

(2011) 10 DEL CK 0008
In the Delhi High Court
Case No : WP (C) No. 7399 of 2011

Delhi Development Authority

APPELLANT

Vs

Sh. Surendra Kumar Meena

RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Citation : (2011) 10 DEL CK 0008

Hon'ble Judges : Sudershan Kumar Misra, J; Anil Kumar, J

Bench : Division Bench

Advocate : Dhanesh Relan, for the Appellant; Daleep Singh, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Issue notice to the respondent. Mr. Daleep Singh, Advocate, accepts notice on behalf of the respondent and states that reply to the notice is not to be filed. The counsel for the parties contend that the writ petition be heard and disposed of finally on the basis of the record of the Tribunal produced along with the writ petition.

2. The petitioner, Delhi Development Authority, has challenged the order dated 18th March, 2011 passed by the Central Administrative Tribunal, Principal Bench in OA No. 3555/2010 titled as Surendra Kumar Meena v. DDA and Ors., allowing the original application of the respondent and setting aside the order dated 21st May, 2010 passed by the petitioner declining the request of the respondent for fixing his seniority from an earlier date, on the ground that there was no provision for re-evaluation of answer sheet in the Recruitment Rules and therefore the answer book of the respondent could not be re-evaluated and he could not be declared successful in the limited departmental examination for promotion for the post of Asstt. Director (Min).

3. Relevant facts to comprehend the disputes between the parties are that the respondent belongs to the Scheduled Tribe community and was appointed on 21st August, 1989 as LDC in the DDA. Thereafter, the respondent had been

promoted up to the post of Assistant Director and at the time of filing the original application, he was working on the said post.

4. In the year 2001, the respondent was working as Assistant and had become eligible for promotion to the post of Assistant Director (Administration) after completing 5 years of service in the grade of Assistant. Pursuant to a Circular dated 19th October, 2001, the respondent applied for the post of Assistant Director (Administration). For the said promotion, the examination was conducted in July and August, 2005 and the result was declared on 16th January, 2006. 5.

5. In the examination conducted for promotion for the post of Assistant Director (Administration), the respondent was declared not qualified in the subject Hindi. The respondent sought information under Right to Information Act, 2005 and the marks obtained by the respondent was disclosed as Paper-1: 56/100; Paper-2: 60/100; Paper-3: 81/100; Paper-4: 36/150 (Hindi); Paper-5: 41/150. The respondent had not been declared qualified as the minimum qualifying marks in each paper was 40%, while aggregate was to be 45%. Since the respondent had got 36 marks out of 150 in Paper-4, even though his aggregate was more than 45%, he was declared unsuccessful.

6. The Scheme of the examination contemplated relaxation of marks of Scheduled Tribe candidates up to 20 marks, however, this relaxation had not been granted to the respondent at that time though other Scheduled Caste and Scheduled Tribe candidates were granted relaxation of 20 marks. The respondent also disclosed that other Scheduled Caste employees, namely, Sh.Dinesh Kumar and Smt. Nirmal Suman, had been granted relaxation of 20 marks, which fact had also been disclosed pursuant to the query raised by the respondent under the Right to Information Act, 2005.

7. Since the respondent had scored only 36 marks out of 150, he along with the other employees of the petitioner who had failed in the Hindi subject filed a writ petition being W.P.(C) No. 2795/2007 before this Court seeking re-evaluation of their result in terms of Circular No. 11 dated 19th October, 2001. The respondent and other candidates also sought that if they are found successful on re-evaluation then to direct the petitioners to promote the respondent and the other employees as Assistant Director (Ministerial) with consequential benefits. The writ petition filed by the respondent and the other persons was decided by order dated 22nd August, 2007 directing the petitioner to get the Hindi subject paper re-evaluated/re-checked from an independent Hindi Officer or any other competent person. Pursuant to the direction by the court, the answer sheet of the respondent and the other candidates who had filed the writ petition No. 2795/2007 were re-evaluated from the Professor of Hindi of Jamia Millia Islamia University. The above noted writ petition later on was transferred to the Central Administrative Tribunal where it was registered as TA No. 13/2008. After the answer books of the subject Hindi test was re-evaluated, the petitioner filed a reply on 17th March, 2009 disclosing that the answer books of the subject Hindi

were re-evaluated and that there was no significant change in the results of the candidates. The writ petition was, therefore, disposed of by the Tribunal by order dated 13th January, 2010.

