

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 60/2009

Dated this 24th day of October, 2009.

C O R A M

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

A. Somasundaram S/o Sri P. Ayyaru
working as Surveyor, Faculty of Geodesy
Survey Training Institute
Survey of India, Uppal,
Hyderabad-500 039

Applicant

By Advocate Mr.TCG Swamy

Vs.

1 Union of India rep. by its Secretary
Department of Science & Technology
New Delhi.

2 The Surveyor General of India
Survey of India, Dehra Dun-248 001
Uttaranjal.

3 The Director
Survey Training Institute
Survey of India, Uppal
Hyderabad-500 039

Respondents

By Mr. M.M. Saidu Muhammed, ACGSC

The Application having been heard on 9.10.2009 this Tribunal delivered the following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is challenging the selections made for the post of
Officer Surveyor under the 25% promotion quota through limited

ty

departmental competitive examination for the years 2001, 2002, 2004 and 2005, the illegal interpretation of the Recruitment Rules by respondents and promotion of juniors.

2 The applicant has filed O.A. 843/2005 before the Hyderabad Bench of the Tribunal which was withdrawn with leave of the Tribunal. The Tribunal by its order dated 7.6.2006 granted leave to file fresh O.A. within the time limit. Accordingly, O.A.395/2006 was presented before the Hyderabad Bench of the Tribunal on 10.7.2006 which was transferred to this Bench under Section 25 of the Administrative Tribunals' Act, 1985.

3 The applicant belonging to SC community entered service as Plane Tabler Trainee (TTT-B) in the Survey of India on 28.8.1989, promoted to Plane Tabler Grade-IV w.e.f. 1.10.1991 and Surveyor Trainee (TTA-A) on 24.9.93. The next promotion post is Officer Surveyors Grade. As per the Recruitment Rules in force, 25% of the posts would be filled by Limited Departmental Competitive Examination (LDCE for short) from Surveyors, Survey Assistants, Scientific Assistant and Geodetic Computers who possess Degree and have rendered 5 years regular service in the respective Grade. The LDCE examination was notified separately for the years 1997 to 2001 by notification dated 31.10.2001, the examination was conducted only in 2001, vacancies for 1997 was amended as 24 instead of 30. Though LDCE was scheduled for the years 1998, 1999, 2000 and 2001 no examination was conducted. The special drive for filling up of the vacancies of reserved community candidates for the post of Officers Surveyor grade was notified by notification dated 5.11.2002. The applicant was not called for. It is submitted that in the selection for the year 1997 and 2003, various officials have been promoted. For the vacancies of 2004, a notification was issued on 6.9.2005 in which it was stipulated that 5 years service is to be fulfilled as on 1.1.2005. The applicant submitted a number of representations but no reply is received so far. Aggrieved, he filed this application on the grounds



that (i) the selection held for the vacancies of 1997 by notification dated 31.10.2001 and other examinations as a special drive for reserved community candidates the Recruitment Rule is not followed, (ii) in the examination held for the vacancies of 2003 the date of eligibility condition as on 1.1.2003 and empanelment of 33 against the notified vacancies of 15, (iii) eligibility condition fixed as on 1.1.2005 for the vacancies of 2004 against the Recruitment Rules is erroneous, (iv) the representations submitted by the applicant has not been responded (v) reservation to Scheduled Castes has not been properly implemented (vi) the applicant has not been called for the selection for the vacancies of the year 1997. Hence, he filed this Application mainly to set aside the illegal selections held to the post of Officer Surveyor Grade for the years 1997 to 2004, against modification of the eligibility conditions and against wrong interpretation of recruitment rules.

4 The respondents in the reply statement submitted that the applicant was classified in the grade of Surveyor only on 1.10.1995 after completion of training for two years since his induction as Surveyor Trainee through direct recruitment on 24.9.1993. Therefore, he completed 5 years service on 1.10.2000. Hence, he was eligible to be permitted to appear for the LDCE for promotion from 1.1.2001 onwards only. Therefore, he was not considered for the vacancies for the year 1997 and the backlog vacancies of 1997 for which a special drive was conducted in 2003. As regards vacancies to be filled up against the year 2003, out of 31 candidates shortlisted, promotion order was issued for 13 candidates. Eighteen additional vacancies occurred due to promotion of 18 Officer Surveyor to Superintending Surveyor. Hence, 18 more candidates were promoted from the same select list as the panel of selected candidates is valid for one year as per the Recruitment Rules. 102 candidates qualified for interview. The applicant did not qualify in the test. A special drive for ST backlog vacancy of 2003 was conducted in December, 2004 But the applicant being a SC candidate was not eligible. Again in November, 2005 the examination for

[Handwritten signature]

promotion was held for vacancies of 2005. Out of 73 eligible candidates, 32 were promoted. The applicant did not qualify. In August 2006 the examination was held for 3 vacancies of 2006 but none qualified. The applicant did not appear for the examination.

