

(1981) 08 KAR CK 0046
In the Karnataka High Court
Case No : WP. 20991/80

Manjunatha N.H.

APPELLANT

Vs

Karnataka Public Service Commission and Another

RESPONDENT

Date of Decision : 13-08-1981

Acts Referred:

Karnataka State Civil Services (Direct Recruitment By Selection) Rules, 1973 — Rule 4

Citation : (1981) 2 KarLJ 520

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The petitioner who was an applicant for selection and appointment to the post of English Typist on the establishment of the Karnataka Public Service Commission (hereinafter referred to as the Commission) has questioned the legality of the selection and appointment of the second respondent to the post to the exclusion of the petitioner.

2. The facts of the case are as follows:

The Commission had invited applications for the two posts of English Typists on its establishment. The petitioner being possessed of the minimum qualification prescribed for the post submitted his application to the Commission within the due date. The recruitment to the posts is governed by the Karnataka Civil Services (Recruitment to the post of stenographers, Junior Stenographers, and Typists) Rules 1977. The said Rules prescribe only the minimum qualification for recruitment to the post. As regards the procedure for recruitment Rule 3 of the said Rules provides that direct recruitment under the said Rules shall be made in accordance with the Karnataka Civil Services (Direct Recruitment by Selection) Rules, 1973 (hereinafter referred to as the selection Rules).

Rule 4 of the Selection Rules reads as follows:

"Recruitment under these rules shall be made on the basis of the marks secured at the interview by the selecting authority."

Rule 6(1) of the Selection Rules provides that the selecting authority shall

interview the candidates eligible to be called for interview under rule 5 and award marks on the basis of their performance in the interview. The maximum marks for interview is one hundred. The object of such interview is to assess the suitability of the candidates for appointment to the cadre or post applied for by them and their calibre including intellectual and social traits of personality.

Rule 7 of the Selection Rules requires the selecting authority to prepare list of selected candidates on the basis of the marks secured by the candidates in the qualifying examination and the marks secured at the interview.

3. The petitioner belongs to Schedule Tribe. One of the two vacancies advertised had been reserved for Scheduled Tribe. After the petitioner attended the interview, the second respondent was selected as against the post reserved for Scheduled Tribe and the petitioner was not selected. The petitioner is aggrieved by the action of the Commission in selecting the second respondent in preference to the petitioner and therefore he has presented this writ petition.

4. Before presenting this writ petition, the petitioner made a representation to the Commission requesting them to furnish the reasons for selecting the second respondent in preference to him. An Endorsement dated 22-9-1980 was given to the petitioner which is produced as Annexure-G. The relevant portion of the said endorsement is as follows:

Endorsement "To

Sri N.H. Manjunatha,

Govt. General Hostel,

No. 1, 4th Primrose Road,

Bangalore-560 025.

With reference to his representation dated 22-8-1980, Shri N.H. Manjunatha, is hereby informed that he has secured the following marks in the qualifying examination, typing test and interview for the post of Typist in the office of the Karnataka Public Service Commission.

The Marks secured by Shri R. Vasudeva (selected candidate) are also indicated as requested by him.

Serial No. in the select list Name of the candidate Qualifying examination (per cent of marks) Typing Test Average Total Grand Total

10 Sriyuths:

N.H. Manjunatha 46.37 31/50 21 66 99.03

11

12

The above particulars furnished in the endorsement indicates that the second respondent had secured more marks than the petitioner and therefore the Commission had selected the second respondent.

5. The contention of the petitioner, however, is that under the Selection Rules there is no provision for holding a typing test and if the marks awarded during the typing test was excluded and only the marks secured in the qualifying examination and the marks secured at the interview were taken into account the petitioner had secured more marks than the second respondent and therefore, it was obligatory for the Commission to have selected the petitioner. He contends that the typing test held by the Commission was without authority of law.

6. If the marks awarded during the typing test is excluded the total marks of the petitioner comes to 68.03 and the marks secured by the second respondent comes to 63.33. Therefore, there can be no doubt that if the typing test was not held and the said marks was not taken into account the Commission was bound to select the petitioner instead of the second respondent.

7. Sri S.V. Narasimhan learned High Court Government Pleader appearing for the Commission, however, strenuously contended that as the selection was for the post of English Typist it was legally competent for the Commission to conduct a Typing test and accordingly it conducted the typing test. If the marks awarded by the Commission during the typing test is taken into account, admittedly, the second respondent has secured more marks than the petitioner. On this basis, he submitted that the selection of the second respondent is valid and the petition of the petitioner is liable to be rejected.

8. I find it difficult to accept the contention urged for the Commission. The recruitment to the post of Typists is regulated by the Rules framed under Art. 309 of the Constitution. Rule 3 of the said Rules specifically provides that selection shall be made in accordance with the Selection Rules. Rule 4 of the Selection Rules provides that selection shall be made on the basis of the marks secured in the qualifying examination and the marks secured at the interview conducted under Rule 6 of the Selection Rules. No power is conferred on the Commission to hold a typing test. The holding of typing test, therefore, was contrary to the Rules framed by the Governor under Art. 309 of the Constitution and therefore cannot be upheld.

9. It is true that the Commission was making selection for the post of Typists. But the Recruitment Rules framed by the Governor has taken care of the knowledge of typing while prescribing the minimum qualification as a condition of eligibility for selection viz., a pass in Senior Grade Typewriting examination. Therefore, under the Rules, the Commission was required to make the selection on the basis of the marks awarded by the Department of Public Instructions at the Senior Grade Typewriting examination and the marks awarded by it at the time of interview. There was no scope for Holding another typing test by the

Commission. The above question of law is covered by an earlier decision of this Court in *Rama Dixit v. State of Mysore*, 1972 (1) Mys.L.J. 563. In that case, the validity of the selection which had been questioned before this Court was the selection made for the post of Village Accountants, In, that case also, the concerned selection committee instead of making selection on the basis of qualifying examination had proceeded to hold a written test which was not permitted by the Rules. This Court held that when the Rules did not permit the selecting authority to hold a written test, but had provided that selection shall be made only on the basis of the performance at the interview, the list of selected candidates made taking into account the marks awarded in the written test was invalid and the selection was required to be redone in accordant with the Rules. The said decision applies on all fours to this case also.

10. In the present case there is only one candidate who has been selected to the only post reserved for Scheduled Tribe. The petitioner also belongs to Scheduled Tribe. He had secured more marks both in the qualifying examination and the interview. Therefore, the petitioner is entitled to the relief sought for in the writ petition.

11. Accordingly, I make the following order.

(i) Rule made absolute;

(ii) Selection of respondent-2 for the post of Typist made under Notification dated 27-3-1980 (Annexure-C) is set aside;

(iii) A writ in the nature of mandamus shall issue to the Karnataka Public Service Commission to select the petitioner for the post of English Typist to which he had submitted his application pursuant to the notification dated 26-12-1979 (Annexure-A).

(iv) The Karnataka Public Service Commission is further directed to appoint the petitioner to the post of English Typist.

(v) Time for compliance is one month.

12. Sri S.V. Narasimhan, learned High Court Government Pleader is permitted to file his memo of appearance in two weeks.