

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-1976/2015

Order Reserved on: 30.11.2015

Order Pronounced on: 04.03.2016

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

Mrs. Mudika Soni
Aged about 28 years,
D/o Shri Ramesh Soni,
R/o G-011, