

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 15325 of 2010 (Z)

AGAINST THE ORDER IN OA 237/2008 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 20-08-2009

PETITIONER:

T.K. HARIDAS, AGED 45 YEARS,
S/O (LATE) T.G. KRISHNANKUTTY,
SENIOR ENGINEERING ASSISTANT,
DOORDARSHAN KENDRA, KUDAPPANAKKUNNU PO, TRIVANDRUM,
RESIDING AT: "DHANYA BHAVAN",
KARUR, NEAR LAKSHMI VILASAM HIGH SCHOOL, POTHENCODE PO,
TRIVANDRUM DISTRICT.

BY ADV. SRI. T.C. GOVINDA SWAMY

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF INFORMATION & BROADCASTING, NEW DELHI.
2. PRASAR BHARATHY BROADCASTING CORPORATION OF INDIA,
NEW DELHI, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.
3. THE DIRECTOR GENERAL,
ALL INDIA RADIO, AKASHAVANI BHAVAN,
NEW DELHI.
4. THE CHIEF ENGINEER (TRAINING) TECHNICAL,
ALL INDIA RADIO AND DOORDARSHAN,
KINGSWAY, DELHI.
5. THE DIRECTOR,
DOORDARSHAN KENDRA,
KUDAPPANAKKUNNU, TRIVANDRUM.

BY ADV. SRI. N. NAGARESH, ASSISTANT SOLICITOR GENERAL
SMT. JISHAMOL CLEETUS, CGC
SRI. S. SUJIN SC FOR DOORDARSHAN, KENDRA, TVM
SRI. N. N. SUGUNAPALAN, SC, DOORDARSHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27.5.2015,
THE COURT ON 10-07-2015, DELIVERED THE FOLLOWING:

APPENDIX IN WPC.15325/2010

PETITIONER'S EXTS:

- EXT.P1: COPY OF ORDER IN OA.237/08 DT.20.8.09 RENDERED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.
- EXT.P2: COPY OF O.A.NO.237/2008 DT.5.5.2008 ALONG WITH ITS ANNEXURES FILED BEFORE THE TRIBUNAL.
- EXT.P3: COPY OF REPLY STATEMENT FILED BY RESPONDENTS 2 TO 5 DT.20.6.2008 IN OA.237/2008 BEFORE THE TRIBUNAL.
- EXT.P4: COPY OF MISC.APPLICATION PRODUCING CERTAIN DOCUMENTS DT.10.6.09 IN O.A.237/08 BEFORE THE TRIBUNAL.

RESPONDENTS' EXTS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

W.P.(C)No.15325 of 2010

DATED THIS THE 10th DAY OF JULY, 2015

JUDGMENT

Anil K.Narendran, J.

The petitioner is the applicant in O.A.No.237 of 2008 on the file of the Central Administrative Tribunal, Ernakulam Bench. The said application was filed seeking an order to set aside Annexures A5 and A6 circular memorandum dated 10.3.2008 and 4.4.2008 respectively of the 4th respondent and seeking an order directing the respondents to fill up the post of Assistant Engineers according to the seniority in the examination and also in the notified vacancy of 135, before conducting any Departmental Competitive Examination pursuant to Annexure A4 office order dated 6.2.2008 of the 3rd respondent and Annexure A5 circular memorandum dated 10.3.2008 of the 4th respondent. He has also sought for an order directing the respondents to promote him as Assistant Engineer pursuant to his successful completion of the examination and according to his rank in the general quota and an order directing the respondents to consider Annexure A7 representation submitted by him and pass

appropriate orders thereon. The Tribunal by Ext.P1 order dated 20.8.2009 disposed of O.A.No.237 of 2008 with certain directions. The Tribunal in Ext.P1 observed that, even though none of the reliefs sought for by the applicant can be allowed, the argument of the learned counsel for the applicant that Annexure R1 Gist of ACR under 75% (Limited Departmental Competitive Examination quota) has been prepared in violation of the principles of natural justice as laid down by the Apex Court in **Devdutt v. Union of India and others (AIR 2008 SC 2513)** cannot be ignored. Admittedly, the applicant was graded as 'good' for three years and 'very good' for two years during the assessment period between 2000-01 to 2004-05. Though, those gradings were not adverse to him as they were not below the benchmark, there is no denial of the fact that the applicant was denied the right of making representations against the low grading granted to him. Therefore, the Tribunal directed the respondents to communicate all the ACRs of the applicant from 2000-01 to 2004-05 and give him an opportunity to make individual representations against them. On receipt of such representations, the competent authority shall consider them in

