

Nitin Kumar Vs. Staff Selection Commission

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Court : Delhi

Decided On : Jul-09-2015

Judge : S.Ravindra Bhat

Appellant : Nitin Kumar

Respondent : Staff Selection Commission

Advocate for Def. : Mr. Bhagwan Swarup Shukla, Mr. Jitendra Kumar Tripathi, Mr. Suyash Kumar, Mr. J.P. Shukla

Advocate for Pet/Ap. : Mr. Tarun Sharma, Ms. Boudh Prabha

Judgement :

\$~11 * IN THE HIGH COURT OF DELHI AT NEW DELHI % DECIDED ON:

09. 07.2015 + W.P. (C) 2888/2015 CM APPL.5180/2015, 6028/2015 NITIN KUMAR Petitioner Through: Mr. Tarun Sharma with Ms. Boudh Prabha, Advocates. versus STAFF SELECTION COMMISSION Respondent Through: Mr. Bhagwan Swarup Shukla, CGSC with Mr. Jitendra Kumar Tripathi and Mr. Suyash Kumar, Advocates. Mr. J.P. Shukla, , Advocate for SSC. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MS. JUSTICE DEEPA SHARMA S.RAVINDRA BHAT, J.

(OPEN COURT) 1. The writ petitioner seeks appropriate directions against the respondents for his appointment as Sub-Inspector (SI) in the Central Armed Police

Force.

2. The brief facts are that the petitioner participated in a common recruitment process for selection to the post of SI in Delhi Police and Central Armed Police Forces as well as Assistant Sub-Inspector in CISF. The examination was conducted in 2014. The controversy centres around the issue as to whether the petitioner possessed the essential qualification prescribed, i.e., graduation as on the cut off date spelt out in the advertisement. The common case of the parties W.P.(C)2888/2015 Page 1 is that a candidate is deemed qualified if he possessed a graduate degree from a recognized University as on 01.01.2014. The petitioner was allowed to participate in the written examination; he also cleared the other mandatory processes, i.e., Physical Endurance Test, Medical Test and Interview. Nevertheless his results were withheld. In these circumstances, he approached this Court seeking directions that are claimed as relief in the present petition, on 19.03.2015. Notice was issued to the respondents on 23.03.2015 and on 08.04.2015, the following order was made:

CMNo.6028/2015 1. Notice.

2. Counsel as above accepts notice for the respondents.

3. List on July 09, 2015, the date already fixed. In the meanwhile it is directed that the appointment of the last candidate to the post of Sub-Inspector effected pursuant to the CAPF Competitive Examination for Sub-Inspectors shall be subject to further orders which may be passed in the writ petition, which fact would be conveyed to the candidate concerned so that no equities are created in favour of the candidate.

3. The results were finally declared after the petitioner had approached the Court and notice was issued, i.e., on 30.03.2015. The petitioners name did not figure in that list.

4. The respondents in their counter affidavit urge principally that the petitioner was not eligible since he did not possess the bachelor degree as on 01.01.2014. They cite the circumstance that the result of the B.Tech examination held by the

Maharshi Dayanand University (MDU), where the petitioner had completed his engineering W.P.(C)2888/2015 Page 2 graduation degree had declared him failed as on 27.09.2013. The other objection - concededly a minor one - is a discrepancy in the petitioners mothers name. The certificate initially issued by the University reflected that to be Sprita and the subsequent certificate furnished by the petitioner to the respondents indicates that the correct name is Sarita. The petitioner relies upon the fact that the University declared him to have successfully completed the graduation in respect of the examination held in May, 2013. He relies upon the degree certificate issued in that regard. It is submitted that the petitioner had been wrongly marked in one paper of the sixth semester and had sought revaluation which was granted - the result of which was declared on 17.01.2014, i.e., Micro-Controller and Embedded System, EE308-F. The revaluation request ultimately resulted in enhancement of the marks awarded. Consequently, he was declared successful in the original examination and declared passed as on May, 2013. He, therefore, submits that the essential qualification of possessing the degree as on 01.01.2014 stood fulfilled.

