

CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA

**O.A.No.216 of 2006**

Patna, This the 1<sup>st</sup> day of January, 2010

CORAM

The Hon'ble Mrs. Justice Rekha Kumari, Member (J)  
The Hon'ble Mr. Sudhir Kumar, Administrative Member

Jyotish Kumar Rajak, son of Shri Dashrath Prasad Rajak, resident of Village Babu Bank, c/o Ashok Laundry (near State Bank of India), P.O. and P.S. Jhajha, District Jamui-811 308

Applicant

By Advocate Mr. G. Saha

versus

1. The Union of India through the Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, New Delhi.
2. Secretary, Staff Selection Commission, Block No.12, C.G.O. Complex, Lodhi Road, New Delhi-110 003.
3. Under Secretary (P&P-I), Staff Selection Commission, Block No.12, C.G.O. Complex, Lodhi Road, New Delhi-110 003.
4. Shri R.K. Yadav, Regional Director (Central Region), Staff Selection Commission (Central Region), 8A-B, Beli Road, Allahabad-211002.
5. Deputy Director (Non), Staff Selection Commission (Central Region) 8A-B Beli Road, Allahabad-211 002.

Respondents

By Advocate Mr. S.C.Jha

ORDER

JUSTICE REKHA KUMARI, MEMBER(J):- This applicant has filed this O.A. for directing the respondents to appoint him to the post of Sub-Inspector in Delhi Police with retrospective effect with all consequential

benefits.

2. The case of the applicant is that in October 2000, there was an advertisement in the Employment News inviting applications from eligible candidates ~~for~~ filling up the sanctioned vacancies of Sub-Inspectors in Delhi Police along with other vacancies in various Departments. The applicant, a Scheduled Caste candidate, fulfilling all eligibility criteria, applied in proper format giving all information, including the information that he would appear at B.A. Part III Examination in Delhi University, which was likely to be held in April 2001, within the prescribed time. After due scrutiny of his application form, admission certificate was issued to him to appear at the Combined Preliminary (Graduate Level) Examination-2001. He took the preliminary examination on 24.03.2002 at Science college Patna. He was successful in the examination. The respondents then sent application form to him for appearing <sup>at</sup> ~~in~~ the Main (Written) Examination. He sent the form after <sup>✓</sup> ~~being~~ duly filling it along with all documents, including Caste Certificate, B.A. Part III Marks Sheet dated 25.08.2001 (of School of Correspondence Courses and Continuing Education, University of Delhi) etc. It is also stated that though the Marks Sheet showing him successful in B.A. Part III Examination was dated 25.08.2001, the result of B.A. Part III Examination was declared on 27.07.2001, that is, before 01.08.2001, the prescribed date.

3. The further case of the applicant is that after due consideration of his candidature, he was issued admission certificate to appear at the Combined Main (Graduate level) Examination. Accordingly, he appeared at the examinations on 22, 27, 28 and 29 December, 2002 at Science College Patna. The respondents also took his Physical Efficiency Test (PET) on 16.07.2003. He was declared qualified in the written test as well as PET. He was directed to appear at the interview, on 12.11.2003, along with the original documents in respect of Matriculation certificate or equivalent certificate showing date of birth, certificate regarding educational qualification, Scheduled Caste certificate from competent authority, etc. He appeared at the interview along with the documents. He performed well at the interview and was expecting to be selected. But, subsequently, he was directed by respondent No.4, Regional Director(CR) to produce any document showing <sup>that -</sup> ~~at~~ the result of <sup>his</sup> Degree/B.A.Part III of 2001, was declared on or before 01.08.2001. He obtained a certificate on 28.11.2003 from the Controller of Examination, University of Delhi, clearly mentioning that the result of B.A. Part III Examination was declared on 27.07.2001. The result of the Combined (Main) Graduate Level Examination was published on 20-26 December, 2003, in the Employment News and he was declared successful having been placed at rank 67 out of the total 112 successful candidates for appointment to the post of Sub-Inspector.

4. It is further stated that thereafter respondent No.5, Deputy

Director issued a memorandum to him directing him to submit certain documents, including Graduation Degree/Marks Sheet in support of his educational qualification with date of issue on or before 01.08.2001 and Scheduled Caste certificate in prescribed proforma duly attested by a Gazetted Officer. He personally handed over, along with other documents, the Graduation Degree certificate dated 22.02.2002, B.A.Part III Marks Sheet dated 25.08.2001 and the above certificate dated 28.11.2003 certifying that the B.A. Part III Examination result was published on 27.07.2001 and the caste certificate, which was, however, not in prescribed proforma ~~and~~ for which he was allowed time, on request, by respondent No.5 to file the same.

