

(2014) 12 DEL CK 0187

In the Delhi High Court

Case No : Writ Petition (Civil) 2386/2012

Sandeep Kumar Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : (2015) 216 DLT 10

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Yudhister Bhardwaj, Advocate for the Appellant; M.P. Singh and Rajat Arora, Advocate for the Respondent

Judgement

Hima Kohli, J.—The petitioner has filed the present petition praying inter alia for quashing of the entire selection process undertaken by the Institute of Banking Personnel Selection (IBPS) on behalf of the respondent No. 2/Bank of India, pursuant to the advertisement issued on 15.7.2011. He has also questioned the selection of the respondent No. 3 in the OBC category to the post of Law Officer Scale-I and prays that he be appointed with the respondent No. 2/Bank in place of the said respondent.

2. Briefly stated, the facts of the case are that the respondent No. 2/Bank had issued an advertisement dated 15.7.2011, inviting applications for making appointments to the posts of Marketing Executive (MBA) Scale-I, Marketing Executive (MBA) Scale-II and Law Officers Scale-I, for filling up a total of 295 vacancies. For the said purpose, respondent No. 2/Bank had approached the IBPS for undertaking the recruitment process for the aforesaid posts. The dispute in the present case revolves around the post of Law Officers Scale-I, where there existed three vacancies (OBC-2 and General-1) . The examination for the said post was structured by the respondent No. 2/Bank in two parts. The first part comprised of the written examination, that was to be conducted by the IBPS and the second part comprised of an oral interview, that was to be conducted by the respondent No. 2/Bank. The total marks assigned by the respondent No. 2/Bank

to the written examination and the interview were 200 and 100 respectively.

3. The petitioner submitted his application for the subject post under the OBC category and along with the other candidates, he sat in the written examination that was held in Delhi. Vide letter dated 26.11.2011, the respondent No. 2/Bank called the petitioner for an interview for the subject post that was conducted at Mumbai on 2.12.2011. The petitioner claims that he was not intimated about the final outcome of the examination. Later on, the respondent No. 2/Bank had displayed the result of the aforesaid test on its website and against three vacancies for the post of Law Officer, the names of only two successful candidates were displayed. Thereafter, the petitioner adopted the RTI route to gather some information about the results from the respondent No. 2/Bank.

4. In its reply dated 6.2.2012, the respondent No. 2/Bank informed the petitioner that he had obtained the following marks in the written examination:-

5. The petitioner was further informed that he had scored 83 marks in the interview. It was clarified that for qualifying in the written (objective) test, a candidate from the General category ought to have obtained a minimum of 40% marks in each subject/section and the overall prescribed marks (minimum) for all sections/subjects was 50%. For the OBC, SC & ST category, a relaxation was given and the candidates applying under the said categories were required to have obtained 35% marks in each section and the aggregate marks in all sections was fixed as 45%. In reply to a question about the availability of eligible qualified candidates category-wise for the subject post, the respondent No. 2/Bank had stated that three candidates were selected against three vacancies but the result of one candidate from the OBC category was held in abeyance due to non-submission of conclusive proof of eligibility. Initially, the result of the said candidate was not displayed on the website, but later on, the list of candidates displayed on the website included the name of the respondent No. 3, whose result was kept in abeyance.

6. Aggrieved by the information furnished by the respondent No. 2/Bank under the RTI Act, the petitioner had filed an appeal before the Appellate Authority. In the said appeal, the respondent No. 2/Bank had given a reply dated 26.3.2012 and in para 3 thereof, it had stated as under :

"3. xxxxx

Please note that for the purpose of selection for Interview, the aggregate marks obtained in written test is taken into account, whereas for final selection after Interview, Interview marks are added to these aggregate marks (i.e. written test mark) . Accordingly, the mark scored by you in the said Exam (Law Officer - Scale-I) is as below:

It is informed that though you have scored 155 marks after interview which is equal to the cut off marks for OBC, you are not selected because the last candidate selected under OBC category had scored more marks in written test

i.e. 100 marks against the (Total weighted Score) TWS-200. Please also note that in the Bank's letter dated 06.02.12, your interview marks is inadvertently shown as 83 instead of 72. In this regard the combined merit list containing all candidates' written test marks, interview marks etc. for the post of Law Officer-I is attached herewith for your information.

