

(2010) 05 DEL CK 0216

In the Delhi High Court

Case No : Writ Petition (C) No. 3467 of 2010

Anupam Garg

APPELLANT

Vs

The District Judge Office of District Sessions Judge

RESPONDENT

Date of Decision : 26-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 05 DEL CK 0216

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Rajeev Saxena and R.K. Bedi, for the Appellant; Avnish Ahlawat, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The petitioner has filed the present writ petition under 226 of the Constitution of India seeking direction against the respondent to recall/modify the result of candidates selected for interview for LDC Recruitment Test, 2009.

2. The petitioner is currently pursuing his graduate studies in B.A. Political Science (Honours) from Satyawati College, University of Delhi, and has appeared for the final examination of Second Year. The petitioner has obtained 72% in his Senior Secondary Examination and has currently secured an aggregate of 57% in his graduate studies.

3. The respondent had by way of public notification advertised for filling up the vacancies of Lower Division Clerk in the pay-scale of Rs. 3050-4590/- pre-revised as per the terms and directions detailed in the notification.

4. The petitioner has given the detail of notification allegedly advertised for filling up vacancies. The learned Counsel for the respondent has placed a photocopy of the relevant page of the Employment News dated 11.12.2009. Learned Counsel for the petitioner has no objection if the same is considered by this Court. The

mode of selections is given in the said notification as under:

Mode of Selection Selection shall be made on the basis of Written Test examination comprising of one paper in English language (Essay, Grammar and translation from English to Hindi and vice-versa). The candidates, who will be declared qualified in English language paper will be called to appear for typing test @ 30 w.p.m. in English. The short listed candidate would also undergo an interview (The candidates will have to arrange their own Type Writers for taking the test)

5. Pursuant to the said advertisement, the petitioner applied for the said post and was issued Roll No. 5159 vide letter dated 11.2.2010 by the respondent for a written test which was scheduled for 7.3.2010. The petitioner qualified the written test with 93% marks as per the result declared on 12.4.2010.

6. After having been declared successful in the examination, the petitioner received intimation for the purpose of a typing test for the recruitment of post of LDC which was to be held on 25.4.2010.

7. The petitioner appeared in the said typing test and obtained 20 marks and his result of the said typing test was shown at Serial No. 109. However, his name did not figure in the list of candidates called for interview despite the petitioner having secured 93 marks out of 100 in the written test examination and 20 marks out of 30 in the typing test for which as per initial information averred by the petitioner, the bench mark was set at 20 out of 30 marks. Admittedly, the bench mark/cut off set by the respondent to be called for an interview was 20 marks in typing test with 45% in the written test.

8. According to the petitioner, the respondent has changed the criteria for selecting candidates for interview by changing the cut off marks from 20 out of 30.

9. The main contention of the petitioner during the course of arguments was that the said change of criteria in the post-examination period is illegal as no reasons have been given by the respondent for such a change. There ought to have been no change in the selection criteria especially without assigning any reason thereto as selection criteria once finalised cannot be changed once notification in that regard has already been published. It is argued that a mere perusal of list of candidates who have been called for interview would show that many candidates with lower marks in written examination than that of the petitioner have been invited for interview for the appointment of LDC.

10. According to the petitioner, the respondent has changed the criteria for selecting the candidates for interview by changing the cut off rate to 22 marks out of 30 marks for typing text against the initially decided cut off rate of 20 marks out of 30 marks. His grievance is that despite having obtained 93% marks in the written examination and 20 out of 30 marks in the typing test he has not been called for an interview and therefore, the conduct of the respondent is

illegal, unlawful and arbitrary.

11. In support of his submissions, the petitioner has referred the judgment of Hemani Malhotra Vs. High Court of Delhi, wherein the Supreme Court in paragraph 9 observed as under:

9. From the proposition of law laid down by this Court in the above mentioned case it is evident that previous procedure was not to have any minimum marks for vive-voce. Therefore, prescribing minimum marks for vive-voce was not permissible at all after written test was conducted. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at vive-voce, test was illegal.

