



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

O.A. No.774/2021

This the 29th day of June, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Yatesh Kumar Sharma age 43 years
Assistant Executive Engineer (Civil)
Employees State Insurance Corporation
Janpath Unit-9
Near RupaliChowk, Bhuneshwar-751001
Group (A)

... Applicant

(By Advocate: Mr. D.K. Gupta)

Versus

Union of India through

1. Director General
Employees' State Insurance Corporation
Headquarter Office
PanchdeepBhawan, C.I.G. Road
New Delhi-110002.
2. Chairman, Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi-110001.

...Respondents

(By Advocate: Mr. R.V. Sinha)

ORDER (Oral)**Justice L. Narasimha Reddy, Chairman:**

The applicant responded to the advertisement issued by the Union Public Service Commission(UPSC) for the post of Assistant Executive Engineer in the year 2011. In the select list published on 03.11.2011, his name did not figure in the unreserved category. However, two candidates under the unreserved category by name, Ansul Kumar and Santosh GorakhLamkane did not join. In their place one Mr.Prashant Agnohotri, who secured sixty three marks and the applicant who secured sixty two marks, were recommended by the UPSC through their proceedings dated 25.06.2012. The applicant was also issued offer of appointment. In the seniority list, the applicant was placed below the candidates who were appointed through the first list dated 07.11.2016. He made repeated representations, with a request to decide his seniority on the basis of the merit obtained in the examination. He stated that there was absolutely no basis for placing him below Shri UpendraResu and Shri AshwaniYadav. He placed reliance upon the OM dated 08.08.2013 and an order dated 06.09.2013 passed by this Tribunal in OA No.465/2013. This OA is filed with a prayer to direct the respondents to re-fix his seniority above the two persons named above.

2. We heard Shri D.K.Gupta, learned counsel for the applicant and Shri R.V.Sinha, learned counsel for the respondents.



3. At the outset, Mr. R.V. Sinha, learned counsel for the second respondent-UPSC submits that the UPSC should have been made party represented by the Secretary and not the Chairman. The description of respondent No.2 shall stand modified accordingly.

4. The applicant did not figure in the first select list published on 03.11.2011. He figured only at Sl. No.2 in the reserve list under the un-reserved category. Since two candidates did not join, the name of the applicant and Mr. Prashant Agnihotri were recommended by the UPSC for appointment. The relevant portion reads as under:-

"I am directed to refer to your letter No.A-12/17/1/2010-E-I dated 07.05.2012 with reference to the Commission's recommendation letter of even number dated 03.11.201 regarding recruitment to the post of Assistant Executive Engineer (Civil) in Employees State Insurance Corporation. In considering the request for operation of the reserve List, the Commission recommends for appointment to the post of Assistant Executive Engineer, Shri PrashantAgnihotri (Roll No.182 Gen, Marks obtained 63) and Shri Yatesh Kumar Sharma (Roll No.321/Gen, Marks obtained 62) vice Shri Ansul Kumar (Roll No.238/Gen) and Santosh GorahLamkane (Roll No.102/Gen) respectively (as per Annexure) whose offer of appointment have been cancelled by you on 07.05.2012. The pay of the recommended candidates may be fixed according to the rules or instructions issued by the Govt. of India from time to time, as the case may be in the pay scale of Rs.15600-39,100 + Rs.5400/- Grade Pay (Revised). The candidates now recommended have also been informed about their selection."

5. The applicant secured 62 marks. The circumstances under which the applicant came to be shown



below the reserved category candidate, are not immediately before us. Much would depend upon the method of fixation of seniority in the first respondent organisation. In the OM dated 08.08.2013 issued by the DOP&T, it is stated that the seniority list shall be guided by the merit. No mention is made about the ranking or other factors. The matter needs to be taken into account by the second respondent. The representation made by the applicant cannot be kept pending indefinitely.

6. We, therefore, dispose of the OA directing the first respondent to pass orders on the representation dated 24.08.2020, made by the applicant as regards fixation of seniority within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/lg/vb/ns/sd