

(2016) 03 SC CK 0037

In the Supreme Court Of India

Case No : Civil Appeal No. 2460 of 2016 (Arising out of SLP(C) No.8202 of 2015)

Union Public Service Commission

APPELLANT

Vs

Anand Devulapally and another

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Citation : (2017) AIR(SCW) 1510 : (2017) AIRSC 1510 : (2017) LIC 2162 : (2016) 3 LLN 28 : (2016) 3 Scale 489

Hon'ble Judges : Fakkir Mohamed Ibrahim Kalifulla;S.A. Bobde, JJ.

Bench : Division Bench

Advocate : K.B. Sounder Rajan and Shriya Rai Chauhan, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.

2. In this appeal preferred by the Union Public Service Commission, the challenge is to the order of the Division Bench dated 27.11.2014 passed in Writ Petition No.23340 of 2010, in and by which the Division Bench upheld the order of the Central Administrative Tribunal, Hyderabad Bench dated 28.7.2010 passed in O.A. No.640 of 2008. The issue pertains to selection for the post of Section Officer from the feeder category of Assistant on the basis of Limited Departmental Competitive Examination (for short, LDCE) held for the year 2004. In the open category, the number of vacancies ascertained was 299 and the number of candidates appeared was 591. Based on the examination results, applying the Rules, the appellant fixed the qualifying cut off marks for the written examination at 38. As many as 340 candidates qualified in the said examination. Based on the said written examination held and after assessing their merit qualification based on their ACRs, the select list was prepared. It came to light that out of the selected candidates 148 in numbers, who had competed in the previous year, i.e. 2003, got selected in that year as well as in the year 2004.

3. In regard to the said repeat candidates, an issue was brought before the Central Administrative Tribunal which resulted in an order passed on 19.9.2006 wherein the statement of the appellant was recorded to the effect that the Commission would declare the supplementary results against the repeat candidates i.e. the candidates who had been declared in two successive examinations, that the supplementary results shall be declared by the Commission strictly in the order of merit of the candidates. By recording the statement of the appellant, the Tribunal directed the appellant to confine the supplementary results against only repeat 148 candidates within four weeks from the date of communication of the order.

4. As directed by the Tribunal though the appellant declared the results pertaining to the 148 repeat candidates, a Contempt Petition came to be filed before the Tribunal in Contempt Petition No.81 of 2007. Before the Tribunal the appellant took the stand that after declaring the supplementary list pertaining to 148 candidates when re-evaluation of the merit of the remaining candidates in the open category for the year 2004 was made, it came to light that 29 candidates alone qualified by securing the cut off marks fixed for the open category candidates in respect of whom the results were declared for the year 2004. The Tribunal accepted the said stand of the appellant and held that no contempt was made out.

5. Nevertheless, a fresh original application was filed before the Tribunal in OA No.640 of 2008, wherein a prayer was made inter alia for a direction to the appellant to recommend 119 fresh next available candidates by reducing the cut off marks on the basis of LDCE, 2004. The Tribunal accepted the said claim of the respondents made in the O.A. and issued a direction as prayed for by asking the appellant to reduce the cut off marks and thereby enable the 119 candidates to be promoted to the post of Section Officer in the open category. The Division Bench by the impugned order having upheld the said order of the Tribunal, the appellant is before us.

6. We heard Mr. P.S. Patwalia, learned Additional Solicitor General of India for the appellant and Dr. K.B. Sunder Rajan, learned counsel appearing for the contesting private respondents. The learned counsel brought to our notice the relevant Rules pertaining to the selection to be made as provided in the Notification dated 3.7.2004. We are concerned with Rule 8 and Appendix, the relevant part of it reads as under:-

"8. (I) After the examination, candidates will be arranged by the Commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate; and in that order so many candidates as are found by the Commission to be qualified at the examination shall be recommended for inclusion in the select List for each category upto the required number.

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Note. - Candidates should clearly understand that this is a competitive and not a

qualifying examination. The number of persons to be included in each Select List on the result of the examination is entirely within the competence of Government to decide. No candidate will therefore have any claim for inclusion in the Select List on the basis of his performance in this examination as a matter of right.

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Appendix

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Part II.- Evaluation of record of service carrying a maximum of 100 marks of candidates:-

(i) who obtain such minimum qualifying marks in the written examination as may be fixed by the Commission in their discretion (for categories I, II, III and IX); and

(ii) who obtain such minimum qualifying marks in the written examination and Shorthand test as may be fixed by the Commission in their discretion (for categories IV, V, VI and VII).

