

(2021) 06 DEL CK 0052

In the Delhi High Court

Case No : Letter Patent Appeal No. 168 Of 2021

Abhishek Kumar

APPELLANT

Vs

Office Of District And Sessions Judge (Hq) & Anr

RESPONDENT

Date of Decision : 04-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Negotiable Instruments Act 1881 — Section 138(a), 138(c), 142(b)

Citation : (2021) 06 DEL CK 0052

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Ajay Garg, Avnish Ahlawat, Nitesh Kumar Singh, Tania Ahlawat, Palak Rohmetra

Final Decision : Dismissed

Judgement

'''

Navin Chawla, J",'''

1. This appeal has been filed challenging the Judgment and Order dated 20.04.2021 passed by the learned Single Judge of this Court in W.P.(C) 7122,,''

of 2020, titled Abhishek Kumar v. Office of District and Sessions Judge (HQ) & Anr., dismissing the said writ petition of the appellant herein.",'''

2. By way of the above-mentioned writ petition, the appellant had sought for the following reliefs:",'''

â??a. To quash the Circular dated 19-08-2020 and the previous and subsequent circulars of the respondents inviting the candidates,,''

directly for Interview by bypassing/dispensing with the Descriptive Test of 100 marks and reducing the Interview to 12 Marks being illegal,"'''

arbitrary and violative of Article 14 and 16 of the Constitution of India and

prevalent rules and advertisement issued by the respondents,,, and quash all subsequent steps taken by the respondent thereto; and,,, b. direct the respondents to conduct as well as complete the examination and selection process as per the notified scheme and selection,,, procedure given in the said Advertisement dated 14-09-2020 and prevalent Rules as applicable.â??,,, 3. The respondent no. 1 issued a Vacancy Notice/Advertisement dated 14.09.2020 for recruitment to various cadre posts inter alia including 161,,, vacancies for the post of Junior Judicial Assistant (â??JJAâ??) in the establishment of the District & Sessions Courts and Family Courts, New Delhi,",,, with respect to which the writ petition and the present appeal relates.,,, 4. The Advertisement prescribed a four-Tier selection process/scheme of examination. Tierâ?"I was an Objective Test containing questions of,,, General English and Comprehension, General Knowledge (including Current Affairs) and General Intelligence, for a total 120 marks. Tierâ?"II was a",,,, Skill Test (Typing Test) and was qualifying in nature. Tierâ?"III was a Descriptive Test, and the Advertisement prescribed the following conditions",,, insofar as Tierâ?"III was concerned:,,, â??Tier-III:- Descriptive Test for the posts of Junior Judicial Assistant & Data Entry Operator,,, The candidates who qualify the Skill Test will be called for a â??Descriptive Testâ? of English language (Total 100 Marks). It would,,, consist of Essay (300 words = 50 Marks), Grammar (30 Marks) and Translation (25 words = 20 Marks). Minimum passing marks for",,,, General Category candidates will be 50% (i.e., 50 Marks out of 100 Marks) and for Reserved Category candidates will be 45% (I.e., 45",,,, Marks out of 100 Marks). Duration of the test will be of 120 Minutes.,,, The Descriptive test will be conducted for the posts of Sr. Personal Assistant, Personal Assistant, Junior Judicial Assistant, & Date Entry",,,, Operator. However, District & Sessions Judge (HQ), Delhi reserves the right to modify or dispense with any stage of the selection process, if",,,, deemed appropriate especially in view of the number of applications received for any particular post and as may be permissible under Delhi,,, District Court (Establishment) Rules, 2012.â??",,,,

5. Tier-IV was an Interview which was prescribed to be of 30 marks. The minimum passing marks in the interview for the General Category,,,

candidates was 12 marks while for the Reserved Category (including PwD) candidates was 10 marks.,,,

6. A total of 24,173 candidates applied for the 161 posts of JJA, for which Tier-I (Objective Test) was conducted on 29.11.2019. A total of 14,256,,,

candidates appeared in the same. 4,471 candidates, including the appellant herein, qualified in the Tier-I test with the appellant being placed at serial",,,

number 1606, having secured 87.5 marks out of 120 marks in the unreserved category with the highest being of a candidate with 115 marks in the",,,

same category.,,,

7. It is the case of the respondents, which has also been confirmed by the learned Single Judge having perused the relevant records, that in the",,,

meeting of the Recruitment Committee held on 06.01.2020, it was decided to dispense with the holding of the Descriptive Test of the candidates for",,,

the post of JJA. The relevant extract from the Minutes of Meeting dated 06.01.2020 excerpted from the counter affidavit filed by the respondents,,,

before the learned Single Judge, is as under:",,,

11. That vide Minutes of Meeting dated 06.01.2020 of the Recruitment Committee duly approved by Ld. District & Sessions Judge,,,

