

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : December 20, 2010*

+ **W.P.(C) 8353/2010**

UNION OF INDIA Petitioner
Through: Mr.R.V.Sinha, Mr.R.N.Singh and
Mr.A.S.Singh, Advocate.

versus

SANJEEV KUMAR JHA & ANR. Respondents
Through: Mr.Aditya Ranjan, Advocate for R-1.
Mr.Naresh Kaushik, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Vide impugned judgment and order dated 4.10.2010, OA No.2694/2010 filed by respondent No.1 has been allowed with a direction that respondent No.1 be allocated Indian Revenue Service (Customs & Central Excise) as a General Category Physically Disabled (Hearing Impaired) candidate.

2. Relevant facts to be noted are that for the Central Civil Services Examination 2009, public notice inviting applications from eligible candidates was issued recording that applications be submitted between 6.12.2008 and 5.1.2009. It was intimated in the advertisement that the number of vacancies expected to be filled up are approximately 580. It

was further intimated that recruitment pursuant to the examination would be made to 23 services. Services identified suitable for Physically Disabled Category persons and as reserved were thereafter mentioned. Pertaining to 'Indian Revenue Service (Custom & Central Excise) Group A' it was indicated that 1 post in the category of 'Locomotor Disability' was identified. However, it was also indicated that for this service persons with Hearing Impairment and Locomotor Disability were identified as eligible. It was clearly notified that the number of vacancies disclosed as expected to be approximately 580 was liable to alteration. It be noted that vacancies finally filled up were 989 and with the result as against 13 vacancies reserved in the Physically Disabled Category, 30 became liable to be filled in this category and as a result as against only 1 post tentatively notified as allocable to a Physically Disabled Person having Locomotor Disability in the 'Indian Revenue Service (Custom & Central Excise) Group A' another post for a hearing impaired person became available to be filled up.

3. In the advertisement, it was clearly indicated to the candidates that they should fill up their preference for the service they choose to take. Multiple options could be opted for.

4. While filling up the form the petitioner did not indicate his preference for the 'Indian Revenue Service (Custom & Central Excise) Group A'.

5. When the result was declared respondent No.1 found himself ranked 869 and was allotted the Indian Railways Accounts Service Group-A, as per his option sought and eligibility determined. One K.Manoranjan Naik who was ranked two notches below respondent No.1 i.e. at rank 871, having

opted for 'Indian Revenue Service (Custom & Central Excise) Group A' was allotted the same in the category of a 'Hearing Impaired' person.

6. When he learnt that Sh.K.Manoranjan Naik who was 2 ranks below him was allotted the 'Indian Revenue Service (Custom & Central Excise) Group A', the petitioner approached the Tribunal vide OA No.2694/2010 alleging that in the advertisement issued, no post was shown as reserved for a 'Hearing Impaired' person and thus he did not opt for the said service. He claimed injustice being done to him stating that if the number of posts liable to be filled up got drastically increased from 580 to 989 it was the duty of the concerned officers to intimate said fact as also the fact of additional posts in different disciplines/services being reserved so that the beneficiaries could avail the benefit of increase in the number of posts.

7. The claim was opposed on the ground that large number of persons take the Central Civil Services Examination and for said reason it is not possible to contact individual aspirants, all of whom were clearly advised vide Note-1 in the advertisement to indicate their order of preference in the respective application form. Hardship of an individual was claimed to be subject to Administrative Convenience and the necessity of timely placement of persons in Civil Services since public good requires Civil Posts to be manned at the earliest and not lying vacant.

8. Vide Rule 2 of the Civil Services Examination Rules and the note thereto, it is stipulated as under:-

"2. A candidate shall be required to indicate his/her application form for the Main Examination his/her order of preferences for various services/posts for which he/she would like to be considered for appointment in case he/she is recommended for

appointment by Union Public Service Commission.

A candidate who wishes to be considered for IAS/IPS shall be required to indicate in his/her application form for the Main Examination his/her order of preferences for various State cadres for which he/she would like to be considered for allotment in case he/she is appointed to the IAS/IPS.

Note-1 – The candidate is advised to be very careful while indicating preferences for various services/posts. In this connection, attention is also invited to rule 19 of the Rules. The candidate is also advised to indicate all the services/posts in the order of preferences in his/her application form. In case he/she does not give any preferences for any services/post, it will be assumed that he/she has no specific preference for those services, if he/she is not allotted to any one of the services/posts for which he/she has indicated preference, he/she shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to services/posts in accordance with their preference.”

