

Administrative Tribunal
Principal Bench
New Delhi

C.P.No.399/2015
in
O.A.No.14/2012

Order Reserved on: 18.09.2015
Order pronounced on 24.09.2015

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

Shri Gulab Singh
S/o Late Shri Inder Singh
R/o 4/5 H.No.195
Rajindra Park Extension, Nagloi
Delhi – 110 041. ... Applicant

(By Advocate: Shri Deepak Verma)

Versus

1. Shri K.K.Sharma
Chief Secretary
Govt. of NCT of Delhi
I.P.Estate
New Secretariat
New Delhi.
2. Shri Janak Digal
Chairman
Delhi Subordinate Services Selection Board
Govt. of NCT of Delhi
FC-18, Institutional Area, Karkadoma
Delhi – 110 032.

(By Advocate: Mrs. P.K.Gupta for Mrs. Renu George and Shri Amit Anand)

ORDER

By V. Ajay Kumar, Member (J):

The applicant filed OA No.14/2012, having aggrieved by the action of the respondents in rejecting his case for appointment to the

post of TGT(English), on the ground of overage, though he was qualified both in the preliminary and subject (English) tests, under Ex-Serviceman category, as declared by the respondents vide results Notice dated 07.03.2011, in pursuance of the advertisement No.001/2010, in respect of post code No.01/2010.

2. This Tribunal by its order dated 17.02.2015, after hearing both sides, following the decision of the Hon'ble High Court of Delhi in WP(C) No.2669/2012 dated 07.05.2012 in **DSSSB through its Secretary v. Anand Kumar Tyagi and others**, allowed the OA, by holding that the applicant is well within the upper age limit of 32 years, as required under the Notification, and the operative portion of the said Order reads as under:

"8. The applicant, who born on 16.03.1972 completed 38 years as on the cut off date of 15.03.2010 and since he rendered Military service for 19 years 2 months, he is well within the upper age limit of 32 years, as per the aforesaid decision. Further, since the applicant secured 109/200 marks in Part-II, i.e., more than the marks secured by the Petitioner in the above Writ Petition, in the same examination and in respect of the same post, the applicant is also entitled for consideration for appointment to the post of TGT (English) under Ex-Serviceman category.

9. In view of our finding that the applicant is similarly placed like the respondent in **Anand Kumar Tyagi** (supra), we do not feel it necessary to delve upon other contentions of the parties.

10. In the circumstances and for the aforesaid reasons, the OA is allowed and the respondents are directed to consider the applicant for appointment to the post of TGT (English), as per his merit in the Ex-serviceman category, with all consequential benefits, except back-wages, within sixty days from the date of receipt of a copy of this order."

3. Complaining non implementation of the aforesaid order, the applicant in OA No.14/2012, filed the present CP.

4. The respondents vide their counter submitted that they have fully complied with the orders of this Tribunal and accordingly, after treating the applicant as within the required age limit, considered the case of the applicant and passed a detailed speaking and reasoned order dated 07.08.2015. It is further submitted that this Tribunal while allowing the OA only held that the applicant is well within the upper age limit of 32 years and accordingly directed to consider his case for appointment to the post of TGT (English), as per his merit, in the Ex-Serviceman category. This Tribunal, in the said order, categorically observed that no other contentions of the parties were delved upon in the OA.

5. The respondents further submits that, after considering the case of the applicant rejected the claim of the applicant for selection to the post of TGT (English-Male), as he was not found eligible on the ground of not possessing the required educational qualifications. Accordingly, prayed for dismissal of the CP.

6. Heard Shri Deepak Verma, the learned counsel for the petitioner and Mrs. P.K.Gupta for Mrs. Renu George and Shri Amit Anand, the learned counsel for the respondents, and perused the pleadings on record.

7. Shri Deepak Verma, the learned counsel appearing for the petitioner, submits that once this Tribunal directed the respondents to

consider the case of the applicant, they cannot reject the case of the applicant on any new grounds, such as not possessing the essential educational qualifications, etc.

8. Admittedly, earlier the respondents rejected the candidature of the applicant on the ground of over age and at that time they have not considered the other requirements. Further, while allowing the OA 14/2012, this Tribunal categorically held that no other contentions of the parties are delved upon. What is decided in the OA was the issue of overage of the applicant only. The other conditions of suitability of the applicant for selection to the post were not the subject matter before this Tribunal, while disposing of the OA. Hence, we cannot accept the contention of the petitioner that the orders of this Tribunal have not been complied with.

9. In **A.P.S.R.T.C. and Others v. G.Srinivas Reddy and Others**, (2006) 3 SCC 674, the Hon'ble Apex Court observed as under:-

"14. We may, in this context, examine the significance and meaning of a direction given by the court to "consider" a case. When a court directs an authority to 'consider', it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in High Courts being disposed of with a direction to "consider" the claim/case/representation of the petitioner/s in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/ irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed

to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to 'consider' and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision making process, rather than the decision itself.

16. The High Courts also direct authorities to 'consider', in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of power of judicial review, directs the authority to 'consider' and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs 'consideration' without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to 'consider' afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to 'consider' the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to 'consider' the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.

18. We may also note that sometimes the High Courts dispose of matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court, to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation.

When the court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider', may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of court's direction to 'consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily wagers seeking regularization/absorption into regular service is a species of cases, where there has been a large scale misuse of the orders 'to consider'.

20. Therefore, while disposing of writ petitions with a direction to 'consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

10. In the circumstances and for the aforesaid reasons, we do not find any merit in the CP, and accordingly the same is dismissed. Notices are discharged. However, this order shall not preclude the applicant from questioning the speaking order passed by the respondents, in compliance of the orders of this Tribunal, if he is aggrieved, in accordance with law. No order as to costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

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