8. The respondent contended that before the Tribunal an incorrect affidavit was filed by the petitioner, as on re-evaluation 41 marks were awarded to him whereas initially 36 marks were awarded by the evaluator who was not competent to evaluate which had necessitated challenging the evaluation and demand for re-evaluation. The respondent, therefore, claimed that he had to be declared successful as with 41 marks on re-evaluation of the answer book in the subject Hindi test and by adding the 20 marks of relaxation to which he was entitled in his overall marks, he had fulfilled the criteria of scoring 40% in the individual subject and 45% in aggregate, Therefore, he claimed that he should be declared successful in the departmental examination held during 2005, and therefore, he made a representation dated 2nd December, 2009 seeking grant of promotion and seniority from the relevant date.

9. The respondent made another representation dated 28th April, 2010 which was disposed of by order dated 21st May, 2010 on the ground that the case of the respondent to declare him successful cannot be considered, as under the Recruitment Rules there was no provision for re-evaluation of the answer sheets. The order passed on the representation of the respondent is as under:-

Please refer to your application dated 28.04.2010 on the subject cited above. Your case regarding fixing of seniority was examined by the Competent Authority and the same has not been acceded to, as the RRs does not have any provision for revaluation of answer sheet.

10. The respondent thereafter made a detailed representation dated 30th July, 2010 to the Vice Chairman, DDA and also to the Finance member, DDA against the order dated 21st May, 2010 rejecting his claim to declare him successful in the examination of 2005 and to grant him seniority thereof. However, the representation was not replied to entailing the filing of an original application before the Tribunal contending, inter-alia, that the re-evaluation was done by the petitioner from a Professor of Hindi of Jamia Millia Islamia University, and the re-evaluation cannot be challenged on the ground that there are no rules for re-evaluation. The respondent categorically asserted that even after getting answer sheets re-evaluated from the Professor of Hindi of Jamia Millia Islamia University, the petitioner did not disclose the correct facts and rather filed an affidavit disclosing that on re-evaluation there had not been any significant change in the result of the respondent. The respondent also contended that he is entitled for relaxation of passing marks up to 20 marks, which relaxation had also been given to other candidates, which fact had not been denied by the petitioner. The respondent categorically relied on the query raised under the Right to Information Act, 2005 which was replied by the communication reference No. F.7(97)/2010-PB-I/1513 dated 17th June, 2010 regarding the re-evaluation of his answer sheets by a competent Professor. The query No. 5 raised by the

respondent, which was answered by the petitioner is reproduced as under:-

5.

Did Hon''ble 8223;ble Court direct DDA to get re-evaluate the answer book of Hindi from a Competent Professor? If yes, please provide marks secured by applicant on re-evaluation of answer book of Hindi from competent professor.

The suggestion of Hon''ble 8223;ble High Court, the answer sheet of candidate who opted Hindi paper were got re-evaluated from the Professor of Hindi in Jamia Milia Islamia University. The re-evaluated marks in your case were 41. The details of earlier marks and re-evaluated marks were submitted before the Hon? ble High Court.

