

(2014) 09 DEL CK 0038

In the Delhi High Court

Case No : W.P.(C) 5706/2014, CAV 744/2014 and C.M. Nos. 14087/2014

Delhi Subordinate Services Selection Board

APPELLANT

Vs

Sanjeev Kumar

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Citation : (2014) 09 DEL CK 0038

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Zubeda Begum, Standing Counsel, Advocate for the Appellant; Shailesh Suman, Abhishek Kumar Rao and Bhavya Bharti, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.

CAV.744/2014

Learned counsel for the respondent has put in appearance.

Cav. 744/2014 accordingly stands discharged.

C.M. No. 14088/2014 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 5706/2014, C.M. No. 14087/2014

1. The petitioner, Delhi Subordinate Services Selection Board (DSSSB) is aggrieved by an order of the Central Administrative Tribunal (CAT) dated 13.01.2014 in O.A. No.4380/2012 whereby the respondent's application was allowed, with a direction that in the event of an unreserved candidate failing to join the post, he ought to be considered for the post of PGT (Political Science).

2. The brief facts are that the respondent applicant had applied for the post of

PGT (Political Science) pursuant to an advertisement issued in 2010. 20 vacancies were advertised out of which 11 were in the unreserved category. A competitive written test was held on 18.12.2011; result of this test was declared on 17.07.2012. In the combined select list, the respondent's name was at S. No.15; he had secured 119 marks. The respondent applicant was not appointed. He, therefore, approached the CAT with two contentions, i.e. that the marks awarded to him in the written test were wrong and that he was excluded from the select list even though another candidate-Baksha Ram, who also obtained the same marks, was included. The DSSSB's explanation was that Baksha Ram was senior to the respondent and under the prevailing regulations, his candidature had to be accepted since there was a tie in the performance. The CAT noticed in its impugned order and relied upon two decisions of the Allahabad High Court and directed that since the petitioner had secured same marks as the last selected candidate, in the event a candidate refuses to join in the unreserved category, instead of leaving the vacancy unfilled, the petitioner should be offered appointment.

3. The relevant findings of the CAT are as follows:

"5. It is not in dispute that last candidate selected in UR category secured 119 marks in part II of the exam and could not be included in the select list. The applicant could not find place in the select list as there was no vacancy. It is also not in dispute that because the vacancies in the unreserved category were only 10, thus though, both the applicant and Shri Baksha Ram (Roll No.029795) got same marks, Shri Baksha Ram being elder to him, was preferred over the applicant.

6. As has been viewed by the High Court of Allahabad in the Trilok Nath Mishra Vs. State of UP (supra), there is no object sought to be achieved by giving up preparation of waiting list. If the waiting list is not prepared, the vacancies will remain unfilled for a long period. Para 18 of the judgment reads as under:

"There is no object sought to be achieved by giving up preparation of waiting list. The vacancies will remain unfilled for long period, whereas deserving candidates will be kept waiting or take up other jobs. The U.P. Public Service Commission shall have to bear avoidable cost of selections for the same vacancies afresh. The candidates will either become overage or will have to again compete for the same vacancies. It is thus, in the interest and benefit of candidates, as well as in the public interest to prepare a waiting list. "

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8. In view of the aforementioned judgments of Allahabad High Court, the respondents could have prepared a waiting list and had they done so, the applicant could be offered the vacancy in UR category in the event of non-joining of any of the selected candidates in the said category. It is separate issue that the wait listed candidates have no right to appointment but such proposition would arise only when it is decided not to fill up the vacancies.

9. In the present case, such situation is not espoused. Nevertheless, none of the parties is clear regarding the category in which the selected candidates have refused to join i.e. whether UR category or reserved category.

10. In view of the judgment of the Allahabad High Court and also the fact that marks scored by the applicant are 119 i.e. the same as scored by the last selected candidate in UR category, we are of the opinion that in the event the candidate refused to join is from UR category and the said vacancy is still unfilled, the respondents would consider appointing the applicant as PGT (Political Science) within a period of three months from the date of receipt of a copy of this letter. "

4. It was argued on behalf of the DSSSB that the prevailing instructions did not mandate maintenance of panel after declaration of results. Once the select list was drawn in respect of 11 successful candidates, there was no question of the employer proceeding on the basis of an assumed waiting list and offering appointment to the candidate who was next in order of merit.

5. This Court has considered the submissions. As is evident, the CAT was guided by the decisions of the Allahabad High Court in holding that if vacancies are allowed to remain for long period, deserving candidates would be kept waiting. Although in the present case, the DSSSB asserts that no waiting list is maintained, having regard to the circumstances that only one applicant/candidate is sought to be accommodated, and more importantly, the respondent applicant was equal in merit, this Court is of the opinion that the writ petition is not merited. It is accordingly dismissed along with the pending application.