

(2011) 05 DEL CK 0217

In the Delhi High Court

Case No : Writ Petition (Civil) No. 3297 of 2011

Manoj Manu and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 05 DEL CK 0217

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Jyoti Singh and Padma Kumar S, for the Appellant; Jai Shri Raj and D.S. Mahendru for Respondent Nos. 1, 3 and 4 and Naresh Kaushik and Joymoti Mize for UPSC, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—By the impugned order dated 29th March, 2011, the Central Administrative Tribunal, Principal Bench (tribunal, for short) has dismissed the Original Application of the Petitioners.

2. The writ Petitioners, who were working as Assistant in Central Secretariat Service, had appeared in Limited Departmental Competitive Examination, 2005, conducted by UPSC for appointment to the post of Section Officer's Grade of the Central Secretariat Service. On the basis of information made available to them under the Right to Information Act, 2005, they had filed Original Application No. 3511/2010 claiming, inter alia, that DOP&T by their letter dated 20th November, 2009 had requisitioned UPSC for five general category vacancies but the UPSC had recommended names for three vacancies. Thus, the Petitioners have been denied promotion. It is submitted that the Petitioners had secured marks equivalent to the three recommended candidates and, therefore, UPSC has acted in an arbitrary and discriminatory manner in contravention of the Fundamental Rights under Articles 14 and 16 of the Constitution of India.

3. The Petitioners had secured 305 marks, same as secured by Rajesh Kumar Yadav, who was recommended by UPSC in the supplementary list of three candidates. However, the tribunal after examining the scheme of examination has held that AC Rs are seen for determining merit position inter se candidates, who have secured the some qualifying written test marks. To this extent, learned Counsel for the Petitioners has not questioned the decision of the tribunal.

4. Learned Counsel for the Petitioners has, however, relied upon Clause 4(c) of the Office Memorandum dated 14th July, 1967, which for the sake of convenience is reproduced below:

4.(c) Once the results are published, additional persons should not normally be taken till the next examination. Nor should vacancies reported before declaration of the results, be ordinarily withdrawn after declaration of the results. If, however, some of the candidates recommended/allotted for appointment against the specific number of vacancies reported in respect of a particular examination do not become available for one reason or another, the Commission may be approached, within a reasonable time, with request for replacements from reserved, if available. When replacements may not be available, the vacancies that may remain unfilled should be reported to the Commission for being filled through the next examination.

5. It is submitted by the counsel for the Petitioners that once requisition is made, it is mandatory for UPSC to issue supplementary list and recommend the name of the next candidate on merits. Only when the replacements are not available and that vacancies go unfilled, they can be made subject matter of subsequent examination. It is submitted that the UPSC cannot have a policy contrary to the Office Memorandum and if there is a conflict between the two, the Office Memorandum must prevail. Accordingly, it is submitted that the tribunal has erred in holding that the policy decision of UPSC not to issue supplementary list except in cases of "repeat" or "common" candidates deserves interference and should be set aside.

6. We have examined Clause 4(c) of the Office Memorandum dated 14th July, 1967 but are unable to agree with the interpretation given by the learned Counsel for the Petitioners. The aforesaid clause neither mandates nor gives any direction to UPSC that they must or should issue a supplementary list if a department approaches the UPSC within a reasonable time for replacement from the reserves. The aforesaid clause merely states that a department can approach UPSC within a reasonable time for replacement from the reserves but whether or not UPSC should accept the said request is not a subject matter of the said Office Memorandum. Accepting the contention of the Petitioners, will be reading or adding words to Clause 4(c), which are not there. The stand of UPSC has been that throughout and as a convention, in terms of the policy decision, they do not issue supplementary list except in two category of cases, namely, "repeat" or "common" candidates. Repeat candidates are those candidates, who have participated in same category in two limited Departmental Competitive

Examination and are successful in the first exam but their results had not been declared when the second Departmental Competitive Examination was held. Thus, these candidates are successful in two limited Departmental Competitive Examinations. Result in the second limited Departmental Competitive Examination is not counted and benefit is given to the next candidate on merits. Common candidates are those candidates, who get selected in more than one category in the limited Departmental Competitive Examination. Taking a different view would upset the policy or convention followed by UPSC for a long time and will create ambiguity and will lead to confusion. Learned Counsel for the Petitioners has not been able to point out any instance when the said policy has not been acted upon and applied. There is also logic and reason behind the said policy as Limited Departmental Competitive Examinations are held periodically and no waiting list as such is prepared. Limited Departmental Competitive Examination is held for clear and anticipated vacancies and not for future vacancies.

7. For the examination in question, limited Departmental Competitive Examination was held for 196 vacancies (General 160, SC 17 and ST 19) as intimated by DOP&T. UPSC nominated 184 candidates in two lots. Twelve SC vacancies remained unfilled for want of recommendations regarding suitable candidates. A supplementary list of three persons was issued as three selected candidates were "common/repeat" candidates. It is well settled that a selectee has only right to consideration but no legally indefeasible right to appointment. (See Shankarsan Dash Vs. Union of India,

8. In view of the aforesaid, we do not find any merit in the present petition and the same is dismissed.