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Pankaj Kumar Vs. the Union Public Service Commission and anr.

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Court : Delhi

Decided On : Apr-17-2013

Judge : V. Kameswar Rao

Appellant : Pankaj Kumar

Respondent : The Union Public Service Commission and anr.

Judgement :
$~19 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: April 17, 2013 + + W.P.(C) 5976/2011 W.P.(C) 5976/2011 PANKAJ KUMAR Represented by: ..... Petitioner Mr.Anil Hooda with Mr. Prashant Kumar Advocate Versus THE UNION PUBLIC SERVICE COMMISSION AND ANR. .... Respondents Represented by: Mr.Naresh Kaushik with Ms. Amita Kalkal Chaudhary, Ms. Aditi Gupta, Advocate for R-1 Ms. Rekha Palli with Ms. Punam Singh, Advocate for R-2 CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE V.KAMESWAR RAO V.KAMESWAR RAO, J.(Oral) 1. The challenge in this writ petition is to the order dated July 15, 2011 in OA No. 2466/2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal). In the OA, the petitioner herein has sought a direction to the respondents to declare his result without adhering to the criteria of minimum qualifying marks for the interview and in that process if his name figures in the merit list in the written test as well as in the interview, then he may be appointed in the post of Deputy Director, Employees State Insurance Corporation (ESIC).

2. The Union Public Service Commission (UPSC), the first respondent herein had vide Advertisement No. 50/2009 invited applications for 71 posts of Deputy WP (C) 5976/2011 1 of 6 Director in Employees State Insurance Company (ESIC), whereas 11 posts were reserved for SC, 6 for ST and 20 for OBC, the remaining posts were unreserved. UPSC conducted a written test on August 9, 2009, on which date the petitioner appeared. The petitioner was informed that he had qualified to be called for the interview to the post in question. Later on, on March 23, 2010, the petitioner was informed that his candidature was cancelled due to lack of experience in a responsible capacity.

3. The petitioner challenged the said decision by filing an OA No. 1250/2010 wherein the Tribunal vide its order dated April 19, 2010 on the interim prayer sought for by the petitioner was allowed to appear provisionally in the interview, but the result of the petitioner was ordered not to be declared without the permission of the Court. The Tribunal directed the respondents to intimate the result of the petitioner as in its view, the matter may require consideration on merits only if the petitioner had succeeded. The result were brought to the Tribunal in a sealed cover and the same was opened which revealed that the petitioner had secured only 42 marks out of 100 in the interview instead of 45 marks required for qualifying the same. The OA was accordingly dismissed.

4. The petitioner challenged the dismissal of the OA in this Court. The writ petition was listed on May 26, 2011 when the learned counsel appearing for the petitioner raised a similar contention that competent authority could not have fixed a cut off marks in the interview and total marks in the written examination and interview should have been considered. According to him, this aspect was not advertised by the Tribunal.

5. In this background, this Court granted liberty to the petitioner to file a fresh OA raising this issue before the Tribunal which was to be adjudicated by the Tribunal on merits.

6. Pursuant to this liberty, the petitioner filed OA No. 2466/2011. The contention of the learned counsel for the petitioner before the Tribunal was that the respondents have changed the rules and criteria for selection in the midst of the WP (C)

5976/2011 2 of 6 examination and therefore, cogent reasons exist for the Tribunal to interfere with the matter. According to him, there is no prescription for minimum qualifying marks for the interview and to secure 45 cut off marks has been prescribed during the process of the selection.

