

(2014) 09 DEL CK 0432
In the Delhi High Court
Case No : W.P. (C) 3095/2013

Ashwani Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Citation : (2014) 09 DEL CK 0432

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

Bench : Division Bench

Advocate : Sarvesh Bisaria, R.S. Parashar and P.C. Sharma, Advocates for the Appellant; Vikrant Jetly, CGSC and Satya Prakash, Under Secretary (SSC), Advocates for the Respondent

Judgement

Kailash Gambhir, J.—A 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 i.e. 25% for unreserved category and 20% for other categories when no condition of scoring any cut off marks in the interview was laid down in the advertisement issued by the Commission inviting applications for the recruitment to the post of Sub-Inspector in CAPFs, Assistant Sub-Inspector in Central Industrial Security Force (CISF) Examination 2012.

2. The grievance of the petitioners is that the act of the respondents to introduce the 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, placed reliance on the decision of the Apex Court in the case of K. Manjusree Vs. State of A.P. and Another, and Hemani Malhotra Vs. High Court of Delhi, in support of their contentions.

3. Another contention raised by the learned counsel for the petitioner is that the same issue had come up for consideration, before the Central Administrative Tribunal, Principal Bench, New Delhi where the challenge was made by the

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

4. It is an admitted case that the petitioners in these petitions had qualified the written examination (PET) as well as the review medical examination and 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 and if the consolidated marks secured by the petitioners in the written examination and interview are taken into consideration then it could be seen that they had obtained top position in the list of selected candidates.

5. In the counter affidavit filed by the respondents, they have made an attempt to justify their action for introducing the said cut off marks in the interview by stating that when the minimum cut off marks could be laid down from any written paper, then the Commission was well within its rights to prescribe the minimum cut off marks in the interview for the posts, where personality plays an extremely important role in ensuring the efficient discharge of duties even in the initial stage of entry into the service.

6. It is also the stand of the respondents that certain aberrations were noticed in the marks obtained in written examination, vis-a-vis marks obtained in the interview and such aberrations can be redressed only by prescribing the certain minimum cut off marks in 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 the cut off marks in the interview was taken prior to the start of the interview and therefore the petitioners cannot cry foul as they were informed prior in time and before the process for interview could commence.

7. Another stand taken by the respondent 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 order 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 reliance on various judgments of the Apex Court holding the field, therefore we need not

delve into the issues raised by the respondents in their counter affidavit again it has not been disputed before us that the petitioners who had come before the learned Central Administrative Tribunal were also aggrieved by the same criteria introduced by the same advertisement and because they were seeking appointment to the post of Sub-Inspector in Delhi Police, therefore, their remedy to challenge the advertisement lay before the learned Central Administrative Tribunal whereas the present petitioners 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. Consequently, the respondent is directed to proceed in the matter by including the names of the petitioners in the select list 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 and in case they fulfil all other eligibility conditions, the case of the petitioners 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 aforesaid directions, these writ petitions filed by the petitioners stand allowed.