

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00051/2018

Jabalpur, this Friday, the 4th day of May, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Parag Porwal, S/o Shri Gopal Porwal,
Age 26 years, R/o 11-12, Shantikunj, in front of
Bombay Hospital, Vijay Nagar, Indore, Distt-Indore (MP)
E-mail-parag21porwal@gmail.com **-Applicant**

(By Advocate –Shri M.K.Verma)

V e r s u s

1. Union of India, through Secretary,
Ministry of Mines, Govt. of India, Third Floor D Wing,
Shashtri Bhawan, New Delhi-110001
Web- www.ministryofmines.gov.in

2. Secretary and C.P.I.O.,
Union Public Service Commission,
Dholpur House, Shahjanha Road, New Delhi-1100069
Web-www.upsc.gov.in **-Respondents**

(By Advocate –Shri S.P.Singh for Union of India/respondent No.1
& Shri Mohan Sausarkar for UPSC/respondent No.2)

(Date of reserving the order:-27.04.2018)

O R D E R

By Navin Tandon, AM:-

The applicant is aggrieved that Union Public Service Commission (UPSC) has recommended names for appointment to Group ‘A’ services without implementing condition No. 2(b)

N.B.(i) and N.B. (ii) of their own advertisement. Hence this Original Application has been filed.

2. The undisputed fact of the case are that UPSC (respondent No.2) issued examination Notice No. 5/2017-GEOL on 08.02.2017 (Annexure A-3) for Combined Geo-Scientist and Geologist Examination, 2017. The extract of relevant paras 2(a) and 2(b) are given below:-

“2(a). The categories of post to which recruitment is to be made on the results of this examination and the approximate number of vacancies in the various posts are given below:-

Category I: (Posts in the Geological Survey of India, Ministry of Mines).

(i) Geologist, Group A	:	40
(ii) Geophysicist, Group A	:	40
(iii) Chemist: Group A	:	25

Category II: (Posts in the Central Ground Water Board, Ministry of Water Resources)

(i) Junior Hydro geologists (Scientist B, Group A: 33

2(b). A candidate may apply for admission to the examination in respect of any one or both the categories, mentioned in Para 2(2) above. Once an application has been made, no change will be allowed.

If a candidate wishes to be admitted for both the categories, he/she need fill in only one application.

He/She will be required to pay the fees mentioned in para 4 below once only and will not be required to pay separate fee for each of the categories for which he/she applies.

A candidate may compete for any one or both the categories of posts for which he/she is eligible in terms of Rules. A candidate who qualifies for both the categories of posts on the result of written part of examination will be required to indicate clearly in the Detailed Application Form the

categories of Posts for which he/she wishes to be considered in the order of preference so that having regard to his/her rank in order of merit, due consideration can be given to his/her preference when making appointment.

N.B.(i): No request for addition/alteration in the preference indicated by a candidate in his/her detailed application form will be entertained by the Commission.

N.B.(ii) The candidates competing for both the categories of the Posts will be allotted to posts strictly in accordance with their merit position, preference exercised by them and number of vacancies.”

2.2 The number of firm vacancies for the posts reported to the UPSC vide the Ministry of Mines (respondent No.1) letter dated 29.05.2017 were as under :

- (i) Geologist: 25
- (ii) Geophysicist : 10
- (iii) Chemist: 10
- (iv) Junior Hydrogeologist : 33 (By CGWB)

2.3 Based on the results of the written examination held in May 2017 followed by interviews for Personality Test in October, 2017, UPSC issued a Press Note on 24.10.2017 (Annexure A-1), whereby it recommended a total number of 78 candidates for appointment to the posts as under:-

- (i) Geologist: 25
- (ii) Geophysicist: 10
- (iii) Chemist: 10
- (iv) Junior Hydrogeologist : 33 (By CGWB)

2.4 There are 14 names which are common amongst the list of names of 25 and 33 candidates recommended for Geologist and Hydrogeologists respectively. After allotment of the posts of

Geologists and Junior Hydrogeologists, to the recommended candidates as per first preference furnished by them, a total of 14 posts remained vacant-5 posts of Geologist and 9 posts of Junior Hydrogeologist.

2.5 As per information published by UPSC on their website (Annexure A-6) the marks secured by the last finally recommended candidate for appointment in Geologist (General Category) is 352.

2.6 The applicant has secured 345 marks.

3. The applicant has sought for the following relief in this Original Application”-

“8. Relief Sought:

(8.1) This Hon’ble Tribunal may kindly be pleased to quash the impugned select/merit list Annexure A/1, for the post of Geologist and Jr. Hydrogeologist, with respect to the Combined Geo Scientist and Geologist Examination, 2017, may further be pleased to direct Respondent No.2 to prepare a fresh select list for appointment as per the condition of para 2(b) N.B. (i) and N.B. (ii) of advertisement Annexure A/3, in the interest of justice.

