

(2018) 07 CAT CK 0077

In the Central Administrative Tribunal

Case No : Original Application No. 319 Of 2015, Miscellaneous Application No. 239 Of 2015

Parveen Kumar

APPELLANT

Vs

GNCT Of Delhi And Ors

RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 07 CAT CK 0077

Hon'ble Judges : K.N. Shrivastava, Member (A); S.N. Terdal, J

Bench : Division Bench

Advocate : Sourabh Ahuja, Amit Anand, R.K. Jain

Final Decision : Dismissed/Disposed Of

Judgement

K.N. Shrivastava, Member (A)

1. Through the medium of this Original Application (OA) filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

"i. Direct the respondents to conduct the trade test qua the applicant for the post of Binder (Grade-II) and if the applicant qualifies the said trade test then he may kindly be appointed to the post of Binder (Grade-II) with all consequential benefits of seniority, promotion, pay and allowances etc."

2. The factual matrix of the case, as noticed from the records, is as under:

2.1 The erstwhile Municipal Corporation of Delhi (MCD) sent a requisition to Delhi Subordinate Services Selection Board (DSSSB)-R-2 for recruitment against certain posts. Accordingly, the DSSSB published advertisement No.04/2007 (Annexure A-1 Colly). The opening date for receiving the applications was 30.08.2008 and the closing date was 10.09.2017. One of the posts advertised was that of Binder Grade-II, Post Code 050/2007. In the advertisement, it was

indicated that there are seven vacancies in this post, maximum age limit was 30 years and educational qualification prescribed was 8th passed. Essential experience was also stipulated, according to which two years' experience of all kinds of binding, including leather, rexine etc. and thorough experience of numbering, perforating, stitching, cutting gathering and ware-housing was essential.

2.2 The written examination was to be conducted in two tiers - tier-I, the objective type and tier-II, descriptive type. Tier-I was just a qualifying test. It is stated that the applicant successfully cleared tier-I examination. He also cleared tier-II examination and secured 148 marks out of 200.

3. Shri Sourabh Ahuja, learned counsel for the applicant stated that the marks secured by the applicant in tier-II descriptive examination were the highest. Accordingly, respondent no.2 published the result vide Notice no.53, dated 20.04.2012 (Annexure-4 colly) placing applicant in the select list under UR category. Besides the applicant, another candidate was also selected under the UR category and yet another under the OBC category. The result notice had also stipulated as under:

"The selection of the above 03 candidates (UR 02, OBC-01) shall further be subject to the fulfilment of all eligibility conditions as prescribed by the statutory RRs and the terms and conditions of the advertisement as indicated in the advertisement inviting applications and also subject to thorough verification of their identity with reference to their photographs, signatures, handwriting and thumb impression etc. on the application forms, admit card etc. The candidature of the candidate is liable to be cancelled by the user Department also, in case the candidate is found not fulfilling the eligibility conditions or for any other genuine reasons. The competent authority of the user Department shall arrange to verify the correctness of information/documents as furnished in the application form after verification of the same from the original documents. Mere inclusion of name in the result notice does not confer any right upon the candidate over the post."

3.1 Shri Ahuja further submitted that there was no action at the end of the respondents after publishing the result notice no.53, nor any letter of appointment was received by the applicant. The applicant filed OA No.3550/2013, seeking a direction to the respondents to grant him the appointment.

3.2 Shri Ahuja stated that during the pendency of the OA, the applicant was called for the trade test by Director (Printing & Stationery), North Delhi Municipal Corporation (NDMC) vide Annexure A-7 letter dated 15.10.2013. Incidentally, MCD got trifurcated in the year 2012 and three Corporations, namely, South Delhi Municipal Corporation, NDMC and East Delhi Municipal Corporation were formed. NDMC-respondent no.3 was required to attend to the matters emanating from the advertisement no.04.07 of DSSSB. He further stated that in view of the

Annexure A-7 letter of respondent no.3, the applicant withdrew his OA No.3550/2013.

3.3 The applicant was supposed to appear for the trade test on 09.11.2013. It is stated that the applicant's father in the meanwhile suffered massive heart-attack for which he was admitted at Army Hospital (RR), Delhi Cantt. The applicant was required to attend to his ailing father. A certificate issued by the said hospital (Annexure A-8 colly) would indicate that applicant's father was hospitalized from 04.11.2013 to 09.11.2013.

3.4 Shri Ahuja further submitted that the applicant nevertheless appeared in the trade test on the appointed date, i.e., 09.11.2013 despite his father's medical condition and obviously he was not fully prepared for the trade test.

3.5 The applicant secured only 30 marks out of 100, whereas the cut off marks for clearing the trade test, fixed by the Selection Board, was 40. As a result, the Selection Board held that the applicant had not passed the trade test. The proceedings of the Selection Board are marked as Annexure R-4 (p.52).

4. Arguments of the learned counsel for the parties were heard on 12.07.2018. Pleadings of the rival parties were also perused.

5. The gist of the arguments of the learned counsel for the respondents was that in terms of the Recruitment Rules (RRs), the candidates who have cleared the written examination for the post of Binder Grade-II, were also required to pass the trade test. Since the applicant had failed in the trade test, the offer of appointment could not have been extended to him by the respondents.

6. Per contra, the gist of the argument of Shri Ahuja, learned counsel for the applicant was that applicant had secured highest marks in the written examination and was placed in the select list. Due to the medical condition of his father, he could not participate in the trade test with full preparation and with cool mind. Hence, in the interest of justice, a further opportunity may be granted to the applicant for appearing in the trade test.

7. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings. It is not in dispute that the candidates, besides clearing the written test, were also required to pass the trade test, as prescribed in the RRs before they could be offered appointment. In the instant case, although the applicant had secured highest marks in the written test but had failed in the trade test. Neither in the RRs nor in any executive instructions, it is stipulated that the candidates who have failed in the trade test could be offered further opportunity of appearing in the trade test. Even though we do appreciate that due to the medical condition of his father, the applicant definitely was not in free mind to appear in the trade test on 09.11.2013, however, the rules do not provide for showing any compassion or special consideration in such cases.

8. In the conspectus, we do not find any flaw in the action of the respondents in rejecting the candidature of the applicant since he had failed in the trade test. As

such, we do not find any merit in this OA and it is dismissed accordingly.

9. There shall be no order as to costs.

10. In view of the above, no separate orders are required to be passed in MA No.239/2015, which accordingly stands disposed of.