With regard to other queries at Para No. 3 & 4 of the appeal, please note that as per the Notice dated 25.04.2011, there were 2 vacancies for OBC for Law Officer-I. Among the OBC candidates, two candidates were selected under OBC of which the result of candidate with Roll No. 2403094690 was held in abeyance. The said candidate has now been issued appointment letter after verifying her eligibility. Consequently, no vacancy remains in OBC under the said process for Law Officer-I."

7. Not satisfied with the information furnished by the respondent No. 2/Bank, the petitioner has filed the present petition. Learned counsel submits that in the combined merit list dated 3.12.2011 (Annexure P-2) , the candidate mentioned at Sr. No. 1 (Nishant Garg) was declared successful from the General category against one vacancy available in the said category, and the candidates at Sr. No. 2 and 3 (Kanchan Yadav and Banita Kumari respectively) were declared successful in the OBC category, whereas the petitioner's name had featured at Sr.No. 4 in the said list. It is the petitioner's stand that on comparison of his result as declared in the combined merit list of candidates with that of the successful candidate immediately above him and ranked at Sr.No. 3, i.e., respondent No. 3/Banita Kumari, it would transpire that against a total of 200 marks assigned for the written (objective) test, the said respondent had obtained 100 marks and the petitioner had obtained 83 marks. Out of 100 marks assigned for the interview, the respondent No. 3 had obtained 55 marks and the petitioner had obtained 72 marks. On totaling the two set of marks (T-200+interview (100)) , both, the respondent No. 3 and the petitioner had obtained the same marks i.e., 155 marks.

8. The grievance of the petitioner is that in the Bank's reply dated 6.2.2012 to the RTI queries raised by him, he was informed that the marks obtained by him in the interview were 83, whereas subsequently, in the reply dated 26.03.2012 submitted by the respondent No. 2/Bank in the appeal proceedings filed by the petitioner, the marks obtained by him in the interview were unilaterally reduced from 83 to 72. It is contended that if the petitioner's marks in the interview are maintained at 83 as was conveyed to him originally, then on adding his marks in the written test which were 83, the total marks scored by him would be 166, which were more than what the respondent No. 3 had scored, this making him eligible for selection over her.

9. Learned counsel for the petitioner argued that it is hard to believe the explanation for the mismatch of marks offered by the respondent No. 2/Bank during the appeal proceedings under the RTI Act which was that the information earlier furnished to the petitioner, vide reply dated 6.2.2012, was an inadvertent

mistake. He contended that it raises a serious doubt about the legitimacy and genuineness of the combined merit list for the subject post and the petitioner has a genuine doubt that the results were manipulated by the respondent No. 2/Bank only to oust him and to extend undue favours to the respondent No. 3. It was therefore submitted that while preparing the merit list, the respondent No. 2/Bank had discriminated against the petitioner and committed a gross illegality in the selection process.

10. Notice was issued on the present petition on 23.4.2012. After the pleadings were completed, the matter was listed for arguments on 16.7.2014. In the course of arguments, learned counsels for the parties had drawn the attention of this Court to the document enclosed with the writ petition and marked as Annexure P-2, which is a copy of the combined merit list of all the candidates for the subject post. Counsel for the petitioner had stated that the respondent No. 3 had scored 155 marks only after the respondent No. 2/Bank had granted concessional marks in the interview, whereas the same relaxation was not extended to the petitioner. He urged that even if the version of the respondent No. 2/Bank is accepted that the marks obtained by the petitioner in the interview were 72 and not 83, then if the concessional marks that were granted to the respondent No. 3 would have been added to the 72 marks assigned to the petitioner, he would have obtained 158 marks out of 300 marks and not 155 marks, as reflected in the combined merit list and that would have made him eligible for appointment to the subject post over the respondent No. 3.

11. In view of the aforesaid stand taken by the counsel for the petitioner and looking at the difference in the marks of the petitioner conveyed by the respondent No. 2/Bank while filing two sets of replies to the RTI queries raised by him, counsel for the respondent No. 2/Bank was directed to produce the relevant records for the Court to peruse. On 25.8.2014, after perusing the records produced by the counsel for the respondent No. 2/Bank, it was deemed appropriate to direct the Bank to file a brief affidavit giving clarifications along with the relevant documents.

