

(2019) 02 CAT CK 0098
In the Central Administrative Tribunal
Case No : Original Application No. 11 Of 2017

Surendra Pratap Gautam

APPELLANT

Vs

Govt Of NCT Delhi

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0098

Hon'ble Judges : Nita Chowdhury, J; S.N. Terdal, J

Bench : Division Bench

Advocate : Padma Kumar S, K.M. Singh

Final Decision : Allowed

Judgement

Nita Chowdhury, J

1. By filing this OA, the applicant is seeking the following reliefs:-

"(i) Quash and set aside the final result notice (ANNEXURE A-1) of the examination to the extent it contained the name of the private respondent and not the name of applicant and declare the action of the respondent to have denied the applicant the final selection as illegal and arbitrary.

(ii) Direct the respondents to consider the including the name of the applicant in the final select list and grant further consequential benefit thereof by offering the applicant appointment with consequential relief thereof.

(iii) Grant any further direction as may be deemed appropriate under the facts and circumstances of the case."

2. When this matter was argued, counsel for the applicant submitted that common examination for the post of PGT (Biology) Male, advertised vide Advertisement No.02/2012 and subsequently advertised vide Advertisement No.01/2014 was held by the respondent - DSSSB. Applicant appeared in Tier-I Examination on 30.11.2014 and qualified for Tier-II Examination held on

28.6.2015 in which applicant also appeared. The applicant was shortlisted for verification of documents on the basis of marks obtained by him in Tier-II Examination. However, respondents after completion of said examination issued two different merit lists and the applicant has been considered only for the Advertisement No.02/2012 in spite of the fact that he was eligible for the 2nd advertisement and the applicant has submitted the particulars as per the directions online.

3. Counsel further submitted that when combined exam was held for the said post, the respondents ought to have issued a common merit list and the action of the respondents issuing two different merit list for the said common exam is violative of principles of natural justice and also not sustainable in the eyes of law in view of the decision of this Tribunal in OA NO.271/2012 (Tapan Neeraj vs. GNCT of Delhi and others) decided on 2.5.2013 in which this Tribunal held as under:-

19. In our view, the OA will succeed on this ground alone. However, we feel it is important to address the question of drawing two merit lists from the same examination for the same post. It has been explained from the respondents' side that 8 posts of Welfare Officer Grade-II were advertised in the year 2005 and 10 posts were advertised in 2007 with post code No.326/05 and 049/07 respectively. As the respondent No.3 could not hold examination in respect of post code 326/05 for quite some time they decided to hold a common examination in respect of the two posts codes on

13. 09.2009 wherein all the applicants responding to the advertisements in 2005 and 2007 appeared. On the basis of the performance of the candidates the respondent No.3 prepared two merit lists, first in respect of post code 326/05 and the second for 049/07. Some candidates applied in response to both advertisements and, therefore, found place in both the merit lists. The cut off marks for selection was 138 for post code 326/05 and 147 for post code 049/07. The applicant who had applied for post code 049/07 did not find place in the final list as he secured only 140 marks as compared to the cut off marks of 147. In our view, this procedure is violative of the principles of natural justice for the reason that for the same post there cannot be two cut off marks from the same examination on the technical ground that some posts were advertised through a different advertisement. It was the outcome of this peculiar method adopted by respondent No.3 that having appeared in the same examination a person securing higher marks gets rejected whereas the person securing lower marks got selected because of the artificial division in the form of two merits lists. It is noted that 8 vacancies were requisitioned vide letter dated 29.11.2004 and notified vide advertisement No.10/2005 with the closing dated 29.01.2005. 10 additional posts of the same category were requisitioned vide letters dated 05.01.2006 and 10.03.2006 and notified vide advertisement No.03/2007 with the closing date 28.03.2007. In such a situation, either the respondent No.3 should have cancelled the earlier advertisement and enhanced number of posts

in the latter advertisement or should have conducted two separate examinations or at the time of making final list, made a common merit list for the combined 18 vacancies. The respondents did not adopt any of these options and instead made two merit lists, which cannot be justified when the posts are same and there is a common examination. Making of several merit lists from the same examination can be justified only where it pertains to different services/posts. On this ground also it is seen that the procedure adopted by the respondents was faulty and thereby, adversely affecting the rights of the applicant.

20. Keeping in view the entire conspectus of the case we are of the view that the respondents have to consider appointment of the applicant both on the ground of securing higher marks than the last selected person from the same examination and that vacancy for PH category was available during the year 2007 by way of horizontal reservation in the post code 049/07. The process should be completed within a period of 03 months from the date of receipt of a certified copy of this order. The OA is accordingly allowed. No costs."

4. Lastly, counsel submitted that applicant scored 135.75 marks and the last selected candidate scored 135 marks, if common merit list was made by the respondent - DSSSB for the said common examination, the applicant would have been selected in place of last selected candidate, namely, Shri Naresh Kumar, who has also been made party in this OA as respondent no.4.

5. Counsel for the respondents no.1 and 2 submitted that the applicant was one of the candidates for the post of PGT (Biology) under Post Code No.124/12 and was issued Roll NO.27000030 only for post code 124/12. The candidates, who were eligible and who had applied for both the post codes 124/12 and 159/14 by submission of separate applications, were issued a common roll number for both the post codes. As such, there were three categories of candidates viz. those who were eligible/had applied only for post code 124/12, candidates who were eligible for both and had applied for both aforesaid post codes and those candidates who were eligible/had applied only for post code 159/14. The Board had conducted the combined examination for the posts of PGTs advertised in the year 2012 and 2014 both. The common Tier-I examination for the post in question was conducted on 30.11.2014. The candidates were shortlisted for appearing for Tier-II main Examination on the basis of the marks obtained in Tier-I Examination. The postcode-wise and category-wise result of the candidates were declared on 26.5.2015, wherein the candidates were shortlisted for appearing in the Tier-II Examination for post code No.124/12 only, 159/14 only and for both 24/12 and 159/14.

6. Counsel for the respondents no.1 and 2 further submitted that the applicant was shortlisted for postcode 124/12 only, as he had only applied against the said post code. Since he had not submitted his application against the post code 159/14, he was not shortlisted in post code 159/14. The applicant obtained 135.75 marks whereas last selected candidate had obtained 137.5 marks in Tier-II examination and as such there is no illegality in the action of the respondents.

7. Counsel for the respondents no.1 and 2 further submitted that while declaring the result for the post of PGTs including that of PGT (Biology), the Board had already considered the aspect that Board had conducted combined examination for the post of PGT (Biology) and therefore declare the result for post codes 124/12 and 159/14 separately.

8. Counsel for the respondents no.1 and 2 also submitted that reliance placed on judgment of this Tribunal in OA 271/2012 is not admissible since in an appeal filed by the Board before the Hon'ble High Court of Delhi in Writ Petition No.814/2014 (DSSSB vs. Tapan Neeraj), the High Court vide its judgment dated 23.7.2014 had granted the relief to the respondent therein on the ground of horizontal reservation only.

9. We have heard learned counsel for the parties and have also carefully perused the pleadings available on record.

10. The issue involved in this case is whether issuance of separate merit lists for the common exam for the post in question advertised by two different advertisements is sustainable in the eyes of law or not? The same issue was also involved in OA 271/2012 decided by this Tribunal vide order dated 22.5.2013, in which the respondents have taken the similar pleas as raised in their counter reply in support of their stand has also been raised in the said OA, observed as under:-

"19.....In our view, this procedure is violative of the principles of natural justice for the reason that for the same post there cannot be two cut off marks from the same examination on the technical ground that some posts were advertised through a different advertisement. It was the outcome of this peculiar method adopted by respondent No.3 that having appeared in the same examination a person securing higher marks gets rejected whereas the person securing lower marks got selected because of the artificial division in the form of two merits lists. It is noted that 8 vacancies were requisitioned vide letter dated 29.11.2004 and notified vide advertisement No.10/2005 with the closing dated 29.01.2005. 10 additional posts of the same category were requisitioned vide letters dated 05.01.2006 and 10.03.2006 and notified vide advertisement No.03/2007 with the closing date 28.03.2007. In such a situation, either the respondent No.3 should have cancelled the earlier advertisement and enhanced number of posts in the latter advertisement or should have conducted two separate examinations or at the time of making final list, made a common merit list for the combined 18 vacancies. The respondents did not adopt any of these options and instead made two merit lists, which cannot be justified when the posts are same and there is a common examination. Making of several merit lists from the same examination can be justified only where it pertains to different services/posts. On this ground also it is seen that the procedure adopted by the respondents was faulty and thereby, adversely affecting the rights of the applicant.

20. Keeping in view the entire conspectus of the case we are of the view that the

respondents have to consider appointment of the applicant both on the ground of securing higher marks than the last selected person from the same examination and that vacancy for PH category was available during the year 2007 by way of horizontal reservation in the post code 049/07. The process should be completed within a period of 03 months from the date of receipt of a certified copy of this order. The OA is accordingly allowed. No costs."

11. The respondents preferred a Writ Petition bearing WP(C)No.814/2014 against the aforesaid Order of this Tribunal and the Hon'ble High Court vide its judgment dated 23.7.2014 dismissed the same as it was found to lack in merit. Since this Tribunal in OA No.271/2012 gave specific finding on the similar issue as involved in this case, as noted above, and the respondents in the said Writ Petition preferred against the aforesaid Order of this Tribunal have not challenged the said conclusion drawn by this Tribunal on first issue, as involved in this case, as such we fully agreed with the decision of the Coordinate Bench in OA No.271/2012 and adopt the same. It is not open to the respondents, once they themselves held the common/combined examination for the post in question, to issue separate merit lists for the post in question. It is not the case of the respondents that applicant is not eligible for the same post, which was subsequently advertised by them, but their only contention is that he has not applied for the same post, which was advertised in 2014. After dismissal of the said Writ Petition the official respondents have implemented the said Order of this Tribunal which was upheld by the Hon'ble Delhi High Court.

12. In view of the above position, we allow this OA in terms of observations made by the coordinate Bench in OA No.271/2012 (supra) and direct the respondents to consider the case of the applicant in the light of the observation of this Tribunal in OA No.271/2012, which was upheld by Hon'ble Delhi High Court and the fact that the same was also implemented by the official respondents, and pass necessary orders within a period of 90 days from the date of receipt of certified copy of this Order. The applicant is given liberty to prefer any representation with regard to consequential benefits and the decision on the same shall also be communicated to the applicant. There shall be no order as to costs.