

(18)

**Central Administrative Tribunal  
Principal Bench**

**OA No. 616/2004**

**New Delhi, this the 29<sup>th</sup> day of October, 2010**

**Hon'ble Dr. Ramesh Chandra Panda, Member (A)  
Hon'ble Dr. Dharam Paul Sharma, Member (J)**

Shri Raman Singh Negi,  
S/o Late Shri Prem Singh,  
R/o A-2/49 B, Lawrence Road,  
Delhi-110 035.

**... Applicant**

**Versus**

1. Government of N.C.T, Delhi,  
Through The Chief Secretary,  
Delhi Secretariat, Indraprasth Estate,  
New Delhi-110 002.
2. The Secretary,  
Services III, Department,  
Government of N.C.T. Delhi,  
Level 7, Wing B,  
Delhi Secretariat, Indraprasth Estate,  
New Delhi-110 002.
3. Delhi Subordinate Service Selection Board,  
Through its Secretary,  
UTCS Building, Behind Karkardooma Courts Complex,  
Vishwas Nagar, Shahdara,  
Delhi-110 032.

**.... Respondents.**

(By Advocate : Shri Vijay Pandita)

**: O R D E R (ORAL) :**

**Dr. Ramesh Chandra Panda, Member (A)**

Shri Reman Singh Negi, the Applicant in this OA has come to  
the Tribunal with the following prayers:-

*Vijay Pandita*

- "a. QUASH the ORDER No.F.14(5)/9/2003/S.III/Misc/429 dt. 11/2/2004 (copy annexed herewith as ANNEXURE – A-1), and
- b. DIRECT the respondents to appoint the applicant in Grade IV DASS/L.D.C. (Sports Quota), from the date of vacancy, with all monetary & consequential benefits of seniority & pay-allowances, and
- c. GRANT cost in favour of the applicant and
- d. PASS any other or further order (s), in favor of the applicant, which this Hon'ble Tribunal may deem fit, just and proper in the above-mentioned facts & circumstances."

2. When the case came up for hearing on 15.12.2004, after hearing the counsel for the rival parties, the Tribunal passed the following orders :-

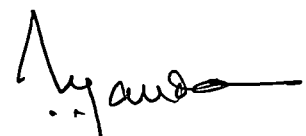
"During the course of submissions, learned counsel for the applicant pointed that O.A.116/2003 had been filed in this Tribunal and though the entire result was not quashed but the appointments of private respondents had been quashed. The said O.A. was disposed of with the following directions :

"For these reasons recorded above, we direct:

- (a)The respondent no.1 will re-examine the entire dossiers of the candidates to enquire that they have filed complete certificates and were within the age limit prescribed etc.;
- (b)The marks obtained in the trial test should be calculated as was decided to be 100 marks, a fresh merit list in this regard should be prepared and thereafter the result should be declared as per the merit of the candidates."

It is being stated at the Bar by the learned counsel for respondents that against the said decision, a writ petition has been filed by the private respondents in the Delhi High Court and operation of the order has been stayed.

Since that decision may reflect on the final outcome of the present O.A., therefore, we adjourn the matter sine die with liberty to either party to seek revival of the same after decision of the abovesaid Writ Petition in the Delhi High Court."





3. Vide order dated 05.05.2010, this case was notified by the Registry for hearing as this has been in the *sine-die* for quite sometime. Accordingly, the case was heard on 06.05.2010, 25.05.2010, 29.07.2010, 31.08.2010, 16.09.2010 and finally on 29.10.2010. The respective parties were directed to file affidavit enclosing copy of judgment of Hon'ble High Court of Delhi, which was passed on 01.02.2008 in a batch of four Writ Petitions with the leading Writ Petition **between Shri Manoj Panwar Vs. Govt. of NCT of Delhi & Ors. (WP(C) No.16563-70/2004)**. The learned counsel for the NCTD filed an additional affidavit on 15.09.2010 enclosing a copy of the judgment of Hon'ble High Court of Delhi.

4. We heard Shri Vijay Pandita, learned counsel for the Respondents. Neither the Applicant nor their counsel appeared during the final hearing.

5. The issues in the present OA having been covered in the Tribunal's order dated 24.08.2004 in **OA No.116/2003**, the following orders were passed with directions to the Respondents :-

"In the present case, this decision indeed is a guiding factor because we find no reason otherwise to quash the entire result, selection process but quash the appointments/result declared.

24. For these reasons recorded above, we direct :

- (a) The respondent no.1 will re-examine the entire dossiers of the candidates to enquire that they have filed complete certificates and were within the age limit prescribed etc.;
- (b) The marks obtained in the trial test should be calculated as was decided to be 100 marks; a fresh merit list in this regard should be prepared and thereafter the result should be declared as per the merit of the candidates.

