

Deep Chand Vs. Union of India and Others

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Court : Delhi

Decided On : Apr-27-2012

Judge : Badar Durrez Ahmed & V.K. Jain

Appeal No. : W.P.(C) 7615 of 2011

Appellant : Deep Chand

Respondent : Union of India and Others

Judgement :

V.K. JAIN, J.

1. This writ petition is directed against the order dated 15.07.2011 passed by the Central Administrative Tribunal, Principal Bench, Delhi (hereinafter referred to as 'Tribunal'), whereby OA No. 3303/2010 filed by the petitioner was dismissed. Brief facts giving rise to the filing of this petition are stated herein below:

On 10.2.1992, the petitioner was appointed as a Group 'D' employee (Messenger-cum-Cleaner) in the Directorate of Plant Protection, Quarantine and Storage and was posted at Locust out post Jaisalmer. On 16.4.1999, he was transferred to the Central Integrated Pest Management Centre (CIPMC) at Faridabad. The Locust out post as well as CIPMC formed part of the Department of Agriculture and Cooperation in Ministry of Agriculture. Pursuant to an advertisement issued by the Staff Selection Commission (SCC) to hold departmental examination from Group 'D' employees, the petitioner applied for the post of Lower Divisional Clerk (LDC)

and was declared qualified. The Department of Agriculture and Cooperation, however, took the view that since the Office of CIPMC, where the petitioner was working, was not a participating office of Central Secretariat Clerical Service (CSCS), he was not eligible to appear in the examination conducted by the SSC. The Tribunal, observing that only the Ministries, Departments and Attached Offices are considered as participating offices of Central Secretariat Clerical Service and the Field Offices under them are Subordinate Offices, held that since the petitioner was not working in a participating office, he was not eligible for appointment as LDC in Central Secretariat Clerical Service. The Tribunal also observed that the Field Offices have their own Recruitment Rules governing promotion of Group 'D' staff as LDC.

2. It is not in dispute that at the time he applied for the post of LDC pursuant to the advertisement issued by the SSC, the petitioner was posted in CIPMC, Faridabad. Vide Office Memorandum dated 18.10.2004, he was given work relating to cleaning of vehicles of Headquarter in addition to his own duties at CIPMC, Faridabad, till further arrangements were made. On 8.11.2005, the petitioner was posted in the Headquarter of Directorate of Plant Protection, Quarantine and Storage, Faridabad. The examination for the post of LDC was conducted on 18.12.2005. The petitioner was posted in the Headquarter at that time. Pursuant to our order dated 16.4.2012, the respondents have placed on record the advertisement issued by the Staff Selection Commissioner (SSC) for Clerks Grade Departmental Examination, 2005, for Group 'D' Staff. A perusal of the advertisement would show that a qualifying examination was held for recruitment to temporary vacancies reserved for regularly appointed Group 'D' staff in the Lower Division Grade of the (i) Central Secretariat Clerical Service, (ii) Armed Force Headquarters Clerical Service and (iii) Grade VI of the I.F.S. Branch 'B'. The relevant Clauses of the advertisement read as under:

Conditions of Eligibility:

(i) Group 'D' employees holding Group 'D' post on regular basis of any of the above mentioned services/Ministry/Offices shall be eligible to appear for vacancies existing only in their respective service/Ministry/Office.

(ii) x x x x x

(iii) **Length of Service:** The candidates should have rendered on 1.8.2005 not less than 5 years of approved and continuous service, as Group 'D' employees or in any higher grade in the Ministries/Offices participating in the Central Secretariat Clerical Service scheme or Armed Force Headquarters Clerical Service and/or Inter services Organization or in the Ministry of External Affairs or its Mission abroad.

x x x x x

x x x x x

Selection of Candidates: x x x

(ii) x x x .

A candidate must submit his application through the Head of his department or office concerned who will complete the endorsement at the end of the application form and forward it to the Commission. It shall be the responsibility of the Department or offices concerned to ensure eligibility of the candidates as laid down in para 3 and all application received through department or office by the closing date shall be considered as eligible by the Commission. x x x x NOTE: THIS EXAMINATION IS MEANT ONLY FOR THE PERSONS WORKING AS GROUP 'D' EMPLOYEES IN VARIOUS OFFICES OF GOVT. OF INDIA WHICH PARTICIPATES IN CSCS, AFHQ, IFS (B). THE APPLICATION WILL BE CONSIDERED ONLY IF THEY ARE FORWARDED THROUGH THE OFFICES PARTICIPATING IN THESE CADRES. THE APPLICATION OF ALL OTHER CANDIDATES WILL BE SUMMARILY REJECTED.

x x x x x

TO BE FILLED BY THE HEAD OF DEPARTMENT OR OFFICE IN WHICH THE CANDIDATE IS SERVING (Please see para 3 and 9 (ii) of Notice) Certified that:

(i) x x x

(ii) x x x

(iii) x x x

(iv) Shri/Smt.Kum._____ is a continuously and regularly appointed Group 'D'/Class IV employee of Ministry/Office participating in the cadre/service of (tick (?) the appropriate box).