11. The respondent also relied on a communication from the Standing Counsel of the petitioner regarding the direction of the High Court either to get the answer book re-evaluated by a competent Hindi Professor or to scrap the entire process and to take another examination and also to impose heavy costs on the petitioner/DDA for acting in such an irresponsible manner. The communication dated 24th August, 2007 from the Standing Counsel of the DDA which was produced before the Tribunal is as under;-

The above mentioned matter pertaining to the checking of Hindi Subject Papers was listed before the Hon''ble Court on 22.08.2007. The Hon''ble Court was of the view that admittedly the officer who has checked the papers was less qualified in the Hindi Subject when and as compared to those officers who give the promotion test. The Hon''ble Court suggested that either it can scrap the entire process and direct the respondent DDA to take another examination and imposed heavy cost on the respondent DDA for acting in an irresponsible manner or the respondent DDA may get the same papers rejected from an independent Hindi Professor or any other person competent to check the Hindi Papers.

The Hon''ble Court has granted two weeks time to the respondent DDA to decide and file an appropriate affidavit.

The present matter shall now come up on 11.09.2007. You are hereby requested to kindly consider the case in the light of the above mentioned suggestion.

12. The respondent also produced the details of 29 candidates in whose case re-evaluation was done and the name of the respondent appeared at item No. 19 having Roll No. 103 and Code No. L-17, and his marks obtained out of 150 were shown as 36 and on re-evaluation as 41 marks.

13. The claim of the respondent was contested by the petitioner and a counter affidavit of Mr.Vivin Ahuja, Director (Personnel) was filed contending categorically that the relaxation of 20 marks is given only if a candidate qualifies the examination and even after giving the 20 marks relaxation in the subject Hindi, the respondent would have scored only 56 marks out of 150, and as such would not have scored 40% marks. In para 4.8 of the counter reply, it was admitted

that the Hindi Paper of the respondent and other candidates were re-evaluated. Regarding the averments made before the Tribunal in the transfer application that there had not been any significant change in the result, it was contended that the entire facts ought to be read and there is no provision in the scheme of the said examination for re-evaluation of any paper. Para 4.8 of the counter reply before the Tribunal is as under:-

4.8 That in reply to the contents of para No. 4.8 of the O.A, it is not denied that the responding in TA No. 13/2008 has made a statement "it is submitted that after the Hindi papers were revalued by the competent person there was no change in the result" but the contents of the affidavit filed by the respondent should be read in total. Accordingly it was also stated that "there is no provision in the criterion/scheme of said examinations for re-evaluation of any paper". The action of re-evaluation done by the respondent was in compliance of the orders of Hon''ble High Court and there was no such order for change in criteria/change in the scheme of exam.

14. The petitioner, however, categorically accepted that re-evaluation was done by the petitioner in compliance of the orders of the High Court and that there was no order for change in criteria/change in the scheme of examination.

15. The Tribunal after considering the respective pleas and contentions of the parties, held that the plea of the petitioner that there was no provision for re-evaluation cannot be accepted at this stage as re-evaluation was already got done by the petitioner pursuant to order passed by the High Court in the earlier writ petition. The petitioner had not challenged that there was no provision for re-evaluation and so the High Court could not have directed the respondent to get it re-evaluated from a competent person. The observations and findings of the Tribunal in para 6 and 7 in this regard are as under:-

6. We have heard both the counsel and perused the pleadings. Admittedly, reevaluation of answer sheets was ordered by the Hon''ble High Court of Delhi and on reevaluation, applicant had scored 41 marks in the Hindi paper, therefore, question of reevaluation does not arise at this stage because it has already been reevaluated. It is admitted by the respondents that applicant is entitled to get 20 marks by way of relaxation which has been given to other reserved candidates also. If he is given 20 marks in Hindi and it is added to 41 marks which he has secured on reevaluation, naturally it would make it 61 marks out of 150 which would be 40% or may be more by a fraction. Since it is an admitted position that applicant would be entitled to 20 marks and it has been given to other reserved candidates also, we direct the respondents to grant him 20 marks by way of relaxed standard in Hindi paper and treat it as 61 marks out of 150 in Hindi paper.

7. In view of the above, order dated 21.5.2010 is quashed and set aside. Since 61 marks would be more than 40% and applicant had admittedly got 45% marks in aggregate, he would be entitled to be promoted as Assistant Director

(Ministerial) from the same date when persons of the same selection were promoted. Ordered accordingly.