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25. Subject to aforesaid, the impugned selection is quashed. This exercise should be completed preferably within two months from the date of receipt of the certified copy of this order. No costs. "

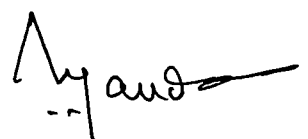
6. The above order became the subject of controversy in the batch of four Writ Petitions before the Hon'ble High Court, which were taken together and judgment was pronounced on 01.02.2008. The decision of this Tribunal in OA No.116/2003 was considered and quashed and set aside. The operative part of the judgment of Hon'ble High Court reads as follows:-

#### **"15. FINDINGS**

We have considered the respective submissions and have also gone through the records filed.

At the outset, we may mention that the Tribunal has proceeded on the basis that for the trial test the Committee had decided to award the marks out of 100 which were later on reduced to 25 and this could not have been changed subsequently. This appears to be factually incorrect and is not born from the record. On the contrary, it has been pointed out by the Board that even before the selection process started, criteria was formulated by the Selection Committee fixing 25 marks for trials, 60 marks for the past performance and 25 marks for interview. Therefore, observations of the Tribunal in para 18 of the impugned judgment on the basis of aforesaid premise, which is factually incorrect, is not sustainable.

16. It appears that though for the trial test the maximum marks were fixed at 25 by the interview Board, at the time of conducting those trials, candidates were awarded marks against a score of 100. According to the Board, this was done only for the sake of convenience, though such a reason is not very logical as marks could have been awarded for trial test even against 25 without much difficulty. Fact remains that if even before the trials started the criteria for awarding marks was fixed by the Selection Committee and the Committee had decided to award marks out of 25 insofar as trial test is concerned, we do not find any such serious irregularity in reducing the marks to 25 i.e. reducing the marks awarded to different candidates on dividing by 4. On the contrary, if the



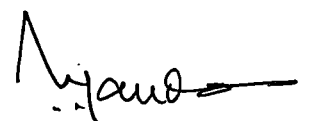
marks for the trial are taken as 100, though initially fixed at 25, we find merit in the contention of learned counsel for the petitioners that this would act unfairly by giving much more importance to the trial than what was decided in the beginning and in those games where there were very less number of candidates, such course of action would give them undue advantage. It was for the Selection Committee to fix the criteria and if they decided to give more importance to past record, this yardstick for assessing this overall suitability cannot be changed. In fact, as noted in the beginning, OA No.1146/1999 filed by one Shailesh Mudgil was dismissed by another coordinate Bench vide orders dated 5.11.1999 giving some reasons. In view thereof, as held by the Apex Court in the case of **S.I. Rooplal & Anr. v. Lt. Governor through Chief Secretary, Delhi & Ors.**, JT 1999 (9) SC 597, if subsequent Bench in the impugned judgment was taking contrary view, it should have referred the matter to a larger Bench.

Be that as it may, since the matter is before us in the writ petition, which is filed under Article 226 of the Constitution of India, and we are undertaking judicial review of the impugned judgment, we have decided to deal with this matter on merits with the concurrence of counsel for all the parties.

17. Thus whereas we do not find anything wrong in otherwise reducing the marks to 25, the only aspect which needs determination is as to whether by initially recording the marks against 100 and thereafter reducing it to 25 has disturbed the merit list by pushing down certain persons in the said list who had gained substantial lead over the others.

18. As mentioned above, we have directed the Board to undertake this exercise and Mr. Tandon produced the two merit lists – one prepared on the basis of giving 100 marks and the other on the basis of maximum marks of 25 against the trial test. We find that it had not made any substantial difference to the course of selection. No doubt, position of some of the candidates have changed, but it has had hardly any impact on the final selection. We may point out that insofar as the respondent No.3 is concerned, his position was at Sl. No.137 when the marks are given out of 100 and he would be at S.No.55 when the marks are awarded out of 25. Therefore, he remains out of contention in either case.

19. We also find force in the argument of learned counsel for the petitioners that in the entire selection process, insofar as the petitioners are concerned, they are not to be blamed. Moreover, there are no *mala fides* or arbitrariness attributed to the Selection Board. The only irregularity, even if it is presumed to be so, was that though before the selection process started





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maximum marks against trial test was fixed at 25, at the time of taking trials candidates were awarded the marks against 100 in this category, but again while making the final merit list these marks were divided by 4 to bring it at par with the selection criteria fixed in the beginning. After their selections, the petitioners have been working for last more than eight years. Many of them left their earlier service and they are now even over age.

20. Thus, taking a holistic view of the matter, keeping in view all the aforesaid consideration, and, also the observations of the Supreme Court in the case of *Union of India v. K.P. Tiwari*, 2003 SCC (L&S) 1233, it would not be appropriate to interfere with the appointments of these persons at this stage. We, therefore, make the rule absolute, allow this writ petition, set aside the impugned judgment passed by the Tribunal and dismiss the OA filed by the respondent No.3 herein. There shall, however, be no order as to costs.

6. The relief claimed in the present OA being fully covered by the above decision of the Hon'ble High court of Delhi, we are not going into the details of the case. However, following the above dicta of the Hon'ble High Court, we dispose of the present OA in terms of the said judgment. No costs.

  
( Dr. Dharam Paul Sharma )  
Member (J)

  
(Dr. Ramesh Chandra Panda )  
Member (A)

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