

The Government of National Capital Territory of Delhi Through Its Chief Secretary and the Director of Education, Government of National Capital Territory of Delhi Vs. Shri Jai Singh Son of Shri Chander Bhan, Presently Appointed as Assistant Teacher, M.C.D. Primary School and the Central Administrative Tribunal, Principal Bench

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Court : Delhi

Decided On : Oct-03-2008

Reported in : 154(2008)DLT295

Judge : Madan B. Lokur and; Suresh Kait, JJ.

Appeal No. : Writ Petition (Civil) No. 1363 of 1998

Appellant : The Government of National Capital Territory of Delhi Through Its Chief Secretary and the Director O

Respondent : Shri Jai Singh Son of Shri Chander Bhan, Presently Appointed as Assistant Teacher, M.C.D. Primary Sc

Advocate for Def. : Randhir Jain, Adv. for R-1

Advocate for Pet/Ap. : Avnish Ahlawat, Adv

Disposition : Petition allowed

Judgement :

Madan B. Lokur, J.

1. Pursuant to an advertisement for recruitment to the post of Post Graduate Teacher in Political Science, the Respondent put in his application along with all necessary documents.

2. For the purpose of selection, a marking scheme was evolved by the Petitioners and as per this scheme, the Respondent secured 51 marks which met the required cut off. Accordingly, the Respondent was placed in the select list for the purposes of issuance of an appointment letter.

3. According to the Respondent, the appointment letter never came and on enquiries he was informed that his name was no longer in the select list since certain other applicants, who had got better marks, were entitled to be selected.

4. Under these circumstances, the Respondent filed an Original Application bearing No. 1810/1995 before the Central Administrative Tribunal, Principal Bench, New Delhi seeking issuance of an appointment letter for the post of Post Graduate Teacher Political Science.

5. In response, the Petitioners stated that there was some dispute about a certificate issued to the Respondent equivalent to a Class 12 certificate. For this reason, the final appointment letter in the case of the Respondent was held back until verification. Subsequently, this controversy was resolved in favour of the Respondent.
6. The Petitioners also stated that they had received representations from other candidates to the effect that even though they deserved to be appointed they had not been issued appointment letters. An inquiry was made by the Petitioners into the circumstances leading upto the complaints and it was found that the cases of some candidates were erroneously not considered apparently because their applications were misplaced. After taking the misplaced applications into consideration it was found that the cut off would now be 52 marks and since the Respondent fell below the cut off, no appointment letter was issued to him.
7. The Tribunal noted that it was rather odd that some applications were misplaced and that they pertained to the very same subject of Political Science, with which we are presently concerned. However, since the Director of Education had filed his personal affidavit indicating the relevant facts, the Tribunal accepted the affidavit and proceeded on the basis that only a human error was responsible for the controversy and that it was not as if some persons were sought to be appointed through a back door method.
8. The Tribunal was of the view that if the misplaced applications were not discovered, the Respondent would have been appointed and since there was a 'change in policy', due to subsequent events, the Respondent cannot be denied appointment.
9. Accordingly, the Tribunal directed that the Respondent be placed on the panel and the next vacancy be offered to him. It is against this order of the Tribunal that the Petitioners are now before us.
10. Having heard learned Counsel for the Petitioners, we must proceed on the basis that it was due to a bona fide human error that some applications were misplaced, as has been found by the Tribunal. Once we are required to proceed on this basis, we must also assume, in the absence of any contrary finding having been given by the Tribunal, that the misplaced applications were required to be taken into consideration. If the misplaced applications are taken into consideration, the cut off marks as per the scheme evolved by the Petitioners stood raised to 52 marks and unfortunately the Respondent did not reach the cut off for appointment. Therefore, the Respondent could not be given the appointment letter for the post of Post Graduate Teacher in Political Science.
11. In our opinion, the Tribunal was incorrect in assuming that there was a 'change in policy'. The policy remained the same inasmuch as the marking scheme remained the same but it is only that the applications of some more persons were taken into consideration since their applications were misplaced. Since no mala fides have been alleged in this regard, the Petitioners were obliged to take those applications into consideration. Having done so, the cut off marks rose from 51 to 52. This was purely fortuitous and not due to any 'change in policy' which continued to remain the same.
12. That being the position, we are of the opinion that the Tribunal erred in giving the direction that it did, namely, that the Respondent should be offered the next vacancy, even though he is below the cut-off mark.
13. The impugned order passed by the Tribunal is set aside and the petition is allowed.
14. No costs.