
(2022) 05 DEL CK 0367

In the Delhi High Court

Case No : Civil Writ Petition No. 1104 Of 2021, Civil Miscellaneous Application
No. 3066 Of 2021???

Rizwan Zafar

APPELLANT

Vs

Union Of India Through Secretary & Ors

RESPONDENT

Date of Decision : 12-05-2022

Acts Referred:

Citation : (2022) 05 DEL CK 0367

Hon'ble Judges : Najmi Waziri, J;Swarana Kanta Sharma, J

Bench : Division Bench

Advocate : Pramod Kumar Sharma, Manish Sharma, Amrita Prakash?

Final Decision : Allowed

Judgement

NAJMI WAZRI, J

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The petitioner applied for the recruitment to the post of 'Chemical Assistance, Group-B (Non-Gazetted, Non-Ministerial in the Central Revenues Control Laboratory ('CRCL') under the Ministry of Finance, Department of Revenue as advertised vide Recruitment Notice/ Advertisement No. NR/2/2017 (Post Category No. NR/21317) dated 25.08.2017 published on the website of Staff Selection Commission (SSC). A total of 167 vacancies were notified.

2. He was declared successful candidate at 38th rank in the Merit List (Serial Number 253). The recruitment exercise was carried out by the Staff Selection Commission ('SSC'). The essential qualification for recruitment were as under:

"...

Essential Qualification:

(a) Bachelor's Degree in Chemistry from a recognized University or institute.

(b) Two years experience in chemical analysis or Research in a Govt. Department of Autonomous or Statutory Body or Recognized Institute or University or Public Sector Organization (Undertaking) or listed Private Sector organization"

..."

3. The petitioner claimed that he had requisite educational qualification as well as requisite work experience of more than two years in the field of chemical analysis, testing and research and produced the following details of his work experience:

S.No.

Name of the Organization

Years of Experience with date

1.

M/s. IOL Chemicals and Pharmaceuticals Ltd. (Company Listed with Stock-exchange)

10 months, 21 days

(11.12.2013 to

31.10.2014)

2.

M/s. Saurav Chemicals Ltd

7 months, 15 days (10.11.2014 to 24.06.2015)

3.

M/s. IOL Chemicals and Pharmaceuticals Ltd. (Company Listed with Stock-Exchange)

11 months, 13 days (06.07.2015 to 18.06.2016)

4.

M/s. TEVA API India Pvt. Ltd. [Its parent company, TEVA is listed with International Stock Exchange]

1 year, 3 months and 4 days (21.06.2016 to 24.09.2017)

Total Experience

3 years, 8 months and 23 days (till 24.09.2017)

4. The petitioner contends that denial of his appointment on the ground of his not having the "essential qualification" of 2 years' work experience is totally

incorrect. Referring to his experience certificates, he asserts that he has work experience of more than 2 years with listed organizations which makes him eligible for the post of Chemical Assistant; that indeed, it is on this basis of his having met all requisite qualifications that his name has been forwarded by SSC as successful candidate for appointment in CRCL.

5. The learned Standing Counsel for the respondents submits that only the first period of work experience of the petitioner with M/s. IOL Chemicals and Pharmaceuticals Ltd. for 10 months and 21 days i.e., from 11.12.2013 to 31.10.2014 can be counted; he did not disclose the subsequent period of experience from 06.07.2015 to 18.06.2016 (11 months and 13 days). In any case, the work experience of both phases, would still be less than two years. The experience from the other private sector organization was less than a year, the same would be of no consequence as it was not a "listed organization". The Recruitment Rules require two years' experience in chemical analysis or research in a government department or autonomous or statutory body or recognized institution or listed private sector organizations. She submits that the petitioner does not meet the requirement and therefore he is not eligible to be appointed; that he had not disclosed his entire period of work experience in the application form or before the Tribunal.

6. On the other hand the petitioner submits that the application form did not provide enough columns for listing the entire sequence and periods of work experience including the second period of 11 months and 13 days with IOL Chemicals; therefore, the work experience was filled up in the provided columns in reverse chronological manner, which could not include the second phase with IOL.

7. In this regard, he refers to the dicta of the Supreme Court in Food Corporation of India v. Rimjhim, (2019) 5 SCC 743 wherein it has been held, inter alia, as under:

"...10.1 Clause 33 of the advertisement, which is also considered by the Division Bench of the High Court, provides that the management reserves the right to call for any additional documentary evidence in support of educational qualification & experience of the applicant. As found from the record and even as observed by the Division Bench, the management at the time of verification of the documents, did not thought it fit to call upon the applicant to produce any additional documentary evidence in support of her experience. The management could have called for any additional documentary evidence in support of experience of the applicant. If the management would have called for the additional documentary evidence in support of experience of the applicant, in that case, the original writ petitioner would have produced the certificates, which are subsequently produced before the High Court. At the cost of the repetition, it is to be noted that the FCI has not doubted the certificates dated 14.01.2015 and 18.07.2016 issued by the erstwhile employer of the original writ petitioner. Therefore, the Division Bench of the High Court has rightly observed and held

considering the aforesaid two certificates that the original writ petitioner was having one year's experience of translation from English to Hindi and vice-versa and therefore fulfilled all the requisite essential requirements/qualifications and therefore she was required to be considered for appointment on merits.

11. Now so far as the submission on behalf of the FCI that a candidate must and/or ought to have produced the experience certificate along with the application is concerned, at this stage, a decision of this Court in the case of *Charles K. Skaria v. Dr. C. Mathew* (1980) 2 SCC 752 and the subsequent decision of this Court in the case of *Dolly Chhanda v. Chairman, Jee and others* (2005) 9 SCC 779 are required to be referred to. In the case of *Charles K. Skaria* (supra), this Court had an occasion to consider the distinction between the essential requirements and the proof/mode of proof. In the aforesaid case, this Court had an occasion to consider the distinction between a fact and its proof. In the aforesaid case before this Court, a candidate/student was entitled to extra 10% marks for holders of a diploma and the diploma must be obtained on or before the last date of the application, not later. In the aforesaid case, a candidate secured diploma before the final date of application, but did not produce the evidence of diploma along with the application. Therefore, he was not allowed extra 10% marks and therefore denied the admission. Dealing with such a situation, this Court observed and held that what was essential requirement was that a candidate must have obtained the diploma on or before the last date of application but not later, and that is the primary requirement and to submit the proof that the diploma is obtained on or before a particular date as per the essential requirement is secondary. This Court specifically observed and held that "what is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification". This Court specifically observed and held that "to confuse between a fact and its proof is blurred perspicacity". This Court further observed and held that "to make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakably shown that the qualification has been acquired before the relevant date, to invalidate the merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence. While observing and holding so, in paragraphs 20 & 24, this Court observed and held as under:

"20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a

diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor..... Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

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24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and Government Orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. But a prospectus is not scripture and common sense is not inimical to interpreting and applying the guide-lines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks.

11.1 A similar view is taken by this Court subsequently in the case of Dolly Chhanda (*supra*), relying upon the aforesaid decision of this Court in the case of

Charles K. Skaria (supra)..."

(emphasis supplied)

8. The petitioner submits that the electronic form did not provide for adequate columns to disclose all work experiences in different companies. The petitioner did not stress on the technological constraints in the proceedings before the learned Tribunal because physical copies of the experience certificates had been furnished to the respondents in the OA. The same are annexed to the present petition as Annexure-P2 and are reproduced as under:

9. The petitioner contends that he cannot be blamed for his inability to disclose his complete work experience if the electronic/application form itself did not provide for sufficient space or columns to do so.