accordance with the Rules and take a decision whether those gradings were warranted in his case or whether they are to be upgraded. A decision in this regard shall be taken by the competent authority within a period of two months from the date of receipt of such representations, under intimation to the applicant. The Tribunal has made it clear that, if the competent authority decides to upgrade the petitioner's ACRs to higher grades, a review DPC shall be held to assess his ACRs and grant him marks accordingly within two months thereafter. Consequently, his position in the select list prepared on the basis of the examination conducted in terms of Annexure A1 circular memorandum dated 20.4.2007 shall also be reviewed and if the case of the applicant comes within the zone of 51 selected candidates, he shall also be given promotion to the post of Assistant Engineer from the date his junior has been given such promotion, with all consequential benefits, except arrears of salary and allowances, within two months thereafter.

2. It appears that pursuant to Ext.P1 order passed by the Tribunal, the applicant was communicated with the ACRs for the period from 2000-01 to 2004-05 and he was also given an

opportunity to make individual representations against the same. On receipt of such representations, the competent authority rejected the same and the decisions taken thereon were also communicated to him.

3. The main contention raised in this Writ Petition, in order to challenge Ext.P1 order passed by the Tribunal is that, while disposing O.A.No.237 of 2008, the Tribunal did not consider the basic questions as to whether the respondents were justified in promoting only 51 persons as against 131 vacancies notified and also whether they were justified in re-notifying the very same vacancies within a short gap of one month, that too, while persons like the applicant who are eligible and qualified to be promoted are available in the list. Therefore, the petitioner/applicant has filed this Writ Petition seeking a writ of certiorari to quash Ext.P1 order passed by the Tribunal in O.A.No.237 of 2008 insofar as it observes in paragraph 8 that "none of the reliefs sought for in the O.A. can be allowed" and seeking an order to allow the said O.A. as prayed for.

4. On 19.5.2010, this Court admitted the Writ Petition on file and the learned Assistant Solicitor General of India has taken

notice for the 1st respondent and the learned Standing Counsel for Prassar Bharathi Broadcasting Corporation of India has taken notice for respondents 2 to 5.

5. On 18.10.2010, a counter affidavit has been filed on behalf of the respondents contending, inter alia, that the petitioner applied under the 75% Limited Departmental Examination quota (LDCE quota) for promotion from the post of Senior Engineering Assistants to the post of Assistant Engineers. The number of vacancies notified in the circular for written examination are always tentative and are subject to change and therefore, the number of vacancies mentioned in Annexure A1 circular memorandum, dated 20.4.2007 were tentative, which was clearly mentioned in Para.2 therein. At the time of DPC, the exact number of vacancies are being calculated upto 31st March of the vacancy year, for which DPC is being held. The petitioner who was ranked 31st in the written examination was considered for promotion by DPC. The weightage of written examination was 70% and that of ACRs was 30%. The candidates like the petitioner, who secured higher marks in the written examination were not finally promoted because the promotions are based on

the final score, i.e., the sum total of the marks in the written examination plus ACR marks. The respondents have also stated that, as per Ext.P1 order of the Tribunal in O.A.No.237 of 2008, the ACR gradings of 5 years were communicated to the petitioner and the representations submitted by him were considered. The decision taken thereon was also communicated to the petitioner, within the stipulated period. Therefore, according to the respondents, the petitioner is not entitled for any of the reliefs prayed for.

6. Heard arguments of the learned counsel for the petitioner/applicant, the learned Assistant Solicitor General of India for the 1st respondent and also the learned Standing Counsel for respondents 2 to 5.

7. We have considered the rival submissions made at the Bar.

8. The only issue that arises for consideration in this Writ Petition is as to whether the respondents are justified in promoting only 51 persons as against the 131 vacancies notified in Annexure A1 circular memorandum dated 20.4.2007 and as to whether the respondents are justified in re-notifying the

vacancies in Annexure A5 circular memorandum dated 10.3.2008, within a short gap of one month from Annexure A4 order dated 6.2.2008, while persons like the petitioner, who are eligible and qualified to be promoted, are available in the list.

