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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

....
O.A. No. 832 of 1994

Dated : 18 April, 1995

Hon. Mr. S. Das Gupta, A.M.
Hon. Mr. J.S. Dhaliwal, J.M.

Vinay Shanker Pandey, aged about
26 years, son of Shri Ram Prakash
Pandey, R/o 33/2 Stanley Road,
Allahabad. Applicant.

(By Advocate Sri Vinod Mishra

VERSUS

1. Union of India, through Ministry of Personal Affairs and Pension Department.
2. U.P.S.C. through its Secretary, Shahjahanroad, Dholpur Home, New Delhi. ... Respondents.

(Advocate Sri Satish Chaturvedi)

O R D E R

(By Hon. Mr. S. Das Gupta, Member (A))

The applicant appeared in the Civil Services (Preliminary) Examination of 1992 conducted by the Union Public Service Commission (U.P.S.C. for short). On being declared successful in the same, he was admitted to the Main Examination of that year and qualified for the Viva-voce/ personality test. On the basis of the written examination and personality test, he secured 1028 marks in the aggregate out of 2050 marks. The final result of the Civil Services Examination, 1992 was declared by U.P.S.C.

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on 2.6.1993. The applicant did not find a place in the list of successful candidates. The applicant has claimed that the last successful candidate in the general category secured 1035 marks and that a number of successful candidates not having joined various services in Group-A and Group-B he would have found a place in supplementary list had such a list been sent by U.P.S.C. to the Union of India. He has further averred that the Government of India did call for such a supplementary list but the U.P.S.C. refused to send the same, this depriving the applicant of appointment to Group-A/Group-B post. He submitted a representation to the Secretary, U.P.S.C. and the Secretary for the department of Personnel Affairs but neither of the addressees responded to his representation. This has led the applicant to file this O.A. under Sec. 19 of the Administrative Tribunals Act, 1985 seeking a direction to U.P.S.C., the respondent no. 2 in this case to recommend the name of the applicant for appointment to Group-A or Group-B services through a supplementary list and to the Union of India, the respondent no. 1 in this case to appoint him in such service.

2. The applicant's prayer is based on the ground that there has been a prevalent practice for several years in the past of filling unfilled posts by candidates in supplementary list on the basis of the examination of the same year to which the posts which have fallen vacant on account of successful candidates in the original list not having joined for whatever reasons pertaining. He has specifically

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averred that on the basis of the 1992 Civil Services Examination, a total number of 763 candidates were recommended by the UPSC for allotment to various services but out of them, 81 candidates were not allotted any service due to various reasons. He has alleged that although, U.P.S.C. was asked to forward a supplementary list from among the candidates who had appeared in the 1992 Civil Services Examination, the U.P.S.C. did not forward such a list with malafide intention and to deprive the applicant and others similarly placed of employment. An Additional plea taken by the applicant is that the department of Personnel Affairs; Public Grievances and Pension had submitted before the Parliament through its annual report of 1993-94 that the vacancies which arose~~seeded~~ pertaining to the Civil Services Examination, 1992 ~~and~~ would be filled up by the supplementary list of candidates prepared by the U.P.S.C. A photo copy of the annual report ~~of~~ for the year 1993-94 has been placed at Annexure- A 6.

3. Separate counter affidavits have been filed on behalf of the respondent no. 1 and 2. In the counter affidavit filed by the respondent no. 2, it has been admitted that the applicant appeared in the 1992 Civil Services Examination and secured 1028 marks out of a total of 2050 marks. They have also admitted that about 80 vacancies could not be filled up on the basis of Civil Services Examination, 1992 and that the first respondent had sent a request on 8.6.1994 for release of a

