

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

OA No.4132/2014

Reserved on: 24.11.2015
Pronounced on:25.07.2016

Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)

Rajeev Ranjan S/o Sh. Lal Babu Singh
R/o Shakti Nagar, Chhapra,
Post Tantri, Saran, Bihar-841301. -Applicant
(By Advocate: Shri Harpreet Singh)

Versus

1. Staff Selection Commission
Through its Chairman
Block No.12, CGO Complex,
Lodhi Road, New Delhi.
2. Secretary, DoP&T,
Ministry of Personnel, Public Grievance &
Pensions, Govt. of India,
Lok Nayak Bhawan, Khan Market,
New Delhi-110003. -Respondents.
(By Advocates: Shri S.M.Arif)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA is before this Tribunal, aggrieved by the Respondent No.1 - Staff Selection Commission (SSC, in short) not having recommended his appointment to the post of Junior Engineer (JE, in short), and because even his representation to them dated 13.06.2014, highlighting his grievances, has failed to elicit any response.

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2. The Respondent No.1 - SSC had conducted the Junior Engineer (Civil, Mechanical, Electrical, Quantity Surveying and Contract) Examination, 2013 on 06.09.2013, on an All India basis. On the basis of performance in Paper-II of the said Examination, a total of 2,822 candidates were called for interviews, and the applicant was also called for interview through letter dated 13.01.2014 (Annexure A/3). Upon declaration of the result of the said examination and the interview, the applicant discovered that he had scored 231.5 marks. However, there was nothing in that result as declared to indicate as to whether a candidate had actually been selected and qualified or not. His grievance is that even though he had obtained 231.5 marks, and the last appointed candidate was having only 199.5 marks, his name was not considered for appointment to the post concerned.

3. It had so happened that the Application Form itself had a column pertaining to preferences. The applicant was required to indicate the posts, for which he would like to be considered for final allocation, and such preference was to be indicated by making the code against the columns from "A" to "K". The applicant had in his Application Form filled his preferences in the following manner:

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Code	Post	Preference by Applicant
A.	JE (Civil), CPWD	Preferred
B.	JE (Electrical), CPWD	
C.	JE (Civil), Department of Posts	Preferred
D.	JE (Electrical), Department of Posts	
E.	JE (Civil), Military Engineering Service	Preferred
F.	JE (Electrical/Mechanical), Military Engineering Service	
G.	JE (QS&C), Military Engineering Service	
H.	JE (Civil), Central Water Commission	Preferred
I.	JE (Mechanical), Central Water Commission	
J.	JE (Civil), Farakka Barrage	Preferred
K.	JE (Mechanical), Farakka Barrage	

4. The applicant has submitted that due to sheer inadvertence, he had failed to mark his preference against Column "G" regarding Military Engineering Service to (MES, in short). The last appointed candidate to the MES was having 199.75 marks, much below the applicant. The applicant has submitted that in the MES there were 160 posts, and only 116 posts were recommended to be filled up, and the other vacancies still exist, and that it would be well within the discretion of the respondents to recommend

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the name of the applicant for appointment to MES, especially since he is having more marks than the last selected candidate for MES. His representation addressed in this regard to the Regional Director, SSC, however failed to elicit any response. Hence this OA.

5. The applicant has taken the ground that the impugned actions on the part of the respondents are arbitrary, violative of Articles 14 & 16 of the Constitution, and it would be in the fitness of things that the name of the applicant also is recommended by the SSC for being appointed as JE in the MES (Preference "G"). He has taken the ground that his not having marked his preference against Column "G" while filling up his Application is by itself is not so grave enough so as to render him as not qualified for appointment against that post. Therefore, while the inadvertence on the part of the applicant was only technical/procedural, but it should not render his candidature as invalid, and no prejudice will be caused to the respondents in case they allow the applicant to add a preference against Column "G" now.