12. An affidavit was filed the respondent No. 2/Bank on 27.10.2014, along with a copy of the subject advertisement, a copy of an earlier advertisement dated 25.4.2011 inviting applications for a number of posts, including that of a Law Officer and a copy of the subsequent advertisement dated 16.3.2012, for recruitment of clerical cadre. The respondent No. 2/Bank filed a copy of the mark-sheet and a copy of the interview rating sheet of the successful candidates for the subject post, as prepared by the IBPS. A copy of the note prepared by Recruitment Advisory Committee on 4.11.2011, explaining inter alia the reasons for granting further concession/relaxation to some candidates in the minimum qualifying marks for the post of Law Officer Scale-I, was also filed.

13. Learned counsel for the respondent No. 2/Bank disputed the stand taken by the other side and denied the allegation that any concession was extended to the respondent No. 3 in the interview process. Instead he submitted that such a

remark made in the column of "Concession" in the combined merit list of candidates furnished by the respondent No. 2/Bank to the petitioner on 26.3.2012, was erroneous and found to be contrary to the actual records maintained by the Bank. He pointed out that the records available with the Bank reflect that the respondent No. 3 was not granted any concession at all in the marks assigned to her in the interview and she had actually obtained 55 marks which position was correctly reflected in the combined merit list. He further clarified that none of the candidates in any category was extended any relaxation during the interview and therefore, the remarks mentioned in the column of "Concession" against the name of the respondent No. 3, may be treated as an error.

14. Counsel for the respondent No. 2/Bank explained that in the advertisement dated 5.7.2011, the cut-off marks for candidates under the OBC category was fixed as 35% in each subject and 45% in aggregate. However, vide note dated 4.11.2011, the Recruitment Advisory Committee had approved additional 5% relaxation so as to enlarge the pool of candidates for the interview. After the said relaxation, as against seven candidates who were earlier found to be eligible for the subject post, 26 candidates became eligible for interview and 10 candidates therefrom were finally shortlisted for participating in the interview. He submitted that the petitioner herein had not obtained 35% pass marks in the professional knowledge paper but after giving him relaxation in the said paper, he was allowed to appear in the interview. Thereafter, the marks of the aforesaid 10 shortlisted candidates were tallied and after adding up the marks obtained by them in both, the written examination and the interview, it transpired that the petitioner and the respondent No. 3 had obtained equal marks, i.e., 155 marks. In the case of the petitioner, he had obtained 83 marks in the written examination and 72 marks in the interview, totaling to 155 marks and as for the respondent No. 3, she had obtained 100 marks in the written examination and 55 marks in the interview, again totaling to 155 marks.

15. Counsel for the respondent No. 2/Bank stated that as the marks of two of the candidates were equal, the Bank had adopted the uniform policy and practice evolved by it to deal with such a situation by selecting the candidate, who had obtained more marks in the written examination and further, by giving preference to the candidate who is more senior in age (as per the available date of birth) . Since the respondent No. 3 herein had obtained more marks in the written examination, i.e., 100 marks as against 83 marks obtained by the petitioner and she was senior in age vis-?-vis the petitioner, her date of birth being 5.2.1984 as against the petitioner's date of birth, which is 15.11.1984, she was selected to the post of Law Officer Scale-I, in the OBC category.

16. In rejoinder, learned counsel for the petitioner had submitted that the manner in which the respondent No. 3 was selected to the subject post smacks of discrimination and favouritism and the entire selection process is vitiated and ought to be set aside. He disputed the submission made by the counsel for the

respondent No. 2/Bank that the respondent No. 3 was not granted any concession/grace marks in the interview and reiterated that had such a concession been granted to the petitioner, he would have scored higher marks than the respondent No. 3.

17. This Court has heard the arguments advanced by the counsels for the parties and scrutinized the records produced by learned counsel for the respondent. The same were also handed over to the learned counsel for the petitioner for perusal.

18. Before considering the arguments advanced by learned counsels for the parties, it is necessary to clarify the settled legal position with regard to the exercise of the power of judicial review in matters pertaining to recruitment, qualifications, selection criteria etc. which is that when an employer invites applications for appointment to a particular job, it is entirely his prerogative to stipulate the educational qualifications, experience, age limit and the other criteria for selection to the said post. In the case of Union of India (UOI) Vs. Pushpa Rani and Others, , the Supreme Court had laid down the parameters within which the courts ought to exercise the powers of judicial review in service matters and had made the following observations:-

"37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration."

(emphasis added)

19. In the case of Rajya Sabha Secretariat and Others Vs. Subhash Baloda and Others, , the Supreme Court had again observed that it is not the job of the court to substitute what it thinks to be appropriate for that which the selecting authority has decided as desirable and while taking care of the rights of the candidates, the court cannot lose sight of the requirements specified by the selecting authority and nor should the High Court re-write the rules of selection.

