

(2015) 09 DEL CK 0457
In the Delhi High Court
Case No : W.P. (C) 2529/2014

Tanay Rana and Others

APPELLANT

Vs

Union Public Service Commission and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 09 DEL CK 0457

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : Naresh Kaushik, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.

C.M. Appl. Nos. 5254/2014

1. Exemption allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(C) No. 2529/2014

3. By way of the present petition, the petitioners challenges the correctness of the order dated 26.02.2014 passed by the Central Administrative Tribunal in O.A. No. 3193/2013, whereby the Tribunal dismissed the application of the petitioners.

4. The brief facts of the case are that the petitioners (6 in number) had appeared in the Civil Services Examination, 2011 out of a total number of 1001 vacancies which were advertised on the basis of the Civil Services Examination Rules. The Union Public Service Commission (hereinafter referred to as UPSC) declared the result in the first instance in respect of 910 candidates including 420 from General, 255 from OBC, 157 from SC and 78 from ST categories. This list included 33 Physically Handicapped candidates. This list also included 91

candidates [72 from OBC, 12 from SC and 07 from ST] of reserved categories who have qualified on General Merit, who did not avail any concession/relaxation admissible to the reserved categories candidates. Out of these, one of the General Merit candidates from OBC category was assigned to general category as he had not submitted his caste certificate thereby reducing the list of such General Merit candidates to 90. It is the contention of the petitioners that every year some of the candidates selected do not join either on account of the fact that they are already in some Service or simply seek better Service or for the reasons of medical unfitness or otherwise. Normally, the deficit is made up from the reserved list prepared for the General, OBC, SC and ST categories candidates. The UPSC was requisitioned to provide reserve list of Civil Services Examination, 2011 containing 89 candidates (out of 91 candidates in the original General Merit list) as 2 OBC candidates could not be allocated any Service due to limited service preferences. Out of these, the candidates who were offered Services, 74 candidates were appointed by May, 2011. Another 15 names were also sent from another reserve list in May, 2013. The respondents have combined both the reserve lists (74 + 15 = 89). The case of the petitioners is that they are just below 91 candidates in the original General Merit list as detailed below:-

5. The petitioners contended that despite many unfilled notified vacancies the respondents have failed to exercise proper exhaustion of the reserve panel. The petitioners contended that they are only marginally below the cut off marks and there are still 37 vacancies are available and if they are offered to them, they are likely to be appointed. The petitioners have further contended that the selection process is incomplete until all the seats are allocated. It is further contended by the petitioners that the candidatures of more than 38 candidates were cancelled before any allocation and still there are more than 38 vacancies. Therefore, it would be an act of patent injustice to the petitioners who are just on the verge of appointment being a borderline case.

6. The petitioners submitted that the waiting list is utilized to fill up the notified vacancies where selected candidates do not join and that the UPSC is duty bound to provide a list of candidates on requisition by the DoP & T. The petitioners relied on Surinder Singh and Others Vs. State of Punjab and Another, , Mukul Saikia and Others Vs. State of Assam and Others, and Manoj Manu and Another v. Union of India (CA No. 6707 of 2013) to support his case.

7. The learned counsel for the respondents after having relied upon various provisions of Civil Services Examination, 2011, have drawn the attention of this Court to Rule 20 and Rule 21 of Civil Services Examination Rules, 2011. Rule 20 of Civil Services Examination Rules, 2011 stipulates that mere selection in Civil Services Examination confers no right to appointment unless the Government is satisfied after such enquiry as may be considered necessary that only candidates of suitable character and antecedents in all respects are to be appointed to the Service. Rule 21 of the Civil Services Examination Rules further stipulates that the candidates should be mentally and physically healthy in order to be

appointed. The learned counsel further submitted that it is an admitted fact that against 1001 vacancies advertised, a total number of 910 candidates were recommended including 420 from General category, 255 from OBC, 157 from SC and 78 from ST including 33 Physically Handicapped candidates. 91 candidates have been placed in the reserved category including 72 from OBC and 12 from SC and 07 from ST, who had qualified on merit without availing any concession/relaxation admissible to the reserved category candidates.

