
(2010) 10 DEL CK 0271

In the Delhi High Court

Case No : Writ Petition (C) 12399 of 2009

Delhi Subordinate Services Selection Board and Another

APPELLANT

Vs

Sanjay Kumar and Others

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Citation : (2010) 10 DEL CK 0271

Hon'ble Judges : Siddharth Mridul, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Ankur Chhibber and Jyoti Singh, for the Appellant; R.K. Shukla and Arvind Kumar, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—On 23.07.2003, at the request of the Delhi Fire Services, Government of NCT of Delhi, the Delhi Subordinate Services Selection Board (DSSSB) issued an advertisement inviting applications from eligible candidates for being appointed as "Fire Operator". In the advertisement the applicable educational and other qualifications were notified to the candidates as also the procedure of selection. Pertaining to educational and other qualifications it was prescribed the minimum educational qualification would be a metric pass or equivalent. It was notified that the candidates should possess a valid licence for driving heavy duty vehicles. Pertaining to the mode of selection it was notified that the selection shall be made by the Board following any one or more of the following methods: (i) Written Test; (ii) Skill Test/Driving Test; (iii) Aptitude Test; (iv) Interview; and (v) Physical Efficiency Test.

2. A large number of candidates applied and at the written test only 328 were shortlisted for physical endurance test. The said test was held on 20/21.05.2004 and the candidates who remained in the fray were only 137.

3. The said 137 candidates were thereafter subjected to a driving test conducted by the officers of the Institute of Driving, Training and Research; a joint venture

of Government of NCT of Delhi and Maruti Udyog Ltd. The Manager, Driving Training, DTC was appointed as an expert. The driving tests were conducted on various dates and by November, 2004 the Institute sent the names of those who had successfully cleared the driving test. 50 candidates were thereafter empanelled as Fire Operators and by the month of December, 2004 all joined.

4. The respondents of the three captioned writ petitions filed original applications before the Central Administrative Tribunal which were registered as OA No. 563/2005, OA No. 984/2005 and OA No. 1265/2005. Inter-alia, they questioned the right of the Board to subject them to a driving test.

5. Vide judgment and order dated 16.05.2006, the Tribunal allowed all the original applications holding that the selection process did not envisage a driving test to be successfully cleared by the prospective candidates.

6. The decision of the Tribunal was assailed before this Court under W.P.(C) No. 13283-84/2006, W.P.(C) No. 1341112/2006 and W.P.(C) No. 15333-34/2006. The Division Bench of this Court noted that the selection process clearly indicated that the eligible candidates would be subjected to a driving skill test. The decision of the Tribunal was over ruled, but the matter was remanded to the Tribunal inasmuch as learned Counsel for the respondents stated before the Division Bench that there were other issues which the respondents had raised and the same had not been decided by the Tribunal. Accordingly, the three applications filed by the respondents were restored with a direction that the parties shall appear before the Tribunal on 16.03.2009 and the remaining points urged in the original applications would be decided.

7. At the remanded stage, vide impugned order dated 14.05.2009, all the three original applications have been allowed. The selections have been quashed. De novo driving test has been directed to be conducted.

8. At the remanded stage the reasons given by the Tribunal to allow the original applications may be tracked to paragraph 4.1 to 4.3 which read as under:

4.1 On behalf of the applicants, the plea of malafide behind the holding of the impugned driving test on 1.11.2004 would be raised. Adverting to the contentions in Para 4.5 of the OA, the learned Counsel for the applicants would reiterate the averment of the driving test not having been conducted properly and certain irregularities having been committed by respondent No. 3 in connivance with respondent No. 2. The learned Counsel would question how the applicants could be declared unfit in the driving test when they had been declared fit both by the Licencing Authority as well as the same Institute that conducted the driving test on a later date. It would also be contended that the applicants have been declared failed deliberately with a connivance of Respondent No. 2 to accommodate their own candidates.

4.2 Our specific query to substantiate the plea of malafide on the part of the respondent No. 3 drew a blank. It was also pointed out that in case of a factual

malafide the particular person as such has to be impleaded which was not the case here. It is trite that the plea of malafide in decision making process is easier made than made out. As was held by the Apex Court in *M.V. Thimmaiah v. UPSC and Ors.* (2008) 1 SCC (L&S) 409, the plea of malafide in selections not to be acted upon by Courts without substantiation.

On the other points raised regarding unsustainability of the selection process, the relevant aspects have already been considered by the Tribunal while passing its initial order. No new averments have been adduced before us by the respondents necessitating a fresh reconsideration.

4.3 We find that even accepting the right of the respondents to conduct the driving test, which was meant to be only a qualifying test, certain arbitrariness is found. The records perused by the Tribunal at the initial stage had revealed that while no specific marks had been awarded for this test, still some candidates securing high marks in the written and physical endurance tests had been declared as failed; whereas some others securing less marks in these tests were declared as passed. We find ourselves agreeing with the observations that the approach adopted in the given case raised a question mark at the objectivity of the selection process. We also agree with the initial findings of the Tribunal that the selection procedure followed by the respondents by conducting and evaluating the driving test in the way it has been done, has enabled a large number of candidates to be selected even though they secured less marks in the written test and the physical test.

9. The Tribunal has held that there was something amiss in the driving test. It has been held that the result appears to be arbitrary. The Tribunal has been impressed with the fact that no specific marks have been awarded for the driving test and as a result candidates securing higher marks in the written and physical endurance test have been declared unsuccessful.

10. The reasoning of the Tribunal is clearly wrong for the reason a driving test has to be either cleared or one has to fail at the driving test and at which test no specific marks can be allotted. Indeed, as Fire Operators, the prospective candidates were expected to drive fire tenders in cases of emergency. Thus, the driving skill pertaining to heavy duty vehicles was required. Indeed, in the advertisement it was so specified.

11. Now, a candidate may obtain very high marks at a written test and an endurance test but may fail at the driving test. If he so fails, from said fact alone, it cannot be inferred that there is malice.

12. The Tribunal failed to note that the Chairman, DSSSB had no role in the driving test which was outsourced by the Board, to be conducted at the Institute of Driving, Training and Research; a joint venture of the Government of NCT of Delhi and Maruti Udyog Ltd. The Manager, Driving Training, DTC was nominated as an expert at the test.

13. What more transparency could be brought into the selection process by the Chairman of the Board? We can think of none more.

14. But, we have more fundamental reasons to dismiss the original applications filed by the respondents and allow the three writ petitions.

15. As noted above in para 3, 50 persons were selected and appointed as Fire Operators by December, 2004. None of them has been impleaded as a respondent in the original applications.

16. Sufficient would it be to state that having secured appointment, a right accrued in favour of the said 50 persons, which right could not be taken away behind their back. All of them had to be impleaded as respondents. It be highlighted that the said 50 persons have been working for the last 5 years as Fire Operators.

17. The writ petitions are allowed. Impugned order dated 14.05.2009 is set aside. OA No. 563/2005, OA No. 984/2005 and OA No. 1265/2005 are dismissed.

18. We refrain from imposing any costs.