7. On this particular issue, the Tribunal had in para 6 concluded as under :Counsel for the applicant does not appear to be right in his submission as noted above. Perusal of the advertisement would reveal that there would be a written objective type test with multiple choices which would be followed by interview for selection of candidates for the posts. The method and syllabus for the test have been mentioned in the advertisement itself. As regards weightage of the recruitment test and interview, it has been mentioned that the same shall be decided by the Commission. There is no mention in the advertisement that the merit shall be determined by combination of marks obtained both in written test and interview. As to what weightage shall be given in the interview, it is clearly mentioned in the advertisement that the same shall be decided by the Commission. If after advertisement, the USSC has prescribed minimum 45 marks to be obtained in the interview, it shall not be a change of recruitment rules in midst of the examination. If perhaps, it had been mentioned that the merit would be worked out in combination of the marks secured by candidates both in written test and interview and the minimum qualifying marks in the interview might have been prescribed thereafter and there was some change brought about, applicant may have had some case. Confronted with the position aforesaid, counsel for the applicant would contend that prescription of minimum qualifying marks in the interview would be illegal in an examination which consists of both written test and interview, and it is combination of marks which would determine the merit. We have pondered over the question raised by the learned counsel for the WP (C) 5976/2011 3 of 6 applicant as noted above, but find no merit therein. The post advertised by the respondents is that of Deputy Director in the Employees State Insurance Corporation. It may be the requirement of the post for the incumbent to have good personality, command over language and other such attributes which would be essential to man the concerned post. The minimum interview marks will always depend upon the post in question. To illustrate, we may mention that if the post may be of News Reader in Doordarshan it would essentially require minimum

marks in the interview, as surely, it may need to have good personality, audition, command over language, oration, pronunciation, the way and the manner in which he may speak etc. For the post as mentioned above, one may obtain 100% marks in the examination but if the personality is such that may not suit the post in question, he cannot be appointed at all. Interview in number of posts may have to be given precedence over the written test and, therefore, prescribing minimum marks for interview, in our view, would not be per se illegal. As mentioned above, it would depend upon the post and the requirement of the employer to man such post. That apart, we are of the firm view that the applicant to make out a case, even if the arguments aforesaid are to be accepted, had to gather information which is possible in view of the right granted to the citizens in the country under Right to Information Act, as to how many marks he had obtained in the written examination. It is only if by combination of marks obtained in written examination and interview that he was to secure more marks than the last selected candidates, that he would have some grievance. Once this information could well be obtained by the applicant, this Tribunal will not go into the fishing enquiry to find out as to whether the applicant by combination of marks both in the written test and interview had obtained more marks than the last selected candidates in his category.

8. On the basis of the aforesaid finding, the original application was dismissed. WP (C) 5976/2011 4 o

9. While arguing this writ petition, the learned counsel reiterates his contention.

10. It is seen that the UPSC has filed a reply to the writ petition filed by the petitioner. In their reply, the UPSC had annexed a circular no. 01/2005 dated January 4, 2005 which deals with subject; procedure to be followed by the interview Boards. Clause X of the said circular stipulates the cut off marks for the interview candidates belonging to various categories have been fixed and the same are re-produced as under :General Category :

50. and above OBC SC/ST 11.:

45. and above (on relaxed standards) :

40. and above (on relaxed standards) Mr. Naresh Kaushik, learned counsel appearing for the UPSC submits that this circular no. 01/2005 came into existence much before the advertisement no. 50/2009 with which we are concerned with, in this petition was issued. According to him, this circular clearly stipulates that the cut off marks for the interview for candidates belonging to various categories including OBC, to which category, the petitioner belongs, has been fixed at 45 and above (on relaxed standards). According to him, it is on the basis of this circular that the cut off marks for the interview were fixed while conducting the selection process for the post in question.

12. The learned counsel for the petitioner does not dispute the existence of circular no. 01/2005 dated January 4, 2005. If that been the position, it is clear that the circular no. 01/2005 dated January 4, 2005 was in existence and the UPSC has followed that particular circular for fixing the cut off marks for the interview, we feel that this is an additional ground which would dis-entitle the petitioner the relief as sought for before the Tribunal as well as in this writ petition. WP (C) 5976/2011 5 o

13. Accordingly, the writ petition is dismissed. No order as to costs. (V.KAMESWAR RAO) JUDGE (PRADEEP NANDRAJOG) JUDGE APRIL 17 2013 p WP (C) 5976/2011 6 of 6

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