9. The 3rd respondent issued Annexure A1 circular memorandum dated 20.4.2007 for conducting Limited Departmental Competitive Examination (LDCE) for the promotion of Senior Engineering Assistants to the grade of Assistant Engineers against 2006-07 vacancies in the Prassar Bharathi Broadcasting Corporation of India. Going by Para.3 of Annexure A1 circular memorandum, the number of vacancies was approximately 131, which includes 85 vacancies under general category, 16 vacancies reserved for scheduled castes and 30 vacancies reserved for scheduled tribes. It has also been stated in Annexure A1 that, the number of vacancies mentioned therein is tentative, which is subject to change. The petitioner appeared for the written examination and secured 63.1% marks in the written examination and viva voce put together and going by Annexure R1 gist of ACR under 75% LDCE quota prepared after summing up the total marks secured in the written examination,

viva voce and ACRs. According to the petitioner, when 85 vacancies out of the 131 vacancies notified in Annexure A1 are under general category, the petitioner who secured 62nd position should have been placed and promoted against one of those vacancies under general quota. However, by Annexure A4 order dated 6.2.2008 of the 3rd respondent, only 51 persons were promoted against the total notified vacancy of 131. Further, Annexure A4 order was followed by Annexure A5 circular memorandum dated 10.3.2008, once again notifying 101 vacancies of Assistant Engineer against the 75% LDCE quota, which includes 68 vacancies under general category, 13 vacancies reserved for scheduled castes and 20 vacancies reserved for scheduled tribes. According to the petitioner, the respondents did not publish a panel of selected candidates either prior to Annexure A4 or thereafter and Annexure A7 representation of the petitioner dated 3.4.2008 regarding his non-promotion against one of the vacancies notified in Annexure A1 also remained unresponded to. It was in such circumstances, the petitioner/applicant moved the Tribunal in O.A.No.237 of 2008, seeking various reliefs.

10. Respondents 2 to 5 filed Ext.P3 reply statement contending, inter alia, that the number of vacancies notified in the circular for written examination are tentative and subject to change. As such, the number vacancies mentioned in Annexure A1 circular dated 20.4.2007, notifying 131 vacancies for the year 2006-07 was also tentative and the exact number vacancies were calculated upto 31st March of the vacancy year for which DPC was met. The petitioner was ranked 31st in the written examination and was considered for promotion by DPC and the weightage of written examination was 70% and that of ACRs was 30% and that the result was prepared by arriving at the final score, as per the existing recruitment rules.

11. On 2.4.2014, after hearing the parties for some time, this Court passed the following order.

“ Heard the learned counsel for the parties of some time. We are unable to take it that an institution of governance could say that there were 131 vacancies tentatively and, ultimately, turn round to say that only 51 vacancies were available. The word 'tentative' and similar other words, including the word 'approximate' has fallen for consideration at the hands of the judiciary in different realms of jurisdiction. Those terms also

carry a common sense point of view that what is treated as tentative cannot be oblique and away from the reality. The learned counsel for the establishment seeks adjournment. Post in the petition list on 23.5.2014.”

12. Since no details were forthcoming from the respondents, regarding the actual number vacancies for the year 2006-07, this Court by order dated 18.7.2004 directed the 3rd respondent to file an affidavit to bring on record the actual number of vacancies and in the said order it was made clear that, if the affidavit is not filed on or before 4.8.2014, the 3rd respondent shall personally present before this Court.

13. Later, by order dated 4.8.2014, this Court granted two weeks' time to the respondents to file an additional counter affidavit, giving the details of the vacancies, along with the relevant supporting materials.

14. On 6.8.2014, the 5th respondent filed an affidavit in compliance of the earlier order passed by this Court on 18.7.2014. The stand taken by the 5th respondent in the aforesaid affidavit is that, though DPC was convened to fill up 82 vacancies notified for the year 2006-07, but only 51 vacancies were filled up under the departmental examination quota.

According to the 5th respondent, the practice of notifying large number of vacancies than the exact vacancies which are subsequently filled up, has been in existence in the Department and is continued to be followed. The practice was neither introduced for the first time in 2007 nor was this done with the intention of denying the promotion due to the petitioner. Though the petitioner had in fact fared quite well in the written examination, being ranked 31st, his ACR gradings were not good enough. It was also stated in the aforesaid affidavit that, for the year 2004-05, 119 vacancies were notified and for the year 2008-09, 107 vacancies were notified. Since the 5th respondent was unable to collect the details of the vacancies filled up for the years stated above, it was stated that, the same will be produced before this Court if some more time is granted. Therefore, it was prayed that, the 5th respondent may be given some more time to produce the details of the exact vacancies filled for the above years.

