

(2018) 10 CAT CK 0009
In the Central Administrative Tribunal
Case No : Original Application No. 407 Of 2013

Amar Singh

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 12-10-2018

Acts Referred:

Citation : (2018) 10 CAT CK 0009

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Saurabh Ahuja, Amit Anand

Final Decision : Dismissed

Judgement

A.K. Bishnoi, Member (A)

1. Briefly stated, the facts of the case as per the applicant are that the respondents advertised vacancies for filling up the posts in various categories, including Constable (Bugler) in Delhi Police vide advertisement dated 19.02.2009, which was also published in the Employment News dated 21.02.2009.

1.1 The applicant being eligible applied for the post of Constable (Bugler). On 04.02.2010, the respondents issued a letter to him for appearing in the trade test on 26.02.2010. The applicant appeared in the trade test on that date for the said post. Subsequently he was asked to appear before the Interview Board on 26.05.2010 at Recruitment Cell, Delhi Police Headquarters in which he appeared.

1.2 Thereafter the applicant on coming to know that respondents had secretly declared the result for the said post and his name was not reflected in the list of successful candidates, requested the respondents, on a number of occasions, to provide him the list of successful candidates category-wise but of no avail. The result was also not published in any daily newspaper or on internet.

1.3 Left with no alternative, the applicant filed OA No.2269/2010 against the

inaction of the respondents. The said OA was allowed to be withdrawn by the Tribunal on 20.07.2010 with liberty to approach the respondents directly.

1.4 On 22.07.2010 the applicant filed an application under Right to Information Act, 2005 and sought several information. When the requisite information was not provided by the respondents, the applicant sent a reminder to them. However, on 06.10.2010 the respondents provided certain information to him regarding the recruitment of Constable (Bugler) in Delhi Police, 2009. As per the information so provided there were two vacancies for the Scheduled Caste (SC) whereas four SC candidates were appointed in the same recruitment in violation of the advertisement.

1.5 Aggrieved, the applicant again challenged the action of the respondents by filing OA No.1665/2011, which too was later allowed to be withdrawn by the Tribunal vide order dated 08.08.2012, with liberty to file substantive OA on the same cause of action by impleading the affected persons. Hence the instant OA.

2. In support of the reliefs claimed, the applicant has taken mainly the following grounds:-

2.1 The applicant was the only one who played all the band calls and performed very well in the trade test.

2.2 The respondents have selected the candidates in contravention of the terms and conditions of the advertisement. As against the 13 posts in the category of Constable (Bugler), 03 were reserved for OBC candidates and 02 were reserved for SC candidates and rest of 08 posts were for the general category candidates. But the respondents recruited 03 SC candidates in place of 02 reserved posts for them. It implies that the respondents have given one post of general category candidate to SC candidate.

2.3 The respondents selected candidates from other streams whereas as per the advertisement the thirteen vacancies were for Constable (Bugler).

2.4 Final results were not published.

2.5 The respondents did not select/appoint one Shri Shitesh Kumar, SC candidate who had secured 43 marks in the merit list whereas the candidates who had secured 40 marks were appointed in Delhi Police.

3. Accordingly, the applicant has sought the following reliefs:

"A. Quash and set aside the selection of the candidates to the extent that where it was made in contravention of the advertisement as the Schedule caste candidates given three appointments whereas only two vacancies were reserved for them as per the advertisement.

B. Quash and set aside the selection of the candidates to the extent that where it was made in contravention of the advertisement as the other category candidates were selected in the category of constable (bugler) as per the

advertisement there were exclusively thirteen vacancies for the constable bugler.

C. To appoint the applicant as a constable bugler.

D. To produce before the Court cost the hand written copy of marks allotted by the Band Masters of trade test as well as video recording of trade test.

E. To produce the Hand written copy of the interview marks given by the interview officer.

F. Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case".

4. The respondents have filed their reply wherein they have stated as follows:

4.1 All tests, i.e., PE&MT (Qualifying), trade test and interview were conducted under overall close supervision of the Chairman of Recruitment Board constituted as per S.O. No.258/06. Photography and Videography of the events was done. Trade test for the post of Constable (Bugler) was conducted by constituting a Board of Officers, i.e., an Additional CP (Chairman), a DCP (Member) as well as Incharge-Band from Delhi Police, representatives of Band from two Central Para-Military Forces, i.e., BSF & CRPF. The applicant on having been qualified in PE&MT, was called for trade test on 26.02.2010. The experts gave marks to the candidates as per their performance and they were the best judge in this regard.

