
(2020) 12 RAJ CK 0095

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13411 Of 2020

Abhimanyu Dhaka

APPELLANT

Vs

Union Public Service Commission And Ors

RESPONDENT

Date of Decision : 16-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 16, 320, 320(3), 335

Citation : (2020) 12 RAJ CK 0095

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Abhay Kumar Bhandari, Sanjay Rahar, Anand Sharma, H.V. Nandwana Captain, Ankit Naudiyal

Final Decision : Allowed

Judgement

(1) The petitioner, by way of this writ petition, submits that he participated in the Combined Defence Service Examination (II) 2019, which was

conducted by the Union Public Service Commission (hereinafter referred to as ""the UPSC"" for recruitment of Officers for Defence Services,

namely, Army, Navy and Air Force. The advertisement was issued on 12.6.2019. As per the said advertisement, a candidate was required to specify

clearly in respect of columns of online application form, the services for which he wishes to be considered and also his choice of preference. A male

candidate could indicate as many preferences as he wished subject to conditions mentioned in the advertisement.

(2) The petitioner, however, submitted his preference to join Indian Navy alone although he has stated in the writ petition that he had also given his

preference to join the Army, but could not record the same in the application form.

(3) As per the Scheme of the recruitment process, a written examination was conducted and thereafter, the candidates who cleared the written examination as per the minimum qualifying marks laid down by the UPSC were asked to appear for intelligence and personality test before the Service Selection Board (hereinafter referred to as "the SSB"), which is conducted for different courses of respective forces i.e. Army, Navy and Air Force. The petitioner after having qualified the written examination was called to appear for SSB and thereafter, on 1.9.2020, the UPSC declared the final result of the Combined Defence Service Examination (II) 2019. As per the said result, it is stated as under:-

4. The Commission had recommended 2699, 1592 and 0611 as qualified in the written test for admission to the Indian Military Academy, Indian Naval Academy and Air force Academy, respectively. The number of candidates finally qualified are those after SSB Test conducted by Army Head Quarters.

5. The results of Medical examination have not been taken into account in preparing these lists.

6. Verification of date of birth and educational qualifications of these candidates is still under process by the Army Headquarters. The candidature of all these candidates is, therefore, provisional on this score. Candidates are requested to forward their certificates, in original, in support of Date of Birth/Educational qualification etc. claimed by them, along with photostat attested copies thereof to Army Headquarters/ Naval Headquarters/ Air Headquarters, as per their first choice.

(4) The name of the petitioner finds place in this list for Indian Naval Academy at Serial No.17 with Roll No.1100806. (5) After the result was declared, the petitioner was sent for medical examination and as has been mentioned in the petition, he was found unfit for Indian Naval Academy. However, he was found fit for joining the Army. The petitioner thereafter submitted a representation to the Armed Forces stating his willingness to join Army and requested that his candidature be considered for Short Service Commission (hereinafter referred to as "the SSC") at Officers Training Academy (hereinafter referred to as "the OTA"). It was stated that he had erroneously not mentioned his choice for Army earlier. The representation dated 9.9.2020 was considered and rejected by the Army for the purpose of

joining IMA i.e. Indian Military Academy. Thereafter, the petitioner submitted another representation for joining OTA/SSC. A representation was also made to the UPSC and the UPSC sent a letter to the Adjutant General, Army Headquarters to take necessary action on the request made by the candidate in the light of the provisions of NB(I)(d) and N.B.(II) mentioned in the Examination Notification of CDS-II, 2019. The said letter was examined by the Army Headquarters and vide their letter dated 8.10.2020, it was reiterated that the candidate's plea cannot be entertained with the observations as under:-

NB I (a), b(i), (d), (e) of Notification is required to be read in conjunction with NB (II) for eligibility of candidate who has indicated only one choice and been Recommended in SSB but declared medically UNFIT and not eligible for his only choice to join PCTA. Hence, the candidates eligibility for being considered as leftover candidate is not being met. The candidature for all other courses automatically gets closed when the candidate has been declared UNFIT in medical in his only option i.e. Navy here. NB (II) (iii) substantiates the case of candidates with Air Force as first and only choice who cannot be considered as a leftover for grant of SSC (OTA).