16. The order dated 18th March, 2011 passed in OA No. 3555/2010 is now challenged by the petitioner contending, inter-alia, that there was no provision for re-evaluation of any paper in the scheme of the examination, however, the answer book was re-evaluated to comply with the direction of the High Court in this regard. Regarding relaxation, it was contended that 20 marks relaxation is given only if a candidate qualifies the examination after adding the 20 marks, but in the case of the respondent even 20 marks relaxation would not qualify him in the Hindi subject, therefore, he was not entitled for relaxation in the Hindi Subject. The petitioner also relied on the order dated 13th January, 2010 passed in T.A.No. 13/2008 which was the writ petition No. 2795/2007 prior to it getting transferred to the Tribunal, wherein the High Court had directed the re-evaluation of the answer book. The order dated 13th January, 2010 passed in T.A.No. 13/2008 is as under:-

3. The learned counsel for the Respondents at the outset stated that the OA had become infructuous because the Respondents on the suggestion made by the Honourable Delhi High Court for re-evaluation of answer-sheets had got the answer-sheets already re-evaluated. It is stated that the answer-sheets were first sent to the Delhi Administration for evaluation by their Hindi officer. However, the Delhi Administration expressed difficulty in evaluation of the answer-sheets and returned those sheets to Respondent _ DDA. Thereafter, the DDA sent these answer-sheets to Professor of Hindi in Jamia Milia Islamia University. The answer-sheets were re-evaluated by the aforesaid Professor and there was very little difference in marks given by the examiner appointed by the DDA initially and by the Professor who re-evaluated the answer-sheets. He would also contend that subsequently three of the Applicants have already been promoted to the post of Assistant Director (Administration). The learned counsel for the Respondents would further contend that now the Applicants are objecting to the re-evaluation by the Professor of Hindi on the ground that he was over-qualified, whereas earlier they were objecting to the evaluation by the Examiner appointed by the DDA on the ground that he was under-qualified.

4. The learned counsel for the Applicant, when confronted with this position, has not been able to give any argument as to how the grievance of the Applicants survives. The Applicants had only requested for re-evaluation, which was done by a competent person appointed by the Respondents.

5. In the aforesaid circumstances, in our opinion, the OA has become infructuous and is accordingly dismissed. No costs.

17. The learned counsel in the circumstances, has emphatically submitted that since no specific direction was given in the transfer application No. 13/2008 to take into consideration the re-evaluated marks, therefore, the same cannot be taken into consideration. It is also contended that there is no provision for re-

evaluation of the answer book for the departmental examination under the Recruitment Rules.

18. Learned counsel for the respondent who appears on an advance notice has categorically refuted the pleas and contentions and has relied on the averments made before the Tribunal and the documents produced therein. The learned counsel has contended that the petitioner has misled the Court by contending that there had not been any significant change in the result of the respondent after the answer book was re-evaluated. Also, as to what was "insignificant difference" in the re-evaluated marks of the answer book was not disclosed to the Tribunal on 13th January, 2010 when T.A.No. 13/2008 was decided. According to the respondent, he got the information under the Right to Information Act, 2005 only afterwards on 17th June, 2010 wherein it was categorically accepted by the petitioner that on re-evaluation 41 marks were awarded to the respondent in place of 36 marks awarded by incompetent evaluators. With 41 marks and relaxation of 20 marks which the respondent was entitled to his marks become 61 marks out of 150 in subject Hindi, and thus, fulfilled the criteria to qualify the departmental examination of scoring 40% i.e. 60 marks out of 150. In the circumstances, it is contended that the Tribunal's order allowing his original application cannot be faulted, and rather action should be taken against the petitioner for misleading the Tribunal and making false averments in the Transfer Application 13 of 2008. The learned counsel for the respondent has also relied on the communication of the learned counsel for the petitioner dated 24th August, 2007 categorically communicating that the High Court was of the view in W.P.(C) No. 2795/2007, which was subsequently transferred to the Tribunal and was registered as T.A.No. 13/2008, that the officer who checked the paper of subject Hindi, compared to the officer who had given the promotion test, was less qualified and in the circumstances, the High Court was of the view to either scrap the entire process and direct the petitioner to take another examination and impose heavy cost for acting in such an irresponsible manner, or the petitioner may get the paper re-evaluated from an independent Hindi Professor or any other competent person to check the Hindi paper. In these circumstances, though there was no provision for re-evaluation of the answer book, the answer book of the respondent and other candidates were re-evaluated by a Professor of Hindi of Jamia Millia Islamia University. The respondent was awarded 41 marks, however, the correct facts were not disclosed before the Tribunal and rather a vague statement was given that there had not been any significant change in the marks on re-evaluation, which led to the disposal of T.A.No. 13/2008 on 13th January, 2010 without any specific direction regarding the respondent.

