

12

Central Administrative Tribunal
Principal Bench

O.A. 265/2000

New Delhi this the 28 th day of February, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

Shri Anil Wason,
S/o Shri P.K. Wason,
R/o 13-A, Pocket-III,
Mayur Vihar,
Delhi-110091.

... Applicant.

(By Advocate Shri M.K. Gupta)

Versus

1. Government of National Capital Territory of Delhi,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.
2. Lt. Governor of Delhi,
Raj Niwas,
Delhi-110054.
3. Principal Secretary (Medical),
Govt. of NCT of Delhi,
5, Sham Nath Marg, Delhi. ... Respondents.

(By Advocate Mrs. Meera Chhibber)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicant is aggrieved by the penalty order passed by the respondents reducing his pay by one stage in his time scale of pay for a period of one year w.e.f. 1.2.1998 dated 31.12.1997/2.1.1998, as well as the appellate authority's order dated 6.1.1999 rejecting his appeal.

2. The applicant, while working as Superintendent Grade-I of DASS was issued a chargesheet dated 15.3.1996. In this Memorandum, it was alleged that while functioning as Superintendent, Grade-I of DASS in

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the Technical Recruitment Cell (TRC) under the Medical and Public Health Department, Govt. of NCT, Delhi during the year 1989, he had committed gross misconduct inasmuch as he had processed/ scrutinised the case of one Shri Hari Sharan for appointment as Radiographer, but had failed to point out that he did not possess the requisite qualification as prescribed under the Recruitment Rules (RRs) for that post.

3. Shri M.K. Gupta, learned counsel for the applicant, has urged a number of grounds assailing the punishment orders as set out in the OA. He has also emphasised that ^{a B} ~~the~~ prosecution witness had admitted that no recruitment against this post was being done as the Services Department of Delhi Government had opined that the RR's were not suitably worded and need amendments. He has also relied on the fact that the Inquiry Officer had also stated that even if it is assumed that Matriculation as per RR's means Matriculation with Science, it is not clear what subject a candidate should have if he is to be declared eligible for the post. The disciplinary authority had disagreed with the findings of the Inquiry Officer vide his letter dated 28.7.1997. Learned counsel for the applicant has submitted that there was no justification for the disciplinary authority to differ from the findings of the Inquiry Officer and he has, therefore, submitted that the findings of the competent authority are perverse and misconceived and should be quashed and set aside. He has also submitted that the recruitment in question was done in 1989 for which the charge-sheet had

14

-3-

been issued on 15.3.1996. The Inquiry Officer had come to the conclusion that it was not possible to hold that the applicant, along with the other charged officials, had failed to point out that Shri Hari Sharan did not possess the requisite qualifications as prescribed under the RRs resulting in his appointment by G.T.B Hospital on the recommendations of the Staff Selection Board (SSB) and held the charges as not proved.

4. Shri M.K. Gupta, learned counsel has referred to the Certificate submitted by Shri Hari Sharan and has also relied on the annexures to the rejoinder, regarding what is 'Technical Drawing'. His contention is that under the RRs, the qualifications prescribed are (1) Matriculation/Higher Secondary or Sr. Secondary (10+2) with Science; and (2) Certificate in Radiography (two years' course) or Diploma in Radiography (two years), etc. He has, therefore, contended that ^aScience subject has not been specified in the RRs because it could have many papers like Physics, Chemistry, Biology and Maths, etc. and, according to him, Shri Hari Sharan was having Higher Secondary Certificate with various subjects, like General Maths and Technical Drawing which are Science subjects. Learned counsel has, therefore, very emphatically submitted that the penalty orders are unjust as the applicant can in no way be held guilty of the charges, which partly rested with the respondents in not having framed the RRs properly which has been admitted by them.

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5. The respondents in their reply have controverted the above averments. We have also heard Mrs. Meera Chhibber, learned counsel. She has submitted that Shri Hari Sharan did not have the requisite qualifications as prescribed under the RRs which, however, resulted in his final selection by the S.S.B. to the post of Radiographer in the G.T.B. Hospital. She has submitted that accordingly a departmental inquiry had been held against the applicant which is in accordance with the ^{Rules} ~~RRs~~ and instructions and the disciplinary authority has imposed the penalty of reduction in the time scale of pay for a period of one year. She has submitted that, therefore, there is nothing illegal in the penalty orders. She has also submitted that while disagreeing with the findings of the Inquiry Officer, the disciplinary authority had given the reasons which are sound and on this ground also the minor penalty imposed on the applicant does not call for any interference. According to her, the candidate had to fulfil the educational and other qualifications prescribed in the RRs for direct recruitment, which includes Matriculation or Higher Secondary or Senior Secondary (10+2) with Science and the Certificate or Diploma in Radiography, which are both essential. In the circumstances, learned counsel has submitted that the penalty orders passed by the disciplinary authority which has been upheld by the appellate authority after considering the relevant documents are legal and valid and the O.A. is devoid of any merit.

18/

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. Under the RRs for direct recruitment to the post of Radiographer, the following educational qualifications are prescribed:

"1. Matriculation/Higher Secondary/or Sr. Secondary (10+2) with Science.

2. Certificate in Radiography (two years course) or Diploma in Radiography (two years) or B.Sc. (Radiography) or Radiographical Technology (two years course)".

8. From the Certificate of the candidate whose selection is under question, namely, Shri Hari Sharan, it is seen that he did not have any Science subject in the High School examination. Shri M.K. Gupta, learned counsel has contended that the Certificate shows that the candidate had done subjects like, General ~~subjects~~^{subjects} and Technical Drawing which are Science subjects. In the context of the RRs, we are unable to agree with this contention because what was required was a Science subject, which would have meant subjects, like Physics, Botany, Zoology or Chemistry at the School level, which were also referred to by him in his submissions. The other contention of Shri Gupta, learned counsel that it was not the duty of the applicant to make the appointment of Radiographer as there were other persons who had this task will not by itself absolve the applicant of his duties as Superintendent in the TRC during the relevant period. It is also relevant to note that the applicant was an officer of Grade-I DASS and

his work includes proper checking and scrutinising of applications^{Rs} relating to educational qualifications of the candidates in accordance with the RRs.