12. The respondent has filed the short affidavit of Sh. Durga Prasad, Superintendent Administration Branch, Office of District Judge-I & Sessions Judge, Delhi.

13. Admittedly, in order to judge the suitability of the candidates in the typing test, the procedure as prescribed in Annexure R-1 was followed which reads as under:

Practice which may be followed for checking answer sheets of Type Test for LDC Recruitment Test 2009 in the office of District & Sessions Judge, Delhi.

A passage for about 300 words has been given to the candidates to be typed in ten minutes. If he falls short of the said passage, number of words by which answer sheet falls short may be taken as mistake and one mark may be deducted for three mistakes. The maximum marks are 30 out of which minimum qualifying marks are 20.

If the candidate repeats the passage, he may be given one additional mark for every ten words typed by him.

While checking one mark may be deducted for every three mistakes. Mistakes also include punctuation, spelling error.

14. It appears from Annexure R-1 that a candidate who qualifies the typing test with 20 marks would be called for the interview but admittedly in the last three times, the last cut off reached 22 marks for General and SC category and other category at 20 marks. Therefore, it is apparent that the petitioner was not called for interview.

15. It is not denied by the petitioner that as per the result, there are many candidates who have secured 93 to 98 marks but have not been called for the

interview. Similarly the petitioner has not pointed out the detail of a single candidate in the selection process who obtained similar marks i.e. 20 marks or lesser than those of the petitioner and was still called for the interview.

16. As per notification, passing the typing test was necessary for LDC candidates irrespective of the fact that a candidate secured high marks in written test. As per procedure, if the candidate does not come within cut off marks set for the typing test, he is not eligible. Admittedly, between 20 to 21.5 marks there are 139 candidates who have not been called for interview as they did not achieve the target of cut off marks of passing of typing test.

17. The selection process was of three stages : stage one was written examination; stage two the candidates qualifying the English language paper were to appear for the typing test @ 30 words per minute in English and the third stage wherein the shortlisted candidates who passed the typing test were to be called for interview.

18. As per the advertisement for filling up the vacancies and eligibility criteria for recruitment, candidates with minimum qualifying marks of 45% for general category and 40% for reserved categories in written examination were to be called for the typing test and three times were to be called for the interview. Undisputedly, in the three times vacancies the last cut off reached 22 marks for general category in which the petitioner applied for the post. Thus, it appears that cut off criteria for interview as adopted by the respondent was in compliance with the terms mentioned in the "Term C" of the advertisement.

19. Ms. Avnish Ahlawat, learned Counsel for the respondent has pointed out that as per selection criteria, the typing test of 30 words per minute was taken by the petitioner but after the test it was found that there were many mistakes in the typing test and he was only able to obtain 20 marks which was below the cut off mark, hence question of arbitrariness does not arise.

20. After having gone through the entire gamut of the matter, this Court does not find itself agreeing with the submissions of the petitioner that the respondent changed the selection criteria rather, it is evident from the paragraph stating the mode of selection that the shortlisted candidates were also to undergo an interview after the publication of the notification. A plain reading of mode of selection shows that the typing test @ 30 words per minute in English was conducted by the respondent as regards the candidates who qualified the written test examination and the candidates who qualified in the typing test were called for interview as per the shortlisting on the basis of marks obtained in the typing test. Therefore, it is apparent that the selection criteria as it appeared in the notification has been not changed after the advertisement against the principle of equity and transparency. The submission of the learned Counsel for the petitioner has no force in view of the reasons mentioned above. The decision referred hence does not help the case of the petitioner as the facts in the present case are entirely different.

21. There is no merit in the petition, the same is dismissed with no orders as to cost. The interim application also stands disposed of.

Copy of this order be given dasti under the signatures of the Court Master.