8. The learned counsel for the respondents further submits that one of these candidates namely one Ajay Katesaria (rank 28) had been converted into general category candidate by UPSC on account of the fact that he failed to submit the OBC certificate in the desired format and had not availed any relaxation available to this category. By which the list of General Merit candidates got reduced to 90 candidates and the list of general category candidates got increased by one candidate to 421. However, since the said Ajay Katesaria had been originally recommended in the list of OBC candidates with the status of General Merit candidate, the shortage of OBC candidates was made up with the requisition of one OBC category from the reserved list. This is how the UPSC was requisitioned to provide reserve list of Civil Services Examination, 2011 containing 89 candidates (74 General, 13 OBC and 1 SC) from the consolidated in place of 91 candidates. The counsel for the respondents submitted that the petitioners were not recommended by UPSC for appointment due to their low merit. The role of the respondent No. 2 is confined to allocation of services to the candidates declared successful and whose dossiers have been sent by the UPSC equal to the number of vacancies projected by various Central Civil Services to UPSC for filling vacancies through Civil Services Examination, the allocation of services is made on the basis of preferences indicated by them for the services, medical status and availability of number of vacancies in their categories as per turn. On the other hand, the allocation of services to the lower candidates is made on the basis of number of candidates allocated higher services who are either not willing to join or whose candidatures have been rejected on the basis of one ground or the other thereby having a cascading effect. The respondent No. 2 forwards the dossiers to the different Central Civil Services for this purpose.

9. The learned counsel for the respondents submitted that if the process of service allocation of a Civil Services Examination takes more than two years and there would be a difference in the date of joining in services by different candidates then it would attract issues of fixation of seniority, pay, promotion etc. These issues have been continuously criticized by the Civil Services Examination 2005 involving the Government in endless litigation. Therefore, if the plea of the petitioners were to be accepted in principle that the recruitment would be complete only when all vacancies have been exhausted, it would throw the administration out of gear and result in unending recruitment process. Thus, it is not possible to concede to a making third list as the result would be non-ending lists. This would lead to administrative chaos and anarchy.

10. The learned counsel appearing on behalf of respondent No. 1 submitted that the Civil Services Examinations are conducted under Civil Services Examination Rules framed for that particular year of recruitment. The mode of selection has been provided under Rule 16(4) of Civil Services Examination Rules, 2011 and Rule 16(5) of the Civil Services Examination Rules further provides that in case of shortfall, the Government may forward a requisition to the Commission requiring it to recommend from the reserved list in order of merit the same number of candidates as requisitioned for the purpose of filling up of unfilled vacancies in each category. The learned counsel for the respondent No. 1 has submitted that the term of vacancies still remain to be filled up is purely in the context of Rule 16(4) and does not go beyond that year.

11. The learned counsel for the respondent No. 1 has further submitted that drawing a vacancy from a list beyond what has been permitted under Rule 16(5) would imply maintenance of a wait list for which there is no provision. This again would have a cascading effect because candidates from the wait list may also decline to join the services allocated to them thereby not only complicating the process but involving the parties into prolonged and debilitating litigation.

12. The petitioners have contended that the Civil Services Examination Rules, 2011 make it incumbent upon the respondents to carry forward the process of requisitioning additional list till all vacancies are exhausted, the respondents on the other hand have denied the same and stated that the process of requisitioning does not extend beyond the second list as provided under Rule 16 (5) of the Rules. The respondents have also pleaded that if such a procedure is followed, it would make the process of recruitment far more complicated as compared to what it already is and almost a never ending task.

13. At the outset, before delving into the merits of the case, it is pertinent to consider the law in this regard. Rules 16 of Civil Services Examination Rules, 2011 are being extracted as hereunder:-

"16 (1) After interview, the candidates will be arranged by the Commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate in the Main Examination. Thereafter, the Commission shall, for the purpose of recommending candidates against unreserved vacancies, fix a qualifying mark (hereinafter referred to as general qualifying standard) with reference to the number of unreserved vacancies to be filled up on the basis of the Main Examination. For the purpose of recommending reserved category candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes against reserved vacancies, the Commission may relax the general qualifying standard with reference to number of reserved vacancies to be filled up in each of these categories on the basis of the Main Examination.

