

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.-622/2016

Order Reserved on: 23.02.2016
Order Pronounced on: 26.02.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Shri Mahaveer,
Age-38 years,
S/o Shri Hukim Chand
R/o 164, Village & PO Khera Kalan
Delhi-110082.

-Applicant

(By Advocate: Shri Manish Kumar)

Versus

1. Delhi Subordinate Services Selection Board
Through its Chairman
F-18, Karkardooma Institutional Area
New Delhi.
2. New Delhi Municipal Corporation
Through its Chairperson
Palika Kendra Building
Opposite Jantar Mantar
Parliament Street
New Delhi.

-Respondents

ORDER

Per Sudhir Kumar, Member (A):

This case was heard and reserved for orders at the stage of admission itself.

2. This is the second round of current litigation attempted by the applicant. He had earlier filed an OA No. 4451/2011 with OA No.4452/2011 & OA No.4453/2011, which came to be disposed of

through a common order dated 25.05.2012. In Paragraphs 5 & 6 of that order, the Bench had held that once the user department has informed the recruiting agency-Delhi Subordinate Services Selection Board (DSSSB, in short) that they would be satisfied if the selected candidates have National Trade Certificate in Draftsmanship from any recognized Institution, it is not for the recruiting agency-DSSSB to question it, and not to recommend the names of the applicants for appointment, if they are otherwise qualified in the examination, and possess that National Trade Certificate. In the result, the three OAs had been allowed, and the Result Notice dated 21.09.2011 had been quashed and set aside, and DSSSB had been directed to declare the final result of the examination, and if the three applicants of those OAs covered by the common order, including the present applicant of this OA, had become eligible as per their positions in the merit list, it was ordered that their names should be recommended for appointment in the user department, i.e., New Delhi Municipal Corporation (NDMC, in short), and that, thereafter, NDMC shall appoint them after completion of necessary codal formalities, with all consequential benefits, including seniority as per their respective position in the rank list, though it was made clear in that order itself that the applicants will not be entitled for any back wages.

3. The Respondent-DSSSB carried the matter before the Hon'ble Delhi High Court in Extraordinary Civil Jurisdiction Writ Petition (C) No. 6947/2012 in the matter of **DSSSB vs. Sanjeev Kumar, Geeta Bharti, & Mahaveer (the present applicant) and NDMC**. That Writ Petition

came to be disposed of by the Hon'ble Delhi High Court through its order dated 09.04.2013. After noting the stand taken by this Tribunal in Para-5 of its judgment, the High Court ordered for quashing the Tribunal's order dated 25.05.2012, but at the same time directed NDMC to forthwith amend its Recruitment Rules (RRs, in short), in order to bring them in conformity with its stand taken before not only the DSSSB as well as before this Tribunal, but before the Hon'ble High Court also. Para-6 & 7 of the High Court's judgment read as follows :-

"6. We agree with the stand taken by the Board that **unless NDMC amends its Recruitment Rules it would be impermissible to include the National Trade Certificate in Draftsmanship as a valid eligibility degree for the reason an Advertisement has to conform to the Recruitment Rules. In the absence thereof what would happen would be that large number of candidates possessing the National Trade Certificate in Draftsmanship, thinking that they are ineligible, may not even apply. To make eligible those who take a chance would amount to denying fair opportunity to the others.**

7. Thus, as regards WP(C) 6947/2012, we allow the same and quash the order dated May 25, 2012 but **simultaneously direct NDMC to forthwith amend its Recruitment Rules in conformity with its stand taken before not only the Board but even the Tribunal, which stand is reiterated before us today.** Selection process be completed thereafter. Needless to state a fresh Advertisement would be issued."

(Emphasis supplied).

