

Union of Public Service Commission

Vs

Gaurav Dwivedi and Others

Civil Appeal No. 3177 of 1999

(B. N. Kirpal, S. R. Babu JJ )

13.05.1999

ORDER

1. Leave granted. We have heard learned counsel for the parties at length.
2. The question involved is as to how many candidates should be called for interview/viva voce by the Union of Public Service Commission (for short UPSC) for recruitment to the Central Services.
3. An advertisement was published by the UPSC which was to the effect that for the Central (sic Civil) Services Examination to be conducted in 1998 the approximate number of vacancies would be 740. It was clearly stipulated therein that this figure of 740 was subject to alteration.
4. Preliminary examination was held in May 1998 and the result was declared in July 1998. Those who were successful, then took part in the main examination which was conducted in October/December 1998. The case of the appellant is that in March 1999, for the reasons stated-in its affidavit in reply in the High Court which we need not advert to at this stage, the number of vacancies were finally determined to be at a figure of 470. It is an admitted case that the number of candidates who are called for interview/viva voce are not more than twice the number of vacancies which are required to be filled. In view of this on 26-3-1999 results were declared and 964 candidates who were successful, were called for interview.
5. It is thereafter that the present respondents approached the Central Administrative Tribunal, Lucknow Bench with a contention that 1480 candidates should have been called for interview and not 940. The basis was the number of vacancies which were finally notified were 740 and, therefore, 1480 candidates should have been called for interview. The Tribunal declined to give any relief. Thereafter a writ petition was filed and by an interim order the Lucknow Bench of the Allahabad High Court has directed that the respondents, who are not the first 940 candidates but their position in the order of merit is lower down till 1480, should also be called for interview. Liberty was granted to the appellant herein to call for interview even those candidates who were higher in rank than the respondents but lower in position than 940. It is this direction which is challenged before us.
6. Rule 3 of the Civil Services Examination Rules, 1998 states that the number of vacancies to be filled on the result of the examination will be specified in the notice issued by the Commission. In the notice which was issued it was stated, as already noted, that the number of vacancies was only an approximate number which was subject to change. There is no rule which has been brought to our notice which prohibits the change in the number of vacancies which are once notified. Indeed it is not necessary or incumbent upon the Government to fill up all the vacancies which are notified

even if candidates have been selected. It is contended by the learned counsel for the respondent that even though the number of vacancies could be changed, this could only have been done after the candidates had been interviewed on the basis that the number of vacancies was 740. The submission is, if this is not done the candidates will lose one chance'

7. We are unable to agree with this contention. Once it is considered, and in our opinion rightly so, that the number of vacancies to be filled could be reduced then the rules do not stipulate that the entire process of examination must be completed, including the conduct of the interview/viva voce, on the basis of the original number of vacancies which were notified. When before the declaration of the result of the main examination, the number of vacancies have been determined then it was only proper that candidates who are twice the number of revised vacancies are called for interview and not more. It is to be borne in mind that this is a competitive examination with the number of vacancies being 470 only, 940 candidates were required to be called for interview. By calling more than this number may result in prejudice to one or more of the candidates who were in the position of 940 or above. For example, it is possible that a candidate at Serial No. 941, who is not entitled to be called for interview, if he is permitted to be called for interview, may secure higher marks in the viva voce and oust those candidates who were higher in rank to him in the merit list. The High Court, in our opinion, was not right in permitting more than 940 candidates being called for interview/viva voce.

8. From the facts enumerated hereinabove it is difficult to agree with the contention of the learned counsel for the respondent that any prejudice will be caused to the candidates. It is clear that in March 1999 the final result of the main examination had been declared and it was notified to the candidates concerned as to how many of them have been called for interview. Those who were unsuccessful could, in accordance with the rules, take the subsequent examination. It can happen that even where some of the candidates have been called for interview they may still not take a chance and may sit in the examination for the year 1999 because they may not be sure whether ultimately, after the viva voce, they would be selected. Varying of vacancies during the course of the examination does not, to our mind, cause any prejudice to the candidates.

9. For the aforesaid reasons the impugned order of the High Court dated 29-4-1999 is set aside and this appeal is allowed. There will be no order as to costs.