5. The case of the applicant then is that thereafter respondent no.5, without application of mind, issued a show-cause notice (Annexure-10) directing him to produce authentic evidence regarding the declaration of B.A. (Final) result by 01.08.2001 holding that the document produced by him regarding the declaration of result on 27.07.2001 was neither signed nor ~~sent~~ on any University letter-head. He was also directed to produce caste certificate in proper format. He met respondent No.4 and explained that result was published prior to issue of marks sheet and the certificate was issued by the Controller of Examination. But without consideration of the matter, respondent no.4 illegally and arbitrarily issued memorandum cancelling his candidature for the post of Sub-Inspector, Delhi Police. On this, he met respondent No.3, Under

Secretary and respondent No.4 and requested to cancel the memorandum. On repeated requests and persuasion, the memorandum was cancelled. In the meantime, he submitted the caste certificate in prescribed format.

6. Subsequently, respondent No.4 issued a memorandum dated 19.05.2005 directing him to submit Examination Roll No. against which he last passed the Graduation Examination and the School Roll No. allotted to him at the time of admission in the School of Correspondence Courses. He submitted the above information by Regd. Post dated 28.05.2005. Again, vide reminder dated 21.07.2005 sent all the required information.

7. The case of the applicant is that <sup>as</sup> he had become successful in all the tests and interview and had filed all required information, he was legally entitled to be appointed to the post of Sub-Inspector in Delhi Police against Scheduled Castes quota but the respondents did not take any action regarding his appointment. He, hence, personally met respondent No.4 and also sent representation dated 16.08.2005 to respondent No.3 but despite assurance and when similarly situated persons have already been sent for training, nothing was done by respondents for his appointment. Hence, he was compelled to file this O.A.

8. The respondents have contested the OA by filing a written statement. Their case, inter alia, is that during the verification of

documents before Interview, it was detected that the date mentioned in the Graduation Marks Sheet of the applicant was dated 25.08.2001. But as per the provisions of the notice of examination for Combined Graduate Level Examination 2001, a candidate, to be eligible, must <sup>have been</sup> ~~be~~ a Graduate from a recognized University <sup>or before</sup> on 01.08.2001. This fact was communicated to the applicant. The applicant requested for 15-20 days time for producing the certificate of the actual date of publication of result (Annexure-R/1). After considering the application, he was allowed provisionally to appear at the Interview on 12.11.2003. He, however, did not furnish before the final result any proof that his B.A.Part III result was published on or before 01.08.2001. Meanwhile, the final result was published in the Employment News but it was mentioned therein that the list published was purely provisional and subject to the candidates recommended, fulfilling all the eligibility conditions prescribed for the respective posts.

9. It is further stated that after publication of the final result, the applicant was directed on 29.12.2003 to submit, among other things, Graduation Degree certificate/marks sheet in support of his educational qualification with the date of issue, on or before 01.08.2001. The applicant produced a copy of the document issued by the School of Correspondence courses and Continuing Education, showing that the B.A. Part III result was declared on 27.07.2001 but the certificate was neither signed by the issuing authority nor it was on the University letter-

head. The language of the certificate was also unlike <sup>the</sup> one expected of a premier University. A notice, hence, was issued to the applicant to produce authentic evidence regarding declaration of B.A. final result. The applicant did not respond to the notice. His candidature was, hence, cancelled on 09.06.2004.

10. The case of the respondents is that even though the applicant qualified in the preliminary and main examination, as he did not fulfil the eligibility criteria <sup>by</sup> ~~for~~ showing that he had passed the Graduate Examination on or before the cut off date, he is not entitled to get the benefit of appointment, as claimed by him.

11. Their case also is that as the candidature of the applicant was cancelled on 09.06.2004 and the OA has been filed after two years of the cancellation, the OA is time-barred. It is also stated that the order of cancellation was never withdrawn and no assurance in this regard was given by any authority as has been stated by the applicant.

12. The applicant has filed a rejoinder to the written statement filed by the respondents stating, inter alia, that the University certificates generally contain the stamped signature of the <sup>concerned</sup> ~~same~~ authority and the document showing <sup>or that</sup> the result of B.A. Part III Examination of 2001 was published on 27.07.2001, bears the stamped signature of the Controller of Examination. It is also stated that one Shri Shahbaz Ahsan, whose Graduation result was published after the cut off date, has been provided appointment, whereas the applicant has not been provided appointment

causing discrimination.

13. The learned counsel for both the sides were heard.

14. Learned Counsel for the applicant submitted that the applicant had submitted a certificate of the Controller of Examination dated 23.11.2003 (Annexure-7) which clearly shows that the result of B.A. Part III of 2001 of School of Correspondence Courses and Continuing Education of University of Delhi was declared on 27.07.2001 before the cut off date of 01.08.2001 and, therefore, the applicant had fulfilled the education criteria and there was no reasonable ground for respondent No.4 to cancel the candidature of the applicant.

