

(2019) 02 CAT CK 0186

In the Central Administrative Tribunal

Case No : Original Application No. 1437 Of 2016

Arun Dutt Sharma

APPELLANT

Vs

Union Of India Through the Secretary

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0186

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Yogesh Sharma, V.K. Sharma

Final Decision : Dismissed

Judgement

Nita Chowdhury, J

Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order 25.2.2015(A/1) and final result of selection, declaring to the effect that the same is illegal, arbitrary and against the Govt. of India instruction and consequently, pass an order directing the respondents to consider the applicant for his appointment to the post of Examiner (SS) with all consequential benefits from the date of appointment of other selected candidates.

(ii) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 15.6.12 by which the trade test has been declared qualifying in nature with all the consequential benefits.

(iii) Any other relief which the Hon'ble Tribunal may fit and proper may also be granted to the applicant."

3. Brief relevant facts of the case as stated in the OA are that in the year 2012, the respondents invited application for various posts including 65 posts of

Examiner (Semi skilled) in the Employment News 1-7 Sept., 2012. The applicant also applied for the post of Examiner (SS) as a general category candidate and also appeared in the written test. On the basis of result of the said written test, he was provisionally selected for Trade Test (Practical) vide order dated 17.12.2013. Vide order dated 31.5.2014, the applicant was called for Trade Test on 13.6.2014 in which he appeared. Vide letter dated 4. 7.2014, the applicant was informed that the last selected candidates got 65% marks and qualified in the trade test, which was qualifying in nature.

3. 1 The contention of the applicant that in the advertisement, it was not mentioned that the trade test was qualifying in nature, which is contrary to it and averred that merits will be prepared on the basis of written as well as trade test marks.

3.2 The applicant preferred RTI Application on 1.9.2014 requested to supply the copies of marks obtained by each candidates including the applicant. The respondents vide letter dated 1.9.2014 supplied the copies of the merit list of candidates in which the marks of the applicant shown 69 but declared failed in trade test whereas the last selected candidate shown 65 marks only. Thereafter the applicant submitted a detailed representation on 29.12.2014 to the respondents. The respondents vide order dated 25.2.2015 rejected the same by stating that he did not qualify the trade test, which was qualifying in nature. The applicant submitted again another representation on 6.5.2015 against the order dated 25.2.2015 but till date no reply has been given to the same.

3.3 Being aggrieved by the aforesaid action of the respondents, the applicant has filed this OA seeking the reliefs as quoted above.

4. Pursuant to notice issued to the respondents, they have filed their reply refuting the contentions of the applicant as raised in the OA. They specifically relied upon the decision of Mumbai Bench of this Tribunal in Review Petition No.31/2015 in OA 385/2014 in the matter of Union of India and others vs. Nitin Rajkumar and others decided on 28.10.2016 and averred that similar issue had been raised as involved in this matter. The relevant para of the said

judgment reads as under:-

"26. So far as the second ground raised by the respondents is concerned, it is obvious from record that the applicants have participated in the written test and trade test without any protest and they were made aware of these provisions in Advertisement itself and particularly the fact that trade test is qualifying in nature. Hence subsequently they cannot make any grievance in this behalf especially when they failed to qualify said test. Further holding of written test and trade test as qualifying in nature on the strength of administrative instructions issued by the competent authority was also raised by respondents in reply to the OA and during the course of arguments. Hence we find substantial force in the contention that the applicants are stopped from making any grievance in this behalf, especially when no such grievance was made before

they participated in the examination or trade test. Although this ground was also raised by the learned Advocate for the respondents in the OA, this Tribunal skipped it since comments were made in this behalf in the order. This was also resulted in causing error or defect apparent on face of record, since this ground goes to the root of the case."

5. After hearing the arguments of learned counsel for the parties, this Court observes that so far as contention of the applicant that in the advertisement, it was not mentioned that the trade test was qualifying in nature, which is contrary to it and averred that merits will be prepared on the basis of written as well as trade test marks is concerned, this contention is not sustainable on the face of it as in the Advertisement itself, it is specifically mentioned under (F) Scheme of Examination that the selection will be made strictly on the merit basis. The selection process will comprise of :-

(1) Written Test of 100 marks: the question papers of written test will be a Trilingual i.e. English, Hindi & Local language. The syllabus for the written test for a trade will be broadly as that of the NCTVT Examination syllabus for applied trade and as per the functional requirement of applied trade test.

(2) Trade Test : Only qualifying in nature. The Trade Test (Practical) will be conducted to test the skill of the candidate in their relevant field. The syllabus for the trade test (Practical) will be as per trade test specification of the semi-skilled grade of the relevant trade."

(emphasis supplied)

6. Admitted fact is that the applicant cleared the written test but has not cleared the trade test, which was qualifying in nature and was also an essential part of the selection process of industrial employees, hence, this Court is not inclined to interfere with the decision of the respondents, especially having regard to the decision of the Mumbai Bench in the said Review Petition in which similar issue has been adjudicated by this Tribunal and wherein it was also observed that applicant is estopped from making any grievance in this behalf, especially when no such grievance was made before he participated in the examination or trade test.

7. In the result, for the foregoing reasons, we dismiss this OA being devoid of merit. There shall be no order as to costs.