20. In the instant case, the petitioner has expressed an apprehension that some mischief had taken place in the selection process adopted by the respondent No.

2/Bank due to which, the relaxation in the marks granted to the respondent No. 3 during the interview, was denied to the petitioner and resultantly, he was denied the appointment. Furthermore, the conflicting information furnished by the respondent No. 2/Bank in the proceedings initiated by the petitioner under the RTI Act for gathering information about the results, made the results appear to be questionable. This was so because initially, in its reply dated 6.2.2012, the respondent No. 2/Bank had informed the petitioner that he had obtained 83 marks in the written examination and scored 83 marks in the interview, totaling to 166 marks. Subsequently, in its reply dated 26.3.2013, the petitioner was informed by the respondent No. 2/Bank that while he had obtained 83 marks in the written examination, the correct marks obtained by him in the interview were 72 and it was clarified that due to inadvertence, in its previous letter dated 6.2.2012, his interview marks were shown as 83.

21. Alongwith the aforesaid letter dated 26.3.2012, the respondent No. 2 had also enclosed the combined merit list containing the marks scored by all the candidates in the written test and the interview held for the subject post. It was conveyed to the petitioner that there were two vacancies in the OBC category for the subject post and amongst the OBC candidates, two candidates were selected, but the result of one of the selected candidates was held in abeyance for evaluating the said candidate's eligibility. After evaluating the same, an appointment letter had been issued to the said candidate who turned out to be the respondent No. 3 herein. The Bank had finally stated that there was no vacancy remaining in the OBC category for the post of Law Officer-I.

22. From the above, what emerges is that in less than two months from the date of furnishing the initial information to the petitioner under the RTI Act, the respondent No. 2/Bank had admitted an error on its part in specifying the marks obtained by him in the interview and had informed him that there was an error in the letter dated 6.2.2012 with regard to the marks conveyed. Pertinently, at that point in time, the petitioner had not initiated any litigation against the respondent No. 2/Bank and therefore, no adverse inference can be drawn against the Bank by assuming that it had deliberately furnished inaccurate information to the petitioner on the first occasion and later on changed his marks to cover up some illegality allegedly committed by it during the selection process.

23. On perusing the combined merit list of all the candidates as procured by the petitioner from the respondent No. 2/Bank through the RTI route, it transpired that the respondent No. 3 who was also an OBC candidate like the petitioner herein, had obtained 100 marks in the written test as against 83 marks obtained by the petitioner and she had obtained 55 marks in the interview as against 72 marks obtained by the petitioner. There is no dispute with regard to the marks obtained by the petitioner and the respondent No. 3 in the written test. It is clear that the respondent No. 3 had obtained 17 marks more than the petitioner in the written test. However, the heart of the dispute revolves around the marks scored by the parties in the interview. While the respondent No. 3 had scored 55 marks,

the petitioner had scored 72 marks. In other words, the respondent No. 3 had obtained 17 marks less than the petitioner in the interview.

24. On the court's directions, learned counsel for the respondent No. 2/Bank had produced the records that included a copy of the note prepared by the Recruitment Advisory Committee on 4.11.2011 wherein, it was noted that in case of Law Officer Scale-I, adequate number of candidates had not qualified and same was the position even in the earlier recruitment process. After discussing the matter with the IBPS, the Agency that had conducted the written test for the subject post, the Committee recorded that the qualifying marks stipulated by the respondent No. 2/Bank were higher than those of other banks and taking note of the fact that the Bank was facing an acute shortage of manpower, it was proposed that the marks for qualifying in the written examination be relaxed by 5% subject-wise and aggregate so that it provides a larger pool for shortlisting candidates to be called for the interview.

