

(2013) 09 DEL CK 0577

In the Delhi High Court

Case No : Writ Petition (C) No. 3286 of 2012

Vipul Kumr

APPELLANT

Vs

Lok Sabha Secretariat and Others

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 09 DEL CK 0577

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Gyanendra Singh and Mr. Yogesh Kumar, for the Appellant; Zubeda Begum, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

W.P. (C) No. 3286/2012 and C.M. No. 7000/2012 (stay)

1. The issue raised in the writ petition is squarely covered against the petitioner in terms of the judgment of the Supreme Court reported as Rajya Sabha Secretariat and Others Vs. Subhash Baloda and Others, What is contended before me is that there cannot be fixed 50% marks for the interview and which interview marks of 25 cannot be split up as being 18 for the interview and 7 for the various certificates such as NCC etc to be considered.

2. These issues have in fact been decided against the petitioner by the Supreme Court and reference in this regard may be made to paras 9, 12, 18, 23 to 25 of the judgment of the Supreme Court in the case of Rajya Sabha Secretariat (supra) and which read as under:-

9. The Respondents were some of the candidates who participated in this process but were not selected. They filed a Writ Petition in the High Court of Delhi bearing Writ Petition (C) No. 4835 of 2011. The Respondents principally raised

two contentions: (1) firstly, that the splitting of the marks, in the interview, was not indicated to them in advance, and (2) secondly, attainment of minimum cut-off marks (say 50% for the general category) be adjudged out of 18 marks earmarked for the oral interview, and the marks for the NCC or the computer course certificates be considered only thereafter.

12. Having decided to go into this issue, the Learned Single Judge in terms held, in para 25 of his Judgment, that allotting 7 marks for the certificates out of the 25 marks for the interview had resulted in elimination of those candidates who had otherwise obtained the minimum qualifying marks out of 18 marks. He further held that even if marks were to be given for the certificates, they ought to have been in addition to the qualifying marks, and ought not to have been used to eliminate those who had otherwise qualified as per the marks in the remaining portion of the interview.

18. Ms. Jyoti Singh, learned senior Counsel appearing for the Respondents, on the other hand submitted that the Learned Single Judge of the High Court was right in holding that Mahesh Kumar (*supra*) had not considered the issue in the manner in which it was placed before the High Court in the present matter. The advertisement clearly meant an interview of 25 marks. The splitting of the marks of interview under various categories was not informed to the Respondents anytime prior to the interview. If the oral interview was of 18 marks, then the cut-off marks ought to have been Assessed out of 18 marks, and the marks for the certificates ought to have been added subsequently. The manner in which the marks for the interview were allotted was arbitrary, and it resulted into denial of equal opportunity in public employment. She, therefore, submitted that the decisions of the High Court did not call for interference by this Court.

23. The question before us is whether the interview board can be faulted for making the certificate marks a component of the 25 interview marks, and whether thereby the candidates were in any way taken by surprise. In this connection we must note that the Appellants had advertised that the NCC/Sports and Computer certificates were "desirable". The call-letter, in paragraph 5 thereof, specifically called upon the candidates to bring their certificates at the time of the Personal Interview. It further stated that credit for the same shall be given only if the certificate was accompanied by a declaration by the concerned institute that the course done by the candidate was recognized by AICTE or DOEACC. Thus, it was clear that credit was to be given to those certificates as a part of the interview. The Respondents, therefore, can not make any grievance that they were taken by surprise by giving of 7 (out of 25) marks for such certificates to the successful candidates. Nor can the Respondents say that any prejudice is caused to them, since all candidates having such certificates were uniformly given 5 and/or 2 marks for the certificates, and those who were not having them were not given such marks. The process cannot, therefore, be called arbitrary.

24. The decisions rendered by the High Court were erroneous for one more

reason. In the present case, the interview was to be of 25 marks. The view which has appealed to the Learned Judges of the High Court would mean that the cut-off marks (say 50%) will have to be obtained out of 18 marks, whereas the advertisement clearly stated that the cut-off marks had to be obtained in the Written Test and the Personal Interview. This meant obtaining cut-off marks out of 25 marks set out for interview as well. The consequence of the view which is accepted by the High Court will be that it may as well happen that candidates who did not have the NCC/Sports certificates or any computer course certificates will obtain higher marks out of 18 marks, and will top the list. On the other hand the candidates who have these certificates may not get the cut-off marks out of 18, or even if they get those marks, they may land at the lower level in the inter-se seniority in the merit order for selection. This was certainly not meant to be achieved by the selection process, when these certificates were declared in advance as "desirable".

25. In the impugned order the Division Bench has recommended in its judgment, as quoted above that the proficiency of the candidates producing certificates be Assessed on a scale of 0 to 5. That will mean holding one more test as far as computer course certificate is concerned, or asking the candidates concerned to exhibit their skill in a particular sport or as NCC Cadet. That was certainly not contemplated in the advertisement. The advertisement only stated that the NCC/Sport certificate and the computer course certificate recognised by AICTE/DOEACC were desirable. The call-letter specifically stated they will be given credit at the time of interview. The Joint Recruitment Cell did not want to go behind those certificates once they were from the proper authorities, and therefore, the interview board fairly granted all the marks to the candidates who produced those certificates, making them a component out of 25 marks. It cannot be disputed that the Appellants have applied a uniform standard. The Respondents who had filed the petition were all constables. The posts of Security Assistants were being filled from amongst them. Although, dress, manners and appearance was given 6 marks, behavior in communication was allotted 6 marks and general awareness and knowledge of duties involved in security service was allotted 6 marks, what was "desirable" was having the NCC/Sports or Computer course certificate. It was for the Lok Sabha and Rajya Sabha Secretariat to decide what qualifications they expected in the Security Assistants. They did want persons with Sports/NCC and Computer course certificates. Therefore, they specifically mentioned those certificates as desirable. Specifying 5+2 marks for these certificates was in consonance with the objective to be achieved. The method followed by the interview board in giving these certificates 7 out of 25 marks cannot, therefore, be faulted as denying equal opportunity in the matter of public employment. Dissimilar candidates could not be expected to receive similar treatment. Thus, in the present process of selection, there is no breach either of Article 14 or 16 of the Constitution of India.

In view of the above, the matter being fully covered against the petitioner in terms of the aforesaid judgment of the Supreme Court in the case of Rajya

Sabha Secretariat (supra), the writ petition is accordingly dismissed, leaving the parties to bear their own costs.