Provided that the candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward Classes who have not availed themselves of any of the concessions or relaxations in the eligibility or the selection criteria, at any

stage of the examination and who after taking into account the general qualifying standards are found fit for recommendation by the Commission shall not be recommended against the vacancies reserved for Scheduled Castes, Scheduled Tribes and the Other Backward Classes.

(2) While making service allocation, the candidates belonging to the Scheduled Castes, the Scheduled Tribes or Other Backward Classes recommended against unreserved vacancies may be adjusted against reserved vacancies by the Govt. If by this process they get a service of higher choice in the order of their preference.

(3) The Commission may further lower the qualifying standards to take care of any shortfall of candidates for appointment against unreserved vacancies and any surplus of candidates against reserved vacancies arising out of the provisions of this rule, the Commission may make the recommendations in the manner prescribed in sub-rules (4) and (5).

(4) While recommending the candidates, the Commission shall, in the first instance, take into account the total number of vacancies in all categories. This total number of recommended candidates shall be reduced by the number of candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes who acquire the merit at or above the fixed general qualifying standard without availing themselves of any concession or relaxation in the eligibility or selection criteria in terms of the proviso to sub-rule (1). Along with this list of recommended candidates, the Commission shall also declare a consolidated reserve list of candidates which will include candidates from general and reserved categories ranking in order of merit below the last recommended candidate under each category. The number of candidates in each of these categories will be equal to the number of reserved category candidates who were included in the first list without availing of any relaxation or concession in eligibility or selection criteria as per proviso to sub-rule (1). Amongst the reserved categories, the number of candidates from each of the Scheduled Caste, the Scheduled Tribe and Other Backward Class categories in the reserve list will be equal to the respective number of vacancies reduced initially in each category.

(5) The candidates recommended in terms of the provisions of sub-rule (4), shall be allocated by the Government to the services and where certain vacancies still remained to be filled up, the Government may forward a requisition to the Commission requiring it to recommend, in order of merit, from the reserve list, the same number of candidates as requisitioned for the purpose of filling up the unfilled vacancies in each category."

14. It is clear from Rule 16(2) of Civil Services Examination Rules, 2011 that while making service allocation, the candidates belonging to SC, ST and OBC recommended against unreserved vacancies are to be adjusted against reserved vacancies by the Government if by this process they get a service of higher

choice in the order of their preference. Rule 16 (3) gives the leverage to the Commission of further lowering the qualifying standards to take care of any shortfall of candidates for appointment against unreserved vacancies and any surplus of candidates against the reserved vacancies arising out of the provisions of these rules. After having taken these measures, the final recommendation is to be made in the manner prescribed under the Rules 16(4) and 16(5). The Rule 16(4) provides that while making the recommendation, the Learned Tribunal had rightly described the methodology to be adopted by the commission as under:-

"The Commission is to take the total number of vacancies in all categories into account;

The total of recommended candidates is to be reduced by such candidates belonging to SC, ST and OBC who have met the general qualifying conditions. These candidates, according to proviso to sub-rule (1), are to be reckoned as general category candidates and not to be recommended against vacancies reserved for their own categories;

The Commission will take recommendation in two manners. One will be a category-wise list while the other will be a consolidated reserve list of candidates including candidates from general reserved categories below the last candidate selected in each category. The number of candidates selected in this category will be equal to the respective number of vacancies reduced initially in each category.

Under Rule 16(5) even after having made allocation of services under Rule 16(4) and vacancies still remained to be filled up, the Government may requisition candidates from the reserved list. The Commission will provide the list of these candidates from the reserved list equal to the numbers for filling up the vacancies."

15. After perusal of Rule 16(5) it is clear that the Government is entitled to requisition of the candidates from the reserved list in the case of shortfall and the Government is bound to recommend officers from the reserved list in the same numbers in order of merit for filling up of the vacancies in each category. The question remains whether the Government is duty bound to requisition of the candidates in repeated tranches to the point of exhaustion of the vacancies. Here, the discretion has been left solely upon the Government to file a requisition but this discretion can only be exercised in respect of candidates from the reserved list in the order of merit. Rule 16(5), however, does not speak of more than one requisition of the candidates to be filled to the point of exhaustion of the vacancies. Had it been so, the framers of the Rules would have clearly provided to that effect. It clearly appears from Rule 15 that the leverage given to the Government to requisition of the candidates extends only to the reserved list.

