
(2010) 03 DEL CK 0296

In the Delhi High Court

Case No : Writ Petition (C) No. 1795 of 2010

Sh. Shambhu Dutt

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 03 DEL CK 0296

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : A.K. Sharma, for the Appellant; A.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the order dated 20th March, 2009 passed by Central Administrative Tribunal, Principal Bench, New Delhi in O.A No. 1983/2008 titled Sh. Shambhu Dutt v. Union of India & Ors. dismissing the original application of the petitioner seeking direction to the respondent declaring the petitioner successful and having qualified the ministerial staff (UDC) for the year 2006 and to consider him for promotion to UDC/STA.

2. The brief facts to comprehend the controversies are that the petitioner joined as a Group D employee in the year 1991 and later on he was promoted on adhoc basis as an LDC (Lower Division Clerk). He was regularized as LDC with effect from 16th February, 2001. While working as LDC, which post was also re-designated as Tax Assistant, he appeared in the departmental examination for the post of UDC (Upper Division Clerk). He cleared one paper in 1997 and paper II & IV in 2000. He also passed the computer knowledge test on 16th June, 2003. Another paper was cleared by him in the examination held in 2006 and the results declared in 2007. However, in the examination for the year 2006 for the post of UDC, he was shown absent against three papers, which he alleged that he had qualified in earlier examination. In the examination held in 2006, the petitioner was therefore, not declared successful. Consequently he gave a

representation which was not accepted and rejected by letter dated 24th September, 2007.

3. Aggrieved by the rejection of the request of the petitioner to declare him successful in the examination for the post of UDC he filed an original application. He relied on a judgment of the Tribunal in the case of Laxman Singh Bisht v. U.O.I and Ors being O.A No. 2031/2006 where similar relief as claimed by the petitioner was allegedly granted.

4. The petition was contested by the respondents contending inter-alia that he had appeared only in one paper III and was absent in other three papers of UDC examination, 2006. According to the respondents as per amended rules, the candidates promoted on adhoc basis were required to appear in all papers fresh. Reliance was also placed on various letters and circulars issued specifying that ad-hoc promotes were not eligible to appear in the departmental examination which was meant for regular grade. It was also clarified that the adhoc candidates who had appeared in the Ministerial Examination in earlier years, their marks of earlier years were not to be considered for promotion to the post of UDC and candidates having regular appointments as LDCs were eligible to appear in the examination. Regarding the reliance of the petitioner on Laxman Singh Bisht (Supra) in which case the candidate had not been intimated about appearing in all the papers fresh, it was contended that the petitioner in the present case was advised individually and personally by letter dated 6th October, 2006 which was served on him. Reliance was also placed on various circulars which were duly displayed on the notice board of the office and in these circumstances, it was contended before the Tribunal that the petitioner was fully aware of the decision that he had to appear in all the papers in 2006 examination. In the notification for the examination also it was categorically stipulated that the candidates would be required to appear in all the papers in the examination.

5. The Tribunal after hearing both the parties specifically relied on the notification which clearly stipulated that all the candidates have to appear afresh as a rule, as the marks obtained in earlier examination when the petitioner was working as ad-hoc and not as regular LDC shall not be taken into consideration. The relevant extract of the notification dated 3rd October, 2006 is as under:-

3. In case of ad hoc employees now regularized, who have appeared in the examination held in earlier years, the Board's instruction vide F.No.A-34014/3/98-Ad.IX dated 17.5.2002, has been followed. Hence, all are informed that any marks obtained in earlier years, by ad hoc employees, while appearing provisionally shall not be taken into consideration and candidates having regular appointments only will appear in the Exam.

All candidates are, therefore, advised to appear afresh as per rule since marks obtained in ad hoc period shall not be taken into consideration.

6. In these circumstances, the Tribunal held that the petitioner and the other candidates were categorically and specifically intimated that they have to appear

in all the examinations and even an individual letter dated 6th October, 2006 was served on the petitioner. The Tribunal has also considered the entrance card and certain cancellation done on the said entrance card and has disbelieved that cutting for appearance in not all the papers could be done by the authorities, as it did not bear any initials and, therefore, had reached an inference that the cutting was done by the applicant himself. Since the notification clearly stipulated that the candidates have to appear afresh, the entrance card and the cutting on the same was not to be construed in favor of pleas and contentions of the petitioner. In these circumstances, the Tribunal had held that despite the information to petitioner individually and personally by communication dated 6th October, 2006 and by categorical notification and various circulars which were put up on the notice board, if the petitioner opted to appear only in one paper knowing fully well that he was required to appear in all the papers, the petitioner cannot blame anyone else but himself and has to face the consequences of not appearing in all the examinations. The Tribunal has also distinguished the judgment relied on by the petitioner.

7. The learned counsel for the petitioner before us has again emphasized that the marks obtained by the petitioner in earlier examination in 1997 and 2003 should have been taken into consideration. The learned counsel, however, cannot deny that in 2006 when the petitioner appeared, the rules had been amended and this was categorically brought to the notice of the petitioner. The notification and circulars were also categorical about the candidates to appear in all the examinations and only the regular LDCs were entitled to appear and the petitioner was intimated personally. This is also not disputed by the learned counsel for the petitioner that there have not been any instances where ad-hoc LDCs on the basis of their performance in the earlier examination have been promoted to UDC.

8. In these circumstances if, despite having knowledge by the petitioner that he has to appear in all the papers in the examination, he opted not to appear in all the examination. This will make him liable for the consequences and consequently it cannot be held that petitioner is entitled to be declared successful in the Ministerial Staff UDC Examination, 2006. In the facts and circumstances, there are no grounds to interfere with the order of the Tribunal impugned before us. The pleas raised by the petitioner will not entitle him for interference by this Court with the order dated 20th March, 2009 of the Tribunal. There is no such illegality or irregularity in the order of the Tribunal impugned before us which will entitle petitioner for any of the relief claimed by him in his writ petition under Article 226 of the Constitution of India.

9. The writ petition is without any merit, and it is, therefore, dismissed.