4. Since the Hon'ble High Court had directed that first the RR's were to be amended by NDMC, and that the selection process may be completed thereafter, and a fresh Advertisement will be issued, the respondents of that Writ Petition excluding the NDMC, but, including the applicant herein, filed a Review Application No. 312/2013, praying the

Hon'ble High Court to review its order passed in that Writ Petition (C) No.6947/2012. That Review Application came to be disposed of by the Hon'ble Delhi High Court on 31.05.2013 *ex-parte* against the DSSSB, with the following order:-

"1. We see no reason to review our decision dated April 09, 2013. We highlight that the point urged in the review petition was argued when the writ petition was heard and has been decided.

2. The view taken by us is that unless the Recruitment Rule is amended, it would be impermissible for a Court to treat a different degree as a valid eligibility degree.

3. The applicable Recruitment Rule lists 'Diploma in Draftsmanship (Civil)' as the eligible educational qualification, and it would not be possible for any Court to direct that a 'National Trade Certificate in Draftsmanhip' be treated as a valid equivalent degree.

4. If we are wrong in our view the appropriate remedy would be to approach the Supreme Court.

5. The review petition is accordingly dismissed.

6. No costs."

(Emphasis supplied)

5. Not only that, the applicant of this OA had still not been satisfied with the orders passed in his favour by the Tribunal on 25.05.2012, while allowing his O.A. He had also filed a separate W.P. (Civil) No. 1381/2013, challenging the Tribunal's order in his OA in his favour, though to a limited extent, praying before the High Court that a writ of mandamus may be issued to the respondents to appoint him to the post of Draftsman (Civil) Grade-III in NDMC, with all consequential benefits, including seniority, promotion, and also back wages etc., irrespective of his merit position, as the two other SC category candidates, who had

secured more marks than him, had not approached the Tribunal for redressal of their grievances. He had admitted in that Writ Petition that he had been placed at Sl. No.6 of the merit list of SC category, out of which three candidates belonging to SC category were to be adjusted against UR vacancy as per their own merit, and he was, therefore, required to be placed at Sl. No.3 in the remaining SC category candidates, below two other SC candidates, Neelam Chauhan and Gurudutt Gautam, who were higher in merit than him. His prayer before the Hon'ble High Court in the Writ Petition was that since those two, who were higher in merit than him, had either not approached for redressal of their grievances, or had got better jobs elsewhere, and, therefore, he was eligible for being appointed.

6. He had pointed out that in his RA No.246/2012 in OA No.4453/2011 filed before this Tribunal, he had sought a review of the order of this Tribunal dated 25.05.2012 to a limited extent, but that this Tribunal had reiterated that he be appointed as per his position in merit list, and, if appointed, his seniority has to be fixed as per the position in the rank list, but this order would not benefit him, but would benefit those two candidates who had obtained higher marks than him but were not vigilant, and were sleeping over their rights. Therefore, in his Writ Petition, he had challenged both the orders dated 25.05.2012 in his OA No.4453/2011, as well as the order dated 09.01.2013 in his RA No. 246/2012 in OA No.4453/2011, as being illegal, arbitrary, unjustified, unreasonable, and in violation of the law of land, based on misreading of

material available on record, and had taken the grounds as enumerated at Paragraphs A to I of his Writ Petition (Annexure-9/pages 93-114 of this OA).

7. That Writ Petition (C) No.1381/2013 of the present applicant had got clubbed with the above mentioned Writ Petition No.6947/2012 **DSSSB vs. Sanjeev Kumar & Ors.** (supra). Therefore, the Hon'ble High Court had in its combined order in the two Writ Petitions, in regard to the Writ Petition of this particular applicant, recorded its observations and laid down the law in Paragraphs 8 to 11 as follows:-

"8. As regards WP(C) No.1381/2013, we find that the controversy pertains to Mahaveer, a SC candidate laying a claim that since 02 SC candidates above him have not shown any interest in seeking appointment, he being at No.3 at the select panel should be appointed against one of the two posts reserved for SC candidates.

9. We find that the Tribunal has tagged on the Original Application filed by him along with two others, but without any adjudication on his claim that as an SC candidate, being at No.3 of the select panel, he should have been appointed.