16. The petitioners also relied on *Manoj Manu and Another v. Union of India* (supra). Here, the facts of the case were that the petitioners, who were Assistants in the Central Secretariat Service (CSS), appeared in Limited Departmental Competitive Examination for the next promotion to the post of

Section Officers Grade in that service. In the year 2005, on the requisition sent for 184 general category posts by the DoP & T, the UPSC recommended 184 candidates in two lots 141 candidates and 43 candidates. Out of these, 6 candidates did not join. The DOP & T requisitioned 6 general category candidates against 6 general category vacancies while the UPSC recommended names of 3 candidates out of the reserved list maintained by it. The two appellants, who were next in the merit list, had secured 305 marks, the same as secured by one Rajesh Kumar Yadav who had been recommended by the respondent No. 2 in this case. Aggrieved by non-recommendation, the petitioners Manoj Manu and another approached the Tribunal which dismissed their OA on the ground that the ACRs are also seen for determining the merit position of the candidates who had secured the same marks in the written test. The stand of the appellants was that since they had secured the same marks, not giving them appointment would be violative of Articles 14 & 16 of the Constitution. This Court was chary to grant this relief on the ground that taking a different view would upset the policy or convention followed by the UPSC and will create ambiguity which may also lead to confusion. The Hon'ble Apex Court set aside the order of this Court holding as under:-

"14. It is, thus, manifest that though a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once, it is found that the decision of the Government is based on some valid reason, the Court would not issue any Mandamus to Government to fill up the vacancies."

17. Whereas, as per the findings of the present case there is basic difference between the facts of Manoj Manu and Another v. Union of India (supra) and that of the facts of the case under consideration. Here, no requisition has been filed. The legal position is also clear that Rule 16(5) does not talk of any requisition from the reserved list. Hence, we do not find Manoj Manu and Another v. Union of India (supra) is applicable to the facts of the case in hand.

18. In Shankarsan Dash Vs. Union of India, the 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 *The State of Haryana Vs. Subash Chander Marwaha and Others*, , *Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others*, , or *Jatinder Kumar and Others Vs. State of Punjab and Others*, ."

19. The same question has been dealt by the Hon"ble Apex Court in several other cases including the case of *Food Corporation of India and Others Vs. Bhanu Lodh and Others*, and *All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc.*, wherein the Hon"ble Apex Court has held that merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in *Shankarsan Dash Vs. Union of India*, , the relevant part of the judgment reads thus:--

"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 *The State of Haryana Vs. Subash Chander Marwaha and Others*, ; *Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others*, or *Jatinder Kumar and Others Vs. State of Punjab and Others*,)."

20. We may note that the relationship between the Government and UPSC is that of a principal and as agent. As we have already held in earlier paragraphs that the Government is entitled to requisition a second list from the UPSC and the UPSC is duty bound to provide the same to the Government. However, requisitioning of further candidates from the reserved list is not provided in Rule 16(5) nor has a requisition to this effect to be made. To the contrary, the counsel for the respondent No. 1 clearly stated that the practice that the some vacancies still remained to be filled up is in the context of Rule 16(4) only and not for any other unfilled vacancies. We have also taken note of the submissions made by the counsel for the respondent No. 1 that there is no practice of maintaining a wait list beyond the reserved list.

21. On perusal of facts and contentions of both the parties, we are of the considered view that recruitment process cannot become an unending process. The respondents are not legally bound to fill up all the notified vacancies. The State has a discretionary power to decide as to how many vacancies are to be filled up and there is no corresponding duty vested in the State to fill up all the vacant posts. There is no mandatory provision to suggest that more than one list is to be requisitioned wherein it is obligatory on the part of the respondents to fill up all advertised vacancies to the extent of exhaustion of the said vacancies. In the present case the recruitment process was completed with the result being declared pertinent to the posts and the completion of the same exhausts the recruitment process. The decision on the part of the respondent not to fill up all the advertised vacancies is neither arbitrary nor unreasonable and therefore, the instant Writ Petition is devoid of merit.

22. Resultantly, we find no infirmity in the order of the Central Administrative Tribunal which would require interference. The petition is without any merit and the same is accordingly dismissed.

23. C.M. Appl. No. 5253/2014 (Stay)

In view of the order passed in the writ petition, the present application is also dismissed.