

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 970 of 2002

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Debraj Singh, aged about 47 years, S/o Late Satrughna Singh, resident of Vill/PO-Malipada, PS – Jankia, Dist.-Khurda, at present working as Officer Surveyor, in No.17 D.O.(NWC), 20-C, Gandhi Nagar, Jammu-180004.

.....Applicant

VERSUS

1. Union of India represented by Secretary, Ministry/ Department of Science & Technology, Technology Bhawan, New Mehruti Road, New Delhi – 16.
2. Surveyor General of India, Hatibarkla Estate, Dehradun-248001, Uttaranchal.

.....Respondents

For the applicant : Mr.K.C.Kanungo, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 5.8.2019 Order on : 26.8.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

“In view of submissions set forth above, your Lordships may be graciously pleased to hold that the clam of the applicant for promotion to the post of Officer Surveyor in pursuance to the Limited Departmental Competitive Examination (Selection to Officer Surveyor), 1993 is legal and justified and to that extent Annexure-5 describing existence of 13 vacancies is to be quashed.

AND

Be further pleased to direct the respondents to consider the promotion of the applicant to the post of Officer Surveyor with effect from the successful candidates number 13 who have got promotion in terms of Annexure 7A with all consequential service benefits such as seniority, pay fixation other benefits and arrear thereof w.e.f. January, 1995.

AND

Be further pleased to allow the cost of application.

AND

Any other further relief/reliefs, direction/ directions and order/ orders as deemed fit in the circumstances of the case may please be allowed.

AND

For such kind act, the applicant shall as in duty bound every pray.”

2. The grievance of the applicant is that although he had participated in the Limited Departmental Competitive Examination (in short LDCE) which was notified by the respondents for promotion to the post of Officer Surveyor in Group 'B' and he was placed in the 15th position in the merit list of the said LDCE held during 1993, he was not promoted. It is averred in the OA that 28 vacancies existed at that point of time, but the respondents did not promote him on the basis of the said LDCE held in 1993. The matter was earlier heard and the Tribunal dismissed the OA vide order dated 4.10.2004.

3. The applicant challenged the said order of the Tribunal before the Hon'ble High Court in WP(C) No. 13645/2004, which was disposed of vide order dated 4.4.2019 by setting aside the order of the Tribunal dated 4.10.2004 with the following directions :

"And the learned Tribunal has rejected the Original Application, i.e. OA No. 970 of 2002 on the wrong premises that earlier he has failed. The issue of non-availability of the post was not discussed by the learned Tribunal. In that view of the matter, order of the learned Tribunal is required to be quashed and set aside, which we direct.

Accordingly, the matter is remitted back to learned Tribunal. On being approached by the petitioner along with a copy of this order, learned Tribunal shall consider the matter afresh and dispose of the same within three months from the date of appearance of the petitioner."

It would be seen from the order of the Hon'ble High Court that the main ground for which the order was set aside is that the issue of non-availability of post was not discussed by the Tribunal while passing the order dated 4.10.2004. Accordingly the OA was taken up for consideration as per the order of the Hon'ble High Court after the learned counsel for the applicant filed a copy of the said order.

4. The matter was heard. Both the learned counsels for the applicant and the respondents were heard in the matter. It was submitted that the vacancy notification for the LDCE 1993 by the respondents did not indicate the number of vacancy for which the said examination was being held. It was further submitted that the applicant had qualified in the subsequent examination held in the year 1997 and had been promoted to the post of Officer Surveyor on 23.7.2001. But it is submitted that if the applicant's claims in this OA are accepted, then he would be deemed to be promoted on the basis of 1993

examination and his promotion would be effective from 13.1.1995. In effect, the date of promotion of the applicant to the post of Officer Surveyor will be antedated from 23.7.2001 to 13.1.1995. Learned counsel for the applicant further submitted that the applicant did not fail the test as observed in the order dated 4.4.2019 of Hon'ble High Court but he was placed in the merit list at Sl. No. 15 as admitted in the counter. He could not be selected on the basis of LDCE 1993 since the respondents had assumed that only 13 posts were to be filled up.

5. It was also submitted that another OA No. 386/1996 had been filed by some other candidate and vide order dated 23.8.2000 the respondents were directed to review the matter. Accordingly, the respondents published a revised list in which the applicant's place was No.15. Learned counsel for the applicant submitted that the respondents reported that there were 28 vacancies vide letter dated 18.10.1993 (Annexure A/7 to the OA) for filling up through LDCE. The applicant has relied on this letter to claim that there were 28 vacancies for which the applicant will be entitled for promotion since his position was at Sl. No. 15 in the merit list.

6. Learned counsel for the applicant filed the written note of argument reiterating the averments in the pleadings. It is stated that promotion had been given to one Joyendranath at Serial No.14 of the merit list. If the number of vacancy was 13, then the candidate at 14th position should have been reverted. But as stated in the counter, he was not reverted and was adjusted against future vacancy, which is not permissible.

7. Per contra, the respondents' counsel opposed the submissions first on the ground of delay stating that the OA was delayed and therefore barred by limitation. He also submitted that the OA also is deficient on the ground that the alternative departmental remedy was not exhausted by the applicant before approaching this Tribunal. He brought to our notice the contentions made in para 9 and para 13 of the counter, in which the averment of the applicant that 28 posts were vacant, has been contradicted. It was also submitted that the OA also lacks merit.