(Hqs), Delhi, dispensed with the holding of Descriptive Test (100 marks) of candidates for the post of JJA. The relevant Para is reiterated",,,

as under:",,,

In view of the urgency in the recruitment of ministerial staff, the holding of descriptive test of the candidates for the post of JJA, may be",,,

dispensed with, subject to the approval of Ld. District & Session Judge (Hqs), Delhi.â?? â??",,,

8. Vide the Minutes of Meeting dated 14.02.2020 of the Recruitment Committee, the consequent change in marks for Interview was made with total",,,

marks being reduced to 12, and the qualifying marks being reduced to 5, in the unreserved category. The same was duly approved by the learned",,,

District and Sessions Judge (Hqs), Delhi.",,,

9. A total of 3,775 candidates appeared in the Tier-II test, which was the Skill Test (Typing Test), held on 21.01.2020, out of which 460 candidates",,,

were declared as qualified.,,,

10. Due to the outbreak of Covid-19 pandemic further selection process was delayed and finally on 05.08.2020 notice for holding Online Interview,,,

was issued. The respondents issued notification dated 19.08.2020 in continuation thereof, informing the candidates that the interview shall be",,,

conducted through video conferencing on 30.08.2020 and 12.09.2020. The candidates were also informed that the Descriptive Test (Tierâ?"III) had,,,

been dispensed with and the marks for the interview had been revised, as mentioned hereinabove.",,,

11. The appellant filed a representation against the same and also appeared in the interview.,,,

12. The representation against the decision to dispense with the Descriptive Test and the change in the marks of the Interview was received only from,,,

the appellant and was rejected by the Recruitment Committee on 22.09.2020. The appellant, as noted hereinabove, duly appeared before the Interview",,,

Board.,,,

13. The final results were declared on 13.12.2020 for the 63 posts of JJA in the unreserved category. The candidates from rank 64 to 70 were kept on,,,

the panel, with the last selected candidate in the unreserved category securing a total of 110.494 marks and the last candidate in unreserved category",,,

Sl. No.,Cadre,"N o s . of

vacant post

of

DHJS/DJS.",Remarks

1,DJS,125,"Training of 125 DJS officer has already been completed and they are awaiting their posting orders from Honâ??ble High Court of Delhi which can be issued at any time.

2,DHJS,11,"Interviews of 11 DHJS have already been conducted on 17.10.2020 by the Honâ??ble High Court of Delhi.

3,DJS,75,"Preliminary & Mains examination has already been conducted by the Honâ??ble High Court of Delhi and Interview are scheduled to be conducted in the 4th week of December, 2020 after which the final result is likely to be declared on or before December, 2020.

4,DHJS,19,"Preliminary examination has already been conducted by the

Honâ??ble High Court of Delhi. The mains examination is scheduled to be conducted by the Honâ??ble High Court of Delhi on 12th and 13th December, 2020.

selected meet the threshold of efficiency required to carry out the job requirement of a post. It is neither the domain of the Court to,,,

determine the method/criteria of selection nor does the Court have the necessary expertise to decide which criteria would be best suited to,,,

the job requirement. Supreme Court and various High Courts have repeatedly held that the Courts should not interfere in the examination,,,

processes with respect to requisite qualifications etc. and, in my view, this restraint and restrictions on the Courts shall apply with greater",,,

force to interference in the scheme of the examination, of course with a caveat that the applicable Statutory Rules are not violated.â??",,,

20. Insofar as the Establishment Rules are concerned, the same prescribed that 80% of the posts of JJA shall be filled by direct recruitment â??on the",,,

basis of written test and interviewâ??. Ordinary and general meaning of a â??written testâ?? is one which is administered on a paper or on a,,,

computer (as an eExam/electronic exam). It can be of various types such as, multiple choice, true-false, matching, completion, essay, etcetera. It need",,,

not be only descriptive in nature. An objective-type test is as much a written test as a descriptive test.,,,

21. It is true that the Establishment Rules, for some of the posts including that of the Process Server do prescribe selection on the basis of an",,,

