

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

Original Application No.330/00072/2017.

ALLAHABAD THIS THE 6th DAY OF November 2018.

HON'BLE MR. GOKUL CHANDRA PATI, ADMINISTRATIVE MEMBER
HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

Arjun Kakkar A/a 27 years son of Shri Arun Kakkar, resident of 1231-B/514, Meerapur, Allahabad – U.P.

-Applicant

(By Advocate – Shri Kshitij Shailendra/Shri H.S. Bedi

V e r s u s

1. Union of India, through Ministry of Human Resources and Development, New Delhi.
2. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh, New Delhi 110016 through the Commissioner.
3. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi 110016.

-Respondents

(By Advocate – Shri N.P Singh)

O R D E R

BY HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:-
" (i) An appropriate order/direction may be passed setting aside the order dated 28.09.2016 (Annexure No. 8 to this original application in Compilation No. II) passed by the Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh

Marg, New Delhi 110016 i.e. the respondent No.3 and further directing the respondent No. 3 to appoint the applicant as Assistant in pursuance of advertisement No. 8 (Annexure No.1 to the original application in compilation No. II0.

- (ii) An appropriate order/direction may be passed as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.
 - (iii) An appropriate order/direction awarding the cost of this original application in favour of the applicant".
2. The brief facts of the case are that in pursuance of advertisement for the Officers' Cadre and Non-teaching posts for the year 2012-13 and 2013-14, the applicant submitted online application and sent print out of complete application forms, self attested copies of testimonials along with service certificate. Applicant appeared in the examination and obtained 91 out of 140 marks and thereafter applicant appeared in the computer proficiency test scheduled to be held on 11.3.2015. At the time of computer proficiency test, applicant submitted 'No objection certificate from the present employer along with copies of educational qualification certificates. On 10.9.2015, a select list of candidates was declared/published online in which the name of applicant did not find place (Annexure A-6). Aggrieved against the result, applicant moved a detailed representation dated 23.1.2016 before respondent No.3 but respondent No 3 did not pay any heed on the representation of applicant, the applicant filed an Original Application No. 330/00602/2016 and the Tribunal vide order dated 31.5.2016 (Annexure A-7) disposed of the original application with direction to the respondents to consider and decide the representation of applicant by passing a reasoned and speaking order. In

compliance of direction of Tribunal, respondent No. 3 rejected the representation of the applicant vide order dated 28.09.2016. Aggrieved against the above order, applicant assailed the above order.

3. In compliance of direction of Tribunal vide order dated 24.1.2017, applicant explained the status of applicant as Upper Divisional Clerk (UDC) that the services of the applicant in the clerical cadre are governed by Memorandum of Settlement dated 27.4.2010 (Annexure SA-1) entered into between the management of 46 Banks, including the Allahabad Ban and their workmen/employees in which clause 4 of the Settlement defines scale of pay in supersession of the earlier terms of bipartite settlement and the relevant clause depicts pay scale of the applicant as 7200-19300. At the time of submission of application for appointment, the basic pay of the applicant is Rs.10,500/- in the pay scale of Rs.7200-19300.
4. In Reply to the supplementary affidavit filed by the applicant, the respondents have filed supplementary counter affidavit in which it has been submitted that as per the recruitment rules duly approved by the Executive Body, i.e. Board of Governors of the respondents and the employment news dated 16-22 August 2014, a candidate is eligible for applying to the post of Assistant if he/she possess the following qualification:-

“Essential qualification;

Graduate with 03 years experience as LDC in Central/State Government/Autonomous Bodies/Public Sector Undertaking.

Desirable; knowledge of computer applications”.

Respondents have submitted in their reply that candidates, who had applied online in response to the advertisement in the Employment News dated 16-22 August 2014, were asked to appear in the written test held on 08.11.2014 at various cities across the country. In the advertisement, the candidates were asked to send the copy of the complete application form containing auto generated application number and self-attested copies of the testimonials and NOC/Service/Vigilance certificate in the Post Box No 3076. On the basis of marks scored in the written test, candidates were shortlisted for skill test and were again asked to submit the documents in support of the information filed by him in online application along with NOC/service/Vigilance Certificate from their employer for verification of their eligibility for the post applied for. The documents received from the candidates were scrutinized by the respondents and it was observed that many candidates are working as UDC in the pay band of Rs.5200-20200 with grade pay of Rs.2400/2800 and other pay scales and a committee consisting of Deputy Commissioner (Admn.), Asstt. Commissioner (Admn./Admn. I/II) and Section Officer was constituted to verify the eligibility of the candidates who are working as UDC in their department as per recruitment rules and it has been decided that candidates who are not working as UDC in their department were declared not eligible for the post of Assistant as per eligibility conditions laid down in the advertisement. In view of the above, the respondents submit that the candidature of applicant has rightly been rejected as he was declared ineligible for the post of Assistant for the year 2012-13 and 2013-14.

5. In the counter affidavit filed on behalf of respondents, it has been submitted that applicant was not selected for the post of Assistant through scored more marks than those

given offer of appointment to the post of Assistant. Respondents have further submitted that there is no mention in the said advertisement for equivalent to that of UDC in the column qualification and experience to the post of Assistant advertised vide advertisement No. 8 dated 16-22 August 2014. Applicant had mentioned in the online application to the column post held as Single Window Operator and there is no space in the online application form to fill up the post held other than UDC which is exactly as per the recruitment rules of Kendriya Vidyalaya Sangathan and eligibility criteria published in the advertisement.

