

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 167/2016

Reserved on : 29.04.2016

Pronounced on : 17.05.2016

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)**

1. Dwarka Prasad, Beldar,
Aged 58 years,
S/o Shri Babu Lal,
R/o House No.4, Type-1,
Tuglak Crescent,
New Delhi-110001.
2. Ram Bhawan, Beldar,
Aged 52 years,
S/o Shri Ram Saran,
R/o H.No.40, Block A-3,
Mohan Garden, New Delhi.

.. Applicants

(By Advocate: Shri S.B.S. Vashistha)

Versus

New Delhi Municipal Council,
Through its Chairman,
Palika Kendra, Parliament Street,
New Delhi.

.. Respondent

(By Advocate: Shri Vaibhav Agnihotri)

ORDER

By Hon'ble Mr. P.K. Basu

Applicant Nos. 1 and 2 were appointed as Beldar in the year 1982 and 1997, respectively. On 18.09.2013, applications were

invited from departmental candidates for appointment to the post of Fitter Grade-II for which the eligibility criteria was as follows:

- “1. Literate persons who can read and write Hindi/English.
2. At least 5 years of regular service in the department.
3. Candidate should qualify prescribed trade test.”

The literacy test and trade test were held and the applicants also appeared.

2. The applicants state that on 10.11.2015, the respondent declared a list of 59 candidates for formation of panel for the post of Fitter Grade-II without declaring the results of the trade test/viva voce. This list does not contain the names of the applicants.

Therefore, this O.A. has been filed seeking the following relief:

“Relief:

Selected candidates dated 10.11.2015 declared by Civil Engg. Establishment Unit-II for post of Fitter Grade-II be declared as null and void and the respondent be directed to prepare a seniority list of the eligible candidates who has applied for the post and the post be filled as per the seniority list of the eligible beldars/Group D employees. It is further prayed that the respondents be directed to declare the result of all the 314 candidates before preparing the final list in the interest of justice.

Interim relief:

The appropriate directions may kindly be given restraining the respondent to make appointment to the post of Fitter Grade-II as per list declared by Civil Engg. Establishment Unit-II dated 10.11.2015 as circulated vide circular dated 18.09.2013 till the disposal of the present O.A. The respondent be further directed not to transfer the applicants from their present posting till the disposal of the present O.A.”

3. The learned counsel for the applicant states that the respondent has now filed the result sheet indicating details of marks obtained in the trade test and viva-voce for the post of Fitter Grade-II along with their counter affidavit. He alleges that the respondent has not followed the process of law by not declaring the result of trade test and viva-voce before they declared the list of 59 candidates selected for promotion, and thus violated due process of law and principles of natural justice. It is further alleged that this has allowed the respondent sufficient time to manipulate the results to justify the selection of the 59 candidates and rejection of the candidature of the applicants.

4. It is further stated that in the O.A. at para 4(vi) applicants have made very specific allegation that results of all the tests were not declared and 59 candidates declared selected and reply to the para by the respondents is as follows:

“That the contents of paragraph No.4(vi) of the Application are wrong and vehemently denied. It is denied that without declaring the result of all the tests conducted by the Respondent, the Respondent declared a list of 59 candidates for formation of a panel for the post of the Grade-II. It is submitted that the Respondent have duly declared the list of successful candidates who have been selected as the trade test conducted by the sub-committee of the Respondent. As the Applicants failed to qualify in the said Trade Test, the Applicants are raising frivolous issues as an afterthought.”

which does not answer the allegation made by them.

5. The learned counsel also relies on the judgment of the Hon'ble Supreme Court in the case of **Dev Dutt v. Union of India and Others, (2008) 8 SCC 725** to claim that according to this judgment, an employee cannot be proceeded adversely without communicating such ground to the employee before hand.

6. The learned counsel for the respondents states that the applicants' counsel has alleged possibility of manipulation because the marks were declared later, which is not a specific allegation and, therefore, should be rejected outrightly. It is further argued that at no point have the applicants pointed out that the respondent was obliged under some rules or Govt. orders to declare the marks before final list is brought out. It is stated that mala fide can only be alleged when the respondents are bound to do something which has not been done, or bound to not to do something which has been done. The applicants have not made such an allegation.

7. The learned counsel further states that though his counter affidavit has been filed in March, 2016 enclosing the complete list of 314 candidates indicating their marks in trade test/viva-voce, the applicants have not cared to file any rejoinder pointing out in which case, out of these 314 candidates, there has been any mala fide or error by the respondent. Further since the results were declared in November, 2015, in case the applicants were aggrieved, they could

have sought list of the marks from the respondents through an application under the RTI Act also, and the respondents would have been obliged to provide that. However, no such attempt was made by the applicants at that stage either.

8. Lastly, it is argued that since the applicants are now making allegation that some people have been selected, who were not qualified to be selected, it was incumbent upon the applicants to implead them as party respondents, and in the absence of that, this O.A. is not maintainable for non-joinder of parties.

9. Heard the learned counsel for the parties and perused the pleadings.

10. The only ground of the applicants to question the process of selection seems to be that they have come to the conclusion that because the marks were not declared before the selected candidates list was out, there is scope for manipulation and absolutely unsubstantiated allegations were made during the arguments that those, who are not qualified, have been selected.

11. We strongly deprecate this attitude of the applicants. This is clearly mischievous application filed by the applicants without any basis and just to harass the respondent. In the process, they have wasted this court's time, money from the public exchequer and also, if we may say so, try to tarnish the image of the respondent.

12. The O.A. has absolutely no merits and is also not maintainable for non-joinder of parties and the same is, accordingly, dismissed. In order to discourage such applications, we impose a cost of Rs.25,000/- on the applicants to be paid to the respondent within a period of one month.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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