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(2009) 11 P&H CK 0155

In the Punjab And Haryana At Chandigarh

Arvind Kumar — APPELLANT

Vs

Central Administrative Tribunal and Others — RESPONDENT

Date of Decision : 16-11-2009

Acts Referred:

Citation : (2010) 157 PLR 278

Hon'ble Judges : Mehinder Singh Sullar, J;J.S. Khehar, J

Bench : Division Bench

Judgement

J.S. Khehar, J.—Through the instant writ petition the petitioner has impugned the order passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal") in Original Application No. 62/CH of 2009 decided on 1.9.2009. The same order rendered by the Tribunal has also been impugned by the Post Graduate Institute of Medical Education and Research (hereinafter referred to as "the PGI") through CWP No. 17344 of 2009. Yet another! writ petition has been preferred against the aforesaid order rendered by the Tribunal in CWP No. 16275 of 2009, by those who were arrayed as private respondents in the aforesaid Original Application No. 64-CH of 2009. All the aforesaid three writ petition are being disposed of through this common order.

2. Two issues arise before us for our consideration in all these writ petitions. Firstly, whether the petitioner Arvind Kumar who has approached this Court through CWP No. 16462 of 2009 was eligible for appointment against the post of Store Keeper. In so far as the instant issue is concerned, undisputedly the eligibility conditions prescribed by the PGI were as under:

Educational Qualifications

Essential

1. Bachelor Degree in Economics/Commerce/Statistics.

2. Post-Graduate Degree/Diploma in Material Management from a recognized

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University/Institution or equivalent.

Desirable.

Experience in handling store and record keeping in a store preferably medical or concern of repute in public or private sector.

Or

1. Degree of recognized University or equivalent.

2. Post-Graduate Diploma in Material Management of a recognized University/ Institution.

3. Three years experience in handling, store, store preferably medical stores in Govt/Public/Private Sector.

Arvind Kumar claims and asserts, that he was possessing the qualifications of Master''s Degree in Commerce, as well as, Post Graduate Diploma in Material Management from a recognized institute at the time when applications were invited for the post of Store Keeper. The fact that he possessed the aforesaid qualifications is not in dispute. The only challenge is that although he possessed the qualifications depicted at Serial No. 1 hereinabove out of the first alternate, he did not/does not possess the qualification of Bachelor''s Degree in Economics/ Commerce/Statistics, and as such, could not have been considered to be eligible for the post of Store Keeper.

3. In order to controvert the contention of the PGI pertaining to the eligibility of the petitioner Arvind Kumar it is submitted by the learned Counsel representing him, that the petitioner possessed Master''s Degree in the same stream, as the one stipulated in the prescribed essential qualifications. And that, the Master''s Degree being a higher qualification than the Bachelor''s Degree, he should be treated as eligible for appointment to the post of Store Keeper. In order to substantiate his instant contention, learned Counsel representing the petitioner Arvind Kumar relies on a judgment rendered by the Supreme Court in Jyoti K.K and Ors. v. Kerala Public Service Commission and Ors. JT 2002 SC 85, wherein the Apex Court, inter alia, held as under:

It is no doubt true; as stated by the High Court that when a qualification has been set out under the relevant rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far. Under the relevant

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rules, for the post of assistant engineer, degree in electrical engineering of Kerala University or other equivalent qualification recognized or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualifications is definitely higher qualification than what is prescribed for the lower post, namely, the post of sub-engineer. In that view of the matter the qualification of degree in electrical engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the* post, shall be considered to be sufficient for that post. In the event the government is of the view that only diploma holders should have applied to the post of sub-engineers but not all those who possess higher qualifications, either this rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree holder shall not be eligible to apply for such post....

Following the judgment rendered in Jyoti K.K''s case (supra), a Division Bench of this Court in Ashok Kumar and Ors. v. State of Haryana and Ors., 2 CWP No. 10926 of 2007 decided on 21.12.2007, arrived at the same conclusion. In view of the above, even though one of the essential qualifications stipulated in the prescribed qualifications was Bachelor''s Degree in Commerce, yet since the petitioner Arvind Kumar possessed the Master''s Degree in the same stream, we are satisfied, that in view of the decisions, referred to hereinabove, the petitioner should be treated as eligible for appointment to the post of Store Keeper.

4. The second question that falls for our consideration is, whether or not it was open to the PGI to alter the criterion stipulated by itself, for all processes of selections at the PGI. In this behalf, it would be pertinent to mention, that in the selection criterion determined by the PGI 85% marks were allotted for written examination, as against 15% marks for viva-voce. In derogation to the aforesaid criterion the Selection Committee adopted the criterion of 80 marks for the written examination and 20 marks for the interview. The Tribunal accordingly set aside this process of selection with the direction that the same should be re-conducted.

5. The factual position, as has been noticed hereinabove, is not subject matter of dispute. The only issue that arises for our consideration is whether the same selection process can be adopted for re-determining the merit of the candidates specially when there is no allegation on either side (either at the hands of the petitioner Arvind Kumar, or at the hands of the private respondents who have approached this Court by way of filing CWP No. 16275 of 2009), that the same was vitiated on account of extraneous consideration, mala-fides, or for any other such reason. We are accordingly of the view, that it would be just and appropriate in the facts and circumstances of this case, to require the PGI to re-draw the merit list by reapportioning the marks assigned to the candidates who participated in the process of selection, so as to assign 85 marks in the written examination and 15 marks for the interview/viva voce, so as to redraw the merit

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list. Ordered accordingly. Besides the instant modification to the impugned order dated 1.9.2009, we affirm the order rendered by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh.

6. Needless to mention, that if in the meantime certain additional vacancies of Store Keepers have arisen, it would be open to the PGI to adjust one or more candidates against such vacancies, if it considers appropriate.

7. All the writ petitions mentioned in the opening paragraphs of the instant order are accordingly disposed of.

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