8. We have considered the submissions. In response to the averment that on the basis of letter dated 18.10.1993 (Annexure A/7) there were 28 posts, the respondents have mentioned following in para 13 of the counter :

"That in reply to para 4.8 of the OA it is submitted that as per this office letter No.C-4879/707 dated 18.10.1993 there were 28 posts of Officer Surveyor to be filled by LDCE promotes and not from LDCE 1993. Out of 28 posts, 15 posts were filled through LDCE 1992, thus remaining 13 vacancies (11 remained vacant and 2 occurred during the year 1993) were to be filled through LDCE 1993. From the letters mentioned below it is clear that 15 posts of Officer Surveyor were filled on the basis of LDCE 1992 :

- (i) No.E1-25867/579-Rules/LDCE dated 19.7./1993 (copy enclosed as Annexure R/3)
 - (ii) No. E1-23420/579-Rules/LDCE dated 3.6.1994 (copy enclosed as Annexure R/4)
 - (iii) No. E1-113/579-rules/LDCE dated 3.1.1995 (copy enclosed as Annexure R/5)
-"

9. In reply the applicant has filed rejoinder stating as under :

"That in response to para-13 of the counter, the applicant⁴ most respectfully submits that the contentions of the respondents in the same para appear to be more evasive. An attempt has been made to wriggle out from an incurable mistake/irregularities committed during 1995. Annexure-7 of November, 93 (Much after the 1992 LDCE examinees' promotion) indicates the man in position and the existing vacancies. Therefore, it boils down to the vacancy position as on 18.10.93 when 1993 LDCE process was set to motion. The respondents in their counter were required to be more particular as regards the exact date of occurrence of the vacancies which would determine whether the said vacancies were to be filled up by the successful candidates of the 1993 LDCE....."

10. It is seen from above that the position of vacancies have been clearly explained in para 13 of the counter. The fact that the select list was prepared for 15 posts and not more, shows that the vacancy for LDCE, 1993 was not assumed to be 28. No document has been produced by the applicant in contradiction to averment made in para 13 of the counter except for the letter dated 18.10.1993 mentioning about 28 vacancies, which was explained in para 13 of the counter. It has been very clearly mentioned that out of 28 vacancies, 15 posts were filled up by previous year LDCE held in 1992, leaving 13 vacancies to be filled up in 1993.

11. In addition to above, it is a settled law that a candidate does not acquire any indefeasible right to be appointed once he is included in the merit list. In

the case of Shankarsan Dash vs. Union of India 1991 AIR 1612, a Constitution Bench of Hon'ble Apex Court held as under:-

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in [State of Haryana v. Subhash Chander Marwaha and Others](#), [1974] 1 SCR 165; [Miss Neelima Shangla v. State of Haryana and Others](#), [1986] 4 SCC 268 and [Jitendra Kumar and Others v. State of Punjab and Others](#), [1985] 1 SCR 899."

12. Following the ratio of the above judgment in the case of Shankarsan Dash (supra), it was held by Hon'ble Apex Court in the case of State of Orissa and others vs. Bhikari Charan Khuntia and others, reported in 2004 SCC (L&S) 188, as under:-

"8. As was observed by this Court in [Government of Orissa through Secretary, Commerce and Transport Department, Bhubaneswar v. Haraprasad Das and Ors.](#), [1998] 1 SCC 487, whether to fill up or not to fill up a post, is a policy decision and unless it is arbitrary, the High Court or the Tribunal has no jurisdiction to interfere with such decision of the Government and direct it to make further appointments. In the present case, even no selection was made and not even any select list was in existence. Even if there had been any such selection or inclusion of any of the names in the select list, same could not have given any right. Therefore, mere sending of name by the employment exchange could not have and in fact has not conferred any right. The writ applications were thoroughly mis-conceived, and the court mis-directed itself as to the nature of relief to be granted."

13. In this case, it is not the applicant's case that any candidate who is less meritorious than the applicant had been promoted. His grievance is that there were vacancies available, which were not filled up and had the authorities decided to fill up additional vacancy, he would have been promoted on the basis of the 1993 examination. Learned counsel for the applicant had also pointed out that another candidate who was in the revised merit list at Sl. No. 14, was promoted earlier and he was not reverted. He stated that it shows availability of more number of vacancies than 13 and benefit allowed to the candidate at Sl.No.14 is illegal. Under what circumstances the candidate at Sl.No.14 was promoted or his promotion was retained by the respondents has

not been placed before us except for stating that he was accommodated against future vacancy. Even if it was found that candidate at Sl.No.14 was wrongly allowed promotion, that does not create any right in favour of the applicant, since in absence of clear vacancies, we cannot give any direction to consider promotion of the applicant relying upon a wrong decision of the respondents in respect of another candidate.

14. Basing on the facts and circumstances of this case as placed before us, we are of the view that the justifications furnished by the applicant in support of the contention that more than 13 vacancies were available for promotion on the basis of LDCE, 1993, are not adequate enough to prove such a contention.

15. While parting with the case, we observe that the action of the respondents to issue the notifications for the LDCE without clearly mentioning the number of vacancies for which LDCE is being held, has given rise to the dispute in the present case. We hope that the respondents will take appropriate corrective action to avoid such ambiguity in future.

16. In view of the reasons discussed above, the OA lacks merit and it is accordingly dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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