6. He has further taken the ground that in the previous selection process, Respondent No.1-SSC had decided to release a reserve list for the candidates who were not selected because of

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invalid options or incomplete options. He has, therefore, taken the ground that the Respondent No.1-SSC can once again exercise its discretion to allow the applicant to mark his preference now against Column "G" and, thereafter, recommended his name for appointment for the MES. He has sought shelter under the law as laid down by the Hon'ble Supreme Court in **Shankarsan Dash vs. Union of India and Others** – AIR 1991 SC 1612, in which it was held that the State does not have the license for acting in an arbitrary manner, and it is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. In the result, the applicant had prayed for the following reliefs:-

- "i) to call for the records of the case;
- ii) to direct the respondents to consider the applicant for the post of Junior Engineers (Civil), Mechanical, Electrical, Quantity Surveying & Contract) & appoint him as if found fit.
- iii) to award costs in favour of the applicant; and
- iv) to pass such other order or orders as may be deemed fit and proper in the interest of justice."

7. The respondents filed their counter reply on 18.02.2015. They had accepted the preferences, as indicated by the applicant in his Application Form, as reproduced above, and had submitted that he had secured 85.50 marks and 94 marks in Paper-1 and

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Paper-II respectively, and in the interview he secured 52 marks, and hence he secured a total of 231.50 marks, which was less than the last selected candidate in "UR" category for the posts, which had been indicated by him in his preferences. In respect of the five preferences indicated by him, they had pointed out the cut off marks for those preferences as follows:-

Posts opted by Shri Rajeev Ranjan	Marks of last selected UR candidate
A-J.E. (Civil), CPWD	280.75
A-J.E. (Civil), Military Engineering Service	234.50
H-J.E. (Civil), Central Water Commission	245.00
C-J.E. (Civil), Department of Posts	270.50
J-J.E. (Civil), Farakka Barrage	254.00

8. It was submitted that the SSC conducts all examinations strictly within the ambit of its Recruitment Notices, which are considered sacrosanct for the recruitments and the Respondent No.1-SSC as well as the candidates and all concerned become bound by the Provisions of the Notices of the Recruitments. It was further submitted that in Para-14 of the Notice "Important Instructions to Candidates" under the column of preference it was clearly indicated that the candidates may note that their options, once exercised, are final, and no change will be allowed under

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any circumstances. Further, in Column 13 of Annexure-IIA of the Brochure of the Notice under the heading "Instructions for filling up the application to candidates", it was indicated as follows:

"...Column 13: Preference for posts

Your are advised to opt for such posts/Departments (refer para 14A) for which you have the requisite qualification. You are also advised to be careful in exercising your preferences in the event getting selected you will be considered for the post and Department in order of your merit and option for each post...."

9. It was further submitted that at Point No. 14 of Annexure-IIB of the Notice, under the heading "Procedure for online submission of application to candidates", it was indicated as follows:-

"....Request for change/correction in any particular in the Application Form shall not be entertained under any circumstances. The Staff Selection Commission will not be responsible for any consequence of any correction/addition/deletion in any particular filled in application form whatever the reasons may be"

10. Therefore, it was submitted that it was the responsibility of the applicant to go through the Notice of the Examination and Instructions given in the Notice very carefully before filling up online application submission form, and that the applicant cannot be allowed to add one more option as an afterthought, for which his case was not considered, as he had not opted for it, just

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because the last selected "UR" category candidate in that option had secured less marks than the applicant.

11. The same aspect had been repeated and explained in detail in para-wise reply to the OA, and it was submitted that these instructions are applicable in respect of against all the candidates, and no exception can be made in the applicant's case. It was submitted that it is settled law that both the parties must adhere to the instructions notified prior to the examination, so that there is no violation of principles of natural justice. It was, therefore, submitted that the applicant is not entitled for any indulgence from this Tribunal, on any of the grounds, and the applicant has no case, and the O.A. is liable to be dismissed.

