

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the day 16th Jan' of 1995.

ORIGINAL APPLICATION No. 1258 OF 1987.

Pawan Kumar Chauhan S/o Late Shri Ram Singh Chauhan,
C/o Shri Ram Larhaitey Lal Dixit,
Dixit Hotel Near Mathia Devi, Railway Road, Farrukhabad,
Presently working as Upper Division Clerk,
Central Excise Division, Farrukhabad (U.P.)

..... Applicant.

By Advocate Sri S.C. Budhwar/
Sri Sudhir Agarwal.

Versus

1. Union of India, through Secretary to the Ministry of Home, Department of Personnel and Administrative Reform (Staff Selection Commission) Government of India, Block No. 12, Central Govt. Offices Complex, Lodhi Road, New Delhi.
2. Shri S.C. Srivastava,
Under Secretary Staff Selection Commission,
Block No. 12 Central Govt. Offices Complex,
Lodhi Road, New Delhi.
3. The Chairman, Staff Selection Commission,
Block No. 12, Central Govt. Offices Complex,
Lodhi Road, New Delhi-3.

4. The Regional Director,

Staff Selection Commission,

8 Beli Road, Allahabad.

..... Respondents.

By Advocate Sri Prashant Mathur.

CORAM:- Hon'ble Mr. K. Muthukumar, MEMBER (A)

Hon'ble Mr. J.S. Dhalawal, MEMBER (J)

ORDER (RESERVED)

By Hon'ble Mr. K. Muthukumar, MEMBER (A)

1. The applicant, a Lower Division Clerk in the Divisional Office of the Custom and Central Excise at Fatehgarh in 1985, was a departmental candidate in the "Inspectors of Central Excise Income Tax etc. Examination 1985" conducted by the Staff Selection Commission (SSC) for recruitment to the post of Inspector of Income Tax, preventive Officer (Ordinary Grade) and Examiner (Ordinary Grade). The applicant was finally declared successful in the aforesaid examination on the basis of the results declared by the SSC. The applicant's grievance is that although he had filed his candidature as a departmental candidate of general category and not in ex-service man quota and had also filed no objection certificate from the department and filed a declaration to the effect that he was a departmental candidate of general category at the time of his interview, the respondents have not offered the appointment so far. The applicant was informed that on scrutiny of his application, it was found that he was working as L.D.C in the office of the Custom Central Excise Collectorate, Kanpur, and was not entitled to get reservation as Ex-Service Man since he was

(14) (A3) (P3)

already in Civil Employment and that he was entitled to compete as a departmental candidate of general category. On the basis of the declaration given by him at the time of the interview, this aspect was also examined to find out whether he had qualified for inclusion of his name in the select list as a departmental candidate of general category and it was found that he did not qualify for inclusion in the select list of the candidates recommended for appointment as a departmental candidate of general category. In reply to his representation dated 1st May, 1987, the respondents further informed the applicant that his case was re-examined in detail with reference to his original application and it was seen that he had ticked the column relating the ex-service man which led to the wrong categorisation of his status and he was wrongly included in the final result as ex-service man with relaxed standard applicable to this category. The respondents further stated that when the fact of his being a departmental candidate came to notice, his result was checked again as a departmental general category candidate and his name did not find a place in the list of the recommended candidates for appointment as a departmental general category candidate.

2. The applicant contends that he had applied as a departmental candidate for general category and has also given a declaration to the effect at the time of the interview and also paid the necessary fee applicable to the general category. The respondents, however, were negligent and although he was declared

successful in the result declared by the SSC in their notification in the "Employment News" dated 15th November, 1986, (Annexure-A-3 to the application), the respondents have denied his appointment which has resulted in miscarriage of justice and he has been put to irreparable loss in the matter of his selection and appointment to the said post. Aggrieved by this, the applicant has approached this Tribunal with a prayer that the respondents be directed to declare the applicant as duly selected candidate for the post of Preventive Officer in the Department of Customs and accordingly appointed to the said post, by quashing the impugned letter dated 20.4.1987 and 10.8.1987 of the respondents (SSC).

3. The respondents have strongly resisted the claim of the applicant and have made the following averments:-

a) On the basis of the original application where the applicant had ticked the box of meant for "Ex-Service Man" category, his candidature was included and was recorded in the computerised record as Ex-Service Man in and the final result, his name was included the reserved vacancy of the Ex-Service Man category. By subsequent declaration dated 17.9.1986 submitted by the candidate at the time of the interview, he had claimed as departmental candidate under age relaxation under General Category. By that time the data processing was completed/ the results declared but the revised category of the candidates was not taken into account.