5 The applicant filed rejoinder stating that as per the Recruitment Rules 1991 for Officer Surveyor, the eligibility condition for the 25% promotion quota does not indicate the date from which 5 years of service is to be counted. The respondents say that in 2001 the cut off date is 1st of January of the year in which the vacancies are to be filled. He also challenged the application of circular dated 17.9.98 years after the notification of the Recruitment Rules in 1991. Further the circular dated 17.9.98 does not indicate whether it relates to 75% quota of promotion or to 25% promotion through LDCE. He also stated that the candidates at Sl. No. 4 & 6 of Annexure-III have not completed 5 years of regular service at the time of appearance in the LDCE. As regards increasing the vacancies from 18 to 31 in 2003, the applicant submitted that there is no rule to do so.

6 The respondents filed additional reply statement stating that the crucial cut off date as 1st January of the year for eligibility was introduced much later after receipt of DOPT's OM dated 17.9.1998.

7 The applicant filed additional rejoinder reiterating the averments in the O.A. and the rejoinder.

8 The respondents were directed to produce Vacancy Based Roster/Post Based Roster till 1997, the year-wise total vacancies arising from 1998-2002 with reservation points, the records to prove that 18 extra vacancies were filled from the examination conducted in 2004 for the vacancies of 2003. The respondents have produced the records as directed.

ty

We have heard the learned counsel for the parties and perused the records produced before us.

9 The learned counsel of the applicant submitted that the applicant is aggrieved by the selection conducted for the vacancies of 1997 onwards by notification dated 31.10.2001, the examination conducted as a special drive for the reserved community candidates is against the Recruitment Rules and the expansion of the select list to 31 against the advertised vacancies of 16 is without any rule. He has relied on the following case laws in support of the applicant's case:

- (i) Sanjay Bhattacharjee V. Union of India & Ors(1997 SCC L&S 1069)
- (ii) Karna Pvt. Ltd.Vs. The Collector of Customs Mumbai (1992(5)JT
- (iii)P.Mahendran & Ors. V. State of Karnataka & Ors(1990 1 SLR SC3 07)
- (iv) Naziruddin V. Seetharam Agarwal (2003(2)SCC 577)
- (v) balaram Gumawater Vs. UOI (1992 SSCC (L&S)455)
- (vi) State of Bihar and Another V. Madan Mohen Singh and Ors (1994 (1) SLJ 153)
- (vii) Rohtah Singh Vs. UOI (1991(16)ATC 389)

10 The learned counsel for the respondents on the other hand argued that under the scheme of the Limited Departmental Competitive Examination 1991 (Selection to Officer Surveyors Grade) in Survey of India, 25% of the promotion quota will be filled up by LDCE from Surveyors, etc. who possess Bachelor's degree and have rendered five years regular service. The applicant has completed the requisite five years of service only on 1.10.2000 therefore he was eligible to appear in the LDCE only from the year 2001 onwards. AS regards filling up of 18 additional posts, the counsel submitted that in the LDCE held in 2004, even though 31 candidates qualified only 13 were initially appointed. The panel was valid for one year, therefore 18 more vacancies were filled up with the qualified hands from the select panel of 2004. The cut off date of 1st January for calculating the period of regular service was done in accordance with the DOPT OM dated 17.9.1998.



11 The first ground raised by the applicant is regarding the conduct of LDCE and the special drive held for the reserved community candidates is void as Recruitment Rule is not followed. The examination were conducted by notification dated 18.10.2001. The special drive selection was conducted as per notification dated 5.11.2002.

12 The perusal of the records produced shows that 136 posts were created in 1997 as a result of cadre review based on the recommendation of the Central Pay Commission. When a notification was issued in 1997 to fill up 75% quota by promotion through a qualifying list and 25% through LDCE, Shri O.K. Padhi moved O.A. 388/98 before the Cuttack Bench of the Tribunal to stay the LDCE examination. In the Interim Order dated 4.8.1997 in O.A. No. 388/97 the Tribunal passed the following orders:

".....In consideration of this, while the prayer for staying the LDCE on 6th and 7th August, 1997 is rejected, it is ordered that the respondents shall not make any appointment to the post of Officer Surveyor through the above LDCE till 21.8.1997. Let the matter be listed on 21.8.1997 for consideration of the prayer for interim relief by which time the learned Sr. Standing counsel will obtain instructions regarding the prayer for interim relief."