15. He further submitted that the mark-sheet of B.A. Part III Examination of 2001 (Annexure-2) of the applicant, which is not a disputed document, shows that the same was issued on 25.08.2001, prior to the date of interview on 12.11.2003. and this document was, admittedly, submitted along with the application of main examination. Therefore, the applicant had fulfilled the educational qualification at least prior to the interview. Hence, in view of 3-Judge Bench decision of the Supreme Court in the case of Ashok Kumar Sharma and others vs. Chander Shekhar and others, 1993 Supplementary (2) SCC 611, wherein the question was as to what is the relevant date for fulfillment of educational qualification, that is, whether the educational qualification should be possessed on the date of submission of application form or on the date of interview and it was held that requirement would be fulfilled

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if the same is <sup>passed</sup> ~~presented~~ on the date of interview despite express instructions in the advertisement that such application would not be entertained. He also relied on 3-Judge Bench decision of the Supreme Court in the case of Banaras Hindu University v. Dr. Indra Pratap Singh, reported in Supreme Court Service Rulings Vol. 3 page 69. This decision, however, is not applicable in this case because the question in that case was that when the University extended period of eligibility till the date of interview in some cases, whether the benefits should have been extended to the respondent also.

16. It was also submitted by the learned Counsel that when in similar circumstances Shahbaz Ahsan was appointed, the respondents could not make discrimination and cancel candidature of the applicant. He has further submitted that the OA is not barred by limitation because after the cancellation of the candidature, the respondents entered into correspondence with the applicant and directed by letter dated 19.05.2005 to furnish ~~the same~~ information indicating thereby that the candidature of the applicant was alive and the OA has been filed within one year of the above date. Therefore, the OA is not time-barred.

17. Learned Counsel for the respondents, on the other hand, submitted that the candidature of the applicant was cancelled by memo dated 09.06.2004 and the same was never revoked and, therefore, the applicant was required to file the OA within one year from the above date but the OA has been filed thereafter on 02.03.2006 and as such

the OA is time-barred.

18. He further submitted that as per advertisement the applicant was required to have passed the Graduation examination <sup>by</sup> ~~prior~~ to 01.08.2001 and though he had filed a certificate purported to have been issued by the Controller of Examination, University of Delhi, showing that the result of B.A.Part III of the applicant was declared on 27.07.2001, as it was neither signed by the issuing authority, nor stamped, nor was on the letter-head of the University, the genuineness of the certificate is not established and though he was directed to submit some other document proving that his result of B.A. Part III was actually declared on 27.07.2001, he never produced any other document to prove the genuineness of the above certificate. In this OA also he has not annexed any other document showing that the result was actually declared on 27.07.2001. Therefore, it is not at all proved that he had passed the Graduation examination prior to 01.08.2001 and this being so, he was not eligible for the post. Even if he had been successful in the written and viva examination, it is a settled principle that a candidate must possess the requisite qualification by the last date of submission of his application for being qualified for the post applied for. So, when he did not possess the requisite qualification, i.e., B.A. Degree on 01.08.2001, he has not qualified for the post and so he cannot be appointed to the post of Sub-Inspector of Delhi Police even though he came in merit list.

19. It is an admitted position that the applicant was asked to submit proof that the result of his B.A. Final Examination was declared by 01.08.2001 and he had submitted a certificate said to be issued by the Controller of the Examination showing that the result was declared on 27.07.2001. It is also an admitted position that the genuineness of certificate submitted by the applicant was doubted and the applicant then was issued show-cause notice (Annexure-A/10) giving final opportunity to produce authentic evidence regarding the <sup>date of</sup> declaration of his B.A. final result but, as he failed to do so, by memo dated 7/9.6.2004 (Annexure-A/11) his candidature was cancelled. The case of the applicant is that the above memorandum was subsequently cancelled, but there is no documentary proof to show that that the said memorandum was cancelled. But though the above memorandum was not cancelled, the memorandum (Annexure-A/13) shows that on 19.05.2005, the respondent No.4 with reference to his candidature had directed the applicant to submit certain information within 7 days of the receipt of the said memorandum and the applicant thereafter submitted the ~~required~~ information. <sup>mentioned therein.</sup>

20. So, in this case the period of limitation cannot be said to run from 7/9.6.2004. The OA was also filed within one year of the subsequent memo dated 19.05.2005, Hence the OA does not appear to be barred by limitation.