12. The applicant filed a rejoinder affidavit on 19.08.2015. It was submitted by him that as per the judgment of the Delhi High Court in WP(C) No.5722/2013 and CM No.12653/2013 in the case of **Pintu Prajapat vs. Union of India & Others**, it was held as follows:

"if the candidate is not appointed for the reason that in the application form he/she have not indicated their preference and/or have left a column blank, the respondents as a one time measure may consider appointing the candidates in the order of their *inter-se-merit*."

13. It was further submitted that since contents of the paras in the counter reply of the respondents are vague, and the case of

the applicant is covered under the above cited portion of the judgment of the Delhi High Court, the Respondent No.1-SSC may, after assessment, consider the name of such candidates, in order of merit, irrespective of the fact whether such candidate gave his preference or not. It was reiterated that due to sheer inadvertence, the applicant had failed to mark his preference against Column "G", and when the Advertisement itself had stated that in case the candidate does not fill up the option or miss to fill the option, the Respondent No.1-SSC shall, after assessment, consider the name of such candidates, irrespective of the facts whether such candidate gave preference to the post or not. It was stated that for JE (MES), since out of 160 posts only 116 posts were recommended to be filled up, and the vacancies existed as on today, the OA was prayed to be allowed.

14. Heard. During the course of arguments, learned counsel for the applicant relied upon judgment of the Coordinate Bench dated 13.02.2013 in OA No. 2063/2012 in **Ravindra Malik vs. Staff Selection Commission & Others**, in which the applicant had not coded his Ticket Number correctly on his OMR Answer-sheet, and even the Invigilator had failed to check it. In the peculiar facts and circumstances of that case, a Coordinate Bench had directed to consider the case of the applicant for appointment to

the post of Inspector (Central Excise), or any other posts, as per his merit. Learned counsel for the applicant further relied upon the judgment of the Hon'ble Delhi High Court in **Navrattan Singh & Others vs. Union of India and Another** dated 21.11.2014 in WP(C) No.8004/2014, the judgment in the case of **Deepak Kumar Singh & Others vs. Union of India and Others** along with connected Writ Petitions dated 14.07.2014, and the Hon'ble Allahabad High Court judgment dated 29.10.2013 in Writ A No.3283/2012 in **Bindhyachal Kumar Singh vs. Union of India and Others**, apart from relying upon the judgment of the Constitution Bench of the Hon'ble Apex Court in **Shankarsan Dash** (supra).

15. In the case of **Navrattan Singh & Others** (supra), the Hon'ble High Court has dealt with the issue of revision or modification of the Select List for the post of Constables in BSF, CISF or SSB, ITBP or Assam Rifles, in which the petitioners had left Column No.17 regarding preference blank, or had not properly coded their preferences in the said Column. The High Court had cited its judgment in a batch of petitions WP(C) No. 7651/2012 and other connected cases, titled as **Vinay Kumar vs. Union of India and Others**, wherein it was ordered that in order to redress the grievance of the petitioners, who were being

denied appointment only because of the fact that they had left Column No.17 blank, or had not properly coded their preferences in the said Column, they would be allowed to do so, subject to their unconditional undertaking to the effect that they shall not claim any seniority. Based upon that judgment, relief had been granted to the petitioners in **Navrattan Singh & Others** (supra) also.

16. However, in the instant case, the applicant did not protest against his having been denied an opportunity to fill up his preference. While he may have marked his preference against column "G" also as a part of his choice, but he chose not to do so. It is only in hindsight that, after knowing the result of the examination, he has come up with the present prayer, which, to our mind, is not covered by the judgments of the Hon'ble Delhi Court, either in the batch of petitions titled as **Vinay Kumar vs. Union of India and Others** (supra) decided on 14.07.2014, or the judgment in **Navrattan Singh & Others** (supra) decided on 21.11.2014, and, therefore, the applicant cannot be allowed to claim any benefit on the basis of the aforesaid judgments.

