

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH

LUCKNOW.

Date of order 3-6-94

O.A. No.601/92

R.B.L. Sharma & others :::::: Applicants

Shri T.N. Gupta, Counsel for the
Applicants

Vs.

Union of India & Others :::::: Respondents

Shri R. Srivastava, Counsel
for the respondents.

Hon'ble Mr. Justice B.C. Saksena, Vice-Chairman.

Hon'ble Mr. V.K. Seth, Administrative Member.

JUDGMENT.

(By Hon. Mr. Justice B.C. Saksena, Vice-Chairman)

By means of this O.A. the applicants are challenging the staff notices dated 28-2-1992 and 5-6-1992 by which the respondents No.4 to 7 ^{were} ~~and~~ permitted to appear in the departmental selection against 75% quota for Group 'B' Class-II, technical posts in the S & T Engineering department of Research Design & Standards Organisation (RDSO). They have also challenged the staff notice dated 21-10-1992 by which respondents No.4 to 7 were declared successful at the said selection and had been empanelled.

2. The brief facts giving rise to the O.A. are that the applicants are confirmed Chief Research Assistant Instrumentation, Chief Design Assistants Telecom, and Chief Technical Assistant, in the pay scale of

Recd p.t.o.

Rs.2000-3200 in R.D.S.O., Lucknow.

3. A staff notice dated 28-2-1992 was issued indicating that a departmental selection for 7 vacancies against 75% departmental selection quota for Group 'B' Class-II Technical Posts in the S & T Engineering department of R.D.S.O. will be held. It was also indicated in the said notice that out of the 7 vacancies 5 were general and one each was reserved for S.C. & S.T. A list of 21 eligible candidates in the ratio of 1 X 3 was also circulated along with the said staff notice. The applicants along with other eligible candidates appeared at the written departmental test on 21-6-1992. It is alleged that 5 candidates walked out from the examination on the protest that the IIIrd question paper was not a balanced paper. On their representation, the examination of the IIIrd paper was again held on 30-7-1992. The applicants failed to qualify in the written test. Four candidates were declared successful at the written test. The same are opposite parties No.4 to 7.

4. The applicants alleged that 7 vacancies were for notified, but the selection has been made only/4 posts which proves that the number of vacancies were deliberately increased to bring a very junior i.e. respondent No.7 within the zone of consideration. The other allegation is that the anticipated posts have been highly inflated so that the respondents No.6 & 7 may appear at this selection.

5. The petition has been resisted by the respondents who have filed a detailed counter affidavit. They have

also filed supplementary counter affidavit. The applicants have filed supplementary rejoinder affidavit.

6. We have heard the learned counsel for the parties.

7. In the counter affidavit the respondents have indicated the facts to show that the allegation that the vacancies including the anticipated vacancies were inflated is ⁱⁿcorrect. It has also been indicated that the applicants had appeared in the written test and they have failed to qualify in the written test. The private respondents have qualified at the written test. They have also qualified in the viva-voce test and have been selected and have been empanelled. A further plea has been taken in the counter affidavit that the applicants having failed in the written examination should not be permitted to question the selection. The learned counsel for the respondents, in support of this last plea, has referred to the following decisions :-

- (1) (1976) 3 S.C.C. page 585
Dr. G. Sarana Vs. University of Lucknow.
- (2) 1986 Suppl. S.C.C. page 285
Omprakesh Shukla Vs. Akhilesh Kumar Shukla.
- (3) 1989 (Suppl.) 2 S.C.C. page 268
State of Rajasthan Vs. R.K. Rawat
- (4) (1991) 4 S.C.C. page 555
Sardara Singh Vs. State of Punjab & Others.

and
We have carefully gone through these decisions/in our opinion they clearly support the submissions made by the learned counsel for the respondents. In the said

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decisions the apex Court was pleased to lay down that a candidate who voluntarily appears at the selection and takes a chance ~~but~~ ^{and on an} unfavourable recommendation cannot be permitted to turn round and question the process of selection. In the instant case, before the selection, the vacancies and anticipated vacancies have already been notified by staff notice dated 28-2-1992. The list of the eligible candidates was also indicated. The names of the applicants as also the private respondents were shown in the list of eligible candidates. The applicants without demur participated in the written test. After having failed to qualify at the written test, in view of the settled position of law laid down in the various decisions referred ^{to} here-in-above, the applicants cannot be permitted to question the process of selection on the grounds raised by them. The controversy raised by them about the number of vacancies and anticipated vacancies having been inflated need not be gone into since the alleged infirmities in the selection process would be ^{wholly} ~~only~~ ^{but} irrelevant and would not improve the applicants' case in any manner. The applicants, who were eligible, have been called to appear and they admittedly had failed to qualify in the written test. The applicants did not dispute the essential facts.

8. On a conspectus to the discussion here-in-above, the O.A. lacks merits and is accordingly dismissed.

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9. In the circumstances, however, there will be no order as to costs.

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ADMINISTRATIVE MEMBER.

Roshaksew
VICE-CHAIRMAN.

Dated: 3/8/94, Lucknow.

(tgk)