

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

(8)

OA 2145/92

06.11.1992

Shri Anand Kumar Sinha

...Applicant

Vs.

Union of India & Anr.

...Respondents

CORAM :

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Sh.C.R.Sinha, father of
the applicant on behalf
of the applicant

For the Respondents

...Sh.M.L. Verma

1. Whether Reporters of local papers may
be allowed to see the Judgement?

Yes

2. To be referred to the Reporter or not?

Yes

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

P.C. Jain
(P.C. JAIN)
MEMBER (A)

(7)

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JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant, who has been a student of University of Delhi is aggrieved by the order dt.7.8.1992 issued by Assistant Director, Staff Selection Commission cancelling the applicant's candidature for recruitment to the post of Inspector of Central Excise (Annexure A). The applicant has prayed for the relief that the above Memo dt. 7.8.1992 be cancelled and direct the respondents to consider the candidature of the applicant for the post of Inspector of Central Excise/Income Tax. He also prayed for costs.

2. Staff Selection Commission issued an advertisement published in the Employment News dt. 24.8.1991 issuing notice for the post of Inspector, Central Excise, Income Tax etc.Examination, 1991. SSC has laid down various conditions, eligibility in para-10; educational qualification has also

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been mentioned, which is as follows :-

"Degree of a recognised University or equivalent. Candidates who have yet to appear at the degree examination or whose result has been withheld or not declared on or before 1.8.1991 are not eligible."

3. The applicant has applied for the said examination in pursuance of the notice published in the Employment News dt.24.8.1991 and also gave a declaration stating therein that the applicant fulfils all the conditions of eligibility regarding age limit, educational qualifications etc. prescribed for admission to the examination. The applicant in the same year has appeared in the B.Sc. examination of 1991 from Delhi University which was held in the month of April, 1991. The applicant was allowed to sit in the said examination and he qualified in the written examination which was declared in the first week of July, 1992. However, the applicant did not receive the interview call letter and instead received a Memo dt. 15.7.1992 wherein he was informed that his candidature can be cancelled because he did not possess the essential qualifications on 1.8.1991. He was, therefore, asked to submit the degree from recognised university as on 1.8.1991 within five days from the date of receipt of the letter. The marksheet of passing the B.Sc. examination was issued to the applicant on 2.8.1991 and a provisional certificate was issued by the Principal, Deshbandhu College, Kalkaji on 6.8.1991. As the marksheet of the applicant is dated 2.8.1991, so the applicant was not in

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possession of the degree on 1.8.1991 of having the minimum qualification for the said examination and as such, he was not qualified. The respondents considered the show cause notice given to the applicant and rejected the representation of the applicant after duly considering the same only on the ground that he has not passed his degree examination on or before 1.8.1991.

4. The respondents contested the application and stated that the applicant is not entitled to the relief, prayed for, because he was not having the degree of a recognised university or equivalent on 1.8.1991 which was the cut off date as published by the Staff Selection Commission in its advertisement in the Employment News dt. 24.8.1991. The representation made by the applicant stating that the University of Delhi has issued the marksheet on 2.8.1991 does not fulfil the necessary conditions and so since the applicant was not qualified on the date as mentioned in the advertisement, so he filled up a wrong declaration in the said application form that he possessed the minimum qualification etc. making him eligible to appear in the said examination. It is further stated that all the candidates, who applied for the said Central Excise and Income Tax Inspectors' Examination, 1991 were provisionally allowed to take the written examination as the Commission do not carry out pre examination scrutiny of applications as stipulated in para-22 of the aforesaid notice. The applicant was also accordingly

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admitted to the written part of the examination as the aforesaid provision is binding on the applicant also. On scrutiny of the application dossier of the applicant, it was found that he has submitted statement of marks dt. 2.8.1991 for B.Sc.(General) final examination issued by the University of Delhi. Thus the applicant was not eligible to appear in the said examination by giving false declaration. In this way the applicant has suppressed factual information and has also tried to mislead the commission. The respondents have also stated in the counter the criterion for fixing the crucial date for determining the possession of educational qualifications and that is on the basis of OM No.12013/1/79-Estt.(E) dt.11.12.1979 which lays down that the crucial date for age limits etc. should be (a) 1st day of January of the year in which the examination is held if the examination is held in the first half of the year, and (b) 1st day of August of the year in which the examination is held if the examination is held in the latter half of the year. Staff Selection Commission has acted according to the aforesaid OM of Department of Personnel and Administrative Reforms and that the cut off date as prescribed above is being uniformly applied in all the open competitive examinations held by the Staff Selection Commission since July, 1987. Thus according to the respondents, the applicant has no case and the application be dismissed.

