
(2020) 10 CAT CK 0089

In the Central Administrative Tribunal

Case No : Original Application No. 1843 Of 2019

Parul Rathee & Others

APPELLANT

Vs

Govt. Of NCTD

RESPONDENT

Date of Decision : 12-10-2020

Acts Referred:

Citation : (2020) 10 CAT CK 0089

Hon'ble Judges : L. Narasimha Reddy, J; Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : M K Bhardwaj, Esha Mazumdar, Jagdish

Final Decision : Allowed

Judgement

L.Narasimha Reddy, J

1. For the purpose of filling the posts of Drawing Teacher in the GNCTD, the DSSSB issued advertisement in the year 2017. The applicants were some of the candidates. Written test for that purpose was held on 29.09.2018 and thereafter the results were declared.

2. Through a rejection notice dated 27.05.2019 the DSSSB - R-2, rejected the candidature of the applicants on the ground that they did not hold the stipulated qualifications. This OA is filed challenging the rejection notice dated 27.05.2019.

3. The applicants contend that the qualifications stipulated for the posts are :

(a) Five years diploma in drawing/painting /sculpture/graphic art from a University/Institute recognized by the Government of India; or

(b) Masters Degree in Drawing and Painting/Fine Art from a recognized University; or

(c) Bachelor's Degree in Drawing/Painting/Fine Art plus two years full time diploma in painting/Fine Art from a recognized University/Institution;

They state that all of them have studied the Bachelor of Fine Arts course with 4 years duration. They contend that in Annexure-II of the advertisement, the respondents have clarified that the Bachelor of Fine Arts is equivalent to five years Diploma and accordingly their applications were processed and even they are permitted to take the examination. They state that there is absolutely no basis for the respondents in treating them as not qualified, after conducting the written test. Other ancillary contentions are also advanced.

4. On behalf of Directorate of Education on one hand and DSSSB on the other hand, separate counter affidavits have been filed. According to them the qualifications for the post of Drawing Teacher were modified in the year 2017 and the Annexure-II which was prepared in the context of unamended qualifications was enclosed to the present advertisement, inadvertently. It is argued that whatever may have been the relevance of B.Sc degree under the old recruitment rules, it is essential for a candidate with a bachelor of Fine Arts also should have 2 years Diploma; and admittedly the applicants do not have such a qualification. It is stated that the mistake was noticed at a later stage and through a corrigendum dated 13.06.2019, the issue was clarified. Extensive reference is made to relevant rules and the opinions expressed by the experts.

5. We heard Sh.M.K.Bhardwaj, learned counsel for the applicants and Ms.Eesha Mazumdar, learned counsel for the respondents 1 and 3 and Sh.Jagdish, learned counsel for respondent No.2.

6. The only issue that arises for consideration in this OA is as to whether the applicants who studied 4 years of Degree in Bachelor of Fine Arts can be said to have possessed the qualification, stipulated for the post of Drawing Teacher.

7. The qualifications stipulated for the posts are extracted in the preceding paragraphs.

8. This accords the recruitment rules framed by the 1st respondent. It is no doubt true that mention is made to the Bachelors Degree in Fine Arts also, in item 3 and a candidate with that Degree is required to hold 2 years full time diploma in painting/fine arts , as qualification. Had the advertisement not indicated anything further, as regards the qualifications, things would have been different altogether. In Annexure-II the respondents have elaborated the qualifications for the post. It reads as under :

The list of Diplomas/Certificates recognized by the Central Board Secondary Education is given below :

For Five Year's Diploma :

1. National Diploma of A.I.C.T.E.
2. Bachelor of Fine Arts Degree from a recognized University.

Particulars of the certificates and institutions are also mentioned about the Diplomas of four, three and two years. A perusal of this discloses that a

Bachelors Degree in Fine Arts is treated as equivalent to the 5 years diploma. This is not a contention which the applicants want us to accept independently. On the other hand they rely upon the material, which is part of the advertisement.

9. Once the 5 years diploma is treated as an independent qualification by itself, and the respondents have recognized the Bachelors degree in Fine Arts as equivalent thereto, the applicants can be said to have possessed the qualification.

10. It is true that the same degree i.e. B.F.A. figures as item 3 in list of qualifications. However a close analysis of the same discloses that it is in confirmation with other Bachelor's Degree, such as Drawing/Painting, that mention is made to the Bachelor's Degree in Fine Arts. The plea of the applicants that the course studied by them is of 4 years duration and the various institutions have introduced the 4 years degree course of Fine Arts, in the place of 5 years diploma, remains un rebutted.

11. It is argued strenuously by the learned counsel by the respondents that the Annexure-II was referable to the qualifications under the old recruitment rules. On a perusal of the old recruitment rules, we find that there is no mention about the 5 years diploma course at all. Under the various combinations, the diploma courses occur along with the degrees and the secondary school certificate. While for the former it is 2 years diploma, for the latter it is diploma of 5 years. We do not find the diploma of 5 years, under the old rules. Having stipulated 5 years diploma as an independent qualification by itself, under new recruitment rules, the respondents cannot disown Annexure-II, nor can it be treated as not valid.

12. Assuming that any mistake has crept into the advertisement in the context of stipulating the qualifications, the respondents should have cautioned the candidates before any tangible steps in the selection have been taken place. As mentioned earlier, the written test was conducted on 29.09.2018. It was only on 13.06.2019, that too after the impugned rejection notice was issued, that a corrigendum is said to have been issued. It cannot be gainsaid that with the participation in the examination on the basis of the qualifications stipulated by the respondents, a valuable right as well as the legitimate expectations accrue to the applicants. The so called corrigendum, issued after completion of selection process is of no legal consequence.

13. We are of the view that the impugned order cannot be sustained in law and it runs contrary to the very stipulations made by the respondents, in their advertisement.

14. We are also convinced that there is no contradiction between Annexure-II on the one hand and the recruitment rules on the other hand. In fact the former supplements the latter and does not alter the qualifications.

15. Reliance is placed upon the judgement of Hon'ble Supreme Court in 2006 (9) SCC 507 by the respondents in support of their contention that the stipulation in the advertisement cannot override the qualifications prescribed under the

recruitment rules. We have already mentioned that the Annexure-II does nothing more, than explaining the qualifications prescribed in the recruitment rules and it became necessary in as much as the rules were amended recently.

16. Hence we allow the OA and set aside the impugned order. The applicants shall be treated as qualified and their cases shall be processed as per the merit obtained by them in the written test and in the selection process. There shall be no order as to costs.