
(2019) 03 CAT CK 0098

In the Central Administrative Tribunal

Case No : Original Application No. 3862 Of 2017

Dinesh Kumar

APPELLANT

Vs

President's Secretariat

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 15

Citation : (2019) 03 CAT CK 0098

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : D.S. Mehandru

Final Decision : Dismissed

Judgement

Nita Chowdhury, J

1. There is no appearance on behalf of the applicant today. On previous date of hearing also there was no appearance. Accordingly by invoking the provisions of Rule 15 of CAT (Procedure) Rules 1987, we heard learned counsel for the respondents in detail, perused the OA and pleadings of the applicant.

2. By filing this OA, the applicant is seeking the following reliefs:-

"i) Call for the records of selection done on the basis of advertisement No. A-33011/6/08-Estt dated 13.01.2017 (Annexure A-3).

ii) quash and set aside the Results dated 12.05.2017 (Annexure A-1) and 18.05.2017 (Annexure A-2);

iii) direct the respondents to prepare the result arising out of selection made in pursuance of Advertisement No. A-33011/6/08-Estt, in accordance with merit.

iv) award costs of the proceedings and;

v) pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice in favour of the applicant."

3. The grievance of the applicant in this case is against non selection of his candidature for the post of Mali (Grade- III) declared by the respondents vide Result declared on 12.5.2017.

4. Contention of the applicant is that the impugned result has been declared by the respondents only on the basis of total marks obtained by the participating candidates in the online written test whereas according to the applicant, persons who scored lesser marks than him were selected despite his scoring very high marks in the written test and skill/trade test.

4.1 Further contention of the applicant is that second list purportedly took into account by the performance in online test and skill/trade test but the merit remained unchanged as it was the first list which was based only on the performance in online test.

5. On the other hand, learned counsel for the respondents submitted that the selection procedure for appointment to the post of Mali Grade-III comprised of a written test of 100 marks followed by a skill test which was only a qualifying test and comprises of verification of the original certificates/ documents and an oral interaction with the candidates regarding their personal knowledge and awareness about the concerned trade and the skill test was held for those candidates who had secured the qualifying marks in the written test. Further there were no marks allocated for the skill test.

5.1 Counsel further clarified that the said result dated 12.5.2017 was in respect of 66 candidates, who had cleared the written test as well as skill test. However, due to inadvertent mistake, the heading of the said result mentioned that the said result is of the ?online examination? only. After the said mistake was detected by the respondents, a fresh result dated 18.5.2017 was issued which contained the same file number clearly mentioning the same to be the result of the examination on the basis of written test held on 19.3.2017 and skill/trade test held between 8 to 13 April 2017.

5.2 Counsel also submitted that since 13 further vacancies arose due to retirement or otherwise of the incumbents, the result was also declared in respect of 13 candidates in the waiting list, who had also cleared the written test as well as the skill test. Therefore, there is no ambiguity in the action of the respondents.

5.3 Counsel specifically submitted that the marks obtained in the written test only were of no consequence as the criteria for selection was scoring minimum qualifying marks obtained in the written test and passing the skill/trade test. Since the applicant could not qualify in the skill/trade test, he was rightly rejected for appointment for the post of Mali Grade-III.

5.4 Counsel for the respondents also produced a copy of DoPT OM dated 29.12.2015 which provides for discontinuation of interview at Junior Level Posts in the Government of India in which, in para 2 (f), it has also been clarified that

as Skill Test or Physical Test is different from Interview, and they may continue. However, these tests will only be of qualifying nature. Assessment will not be done on the basis of marks for such tests.

6. Having regard to the aforesaid submissions of the learned counsel for the respondents, we observe that in this case as per the Circular dated 12.1.2017, skill /trade test is essential qualification for the said post and those who qualified the written test were called for skill/trade test and the merit was prepared on the basis of marks obtained by the candidates who were also declared as qualified in the said skill/test. We have also seen the skill test result. We also found that applicant was not declared as qualified in the said skill/trade test by the Selection Board, which was constituted for this purpose by the respondents. The Selection Board comprising of the following has been constituted to conduct the Skill/Trade Test for selection to the posts of Mali Grade-III in the Work-Charged Establishment of President's Gardens:-

i) Dy. Director (Hort)

ii) US (Estt)

iii) Supdt., President's Gardens

iv) An expert from IARI/ Agriculture Sector Council of NSDC

7. Further it is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome, as held by the Supreme Court in catena of judgments, especially in the case of Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521, Apex Court held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non selection. In Pradeep Kumar Rai v. Dinesh Kumar Pandey, (2015) 11 SCC 493, the Apex Court held that:

"Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted."

The aforesaid principle has been reiterated in the case of Madras Institute of Development Studies v. K. Sivasubramaniyan, (2016) 1 SCC 454.

8. In the result, for the foregoing reasons, we do not find any ground to interfere

in this matter. As such the present OA being devoid of merit is dismissed accordingly. There shall be no order as to costs.