10. Apparently, this essential aspect seems to have been missed-out in the impugned order.

11. The aforesaid chart shows that the petitioner's combined experience with IOL Chemicals and Pharmaceuticals Ltd. is 22 months and 4 days. The said company is listed with the Stock Exchange. M/s TEVA API India Pvt. Ltd. is a company registered under Indian laws but owned by TEVA, a foreign entity. The latter is listed with the International Stock Exchange. The petitioner's experience with M/s TEVA API India Pvt. Ltd. is 1 year, 3 months and 4 days. The cumulative work experience of the petitioner with both the organisations is 3 years, 8 months and 23 days.

12. M/s TEVA API India Pvt. Ltd and M/s IOL Chemicals and Pharmaceuticals Ltd both run their chemical laboratories on the basis of certificates issued by the Directorate General of Health Services ('DGHS'). The said document certifies that the laboratories meet the requisite statutory standards and parameters. The same is verified and certified by Central Drugs Standard Control Organization under the relevant rules. Both the laboratories were under identical licenses and meet the same standards. If the laboratories have worked under the prescribed statutory standards, it is this element, of work experience in a duly certified chemical laboratory, which is relevant and necessary for assessing the experience. The ownership of the laboratories could hardly make any difference, therefore the experience gained by the petitioner in either or both the laboratories would count equally. There is no reason for excluding the experience gained in the private laboratory of M/s TEVA API India Pvt. Ltd simply because it is not listed on a Stock Exchange.

13. That being the position, the petitioner shall be deemed to meet the minimum requirement of two years work experience and he is accordingly eligible to be appointed as per the Merit List, at 38th rank, in the General Category as a 'Chemical Assistant', Group-'B' (Non-Gazetted, Non-Ministerial) in Central Revenues Control Laboratory.

14. The petitioner says that he is an OBC candidate. He seeks relaxation because

of his belonging to the OBC Category. He submits that this status would entail relaxation of the required work experience, possibly 22 months instead of 24 months, which is fully met by his work experience with IOL Chemicals (22 months and 4 days); that if this experience is clubbed with his work experience with M/s. TEVA API India Pvt. Ltd., then the total period will be 3 years, 8 months and 23 days; that in both circumstances, he would qualify for being appointed; that if his qualification were to be considered under the OBC eligibility condition, then he would automatically be considered in the un-reserved category as well.

15. He refers to Note-1 and Note-2 of the Recruitment Rules, 2015 which is as under:

"NOTE 1:

Qualifications are relaxable at the discretion of the Staff Selection Commission or Competent Authority, for reasons to be recorded in writing, in the case of Candidates otherwise well qualified.

NOTE 2:

The qualifications regarding experience are relaxable at the discretion of the Staff Selection Commission or Competent Authority, for reason to be recorded in writing the Schedule Caste and Schedule Tribes if at any stage of selection, the Staff Selection Commission or Competent Authority, is of opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill the vacancies reserved for them."

16. He also refers to the recruitment notice/Advertisement No. NR/2/2017 (Post Category No. NR/21317) dated 25.08.2017 which is as under:

"19(iii)..... The reserved vacancies, if nay advertised, will be filled up separately from amongst the eligible SC, ST and OBC candidate on relaxed standards fixed for their respective Categories."

17. The court would note that discretion apropos relaxation of eligibility criteria/ minimum requirements is yet to be exercised by the SSC. This relief was not pursued by the petitioner earlier. It cannot be looked into in these proceedings. He may pursue his remedy, under the said category, as may be available to him under the law.

18. The petitioner has succeeded in the examination. There were 151 declared vacancies, only 35 candidates have been selected. The petitioner being eligible and having qualified in the examination should be issued letter of appointment against those vacancies.

19. In view of the aforesaid, the impugned order 07.10.2020 passed by the Central Administrative Tribunal, New Delhi is set aside. The respondents are directed to declare the petitioner as a successful candidate for the appointment in terms of the Recruitment Notice Advertisement No. NR/2/2017 (Post Category

No. NR/21317) and in the Central Revenues Subordinate Chemical Service (Group 'B' Non-Gazetted post) Chemical Assistant Recruitment Rules, 2015, within six weeks of receipt of this order and a letter of appointment be issued to him in the same period.

20. The petition is allowed and disposed-off in terms of the above.