supplementary list of candidates for filling these 80 vacancies on the basis of Civil Services Examination, 1992. It has been averred that this demand for the supplementary list was received by the U.P.S.C. shortly before the declaration of the final results of the subsequent Civil Services Main Examination, 1993 which was actually announced on 21.6.1994 and that even the preliminary examination of the 1994 Civil Services Examination, was scheduled to be held very shortly on 26.6.1994. It has been submitted that it was not possible for the U.P.S.C. to process and release the supplementary list on the basis of the Civil Services Examination, 1992 before the declaration of the final results of the Civil Services Examination, 1993 and, therefore, the U.P.S.C. decided not to release the supplementary list as requested by the respondent no.1. They have made a reference to O.M. No. F. 23/11/67-Estt(B) dated 14.7.1967 issued by the Ministry of Home Affairs, according to which, once the results are published persons should not normally be taken till the next examination. It is stated that the said O.M. also lays down that the commission may, however, be approached within a reasonable time with the request for release of a supplementary list if some of the candidates recommended/allotted for appointment against the specified number of vacancies reported in respect of the particular examination, did not become available for one reason or the other. As the results of the Civil Services Examination, 1992 were released on 2.6.1993, whereas, the demand for supplementary list was received by the U.P.S.C. shortly before the declaration of the final results of the Civil Services Main Examination, 1993 and, therefore, the U.P.S.C. decided not to release the supplementary list as requested by the respondent no.1.

try list was made only on 8.6.1994, it was only 18 days before the preliminary examination, 1994 was scheduled to be held and shortly before the declaration of the results of the Civil Services Main Examination, 1993, the commission did not consider the request for supplementary list as having been made within a reasonable time. As regards the applicant's claim that he would have been included in the supplementary list, being only 5 marks short of ~~and~~ the marks obtained by the last selected candidate in the general category, it has been averred by the second respondent that the applicant's claim is purely imaginary and there is nothing to substantiate such claim.

4. In the counter affidavit filed on behalf of the respondent no.1 a preliminary objection has been taken to the maintainability of this application on the ground that there is no order by the respondents by which the applicant is aggrieved and since under Sec. 19 of the Administrative Tribunals Act 1985, only a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal may file an application, this application is not maintainable under Sec. 19 of the Administrative Tribunals Act. Referring to the averments made by the applicant regarding the annual report, in the year 1993-94, it has been averred that it was not stated in such annual report that the vacancies pertaining to the Civil Services Examination, 1992 would be filled by supplementary list. In para 2.3

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of the annual report, number of candidates allotted to various services on the basis of the Civil Services Examination, 1992 has been given in a tabular form and below the table, it has been mentioned that "63 General, 11SC and 7 ST candidates more are required for allotment to Group-A and Group-B services. They will be allotted after receipt of Supplementary list from the U.P.S.C." In ~~no~~ support of this contention, a copy of the relevant portion of the ~~annual~~ report has been placed as Annexure- R-II. The respondents claims that it was never stated that a supplementary list will be obtained to fill up the vacancies. The respondents requested the U.P.S.C. to send a supplementary list of 80 candidates but the latter vide their letter dated 1.7.1994 intimated that the results of the Civil Services Examination, 1993 having already been announced on 21.6.1994, it would not be possible to provide a supplementary list in respect of the Civil Services Examination, 1992 at such a belated stage. A copy of the letter dated 1.6.1994 requesting the UPSC to sent a supplementary list and a copy of the reply dated 1.7.1994 from U.P.S.C. are placed at Annexure- R-III and R-IV respectively. It has been further averred that the applicant did not qualify in the Civil Services Examination, 1992. He has no legal right to appointment and that there is no well settled law which says that the vacancies must be filled by a supplementary list. The respondents have also made a reference to the decision of the Hon'ble Supreme

Court in the case of Shankarsan Dash Vs. Union of India 1991SCC (L&S) 800, to contend that even a successful candidate does not acquire an indefeasible right to be appointed and, therefore, the applicant in the present case not having ~~been~~ qualified, has no right whatever to demand appointment by forcing these respondents to obtain supplementary list.

5. The applicant has filed a rejoinder affidavit in which he has sought to explain in detail the various stages of a Civil Services Examination ~~to~~ the manner in which the candidates are selected and allotted to different services on the basis of a 'main list'. He has also claimed that another list called supplementary list is also prepared. The merit of the candidate at the top of supplementary list is immediately below the last candidate in the main list of merit. The applicant has thus sought to convey an impression that the UPSC prepares both a main list and a supplementary list even without being asked to prepare a supplementary list. He has sought to rebut the contention of the first respondent that he did not qualify in the Civil Services Examination and has claimed that he was placed in the supplementary list. He has further contended that the power to make appointment vests in the Union of India and, therefore, when the Union of India decided to fill up vacancies from the supplementary list and gave effect to this decision by sending a letter dated 1.6.1994 to the U.P.S.C., it was not ~~open~~ open to the

latter to sit over the said requisition or to refuse to send the said list. According to the applicant the mere fact that the result of the Civil Services Main Examination, 1993 was announced on 21.6.1994 was not a good enough ground to refuse to send the supplementary list.