(8.2) That this Hon’ble Tribunal may kindly be pleased to hold that the action on the part of the respondent No.2 in including the names of selected candidates for tow different-different posts is per se illegal and arbitrary, as it violates the preference expressed by the candidate at the time of candidature which is specified in the rules and further deprives another eligible candidate from induction into the service.

(8.3) That this Hon’ble Tribunal may further be pleased to direct the respondents to retain the seats with them to be filled/exhausted to the optimum number of vacancies by

remaining candidates who are not included in the select list in the event of exercise of option by selected candidates.

(8.4) This Hon'ble Tribunal may further be pleased to direct the respondent No.2 to consider the name of the applicant for recommendation of appointment for the post of Geologist as per his merit and further be directed to give consequential appointment to him on the above post, in the interest of justice.

(8.5) That this Hon'ble Tribunal may, further be pleased to award the cost of instant **lis** in favour of the applicant.

(8.6) Any other relief(s), direction(s), instruction(s), which this Hon'ble Tribunal deem fit and proper looking to the above facts and circumstances of the case be also awarded in favour of applicant in the best interest of justice.”

4. The applicant submits that he is a young meritorious student and an unemployed youth. He has obtained degree of Master of Technology in Geological Technology from Indian Institute of Technology (Annexure A-2), which is meeting the eligibility qualification for the post of Geologist, Group A in category-I. After appearing in written test and interview, he has obtained 345 marks in the final stage. As per information given by UPSC, the marks of last candidate in General Category for the post of Geologist is 352.

4.1 He further submits that UPSC has erred in preparing the list of recommended names for appointment. UPSC has not taken cognizance of clause 2(b) NB (ii) of their own advertisement which clearly mention that “***the candidate competing for both the categories of the posts will be allotted to posts strictly in***

accordance with their merit position, preference exercised by them and number of vacancies.”

4.2 It is the case of the applicant that he has a fair chance of being recommended for appointment if UPSC revises its recommendations as per their own clause mentioned in the advertisement (Annexure A/3).

5. In the reply filed by Ministry of Mines (Respondent No.1), they have submitted that the Ministry had written to UPSC on 18.12.2017 (Annexure R-1/A). The letter is reproduced below:-

“The undersigned is directed to draw your kind attention towards the list of selected candidates for the posts of Geologist and Jr. Hydro-geologist. There are 14 commons candidates recommended by UPSC in the above said examination. Thus, if the candidates are allotted posts as per their preferences, 14 seats will remain vacant. Out of which 5 posts of Geologist and 9 post are of Jr. Hydro-geologist.

In fact, the allocation of posts considering the preferences of candidates should have been carried out by UPSC as per the reported vacancies.

In view of the above, UPSC is requested to send the list of candidates for the vacant posts of Geologist and Jr. Hydro-geologist separately considering their preferences against the vacancies.”

5.1 UPSC replied to the Ministry of Mines vide letter dated 12.01.2018 (Annexure R-1/B), the contents of which are as under:

“I am directed to refer to your letter E.NO. 4/5/2016-M-II dated 18.12.2017 on the above subject.

2. Attention is invited to Rules of the Combined Geo-Scientist and Geologist Examinaiton-2017 which provide for that candidates possessing common qualification for the

posts of Geologist Gr. 'A' and Junior Hydro-geologist can apply for both the categories. The relevant provision(Rule-2) are reproduced as under:-

"A candidate may compete for any one or both the categories of posts for which he is eligible in terms of the Rules. A candidate who qualifies for both the categories of posts on the result of the written part of the examination, will be required to indicate clearly in the Detailed Application Form the categories of posts for which he wishes to be considered in the order of preference so that having regard to his rank in order of merit, due consideration can be given to his preference when making appointment."

N.B.(i) No request for making subsequent addition/alteration in the details indicated by a candidate in his Detailed Application Form will be entertained by the Commission.

N.B.(ii) The selection of candidates for the posts of Geologist, Geophysicist and Chemist in GSI in the Ministry of Mines and Jr. Hydro-Geologists (Scientist-B), Group-A in the Ministry of Water Resources shall be strictly in accordance with their merit position in each category and number of vacancies separately.

3. Further, it is informed that there is no provision in the Rules of the Examination for catering to the shortfall in the number of candidates due to common recommended candidates for Geologist and Jr. Hydro-geologist. Hence, it is not possible to issue the list of candidates for the 14 vacant posts of Geologist and Jr. Hydro-geologist. Furthermore, it is not appropriate on the part of the Ministry to state that the allocation of posts considering the preference of candidates should have been carried out by the UPSC as per the reported vacancies because the Commission conducts the Examination and recommends candidates in accordance with the Rules of the Examination notified by the Government and allotment/allocation of posts does not fall within the domain of the Commission.

4. Allocation of posts to the recommended candidates on the basis of Merit-cum-Preference is the responsibility of Cadre Controlling Authority i.e. Ministry of Mines."

