

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

% **Date of Decision: 16th February, 2021**

+ **W.P. (C) 1231/2021**

UNION PUBLIC SERVICE COMMISSIONPetitioner

Through: Mr. Naresh Kaushik, Advocate

Versus

GRISHMA GOYAL & ANR.Respondents

Through: Mr. Abhay K Behera and
Mr. Sanjeev Goyal, Advocates for
R-1

Mr. Avnish Singh, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

ASHA MENON, J

W.P. (C) 1231/2021

1. The petition was heard by way of video conferencing.
2. This petition has been filed by the Union Public Service Commission (for short, "UPSC") being aggrieved by the judgment and order dated 8th October, 2020 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") allowing the O.A. No.1308/2020 filed by the respondent No.1 entitled as *Grishma Goyal v. Union Public Service Commission and Anr.*.
3. The undisputed facts are that the petitioner/UPSC had conducted

the examination known as the 'Indian Economic Service Examination 2019' for filling up of 32 vacancies (14-General; 3-EWS; 8-OBC; 5-SC and 2-ST) in the Junior Time Scale. The last candidate in the unreserved category recommended for appointment by the petitioner/UPSC had secured 547 marks, which were the same marks obtained by the respondent No.1 herein. By applying the rule of tie-breaking as evolved by the UPSC itself, apparently since inception of the examinations held by the UPSC, the respondent No.1 lost out to Ms.Saumya Gautam.

4. The respondent No.1, being aggrieved by her non-selection, followed it up with the Finance Ministry by filing a representation dated 10th February, 2020 seeking appointment against any vacancy caused by a recommended candidate not joining. The Ministry of Finance, Department of Economic Affairs vide letter dated 7th August, 2020 informed the Commission that Ms.Sumedha Pandey had not joined and that against the said vacancy, since the respondent No.1 had made a representation, her candidature may be examined as per Rules. The petitioner/UPSC declined to do so vide their letter dated 4th September, 2020 on the ground that there was no provision of waiting-list under the Rules of the Indian Economic Service Examination 2019.

5. The respondent No.1 then filed an O.A. No.1308/2020 before the Tribunal which was allowed and directions were issued to the UPSC to forward the profile of the respondent No.1 to the Ministry in case she was found to be next in the merit after the list of 32 candidates, within two weeks and further steps be taken thereupon within two further weeks.

6. Learned counsel, Sh. Naresh Kaushik appearing for the petitioner/UPSC submitted that the Tribunal had erred in allowing the

O.A. of the respondent No.1 inasmuch as it overlooked the fact that the appointment to the Indian Economic Service was through an All India Examination governed by the statutory examination rules and administrative instructions could not supersede them. It was also argued that the learned Tribunal had erred in applying the O.M. dated 14th July, 1967 issued by the Department of Personnel and Training (for short, DoP&T) as it was applicable only for recruitment through open exams which are not necessarily held annually and which are neither structured nor governed by or conducted under the statutory exam rules.

7. Learned counsel contended that there was no reserved list/waiting-list that was required to be maintained, and relied upon judgment of this Court in *Shashi Kant Singh v. Union of India & Ors.* 2014 SCC OnLine Del 1696 and urged that this judgment rather than the judgment of the Supreme Court in *Manoj Manu and Another v. Union of India and Others*, (2013) 12 SCC 171 ought to have been followed by the Tribunal as the latter decision was completely inapplicable and distinguishable on facts and law.

8. The learned counsel, Sh. Abhay K Behera appearing for the respondent No.1 submitted that the rule of “tie-breaking” was a rule created by the UPSC and was not, by the same yardstick, a statutory rule. Furthermore, in the present case, the last candidate had obtained the same marks as the respondent No.1 and this was not a case where a vacancy had arisen as a “fresh vacancy” after all candidates had joined for some reason such as resignation or promotion. Here was a case where a candidate did not join and the respondent No.1 had acted timely in making her representation as she had cleared the selection on the basis of

marks obtained by her.

9. We have heard both the counsel and have perused the record. We are unable to agree with the learned counsel for the petitioner/UPSC that the learned Tribunal had erred in following the judgment of the Supreme Court in *Manoj Manu (supra)*. In *Manoj Manu (supra)*, the Limited Departmental Competitive Examination-2005 (for short, “LDCE”) had been held for the promotional post of Section Officers and a requisition for 184 general category posts by the DoP&T had been sent. The UPSC recommended 184 candidates in two lots, one for 141 candidates and the other for 43 candidates. Out of the said 43, 06 did not join and therefore, the DoP&T sent a letter of requisition for 06 general category vacancies. The UPSC recommended only three from out of the reserved list maintained by it. The appellants before the Supreme Court contended that they had secured 305 marks, which were the same as secured by another candidate who was recommended by the UPSC in the supplementary list candidates.