The final order in the O.A. was pronounced only on 23.3.2001 with the following observation/direction:

"....In view of this, the respondents are directed to complete the necessary amendment to the Recruitment Rules for Officer Surveyor and Chief Draftsman within a period of 90 (ninety) days from the date of receipt of copy of this order and thereafter take up the question of filling up these posts, strictly on the basis of the Recruitment Rules following the quota for DPC candidates and LDCE candidates and the recruitment roster as laid down in the departmental instructions and the scheme within another ninety days thereof.

Hence, the respondents prepared the ground for amending the Recruitment Rules for Office Surveyor and Chief Draftsman and got it



ready by the later half of 2001 and conducted the examination in December, 2001. Therefore, no examination could be held from 1997 to 2000. Since all the 136 vacancies were filled up in 2002, there was no superannuation or promotion vacancy in the years 1998, 1999, 2000 and 2002. Regular examinations were conducted in 2003, 2004, 2005 and 2006.

From the above it is clear that the LDCE from the year 1997 onwards could not be held till the disposal of the OA on 23.3.2001 because of the interim order passed by the Tribunal on 4.8.199. Therefore, the respondents had no other option but to conduct a common LDCE for filling up the posts of all those years. We do not find any infirmity with the action of the respondents.

13 The second ground raised by the applicant is against the fixing of eligibility as 1.1.2003 for counting qualifying service as void. From the perusal of the records produced before us we find that the respondents have acted in accordance with the DOP&T instructions on the subject. The relevant extracts from DOP&T OM No. 22011/3/98-Estt(D) dated 17.9.1998 is extracted below:

"The undersigned is directed to say that where the Recruitment/Service Rules lay down promotion as one of the methods of recruitment, some period of service in the feeder grade is generally prescribed as one of the conditions of eligibility for the purpose of promotions. Vide the Department of Personnel and Training Office Memorandum No. 22011/7/86-Estt.(D) dated the July 19, 1989, the crucial date for determining the eligibility of officers for promotion has been prescribed as under:-

(i) 1st July of the year in cases where ACRs are written calendar year-wise

(ii) 1st October of the year where ACRs are written financial year wise.

74

2 The matter has been reconsidered by the Government and in supersession of the existing instructions it has now been decided that the crucial date of determining eligibility of officers for promotion in case of financial year based vacancy year would fall on January 1 immediately preceding such vacancy year and in the case of calendar year based vacancy year, the first day of the vacancy year i.e. January 1 itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise. For the sake of illustration, for the panel year 200-2001 (financial year) which covers the period from April 1 2000, to March 31, 2001 and the panel year 2000 (calendar year) which covers the period from January 1, 2000 to December 31, 2000 the crucial date for the purpose of eligibility of the officer would be January 1, 2000 irrespective of whether ACRs are written financial yearwise or calendar yearwise.

3 The crucial date indicated above is in keeping with Para 9 of the Department of Personnel and Training Office Memorandum No. 22011/9/98-Estt.(D) dated September 8, 1998 which prescribes a Model Calendar for DPCs. In accordance with Paragraphs 10 and 11 of the said Office Memorandum, these instructions will come in to force in respect of vacancy years commencing from January, 1/April 1, 1999 and will, accordingly be applicable to all such subsequent vacancy years.

4 These instructions shall be applicable to all service/posts. The Recruitment/Service Rules may, therefore, be amended accordingly. All Ministries/departments are requested to bring these instructions to the notice of"

It is thus clear that the cut off date has been modified by the DOP&T and the action of the respondents were in line with the modified direction of the DOPT. Therefore, the allegation of the applicant that the notification suffers from violating the Recruitment Rules and for departing from the precedence is not correct.

