

Shri Sushil Pal Vs. Delhi Development Authority and ors.

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SooperKanoon Citation : sooperkanoon.com/701903

Court : Delhi

Decided On : Oct-28-2003

Reported in : 2003VIIAD(Delhi)477; 107(2003)DLT797; 2003(71)DRJ580; 2004(2)SLJ321(Delhi)

Judge : Vijender Jain, J.

Appeal No. : CW. 5074/1998

Appellant : Shri Sushil Pal

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Anusuya Salwan, Adv.

Advocate for Pet/Ap. : V.K. Shali, Adv

Disposition : Writ petition allowed

Judgement :

Vijender Jain, J.

1. Rule.

2. Petitioner is an employee of Delhi Development Authority working as Technical Supervisor in Horticulture Division of the DDA. The case of the petitioner is that petitioner was entitled to be promoted as Sectional Officer as per the recruitment

rules under the quota of 50 % departmental candidates. The Selection Board was constituted by the respondent/DDA and the Selection Board prepared a list based on merit-cum-seniority principle. The petitioner pursuant to the letter dated 29.4.93 issued by the respondent was asked to attend office of the Assistant Director on 5.5.93 for checking of the educational certificates of the petitioner and on checking and verification of the said certificates he was issued roll number and was directed to appear for interview on 13.5.93. Petitioner was awarded aggregate of 35 marks. Petitioner is aggrieved by the award of 35 marks. His case is that he ought to have been awarded 37 marks as per the guidelines of the respondent.

3. The criterion fixed by the respondent for assessment of the candidates was to the following effect:

' metric 10 marks

Intermediate 10 marks

B.Sc. 20 marks

M.Sc. 10 marks

Experience 10 marks

Commendable 10 marks

achievements

Interview 10 marks

4. It was further notified by the respondent that assessment will be on the basis of percentage of marks obtained by candidates in examination as under:-

Marks High School Intermediate B.Sc. M.Sc.

Obtained

Less than 45% 4 4 8 4

45%to less 5 5 10 5

than 50%

50% to less 6 6 12 6

than 55%

55% to less 7 7 14 7

than 60%

60% to less 8 8 16 8

than 65%

65% to less 9 9 18 9

than 70%

More than 70% 10 10 20 0

5. The grievance of the petitioner is that he had obtained 277 marks out of 517 marks in the Intermediate examination 1976, thereby got percentage of 51.7% and according to the parameters of respondent 6 marks ought to have been assigned to the petitioner for intermediate examination on the basis of his having passed said examination by getting 51.7% of marks and if 6 marks are assigned to the petitioner, he would obtain 37 marks. The petitioner got 4 marks for intermediate examination. It was contended that in that case petitioner's tally of marks will increase to 37 whereas persons with 36 marks have been promoted.

6. On the other hand, Ms. Anusuya Salwan counsel for the respondent has contended that original certificates of the intermediate examination was not placed before the respondent and therefore, he was awarded 4 marks for his intermediate examination.

7. I have given my careful considerations to the arguments advanced by the counsel for the parties. The stand taken by the respondent in paragraph 19 of the

counter affidavit is to the following effects:

'Contents of para 19 of the writ petition with regards to criteria of given marks is admitted. Rest of the para is wrong and denied. It is pertinent to mention here that showing of original records of all educational qualifications was mandatory for all candidates. Thus due to this lapse of the petitioner he was awarded four marks for his intermediate examination. The petitioner cannot take advantage of his own lapse.'

8. From the bare perusal of the stand taken by the respondent in the counter affidavit, the argument of the respondent that the original mark sheet was not shown to the respondent is not only inconsistent but contrary to the letter dated 29.4.93, issued to the petitioner by the respondent prior to verification of marks and thereafter issuing the roll number which could only be done once the marks have been verified by the respondent which would be evident from the said letter. The same is reproduced below:

'Delhi Development Authority

(Personnel Branch II)

Dated 29.4.93

From K.L. Sharma,

Dy. Director(P)II

To

Sh. Sushil Pal

Tech. Supervisor

Hort. Div., II, DDA

Sub: Interview for the post of S.O.(Hort.)in scale of Rs.1400-2300/-

Apropos his application for the post cited in the subject, Shri Sushil Pal is requested to attend the office of Assistant Director, PB-II on 5th May, 1993 at 10.00 A.M. in his room at 'B' Block, 7th Floor, Vikas Sadan, New Delhi for checking of his educational certificates and to get the roll number to appear in the interview scheduled to be held on 11.5.93 to 13.5.93. He may also bring one attested photo copy of each of the following certificate Along with the original one:

a) Educational qualification certificates with original mark sheet, including the certificate for date of birth proof.b) Certificate from the Branch Officer(with office stamp)certifying the identity and experience of work in DDAc) Original commendation certificate/Appreciation letter if any.d) In case of candidate belonging to SC/ST community,certificate of SC/ST. The actual date and time of interview will be intimated to you after checking your original certificates as above.

It may be ensured that no request will be entertained for issue of roll number after 5.5.1993.

(K.L. Sharma)

Dy. Director(P)II

D.D.A

9. The last paragraph of letter dated 29.4.93 is important as it postulates that the actual date and time of interview was to be intimated to the petitioner after checking of his original certificates. If the petitioner had not shown his original certificates to the respondent the petitioner could not have been issued the actual date and time of interview. At page 35 of the paper book there is a letter dated 6.5.93, from the respondent calling the petitioner for interview for the post of Sectional Officer (Hort.). Although, in the said letter it has been stated that the petitioner was to appear for interview in the room of Commissioner (Personnel),DDA, he was also requested to bring the letter dated 6.5.93 at the time of interview along with all original educational certificates. thereforee, if both the said letters are read together, the interview letter was not to be issued to the petitioner if the petitioner had not shown the original certificates to the respondent.

The case of the petitioner is that he did show his original certificates to the respondent. Even if I believe the respondent that the original certificate was not shown by the petitioner to the respondent then on what basis 4 marks was assigned to the petitioner as no marks could have been assigned to the petitioner if no original certificate was shown by the petitioner to the respondent. Assigning of 4 marks was not proper. From the perusal of aggregate marks received by the petitioner in the intermediate examination the percentage comes to 51.7% which according to the parameters laid down by the respondent for assigning marks would entitle the petitioner for 6 marks. Assessing and assigning the petitioner 4 marks was on wrong premises which has adversely affected the promotion of the petitioner. At page 32 of the paper book there is a list of the persons who have been promoted. At Seriall no. 34 Mahinder Singh got 37 marks he had been promoted thereafter, at Seriall no. 35 Vinod Kumar with 36 marks had been promoted and thereafter 12 other persons who have got 36 marks have got promotion as per the said list. Admittedly, on the basis of assigning of 4 marks the petitioner got 35 marks. The marks on the basis of the yardstick fixed by the respondent in the intermediate examination ought to have been 6 so there is clear deficiency of 2 marks. The petitioner is entitled to get said 2 marks and entitled to promotion in terms of policy of the respondent. A direction is issued to the respondent to promote the petitioner from the date when his juniors were promoted with all consequential benefits within eight weeks. It was such a trivial matter which ought to have been decided in the office of the respondent as its own wrong calculation has resulted in filing of the writ petition by the petitioner and in this regard even opportunity was also granted to the respondents to rectify the mistake. It is a sad commentary that nothing was done on their part. The petitioner is entitled to cost which is quantified at Rs.5000/-.

Writ petition is allowed.

Rule is made absolute.