
(2014) 05 DEL CK 0215
In the Delhi High Court
Case No : LPA No. 969/2013

Bhupender Singh Negi

APPELLANT

Vs

Airports Authority of India

RESPONDENT

Date of Decision : 19-05-2014

Acts Referred:

Citation : (2014) 05 DEL CK 0215

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gita Mittal, J.—We have heard learned senior counsel for the petitioner and counsels for the respondents. We have also carefully perused the record.

2. The present appeal assails the order dated 12th November, 2013 passed by the learned Single Judge dismissing the Writ Petition (Civil) No. 7920/2013 which has been filed by the appellants.

3. The facts giving rise to the instant petition are in narrow compass. It appears that the respondent no. 1-Airports Authority of India had issued a notice dated 2nd November, 2010 inviting application for posts of Junior Executive (PA) in Metro and Non-Metro Division. The eligibility criteria for the said post inter alia was prescribed as under:-

Should have shorthand speed of 100 w.p.m. and typing speed of 60 w.p.m. on computer and 40 w.p.m. on manual typewriter.

Selection will be made through written test and skill test followed by interview.

4. It is apparent from the above that the respondent No. 1 had informed all candidates that the selection would be made through a written test as well as skill test. The shorthand speed was prescribed. The skill test was obviously premised so as to ascertain the ability of the applicants. Skill in shorthand typing requires not only speed but it is also essential that such candidate is able to type

the dictation with minimal mistakes which would establish his or her ability in the field.

5. It appears that the appellants were among the applicants who are in service and who had applied for undertaking the examination.

6. There is no controversy also about the fact that the skill test is got conducted by the AAI through the Young Women's Christian Association of Delhi ("YWCA" for brevity)-respondent No. 2.

7. As a part of the examination, the written test was conducted on 05.06.2011. So far as the skill test is concerned, it may be useful to consider the relevant portion of the counter affidavit which has been placed by Mr. Kirti Uppal, Senior Advocate for the appellant before us.

8. It is submitted that the answering Respondent had conducted this shorthand/typing skill test through Institute of Secretariat Training and Management, Department of Personnel and Training, New Delhi as per their qualifying standards and evaluation method fixed by it. The applicant was informed vide letter No. A.60011/04/2012-HR/183 dated 03.05.2012 that mistakes upto 5% are permissible. The shorthand tests (English & Hindi), were of 100 words per minute of 10 minutes (duration) consisted of 1000 words and permissible limit of mistakes in transcription script was 50 i.e. 5% mistakes. Those candidates who had committed 5% mistakes or less than 5% mistakes were declared as passed whereas the candidates having mistakes beyond 5% i.e. above 50 were declared as failed in the said shorthand skill test conducted on different dates at different centres/places.

9. As per the reply of the respondents, in the skill test (shorthand/typing) for the post of JE (PA) conducted by respondent No. 1 on 05.06.2011, there was extremely weak performance of departmental candidates. As a result of such bad performance only 4 departmental candidates out of 107 could qualify the skill test, giving a second opportunity to take the test, the Competent Authority decided to give a lengthy paragraph to the candidates appearing for the type and shorthand passage preferably from the commercial magazine instead of Pitman's Shorthand Book as per the requests from the Departmental candidates who are more familiar with such material.

10. Our attention is drawn to the communication dated 15.12.2011, addressed by the AAI-respondent No. 1 to the YWCA referring to a request received from the department through candidates who were familiar with the test. By way of this letter, the Airport Authority of India informed the YWCA that "the candidates may be given lengthy paragraph and shorthand passage may be given preferably from the Commercial Magazine instead of Pitman's Shorthand Book as per the request from the Departmental candidates who are more familiar with such materials".

11. It is further submitted that the above said decision was communicated to

respondent No. 2 vide letter dated 15.12.2011 for compliance.

12. The learned Single Judge has noticed that the respondent has not prescribed any method of evaluation in the notice inviting applications.

13. The question then arises as to how the evaluation of the candidates in the prescribed skill was being and has been undertaken?

14. In this regard, we may usefully extract the letter dated 17th July, 2012 written by the General Manager (HR) to the Principal Co-ordinator, Young Women's Christian Association of Delhi, (respondent No. 2) wherein it is stated thus:-

In this connection, it is stated that earlier also we have got the test conducted from YWCA, New Delhi on 05.06.2011 as per our letter dated 13.05.2011 (copy enclosed), indicating the following criteria for skill test.

Shorthand speed of 110 w.p.m. and typing speed of 60 w.p.m. on computer or 40 w.p.m. manual typewriters.

