

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 718/87

Date of Decision 19/10/07

S.S. Misra

Applicant(s)

Sri S.K. Misra

Counsel for the
Applicant(s)

V E R S U S

Union of India & Ors. Respondents(s)

Sri AK. Gaur

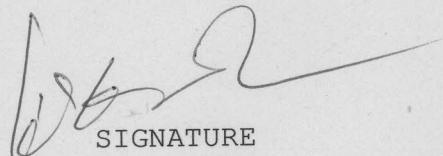
Counsel for the
Respondents(s)

CORAM :

Hon'ble Mr. D.R. Tiwari Member (A)

Hon'ble Mr. KBS Rajan Member (V)

1. Whether Reporters of local News Papers may be allowed to seen the Judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment.
4. Whether to be circulated to all the Benches.



SIGNATURE

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 19/12 day of Dec 2005.

Original Application No. 718 of 1997.

Hon'ble Mr. D.R. Tiwari, Member (J)
Hon'ble Mr. K.B.S. Rajan, Member (A)

Shiv Shanker Singh, S/o Sri D.R. Singh,
R/o 34/14 George Town,
ALLAHABAD.

.....Applicant

By Adv: Sri S.K. Mishra

V E R S U S

1. Union of India through the Secretary, Ministry of Personnel Public Grievances and Training, NEW DELHI.
2. Union of India through Secretary, Ministry of Railways, Rail Bhawan, NEW DELHI.
3. The Dy. Director Establishment, GR Railway, Board, Rail Bhawan, NEW DELHI.
4. Union Public Service Commission, Dhaulpur House, Shahjahan Road, New Delhi through its Secretary.

.....Respondents

By Adv: Sri A.K. Gaur

O R D E R

By K.B.S. Rajan, JM

The question to be decided in this case is whether a person who had secured 50th rank in merit in the Engineering Services Exam of 1995 in the Electrical Engineering Faculty wherein the total number of vacancies announced and the results based



on merits declared equals at 79 could be deprived of his appointment on the basis of the fact that he belongs to OBC and that there is no vacancy in the OBC category.

2. Answer the above question lies in one factor. Was the merit of the applicant based on any concessional treatment afforded to him as OBC or the merit of 50 out of 79 happens to be the general merit.

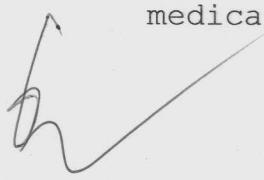
3. The Ministry of Railways are the coordinating Ministry for the combined Engineering Services Examination conducted by the Union Public Service Commission every year to cater for as many as 12 categories in various Departments/Ministries, including Indian Railway Stores Service and Indian Supply Services Group 'A'. The applicant who had secured the 50th position in the order of merit for the 1995 exam was subjected to medical test and he was declared unfit for various categories save the above said categories. He was given a chance to appeal against the medical Board decision in making him unfit for the rest of the categories, within a time bound period and the applicant chose not to appeal, as he being the 50th merit holder out of a total of 79 would be accommodated in any of the two categories in respect of which he was cleared by the

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Medical Board. However, to his shock and surprise, he was not issued with any offer of appointment and as such, he had, of course, after the expiry of the time allowed for making appeal to the Medical Board for reconstituting one, his request was rejected vide order dated 10-02-1997 which has not been acceded to. Hence this application inter alia with the following prayer:-

- "i. To quash the order dated 10.2.1997 passed by respondent no. 3 (Annexure A1 to Comp 'I')
- ii. to quash a mandamus directing the respondents to appoint the applicant against the vacancies in the two services for which the applicant has already been declared medically fit i.e. Indian Railway Store Service and Indian Supply Service with effect from the date any person lowers in merit to the applicant has been appointed in any of the service for which combined examination was conducted.
- iii. to issue a mandamus directing the respondents to allow second Medical Board for the applicant for testing his colour perception and in case the applicant is found fit for suitable service grant his merit and preference with all consequential benefits.
- iv. ...
- v. ..."

4. First the prayer regarding second medical opinion. The same being time barred, there is no question of allowing the same and hence, the same is summarily rejected. In fact, the applicant who qualified even in the 1996 exam, could not pass the medical examination and as such, for all practical

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purposes, he had been subjected to the medical examination for a second time. The same can be taken as the second medical exam for the 1995 selection, as rightly pointed out by the respondents in their counter.

5. Next is about his prayer for a direction to the respondents to issue necessary offer of appointment to the applicant in any of the category in which he was medically found fit.

