UNION OF INDIA AND ORS. A

v.

SHRI PARMANAND

AUGUST 19, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.] B

Combined Services Examination Rules, 1989 : Rule 15 (As it stood before its amendment in 1990).

Service Law—Selection—Allocation of Department—Respondent appointed as Junior Engineer in C.P.W.D.—Later selected as Assistant Engineer by U.P.S.C.—Service Rule in vogue providing that selected candidate be appointed and adjusted against existing vacancies in the Department in which he was working—Direction given by Tribunal to consider absorption of respondent in CPWD held right—Held amendment of rule does not take away candidate's right under the unamended rule. C D

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 18256 of 1996.

From the Judgment and Order dated 23.1.96 of the Central Administrative Tribunal, Delhi in O.A. No. 1565 of 1991. E

P.P. Malhotra, A.S. Bhasme and Arvind Kr. Sharma for the Petitioners.

The following Order of the Court was delivered : F

The respondent was appointed as a Junior Engineer in CPWD on the basis of result of the competitive examinations held by the Director General (Works) on March 1, 1977. Later, as a result of the recruitment by the U.P.S.C. in the year 1982, the respondent was selected as Assistant Engineer and was appointed in that capacity by the Director General (Works), CPWD by proceedings dated July 14, 1987. The question arose : whether he would be entitled to be absorbed in the C.P.W.D. where he, admittedly, has worked for 18 years or be allotted to other department. The respondent has relied upon Rule 15 of the Rules of the Combined Service Examination Rules, 1989 (for short, the "Rules") which reads as follows : G H

A "Departmental candidates will, however be first considered for appointment to service/posts in their own department and only in the event of non-availability of vacancies therein or medical unfitness of such candidates for the services/posts under their own departments, they shall be considered for allotment to the services/posts in other Ministries/Departments on the basis of preferences expressed by them."

Relying upon that Rule, the Tribunal in the impugned order dated January 23, 1996 made in O.A. No. 1565 of 1991 directed the petitioner to do as under :

C "These four candidates were Sarvshri Prakash Rawat, A.K. Das, Mathura Prasad and Ravi Amrohi Learned counsel for the applicant has made a statement before us that the last named candidate, Shri Ravi Amrohi, whose rank was 258 left the department even though he had initially accepted the offer of appointment. If that be the position, then it would be possible to adjust the applicant against his vacancy. Accordingly, the respondents are directed to adjust the applicant against the vacancy of Shri Ravi Amrohi and in case Shri Ravi Amrohi is still in service then they should adjust the applicant against the next available vacancy with all consequential benefits as regards seniority. The appeal is accordingly allowed. There will be no order as to costs."

It is contended for the petitioners that the intention of the Government was that such of the candidates who have been in the department but secured higher ranking should be adjusted in the existing vacancies in the order of merit. If candidates do not come up in the merit, they have to be adjusted in other departments. Since the respondent had secured 295th rank as against others who were also similarly selected as reserved candidates, the respondent cannot get adjusted and appointed in CPWD. We find no force in the contention. It is true that as per list-annexure III his name was downgraded as against others whose names found place at Sl. Nos. 259 and thereafter. But the reading of the list would indicate that the candidate who secured higher merit position than the respondent had been allotted in the order of merit to CPWD. In that behalf they relied upon the rule as amended in 1990 and sought to support the action taken thereunder. The Tribunal has rightly found that as on the date Rule 15 of the

Rules was in vogue which envisages that when the recruitment comes to be made and candidate is duly selected, he should be appointed and adjusted also in the vacancies existing in the department in which he had worked. It clearly indicates that the candidates working in the respective departments are first required to be adjusted unless there is no vacancy existing or they are found medically unfit to hold that post. In that event, they are required to be adjusted in other departments. The subsequent amendment does not have any effect of taking away his right to be adjusted when the Rule was in vogue. The Tribunal was, therefore, right in giving direction as indicated above.

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The special leave petition is accordingly dismissed.

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T.N.A. Petition dismissed.