As per the evaluation sheets supplied to AAI, it is observed that one mark has been deducted for each mistake in shorthand test conducted on 05.06.2011.

Since the departmental candidates of AAI are representing again and again in respect of different evaluation criteria followed by YWCA, an early clarification in the matter would be highly appreciated.

15. In this regard, we find communication dated 01.09.2012 addressed by the YWCA to the AAI. This letter speaks for itself and deserves to be extracted in extenso and reads as follows:-

1. With respect to the test conducted on 05th June 2011, standard criteria followed in actual practice by the Institute was adopted for Shorthand examination, whereas in the test held on 18th December 2011 question papers were made extremely simple at the last minute request made by your authorities. The question paper was set much below the standard followed in previous examination.

2. At the time of evaluation the marking scheme for Shorthand test is decided after randomly going through few answer sheets. The evaluation of answering sheets is done by those teachers only who have originally set the paper keeping in mind the pattern followed in question paper.

3. There were no specific evaluation guideline mentioned either by the AAI or asked from us regarding deduction of marks per mistake. Therefore the evaluation of answering sheets was done as per our usual practice for the specific question paper set for examination.

16. It is apparent from the above that so far as the skill test of the candidates was undertaken is concerned, it was the YWCA which was laying down the criteria as well as the evaluation scheme.

17. The appellants do not challenge the decision of the AAI to appoint the YWCA as the Competent Authority to evaluate the skill of the candidates and to conduct the skill tests. The appellants also do not assail the request of the Airport Authority of India or the decision and action of the YWCA to adopt lower standards in the re-test the candidates including the appellants.

18. Based on the direction of respondent No. 1, the YWCA thus adopted a different evaluation measure for the re-test which was conducted on 18.12.2011.

19. As a result of this decision and the earlier test, 17 candidates out of 103 could qualify the skill test held on 18.12.2011. This by itself clearly shows that the decision taken by the Competent Authority was in favour of the candidates so as to get a better result so that most of the vacant posts could be filled.

20. It appears from the above extract of the counter affidavit that departmental candidates miserably failed to clear the standards prescribed by the YWCA necessitating reconsideration of the difficulty level of the shorthand dictation to which the candidates were to be subjected in the retest.

21. It is also evident from the above that the respondents took the decision to conduct the retest, not on the same standards on which the previous test was done but on less difficult standards based on the request of the departmental candidates. In fact the difficulty level of the dictation to which the retest candidates was taken, was much below the level on which the original test was given by the YWCA-respondent No. 2.

22. Counsel for the petitioner does not dispute that the retest was a completely fresh test and the candidate was exposed to difficulty level than the original test.

23. It cannot be disputed that evaluation has to relate to the difficulty level of the test. There can be no absolute fixed standard. The appellants before us do not dispute that the difficulty level of the second test was much below the difficulty level of the earlier shorthand examination. The fact that a different evaluation standard was set by the testing agency, based on the change in the difficulty level of the test, cannot be faulted on any legal principle.

24. The above narration also shows that the evaluation standards have throughout been set by the testing agency at the time of evaluation. It is disclosed from the communication relied upon by the appellant themselves that the evaluation standards are determined upon the random examination of a few answer sheet. This principle also appears to be fair. This method which has been throughout adopted by the respondents was not challenged before the learned Single Judge. This has not been challenged before us.

25. The difficulty level of the dictated passage for the re-test was altered at the instance of those candidates who were unable to clear the original examination. This being the position, the explanation of the YWCA as to why the standard for evaluating the performance of the candidates in the retest cannot be challenged by these candidates who participated in the test and failed.

26. It cannot be sufficiently emphasised that the respondent was conducting the written test and the skill test to ensure that the best candidate was appointed in the post in question. It is not for this court to substitute the testing standards. We have neither the expertise nor are we competent to do so.

27. Learned counsel for the appellant has submitted before us that the respondents have changed the rules of the game after the game has started. This submission is completely misconceived in view of the discussion hereinabove. It was not merely the evaluation standard for the retest but the very standard on which the retest was conducted was completely different. The retest was much easier than the original examination.

28. In the present case, there is, therefore, no issue with regard to changing of the rules after the game has started. In any case, we find that the respondents have not notified the evaluation standard which was left to the agency which had conducted the skill test for the obvious reason that the standard of evaluation rests on the difficulty level of the skill test. Nothing has been pointed out to us by the appellant to take a view other than the view taken by the Single Judge in this regard.

29. For all these reasons, we find no merit in this appeal which is hereby dismissed.