(6) The petitioner, thereafter, appears to have again submitted a representation to the UPSC and the UPSC sent another letter on 19.10.2020 and after examining the letter of Army dated 8.10.2020 observed as under:-

3. The AHQ has taken a view that his candidature for all other courses automatically gets closed when he was found medically unfit in his only option of Indian Naval Academy. This contention, however, seems not in line with the aforesaid provisions of the Examination Rules as the same do not provide for non-consideration of a qualified candidate of INA (found medically unfit as per Navy standards) for the OTA Course of the Examination.

4. It is, therefore, requested that his case may be looked into again to consider his candidature for the OTA Course of the CDSE- II, 2019 strictly in accordance with the provisions of N.B. (I)(d) and N.B. (II) of the Examination Rules. In this connection, his relevant papers may be called for directly from the Indian Naval Academy.

(7) However, the Armed Forces have not acceded to the observations of the UPSC and therefore, the present writ petition has been preferred with a

request that the petitioner be allowed to join the 112th Short Service Commission Course (N.T.) for OTA (for men) in the Indian Army through

Officers Training Academy (OTA) in terms of the advertisement dated 12.6.2019.

(8) Learned Senior Counsel appearing for the petitioner submits

that the advertisement provided that the left over candidates could be inducted for the SSC, if they have already been recommended for Permanent

Commission but could not be inducted in IMA/INA/Air Force Academy on account of any reason whatsoever. He submitted that although the

petitioner had admittedly opted only for Indian Naval Academy in his application form and since he has been recommended for Indian Naval

Academy by the UPSC in its result, but cannot join on account of medical disability, he should be considered for joining SSC at OTA Chennai.

(9) Learned Senior Council further submits that the interpretation relating to the advertisement has already been finally taken by the UPSC, which can

be said to have the last word with regard to the interpretation of their advertisement. The Army Authorities would therefore be bound to accept the

interpretation as laid down by the UPSC, which is the Examining Body and had conducted the examination. In view thereof, it is stated that once the

interpretation taken by the Army was found to be wanting by the UPSC and it was requested by the UPSC to consider the candidature strictly in

terms of N.B.(I)(d) and N.B.(II), it was binding on the Army Authorities to have allowed the petitioner to join the SSC.

(10) Per contra; learned counsel appearing for the respondent - Union of India and for the Armed Forces submit that the UPSC was only assigned the

duty to conduct the examination. The examination, which is conducted, is as per the conditions laid down by the Armed Forces for the purpose of

selection/ recruitment of the Officers in Army, Navy and Air force. The Army Act, Navy Act as well as Air Force Act are applicable for the purpose

of recruitment and the last word relating to interpretation of the said provisions would lie with the Armed Forces at Adjutant General Branch and

interpretation taken by it would therefore be considered final and the UPSC's interpretation cannot overrule the same.

(11) On facts, learned counsel submits that the final recommendation as mentioned in the N.B.(II), can only be after the candidate is finally found fit

for Permanent Commission i.e. after he/she has undergone the written examination, SSB as well as medical and therefore, the petitioner cannot be

allowed to take advantage of N.B.(II) condition as laid down in the advertisement. Admittedly, the petitioner was not willing to join any other course except Navy as he had mentioned in his application form and the conditions under the advertisement specifically provide that a request for

addition/alteration in the preference already indicated by the candidate in his/her application form will not be entertained by the Commission

subsequently. Learned counsel has invited the attention of this Court toward N.B. (I)(d) and (e) for the said purpose. Learned counsel submits that

taking into consideration the aforesaid conditions, the representation of the petitioner was rejected by the Armed Forces and conveyed to the UPSC

vide its letter dated 8.10.2020 and a subsequent request by the UPSC was found to be of no use and as no new issue was raised in the letter dated

19.10.2020, it is stated that the final merit list has been published by the UPSC on 2.11.2020 and the name of the petitioner does not find place therein.

(12) Learned counsel has also taken this Court to Article 320 of the Constitution of India to submit that the UPSC can only be said to be an Examining

Body and it is only with regard to the civil posts that it can exercise its powers relating to the consultation and the consultation would not extend to

recruitment relating to the Armed Forces.

(13) Counsel appearing for the UPSC, however, has submitted that once, the UPSC is given the powers to conduct the selection process for

recruitment of the Officers, the final word rests with the UPSC with regard to the interpretation of the conditions of the advertisement, which has

been issued by it and in this regard, it would not be said in any manner to be encroaching upon the powers of the Armed Forces.