15. Later, the 5th respondent filed another affidavit dated 14.8.2014, furnishing the details of the vacancies notified for the year 2004-05 to 2008-09, and the details furnished in Para.2 of

the aforesaid affidavit is extracted hereunder:

Year	<i>Vacancy notified</i>	<i>Total vacancies</i>	<i>LDCE Quota</i>	<i>Promotion Quota</i>	<i>Post filled</i>	<i>Promotion Quota</i>
					<i>LDCE Quota</i>	
2004-05	119	119	89	30	86	29
2005-06	83	105	85	20	63	16
2006-07	131	82	65	17	51	13
2007-08	135	135	101	30	87	27
2008-09	107	107	68	39	59	15
2009-10 to till date		No vacancies have been notified				

Relying on the particulars furnished as above, the learned Standing Counsel for respondents 2 to 5 would contend that, though 119 tentative vacancies were notified for the year 2004-05, only 115 vacancies (86 under LDCE quota and 29 under promotion quota) were filled up as actual vacancies. For the year 2005-06, 83 vacancies were notified, but there were 105 actual vacancies out of which only 79 vacancies (63 under LDCE quota and 16 under promotion quota) were filled up. In the year 2006-07, 131 vacancies were notified, but there were only 82 vacancies, out of which only 64 vacancies (51 under LDCE quota and 13 under promotion quota) were filled up. In the year 2007-08, 135 vacancies were notified, but only 114 vacancies (87

vacancies under LDCE quota and 27 vacancies under promotion quota) were filled up. Finally, in the year 2008-09, 107 vacancies were notified, but only 74 vacancies (59 under LDCE quota and 15 under promotion quota) were filled up. Thus, according to the learned Standing Counsel, it is very much evident that the practice of notifying large number of vacancies than the exact number of vacancies which are being filled up subsequently has been in existence in the Department and is continued to be followed. The said practice was neither introduced for the first time in the year 2007 nor was this done with the intention of denying the promotion due to the petitioner.

16. As far as the aforesaid affidavit filed by the 5th respondent dated 14.8.2014 (a copy of which was made available to us by the learned Standing Counsel for the respondents) is concerned, the same was not seen incorporated in the file and on a query made by us, the Registry has reported that, the aforesaid affidavit filed by the 5th respondent was received in the Filing Section and was noted as defective (vide D.No.14275/14-notice dt.20.8.2014) and the same was collected by the Advocate Clerk on 29.8.2014. Thereafter, the same was never re-presented

after curing the defect.

17. From the pleadings and materials on record, it is not in dispute that by Annexure A1 circular memorandum, the 4th respondent notified 131 vacancies of Assistant Engineers for the year 2006-07 for promotion from the post of Senior Engineering Assistants, by conducting Departmental Competitive Examination. Annexure A1 circular states that the number of vacancies mentioned therein is tentative which will be subject to change. After conducting the process of selection, the 4th respondent by Annexure A4 promoted only 51 persons as against 131 vacancies notified and going by the pleadings on record, the respondents are justifying their action mainly contending that the actual number of vacancies for the year 2006-07 alone were filled up by Annexure A4 order dated 6.2.2008, by promoting the candidates included in the select list. Though the respondents would contend that, promotions were effected only against the actual number of vacancies for the year 2006-07, they have not chosen to produce even a scrap of paper to substantiate their contention in this regard.

18. In order dated 2.4.2014, after hearing the learned

counsel for parties for some time, this Court observed that the word 'tentative' and similar other words, including the word 'approximate' carry a common sense point of view that what is treated as 'tentative' cannot be oblique and away from the reality. At that juncture, the learned Standing Counsel for the respondents sought adjournment, and thereafter a vague and evasive affidavit dated 2.8.2014 was filed on 6.8.2014. Later, on the request made by the learned Standing Counsel for the respondents, this Court by order dated 4.8.2014 granted two weeks time to file additional counter affidavit giving the details of the vacancies, along with the relevant supporting materials.