6. The plea of the respondents that this application is not maintainable under Sec. 19 of the Administrative Tribunals Act, 1985 since no order has been challenged, does not appear to be tenable. The applicant's grievance has arisen out of specific communication issued by the respondent no.2 declining the request of the respondent no. 1 to forward a supplementary list of candidates.

7. We have heard the learned counsel for both the parties and have perused the pleadings carefully.

8. The factual averments made by the applicant are not in dispute except to the extant the applicant @ claimed that the last candidate in the select list obtained 1033 marks and he having obtained 1028 marks would have been included in the supplementary list for 80 vacancies. The only controversy which we are called upon to adjudicate in this case is whether any legal right had accrued to the applicant by virtue of his being successful in the Civil Services Main Examination and having obtained certain percentage of marks in the aggregate, which has been violated by the respondents

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by not filling the vacancies arising @@@ due to
of service to some
non-allotment of the successful candidates of that
year, through a supplementary list.

9. In the case of Shankarsan Dash (Supra), the appellant was selected in the Civil Services Examination, 1977 and his name was included in the combined merit list for the I.P.S. and the Group-B police services. The merit position of the applicant was not high enough for inclusion in the I.P.S. and he was offered appointment to Group-B police service, which he accepted. Later, several candidates not having joined the services allotted the position of the applicant improved in the merit list. In June, 1979, 14 vacancies arose in I.P.S. due to selected candidates not joining the service. Three of these vacancies were in the reserved category and three were filled up by the candidates who had earlier been appointed to Group-B police services but no appointments were made to the remaining 11 vacancies in the general category. The appellant represented that these vacancies be filled up and this request having been turned down, the applicant/appellant moved the Delhi High Court by Writ Petition which was dismissed in limine. Dismissing the appeal from the decision of the High Court, the Hon. Supreme Court inter alia held;

"It is not correct to say that if a number of vacancies are notified for appointment and

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adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the 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. Unless the relevant recruitment rules so indicate the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates as selected, at the recruitment test, and no discrimination can be permitted." (emphasis supplied)

10. While the appellant in Shankersan Dash case was actually selected and placed in the select list, though, lower down in merit position, ~~one~~ in the case before us, the applicant admittedly was not included in the select list. If the appellant ~~one~~ Shankersan Dash had acquired no indefeasible right to be appointed, the question of the present applicant who was not even selected acquiring any right to be appointed does not arise.

11. The applicant sought reliance/decision of the Hon'ble Supreme Court in the case of Miss Neelima Shangla Vs. State of Haryana and others, AIR 1987 SC 169. We have noted that Neelima Shangla was noticed by their Lordships in the Supreme Court while deciding the appeal of Shankersan Dash and has

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observed that the claim of the petitioner in Neelima Shangla was allowed by the Supreme Court ~~not~~ on the ground that she had acquired any right by her selection and existence of vacancies. The fact in that case was that the Public Service Commission sent to the Government only the names of 17 candidates belonging to the general category on the assumption that only 17 posts were to be filled up. The Government accordingly made only 17 appointments and stated before the court that they were unable to ~~Select~~ and appoint more candidates as the commission has not recommended any other candidate. It was in this background that the court observed that while it was open to the Government ~~not~~ to fill up of the vacancy for a valid reason, the selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancy and the availability of qualified candidates. It would appear from the facts in Neelima Shangla that the petitioner was ranked number 24 among the candidates who appeared in the examination for appointment to Haryana Civil Services (Judicial). Admittedly, in the case before us, the applicant was not given any rank since his name was not even included in the select list. The ratio in Neelima Shangla cannot, therefore, be made applicable to the present case.

12. The learned counsel for the applicant sought reliance also on the decision of the Hon.

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Supreme Court in the case of Gujrat Dy. Executive Engineers Association Vs. State of Gujrat and others, (1994) 28 ATC 78. The specific observation of the Hon. Supreme Court which has been relied upon by the learned counsel is para-9 of the judgment which is being quoted below;

"A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetuate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service."

