

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2222/2013

New Delhi, this the 15th day of May, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Nagmani Gupta,
R/o Flat No.3117, Block No.10,
Sec.-4A, Vasundhara,
Ghaziabad U.P. .. Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

Union of India & Ors. through :

1. The Secretary,
DoP&T (CS-II Division),
Lok Nayak Bhawan, New Delhi.
2. The Secretary,
Staff Selection Commission,
C.G.O. Complex, Lodhi Road,
New Delhi. .. Respondents

(By Advocate: Shri Rajinder Nischal for R-1 and
Shri S.M. Arif for R-2)

O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicant was working as LDC in the Central Secretariat Clerical Services. Promotion from that post is to the post of UDC. One channel is through promotion on the basis of seniority and the other is through participation in the Limited Departmental Competitive Examination (for short, LDCE). The applicant

participated in the LDCE held in the year 2006. On account of that, he could not find his place in the list of successful candidates.

2. The Department in which he was working informed the Staff Selection Commission (for short, SSC) that as many as 9 candidates, who were selected under LDCE category, did not join. The SSC in turn informed that the reserve panel was not maintained and that the examination for the next year was conducted already in 2007. However, in December 2007, the DoPT requested the SSC to nominate suitable candidates in place of 9 candidates, who did not join. Thereafter, the applicant gathered information from various sources and submitted representation and filed O.A. No. 3700/2012 before this Tribunal claiming the relief in the form of a direction to the respondents to include his name in the panel for appointment against the vacancy for the year 2005.

3. The O.A. was disposed of by directing the respondents to pass a reasoned order on the representation of the applicant. Accordingly, a detailed order dated 18.04.2013 was passed by the DoPT informing that his request cannot be acceded to. It is also mentioned that the O.A. No.3700/2012 filed by the applicant was disposed of on the basis of an order dated 11.10.2012 in O.A. No.949/2012 and that in Writ Petition No.1802/2013, the Hon'ble

High Court has set aside the order passed in O.A. No.949/2012.

The said communication is challenged in this O.A.

4. The applicant contends that once there existed vacancies preferably in the year 2005 under LDCE category, he was entitled to be considered against the same. He contends that the view taken by the respondents is totally untenable. Reliance is placed on the judgment of the Hon'ble Supreme Court in **Manoj Manu and Anr. vs. Union of India and Others** in Civil Appeal No.6707/2013.

5. The respondents filed a detailed counter affidavit. It is stated that as early as in August 2007, the SSC informed the requisitioning department that no reserve panel was maintained and that the next examination was conducted on 25.02.2007 and, therefore, the question of recommending the name of the applicant against the vacancy of the year 2005 in the year 2013 does not arise. Other contentions were also urged.

6. We heard Shri M.K. Bhardwaj, learned counsel for the applicant and Shri Rajinder Nischal, learned counsel for the DoP&T and Shri S.M. Arif, learned counsel for the SSC and perused the pleadings on record.

7. The issue is about the entitlement or otherwise of the applicant to be considered against the vacancy of the year 2005

under the LDCE category. He, no doubt, participated in the examination but was not included in the list, obviously because of his place in the merit list. The record does not disclose that the SSC has maintained any reserve list. After conducting the examination, it forwarded the list of the candidates equivalent to the number of notified vacancies, to the requisitioning department.

8. It appears that information was sought from the SSC as to the steps to be taken, vis-a-vis, the vacancies that remained unfilled on account of failure of the selected candidates to join the posts. The SSC replied on 16.08.2007 (Annexure A-6) as under :

“I am directed to refer to your letter No.7/2/2006-CS.II dated 20.07.2007 on the subject cited above and to say that as per DOPT’s OM No.41019/18/97-Estt. (B) dated 13-06-2000 (copy enclosed), the Reserve List is generally operated by the Commission on a request received from the Ministry/Department concerned when the candidate recommended by the Commission either does not join, thereby causing a replacement vacancy or he/she joins but resigns or dies within six months of his/her joining.

2. Further, next examination i.e. Upper Division Grade Limited Departmental Competitive Examination, 2007 has already been conducted on 25.02.2007 and the result (written part) of this examination is likely to be declared shortly.”

9. From this, it is clear that firstly, the reserve list was not maintained because there was no requisition from the requisitioning department and, secondly, the next examination

was conducted on 25.02.2007. However, despite this, a communication was sent to the SSC on 04.12.2007 by the DoPT. It was mentioned that 9 persons named therein did not join and request was made to the SSC to nominate suitable candidates, if available, on the basis of the results of the examination conducted in the year 2005.

10. We are of the view that there is no basis to address this letter at all, once the SSC has informed them that the examination was already held in February, 2007.

11. In **Manoj Manu** relied upon by the applicant, the facts are that the UPSC forwarded a list of candidates to the requisitioning department in the year 2006, but in 2009, the latter informed that 6 candidates did not join the posts at all. Acting on this, the UPSC forwarded a list of 3 candidates. The appellants in the Civil Appeal were next in the reserve list. The Supreme Court took the view that having sent the list of 3 candidates, there was absolutely no basis for the UPSC in excluding other 3 candidates. Accordingly, a direction was issued to forward the names against the remaining three vacancies.

12. The situation is totally different in the instant case. Even before the requisition was received by the SSC, they have informed the concerned department that the examination for the

next year was already held and that no reserve list was maintained. Therefore, the observations made by the Hon'ble Supreme Court in **Manoj Manu** do not apply to the facts of this case.

13. It is also stated that the applicant has already been promoted as UDC in the promotion category in the next year itself. The whole endeavour is to get one place above in the seniority list. For this purpose, it is not even advisable to undertake such an exercise. The O.A. is dismissed, accordingly. There shall be no order as to costs.

(Aradhana Johri
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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