There shall be minimum of 40% (forty percent) qualifying marks in the evaluation of record of service.

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8. The Commission have the discretion to fix qualifying marks in any or all the subjects at the examination."

(underlining is ours)

7. On behalf of the appellant, it was pointed out that after the examination it is for the appellant to arrange the candidates in the order of merit based on the aggregate marks for ascertaining their entitlement to be considered for selection and that such fixation of marks for determining the qualifying marks was also left to the discretion of the appellant as per Appendix Part-II (i). The learned Additional Solicitor General of India, therefore, pointed out that the appellant by taking into account the number of vacancies that occur every year vis-a-vis the number of candidates who appear in the examination in different category determine the qualifying cut off marks, and thereafter consider their ACRs. In the event of the candidates securing the minimum marks in the evaluation of record of service only those candidates are declared as successful for getting the promotion to the post of Section Officer.

8. As against the above submission, Dr. K.B. Sunder Rajan contended that while the above prescription of Rules as referred to by the appellant is not in controversy, in the case on hand for the year 2004 when as many as 148 repeat candidates got selected and appointed in the previous year of 2003 after declaration of results of the year 2004, in all fairness, the appellant should have made a fresh exercise of fixing the cut off marks once over again by taking into

account the performance of the newly added 148 candidates who participated in the LDCE, 2003. The learned counsel for that purpose also took us through the results relating to the selection/appointment of Section Officers between the years 2000 and 2008 and contended that depending upon the number of vacancies and number of competing candidates, the cut off marks always used to vary, that in the year 2001 when the cut off marks remained at 44.8, in the year 2006, 2007 and 2008 it had fallen down to 28.6 which had every co-relation to the number of candidates whose results in the written examination was considered. It was, therefore, contended that if after the accommodation of repeat candidates in the 2003 selection, when a consideration of the fresh 148 candidates in 2004 selection were made as per the direction of the Tribunal, the appellant ought to have made a fresh evaluation for the purpose of determining the qualifying cut off marks.

9. However, appealing the said submission may be, in the first blush we are unable to appreciate or countenance such a contention made on behalf of the respondents. As rightly pointed out by learned Additional Solicitor General, Part II of Appendix to the Rules read along with Rule 8 makes the position amply clear that it was for the appellant to fix the qualifying cut off marks in the written examination in order to ascertain the number of candidates who can be considered for evaluation of their ACRs for further ascertainment of their qualification on merits. The said Part-II (i) specifically states that the fixation of qualifying marks is left to the discretion of the Commission. The submission of the counsel for the respondent that after adjustment of the repeat candidates in the previous year's selection, a fresh exercise is to be carried out by the Commission for fixation of cut off marks is concerned, we do not find any support for the said submission under the Rules. When under the Rules once it is left to the discretion of the Service Commission to fix the qualifying cut off marks, it is axiomatic that all those who aspire to get selected to the post of Section Officer should qualify such cut off marks are fixed for the written examination. It will be immaterial, whether it is for the repeat candidates 148 or without the said number of repeat candidates in order for a candidate to get selected it can only be based on the qualifying marks fixed by the Commission.

10. We are not able to countenance the submission of the learned counsel for the respondent that whenever repeat candidates are accommodated in the previous year's selection, the Commission should redo the exercise of fixing the qualifying marks once over again. We are convinced that when once the qualifying cut off marks are fixed for the written examination for any particular year any candidate who aspire to get selected for promotion should necessarily satisfy that cut off marks and only thereafter there would be scope for considering his ACR for getting selected to the post. Any other conclusion will result in a serious anomaly of one set of selectees with a higher qualifying marks and another set of aspirants to get selected with a lower cut off marks. Such a situation cannot be allowed to prevail in the matters of selection for promotion to a post in one particular selection.

11. In such circumstances, the order of the Tribunal as well as that of the Division Bench in directing the Commission to reduce the cut off marks is without any intelligible criteria and without any challenge to the said exercise carried out by the Service Commission. We find that the said order of the Tribunal as well as that of the Division Bench cannot be sustained. We are, therefore, constrained to set aside the order of the Tribunal as well as that of the Division Bench and hold that there is no necessity for the appellant to redo the exercise and whomsoever who have been found successful in the selection based on the cut off marks fixed for the year 2004 alone can be promoted to the post of Section Officer and the direction of the Tribunal as well as the Division Bench is set aside.

12. With the above observations and directions this appeal stands allowed.