10. However, no relief can be granted to him because he seeks relief on the strength of possessing National Trade Certificate in Draftsmanship, a qualification which cannot make him eligible till the Recruitment Rules are amended. As a matter of fact we find that the two SC candidates above him in order of merit also sought eligibility on the strength of possessing National Trade Certificate in Draftsmanship. The fact that when appointment was denied to them because they were not possessing the Diploma in Draftsmanship (Civil) they did not approach the Tribunal would not mean that on the reasoning of Mahaveer he should be given appointment. On his reasoning, the only direction could be that at the first instance letters offering appointment should be issued to the two empanelled candidates above him.

11. Accordingly, WP(C)1381/2013 is dismissed. Dismissed as infructuous.”

(Emphasis supplied)

8. Not being satisfied even with this, since the Hon’ble High Court had while disposing off the Review Petition said that if their view is considered to be wrong, the appropriate remedy would be to approach the Hon’ble Supreme Court, the three applicants of the three OAs in the common order passed by this Tribunal dated 25.05.2012, who were Respondents R-1 to R-3 in the said W.P. (C) No.6947/2012 filed by DSSSB, and were the Review Applicants in the Review Petition No. 312/2013 before the Hon’ble High Court, thereafter filed Petitions for Special Leave to Appeal (Civil) No (s). 24740-24743/2013, challenging both the orders of the Hon’ble High Court, that in the Writ Petition No.6947/2012, as well as that in the Review Petition No. 312/2013. After hearing the matter, through its order dated 07.10.2013, the Hon’ble Apex Court found no reason to interfere with both the orders as passed by the Hon’ble High Court, and the Special Leave Petitions were, therefore, dismissed, whereby the two orders of the Hon’ble High Court became final.

9. Still, the applicant has now filed the present OA, with the only prayer being to direct the Respondent No.1-DSSSB to make a provision by relaxing the age qualification for participating in the ensuing selection process vide the fresh Advertisement No. 01/15 dated 20.10.2015 issued by them, so that the applicant can take that examination without being age barred. His only contention is that in the Advertisement dated

20.10.2015, the Respondent-DSSSB have not provided for any age relaxation through which his appearing at the examination could be facilitated.

10. He had also represented in this regard to the Chairman, DSSSB, through his representation dated 26.10.2015 (Annexure A-1), stating that he had been earlier selected in the selection process vide Advertisement No.03/08 for the post of Draftsman, but was denied appointment because of his possessing only a National Trade Certificate in Draftsmanship instead of the then prescribed Diploma in Draftsmanship. His contention is that since the Rules have now been amended, and his qualification of National Trade Certificate in Draftsmanship has now been incorporated in the RRs, yet since the new RRs do not prescribe any relaxation of age with respect to the selected candidates in the earlier Advertisement No. 03/08, which the applicant has claimed to be a matter of his right, but he has claimed for grant of age relaxation to him by issuing a Corrigendum to the Advertisement now brought out.

11. However, it is seen that the prayer of the applicant in this OA as presently filed is against the observations made by the Hon'ble High Court in its order dated 09.04.2013 in W.P. (C) No. 6947/2012, in which, in Para-6, as already reproduced above, it was noted that "an Advertisement has to conform to the RRs", as in the absence of that a large number of candidates, possessing the similar qualification,

thinking that they are ineligible, may not have even applied, and to make eligible those who take a chance with lesser qualifications would amount to denying a fair opportunity to the others, who did not take such chance, and did not apply.

12. It is clear that in view of the law as laid down by the Hon'ble High Court in Para 6 of its order (supra), the present prayer of the applicant for providing age relaxation only to those who had qualified in the previous selection process with lesser qualifications, like him at that time, would also operate to deny a fair opportunity to a large number of possible candidates, who may not have even applied at that earlier examination, thinking that they are ineligible. Therefore, the present OA is not maintainable, and the same is dismissed *in limine*, at the admission stage itself.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.