

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



O.A. No. 19 of 2021

Reserved for orders on: 18.06.2021
Orders pronounced on: 14. 07.2021

(Through Video Conferencing)

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

1. Vivek Chauhan, s/o Baldev Chauhan,
Age 39 years, Post:Assistant Engineer (Civil)/
Executive Engineer (Civil) CDC,
Department: Irrigation and Flood Control
Department,GNCT of Delhi, Group-A, R/o71 B,
Jhang Apartment Sector 13, Rohini,
Delhi-110 085.
2. Pradeep Manohar Naik, s/o Manohar Kamu Naik,
Age 37 years, Post: Assistant Engineer (Civil)/
Executive Engineer (Civil) CDC,
Department: Irrigation and Flood Control
Department,GNCT of Delhi, Group-A, R/o Flat No.46,
Nav Shakti Sadan Apartment, Sector 13,Rohini,
Delhi-110 085.
3. Aheiban Suran Kumar Singh, s/o A.Thanil Singh,
Age 43 years, Post:Assistant Engineer (Civil)/
Executive Engineer (Civil) CDC,
Department: Irrigation and Flood Control
Department,GNCT of Delhi, Group-A, R/o Pocket-4,
139-E, Mayur Vihar, Phase-I, Delhi-91.

..... Applicants

(By Advocate:Mr.Nalin Kholi and Ms.Tamali Wad

Versus

1. Govt. Of NCT of Delhi,
Through Secretary,
Irrigation and Flood Control Department,
L.M. Bund, Shastri Nagar, Delhi-31.
2. Union Public Service Commission,
Through Secretary, Dholpur House,
Shahjahan Road, New Delhi.

...Respondents

(By Advocate: Ms.Esha Mazumdar for R-1 Mr.R.V.Sinha for
R-2)



: ORDER :

Justice L. Narasimha Reddy, Chairman:

The applicants are holding the substantive post of Assistant Engineer (AE) in the Department of Irrigation and Flood Control Department, GNCT of Delhi, the first respondent herein, They are also holding the post of Executive Engineer (EE) (Civil) on CDC basis. The appointment to the post of EE in the first respondent department, appears to be through promotion as well as direct recruitment, in the stipulated proportions. The first respondent intended to fill up four posts of EE by way of direct recruitment. Out of them, two are unreserved, one reserved in favour of SC and other in favour of EWS, as required under the relevant provisions of law. The selection was entrusted to the UPSC, the 2nd respondent herein, and advertisement No.9/2019 was issued for this purpose. The qualifications stipulated for the post, are (a) degree in Civil Engineering from a recognized University; and (b) experience of 7 years in the field of Civil Engineering and related field in Irrigation and Flood Control works. The applicants and various others responded to the advertisement. The applications were processed and the 2nd respondent shortlisted the candidates, for being interviewed. Such a list was published on 11.12.2020, and the names of the applicants did not figure therein.



2. The applicants contend that in September 2020, the 2nd respondent published a list after scrutiny and their names did not figure therein, and since the 2nd respondent permitted the aggrieved candidates to make a representation against such non inclusion they submitted their representations duly inviting the attention of the 2nd respondent to the experience and the qualifications held by them. The applicants state that despite the same, their names were not included in the shortlist of candidates for interview, published on 11.12.2019. The applicants further contend that when they are already holding the very post, which is sought to be filled, on CDC basis the 2nd respondent cannot treat them as not qualified.

3. In its short reply, the first respondent stated that the selection process is entirely under the purview of the 2nd respondent and they have nothing to state, at that stage.

4. The OA is mainly contested by the 2nd respondent. They filed a counter affidavit initially on 14.01.2021, and thereafter another counter affidavit on 12.02.2021. The gist of their reply is that the Commission reserves to itself the right to adopt shortlist criteria and accordingly the relevant parameters are prescribed. They contend that the advertisement itself is very comprehensive and every step, starting from the method of submitting application, to the manner in which the assessment is done, interviews are held and selection is made, are indicated therein. They state that in all fairness to the aspirants to the post, a preliminary scrutiny was undertaken and the



candidates were permitted to submit their representations, with a note of caution, that no fresh documents would be entertained. It is stated that the representations of the applicant were taken into account, and on finding that they do not possess the stipulated qualifications they were not included in the shortlist of candidates to be interviewed.

5. The 2nd respondent has also stated that the scope of interference in the matters of this nature is very limited and the Commission being an authority under the Constitution of India, has every right to adopt the parameters for selection. They denied the various allegations made by the applicants.

6. We heard the arguments of Mr. Nalin Kholi and Ms. Tamali Wad, learned counsel for the Applicants and Ms. Esha Mazumdar, learned counsel for the Respondent No.1, and Mr. R.V. Sinha, learned counsel for the Respondent No.2.

7. The applicants are working as EE in the first respondent department, on CDC basis. Their substantive post is that of AE. The first respondent entrusted the matter of selection for direct recruitment to the post of EE to the 2nd respondent. Accordingly, an advertisement was issued in 2019. The advertisement is very comprehensive, and indicated the manner in which the applications are to be submitted, the method of scrutiny of the applications and the various criteria that would be taken into account by it.

