

Sh. Raj Kumar Sharma Vs. Delhi Development Authority Through Its Vice-chairman, New Delhi and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Sep-29-2011

Judge : The Honourable Mrs. Meera Chhibber, Judicial Member & the Honourable Dr. a.K. Mishra, Administrative Member

Appeal No. : OA-1147 of 2011

Appellant : Sh. Raj Kumar Sharma

Respondent : Delhi Development Authority Through Its Vice-chairman, New Delhi and Others

Advocate for Pet/Ap. : For the Applicant: S.K. Gupta, Advocate. For the Respondents: Danesh Relan, Advocate.

Judgement :

Dr. A.K. Mishra, Member (A)

1. The applicant, who is working as Draftsman (Civil) Grade-II in the office of the respondents for a long time has filed this application for a direction to quash the Circular dated 31.05.2010 issued by the Dy. Director (P)-II whereby outsiders along with the departmental candidates have been asked to participate in a written test. His prayer is to quash the letter dated 26.05.2010 (Annexure A-4) whereby his representation was rejected and he was advised to apply against the

advertisement. He has also prayed to set aside the letter dated 07.02.2011 (Annexure A-2) whereby his representation was rejected and he was advised to participate along with others.

2. At the time of hearing, learned counsel for the applicant submits that the applicant has been working as a Draftsman (Civil) Grade-II with the respondents for a very long time without having any promotional avenues. As per the original Recruitment Rules (RRs) (vide Resolution No. 574 dated 13.11.63), the post of Sectional Officer, now re-designated as Junior Engineer, was to be filled up 100% by direct recruitment. Keeping in view the need for providing avenues for career progression of the departmental candidates who had requisite qualification, a new Resolution was issued in the year 1985 by which it was decided to amend the RRs so as to enable the departmental candidates (Work Assistants) having required qualification and experience to participate in the process of recruitment to the post of Junior Engineer. According to him, the RRs were modified and the modified rule placed at Annexure A-5 (page-28) prescribes as follows:-

“APPENDIX “F” TO ITEM NO.77

RECRUITMENT RULES FOR THE POST OF SECTIONAL OFFICER (NOW RE-DESIGNATED AS JUNIOR ENGINEER (CIVIL)/(Elect/mech,)

Sl.No.Name of Classification Scale of pay EducationalMethod of Remarks

the post Qualificationrecruitment

Requiredwhether by

Direct recruitment

or by promotion

1 2 3 4 5 6 7

1. Sectional Officer Class-III (now Rs.180-10/- I) Diploma holders By appoint-
*Graduate

(Now re-designated Group "C") -290-EB- in Civil/Elect. and ment of in Civil/

as Junior Engineer 380/- Mech.Engin- departmental Elect/Mech

(Civil)/(Elect/Mech) (Now revised eering with two candidates Engineering

as R s.425- with two years who possess candidates

15-500 -EB- experience. the requisite have also been

15-560-20-700 qualification made eligible

and Experience. during the year

1963 as per

ii) Gradutate or requisition sent

in Civil/ Direct to the

Elect. and Recruitment. Employment

Mech. From time to

Engineering time.

2.1 It is the contention of the learned counsel for the applicant that the respondents could not have issued the advertisement/circular calling upon the departmental candidates to participate in a written test for selection along with outsiders. They should have first exhausted the suitable departmental candidates and thereafter gone for separate written test for the outsider candidates. They could not have combined the two categories for one common test. According to him the word "or" appearing in Column-6 of the amended RR is not the same as "and". The basic object for bringing about amendment in the RRs was to provide avenues of career progression of departmental candidates having requisite

qualification. This objective would be frustrated if the departmental candidates are asked to sit in an open competitive test with outsiders. In this context, he argues that the departmental candidates should be tested separately and their suitability determined on the basis of their passing a prescribed bench-mark.

2.2 He also contends that the respondents cannot be permitted to take a fresh ground to determine the validity of the educational qualification of the applicant on the basis of a new ground taken in the counter-affidavit. Their decision should be examined within the confines of the position taken in the impugned orders. In any case, he argues that the validity of the diplomas/degrees issued by the deemed Universities have been examined by this Tribunal in other OAs and upheld.

3. Learned counsel for the respondents submits that there are as many as 199 vacancies for the post of Junior Engineer (Civil) and only 30 departmental candidates are available who satisfy the eligibility criteria. It could not be the case of the applicants that all the 30 candidates eligible for the purpose should be selected. Therefore, the respondents have notified the vacancies through their Advertisement No. 13/PR/2010 inviting applications from all those who are eligible and desirous of applying for the post. By the Circular dated 31.05.2010 the departmental candidates having requisite qualification were intimated that they could appear in the test on the scheduled date. The candidates desirous of being considered for the post were asked to apply by 28.06.2010. The applicant was accordingly advised in the letter dated 21.06.2010 to apply for the post in case he had the requisite qualification. Subsequently, he was also advised to appear in the test along with others.

3.1 RR clearly says that departmental candidates as well as outsiders having prescribed qualification will be considered for recruitment. The word “or” appearing in the RRs cannot be interpreted to mean as “failing which”. It does not state anywhere that the suitability of the departmental candidates should be adjudged first before outsiders are considered for appointment. Since the number of vacancies is as many as 199, the respondents have invited applications both from the departmental candidates as well as others and such of them who possess the requisite qualification and satisfy other conditions would be permitted to appear in

the examination.

3.2 Learned counsel for the respondents further argues that if the contention of the applicant is allowed and the departmental candidates are considered as a separate category and subjected to a different selection test such an action of the respondents would be open to the charge of invidious discrimination.

4. We have heard the counsel for both the parties and gone through the record.

5. The modified RRs prescribe that the post of Junior Engineer can be filled up both by appointment of departmental candidates as well as by direct recruitment. It does not state specifically that the departmental candidates will have to be considered and appointed first before outsiders are invited to participate in a competitive examination. We do not find any infirmity in the decision of the respondent authority to subject the departmental candidates along with outsiders to a common competitive examination which would determine not only their suitability but also their inter-se-seniority in the rank of Junior Engineer. Since no quota has been fixed for promotion for departmental candidates, we do not see any merit in the contention of the applicants that they should be considered by a separate selection either for promotion or for appointment against any such quota earmarked for them. In the circumstances, we do not find that any case has been made out to interfere with the impugned action of the respondents. The O.A. is dismissed accordingly. No costs.

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