

(2002) 09 DEL CK 0187
In the Delhi High Court
Case No : CWP 6900 of 2000

Shri Malbir

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 309
Group C Recruitment Rules, 1986 — Rule 2, 3

Citation : (2002) 09 DEL CK 0187

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : Sanjay Sarin and Jayasree Singh, for the Appellant; Sameer Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—An order of the Central Administrative Tribunal dated 2nd August 2000 passed in OA No. 226/1995 whereby and whereunder the Original Application filed by the writ petitioner herein was dismissed, which is in question in this writ petition. Bereft of all unnecessary details, the fact of the matter is as follows.

2. On or about 29th April 1993, a Circular was issued by the third respondent herein inviting applications for Group "D" staff of the Safdarjung Hospital for the post of Dispatch Rider in the scale of Rs.950-1400, which is in the following terms:

"GOVERNMENT OF INDIA

SAFDARJUNG HOSPITAL

NEW DELHI

No.6-6 / 93 -- Admn. II

Dated 29.4.93

CIRCULAR

Applications are invited from group "D" staff of this Hospital with 5 years regular service in the grade, for the post of Dispatch Rider in the scale of Rs.950- 1400 on the following qualifications.

"Middle Standard pass or its equivalent qualification from a recognized Board / Institutions with valid driving license and should know Auto/Cycling."

Previous circular No. 6-6/93 -- Admn. II dated 23.3.1993 is hereby superseded.

Application should reach Admn. II section before 12.5.1993.

Chief Administration Officer

Standard Distribution."

3. Pursuant to or in furtherance of the said Circular, the fourth respondent and another person submitted their applications. A driving test was held on 26th August 1993 wherein the petitioner obtained 36 marks, Shri Suresh Kumar, the respondent No.4 herein secured 35 marks and one Rohtas secured 33 marks. The Selection Committee, having regard to the consideration of the marks obtained by the candidates in the afore-mentioned driving test and the seniority made recommendations for appointed to the said post in favor of the fourth respondent. Pursuant to or in furtherance of the said recommendation, the respondent No.4 applied. The petitioner herein filed representations to the respondent No. 1 to 3 questioning the said appointed but to no avail where after the said Original Application was filed.

4. The learned Tribunal by a short and cryptic order, disposed of the said application in the following words:

"ORDER

Mr. S.R. ADIGE, VC(A)

Heard both sides.

2. The relevant Recruitment Rules prescribe promotion through selection as the mode of recruitment for the post of "dispatch Rider" (Annexure A-4). There is merit in respondents contention that marks in the vehicle driving test was only to judge the driving skills of the candidates and was not the sole criteria for selection to the post of "dispatch Rider". It is well settled that the D.P.C. is empowered to formulate its own guidelines while making selections, and unless the same are found to be illegal, arbitrary as malafide, or discriminatory, the Courts/Tribunal, would not interfere.

3. Consequently if the DPC after taking all the relevant facts and circumstances into account, including the seniority of respondent No.4 selected him for promotion as "dispatch Rider", it cannot be said that they have acted in a manner so as to warrant judicial interference in this O.A.

4. The O.A. is dismissed. No costs.

(Kuldip Sing) (S.R. Adige) Member (J) Vice Chairman (A)."

5. Mr. Sanjay Sarin, the learned counsel appearing on behalf of he the petitioner would submit that having regard to the fact that the post in question was a selection post. The petitioner who stood first in driving test, should have been employed. According the learned counsel, from a perusal of the statements made in the counter-affidavit, it would appear that according to the respondents, the passing of the driving test was not considered to be the sole criteria. The learned counsel would contend that in a selection post, seniority cannot be the criteria and in the event it be held that merit in the test would also not be the criteria, then necessarily it must be held that the Departmental Promotion Committee which selected the candidates, acted without any guidelines whatsoever and thus the learned Tribunal must be held to have committed an error in passing the impugned judgment.

6. In support of his contention, reliance has been placed on National Airport Authority v. Nilu Sharma and Ors. 1985(5) Scale 618.

7. Learned counsel appearing on behalf of the respondent No. 1 to 3 and respondent No.4, on the other hand, would submit that although the post is a selection post, the seniority of the respondent No.4 could not have been ignored.

8. According to the learned counsel, knowledge of driving was only an essential condition and thus what was necessary was to have the knowledge of driving. Only because the petitioner is a better driver, the same could not have been the sole criteria for the purpose of appointment. The learned counsel would contend that this court in exercise of its jurisdiction of judicial review exercises a limited power. Strong reliance in this connection has been placed on Badrinath Vs. Government of Tamil Nadu and Others, and Bibhudatta Mohanty Vs. Union of India (UOI) and Others,

9. Before us, the respondents have produced the records from the perusal whereof it appears that for the purpose of appointment to the post in question, a rule was framed in terms of the proviso appended to Article 309 of the Constitution of India, known as the Safdarjung Hospital, dispatch Rider, Group "C" Recruitment Rules, 1986. Rules 2 and 3 thereof read thus:

"2. Number of post, classification and scale of pay. - Number of the said post, its classification and the scale of pay attached thereto shall be as specified in columns 2 to 4 of the Schedule annexed to these rules.

3. Method of recruitment, age limit, qualifications etc. - The method of recruitment, age limit, qualifications and other matters relating to the said post shall be as specified in columns 5 to 14 of the said Schedule".

10. As noticed hereinbefore, in the circular dated 29th April 1993 also, the criteria for holding the said post has been laid down.

