

MANJEET SINGH, UDC AND ORS. ETC.

A

v.

EMPLOYEES STATE INSURANCE CORPN. AND ANR. ETC.

MARCH 22, 1990

[RANGANATH MISRA, M.M. PUNCHHI AND
K. RAMASWAMY, JJ.]

B

Employees State Insurance Act, 1948: Sections 2-A, 17(2) and 97(1)(2)(xx).

Employees State Insurance Corporation—Insurance Inspector—Recruitment of—Written Test and Interview—No pass marks prescribed for interview—Selection made on the basis of 40% marks in the interview held reasonable.

C

Service Law—Post Filling up of vacancies—2/3 by promotion and 1/3 by direct recruitment—Panel—Direct Recruit quota partially filled—Filling of accumulated vacancies from out of old penal—Desirability of.

D

The respondent Corporation prepared a panel for the post of Insurance Inspector, for filling up the direct-recruit quota, on the basis of written test and interview. In the absence of prescribed marks for the interview—40% was made as basic limit for selection.

E

The unsuccessful candidates challenged their rejection before the Central Administrative Tribunal contending that the selection based on 40% marks in the interview was unjustified. Petitions were also filed by the successful candidates seeking directions to the respondent Corporation to issue appointments pursuant to the panel prepared.

F

The tribunal directed that a fresh select list be prepared for filling up the remaining vacancies on the basis of the total marks obtained in the written examination and interview, in disregard of the qualifying marks of the interview. Hence this appeal. The successful candidates also filed a Writ Petition contending that they were entitled to appointment order since there was no indication of the expiry of the panel.

G

Allowing the appeal in part and disposing of the matter, this Court,

H

HELD: 1. Interview has its own place in the matter of the selection process and the choice of the candidate. Once this is recognised, it would be appropriate to require every candidate to pass the interview test and for that purpose there should be a basic limit provided. In the absence of any prescription of qualifying marks for the interview test the prescription of 40% as applicable for the written examination seems to be reasonable. [123C-D]

Rajesh Sood & Ors. v. Director-General, Employees State Insurance Corporation & Anr., decided on August 7, 1985, approved.

2. 50% of the vacancies existing upto 31st December, 1989, relating to the one-third quota should be filled up out of the penal after giving credit to appointments already made. The remaining vacancies should be filled up by holding of a fresh recruitment examination. The scheme intended for recruitment should be on the basis of an examination comprising of written test and interview. In the oral examination the pass mark shall be 40% and 40% pass marks shall be insisted separately for the written as also the oral test for qualifying in the selection. [123B; D-E]

ORIGINAL JURISDICTION: Civil Writ Petition No. 226 of 1986.

(Under Article 32 of the Constitution of India).

WITH

Civil Appeal No. 1263 of 1990.

From the Judgment and Order dated 28.4.1989 of the Central Administrative Tribunal, Hyderabad in T.A. No. 1146 of 1986.

Dr. L.M. Singhvi, Dr. Gauri Shankar, C. Mukopadhyaya, P.N. Misra and H.S. Parihar, for the Petitioners.

Madhava Reddy, Vivek Gambhir, S.K. Gambhir, R.D. Upadhyaya and Surender Karnail for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. Petitioners are employees under the State Insurance Corporation, respondent no. 1. According to the notification dated 22nd of April, 1977, issued in exercise of powers

conferred by s. 97(1), (1, 2)(xxx), s. 2A and s. 17(2) of the Employees State Insurance Act, 1948, (hereinafter referred to as 'the Act') which came by way of supersession of the Employees State Insurance Corporation (Recruitment) Regulations, 1965, the post of Insurance Inspector/Manager Grade II was treated partly as selection and partly as non-selection. There was no age limit for departmental candidates and two-thirds of the vacancies were to be filled up promotion and one-third by competitive examination under the Rules. By advertisement dated 6th August, 1983, applications were invited for filling up the one-third vacancies by direct recruitment to the category of post of Insurance Inspector/Manager Grade II. The petitioners in this application under Art. 32 of the Constitution responded to the said advertisement and were in due course declared as successful in the test. In consideration of the fact that a good number of vacancies were then existing and in anticipation of the position that more vacancies were about to occur, a select list was drawn up for the existing and future vacancies. In the said select list petitioners featured at Sr. nos. 114, 116, 121, 159, 171, 172 and 188 respectively. The panel was notified and in accordance with the practice petitioners along with other successful candidates were individually intimated by respondent no. 2 on 1.9.1984.