21. As regards the merit of the application (OA) of the applicant, it

is admitted that he was allowed to appear at the Combined Preliminary (Graduate level) Examination and he was successful in that examination and thereafter he was allowed to appear in the main (written) examination and PET Test and he was successful in the examination and the test. <sup>then</sup> He was permitted to appear in the interview and he was declared successful and the final result published (Annexure-8) shows that out of 101 open successful candidates, he ranked 67.

22 It is also an admitted position that according to the advertisement, a candidate for Graduate level examination was required to have passed Graduation on or before 01.08.2001 and that when the applicant filed his application had not appeared at the B.A. Part III Examination.

23. It is not disputed that at the time of filing of the application for Main Examination, the applicant had filed marks-sheet (Annexure-2) of University of Delhi dated 25.05.2001 showing that he had passed B.A. Part III Examination of the year 2001 but this document does not show as to when the result was published. So, it appears that he was directed to produce document showing that he had passed the B.A. Final Examination on or before the above cut off date.

24. Admittedly, the applicant had filed a certificate said to have been issued by the Controller of Examination of School of Correspondence Courses and Continuing Education, University of Delhi dated 23.10.2003, a copy of which is annexed at Annexure-7. The show-cause notice Annexure-10 shows that the Regional Director

doubted the genuineness of the document on the ground that it is neither signed, nor on any University letter-head. The stand of the applicant is that it bears the stamped signature of the issuing authority. A perusal of the document shows that the same is not on the letter-head of the University of Delhi, nor it bears any stamp of the University, when the other documents of the University (Annexures-2 and 3) filed by the applicant show that they bear the stamp of the University <sup>on</sup> <sup>and</sup> a letter-head <sup>of</sup> the University. The signature of the Controller of examination on the document is also not clear. Therefore, the doubt of respondent No.4 was genuine. The show-cause notice further shows that the applicant was given opportunity to produce authentic evidence regarding the declaration of his B.A.(Final Examination) result but, admittedly, he never submitted any other document in support of his claim that the result was published on 27.07.2001. He has also not filed any document in this Tribunal to show that the result was published on 27.07.2001 as stated by him.

25. Hence, it is clear that the applicant had failed to show before the respondents and has failed to show before this Tribunal that the result of his final examination was published on or before 01.08.2001.

26. However, as stated earlier, the applicant, at the time of filing of application for the main examination, had submitted the marks sheet dated 25.08.2001 showing that he had passed the B.A. Part III

Examination of 2001. The question, hence, arises, whether the applicant

would be deemed to have fulfilled the educational criterion.

27. It has been held by the three-Judge Bench of Hon'ble supreme Court in Ashok Kumar Sharma (supra) relied on by the learned Counsel for the applicant that despite express instructions in the advertisement that a candidate must possess the required educational qualification <sup>by the</sup> ~~on~~ last date of submission of the application, requirement is fulfilled, if the requirement of qualification is fulfilled on the date of interview. Hence, in view of this decision, the applicant, of course, fulfilled the eligibility condition of educational qualification as he was possessed of the educational qualification not only before the interview, but also before the filing of the application for main examination in view of the marks sheet dated 25.08.2001. But the Hon'ble Supreme Court in the case of Dr. N.V. Nair v. Union of India (1993) 2 SCC 429 has disapproved the decision of the CAT that even though a candidate, who was ineligible initially but became eligible during the pendency of the proceedings, should be considered along with eligible candidates. The Hon'ble Supreme Court further observed that it is well settled that suitability and eligibility had to be considered with reference to the last date of receiving the application unless the notification inviting applications specified some other date. This judgment is also a 3-Judge Bench judgment and the decision was unanimous, whereas the above decision of Ashok Kumar Sharma was a majority view. This decision

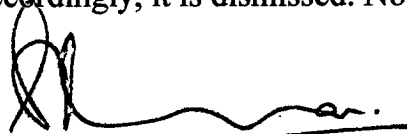
was also a later decision. Therefore, the decision in the case of Dr. N.V.

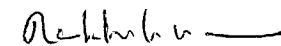
Nair would prevail. This being so, as the applicant has failed to show that he passed B.A. Final Examination on or before 01.08.2001, it is evident that he had not fulfilled the educational qualification for being appointed as Sub-Inspector of Delhi Police.

28. Then so far as the case of the applicant that one Shahbaz Ahsan, whose case was similar to that of the applicant, has been given appointment, nothing has been shown by the applicant to prove that Shahbaz Ahsan's case was similar to that of the applicant. So, this cannot be a ground for his appointment.

29. In view of the discussions made above, the OA is devoid of merit.

Accordingly, it is dismissed. No costs.

  
(SUDHIR KUMAR)  
MEMBER(A)

  
(REKHA KUMARI)  
MEMBER(J)

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