(14) I have considered the submissions as above. (15) The short question involved in the present writ petition is in two-fold; Firstly, whether the

Armed Forces are bound by the interpretation taken by the UPSC relating to the advertisement and conditions therein and Secondly, whether the

petitioner is entitled for being considered for admission to SSC through OTA Chennai upon being medically declared unfit for Navy and being found fit

for Army in spite of the fact that he had not initially opted for SSC through OTA and had only opted for Indian Navy. (16) Article 320 of the

Constitution of India provides as under:- "320. Functions of Public Service Commissions.-(1)It shall be the duty of the Union and the State Public

Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing

and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted--

(a). on all matters relating to methods of recruitment to civil services and for civil posts;

(b). on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to

another and on the suitability of candidates for such appointments, promotions or transfers;

(c). on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including

memorials or petitions relating to such matters;

(d). on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the

Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted

against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the

case may be, out of the Consolidated Fund of the State;

(e). on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the

Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount

of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which

the President, or, as the case may be, the Governor of the State, may refer to them:

Provided that the President as respects the all- India services and also as respects other services and posts in connection with the affairs of the Union,

and the Governor, as respects other services and posts in connection with the

affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause

(4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.

(5) All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before

each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made,

and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the

Legislature of the State may make during the session in which they are so laid.

(17) Thus, from the above provisions, it is apparent that the UPSC performs a dual role. First is with regard to the recruitment for Central Civil

Services and another recruitment for which it is assigned to perform its duties regarding conducting of the examination and secondly is with regard to

the consultation, which it may provide to the Central Government for any of the purposes as provided under Article 320 (3) of the Constitution of

India. As per the proviso to sub-clause (3), the President may, in relation to All India Services with regard to other services and posts in connection

with the affairs of the State, make regulations excluding such consultation. A look at Article 320 of the Constitution of India, therefore, clearly

provides for consultation in all respects except where some regulations may have been made excluding certain services. Admittedly, so far as the

Armed Forces are concerned, no such regulation has been made in respect of the same by the President excluding the power of consultation. Thus, in

the opinion of this Court in respect of all the services, which may be civil services or for civil posts or posts in connection with the affairs of the Union,

consultation can be taken. The Officers in Armed Forces would be performing the services in connection with the affairs of the Union and therefore,

effective consultation from the UPSC can always be taken in relation to any issue, which may be involved by the President relating to the services of

the Armed Forces also. The contention to the said extent, however, of the counsel for the Armed Forces, is found to be without any force. (18)

However, here this Court finds that there is no such consultation specifically taken by the Armed Forces from the UPSC. Suo motu the UPSC on the

basis of a representation made by the petitioner has given its consultation to the Armed Forces which in the opinion of the Armed Forces is not

acceptable. Thus, the second issue therefore arises before the Court to decide as to whether the interpretation taken by the Armed Forces in relation

to disallowing the petitioner's letter for joining OTA is correct or not.

(19) For the said purpose, it would be appropriate to quote the relevant provisions of N.B.(I) & N.B.(II):-

N.B. (I)(a) : A candidate is required to specify clearly in respective column of the Online Application the Services for which he/she wishes to be

considered in the order of his/her preference. A male candidate is advised to indicate as many preferences as he wishes to, subject to the condition

given at paras (b) and (c) below, so that having regard to his rank in the order of merit due consideration can be given to his preferences when making

appointment.

Since women candidates are eligible for OTA only, they should give OTA as their first and only preferences.

(b) (i): If a male candidate is competing for Short Service Commission (Army) only, he should indicate OTA as the one and only choice. However, a

male candidate competing for Short Service Commission Course at OTA as well as Permanent Commission course at IMA, Indian Naval Academy

and Air Force Academy should indicate OTA as his last preference; otherwise OTA will be deemed to be the last choice even if it is given a higher

preference by the candidate.

(b) (ii): Women candidates are being considered only for Short Service Commission at OTA. They should indicate OTA as the only choice.

(d) Candidates should note that, except as provided in N.B. (II) below, they will be considered for appointment to those courses only for which they

exercise their preference and for no other course(s).

(e) No request for addition/alteration in the preference already indicated by a candidate in his /her application will be entertained by the Commission.

No change of choice once exercised will be allowed. Second choice will come for

consideration only when the first choice is not offered to the candidate by Services HQ. When first choice is offered and a candidate declines the same, his/her candidature will be cancelled for all other choices for regular Commission.

