

(2013) 01 DEL CK 0227

In the Delhi High Court

Case No : Writ Petition (C) No. 4338 of 2012

Union of India and Others

APPELLANT

Vs

A.K. Sharma

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0227

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : V.S.R. Krishna with Mr. Abhishek Yadav, for the Appellant;

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—The matter was called out once and since none appeared for the respondent was passed over. None appears for the respondent even at the second call. Vide impugned order dated February 07, 2012 the Central Administrative Tribunal has allowed O.A. No. 778/2011 filed by the respondent. A direction has been issued to the writ petitioner to issue letter appointing respondent to the post of ACM.

2. The reason why the direction has been issued by the Tribunal is that the respondent successfully cleared the written test held on September 04, 2004 for promoting Group-C employees to Group-B post i.e. the post of ACM in which the respondent obtained marks above the minimum cut off but on account of being detected suffering from colour blindness at the medical examination conducted on October 26, 2004 he was not called for an interview. This resulted in the respondent filing O.A. No. 867/2006 predicated a right to be promoted under the "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995". The claim was allowed by the Central Administrative Tribunal and a direction was issued to the writ petitioner to hold a supplementary viva-voce test and consider posting respondent to a post not connected with the running of trains. The said decision of the Tribunal was unsuccessfully challenged

by the petitioner in this Court when the writ petition filed by the petitioner was dismissed on March 28, 2007.

3. Thereafter, the petitioner conducted a supplementary viva-voce and redrew the select panel.

4. Now, the posts are seven in number. The final order dated July 10, 2009 indicates the merit position as under:-

The respondent is at serial No. 8.

5. The respondent thereafter applied under the Right to Information Act on June 11, 2009 exercising there a right to access his answer-sheet and the response of the writ petitioner is as that the answer-sheet had been destroyed in accordance with the Retention Rules.

6. Thus commences the second round of litigation by the respondent when he filed O.A. No. 778/2011 raising a grievance that if the matter was sub judice why the writ petitioner destroyed the answer-sheets. The plea has been accepted.

7. Now, the Tribunal has overlooked the fact that when the respondent filed O.A. No. 867/2006, he never raised any issue pertaining to the evaluation of his answer-sheet. He only raised the issue of discrimination with respect to he being colour blind. He sought a direction that even he be subjected to a viva-voce and thereafter result re-tabulated.

8. Thus, we do not find any infirmity in the action of the writ petitioner in not preserving the answer-sheet of the respondent as of the year 2009 when he desired to access the same.

9. There is yet another error committed by the petitioner.

10. The decision has been predicated with reference to an O.M. issued by the DoPT on December 06, 1974 on the subject of preservation of records as per which files qua which court cases have been pending have to be preserved for ten years or three years after final judgment.

11. The Tribunal overlooked the fact that the litigation fought by the respondent at the first stage did not relate to any matter of record. It related to a claim under the Disabilities Act. Further, the Tribunal overlooked the fact that the respondent was litigating with the Indian Railways and thus it was the Railway's circular dated August 27, 1962 which had to be taken note of; at Sl. No. 1666 whereof it is clearly provided that written papers in relation to suitability test or selection will be preserved for a period of two years from the date of commencement of the result.

12. Lastly, even if the Railways had wrongfully destroyed the answer-sheet pertaining to the respondent, no direction to give appointment to the respondent could be issued and at best direction of the kind which was issued by the Supreme Court in its decision dated May 01, 2012, C.A. No. 4128/2012 Poonam

Rani v. State of Haryana & Anr. could be issued.

13. In the said case the answer-sheets of Poonam Rani being destroyed, mandamus was issued to hold a fresh written test.

14. Looked at from any angle and in particular that after the written test results were declared somewhere towards the end of September 2004, the respondent never questioned the marks awarded to him at the written examination, he proceeded to the medical examination which was held on October 26, 2004 and raised an issue of his being declared colour blind and denied the right to participate in the viva-voce. He never questioned the marks allotted to him in the written test. The Railway's circular mandates preservation of the answer-sheets for only two years.

15. The writ petition is allowed. The impugned order dated February 07, 2012 passed by the Central Administrative Tribunal is set aside and as a result O.A. No. 778/2011 filed by the respondent is dismissed. There shall be no order as to costs.