8. After the preliminary scrutiny of the applications, the 2nd respondent published a list of candidates on 02.09.2020. The names



of the applicant did not figure therein. At the end of the list, the 2nd respondent incorporated the following note:

“Note 2: Candidates who desire to represent against his/her rejection in accordance with criteria and modalities adopted for shortlisting the post, may submit the same with substantive ground(s)/reason(s) to sort6-upsc@gov.in by 16.09.2020. Mails received after this date would not be opened. No documents are to be submitted alongwith such e-mails. Even if submitted, they would not be opened, considered or entertained. All the representations would be examined and if in any case the ground/reasons indicated therein are found to be correct as per criteria and modalities adopted, such applications would be shortlisted and rejection of others would be maintained. Thereafter, revised and updated scrutiny details would be uploaded in this space, if any change is made therein. No individual reply would be given to any of these emails.”

9. Even while permitting the concerned candidates to make representation, a note of caution was added that no documents are to be submitted and even if they are submitted, they would not be even opened muchless considered or informed. It is also informed that if the candidature is rejected, no order would be passed.

10. The applicants 1 and 2 submitted their representations within time and the 3rd applicant represented a bit later. After this step, the 2nd respondent published a list of candidates on 11.12.2020, showing the names of the persons, who would be interviewed on 27/28.01.2021. The names of the applicants did not figure and accordingly they filed this OA, with a prayer to set aside the list dated 11.12.2020 and to draw a shortlist, by including the names of the applicants also, since their batchmates were already included therein.



Prayer is also made to direct the respondents to pass a speaking order, on the representation made by them.

11. While admitting the OA, an interim order was passed directing the 2nd respondent to interview the applicants 1 and 2, since they submitted a representations, within the stipulated time. Such a relief was denied to the 3rd applicant. He filed Writ Petition before the Hon'ble High Court of Delhi, and the Writ Petition was disposed of directing that the 3rd applicant shall also be interviewed on par with the applicants 1 and 2, and the same would be subject to the outcome of the OA.

12. In their reply affidavit, the respondents stated the reasons for non-inclusion of the names of the applicants as under:

Roll No.	Grounds for rejection
135 (Gen)	Nature of duties not specified in ECs. Hence, as per modality No. (xi), rejection under "Incomplete" category was maintained.
80 (Gen)	Experience not in relevant field. As per modality No. (III) rejection under "LEQ(B" was maintained.

13. No such reason is mentioned about the 3rd applicant since his representation was not made within time.

14. The applicants enclosed their experience certificates along with the applications. It was mentioned therein that the certification was in two parts. The first applicant is said to have worked in the Delhi



Agriculture Market Board on deputation from 02.05.2016 to 31.05.2019.

15. The applicant contends that their very selection and appointment was in the Irrigation and Flood Control Department and apart from holding the post of AE in a substantive capacity, they are working as EE on CDC basis and in that view of the matter, it cannot be stated that they do not have experience of 7 years in the relevant field.

16. In this behalf, the 2nd respondent states that the nature of duties was not specified in the experience certificates in case of the first applicant, and accordingly it was rejected under caption "incomplete category". As regards, the second applicant, experience certificate is said to be not in the relevant field. It is stated that the consideration would be confined to the certificates already uploaded and fresh certificates would not be taken into account.

17. During the course of arguments, it is also mentioned that the certificates submitted by the applicants were not in the prescribed proforma.

18. We are aware of the limitations of this Tribunal in matters of assessment of eligibility of the candidates, which is purely under the realm of the selecting agency, which in this case is the UPSC. However, the Tribunal or Courts expect an objective and uniform approach on the part of the selecting agency. In this behalf, we find



an element of inconsistency in the very instructions contained in the advertisement. Para 6 (A) (ii) of the advertisement reads as under:

“Candidates must upload the following documents/certificates relating to educational qualification, Date of Birth, Experience (preferably in prescribed format), Desirable Qualification(s) or any other information, as claimed in the online application, in a single pdf file in such a way that the file size does not exceed 2 MB and is legible when a printout taken. For that purpose, the applicant may scan the following documents/certificates in 200 dpi grey scale. Documents like Pay Slip, Resume, Appointment Letter, Relieving Letter, Un-signed Experience Certificate etc. must not be uploaded in the Document Upload Module.”

19. A perusal of the same discloses that the submission of the experience certificates in the prescribed format is almost optional, and it is not made compulsory. However, the office order dated 02.09.2020, wherein the method of preliminary scrutiny was undertaken, it is mentioned that if an experience certificate is submitted otherwise than in prescribed proforma, the application shall be rejected under “incomplete category”.