N.B. (II) The left-over candidates of IMA/ Indian Naval Academy/ Air Force Academy courses viz., those who have been recommended by the

Union Public Service Commission for grant of Permanent Commission on the basis of the final results of this Examination, but who could not be

inducted on these courses for any reason whatsoever may be considered for grant of SSC even if they have not indicated their choice for this course

in their applications, if they are subsequently willing to be considered for this course subject to the following conditions:

(i) There is a shortfall after detailing all the candidates who competed for the SSC Course; and

(ii) The candidates who are detailed for training even though they have not expressed their preference for SSC will be placed in the order of Merit

List after the last candidate who had opted for this Course, as these candidates will be getting admission to the Course to which they are not entitled

according to the preference expressed by them.

(iii) Candidate with Air Force as first and only choice cannot be considered as left-over for grant of SSC (OTA) if they fail in Computer Pilot

Selection System (CPSS) and/or Pilot Aptitude Battery Test. Such candidates, if they desire to be considered for SSC (OTA) should exercise their

option for OTA also.

(20) In view of the facts as noticed above, it is apparent that as per N.B.(I)(a) and N.B.(I)(b)(i), if a candidate wants to compete for Short Service

Commission (Army) only, he should indicate OTA as the one and only choice or he may indicate at any other preference but would be treated as a

last preference. As per N.B. (I)(a), (d) and (e), the candidature of such a candidate who has exercised preference for a particular course only i.e. like

the petitioner who applied only for Naval Academy would not be considered for any other course. Thus, the action of the Armed Forces in rejecting

the application of the petitioner at the initial stage for joining IMA was correct and the petitioner could not claim any right for joining IMA on account

of after having been found medically unfit for Navy. As no addition or alteration

in preference can be allowed, subsequently alteration and request for Army was also uncalled for and the petitioner had rightly been disallowed to join the IMA. However, this Court finds that N.B.(II) carves out an exception to N.B.(I) and it specifically leaves a room for the candidates, who may not have opted for SSC to express their willingness subsequently for joining the course and who could not be inducted in IMA, INA and Air Force even though they have not been recommended by the UPSC for any reason whatsoever. The words used for any reason whatsoever would have to include the cases where a person may have found medically fit for Army but may not have been found medically fit for Navy or Air Force. A person may also be denied to be inducted in a course of INA or Air Force on account of being lower in the merit than those to the number of posts available for joining the course and in that circumstance, he/she can also show his/her willingness to join the OTA for grant of SSC. As per N.B.(II)(iii), those who only opt for Air Force as first and only choice cannot be considered as left-over for grant of SSC (OTA), if they fail in Computer Pilot Selection System (CPSS) and/or Pilot Aptitude Battery Test can exercise their option for SSC (OTA) also. However, the note is completely silent with regard to the candidates who only opt for Navy as first and only choice but this will not have any implication to the present case as N.B.(II) specifically mentions left-over candidates. As the petitioner has to be treated as a left-over candidate, who was recommended for Indian Naval Academy, but on account of medically unfitness cannot join the INA and has shown his willingness to join the Army ought to be now considered for grant of SSC by allowing him to join OTA. Such an interpretation would also be in the public policy domain for the benefit as the same is subject to condition one that there is a shortfall after detailing all the candidates who competed SSC Course. The purpose essentially for N.B.(II) is to fill up as many seats for Officers, who are willing to join the Armed Forces. Thus, this Court is of the firm view that the petitioner's application showing willingness to join SSC Course by joining OTA ought to be considered and he should be allowed to join the Course as he is ready and willing to join the Forces and serve the nation. (21) The submission of learned counsel for the Union of India that the result declared by the UPSC cannot be said to be a final recommendation as envisaged under N.B.(II) is found to be

misconceived as the word used in the result dated 1.9.2020 mentions the Commission having recommended 2699, 1592 and 611 as qualified for admission to IMA, INA and Indian Air Force Academy after SSB test was conducted. In the circumstances, medical test or ousting on account of medical test would come only within the meaning of a candidate, who could not be inducted in these Courses for any reason whatsoever. (22) Having taken the aforesaid interpretation, the present writ petition stands allowed. The respondents are directed to consider the candidature of the petitioner for 112 th Short Service Commission Course (N.T.) for OTA (for men) in the Indian Army through Officers Training Academy (OTA) in terms of the advertisement dated 12.6.2019, if he is otherwise having no other disability.