5. We have heard the applicant's father, who appeared on

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behalf of his son and argued the matter personally and also the learned counsel for the respondents at length. The undisputed facts remain that the applicant on 1.8.1991 was not in possession of any certificate/marksheet/degree of having successfully passed the B.Sc. final examination which was the minimum eligibility for taking the Central Excise Inspectors Examination, 1991. The only point which has to be considered is whether the applicant has acquired any vested right if he has been allowed to take the examination. Firstly, the applicant has filled in a declaration that he possesses prescribed qualifications and that declaration along with the documents and the application have not been scrutinised earlier and the applicant was allowed provisionally to take the examination. The contention of the applicant's father is that since the applicant has appeared and he has already been declared successful and the advertisement has appeared subsequently in the Employment News dt.24.8.1991, then the marksheet which was issued on 2.8.1991 may very well be taken to be a document which goes to show that the applicant has already cleared the graduation examination. The result was already declared and was ready with the Delhi University and the issue of marksheet on the subsequent date after 1.8.1991 is only a ministerial act which may be delayed by any act beyond the control of the applicant. The issue of marksheet on 2.8.1991 goes to show that on 1.8.1991, the applicant had already been successful in the said examination. So in his case this cut off date should not be interpreted in a manner

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which may prejudice his prospects of getting an employment.


6. We have considered this aspect. The respondents have themselves stated that they have laid down a uniform policy of prescribing any particular date as the cut off date for age as well as educational qualifications. The U.P.S.C., however, has been following a different criteria for determining the date of educational qualifications for different examinations conducted by it. However, the fact remains that on the date when the application was sent to SSC and further on the date when the result of the examination was declared, the applicant was very much equal to all such candidates who hold the graduation certificates with them. Merely the fact that the marksheet of B.Sc. was finally issued on 2.8.1991, while the marksheet of B.A. and other graduation examination by the Delhi University itself have been issued even in the month of July, 1991, should not come in the way of the applicant in holding him a graduate on 1.8.1991, otherwise it will be discriminatory. It will also be an arbitrary act because if the graduation is the minimum qualification and the same university has declared the result of one discipline in July and of the other discipline a few days after, which falls in the first week of August, then these two incumbents should not be discriminated because the declaration of the result was beyond the control of both the incumbents. All this cannot be left to the luck of individual person or any contingency which cannot be contemplated or thought of. The result of the

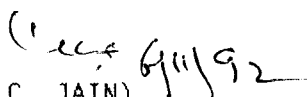
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applicant was very much prepared and was ready on 1.8.1991. It is not that the result was not ready on 1.8.1991. The process of issuing of the marksheet on 2.8.1991 should be treated as good by assumption that the applicant was also a graduate on 1.8.1991. So without disturbing the cut off date in the present case, the applicant fulfills the eligibility conditions in as much as the University of Delhi has issued the marksheet on 2.8.1991 and also that the case of the applicant was not rejected before he took the competitive examination. Since, according to the respondents, he was provisionally allowed to take the examination, then the interpretation whether the applicant was graduate on 1.8.1991 or not, has to be taken favourably in his favour in the circumstances of the case.

7. In view of the above facts, the present application is partly allowed to the extent that the Secretary, Staff Selection Commission will also issue the interview call letter to the applicant and he shall be interviewed by the same Board which has interviewed earlier candidates and his result be also declared on the basis of the merit position. In the circumstances, the parties shall bear their own costs.


(J.P. SHARMA)
MEMBER (J)


(P.C. JAIN)
MEMBER (A)