

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1492/2013
MA 741/2014

Reserved on: 5.05.2016
Pronounced on: 20.05.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Kavinder
S/o Shri Bhoop Singh
R/o Kheri Sampla, P.O. Sampla
District Rohtak, Haryana

... Applicant

(Through Shri Ram Kwar, Advocate)

Versus

1. Govt. of NCT of Delhi,
Through its Chief Secretary
Delhi Secretariat, I.P. Estate,
New Delhi
2. East Delhi Municipal Corporation
Through its Commissioner
Civics Tower, Minto Road,
New Delhi-110002
3. North Municipal Corporation of Delhi
Through its Commissioner
Civics Tower, Minto Road
New Delhi-110002
4. South Municipal Corporation of Delhi
Through its Commissioner
Civics Tower, Minto Road
New Delhi-110002
5. Delhi Subordinate Services Selection Board
FC-18, Institutional Area, Karkardooma
Delhi-110092 through its Secretary
6. Ms. Anjali Yadav
(Roll No.05610136)
Labour Welfare Commissioner
Post Code 56/09
7. Mr. Ashish Aggarwal

(Roll No.05610566)
 Labour Welfare Commissioner
 Post Code 56/09
 R/o House No.820/52
 Lekhu Nagar, Tri Nagar,
 Delhi-110035

8. Mr. Ram Kishan Meena
 (Roll No.05610040)
 Labour Welfare Commissioner
 Post Code 56/09
 S/o Shri Jagdish Narain Meena
 Village Khjuria Tiwadyam
 Post Office: Khratipur Bassi
 Jaipur, PIN – 303301 (Rajasthan) ... Respondents

(Through Shri R.K. Jain, Ms. Sangeeta Rai and Mrs. Alka
 Sharma, Advocates)

ORDER

Mr. P.K. Basu, Member (A)

The applicant had applied for the post of Labour Welfare Superintendent (LWS) in the Municipal Corporation of Delhi (MCD) under Post Code 56/09 against an advertisement No.003/09 issued by Delhi Subordinate Services Selection Board (DSSSB) in November 2009. He was issued an admit card and appeared for Part-I, Objective Examination and thereafter Part-II Examination for the said post. On 24.10.2011, the DSSSB declared the result of Part-I Objective Examination and the applicant was shown as provisionally short listed for evaluation of his Part-II (Descriptive) answer sheets.

2. On 23.05.2012, the DSSSB issued the result notice in which it is stated that on the basis of the written examination held on 18.09.2011, Anjali Yadav secured 141 marks and Ashis Aggarwal secured 108 marks in the `general' category and are

provisionally selected and recommended for appointment to the post of LWS. In response to an RTI application dated 19.06.2012, the applicant was informed by the respondents vide letter dated 28.06.2012 that he had obtained 142 marks in Part II Descriptive Examination for the post. The applicant moved an RTI application before the DSSSB dated 5.07.2012 and was informed by the DSSSB through their reply dated 12.07.2012 that he was not declared eligible for selection due to qualification not as per RRs.

3. Again through reply to an RTI application, the DSSSB informed the applicant through letter dated 31.07.2012 that he had obtained 62 marks out of 100 in Part I and that "As per record 'qualification not as per RRs'." It is stated by the applicant that on 28.08.2012, the DSSSB issued office order/result notice provisionally selecting Ram Kishan Meena, respondent no. 8, who had secured 124 marks in UR category and recommending him for appointment. The applicant has, therefore, filed this OA with the following prayers:

- (a) declare that the applicant possessed the qualification for appointment as required by the Rules and the Advertisement no. 003/2009 for post Code 56/09;
- (b) declare the procedure adopted for selection of the UR/ General Category for the post of Labour Welfare Superintendent under the post Code 56/09 was not fair, just and reasonable;
- (c) quash and set aside the impugned declaration and informations dated 11.07.12 and 31.07.12 of Asish Kumar Dy. Secretary CC-I of DSSSB;
- (d) quash and set aside selection and appointments of Ms. Anjali Yadav, Mr. Asish Aggarwal and Mr. Ram Kishan Meena, Respondents no.6 to 8 in UR category

vide impugned Result notice dated 23.05.2012 and 28.08.2012;

- (e) direct the DSSSB and other respondent authorities to conduct the selection and appointment for the UR Category afresh, considering the applicant eligible having essential qualification as per advertisement no.003/2009 post code 56/09."

4. The applicant's case is that in the initial advertisement (Annexure A-2 colly), the essential and desirable qualifications required for the post were as follows:-

"Essential Qualifications: (1) Degree of a recognized University or Equivalent

(2) Post-Graduate Degree/Diploma in Social Work or Labour Welfare or Industrial Relations or Personal Management or in any other allied subject of recognized University/ Institution or equivalent.

Desirable: (1) Degree in Law of a recognized University or equivalent.

(2) Experience in the field in responsible capacity of Labour Welfare/ Industrial Relations/ Personal Management and/or in allied fields."

5. The applicant states that he has a B.Sc. degree and hence he satisfies condition no. 1 of the essential qualification. It is further stated that the applicant has also passed his MBA during the course of which he read papers on Personnel Management and, therefore, he also qualifies under entry (2) of the essential qualifications having studied Personal Management. Thus, he possesses the essential qualification and his candidature cannot be rejected on the ground that he does not possess the essential qualification.

6. It is pointed out by the learned counsel for the applicant that in their reply dated 29.08.2013, under the heading 'brief facts of the case', the respondents have shown the essential and desirable qualifications as follows:-

"ESSENTIAL QUALIFICATION:-

1. Degree of a recognized university or equivalent.
2. Post Graduate Degree/ Diploma in Social Work or Labour Welfare of Industrial Relations or In any other allied subject of a recognized university or equivalent.

