

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.502/2016

Thursday, this the 16th day of March 2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

Jagdeep
Age 31 years
Designation : Teacher
s/o Mr. Dilbag Singh
r/o H.No.559/2, Near Khidar Makbara Park
Mohalla Jatwara
Sonipat, Haryana

..Applicant

(Mr. R K Jain, Advocate)

Versus

1. Govt. of NCT of Delhi
Through the Secretary
5th Floor, Delhi Sachivalaya, New Delhi
2. Delhi Subordinate Services Selection Board
Through its Chairman
Govt. of NCT of Delhi, F-18, Karkardooma
Institutional Area, Delhi – 92
3. The Director
Directorate of Education
GNCT of Delhi
Delhi Secretariat, New Delhi

..Respondents

(Mrs. Harvinder Oberoi, Advocate)

O R D E R (ORAL)

Justice Permod Kohli:

The Delhi Subordinate Services Selection Board (DSSSB) issued Employment Notice bearing No.02/12 in May 2012 inviting applications for various posts, including Trained Graduate Teacher (TGT), in different disciplines in the Directorate of Education, Govt. of NCT of Delhi. The applicant applied for the post of TGT (Social Science) Post Code 118/12.

DSSSB issued another Advertisement No.01/13 for various posts, including the post of TGT (Social Science) Post Code 12/13 in February 2013. In response to the said Advertisement, the applicant again applied for the post of TGT (Social Science). Second time, the applications were invited in prescribed Optical Mark Recognition (OMR) form. The educational qualification as also the eligibility criterion for the post of TGT (Social Science) under both the Advertisements was the same. The respondents also notified that a common examination shall be held in respect to both the Advertisements and single admit card would be considered valid for both the examinations. The applicant was issued the admit card with Roll No.54000309. He appeared in the examination on the strength of the said admit card. The marks of the examinations were uploaded on 24.11.2015 for the Post Codes 118/12 & 12/13 and separately for the candidates, who appeared against both the Post Codes referred to above. The applicant secured 101.75 marks in the examination. It is stated that the applicant was shocked to find that his name was not included in the select list, which was declared for both the Post Codes. It is also stated that the respondents, vide Notice dated 10.09.2013, declared the applicant ineligible on the ground that he is not having the requisite qualification and no Hindi knowledge for both the Post Codes.

2. In paragraph 4.8 of the O.A, the applicant has specifically mentioned that the above Notice was uploaded by the DSSSB on its official website and the applicant could not come to know about the same at the relevant time, as nothing was stated in the Advertisement that further notice will be uploaded on the website of the DSSSB. On finding that his name did not figure in the list of selectees, the applicant made representations dated

30.11.2015 and 07.12.2015 requesting the respondents to consider his candidature against the Post Code of 12/13 also. No decision was taken on the said representations.

3. Vide Notifications dated 12.01.2016 and 14.01.2016, the respondents declared the cut-off marks for the abovementioned post. The applicant secured more marks than the marks (95.5) secured by the last selected candidate in Post Code 12/13 under unreserved category. However, his name did not figure in the list of selectees. It is under these circumstances that the present O.A. has been filed by the applicant seeking the following reliefs:-

“(a) Hold and declare that the applicant has been wrongly excluded from consideration for appointment to the post of TGT (Social Science) Male in Directorate of Education, GNCT of Delhi (post code 12/13) and;

(b) Direct the respondents to consider the candidature of the applicant for the Post Code 12/13 as well as further process the result of the applicant accordingly and appoint her to the post of TGT (Social Science) in Directorate of Education, GNCT of Delhi in accordance with his merit position.

(c) Award costs of the proceedings and

(d) pass any other order/direction which this Hon’ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.”

4. The respondents, in their counter affidavit, stated that as per the Advertisement Notice No. 02/12, the candidates were advised to read the detailed instructions in Sections A, B & C of the Advertisement before filling up Parts I and II of the application form strictly according to the instructions. It is further stated in the reply that as per Notices dated 24.10.2014 and 25.11.2014, the candidates were informed that since the

Board has now switched over to Online Application Registration System (OARS), the candidates, who had applied for the said Post Codes through paper based forms, were now required to get themselves registered in OARS software and to upload their photograph, signature and educational qualification/experience online for issuance of admit cards through OARS. It is further stated that the candidates were also advised to ensure that they fulfill all the eligibility criteria as per the Advertisement No.02/12 on or before the cut-off date.