(b)
15

b) After the declaration of the final result on pre-nomination scrutiny it was revealed that though he was a Ex-Service Man, he was not entitled to get relaxation as an Ex-Service Man. However, since he was to be considered for inclusion only as a departmental general category, it was found that on the basis of his position in the merit list, his name did not find a place in the select list of the candidate recommended for appointment as departmental candidate of general category and, therefore, he was not nominated for such appointment.

c) On the basis of the revised categorisation as a departmental candidate of general category and the on the basis of the marks obtained, position in the merit list, the applicant's name was to be included in the list of the candidates held in Reserve for U.P. Zone with a Zonal Rank below 056 above 057 and was, therefore, given a rank of 056A.

d) After nomination of candidates from the Select List, the candidates from reserve list were to be nominated against the post of Inspector of Central Exercise and Inspector of Narcotics from the Reserve List of the U.P. Zone to which this candidate was eligible. The applicant was also considered for nomination alongwith the others. However, his name could not be covered within the ranks for the vacancies, in view of his low rank in the reserve list.

17
16

e) In the U.P. Zone, the rank of the last candidate of general category, nominated was 045 whereas the rank of the applicant was 056 A and, therefore, there were 11 candidates who were senior in the rank than the applicant who also remained un-nominated and no candidates junior in rank to the applicant had been nominated.

4. In the light of the above averments, the respondents maintained that there had been no discrimination and it was wrong to allege that there had been infringement of the provisions of Article 14 and 16 of the Constitution. The respondents further averred that only due to low rank obtained by the applicant as a general category candidate that he could not be included in the select list and as such the contention of the applicant that there had been negligence and failure of the respondents was unfounded.

5. The counsel for the applicant strongly argued that the adverse inference should be drawn against the respondents on account of the following factors:-

a) In the Misc. application filed by the respondents for submission of certain documents summoned by the Tribunal, they had furnished the extract of the reserve list of the general category candidates but they had not produced the answer sheets which were relevant to verify the marks stated to have been obtained by the applicant as shown in the reserve list and they had averred

that the said answer sheets had been pulped and destroyed in January 1987, while, the final result was declared in November 1986. It was strongly argued that all the answer sheets had been destroyed within a period of 1½ months, which appeared, on the face of it, incredible. To bolster his contention, the counsel cited the decision in AIR 1986 SCC 1987 S. Govind Raj Versus U.O.I.

b) From the result declared, it was indicated that for the post of Inspector of Income Tax and Central Excise, the select list of the candidates had been prepared on Zonal basis corresponding to the 18 Collectorates of Central Excise / Commissioners of Income Tax. The Zonal Lists have been prepared on the basis of Centre linked Zonal Scheme and under this scheme candidates appearing from Centre falling in a particular zone only are eligible for being considered for vacancies in that zone and thus Zonal List includes only such candidates as have been selected in the centres falling within that zone and the select lists of Preventive Officer and Examiner have been prepared on all India basis in order of merit. The counsel for the applicant strongly contended that with reference to the number of indicated vacancies in the result published and the total number of candidates selected, it is clear that the applicant has qualified for nomination to any one of the posts either on all India basis or zonal basis. Since, the respondents have not produced necessary

evidence, their subsequent averments after the publication of the result, that the candidate did not come within the rank approved for the U.P. Zone can not be accepted and adverse inference has to be drawn in such a situation.

c) Although the respondents have stated that the candidates have been placed in rank 056 A of the U.P. Zone and none of the candidates below rank 045 are stated to have been appointed, the respondents have not filled any vacancy of Inspector of Narcotics and no select and nomination lists in respect of the different categories of posts, both on all India basis as well as on the Zonal basis, rankwise have been produced by the respondents and no reliance can be placed on such averments in the absence on these separate select lists.

6. The counsel for the respondents argued on the pleadings and also produced at our instance information in regard to the last candidate under general category for various posts in the select list and also in the reserve list.

7. We have heard the learned counsel for the parties and perused their pleadings and other records including the computerised marksheets and the select lists / reserve lists which were produced before us during the hearing.