25. To verify the contention of the learned counsel for the petitioner that in the combined merit list of candidates furnished by the respondent No. 2/Bank, under the column, "concession", there was a remark that the respondent No. 3 was given a concession in the interview, which has been denied by the other side, the court had summoned the original records for perusal. The records reveal that there is no over-writing, interpolation, scoring off and /or cutting etc. in the Interview Rating Sheet prepared in respect of all the candidates for creating any doubt as to its veracity or to lend credence to the apprehension expressed by the petitioner that an undue advantage was sought to be given to the respondent No. 3. The said Sheet clearly mentions that the respondent No. 3 was awarded 55 marks and the petitioner was awarded 72 marks. Further, on a comparison of the marks reflected in the Interview Rating Sheet with the documents filed by the petitioner at Annexure P-2 which is the combined merit list of all the candidates furnished to him by the respondent No. 2/Bank under the RTI Act, it transpires that the marks reflected in both the documents are identical. In such circumstances, the court is quite inclined to accept as reasonable, the submission made by counsel for the respondent No. 2/Bank that the remarks given in the combined merit list that a concession was given to the respondent No. 3 in the interview, is a bonafide error/omission and in reality, no such concession was extended to her. On the other hand, in line with the recommendation made by the Recruitment Advisory Committee, respondent No. 2/Bank had extended relaxation of 5% to the petitioner in the professional knowledge paper to enable him to meet the cut off marks fixed at 35%. This fact is borne out from the Combined Merit List of candidates, where in the column of "Concession" against the petitioner's name, appears a remark, "PK/T200". Therefore, it cannot be urged by the petitioner that he was not granted any relaxation in the selection process.

26. The next question that falls for consideration is that in view of the fact that on tallying the results of the written test and the interview, when both the

petitioner herein and the respondent No. 3 had obtained equal marks, i.e., 155 marks each, whether the respondent No. 2/Bank fell into an error in adopting the practice evolved by it to deal with such a situation, by selecting a candidate who had obtained more marks in the written examination and by giving preference to the candidate who is more senior in age, vis-?-vis the other candidate.

27. No doubt, the aforesaid practice evolved by the respondent No. 2/Bank does not find any mention in the selection procedure stipulated in the subject advertisement issued on 15.7.2011, but learned counsel for the respondent No. 2/Bank has been able to demonstrate from the selection procedure followed by the bank on 25.04.2011, which took place prior to the selection process that is the subject matter of the present petition and subsequently, on 16.3.2012 when another selection process was initiated that such a practice was being regularly followed, when coming across a situation where similar marks were obtained by two or more candidates. This was evidenced by the advertisement dated 25.4.2011 issued by the respondent No. 2/Bank for making recruitments to 17 posts including the post of Law Officer-II and the advertisement dated 16.3.2012 issued by the Bank for making recruitment to the post of 3016 clerical cadre. In both the advertisements, under the column "selection procedure", the following note was inserted:-

"Note": In case of similar marks to two or more candidates the merit order of such group of candidates will be as per their aggregate written test marks and further as per their date of birth(i.e. more senior in age will be placed first before less senior in age) . Candidates belonging to SC/ST/OBC/PWD categories filling in "unreserved" vacancies will not be entitled for relaxation available to them in their respective category."

28. From the aforesaid facts, it is amply clear that the respondent No. 2 Bank has been adopting a uniform selection procedure for making recruitments when similar marks are obtained by two or more candidates and therefore, by following the said procedure in the selection process adopted in the present case, no exception was made and nor did the Bank go out of the way to accommodate the respondent No. 3 over the head of the petitioner, as alleged. As noted earlier, when scrutinizing the selection procedure adopted by the respondent/employer, the court is not expected to evaluate the relative merits/demerits of the methodology of recruitment; it has only to examine as to whether the procedure adopted by the employer has been uniformly applied to all the candidates and such an action is not tainted with malafides or arbitrariness. Even otherwise, the aforesaid practice adopted by the respondent No. 2/Bank appears to have a rational nexus to the object sought to be achieved. The Bank did not commit any error in giving primacy to the marks obtained by a candidate in the written test, as it would rule out any scope of subjectivity that may have crept in during the interview process. Similarly, giving preference to a candidate, who is senior in age is also based on logic as a candidate, who is senior in age might miss the bus on account of the age bar, on the next occasion when applications would be

invited to fill up posts, but the one who is younger in age is not likely to be disqualified on this ground and would have comparatively more opportunities available to apply.

29. To conclude, in the given facts and circumstances of the case, this court is of the opinion that the respondent No. 2/Bank has been able to satisfactorily dispel the clouds of doubt hanging over the selection procedure adopted by it for making appointments to the subject post. There is no justification for interfering in the selection process for appointment to the post of Law Officer Scale-I made by the respondent No. 2/Bank as the same is not found to be illegal, arbitrary, or tainted with malafides. Nor is there any ground for quashing the appointment of the respondent No. 3. Accordingly, the present petition is dismissed, while leaving the parties to bear their own costs.