5. As regards the second Advertisement, i.e., against the Post Code 01/13, candidates were advised to read the detailed instructions in the Advertisement before filling up the OMR application form in accordance with the instructions, etc. It is the further case of the respondents that the candidature of the applicant was rejected for Post Code 12/13, as the candidate was 'not having the requisite qualification' as on closing date and 'no Hindi knowledge'.

6. In reply to the averments made in paragraph 4.8 of the O.A., the respondents have stated that their website gives all the relevant information to the candidates for various Post Codes, which is regularly checked by the candidates. This has been a practice since long and the applicant cannot plead ignorance now.

7. Mrs. Harvinder Oberoi, learned counsel appearing for the respondents has referred to the following Note in the Advertisement:-

“Note: Application form must be sent in the prescribed format given in the Employment News which can also be downloaded from our website www.dssb.delhigovt.nic.in. Applications sent in any other format are liable to be rejected.”

8. Based upon the aforesaid Note, it is vehemently argued that it was the duty of the candidates, including the applicant, to have visited the website. From the reading of the aforesaid Note, it appears that the Note only refers to the downloading of the application forms from the website. Beyond that, the Note does not notify to the candidates that all information, particularly post-examination, would be available on the website of the DSSSB.

9. In response to the submission of Mrs. Oberoi, Mr. R K Jain, learned counsel appearing for the applicant submits that even though the aforesaid Note was appended in the first Advertisement, however, in the second Advertisement No.1/13, no such Note was incorporated. Otherwise also, nothing is mentioned in the Advertisements requiring the candidates to visit the website for all purposes, including information regarding the rejection of candidatures, and thus it was bonafide belief of the candidates that they would be put to notice regarding rejection of their candidatures, etc.

10. From the counter affidavit, we find that the candidature of the applicant has been rejected for not filling the bubble in column No.13, which is as under:-

Whether having working knowledge of Hindi?	
Yes	①
No	②

11. It is not in dispute that the said column was not filled up by the applicant. His candidature was rejected only on that count. The rejection was only notified on the website of the DSSSB and no intimation by any other mode was given to the applicant. In both the Advertisements, there is

no condition or stipulation, which, *inter alia*, required the candidates to visit the website for all purposes, except downloading the application forms. Thus the bonafide belief of the applicant that he would receive intimation from the respondents with regard to the rejection of his candidature, etc. cannot be ignored. It is an admitted position that the applicant has been able to find berth in the selection list having secured more marks than the last candidate under unreserved category.

12. Vide order dated 23.02.2016 passed by the Tribunal, the selection/recruitment was made subject to the outcome of this O.A.

13. We have heard the learned counsel for the parties and perused the material placed on record.

14. The sole question that needs consideration by the Tribunal is whether the rejection of the applicant was legal or valid, particularly when non-filling of the column was not an essential feature of the recruitment.

15. Mrs. Oberoi, learned counsel for respondents has raised an objection regarding the limitation. It is submitted that the candidature of the applicant was rejected on 10.09.2013 and even she refers to the Advertisement wherein it was mentioned that all those candidates, whose candidatures may be rejected, can approach the respondents till 20.09.2013. It is accordingly submitted that the O.A. having been filed on 04.02.2016 is barred by limitation.

16. Insofar as the question of limitation is concerned, the applicant in paragraphs 4.7 and 4.8 of the O.A. has specifically pleaded that no intimation was available. This fact has not been disputed in the counter

affidavit. What is stated in the reply is that the candidates were advised to visit the website. From the Advertisement, particularly the Note appended therein and extracted by us hereinabove, we find that the candidates were advised to visit the website of the DSSSB only for the purpose of downloading the application forms and not for other purposes. It is stated by the applicant in the O.A. that he came to know of the rejection of his candidature only when the result was notified on 24.11.2015. The applicant immediately preferred two representations dated 30.11.2015 and 07.12.2015. These representations have not been decided till date. Further the cut-off marks were notified only on 12.01.2016 and 14.01.2016. Thus the cause of action accrued to the applicant on notification of the result on 24.11.2015 and cut-off marks on 12.01.2016/14.01.2016. Present O.A. has been filed on 04.02.2016. In any case, the representations of the applicant dated 30.11.2015 and 07.12.2015 have not been decided. Thus the limitation, i.e., six months + one year would commence from the date of making representation in terms of sub-section (b) of clause (1) of Section 21 of Administrative Tribunals Act, 1985, which clearly prescribes that where an appeal or representation has been made and the same is not disposed of, limitation will commence six months from the date of making representation and one year thereafter. The present O.A. is thus within the period of limitation.

