

(2020) 01 DEL CK 0661

In the Delhi High Court

Case No : Civil Writ Petition No. 167 Of 2020

Dr. Sangita

APPELLANT

Vs

Priyanka Bansal & Ors

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Citation : (2020) 01 DEL CK 0661

Hon'ble Judges : G.S. Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Apurb Lal, Shashi, Vijay Joshi, V.S. R. Krishna, V. Shankar Kumar

Final Decision : Dismissed

Judgement

G.S.Sistani, J

1. The petitioner is aggrieved by the decision rendered by the Central Administrative Tribunal ('Tribunal' for short) dated 04.11.2019.
2. Counsel for respondent Nos.2,3 and 4 enters appearance on advance copy.
3. The petitioner herein had applied for the post of Assistant Research Officer (Humanity Group) pursuant to an advertisement dated 09.07.2013 released by respondent No.3. Although the written examination was conducted on 13.02.2016 and the result of the examination was declared on 18.02.2016; however, based on the directives from the Department of Health Ministry of Health & Family Welfare. vide O.M. No.Z.28014/3/2015-Estt.III dated 15.02.2016 the interview had been dispensed with. Since the directions regarding change in the mode of selection of the candidates for appointment had been received during the process of recruitment, the same was considered by the institute and it was decided that the process of the recruitment that was underway be cancelled; and a fresh examination date was fixed.
4. Although the petitioner herein stood at 8th position in the first examination and was above respondent No.1 on the list; in the second examination she

secured less marks than respondent no.1 herein but was erroneously placed in the 2nd position above respondent No.1. This compelled respondent No.1 to approach the Tribunal. The Tribunal allowed the O.A. filed by respondent No.1; resultantly the petitioner being aggrieved by order of the Tribunal, has filed the present writ petition.

5. Counsel for the petitioner has strongly urged before us that once the recruitment process had begun and the examination was conducted, there was no reason for the respondents to conduct a second written examination without issuing a fresh advertisement and commencing a fresh recruitment process without the approval of the competent authority.

6. We have heard learned counsel for the parties and have considered their submissions.

7. The petitioner herein being aggrieved by the action of Respondent No.3 of conducting a second written examination had preferred O.A. No.968/2016 which was dismissed by the Tribunal on 31.03.2016, when the following order was passed:-

".....

11. As regards the applicant's claim of her accrued rights, since she was at SI. No.8 in the Seniority List prepared after the earlier written examination, it may be noted that the Hon'ble Apex Court has in *Shankarsan Dash v. Union of India*, AIR 1991 SC 1612, held that even a finally selected candidate does not acquire any right to issuance of a letter of appointment, and, in the instant case, only the result of the first stage written test had been declared earlier, and the process of the interviews was yet to follow, by which the applicant herself may have perhaps found her to be out of reckoning, on the basis of subjective satisfaction of the Interview Board, which she would now be able to avoid.

12. Therefore, the OA is rejected in limine, at the admission stage itself, but there shall be no order as to costs."

8. Having once participated in and taken the second examination, in our view, it was not open for the petitioner to challenge the very holding of the second examination. Moreover the cancellation of the first examination was also not challenged by the petitioner. We may add that the cancellation of the first examination was based on an explanatory memorandum which we reproduce below:-

"No.A.12024/ 10/ 2013- Admn.I

National Institute of Health and Family Welfare Baba Gang Nath Marg, Munirka
New Delhi-110067

Dated 25.02.2016

Explanatory Memorandum

Subject: Recruitment to the post of Assistant Research Officer (HG), NHFW- Cancellation of Interview and fresh conduct of written examination-regarding.

The Institute had undertaken the process of recruitment of the post of A.R.O. (HG) by inviting applications through an advertisement published in leading news paper in the month of July 2013. The application so received were screened and an examination was held on 13.02.2016 which was to be followed by an interview to be held on 27.02.2016.

However, while the above process was on, directives from the MoHFW were received by the Institute vide O.M. No.Z28014/ 3 / 2015-Estt.III dated 15.02.2016 whereby the interview had been dispensed with. Since, this direction has been received during the process of recruitment leading to change in the mode selection of candidates for appointment to the aforementioned post. It is therefore, the considered view of the institute that the process has to undergo to a change. Therefore, the current process of recruitment has been cancelled.

In the fresh process of recruitment all the candidates who were applicant as per the advertisement dated 9.7.2013 would be subjected to fresh written examination for the selection which would be based strictly on merit prepared on the basis of the marks obtained in the examination. All applicants would have equal opportunity of participation for the selection to the aforesaid post. Adopting such a course is as per the mandate of the Constitution of India.

The inconvenience caused to the candidate is regretted.

Director, NHFW."

which Explanatory Memorandum therefore gave cogent reasons for cancelling the first examination.

9. In view also of the fact that a earlier O.A. being O.A. No.968/2016 filed by the petitioner challenging the second examination stands rejected; and having regard to the contents of Explanatory Memorandum; and the fact that petitioner participated in the second examination, we find no ground to interfere in the order of the Tribunal by way of this writ petition.

10. Writ petition is accordingly dismissed.

C.M. Nos.435/2020 (permission to file additional documents) and 436/2020 (stay)

Since the writ petition is disposed of, these applications are also disposed of.