11. In the driving test held, all the three candidates passed their examination whereas the respondent No.4 obtained 35 marks out of 50, the petitioner herein obtained 36 marks. However, the seniority list of the parties hereto is as under:

Sl. No. Name Designation Date of appointment

1. Shri Suresh Kumar Stretcher bearer rank No. 2866 14.6.78

2. Shri. Rohtash Kumar Bearer rank No. 3547 16.11.84

3. Shri. Malbir Nursing Perchar rank No. 3719 29.11.85

12. As regards the work and conduct, both the petitioner and the fourth respondent were stated to be good workers. The Departmental Promotion Committee consisted of CAO - Member, CMOT - Adviser and Member, Additional Medical Superintendent - President. The said DPC upon taking into consideration, the afore-mentioned criteria, recommended the name of the fourth respondent herein.

13. It may be true that the post in question is a selection post but in the event the respondents No. 1 to 3 had taken into consideration all aspects of the matter and having regard to the fact that the fourth respondent herein received only one mark less than the petitioner in the driving test, the DPC had chosen to appoint the fourth respondent herein keeping in view his seniority, we are of the opinion that the same cannot be said to be wholly illegal. It may be true that for the purpose of selecting a candidate, in a selection post, some criteria are required to be formulated. A selection post would be filled up on the basis of objective criteria. So far as the post of Dispatch Rider is concerned, knowledge of driving was an essential condition. A person only because he is marginally a better driver, would not mean that he would be a better candidate for serving the post of the Dispatch Rider. In view of the matter, if seniority of the candidates has been taken into consideration, we are of the opinion that no exception thereto can be taken. Furthermore, the petitioner was third in the order of seniority. The official respondent Therefore, must have taken into consideration all factors in recommending the name of the fourth respondent herein for the afore-mentioned post.

14. In *Badrinath v. Government of Tamil Nadu and Ors.* (supra) the Apex Court has held:

"37. These points raise certain important issues relating to "fairness" in the matter of consideration of an officer for promotion under Article 16 and as to the manner in which "adverse remarks" can be taken into consideration.

38. Normally, this Court does not enter into question of the correctness of assessment made by Departmental Promotion Committees (or Joint Screening Committees).

40. Unless there is a strong case for applying the *Wednesbury* doctrine or three are *mala fides*, courts and Tribunals cannot interfere with assessments made by

Departmental Promotion Committees in regard to merit or fitness for promotion. But in rare cases, if the assessment is either proved to be mala fide or is found based on inadmissible or irrelevant or insignificant and trivial material and if an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, or if the inferences drawn are such that a reasonable person can reach such conclusions, or if there is illegality attached to the decision, then the powers of judicial review under Article 226 of the Constitution are not foreclosed."

15. In the instant case, neither the mala fide had been alleged nor the appointment was made on inadmissible or irrelevant, insignificant or trivial material nor in making the said selection, any irrelevant factor has been taken into consideration or relevant factor has been ignored.

16. In that view of the matter, we are of the opinion that it is not a fit case wherein this court should exercise its jurisdiction under Article 226 of the Constitution of India.

17. Yet again, in *Bidhunatta Mohanty v. Union of India and Ors.* (supra), it was held:

"12. Admittedly in the requisition sent by respondent No. 4 to the Employment Exchange candidates having VIII class passed qualification were called for consideration and accordingly the Employment Exchange sponsored as many as 40 candidates all VIII class passed. It is true that the guidelines contained in "Method of Recruitment" mentions that the minimum educational qualification is VIII passed and preference will be given to SSC passed. But the requisition did not specify that preference would be given to SSC passed candidates. Had the fourth respondent notified this condition, perhaps the Employment Exchange would have also sponsored SSC passed candidates as well. As the basis of selection was in terms of requisition to the Employment Exchange, the Selection Authority has committed no illegality in not giving preference to SSC passed candidate-respondent No.5. However, the preference clause for higher qualification does not mean that irrespective of fulfillment of other norms SSC passed have to be preferred. Where any rule or guideline provide preference in respect of some higher qualification, it only means that all other requirements being equal a person possessing higher educational qualification will be preferred. It cannot, however, be considered as the sole criteria for preference in selection and appointment."

18. The decision of the Apex Court in *National Airport Authority v. Nilu Sharma and Ors.* (supra), wherein the learned counsel for the petitioner has placed strong reliance, cannot be said to have any application in the instant case. Therein a question arose as regards filling up of the post of Stenographers. Such a post was required to be filled up on the basis of a written and oral test. However, the High Court, ignoring such criteria, directed the respondents to follow seniority-cum-merit rule and it was in that situation observed:

"7. ...In its counter affidavit filed in the High Court, NAA had stated that the post of "Private Secretary" is a selection post and not a promotional post. It is, Therefore, difficult to appreciate how the High Court held that till 1994 the post of Private Secretary was to be filled up by promotion from amongst the stenographers Grade I. Learned Counsel appearing for respondent Nilu Sharma was not in a position to point out any material on the basis of which it can be said that the view taken by the High Court is correct. The post being a selection post, was required to be filled up by selecting a suitable person from amongst stenographers Grade I and stenographers Grade II. The selection was to be made on the basis of a written and an oral test. Respondent No.9 stood first in the test and, Therefore, he was straightly appointed as Private Secretary. For the reasons stated above, we hold that the High court was wrong in quashing the appointment respondent No.9 and directing NAA to consider Nilu Sharma for appointment as a Private Secretary by applying the criteria of seniority-cum-suitability."

19. In the instant case, having regard to the rules, the post could be filled up by way of promotion and on failure thereto, by direct recruitment. As the post to be filled up also by way of promotion and in the event, the seniority of the concerned candidate had been taken into consideration, in our opinion, the selection process cannot be said to be wholly unfair so as to attract the wrath of Article 226 of the Constitution of India.

20. For the afore-mentioned reasons, we are of the opinion that there is no merit in this writ petition which is accordingly dismissed. But in the facts and circumstances of the case, there shall be no order as to costs.