As already, indicated, the direct recruitment was on the basis of examination and interview. The advertisement did not prescribe any pass marks in the interview though for the written examination 40% was prescribed. Selection was, however, made on the basis of 40% in the interview test and those who did not secure 40% in the interview were not selected. Challenge was made by the unsuccessful candidates questioning their rejection by contending that in the absence of any prescription of pass marks for the interview test, there was no justification to apply the 40% basis. Writ Petitions were also filed when the respondents instead of appointing people from the panel of successful candidates went on filling up existing vacancies out of the category of promotees. Such petitions were pending before the Calcutta, Madras and Andhra Pradesh High Courts when the Central Administrative Tribunals came to be set up. These were transferred to the respective Benches of the Central Administrative Tribunals and on being clubbed were disposed of by a common judgment dated 28th of April, 1989, by the Hyderabad Bench of the Central Administrative Tribunal. The Tribunal held:

"We would direct in these cases that the respondents shall work out and estimate the vacancies available upto 20th

A June, 1986 accurately (we have used the word 'accurately' as an apprehension has been expressed that direct recruits are not getting their due since over 320 posts were filled up between May, 1986 and December, 1988 by promotees on *ad-hoc* basis or otherwise). After such estimation, the respondents shall deduct therefrom 116 vacancies which have already been filled and make available the remaining vacancies to the applicants and others who took the examination on the basis of aggregate marks, i.e. total marks obtained in the written test and the oral interview. Such of the applicants in all the three cases before us and heard by us at Hyderabad, Madras and Calcutta, who come within the zone of selection in accordance with this procedure as directed by us would be entitled to appointment."

D The writ petition is by the successful candidates whose names appear in the panel but who have not been given appointments. They have contended that the respondents were entitled to the issue of appointment orders to them inasmuch as vacancies exist and there was no indication that the life of the select list would expire either at the end of one year or on the expiry of the further extended period of six months and when there has been no fresh select list as yet.

E The decision of the Central Administrative Tribunal referred to above has been assailed by special leave challenging the direction of the Tribunal that the fresh select list filling up the remaining vacancies as on 20th June, 1986, should be prepared on the basis of total marks obtained in the written examination and interview in disregard of the qualifying marks for the latter. We granted special leave and have heard the writ petition and the civil appeal together.

F As already indicated, the last list on the basis of recruitment examination was drawn up in 1984. There have been a good number of vacancies then existing and subsequently a number of them have arisen as against which only 116 appointments have been made, including 16 out of the reserved categories. At one stage of the hearing we had indicated to Shri Madhav Reddy, appearing for the respondent-Corporation that the existing vacancies should be filled up out of the panel of 1984 and in answer to this suggestion, an affidavit has been filed to say that candidates have been waiting for the holding of fresh recruitment examination and if out of the panel of 1984 all the existing vacancies are directed to be filled up, they would be frustrated. There is force in the submission. The Tribunal in its decision has indicated

that even upto 20th June, 1984, there were some vacancies which were available to be filled up out of the panel. On account of respondents' inaction in holding of annual recruitment examinations, vacancies have accumulated. Keeping all these aspects in view, we direct that 50% of the vacancies existing upto 31st of December, 1989, relating to the one-third quota should be filled up out of the panel after giving credit to 116 appointments noticed by the Tribunal. The remaining vacancies should be filled up by holding of a fresh recruitment examination latest before 30th of September, 1990.

So far as the remaining question that was debated before the Tribunal is concerned, we are of the view that the scheme intended for recruitment should be on the basis of an examination comprising of written test and interview. We agree with the submission of Shri Madhav Reddy that interview has its own place in the matter of the selection process and the choice of the candidate. Once this is recognised, it would be appropriate to require every candidate to pass the interview test and for that purpose there should be a basic limit provided. In the absence of any prescription of qualifying marks for the interview test the same prescription of 40% as applicable for the written examination seems to be reasonable. That has been the view expressed by one of us (Punchhi, J.) in a decision (*Rajesh Sood & Ors. v. Director-General, Employees State Insurance Corporation & Anr.*, decided on August 7, 1985) to which our attention has been drawn. We approve of the view. Accordingly, we modify the direction of the Administrative Tribunal and hold that in the oral examination the pass mark shall be 40% and 40% pass marks shall be insisted separately for the written as also the oral test for qualifying in the selection.

The appeal is partly allowed and both the matters are disposed of by this common judgment. There shall be no order as to costs.

T.N.A.

Appeal allowed in part.