

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1504 of 1999

New Delhi, this 10th day of May, 2000

Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

1. Ms. Sushma
W/o Sh. Jayman Dominic Bara
R/o Block 23, H.No.85 B
Tilak Nagar
Delhi.

2. Ms. Nishi Bhatt (Hosto)
W/o Rakesh Hosto
R/o C-2/9, DDUH Complex
New Delhi.

... Applicants

(By Advocate: Shri A. K. Bhardwaj, proxy
counsel for Shri M. K. Bhardwaj)

versus

1. National Capital Territory of Delhi
Through:
The Chief Secretary
Govt. of Delhi
Old Sectt. Rajpur Road
Delhi.

2. The Secretary
Delhi Subordinate Service
Selection Board, 3rd Floor UTCS Building
Institutional Area
Behind Kakardooma Courts Complex
Shahdara
Delhi-110032.

... Respondents

(By Advocates: Shri Vijay Pandita)

Order (oral)

By Reddy, J.

Respondent no. 2 advertised for appointment for the post of Dietician in the Health and Family Welfare Department, Government of N.C.T. of Delhi in November 1999 and in pursuance of it, the applicants had applied. There were only two posts of Dietician. It appears that more than 100 applications had been received by the respondents and hence respondents had adopted the

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'short listing' keeping higher qualifications and the applications were accordingly screened. Since the applicants had not fulfilled the higher qualification prescribed for short listing, they were not called for the interview. Aggrieved by the same they have filed the present OA. It is contended by the learned counsel for the applicant that the basis for short listing was contrary to the instructions issued by respondent no. 2 which mandated that either higher qualifications and experience or more experience and not only keeping higher qualifications.

2. It is the case of the respondents that the candidates with three years experience and with 60% marks in BSc. (Home Science) were called for the interview. Several applications were received for two posts. Hence, the respondents submits that, short listing was made only for the purpose of screening the candidates and to avoid interviewing several candidates and wasting time of the Board. As the applicants did not posses 60% marks in BSc. (Home Science), they were not called for the interview. He maintains that the method of short listing was not illegal or malafide.

3. We have given careful consideration to the pleadings as well as arguments advanced by either side.

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4. The qualifications for appointment to the post of Dietician are as under:

(i) B.Sc. (Home Science/Home Economics) with nutrition as a special subject from a recognised University or equivalent.

(ii) P.G. Diploma in Dietics from a recognised institution.

(iii) 3 years experience of working in a Dietary Deptt/recognised Hospital."

5. In the present case however, it is stated, that one year experience was initially stipulated, erroneously and that as per rules three years experience was required. It is not in dispute that the applicants had fulfilled these qualifications. It is permissible for the selection board to adopt short listing for the purpose of screening the applications when more than 100 applications were received for two posts. Learned counsel relies upon the 'Application Form' and 'Information Brochure' published by the Delhi Subordinate Services Selection Board for the purpose of giving information as to how to apply and the mode of selection etc. for the posts under the Government of N.C.T. of Delhi. The 'Mode of Selection' was clearly stated as under:

"(I) Where the number of applications received in response to the advertisement(s) are large and it will not be convenient or possible for the Board to Interview all the applicants, the Board may restrict the number of applicants to a reasonable limit on the basis of either qualifications and experience higher than the minimum prescribed in the advertisement or on the basis of

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experience higher than the minimum prescribed in the advertisement in the relevant field, or by holding a screening test. The applicants should, therefore, mention all the qualifications and experience in the relevant field or over and above the minimum qualification and should attach attested copies of the certificates in support thereof."

(emphasis supplied)

6. Learned counsel for the applicants Shri A.K. Bhardwaj submits that the mode of selection, ^{which} ~~no doubt~~ permits short listing of the candidates. This short listing was strictly to be as per the mode of selection given by the Board. In the mode of selection the short listing was to be made on the basis of either higher qualifications and more experience in the relevant field, than they are prescribed in the Advertisement or on the basis of experience higher than the minimum prescribed in the advertisement in the relevant field or by holding a screening test. In the instant case, only higher marks were prescribed for the purpose of screening and that is contended by the learned counsel for the applicants as contrary to the mode of short listing. The qualifications alone should not be the guiding factor for short listing, according to the applicants. It should be either higher qualification and better experience or better experience alone, but not higher qualification alone.

7. It is now admitted in the counter that short listing was done stipulating higher qualification



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alone, that is, screening the applications where
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 the marks are less than 60% in B.Sc. (Home
 Science).

8. From a reading of the above 'Mode of Selection' it appears that there is sufficient force in the contention of the learned counsel for the applicants. ~~has sufficient force.~~ The Mode of Selection itself clearly states how the short listing ^{is to} _{to} be done. It should be based on both experience and qualification but not qualification alone. However, higher experience in the field could be the base for short listing. Higher qualification dehors the experience was not contemplated by the Mode of Selection. Learned counsel for the respondents relies upon a Delhi High Court judgement in CWP.314/99 in B.P. Sharma Vs. Lt. Governor & Ors. in which it is stated, to have held as under:

"For the purpose of short-listing the candidates for consideration of appointment having regard to the large number of applications, the respondent had chosen to call ^{for} the interview such of those candidates who had secured 50% marks in the degree examination. There is no right in the petitioners that the respondents cannot seek to select persons who had secured 50% marks in the degree examination. Therefore I do not find any merit in the writ petition. Accordingly it is dismissed in limine."

9. A certified or at least private copy of the judgement is not placed before us except the above which has been quoted in the reply

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affidavit. Even ^{from} a reading of the above quoted portion, it does not appear that the Learned Judge had considered the validity of selection as per the Mode of Selection contained in the Information Brochure issued by the Board. In the instant case, as the applicants rely upon the mode of selection in the Information Brochure we feel the above judgement will be of little help to the respondents. The procedure that has been adopted by the respondents for short listing appears to be wholly irregular. The Staff Selection Board, having issued the brochure indicating the mode of selection, it would be illegal if the Board finalises the selection in breach of procedure. Once applications are invited stipulating certain qualifications, all the candidates who fulfilled the said qualifications ^{quire} ~~acquire~~ a right to be considered for selection. It is a fundamental right under Article 16 of the Constitution. That right would be deprived of ^{by not} ~~only~~ following the procedure strictly in accordance with mode of selection. Short listing of applications is a serious matter as the eligible applicants are eliminated. Hence the method of short listing should not be done haphazardly. The method of short listing was stipulated by the Board keeping in mind to prefer candidates having higher experience than was stipulated in the advertisement and not mere higher qualifications. Hence, in our view,

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prescribing only higher qualifications would be contrary to the mode of selection and the applicants were illegally deprived of their right for consideration.

10. The impugned interviews held on 6.7.1999 for the post of Dietician are therefore set aside. The respondents are directed to conduct fresh interview after following strictly the Mode of selection as shown in the "Application Form and Information Brochure" for the purpose of short listing the applications, if necessary. The OA is accordingly allowed. No costs.

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(Mrs. Shanta Shastry)
Member(A)

Rajagopala Reddy

(V. Rajagopala Reddy)
Vice Chairman(J)

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