17. In the case of **Deepak Kumar Singh & Others** (supra) with connected Writ Petitions, once again the petitioners had applied for the post of Constables in Central Police Organizations,

and had not indicated their preferences at all, and had left Column 17 of the Application Form blank. Similar orders, as in the case of **Navrattan Singh & Others** (supra) were passed by the Hon'ble Delhi High Court, as discussed above. But the applicant in the instant case had never made any such prayer prior to the declaration of final results, and had not protested against his not having been given an opportunity to fill up the forms properly. He had marked his chosen preferences, and had left other preferences blank, on the basis of his own choice alone. Any such opportunity now granted to the applicant would be an injustice to the hundreds and thousands of other candidates, who may have also had missed to mark their preferences properly, or wrong choices may have been made by them in the Application Form. Therefore, equity demands that the applicant should not be allowed to change or add his preferences at this stage.

18. In the case of **Bindhyachal Kumar Singh** (supra), the High Court of judicature at Allahabad had dealt with the question of preparation of final results pertaining to thousands of candidates in respect of Central Police Organizations for the purpose of preparation of Select List, in which case also, the candidates had failed to give any preferences whatsoever in their Application Forms leading to rejection of their candidature. But, the instant

case before us is not a case of rejection of his candidature on the basis of his having missed filling up a portion of his Application Form, but he had properly filled up his Application Forms, and had indicated his preferences, and he had left the other choices blank, for which he was not interested. Thus it has to be held that for MES, he failed to exercise a conscious choice, and did not mark any choice against MES beyond the preferences already marked by him. Now, he cannot be allowed to approbate and reprobate, and submit that due to inadvertence he had opted for only few of the services in which the vacancies had been notified. If such addition is permitted to be made by the applicant, hundreds and thousands of other candidates, who had appeared in the same examination, and were not aware that such deviation from the rules can also be made available to them, would be prejudiced.

19. It is trite law that rules of a process of recruitment cannot be changed when once the process of recruitment has started. Herein, the process of recruitment is completed, and only thereafter the applicant is trying to be permitted to make a change in his application, behind the back of the hundreds and thousands of other candidates, and therefore, his prayer cannot be accepted.

20. We have also given our anxious consideration to the law laid down in **Shankarsan Dash** (supra). We find that no portion of the judgment of the Constitution Bench enures to the applicant before us any benefit in any manner whatsoever. It has been held by the Hon'ble Supreme Court in **Dr. (Mrs.) M.Thaha vs. National Institute of Rural Development and Others** -1992 (4) SLR 65, that after having participated in the selection process for any recruitment, and having appeared for the interview, and having taken a chance for favourable recommendation, it is not open to the petitioner to turn around, thereafter, and challenge the subsequent result and the selection. Here the applicant had never sought to change his choice of services, and at the very last stage, when he came to know about the result and selections, he now wants to change his choice of services, which he cannot now be allowed to change.

21. Here, in this case, the applicant had a choice of 11 services to choose from, but he chose only 5 out of those 11 services as his preferences. Therefore, he himself confined his rights voluntarily and intentionally by deciding not to choose those remaining 6 services, which were very much available to him, by not marking those 6 services out of 11 when he was filling up his

Application Form. Therefore, the reliefs, as sought for by the applicant, cannot be granted to him.

22. In the case of **Dhananjay Malik & Others vs. State of Uttranchal & Others** (2008) 4 SCC 171, the Hon'ble Supreme Court has held that if the applicant takes a calculated chance, and appears in the interview etc., only because the result of the interview is not palatable to him, he cannot turn round, and subsequently contend that the process of interview was unfair, or the Selection Committee was not properly constituted.

23. Here, in the instant case, the applicant took a calculated chance in respect of his choice by opting for only 5 out of 11 services. When the entire selection process of recruitment has completed, he has turned round and prayed that he should be allowed to change his choices, which cannot be permitted. Therefore, the OA is rejected, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

/kdr/