19. This Court has heard the learned counsel for the parties in detail and has also perused the record produced before the Tribunal. The Tribunal has noted all these facts categorically and the learned counsel for the petitioner is unable to point out any illegality, or irregularity or perversity which would entitle the petitioner to invoke the jurisdiction of this Court to interfere with the order of the

Tribunal. It is significant to note that pursuant to the observations made by the High Court in CWP No. 2795/2007 titled as Prakash Chand Pandey v. DDA where the High Court had observed either to scrap the entire process of the examination, as the answer books of Hindi subject were evaluated from a person who was less qualified than the person who appeared in the departmental examination and to impose heavy cost on the petitioner or to get the answer book re-evaluated from an independent or more qualified competent person, the petitioner got the answer book of subject Hindi of the departmental examination -2005 re-checked/re-evaluated by a Professor of Hindi of Jamia Millia Islamia University. This fact has also not been denied that on re-evaluation the respondent was awarded 41 marks, which fact is apparent from the reply given by the petitioner on 17th June, 2010 in reply to queries raised under the Right to Information Act, 2005 posed by the respondent. In view of this, the petitioner cannot be permitted to contend that there is no provision for re-evaluation under the Recruitment Rules. If there is no provision for re-evaluation under the Recruitment Rules then the petitioner should not have got the answer book re-evaluated by a Professor of Hindi of Jamia Millia Islamia University and should have instead contested any direction or observation made by the Court to get the answer book re-evaluated. At that time, in order to circumvent the whole examination being scrapped and heavy costs being imposed, the petitioner thought of getting the answer book re-evaluated despite there being no RRs for re-evaluation and even did not disclose the impact of the re-evaluation in case of the respondent, and instead submitted a rather vague statement which appears to have mislead the Tribunal to believe that there had not been any significant change in the marks given by the examiner appointed by the petitioner initially and the Professor who re-evaluated the answer book. In case of the respondent, the difference of 5 marks coupled with the fact that the respondent is entitled for relaxation of 20 marks, which fact had also not been denied by the petitioner, the change in marks could not be termed as "very little difference.

20. Taking the entirety of the facts and circumstances, this Court does not find any sufficient ground to interfere with the order of the Tribunal directing the petitioner to promote the respondent as Assistant Director (M) from the same date when the persons who appeared with him in the departmental examination of 2005 were promoted. The petitioner ought to have disclosed the correct facts to the Tribunal in TA No. 13/2008 when the matter was disposed of by order dated 13th January, 2010 which consequently had aggravated further litigation in the matter. The petitioner did inform the respondent under the Right to Information Act, 2005 that on re-evaluation he was awarded 41 marks and with re-evaluated marks and 20 marks which are given to the reserve category students, the respondent becomes successful in the said examination.

21. In the circumstances, the writ petition is without any merit, and it is, therefore, dismissed. All the applications are also disposed of. Considering the facts and circumstances, the petitioner shall also be liable to pay a cost of Rs.10,000/- to the respondent. Cost be paid within four weeks.