9. Allowing the claim of the respondent No.1 the Tribunal has reasoned as under:-

“6. The issue is really very simple. There was no indication that any post had been reserved for hearing impaired in the IRS (C&CE) in the advertisement of 6-12 December 2008. The argument of the learned counsel for the respondent-UPSC that in view of the Rule 2 quoted above it was incumbent on the applicant to give his preference for IRS(C&CE) is totally unconvincing. We cannot also accept the argument that the mere mention of the fact that the vacancies were liable to be altered gave enough reason to the Applicant to give his preference for all the services in anticipation of an increase in the vacancies and, therefore, in the posts reserved for the physically disabled. The only reasonable course of action would have been to communicate to all concerned that reservations had been introduced in certain posts, in which there was no reservation prescribed earlier. It would be extremely unjust to the candidates not to be informed about changes such as

these because their future could be crucially affected by the changes. The respondents have failed to justify their inaction in notifying the candidates about the change in the reservations for different categories of services, as the result of which the Applicant was denied the opportunity to apply for the reserved post for the hearing impaired persons in the IRS (C&CE).”

10. As per the Tribunal that argument of the respondents before it that in view of Rule 2 it was incumbent on the applicant to give preference for ‘Indian Revenue Service (Custom & Central Excise) Group A’ is totally unconvincing and that the Tribunal cannot accept the argument that the fact that the vacancies were liable to be altered gave enough reason to the applicant to state his preference for service in anticipation of an increase in the number of vacancies.

11. Suffice would it be to state that these are the conclusions and we find no process of reasoning.

12. The Tribunal has thereafter concluded that the only reasonable course of action would have been to communicate to all concerned that reservations had been introduced in certain posts and thereafter granted an opportunity to submit further options.

13. Now, concept of Administrative Convenience and Administrative Chaos resulting from or within a situation is a recognized branch of Service Jurisprudence. It is also settled law that where the right of an individual comes into conflict with a public interest, it is the latter and not the former which prevails.

14. We need not note large number of decisions of the Supreme Court pertaining to counselling and allocation of seats for Medical and Engineering Colleges where once a candidate is allocated a seat at a counselling he cannot claim right to a seat which falls vacant later on, on the ground he was more

meritorious and had the seat been available earlier he would have got the same. The reason is that where pursuant to an examination, allocations have to be done in different institutes, the process has to be an ongoing process and public good requires that students should join the respective institutes when the academic session begins. To uphold the right of the individual would set into motion a chain-reaction where the seat vacated by the said person would have to be offered to the person next in order of seniority and so on. Likewise, it has been accepted in Service Jurisprudence that Public Interest requires Civil Posts to be filled up at the earliest so that the Civil Servant is in place to serve the society and where the requirement of filling up the post within time comes into conflict with the merit-based right asserted by a candidate, the latter must yield to the former.

15. If claim of respondent No.1 is upheld, the necessary corollary would be K.Manoranjan Naik to be moved out and he would be entitled to be allotted a service as per his next preference, which in turn would require somebody else to be moved out and so on.

16. Thus, Administrative Convenience and Public Good to fill up the posts in various services at the earliest compel us to hold in favour of the petitioner and against respondent No.1.

17. On the issue of a right in favour of respondent No.1, suffice would it be to state that in the advertisement inviting applications it was clearly mentioned that the 580 vacancies notified were tentative and were likely to be revised. It was clearly indicated to the candidates to fill up their preferences. If the candidates were informed that the posts could be enhanced they ought to have been vigilant to anticipate the consequence of the posts being enhanced, and needless to state, one

consequence would be more posts available in the reserved categories. Indeed, K.Manoranjan Naik was cautious enough to fill up the preference for the 'Indian Revenue Service (Custom & Central Excise) Group A' and his action guides us that a reasonable person did understand as K.Manoranjan Naik did that there was a possibility of a post being available for a 'Hearing Impaired' person in the 'Indian Revenue Service (Custom & Central Excise) Group A'. If K.Manoranjan Naik could so act as a prudent person, we see no reason why respondent No.1 could likewise not act as a prudent person.

18. It is apparent that the Tribunal has been swayed by sympathy and has ignored that sometimes Administrative Convenience would be more dependable for finding a solution. Thus, we allow the writ petition and set aside the impugned order dated 4.10.2010 passed by the Tribunal and dismiss OA No.2694/2010.

19. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

December 20, 2010
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