13. The above observation of the apex court would support a view that incase a waiting list has been prepared by the commission and some of the selected candidates do not join, persons from the waiting list may be pushed up and appointed on the vacancy so caused. Even this does not make it mandatory for the appointing authority to appoint the persons in the waiting list, even if some of the selected candidates do not join. Thus, there is no contradiction between this observation and the law laid down in Shankarsan Dash that even selected candidates have no indefeasable rights to be appointed. In the case before us, there was no waiting list prepared by the U.P.S.C., therefore, the decision in the case of Gujrat Dy. Executive Engineer ~~can~~ not, in any case, ^{be} made applicable to the applicant's case.

14. The applicant has contended in his rejoinder affidavit that he had qualified in the examination and a supplementary list was prepared. There is no supporting evidence for such a contention. The Civil Services Examination is a competitive examination and not a qualifying one. Therefore, the question of the applicant qualifying in the said examination would not arise. Admittedly, he could not successfully compete so as to be included in the select list which was prepared on the basis of the number of vacancies declared. Whether or not he would have been in the supplementary list had such a list been prepared is in the realm of conjecture. It is a well known that in such examinations

where the competition is extraneously stillf, thousands aspiring for a handful of positions, there is considerable bunching at ever mark, particularly among those who are lower down in the list. Therefore, even assuming that the candidate who was last in the select list secured 1033 marks and the applicant received only 5 marks less, it cannot be asserted with any amount of certitude that the applicant would have found a place in the supplementary list had such a list been prepared for the 80 vacancies.

15. The applicant has failed to establish that there was a bounden duty on the respondents to fill vacancies caused due to some of the selected candidates not joining the services allotted, by the candidates from a supplementary list. The only point he has argued in this regard is that there has been a long established practice of filling of vacancies for the same year by candidates from a supplementary list. Infact, Jabalpur Bench of this Tribunal while deciding the case of Animesh Shukla Vs. Union of India, (1994) 27 ATC 222, which was cited before us by the learned counsel for the respondents, went to the extent of observing that it is not proper to pick up candidates beyond the declared list. We quote the relevant portion;

"Process of recruitment is over as soon as list of qualified candidates is published to Government of India. The process of recruitment is repeated annually on the basis of vacancies notified by Government of India

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for appointment to a service. There is no statutory rule which permits calling for supplementary lists. This practice cannot be approved for the reason that UPSC undertakes entire process of selection with a view to make recruitment to specified number of vacancies. Keeping this number, the commission determines the minimum written marks for calling candidates for interview and list of successful candidates is also prepared accordingly, if number of vacancies is increased, there would be corresponding increase in number of candidates to be called for interview. The scheme of competitive examination is vitiated if names of successful candidates are varied after declaration of results of the examination as it alters ration for deciding number of candidates to be called for interview, thereby distorting the selection process. It is, therefore, not proper to pick up candidates beyond declared list. The sanctity of declared list must be preserved." (emphasis supplied)

of filling vacancies from a supplementary list Such practice cannot confer any statutory rights on the persons, who are not in the original select list, to insist that the appointing authority must have a supplementary list to fill up the vacancies caused by selected persons not joining.

16. Thus, the principles laid down in the various following cases cited above inexorably lead us to the conclusions

- (i) Even the selected candidates have no indefeasable right to be appointed even if, there are vacancies and, therefore, those who are not selected can have no such right whatever.
- (ii) The candidates who are not in the select list have no right to insist that the appointing

authority must fill up the vacancies caused on account of selected candidates not joining on being offered appointment.

The applicant in this case, therefore, cannot claim as a matter of right that the respondents should have issued a supplementary list for filling of 80 vacancies stated to have been caused on account of the selected candidates not joining for various reasons.

17. The only point which remains to be considered is whether the U.P.S.C. acted arbitrarily in declining to send a supplementary list when requested to do so by the answering respondent no. 1. We have given our anxious considerations to this question in the light of the reasons which the respondent no. 2 indicated for declining to send such a list. We are satisfied that the reasons indicated would adequately justify the action of UPSC in refusing to send a supplementary list, taking into account the totality of the circumstances which compelled the UPSC to decline the request of the respondent no. 1, the action of the UPSC cannot be held as arbitrary or malafide.

18. No other point has been urged. We find no merit in this application and the same deserves

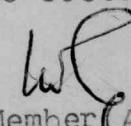
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to be dismissed. We, accordingly, dismiss the application. There will be no order as to costs.


Member (J)

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Member (A)