

(2014) 09 DEL CK 0262

In the Delhi High Court

Case No : Writ Petition (Civil) 7255 and 8057/2013

Amarjeet Malik

APPELLANT

Vs

Union of India
 Rakesh Kumar Vs The Chairman, Staff
Selection Commission

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Citation : (2014) 09 DEL CK 0262

Hon'ble Judges : Najmi Waziri, J;Kailash Gambhir, J

Bench : Division Bench

Advocate : Jasbir Singh Malik, Parmod Bhardwaj for M.K. Bhardwaj, Advocate for the Appellant; Barkha Babbar, Manish Mohan, Anita Mohan and Puja Sarkar, Advocate for the Respondent

Judgement

Kailash Gambhir, J.—The short question which falls for consideration in these two writ petitions is whether the respondent " Staff Selection Commission (SSC) could legitimately introduce a fresh criteria for qualifying the interview process i.e., 25% for unreserved category and 20% for other categories when no such condition of securing any cut off marks in the interview was laid down in the advertisement issued by the Commission which invited applications for recruitment to the post of Sub-Inspectors in CAPFs, Assistant Sub-Inspectors in Central Industrial Security Force (CISF) Examination 2012.

2. The grievance of the petitioners is that the act of the respondents to introduce cut off marks in the interview was completely arbitrary and biased, as the law did not permit the respondents to change the rules of the game after the game, had started. The learned counsel representing the petitioners, have placed reliance on the decisions of the Supreme Court in K. Manjusree Vs. State of A.P. and Another, and N. Lokananandham Vs. Chairman, Tele-Com. Commission and Others, in support of their contentions.

3. Another contention raised by the learned counsel for the petitioners is that the same issue had come up for consideration before the Central Administrative

Tribunal, Principal Bench, New Delhi where challenge was made by the candidates who sought their appointment as Sub-Inspector (Executive) in Delhi Police, pursuant to the same advertisement and vide a detailed judgment dated 10.10.2013, the Central Administrative Tribunal, Principal Bench held that the action of the Staff Selection Commission in fixing cut off marks in the interview after the selection process had started was impermissible and hence, the final result drawn on the basis of such an action was liable to be set aside. Consequently, the respondents therein were directed to re-draw the final result strictly on the basis of aggregate marks obtained by the applicants therein in the written examination and interview/personality test, sans the application of any cut off marks for the interview and were directed to consider the case for appointment of the applicants therein accordingly. This judgment of the learned Central Administrative Tribunal was not challenged by the Staff Selection Commission, as informed to this Court by the learned counsel for the parties and therefore, it was submitted the legal issue in the judgment had attained finality.

4. It is an admitted case that the petitioners had qualified the written examination, PET as well as the medical examination. They had also appeared for the interview but were not selected in the final list because of not having secured the qualifying marks, as required for the interview. If the consolidated marks secured by the petitioners in the written examination and interview are taken into consideration, it could be seen that they had obtained top position in the list of selected candidates.

5. In their counter affidavit, the respondents have made an attempt to justify their action by stating that if minimum cut off marks could be laid down for written examination, then the Commission was well within its powers to prescribe minimum cut off marks in the interview, since personality plays an extremely important role in ensuring the efficient discharge of duties even in the initial stage of entry into service.

6. It is also the stand of the respondents that certain aberrations were noticed in the marks obtained in the written examination, vis-?-vis the marks obtained in the interview and such aberrations could be redressed only by prescribing certain minimum cut off marks in the interview in order to eliminate cases where the correlation between the performance in written examination and interview was extremely poor. It is also the stand of the respondents that the said decision of introducing cut off marks in the interview was taken prior to the start of the interview process and therefore the petitioners cannot cry foul since they were informed prior in time.

7. Another stand taken by the respondents in the counter affidavit has become a falsity in view of the fact that no necessary steps were taken by the SSC to challenge the judgment dated 10.10.2013 passed by the learned Central Administrative Tribunal. In the said judgment, the learned Central Administrative Tribunal has tried to get to the bottom of the issue and has also placed the reliance on various judgments of the Supreme Court. Therefore, we need not

delve into the issues raised by the respondents in their counter affidavit. It has not been disputed before us that the applicants who had approached the learned Central Administrative Tribunal were also aggrieved by the same criteria introduced after the issuance of the advertisement. Since those applicants were seeking appointment to the post of Sub-Inspector in Delhi Police, therefore, their remedy to challenge the advertisement was before the learned Central Administrative Tribunal whereas the present petitioners have sought redressal by way of a writ petition, otherwise, there is no distinction or dissimilarity between the two set of candidates.

8. In the light of the above position, the petitioners succeed in the present writ petitions and both these writ petitions are accordingly allowed. Consequentially, the respondents are directed to proceed in the matter by including the names of the petitioners in the list of selected candidates on the basis of the aggregate marks obtained by them in the written examination as well as the interview/ personality test sans the application of any cut off marks for the interview. In case the petitioners fulfil all other eligibility conditions, their case must be considered for their appointment to the post of Sub-Inspector in CAPFs and ASI in CISF within a period of six weeks from the date of this order.

9. In the peculiar facts and circumstances of this case, it is made clear that the benefit of this order shall go only to the petitioners and not to other candidates who have not approached this Court to challenge the aforesaid criteria.

10. With the aforesaid directions, these writ petitions filed by the petitioners stand allowed.