant Engineer will be filled by promotion as under :-

- "(i) 50% by selection on the basis of merit from among permanent Junior Engineers employed on the Civil Engineering side of the Central Public Works Department; and
- (ii) 50% by selection from among Junior Engineers employed on the Civil Engineering side of the Central Public Works Department, after consultation with the Union Public Service Commission on the basis of a limited Departmental Competitive Examination which shall be held in accordance with the rules to be made by the Central Government, after consultation with the Union Public Service Commission".

3. Limited Departmental Examinations were held in 1978, 1979, 1982 and 1983. After a gap of about 6 years, the examination in which the applicants appeared was conducted in 1989. The UPSC which is incharge of holding the examination indicated in the advertisement for the 1989 examination ^α ~~xxx~~ that the number of vacancies to be filled on the results of the examination will be specified in the Notice issued by them. The approximate number of vacancies to be filled on the results of the said examination were not indicated by the Government. This was challenged in OA 149/91 (Shri A.K. Singh & Others Vs. Union of India). On 1.3.90, another Bench of this Tribunal passed an interim order to the effect that the results of the

examination shall not be published till the number of vacancies was notified, in accordance with the proper procedure. On 2.4.1990, the learned counsel for the UPSC submitted before the Tribunal that the number of vacancies have been duly notified, namely, 173 vacancies for Assistant Engineer (Civil) and 33 vacancies for Assistant Engineer (Electrical). In view of this, the Tribunal modified the interim order passed earlier to the extent that the final result of the examination shall be subject to the outcome of OA 149/90 and that this should be made known in the offer of appointment to the successful candidates.

4. The applicants have challenged the decision of the respondents to thereafter reduce the number of vacancies from 173 + 33 to 119 + 30. They contend that the respondents have no such power to change the number of vacancies once notified. According to them, had the number of vacancies remained as 173 + 33, the applicants would have found place in the final select list. They have also contended that vacancies occurring after 1983-84 ought to have been filled through the 1989 examinations since that was the first examination conducted after 1983.

5. As against the above, the respondents have contended that according to the usual practice, the

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number of vacancies indicated in the advertisement is only approximate and that it is open to the administrative ministry/department concerned to revise the number as per their requirement.

6. We have gone through the records of the case and have considered the rival contentions. The learned counsel for respondent Nos. 1 and 2 has relied upon numerous rulings and we have duly considered them*.

7. The Ministry of Home Affairs have issued detailed administrative instructions in their OM No. 23/11/67-Est.(B) dated 14.7.67 on the subject of holding of open competitive examinations through the UPSC. They have decided as follows:-

"(a) The Ministries/Departments making recruitment through competitive examinations held by the Commission should assess carefully the number of vacancies required to be filled during a particular recruitment year, with due regard to all relevant considerations, including the vacancies likely to occur as a result of retirements, promotions, etc., and to report these to the Commission in time for being notified by them in their Notice for the information of prospective candidates, so that, as far as possible, the necessity of taking more (or less) candidates than originally notified does not arise.

9 (b) Any vacancies arising thereafter, but before the results are announced, should

* Cases relied upon by the learned counsel for the applicant

(i) 1991(1) CSJ CAT 120; (ii) 1990(1) ATR (SC) 665; (iii) 1991(2) SLJ 205; 1990(3) SCJ(CAT) 77; 1986(1) ATR (SC) 61; and AIR 1987 SC 590

be notified forthwith to the Commission. In other words, firm requirements are required to be intimated to the Commission well before the results are announced.

(v) Once the results are published, additional persons should not normally be taken till the next examination. Nor should vacancies reported before declaration of the results, be ordinarily withdrawn after declaration of the results".

8. It is clear from the aforesaid OM that the prospective candidates have a right to know the number of vacancies for which the examination is being conducted. The Ministry/Department concerned is also under an obligation to assess carefully and intimate the UPSC the number of vacancies required to be filled during a particular recruitment year with due regard to all relevant consideration including the vacancies likely to occur as a result of retirement, promotions etc. Even the vacancies arising thereafter to which the results are announced should be notified to the UPSC. In other words, firm requirements are required to be intimated to the UPSC well before the results are announced.

9. In the instant case, after the 1989 examination was held after a gap of six years and the vacancies in the limited departmental promotion quota had arisen during this period, in our opinion, it was incumbent on the part of the respondents to have filled up all those vacancies as a result of the 1989 examination.

No plausible reason or explanation has been given in the counter-affidavit to withhold some of the vacancies which were existing during the said period and a statement to that effect was made before the Tribunal on 2.4.90 in OA 149/90.

10. In the facts and circumstances of the case, we, therefore, allow the present application and direct that the respondents shall fill ^{up to} 173 posts of Assistant Engineer (Civil) and 33 posts of Assistant Engineer (Electrical) in the C.P.W.D. on the basis of the results of the Limited Departmental Competitive Examination conducted in 1989 as disclosed before this Tribunal on 2.4.90 in OA 149/90. The respondents shall do so within a period of 3 months from the date of communication of this order.

There will be no order as to costs.

B. N. Dholiyal
(B.N. DHOUNDIYAL) *28.1.92*
MEMBER (A)

28/1/92
(P.K. KARTHA)
VICE CHAIRMAN (J)

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