5. The respondents urge that the petitioner was not qualified at all because as on the date when he applied, the result of the revaluation had not been declared and that in fact as on 01.01.2014 he had not qualified and has failed in the concerned sixth semester examination. They also placed reliance on the certificate issued by the University on 23.02.2015 which reads as follows:

This is to certify that Mr. Nitin Kumar, S/o Pawan Kumar appeared in B.Tech VI sem examination held in May, 2013 W.P.(C)2888/2015 Page 3 under Roll No.4910735 in the subject of Micro Controller & Embedded System (EE-305-F). His result was declared fail on 27 Sept 2013. After that he applied for re-evaluation and had declared pass by securing 40 marks and completed his degree on 17 Jan 2014. He was issued the DMC after correction in his mothers name on Aug 14, 2014.

6. The above facts show that the essential qualification prescribed for the post - recruitment of which is conducted by the Staff Selection Commission (SSC) was a graduation degree as on 01.01.2014. The petitioner contends that even though

originally he was declared to have failed in the B.Tech examination held by the Maharshi Dayanand University, nevertheless, his application for revaluation was accepted and the marks were enhanced resulting in award of the degree as on May, 2013. The respondents, on the other hand, contend that factually the revaluation result had not been declared as on 01.01.2014. In fact the petitioner was a failed candidate and did not possess the essential qualification.

7. The advertisement in the present case required that the candidate applying for the post ought to possess the degree qualification as on 01.01.2014. That the petitioner was found suitable and in fact would have made the select list is not disputed. The respondents contention is that as on 01.01.2014, he did not possess the graduation qualification and was not entitled to claim himself to be a graduate. They further argue that the revaluation result was subsequent to the cut-off date, i.e., 01.01.2014; the petitioner was declared successful in the revaluation process on 17.01.2014. This Court is of the opinion that the respondents submissions are W.P.(C)2888/2015 Page 4 unmerited and misconceived. The degree/graduation certificate produced before the Court - of course consequent upon the declaration of the revaluation furnished - unambiguously records that the petitioner was successful in the May, 2013 B.Tech examination. The graduation degree is in fact premised on that basis. That the petitioner was initially declared failed in 2013, in the opinion of the Court, should not obscure the circumstance that the revaluation was not preceded by a separate examination. Had such being the case, the respondents position would have been feasible and merited. However, the fact remains that the petitioner merely applied for revaluation soon after the declaration of results in September, 2013. The University took its own time in completing the revaluation and declared the revised result (of the original examination held in May, 2013). This resulted in the enhancement of the marks in the concerned paper and, therefore passing of the same. Accepting the respondents submissions in the opinion of the Court would lead to perversity if not completely defeating the ends of justice. It is not as if the petitioner withheld any information in stating that his re-valued result was in respect of the original examination of May, 2013. His argument is sound and substantiated by the degree certificate issued by the University. Therefore, this Court is of the opinion that the petitioner had completed graduation and was a B.Tech degree holder as on 01.01.2014 and consequently

eligible to be considered for selection and appointment.

8. During the pendency of these proceedings, the respondents declared the results on 30.03.2015. The respondents were alerted to W.P.(C)2888/2015 Page 5 the fact that the last candidate may have to be declared unsuccessful and, therefore, on 08.04.2015 directed the respondents to communicate the pendency of these proceedings. During the course of hearings, learned counsel for the respondents had submitted that a communication to this effect in line with the Courts order was in fact been given to the last candidate. At the same time, counsel submitted that the last selected person has appeared as OBC candidate but since he secured substantial marks, he was entitled to be treated as a general category/general merit candidate. In these circumstances, it is hereby directed that the respondents review the select list and take into consideration the petitioners performance; if his overall performance, marks and ranking is higher than that of the last candidate in the general category, the said candidate - originally an OBC candidate - may have to be relegated to the OBC list and appropriate adjustments made in the OBC merit list. The selection list shall be reviewed in accordance with the merit ranking of the petitioner having regard to his performance in the recruitment process. Review shall be carried out to this extent and declaration of the revised results be made within six weeks from today.

9. The writ petition is allowed in the above terms. There shall be no order as to costs. S. RAVINDRA BHAT, J DEEPA SHARMA, J JULY09 2015/vikas/ W.P.(C)2888/2015 Page 6

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