6. The applicant has filed the rejoinder, denying broadly the contentions in the counter reply and reiterating the contentions made in the OA and supplementary affidavit. It has been further stated that applicant had an experience of more than 5 years working in clerical cadre whereas the recruitment is of 3 years only. The pay band for UDC as defined in the advertisement itself, is of Rs.5200-20200 and the pay band of the applicant is of Rs.7200-19300 which falls within the meaning of the pay band of UDC. As applicant possesses all the essential qualification but respondents are not justified in rejecting the candidature of the applicant. As per the information received from the Allahabad Bank it is very much clear that the Bank has not divided the clerical cadre as UDC or LDC but it has a single post of Single Window Operator 'A' in the clerical cadre.
7. We have heard Shri Kshitij Shailendra learned counsel for the applicant and Shri N.P. Singh, learned counsel for the respondents and perused the record and gone through the written arguments filed by applicant.

8. The following grounds taken by applicant for setting aside the impugned selection dated 28.09.2016 (Annexure A-8) is that:-
 - (a) The candidature of applicant has been illegally rejected even when he secured 91 marks and the minimum qualifying marks were 79.
 - (b) The applicant had an experience of more than 5 years working in the clerical cadre whereas the requirement is of 3 years only.
 - (c) The pay band for UDC as defined in the advertisement itself is of Rs.5200-20200 and the pay band of the applicant is of Rs.7200-19300 which falls within the meaning of pay band of UDC.
 - (d) As per information received from the Allahabad Bank, it is very much clear that the Bank has not divided the clerical cadre as UDC or LDC but it has as single post of Single Window Operator 'A' in the clerical care.
 - (e) While filling up the online form, the application form would not be filled up, if in the column of 'working as', is not filled up on the post of UDC, i.e. to say that there was no other option to be filled; for this reason the applicant has rightly filled up the form, contrary finding recorded in the impugned order regarding wrongly filling up of form is perverse.
9. If one looks to the impugned order dated 28.09.2016, respondents have rejected the candidature of applicant on the sole ground that applicant is not working as UDC, as such, the applicant did not meet the eligibility criteria for appointment to the post of Assistant in the respondents organization.
10. Undoubtedly, applicant has secured good marks in the examination, his pay scale is more than the pay scale of

UDC as advertised and Allahabad Bank has not divided the clerical cadre as UDC or LDC but has as single post of Single Window Operator 'A' in the clerical cadre.

11. After having considered the materials available on record, we have found no substance in the claim of the applicant. A process of selection and appointment to a public office should be absolutely transparent, and there should be no deviation from the terms and conditions contained in the employment notice issued by the recruiting agency during the recruitment process and the rules applicable to the recruitment process in any manner whatsoever, for a deviation in the case of a particular candidate amounts to gross injustice to the other candidates not knowing the fact of deviation benefitting only one or a few. The procedure should be same for all the candidates. The terms and conditions of the employment notice being binding on all candidates, the acceptance of the applicant's plea, besides being violative of the terms and conditions of the Employment notice would be tantamount to denial of equal opportunity to those candidates who did not apply for appointment to the post of Assistant since they did not meet the criteria of being a LDC. Therefore, the applicant's claim to appointment as Assistant is untenable, and there is no scope for interference.
12. This apart, respondents have sought persons having 3 years experience as LDC in Central Govt./State Govt./ Autonomous Bodies/Public Sector Undertaking. The question of laying down the eligibility conditions in matter of appointment lies entirely with the sphere of the Advertising Authority and with which eligibility conditions/criteria, the courts/tribunal have no power to interfere with and alter the said advertisement terms and conditions.

13. In the instant case, having regard to the fact that the advertisement responded by the applicant is clear in its term, we cannot add any words thereto and, in accordance therewith, pronounce that the designation of the petitioner in the bank comes within the definition of LDC. In the event, we read something in the advertisement which is not there, that will amount to altering by us the advertisement which we cannot do.
14. It is a settled law that framing of Service Rules/eligibility conditions, qualifications and criteria in advertisement for appointments is a policy matter which falls within the realm of the Executive/Department/Expert Bodies and no one can challenge it by saying that the same is not beneficial. Further, there is no right in any candidate to seek terms and conditions which suit him. It would be profitable to refer to the principle laid down by the Hon'ble Supreme Court in P.U. Joshi & Others Vs. Accountant General 2003 (2) SCC 632 and the relevant para 10 reads as under:

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State.

Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service".

15. It has been argued by the learned counsel for the applicant and averred in the written arguments that "the applicant would be deemed to hold a post, even above the cadre/designation of Upper Divisional Clerk (UDC) and respondents cannot take undue advantage of the position that in banking services, there is no designation/post, namely 'Upper Divisional Clerk (UDC)'. The distinction in

between the words 'As UDC and 'on the post of UDC' may kindly be drawn in favour of the applicant."

16. This contention of applicant has no force and to be rejected. The respondents have very clearly delineated in their advertisement as to eligibility required for the post of UDC and the question of reading the word 'Deeming' into the conditions and terms of advertisement so as to change the meaning thereof cannot be accepted. It is for the respondents to lay down the criteria required for appointment to the post of UDC in their organization. The advertisement refers to LDC and not to LDC or its equivalent and has been framed in accordance with Recruitment Rules of the respondent-organization. The Recruitment Rules of respondents and scope of the advertisement cannot be whittled by the tribunal.
17. In the light of our above discussions, we do not find any merit in the O.A. Accordingly, the O.A., being devoid of merit, is dismissed. No order as to costs.

(Rakesh Sagar Jain)

Member (J)

(Gokul Chandra Pati)

Member (A)

Manish/-