Desirable Qualifications

1. Degree in Law of a recognized university or equivalent.
2. Experience in the field in responsible capacity of Labour Welfare/ Industrial Relations/ Personal Management and/ or in allied fields."

7. According to the learned counsel for the applicant, this has not been correctly reflected as it only states Labour Welfare/ Industrial Relations but it does not mention Personal Management or the fact that it could be in any allied subject. It is the contention of the applicant, therefore, that while drawing its conclusion that the applicant is not eligible because he does not possess the essential qualifications, the respondents have committed a mistake in considering only part of the essential qualifications and not the whole and as a result, they did not notice that the applicant possessed the essential qualification under the category which had been omitted to be noticed by the respondents.

8. Learned counsel for the respondents Shri R.K. Jain drew our attention to Annexure A-1 colly which contains the marks sheet for Ist, 2nd, 3rd and 4th semesters for the applicant's MBA degree. It is stated that none of the subjects listed indicate either Labour Welfare /Personal Management and, therefore, the contention of the applicant that he satisfies the condition under entry (2) of the essential qualifications as having studied Labour Welfare or Personal Management is not borne out by the subject list of MBA degree. As such, the respondents have rightly rejected his candidature.

9. In reply, learned counsel for the applicant states that in the mark sheet of the 4th semester under the heading 'subject', item no. 6, Industrial Relations & Labour Legislation is indicated. Similarly, in the mark sheet for the 2nd semester, Human Resource Management is mentioned. Therefore, it is incorrect for the respondents to state that the applicant has not studied Personal Management and Labour Welfare.

10. The DSSSB also explained that they are merely recruiting agency and they cannot interpret the Recruitment Rules (RRs) of the post provided by the user department and that they just process the result of any post on the basis of essential qualification/ experience and other eligibility conditions as provided in the RR's of the post by the user department. It is further submitted that in the advertisement, it had been specifically clarified that merely because a candidate has been allowed to appear in the examination, will not be considered as a

valid ground for his being eligible for the examination and that if on verification at any time before or after the written examination or at any stage of recruitment process, it is found that the candidate does not fulfill any of the eligibility conditions, his/her candidature for the post applied for, will be cancelled. Similarly, under column 11 "General Instructions for Candidates", it has been stated that the admit card will be issued on the basis of information furnished by the candidate in his/her application. Further it is stated under column 11 that the candidates should satisfy themselves regarding the possession of the required qualifications.

11. We have heard the learned counsel for the parties and gone through the pleadings available on record. Though private respondents no.6 to 8 have been served notice, they have chosen not to appear.

12. The issue before us is whether the applicant possessed the requisite essential qualification required for the post.

13. What has happened in this case is that the applicant applied for the post; he was permitted to appear in the test; he obtained 142 marks whereas the private respondents secured 141 and 108 marks i.e. less than the applicant but the applicant was not selected and the private respondents were selected. This is what has disturbed the applicant that, despite securing highest marks, he is deprived of the selection on the ground that he does not possess the essential qualification as per the RRs.

Therefore, the only issue to be adjudicated here is whether the applicant possessed the essential qualification or not.

14. Let us examine the essential qualification closely again.

We, therefore, quote the essential qualification again:

“Essential Qualifications: (1) Degree of a recognized University or Equivalent

(2) Post-Graduate Degree/Diploma in Social Work or Labour Welfare or Industrial Relations or Personal Management or in any other allied subject of recognized University/ Institution or equivalent.”

15. The applicant is B.Sc and clearly satisfies condition no.1. Condition no. (2) is Post Graduate Degree or Diploma in Social Work or Labour Welfare or Industrial Relations or Personal Management or in any other allied subject of a recognized University. As against this, the applicant has MBA degree from Maharshi Dayanand University, Rohtak. Before you get MBA degree, you have to go through four semesters. Obviously, the respondents have not treated his MBA as Post Graduate degree because otherwise the applicant is eligible. So now we have to see where the MBA degree possessed by the applicant can be treated towards diploma in Social Work or Labour Welfare or Industrial Relations or Personal Management or in any other allied subject.

16. Applicant does not claim that he had a diploma in Social Work but on Labour Welfare. He states that in 4th semester, there was indeed a paper on industrial relations and labour legislation. Now, clearly labour legislation relates to labour

welfare. Similarly, industrial relations is included as a subject. The applicant also points that in semester II, the subject of Human Resource Management was covered. We are of the opinion that Personal Management is nothing but a different nomenclature for Human Resource Management and, therefore, the diploma included the subject Personal Management. Therefore, prima facie, we are of the opinion that the MBA done by the applicant certainly covers labour welfare, industrial relations and personal management and respondents ignoring this and concluding that the candidate did not have the essential qualification, in our view, was not a correct stand. It was wrong on the part of the respondents not to appoint the applicant, though he received higher marks than the private respondents.

17. We, therefore, allow this OA. In as much as the recruitments have been closed in 2008 and private respondents already appointed, we feel that substantive justice would be granted to the applicant by directing the respondents to declare that the applicant possessed the essential qualifications as per rules and the advertisement. Accordingly, we direct the respondents to appoint the applicant to the post of LWS. We are informed that at least one post of LWS is still vacant and, therefore, the respondents would not feel any difficulty in appointing the applicant. In case no post is vacant, then the respondents are directed to revise the list of selected candidates as per their merit and appoint the applicant by replacing the private respondent who was lowest in merit list. The

respondents shall implement this order within a period of three months of the receipt of a certified copy of this order. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

/dkm/