20. An additional reply was filed on 12.02.2021, furnishing detailed reasons on account of which the candidature of the applicants were rejected. They read as under:

“4. That it is stated that the Applicant No. 01 (Shri Vivek Chauhan, (Roll No-135) had worked in Irrigation & Flood Control Department, Govt. of NCT of Delhi for the period from 16.08.2011 to 01.05.2016. The experience certificate uploaded by him for the above period does not indicate nature of duties. He has also submitted experience certificate for the period from 02.05.2016 to 31.05.2019 claiming that he had worked in Delhi Agricultural Marketing Board/APMC, Govt. of NCT of Delhi as an Executive Engineer (Civil) without indicating nature of duties. Hence, his candidature has been rejected under “Incomplete” category as per modality no (xi).



5. That the Applicant No. 02 (Shri Pradeep Mahohar Naik Roll No. 80) had uploaded experience certificate that he had worked as an Assistant Engineer (Civil) for the period from 07.07.2011 to 11.12.2018 in Irrigation & Flood Control Department, Govt. of NCT of Delhi without indicating nature of duties. He had also uploaded experience certificate indicating that he had worked as Assistant Manager II (Projects) in Quality Control Department of Parbati H.E. Project, Gammon India Limited for the period from 01.10.2009 to 05.07.2011 in which nature of duties were not indicated. Further, in another experience certificate he uploaded, cited that he worked in Nuclear Power Corporation of India Limited for the period from June 2003 to August 2006, this experience was not considered relevant. He was, therefore placed under LEQ (B) category as per modality no (iii).

It is further stated that some of the candidates were rejected under more than one category. They have been rejected under the category considered as most appropriate.

6. That the Applicant No. 3 Shri Surankumar Singh (Roll-07) had uploaded experience certificate that he had worked in Irrigation & Flood Control Department, Govt. of NCT of Delhi as Assistant Engineer (Civil) for the period from 30.12.2010 to 09.11.2017 (06 years 11 months & 08 days) which was considered relevant and the experience certificate as Executive Engineer for the period from 10.11.2017 to 02.08.2019 (01 year 09 months 07 days) was not considered relevant. Hence, his candidature was rejected under "LEQ(B)"category as per modality No. (iii) as his relevant experience falls short as per Recruitment Rules."

21. The consistent emphasis was on the nature of duties. Neither the relevant Recruitment Rules nor the advertisement mentioned any details thereof. When the applicants are working in the very department of Irrigation and Flood Control, it would be naive to insist upon the particulars thereof. Here again, the description would be endless, unless it is on a particular aspect, or line.



22. Secondly, in para 8 of the additional affidavit, the respondents have stated that the additional documents are not acceptable and the scrutiny is done on the basis of the documents, submitted along with the application, before the last date of submission. However, there is material to show that the additional documents were received and they were considered, at the subsequent stages.

23. The entire emphasis is only in relation to the nature of experience. It has already been mentioned that the advertisement, or for that matter, the Recruitment Rules, do not specify the minute details of experience. The requirement is that one should have 7 years of experience in the field of Civil Engineering and related field in Irrigation and Flood Control Organizations. In other words, the requirement is about the experience in related field in Irrigation and Flood Control works. When the applicants are working in that very department ever since their entry into service, and their service as Assistant Engineer in that department is more than 7 years, it is a bit difficult to conclude that they do not hold the experience, mentioned in the advertisement. At any rate, if any doubt has arisen in this behalf in the 2nd respondent, the easiest way was to ascertain from the first respondent, who not only is the author of the experience certificate issued to the applicants 1, 2 and 3, but also the user department.

24. Learned counsel for the 2nd respondent relied upon the judgment of the Hon'ble Supreme Court in 2006 (7) SC227, 1990 (1)



SCC 305, and certain other judgments in support of his contention that the selection process must be completely left to the Commission and the Courts or Tribunal shall not interfere with the same. There cannot be any second view about the proposition nor anyone can think of something different from what the Hon'ble Supreme Court held, on an issue. The entire exercise in this case is only to ascertain the eligibility of the applicants in terms of experience. We have already mentioned that except indicating the broad activities or department as regards the experience, the Commission did not indicate the minute details. Rejection of the candidature of the applicants, who are from the very Irrigation and Floor Control Department of the User Department of the first respondent, only on the ground that the details of nature of duties are not furnished, does not appear to be proper.

25. In compliance with the directions issued by this Tribunal as well as the Hon'ble High Court of Delhi, the applicants were interviewed. Their results are directed to be kept in a sealed cover. If any of them were selected, the 2nd respondent can examine the nature of experience to their credit, if necessary by consulting the first respondent. As regards those who are not selected, even this exercise would not be necessary.

26. We, therefore, dispose of the OA, directing that in case, any of the applicants are found fit by the selection committee, on the basis



of their performance in the interview, the 2nd respondent shall verify the requirement, as to experience with reference to the relevant documents, by consulting the user department, if necessary and shall take a final decision, within four weeks from the date of receipt of copy of this order.

There shall be no order as to costs.

(Tarun Shridhar)
Member (A)

(Justice L.Narasimha Reddy)
Chairman

Dsn