6. The admitted fact is that the applicant's merit position is 50 and that the total number of vacancies in all was 79. In order to ascertain the number of vacancies in the two categories, i.e. the Indian Railway Stores Service and Indian Supply Services Group 'A', at the time of hearing, the respondents were directed to furnish the full details of the vacancy and promptly the counsel for the respondents had made available the details. In respect of the all the twelve categories the details are as under:-

Sl No.	Name of Service	SC	ST	OBC	U.R.	Total
1.	Indian Railway Services of Elec. Engineers	3	1	6	10	20
2.	Indian Railway Stores Services	0	0	0	1	1
3.	Central Elec & Mech. Engg Service	0	0	0	1	1
4.	Indian Ordnance Factories Service	2	0	3	5	10
5.	Indian Naval Armament	1	1	3	5	10

6h

	Service					
6.	Central Power Engineering Services	1	1	3	6	11
7.	Asst. Ex. Engineer in P & T Building Works	1	1	3	5	10
8.	Indian Inspection Service	0	0	1	0	1
9.	Mil. Engg. Services (IDSE Elec & Mech)	1	1	1	3	6
10.	Asst. Manager (Factories) Dept. of Telecom	0	0	1	0	1
11.	Workshop Officer Group 'A' in Corps of EME	1	1	1	3	6
12.	Indian Supply Service	1	0	0	1	2
	Total	11	6	22	40	79

7. The respondents have stated that there are no vacancies under OBC in the two categories in respect of which the applicant was found medically fit i.e. Indian Railway Stores Service and Indian Supply Services Group 'A' and as such the applicant could not be offered any post, though

8. The applicant challenged the decision on the ground that his merit position did not take into account that he belongs to OBC. His contention is that since there were 79 vacancies and the number of candidates declared to have qualified was exactly 79, there is no question of his not being offered appointment on the ground that there are no vacancies in the OBC quota in the two categories for which he was found medically fit.

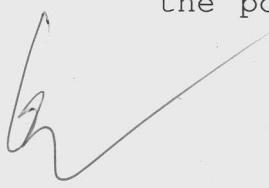


9. Arguments advanced were heard, the case has been considered, the document also perused and we have given our anxious consideration.

10. It is no doubt, a settled law that appointment to a post is not a vested right. Every one has a right to be considered for appointment and if the department chooses not to fill up the post, none can question the decision of the Govt. In this regard, "Shankarsan Dash" reported in (1991) 3 SCC 47 holds the field even today as could be seen from the judgment **Bihar SEB v. Suresh Prasad, (2004) 2 SCC 681**, wherein the Apex Co at page 685 has held as under:

6. We find merit in this appeal preferred by the Board. In the case of Shankarsan Dash v. Union of India¹ it has been held by this Court that even if number of vacancies are notified for appointment and even if adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. That ordinarily such notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. It was further held that the State is under no legal duty to fill up all or any of the vacancies unless the relevant recruitment rules indicate.

11. This was one of the arguments put forth by the respondents. This decision is not directly applicable to the case in hand, as in the instant case it was not the case that the applicant was selected and the respondents did not want to fill up the post. Here, what is to be seen is whether the



applicant was through in the selection under any relaxed condition inasmuch as he belonged to OBC and was considered against OBC quota only, in which event, his selection would have been in other categories but for the fact that he was not medically found fit.

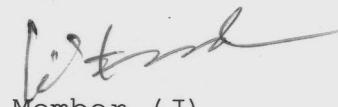
12. Admittedly, there were 79 vacancies and 79 selected candidates. This is the situation prior to medical examination. It is not known whether the respondents had a separate panel over and above 79 to be pressed into service in case of medical unfitness. No such assertion had been made in the counter. Since the selection was for the exact number of vacancies, one could easily deduce that the number of candidates selected under the UR quota was 40, under OBC 22, under S.C. 6 and under S.T. 11 i.e. according to the vacancies. Again, the general trend in selection is most meritorious would be the first group that would belong to UR, followed by OBC whereafter, SC vacancies and then ST vacancies would be the order. As such, since the merit position of the applicant was only 50, he cannot be one among the 40 candidates of UR. He ought to be only one among the OBC. In that event, since his medical fitness was only in respect of Indian Railway Stores Service and Indian Supply Services Group 'A' and there being no vacancies for OBC category, the rejection of the applicant's case



for appointment has been rightly done by the respondents. What would have happened to the one vacancy under the 22 OBC quota (against which the applicant was selected) is not anybody's case and as such, the same need not dilate us.

13. In view of the above, we find no merit in the OA and the OA is dismissed.

No costs.


Member (J)
Member (A)

/pc/