19. When this Court was dissatisfied with the affidavit filed by the 5th respondent dated 2.8.2014, a request was made by the learned Standing Counsel for the respondents seeking time to produce the materials and accordingly, the case was removed from the hearing list with a direction to post it after one month. Thereafter, the respondents have not chosen to produce any materials in support of their contention that the actual number of vacancies for the year 2006-07 was only 51. But, from the details of the vacancies notified for the years 2004-05 to 2008-09

furnished in the affidavit of the 5th respondent dated 14.8.2014, it could be seen that out of the 82 vacancies shown as 'total vacancies' (i.e., available vacancies) for the year 2006-07, (65 vacancies under LDCE quota and 17 under promotion quota), the respondents filled up only 64 vacancies (51 vacancies under LDCE quota and 13 vacancies under promotion quota) from persons included in Annexure R1 Gist of ACR under 75% LDCE quota. The said fact makes it abundantly clear that out of the 65 vacancies under LDCE quota, 14 vacancies were not filled up from persons included in Annexure R1 Gist.

20. The materials on record clearly indicate that immediately after Annexure A4 order dated 6.2.2008 of the 3rd respondent filling up 51 vacancies out of the vacancies notified in Annexure A1 for the year 2006-07, the 4th respondent issued Annexure A5 circular memorandum dated 10.3.2005, notifying 101 tentative vacancies for the year 2007-08, which consists of 68 vacancies under general category, 13 vacancies for scheduled castes and 20 vacancies for scheduled tribes. Now, going by the stand taken by the 5th respondent in his affidavit dated 14.8.2014, there were 85 vacancies for the year 2006-07, out of

which 65 vacancies were under LDCE quota and 17 vacancies under promotion quota. Similarly, there were 135 vacancies for the year 2007-08, out of which 101 vacancies were under LDCE quota and 30 vacancies under promotion quota, out of which 87 vacancies were filled up under LDCE quota and 27 vacancies were filled up under promotion quota. We notice that, the respondents have no explanation whatsoever for not filling up all the 65 vacancies available under LDCE quota for the year 2006-07 from those included in Annexure R1 Gist of ACR under 75% LDCE quota, in which event the petitioner, who is Sl.No.62 in that list, would have got promotion. But, for reasons best known to the respondents, only 51 vacancies were filled up by Annexure A4 office order issued by the 3rd respondent. Therefore, the conclusion is irresistible that, the remaining 14 vacancies, in which candidates up to Sl.No.65 in Annexure R1 list could have been promoted, were filled up during the subsequent year, i.e., 2007-08, thereby denying the legitimate right of the petitioner/applicant and others. We also notice that, in spite of the order passed by this Court dated 4.8.2014 the respondents have not chosen to file an additional affidavit giving the details of

the vacancies, along with supporting materials. In the absence of any such materials, we find absolutely no merit in the contention of the respondents that, the actual vacancy for the year 2006-07 was only 82, though 131 vacancies were notified in Annexure A1 circular memorandum.

21. In such circumstances, the finding of the Tribunal in Ext.P1 order that, none of the reliefs sought for in the O.A. can be allowed, cannot be sustained. We hold that the respondents are legally bound to fill up all the available vacancies in the post of Assistant Engineer under LDCE quota for the year 2006-07, including the 65 available vacancies under that quota, already admitted in the affidavit filed by the 5th respondent dated 14.8.2004, from the candidates included in Annexure R1 Gist of ACR under 75% LDCE quota prepared pursuant to Annexure A1 Office Memorandum dated 20.4.2007, according to their rank in Annexure R1. The competent among the respondents shall determine the actual number of vacancies in the post of Assistant Engineer under LDCE quota for the year 2006-07, in addition to the 65 available vacancies under that quota, already admitted in the affidavit referred to above, within a period of one month from

the date of receipt of a certified copy of this judgment, with specific reference of the date of occurrence of vacancy, and thereafter fill up those vacancies by promoting the petitioner/applicant and others included in Annexure R1 Gist of ACR under 75% LDCE, quota according to their rank in Annexure R1. The entire exercise in this regard shall be completed within a period of three months from the date of receipt of a certified copy of this judgment.

In the result, this Writ Petition is disposed of allowing O.A.No.237 of 2008 on the file of the Central Administrative Tribunal, Ernakulam Bench, to the extent indicated above.

No order as to costs.

Sd/-

P.R.RAMACHANDRA MENON , JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

dsn