â??objective testâ??. However, this cannot lead to a conclusion, that â??written testâ?? for selection of JJA cannot be objective test or has to",,,

necessarily be â??descriptive testâ??. It can only mean that for the post of Process Server, the test cannot be descriptive test. Words of the Rule are",,,

to be understood in their natural, ordinary or popular sense, unless that leads to some absurdity or unless there is something in the context, or in the",,,

object of the statute to suggest the contrary. In the present case, we do not find such reason to depart from the ordinary meaning of a â??written",,,

testâ?? used in the Establishment Rules.,,,

22. Equally, though a presumption arises that where in relation to the same subject-matter, different words are used in the same statute, they are not",,,

used in the same sense, however, this is merely a presumption and not an

inviolable rule. Its application is subject to the primary rule that the words",,,
used must be given their natural and grammatical meaning. Rejecting similar
argument as raised by the learned counsel for the appellant in the present,,,
appeal, the Supreme Court in Econ Antri Ltd. V. Rom Industries Ltd. & Anr.(2014)
11 SCC 769, has held that the words "of", "from" and",,,
"after" may, in a given case, mean really the same thing, and accordingly, it
is not possible to hold that the word "of" occurring in Sections",,,
138(c) and 142(b) of the Negotiable Instruments Act 1881 is to be interpreted
differently as against the word "from" occurring in Section 138(a),,,
of the Act.,,,

23. The learned Single Judge has also considered the above submission of the
appellant in extenso and has observed, as under:",,,

" 55. Coming to the present case, the Recruitment Rules prescribe a written
test.",,,

The word "written" only means and connotes something which is not oral or
spoken and is transcribed on a paper or with the,,,

increasing technology, digitally. Objective test would certainly qualify to be a
written test. This Court cannot read words into the",,,

Recruitment Rules, which do not exist and in this background the contention of
the Petitioner that the Recruitment Rules mandate a",,,

descriptive test only cannot be sustained. Admittedly Respondents have held an
Objective test and thus it cannot be said that written test was,,,

not held.,,,

56. The position taken by the Petitioner that this Court as well as the
Subordinate Courts have been holding descriptive tests in the past for,,,

filling up the posts of JJAs, is certainly uncontroverted. However, in my view, the
norms and practice cannot be a sufficient ground for this",,,

Court to read the Recruitment Rules differently from the way are drafted. Most
certainly it is open to the Respondents to test candidates,,,

through a descriptive test, but the action of dispensing cannot be held violative
of the Rules."",,,

24. We may also note that the Advertisement itself prescribed that the
Descriptive Test can be dispensed with. The relevant extract from the,,,

Advertisement has been reproduced hereinabove. The appellant having
participated in the selection process knowing fully well this condition, cannot",,,

now be allowed to challenge the same.,,,

25. The submission of the learned counsel for the appellant that Tier III â?" Descriptive Test could have been dispensed with in terms of the,,,

Advertisement only where the number of candidates found eligible after Tier II was lesser than those advertised for, is only to be stated to be rejected",,,

as we find no such limitation on the power of District and Session Judge (HQ) in the advertisement. The Advertisement empowers the District and,,,

Session Judge (HQ) to dispense with any stage of the selection process â??if deemed appropriate especially in view of the number of applications,,,

received for any particular postâ?". Therefore, the number of applications received or the number of candidates qualifying the Tier II is not the only",,,

reason on which the District and Session Judge (HQ) could have dispensed with the Tier III stage of the selection process.,,,

26. We may also note that the Supreme Court in Ashok Kumar Uppal & Ors. v. State of J&K & Ors., (1998) 4 SCC 179, has held that under service",,,

jurisprudence as also the administrative law, the power to relax the recruitment rules has necessarily to be conceded to the employer. In the present",,,

case, in our opinion, though the question of relaxation of rules does not arise as the rules itself do not mandatorily require a descriptive test to be taken," ,,,

it was even otherwise, a fit case that the Establishment Rules could have been relaxed with respect to the impugned selection process, given the acute",,,

urgency to complete the selection process as explained by the respondent no. 1 in its counter affidavit.,,,

27. The learned counsel for the appellant had also submitted that the appellant could have improved his standing in case the Descriptive Test was,,,

conducted by the respondent no. 1 and could have made the selection. However, we find the same to be only a matter of conjectures and surmises. It",,,

is not the case of the appellant that the decision of the respondents was mala fide or made to benefit anyone in particular.,,,

28. In view of the above, we find no merit in the present appeal. The same is dismissed. There shall be no order as to costs." ,,,

29. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsels through e-mail.,,,