17. As far as the merits of the case are concerned, the applicant had no occasion to respond or even seek rectification of the error. The error is otherwise also not substantial in nature, which could have denied the opportunity of consideration to the applicant. The applicant has been allowed to appear in examination by issuing the admit card without the

intervention of the Court. He has secured marks more than last selectee in unreserved category.

18. The controversy has been examined by this Tribunal in O.A. No. 1966/2013 (with connected cases) – **Ms. Deepika & another v. Govt. of NCT of Delhi & others** decided on 02.07.2014. The aforesaid judgment was reiterated by the Tribunal in O.A. No.202/2015 & O.A. No.203/2015 vide order dated 18.01.2016. As a matter of fact, the latter judgment relates to filling up of the OMR sheets for the post of TGT pertaining to the same selection. The applicants in the said judgment had not filled up the column 13 of the OMR sheets. Considering the deficiency, this Tribunal observed as under:-

“28. One more aspect of these cases is that when the respondents had combined the examination in respect of 2012 and 2013 advertisements together, and the applicants could have applied against only one of the two Post Codes, either the Post Code in the year 2012 advertisement, or the Post Code in the year 2013 advertisement, it has so happened that both these applicants had filled up and downloaded the OMR sheets by logging in 2012 ID, and have then mistakenly filled up in Column-11 the Post Code relevant for the Post Code of 2013 advertisement. It appears to us that the OMR sheets, as presently prepared by the respondents, do not have proper Columns for sufficient information to be provided by the applicants in such cases where separate applications have been filled up in respect of the two years, and the two Post Codes, and it is the respondents who had then later on decided in respect of the examination in respect of those two Post Codes in two different years to be held together. This is one more reason why the applicants are entitled to reliefs as prayed for by them.”

and finally the Tribunal passed the following directions:-

“30. Therefore, both the OAs are partly allowed, and the respondents are directed to call the applicants of these two OAs for verification of their documents to verify their actual qualifications as possessed by them as on the last date for filling up of the application forms for the years 2012, as well as 2013, and to consider their candidature, and if

their qualifications are found to be fulfilled as on the last date of receipt of those applications, as per the Notifications issued for the respective years 2012 & 2013, by the abovementioned Advertisements, to allow their candidature for the relevant posts.

31. However, since the examination was conducted on 28.12.2014, and the results of the same may have been declared, and the selected candidates may have even joined, who were not parties before us in these two OAs, it is hereby made clear that if, and when, the applicants of these two OAs are found to be eligible candidates in the respective years, or are permitted to appear at any supplementary or subsequent examination, for the same/similar Post Codes, no benefit in respect of the period already elapsed till now will accrue to these two applicants, and that their candidature will be considered to have been only notionally allowed for appearance at the examination held on 28.12.2014.

32. In order to avoid such futile litigation in future, perhaps the respondents may do well to look into the structure of Column-13 of their OMR Sheets, and the manner in which the OMR scanning and scrutiny of that Column is conducted by them.”

19. In view of the dictum of the aforesaid judgments of the Tribunal, we are of the considered view that the rejection of the applicant's candidature is unjustified and wrong. Had the applicant got the information immediately after scrutiny, he could have approached for rectification as prescribed in the Advertisement by 20.09.2013. He could not avail this opportunity because of non-communication of deficiency and rejection. It cannot be lost sight of that OMR system was introduced for the first time in 2013. Since the applicant has already been declared successful and secured marks more than the last selected candidate under unreserved category, he is entitled to be considered for appointment to the post of TGT (Social Science).

20. This O.A. is accordingly allowed with the following directions:-

i) Declare the candidature of the applicant as successful.

- ii) Call the applicant for verification of his documents and if on such verification he is found to be eligible, consider the applicant's appointment against the post of TGT (Social Science) under Post Code 12/13.
- iii) In the event any vacancy for the post of TGT (Social Science) is available, the applicant shall be appointed against such vacancy. However, in the event there is no such vacancy, the respondents would issue notice to the last selected candidate in case he is required to be ousted and after affording an opportunity of being heard to such candidate, the respondents would take decision for the appointment of the applicant.
- iv) The applicant shall be entitled to the appointment from the date other candidates were appointed. However, his appointment shall be notional in nature and he will not be entitled to any financial benefits on account of such appointment, except his seniority on the basis of the merit achieved by him in the process of selection.
- v) The applicant will be entitled to the salary and other financial benefits from the date of actual appointment. This entire exercise shall be completed by the respondents within a period of four months from the date of receipt of a copy of this order.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

March 16, 2017
/sunil/