9. Another contention of the learned counsel for the applicant was that the RRs were defective which has also been submitted by the prosecution witness. However, it was the duty of the applicant to carry out his duties in checking the educational and other qualifications^{of the candidates Rs} to the post of Radiographer in terms of the RRs, which clearly mention the qualifications of Matriculation or Higher Secondary or Senior Secondary with 'Science' as a subject. It was also contended that the Science subject was required only in the case of Senior Secondary Certificate and not in^{the Rs} other two cases, with which we cannot also agree having regard to the aforesaid provisions of the RRs. The applicant's counsel had also relied on the statement given by the candidate, Shri Hari Sharan during the inquiry proceedings that he had not suppressed any information or material from the Members of the S.S.B. including his High School Certificate. Merely because the candidate had produced the relevant documents, including the High School Certificate before the S.S.B. will not help the applicant because he was entrusted with the work of initially checking and scrutinising^{the documents Rs} relating to educational and other qualifications to ensure that they fulfil the necessary and desirable qualifications prescribed in the RRs. On a perusal of the documents on record, it is seen that the applicant has not carried out this duty entrusted to him which was subject matter of the disciplinary proceedings. The charge against the

18

applicant was that while functioning as Superintendent, Grade-I of DASS in the TRC under the Medical and Public Health Department, Govt. of NCT, Delhi, he had committed gross misconduct inasmuch as he has processed and scrutinised the case of one Shri Hari Sharan for appointment as Radiographer, but had failed to point out that the candidate did not possess the requisite qualifications. Taking into account the facts and circumstances of the case, we are unable to agree with the contention of the applicant's counsel that this charge had not been proved against the applicant in the departmental proceedings or that the punishment orders have been passed without application of mind.

10. The disciplinary authority had disagreed with the findings of the Inquiry Officer and had given his reasons for the same. Shri M.K. Gupta, learned counsel has drawn our attention to the applicant's representation dated 20.8.1997 in which he had requested for a personal hearing in the matter to explain his case. His main ground is that even once prosecution witness had admitted that the present RRs were defective and no Science subjects are proposed in the amended RRs. In the impugned order passed by the disciplinary authority dated 1.2.1998, he has given his reasons as to why he has disagreed with the Inquiry Officer's report. The relevant portion of this order reads as follows:

"AND WHEREAS, the undersigned has carefully gone through the inquiry report, representation furnished by Shri Anil Wasan and all other related documents and finds that the findings of the Inquiring Authority are inconsistent and fall short on facts. In fact, the Inquiring Authority has analysed the issue posed to him for inquiry with short sightedness so much so that even a person of ordinary prudence knows that science subject means Physics, Chemistry

18/

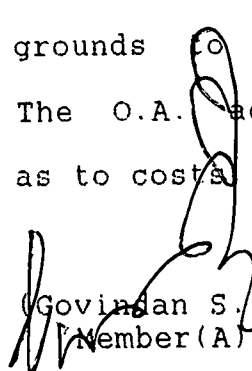
and Biology and certainly General Math and drawing technical cannot be construed as "science" specially with reference to the Recruitment to the post of X-Ray Mechanic/Radiographer. When Recruitment Rules, prescribed Matriculation with Science, the requirement of subjects has to be construed in common parlance. As such the subject "Science" must exist in the Matriculation Certificate of Shri Hari Sharan which is one of the listed documents of the case does not corroborate the version of the Inquiring Authority as there is no mention of "Science" in this Certificate and clinches the issue".

The post under consideration for recruitment was the post of Radiographer for which under the RRs the candidate should possess Matriculation or other equivalent Certificate with Science. The reasoning given by the disciplinary authority quoted above, is very clear and logical and the fact that the prescribed qualification has to be construed "in common parlance" cannot also be faulted. In this view of the matter, the subject "Science" should be part of the Matriculation Certificate of the candidate, which the candidate Shri Hari Sharan, did not possess which is clear from a perusal of the Certificate submitted by him and relied upon by the learned counsel for the applicant. The argument of the learned counsel for the applicant that Maths and Technical Drawing can also be considered as a Science subject, in the context of the Certificate required under the RRs for the post of Radiographer are not relevant. On the contrary, the reasoning of the disciplinary authority cannot be faulted nor is there any justification to set aside the punishment orders. The procedure laid down under the Rules has been correctly followed by the respondents and the punishment order cannot also be considered excessive or perverse in the circumstances of the case.

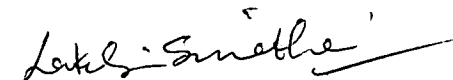
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11. One other ground taken by the learned counsel for the applicant was that in his representation dated 20.8.1997, he had requested for an oral hearing to be given by the disciplinary authority which has not been agreed to. Having regard to the judgements of the Supreme Court in **State Bank of Patiala & Ors. Vs. S.K. Sharma** (JT 1996(3) SC 722), it cannot be held that any prejudice has been caused to the applicant by the disciplinary authority not acceding to his request for giving him an oral hearing when the charges levelled against him have been proved from the documents on record. Accordingly, this ground also fails.

12. In the facts and circumstances of the case, we find no merit in this application or any justifiable grounds to set aside the impugned punishment orders. The O.A. accordingly fails and is dismissed. No order as to costs.


(Govindan S. Tampi)
Member (A)

'SRD'


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)