5.2 Respondent No.1 submits that the name of present applicant did not appear in the final list of recommended candidates. Moreover, the request of Ministry of Mines for release of the reserved list has also been turned down by the UPSC therefore, the result dated 24.10.2017 is final.

6. UPSC (respondent No.2) has submitted their reply. Para 4 of their reply reads as under:-

“In this regard, it is respectfully submitted that UPSC conducts the examination and recommends candidates in accordance with the Rules of the Examination notified by the Government and allotment/allocation of posts does not fall within the domain of the Commission. UPSC vide their letter dated 12.01.2018 informed the Ministry that as there is no provision in the Rules of the Examination for catering to the shortfall in the number of candidates due to common candidature for Geologists and Jr. Hydro-geologist. Hence, it is not possible for UPSC to issue the list of candidates for the 14 vacant posts of Geologist and Jr. Hydro-geologist occurred due to common candidature.”

6.1 It was stated by the applicant in Para 4.11 of his application that he had submitted detailed representation on 30.11.2017 (Annexure A-9) mentioning the clause No. 2(b) of the advertisement, to the respondent No.2 through registered post, but as yet the applicant has not received any reply from respondent. Para 5.5 of the Original Application again raises the fact that the applicant promptly submitted the representation mentioning the above anomaly but despite receipt of the representation, the respondents have not paid any heed on the representation.

6.2 In reply to Para 4.9 to 4.12, UPSC has stated that the contents of these paragraphs being matter of record need no specific reply. In reply to para 5.5 it is mentioned that to whom the representation was submitted has not been mentioned by the applicant. Even the date of representation has not been mentioned.

7. Heard counsel of both the sides and perused the pleadings available in the record.

8. It is seen that the respondents have not submitted any new information in their reply than what has already been stated by the applicant.

9. The stand of respondent No.1 is very clear that they are bound by the recommendation of UPSC. Since no new names have been given to them by the UPSC, they are unable to fill the vacancies.

10. UPSC in their reply or during argument stage have not been able to throw any light as to why they have recommended lesser number of names than the vacancies.

11. UPSC has failed to address the representation of the applicant submitted to them directly. They have also not responded to it in their reply, as brought out in Para 6.1 and 6.2 above.

12. It is the stated stand of UPSC in Para 4 of their reply (refer para 6 above) that UPSC conducts the examination and

recommends candidates in accordance with the Rules of the Examination notified by the Government and allotment/allocation of posts does not fall within the domain of the Commission.

13. A perusal of the recommendations made by UPSC (Annexure A-1) clearly indicates that it is UPSC who have recommended names separately for Geologists and separately for Hydrogeologists. Hence, this action is contradictory to their stated stand that they do not do the allocation.

14. The advertisement issued by UPSC incorporated clause 2(b) and N.B.(ii) therein. The idea is to have a common examination and thereby reduce administrative effort as well as simplification of procedure as far as participants of the examination is concerned. If the allotment of posts is not within the domain of UPSC, why it could not have prepared a combined list of $25+33=58$ candidates for Geologists and Junior Hydrogeologists and the allotment of posts could have been done by the Ministry? How the scheme has been so formulated that sufficient number of candidates are not recommended by UPSC?

15. UPSC is almost a century old organization conducting examination/selection for all Group 'A' Officers of Union of India. Even the Recruitment Rules for Ministries/Departments under the Central Government are submitted to them before approval and

issue. It has not been clarified by them as to which clause of the “Rules of the Examination” allowed such blunder to creep in by UPSC. Obviously, this is not the first time that such an examination has been conducted by UPSC. If there were some clauses in the “Rules of the Examination” that were not proper, surely it was the duty of UPSC to have identified the same and got them corrected.

16. Learned counsel for the applicant has been able to demonstrate that gross injustice has been done to the cause of the applicant by the respondents and hence, the application deserves to be allowed.

17. In the recommendations made by UPSC (annexure A-1), there are 14 persons whose names are appearing in the list for both the categories i.e. Geologists and Hydro-geologists. Ministry has submitted their requisition for the number of posts as per their requirements. With the type of recommendations given by UPSC, the Ministry is not getting the required number of candidates as per recommendations because one candidate can accept only one seat. Therefore, it looks logical for the list to be so prepared that no candidate appears in both the lists.

18. Resultantly, the Original Application is allowed. Respondent No.2 is directed to submit revised recommendations as per Para

2(a) N.B.(i) and N.B.(ii) of their own advertisement in such a manner that all the firm vacancies to the post of Geologists (25 posts) and Junior Hydrogeologists (33 posts) are filled up (unless not eligible otherwise), within a period of 30 days from the date of receipt of a certified copy of this order. A copy of such revised recommendations be also communicated to the applicant. No costs.

(Ramesh Singh Thakur)
Judicial Member

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(Navin Tandon)
Administrative Member