14 As regards expansion of the empanelled list to 31 vacancies against the advertised vacancies of 16, it is noted that the selection panel is valid for one year as per the Recruitment Rules. It should cease to be in force on the expiry of a period of one year and six months or when a fresh panel is prepared whichever is earlier. There were more qualified hands available for promotion. Therefore, there is nothing wrong in filling of available

ty

vacancies by the qualified hands from the same select panel. It is no doubt, well settled law that candidates included in the select list have no legal right to claim appointment. But, according to the respondents in the examination 31 candidates qualified in the written examination and that 18 more vacancies of Officer Surveyor occurred due to promotion of Officer Surveyor to Superintending Surveyor and as the panel of successful candidates is valid for one year, the additional posts were filled up by the qualified hands. In any case, these posts would have been filled up from the panel of successful candidates within the validity of the select panel.

15 We have gone through the following judgments relied on by the applicant:

- (i) Karna Pvt. Ltd. Vs. The Collector of Customs Mumbai
(1992 (5)JT 281)

The Apex Court held that recruitment under advertisement is to be governed by Recruitment Rules in force on the date of advertisement unless the Recruitment Rules were changed with retrospective effect.

- (ii) P. Mahendran and Ors. Vs. State of Karnataka & Ors
(1990 (1) SLR (SC3)07)

This is a case in which application for selection and appointment of Motor Vehicle Inspectors in response to an advertisement by PSC in accordance with the existing rules. Process of selection could not be completed on account of interim orders of High Court. Applicant fulfilled the requisite qualifications. Subsequently rules were amended making the rules retrospective in nature. The applicant became ineligible. The Apex Court held that if a candidate applies for a post in response to an advertisement he acquires a right to be considered for selection in accordance with the then existing rules unless the amending Rule is specifically retrospective in nature.

- (iii) Naziruddin and Others Vs. Sitha Ram Agarwal (2003(2)
SCC 577)

The Apex Court held that in case where statutory provisions is plain and unambiguous the Court shall not interpret the same in a manner only because of harsh consequences



- (iv) Balaram Gulmawater Vs. UOI (1002 SCC (L&S) 455)

The purpose of law as it seeks to achieve should be the object of interpretation and the offender should not be allowed to sneak out of the meshes of law.

- (v) State of Bihar and Another Vs. Madan Mohan Singh and Ors (1994(1)SLJ 153)

Posts of District & Sessions Judges advertised. 129 persons for 32 posts called for as 1:4 ratio- High Court prepared merit list of 129 and recommended 32 persons who were appointed.- Others claim appointment on further vacancies- The Apex Court held that when advertisement and further selection was for 32 only further vacancies cannot be filled from this panel.

- (vi) Sanjoy Bhattacharjee Vs. UOI & Ors (1997 (SCC) L&S 1069)

This is regarding inclusion of candidates in merit list in excess of notified vacancies - The Supreme Court held that "merely because the petitioner has been put in the waiting list, he does not get any vested right to an appointment.

- (vii) Rohtah Singh Vs. Union of India (1991(16) ATC 389)

Applicant's appointment as Driver terminated during probation and reverted as Peon. The Apex Court held termination valid. However, held that the termination of service as Driver and reappointment as Peon to be condoned for the purpose of continuity in service.

- (viii) O.A. 6/2004 of Ernakulam Bench

In this case the applicants approached the Tribunal were aggrieved by the order of the Govt. directing amendment of Recruitment Rules so as to enable determination of different quota for recruitment by applying the method of recruitment by post based roster instead of vacancy based roster which was allowed by the Tribunal.

- (ix) O.A. 497/2005 of Principal Bench, New Delhi

The applicant has assailed the orders where the respondents had allotted 90 posts of AE(civil) to the seniority quota to be filled by way of promotion and bifurcation of



vacancies for the year 2004-05 between seniority and LDCE quota on the basis of shortfall/excess of posts in a particular category which was allowed by the Tribunal setting aside the impugned orders to the extent directing the respondents to reconsider the promotion for the vacancies of the year 2004-05 in accordance with the rules

In the facts and circumstances of the case of the applicant, the above judgments are not helpful to him.

16 From the above discussion, it is abundantly clear that the applicant has completed five years of regular service only on 1.10.2000, therefore he was eligible to appear only in the LDCE conducted thereafter and that nothing has prevented him from appearing in the later LDCE. Unless he qualifies in the LDCE, he cannot be considered for promotion under the 25% Examination quota. We do not find any illegality in the selections held to the post of Officer Surveyor Grade for the years 1997 to 2004, or in the modification of the eligibility conditions or anything wrong in the interpretation of recruitment rules.

17 In this view of the matter, we do not find any merit in the O.A. It is accordingly dismissed. No costs.

Dated 29th October, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER


K.B.S. RAJAN
JUDICIAL MEMBER

kmn