10. In this background, the Supreme Court, accepting the contention of the appellants before it, based on Clause 4(c) of the O.M. dated 14th July, 1967, rejected the contention of the UPSC that no supplementary list was issued except for two categories of cases, namely, ‘repeat’ and ‘common’ candidates. The Supreme Court had drawn a distinction between two situations, one in which persons who were initially appointed and who had joined as Section Officers, but thereafter had resigned/left/promoted, thereby creating vacancies again and the situation where, out of 184 persons recommended, 06 persons did not join at all, and found no reason or justification on the part of the UPSC not to send the names when

candidates were available in the reserved list, on the basis of examination already held and the DoP&T had approached UPSC within a “reasonable time”. It also observed that it was not a case where government had decided not to fill up further vacancies but rather, contrary to the requisition sent by the DoP&T, the UPSC did not send 06 names for the remaining vacancies.

11. The relevant portion of the O.M. dated 14th July, 1967 reads as under: -

“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.”

12. The Supreme Court found this O.M. to be based on sound logic, predicated on public interest and saving of public expenditure. It also observed that exclusion of persons like the appellants before it resulted in discrimination, as one of those candidates who were recommended by the UPSC when the DoP&T sent a requisition for 06 candidates, had the same marks as the appellants who were left out even when the vacancies were available. The facts in the case of **Manoj Manu (supra)** have been referred to in detail only to show the striking similarity between the facts

of that case and the present one.

13. The decision of this Court in *Delhi Subordinate Services Selection Board v. Sanjeev Kumar*, 2014 SCC OnLine Del 4497 is even more close to the fact situation in the present case. In that case also, the Tribunal had issued a direction to the DSSSB that in the event of an unreserved candidate failing to join the post, the respondent before the High Court should be considered for the post of PGT (Political Science). The DSSSB had claimed that the respondent/candidate could not be taken in as there was no wait-list maintained. Nevertheless, the Division Bench of this Court in view of the circumstances that only one applicant/candidate was sought to be accommodated, who was equal in merit, dismissed the writ petition filed by the DSSSB against the orders of the Tribunal.

14. In contrast, the facts of the case in *Shashi Kant Singh (supra)*, relied upon by the petitioner/UPSC, are very different from the facts of the present case. There was a time-line noticed by the court, namely, that *Shashi Kant Singh* had claimed appointment on the basis of an exam held in 2011, which was for the Central Armed Police Forces (CAPFs), and claimed the appointment on the basis of a reserved list, but the court found that there was no occasion for recommendation of a person on the reserved list as the rules did not permit/provide for filling up of posts falling vacant due to the non-joining of selected candidates or on account of resignation, within a period of one year from the date of notification of the reserved list. In the present case, the appointment is sought to a civil post in the Indian Economic Service and the O.M. dated 14th July, 1967 provides for situations where vacancies have arisen on account of non-joining of candidates, who were otherwise found successful in the

selection process. Furthermore, in the present case, the representation of the respondent No.1 herein was of 10th February, 2020 and the letter of the Department was of 7th August, 2020, which clearly discloses that there was no delay in seeking a recommendation from the UPSC.

15. There is no denial of the fact that the last candidate selected in the Indian Economic Service Examination-2019 had obtained 547 marks, which were the same as obtained by the respondent No.1 before us. She was denied appointment on the basis of a “tie-breaking” rule evolved by the UPSC, which has not been shown to be statutory in nature. It is only an administrative rule to facilitate the selection process where candidates had obtained the same marks in the written exam and interview. We therefore, do not find any force in the contention of the learned counsel for the petitioner/UPSC that the O.M. dated 14th July, 1967, being administrative in nature, cannot govern the UPSC for that reason as it relates to selections made on the basis of marks obtained in exams conducted by the UPSC.

16. The principle that obtains in the O.M. dated 14th July, 1967 is salutary, as observed by the Supreme Court, as it balances the equities between the two groups of persons, to seek appointment to vacancies that occur after the exam, one group being those who had cleared the current exam and were otherwise qualified but could not be appointed as all posts were filled up, and the other being those who seek future selection to posts through exams yet to be held.

17. In the present case, as in the case of *Manoj Manu (supra)*, when the Department of Economic Affairs had written to the UPSC that the case of Ms.Grishma Goyal be examined in the light of the refusal to join

by another successful candidate, the UPSC ought to have, without hesitation, recommended the name of the respondent No.1. Instead, by taking shelter in the phrase “as per the relevant rules by the Commission” and claiming that because they do not have a wait-list, the rules do not permit the appointment of the respondent, they unjustly rejected her claim. This stand of the UPSC is unacceptable, particularly when a candidate with the same marks had been appointed on the basis of their own rule of “tie-breaking” and the notified vacancies would not have been exceeded by appointment of the respondent as a vacancy had arisen due to non-joining of another successful candidate, and there was no-one else over whom the respondent would have stolen a march as admittedly, she is as meritorious as the last person selected.

18. We find no cause to interfere with decision of the learned Tribunal directing the UPSC to forward the profile of the applicant to the Ministry. The appeal is accordingly dismissed with further direction to the petitioner/UPSC to ensure that all formalities for the appointment of the respondent No.1 are completed within two weeks from the date of this judgment.

19. The judgment be uploaded on the website forthwith. Copy of the judgment be also forwarded to the learned counsel through e-mail.

ASHA MENON, J

MANMOHAN, J

FEBRUARY 16, 2021/s