8. In regard to the contention of the learned counsel for the applicant that the respondents failed to produce the answer sheets and, therefore, the adverse inference should be drawn against the respondents, we find

(20) AP

that this argument betrays certain lack of appreciation of the efforts on the part of the respondents. This application was filed in December 1987 and this related to the declaration of the result declared in November 1986 and the matter came up for hearing on 19.12.1990. The respondents were directed to produce the answer book also. Although certain other documents were produced, subsequently, in reply to the Misc. application for summoning the records, the respondents had averred in para 7 and 8 thereof that the answer sheets in respect of the aforesaid examination were pulped in January 1987 and, therefore, the answer sheets of the petitioner was pulped alongwith other answer sheets and, therefore, was not available. In an examination of this nature, where there are large number of candidates, the answer books cannot be preserved for a very long time and one has to take into account the administrative difficulties in preserving such a large number of answer books which may be running into lacs and, therefore, the respondents had to weed them out. In any case, the respondents can not be expected to keep the answer books in anticipation of any possible litigation on the result. This will not be practicable also for any centralised examining agency which conducts such examinations almost on annual basis. In any case, marks as awarded, have been taken in the date processing and computerised marksheets of all the candidates, have been taken out and have been produced before us. There is no ground to question the veracity of the computerised marksheets which were produced before us. So merely because the answer sheets were not available, we are unable to draw any adverse inference against the veracity and genuineness of the computerised marksheets which were prepared at the relevant point of time after taking into account the revised categorisation

of the candidature of the applicant, under departmental candidate of the general category and his placement in the Reserve List.

9. Regarding the other contention of the counsel for the applicant that the respondents have not produced any evidence that the applicant had not come within the rank approved for the U.P. Zone as no separate zonal list were produced, we are satisfied from the computerised marksheets and reserve list produced before us that the separate select as well as reserve list are indicated for various posts alongwith the Roll Numbers and Marks obtained in this list. In the above computerised marksheets, we have also seen that the applicant had secured 287 marks and was duly placed in the reserve list for the U.P. Zone for which he is eligible and from the above list, we have also seen that the last general category candidate stated to have been nominated from the U.P. Zone from the reserve list had obtained 300 marks. This candidate's rank was shown at 045. Whereas the applicant's rank was indicated 056A with the marks at 287 and there were other candidates who were above the applicant's rank but below the rank of the last nominated candidate at rank no. 045 and who were also not nominated like the applicant. At our instance, the respondents have also shown us the details of last General Category candidate for various posts from the Select / Reserve Lists on All India / Zonal basis and we find that the last nominated candidates from these lists, have secured more marks than the applicant. In view of the matter, we find that the applicant was not particularly ^{and} discriminated against the respondents had not acted in any ^h malafide manner in disposing of the claim of the applicant.

10. The counsel for the applicant had also stated that the initial mistake of categorisation was committed by the respondents by placing him as Ex-Service Man Category and declared him successful and they had later on deleted his name from the Ex-Category List and transferred his result to the general category list. The counsel argued that after, once declaring him as successful, they cannot declare him as not successful in the General Category List. We are unable to appreciate this point and the reliance of the counsel on the decision in Narendra Deo Versus G.P. Pant University 1981 UPLBEC 320 is also not of any help to him. In this case, the principle of promissory estoppel was found to have been satisfied as the petitioner in the above case was originally admitted to the Civil Engineering Course by the respondents University and thereafter the respondents cancelled his admission in the Civil Engineering Course and transferred him to Agriculture Engineering Course which was never intended by the petitioner in his application. In the case of the present applicant, however, this principle of promissory estoppel is not applicable. On the basis of the representation, the respondents have correctly restored his categorisation under the departmental general category and placed him in the appropriate position in the merit list and his name was included in the reserve list and he was assigned the rank of 056 on the basis of marks obtained by him and, therefore, there was no question of the respondents being estopped from correctly categorising him after they received the necessary declaration and the representation of the applicant stating that he should be treated as departmental general candidate.

11. The counsel had also cited the decision in S. Govindaraju Versus K.S.R.T.C AIR 1986 SC 1680 to press the point that due to the non production of marksheets as desired by the Tribunal adverse inference had to be drawn against the respondents. We are satisfied that the respondents would not obviously be in a position to produce the Answer Book as it had been weeded and pulped out. There are no grounds to suspect the bonafide of the averments made by the respondents in this behalf. We are also of opinion that in the assignment of the rank of the applicant under the departmental candidate of General Category, the respondents have not acted in any arbitrary manner.

12. In the light of the above discussions, we find that the application lacks in merit and is accordingly dismissed. No order as to costs.

Jasai R.
MEMBER (J)
ALLAHABAD: DATED: 16-1-95
am/

Ho
MEMBER (A)