

(2012) 01 DEL CK 0095

In the Delhi High Court

Case No : Writ Petition (C) 473 of 2011

Union Public Service Commission

APPELLANT

Vs

Captain Solanki @ Ashwin Bhawar Lal Solanki and Another

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0095

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Naresh Kaushik, for the Appellant; S. Wasim A. Qadri, for the Respondent

Judgement

Badar Durrez Ahmed

W.P.(C) 473/2011 & CM 972/2011(stay)

1. This writ petition filed on behalf of the Union Public Service Commission (UPSC) is directed against the order dated 11.11.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No.263/2010 which had been preferred by the respondent No.1 inasmuch as he had not been called for the interview pursuant to the advertisement dated 24.01.2009 issued by the UPSC for calling applications for eight posts of Nautical Officers under the control of Department of Shipping.

2. There were two points on which the application of the respondent No.1 had been rejected and because of which he was not called for the interview which was held on 07.10.2009. The first point was that, according to the petitioner, the respondent No.1 had not submitted the requisite matriculation certificate which was a necessary condition for being considered for the said post. We need not labour on this aspect of the matter because the learned counsel for the respondents had produced the College Leaving Certificate which was of Bombay and which was equivalent to class XII. The learned counsel for the petitioner, as pointed out in paragraph 3 of the impugned order, had fairly considered this

point. We are, therefore, left to consider the second point which is with regard to the essential qualifications possessed by the respondent No.1.

3. One of the essential qualifications stipulated in the advertisement dated 24.01.2009 was that the candidate should have eight years service as a Deck Officer of which one year must have been in the capacity of a Chief Officer on a foreign going ship. The application form which was provided for the purposes of appointment required certain particulars to be filled in apart from the name of the candidate, date of birth etc. Serial Nos.10A & B of the application form are relevant for the purposes of the present writ petition. Serial No.10 reads as under:-

10(A). Do you possess relevant experience for the Post?(Write "1" for Yes, "2" for No(See Instructions-II) 1

(B) If Yes, indicate the length of experience as on closing date: 2 YEARS.

4. The said application form also contained the general instructions for filling the application form. Instruction No.3 is relevant for our purposes and the same reads as under:-

3) Copies of certificates should be attached in support of the information given in the form where necessary. Any information contained in the attached certificates shall not be considered unless it is claimed in the application form.

(underlining added)

5. The respondent No.1, as indicated above, had answered "Yes" to the question as to whether he possessed relevant experience for the post, however, in answer to serial No.10(B), he indicated the length of experience as on the closing date, i.e. 12.02.2009, to be of two years. If one were to go by this alone, it is evident that the respondent No.1 on his own showing did not possess the minimum qualifying experience of eight years as stipulated in the advertisement dated 24.01.2009. It was the case of the respondents that the petitioner ought to have examined the accompanying documents to ascertain as to whether he did or did not have the requisite experience. It was further submitted that in case the petitioner examined those documents, it would be evident that he did, in fact, possess more than eight years experience as was required. Agreeing with the respondents, the Tribunal held that it was for the petitioner to have examined the accompanying documents to ascertain as to whether the petitioner had the requisite experience or not and it is for this reason that the Tribunal held in favour of the respondents.

6. However, we feel that the Tribunal had misdirected itself inasmuch as it had not properly construed instruction No.3 which we have extracted above. The said instruction categorically stated that any information contained in the attached certificate shall not be considered unless it is claimed in the application form. It is an admitted position that the respondent No.1 had not claimed that he had more than eight years experience inasmuch as, in the application form itself in

answer to the question at serial No.10(B), he had indicated his experience to be only of two years. It was, therefore, not obligatory on the part of the petitioner to have examined the attached documents so as to verify as to whether the claim of the petitioner was correct or not. In fact, we feel that the petitioner could not have examined attached documents once the claim itself was not there. In the present case, it is evident that the petitioner in the application form itself had indicated that he had an experience of only two years whereas the stipulated condition in the advertisement was that an experience of eight years was required. We are, therefore, of the view that the Tribunal had misdirected itself in holding in favour of the respondent No.1.

7. Furthermore, we may also point out that the respondent No.1 had written a letter to the petitioner indicating that he had the requisite experience of eight years prior to the date of interview. However, we find that this letter was dated 06.10.2009 which was just one day prior to the date fixed for interview, i.e., on 07.10.2009. Therefore, in any event, it would not have been possible for the petitioner to have acceded to the request of the respondent No.1, even if it was permissible under law.

8. The learned counsel for the respondents sought to place reliance on the decisions of the Supreme Court in the case of Dolly Chhand v. Chairman JEE and Others: JT 2004 (8) SC 2267 and Charles K. Skaria and Others v. Dr. C. Mathew and Others : AIR 1980 SC 1230. However, we feel that in those cases, there was no stipulation such as instruction No.3 contained in the application form in the present case and as we have already pointed out above, in the present case, the respondent No.1 himself had indicated that he possessed only two years experience which was well below the minimum stipulated for the said post. The learned counsel for the respondents also sought to place reliance on the decision of UPSC v. Gyan Prakash Srivastava delivered by a Division Bench of this Court in W.P.(C) 2889/2011 on 16.05.2011. That decision will also not help the respondents inasmuch as it revolved upon the expression "or other certificates" which was a key point in that case. Insofar as the present case is concerned, no such issue arises for consideration. Moreover, a stipulation in the nature of instruction No.3 was also not there in that case. Therefore, the said decision of the Division Bench would also not be applicable and would be of no help to the respondents.

9. Considering the aforesaid, we are of the view that the impugned decision of the Tribunal is clearly contrary to the instructions given in the application form and is in complete disregard of instruction No.3 in particular. Consequently, the impugned judgment is set aside. There shall be no order as to costs.