4.2 On the basis of the marks obtained in trade test and interview, the final result of successful candidates, as per the number of vacancies advertised (category-wise) strictly as per merit, was declared on 01.06.2010 and displayed on the Notice Board of Delhi Police Headquarters. Accordingly all 13 posts [UR-08, SC-02 & OBC-03) have been filled up and all the selected candidates joined their basic training on 01.11.2010. Moreover, two candidates, namely S/ Shri Ranjan Kumar and Bhuwan Chandra, applied under SC category and secured 43.5 marks. They availed benefit of relaxation in age/height, hence they were considered for selection in their own SC category. Besides, one candidate, namely Rohit applied under SC category and secured 45 marks whereas cut off marks of unreserved category was 40 marks, hence he was considered for selection in UR category as per the instructions on the subject. As such, the plea taken by the applicant is not sustainable and the action taken by the respondents is legal and justified.

4.3 As regards Shitesh Kumar, the respondents have submitted that he had applied under the SC category and availed the benefit of relaxation in height, hence he was considered for selection in his own SC category. He had secured total 43 marks, i.e., 35 marks in trade test and 08 marks in interview and failed to make the grade in the list of finally selected candidates under SC category. The cut off marks of SC category was 43.5 marks whereas unreserved category was 40 marks and the applicant had secured total 39 marks (30 marks in trade test and 09 marks in Interview) under general category and he could not make the grade in the list of finally selected candidates.

5. The applicant then filed rejoinder dated 13.10.2014 more or less repeating the points raised in the OA with the addition that in the previous recruitment process the board has awarded marks to the candidates (viz. aspiring for the post of Constable (Bugler) only on the basis of their performance on the Bugle but the respondents/board in the impugned selection process made a departure from the practice which has been followed in the Delhi Police since time immemorial for conducting trade test for the post of Constable (Bugler).

6. Thereafter on 16.12.2015, the Tribunal gave the following directions to the respondents:-

"Learned counsel for the applicant submitted that in the previous recruitment process, the Selection Board had awarded marks to Constable (Bugler) only for their trade test for bugle and not for song and playing band. Such averments are made in the rejoinder. Respondents sought an opportunity to comment upon the same. Let the respondents file an additional affidavit to the rejoinder commenting upon the stand taken by the applicant therein, within two weeks."

7. In pursuance to the directions of the Tribunal vide order dated 16.12.2015, the respondents have filed an additional affidavit. They have stated that 13 vacancies each of Constable (Bugler), Constable (Brass Band) and 01 vacancy of Constable (Pipe Band) were advertised. Out of the 384 candidates, who qualified for trade test, 18 candidates were common for the posts of Bugler & Brass Band and 05 candidates were common for all three posts. Therefore, it was decided that the trade test of these candidates may be taken on the same date as for Constable (Bugler).

7.1. The Selection/Expert's Board had awarded marks to each candidate as per performance in their respective trade only for playing the Bugle for the post of Constable (Bugler) and for playing Band Instruments for the posts of Constable (Brass Band and Pipe Band). In addition, it had also been preferred that the candidates have knowledge of musical theory and have actual practical skill on musical instruments. However, Videography was also got made of all the entire events during the trade tests of all these posts.

8. Heard the learned counsels for the applicant and the respondents following which, on 18.09.2018, the following orders were given:-

"Heard both the sides.

2. The short point of the applicant is that in selection for the post of Constable (Bugler), the respondents selected Shri Vikas Thapa, Merit Position No.3 under General category, without even testing him on Bugler in the Trade Test and though the respondents in their counter and additional counter stated that all the persons were tested in the Trade Test for the respective branches, but not given any specific answer that whether the said Shri Vikas Thapa was tested for Bugler in the Trade Test, in addition to the other skills.

3. Hence, the respondents are directed to file a short affidavit by the Appointing

Authority of the post of Constable (Bugler) specifically stating that whether Shri Vikas Thapa was tested on Bugler in the Trade Test at the time of his selection or not, within one week."

9. The respondents have submitted short affidavit on 05.10.2018, which contains Minutes of the meeting of all stake holders of the Trade Test board who conducted the trade test for the post of Constable (Bugler) held on 03.10.2018. The relevant part of the contents is as follows:-

"The meeting of the above members was held on 3.10.2018 at 12 am. All members and chairman concurred that Vikas Thapa Roll No.272 was tested on 25.02.2010 as a Bugler along with other musical instruments".

10. Thus, all points raised by the applicant have been satisfactorily replied to by the respondents. The contentions regarding filling up more posts through SC candidates, non declaration of results and the question regarding selection of one Sri Shitesh Kumar have been adequately negated. It has also been made clear through the additional affidavit filed by the respondents earlier that candidates were awarded marks in their respective trade only.

The only remaining issue regarding Vikas Thapa has also been settled to satisfaction through the affidavit filed on 05.10.2018 with the specific averment quoted in Para 10 above.

11. In view of the above, we are of the opinion that the applicant has failed to establish any flaw in the selection process on the basis of which any of the reliefs sought by the applicant can be granted.

12. The OA is accordingly dismissed being devoid of merit. No order as to costs.