Central Secretariat Clerical Service

Armed Force Headquarters Clerical Service

Indian Foreign Service (B)

With effect from_____

(v) x x x

(vi) x x x

2. Certified also that he/she had submitted his/her application to the Department/Office on _____ for onward transmission to the Staff Selection Commission.

3. Certified also that the photograph of Shri/Smt./Km._____pasted on the application form at appropriate place is duly signed and stamped by the undersigned.

No.....

Signature_____

Name_____

Designation_____

Department_____

Office_____

Place_____

X X X X

RULES

X X X X

The candidates who are admitted to the examination will be eligible for vacancies.

(i) In the Central Secretariat Clerical Service, if they are working in the Ministries/Offices participating in the Central Secretariat Clerical Service.

(ii) In the Armed Forces Headquarters Clerical Service if they are employed in the Armed Forces Headquarter and Inter-Services Organization.

(iii) In Grade VI of the IFS(B), if they are employed in the Ministry of External Affairs or its Missions abroad.

2. The number of vacancies to be filled up on the results of the examination will be decided by each cadre authority participating in the examination.

3. A perusal of the aforesaid advertisement would show that the petitioner could have appeared in Clerks Grade Departmental Examination, 2005 only if he was holding a Group 'D' post on regular basis in any of the Ministries/Offices participating in the Central Secretariat Clerical Services. It is an admitted position that CIPMC, Faridabad where the petitioner was working at the time he submitted his application to appear in Clerks Grade Departmental Examination, 2005 is a constituent of the Directorate of Plant Protection, Quarantine and Storage, Faridabad. CIPMC Faridabad is not an office independent of the said Directorate. All the employees of the Directorate irrespective of whether they are posted in Field Offices such as CIPMC or in its Headquarter, are employees of the Directorate. If Directorate of Plant Protection, Quarantine and Storage, Faridabad was the participating office in the Central Secretariat Clerical Service, all its employees, including the employees who were working in CIPMC, were eligible to appear in Clerks Grade Departmental Examination. On the other hand, if only the Headquarter of the Directorate was the participating office in the Central

Secretariat Clerical Service, only those employees of the Directorate, who, at the relevant time, were posted in the Headquarter would alone be eligible to appear in the said examination.

4. It would be seen from the advertisement that the application was to be submitted through the Head of the Department or Office concerned, who was to complete the endorsement at the end of the application form and forward it to Staff Selection Commission. It was the duty of the Department/Office concerned to ensure that the candidate applying for the said examination was eligible in terms of the eligibility condition stipulated in para 03 of the advertisement.

5. It has been stated in the counter affidavit that the application of the petitioner was forwarded to Staff Selection Commission by CIPMC, which according to the respondents was not the proper channel for submission of the applications. Another plea taken in the counter affidavit is that the Directorate maintains separate seniority list of all the cadres of Group 'D' employees. We notice that the Tribunal has not returned a specific finding as to whether the Directorate of Plant Protection, Quarantine and Storage, Faridabad was the participating office in Central Secretariat Clerical Service or only its Headquarter was the participating office in the said service. The Tribunal has decided the OA by observing that the office of CIPMC was not a participating office. The basis for taking this view appears to be the observation that only the Ministries/Departments or Attached offices are considered as participating offices of Central Secretariat Clerical Service whereas the Field Offices are subordinate offices. The question to be considered is not as to whether a Field Office is an attached office or subordinate office. The question is as to whether the Directorate of Plant Protection, Quarantine and Storage, Faridabad was the participating office or its Headquarter alone was the participating office in Central Secretariat Clerical Service.

In absence of any finding from the Tribunal on this crucial aspect of the matter, we are of the view that the matter needs to be remanded to the Tribunal for returning a categorical finding as to whether the Directorate of Plant Protection, Quarantine and Storage, Faridabad or only its Headquarter was the participating office in Central Secretariat Clerical Service. In our view, if it is found that the Directorate

and not its headquarter alone was the participating office in Central Secretariat Clerical Service, the petitioner irrespective of the fact that he was posted in a subordinate office/field office such as CIPMC, would be eligible to appear in the said examination. On the other hand if it is found that only the Headquarter of the Directorate was the participating office in the said service, the petitioner, who at the relevant time was posted in CIPMC and not in the Headquarter would not be eligible to appear in the said examination.

5. For the reasons stated hereinabove we set aside the impugned order dated 15.7.2011 passed by the Tribunal and remand the matter to the Tribunal for recording a clear finding as to whether the Directorate of Plant Protection, Quarantine and Storage, Faridabad or its Headquarter was the participating office in the Central Secretariat Clerical Service and then deciding the OA, on the basis of that finding. In the first instance, the parties shall appear before the Tribunal on 21st May, 2012.

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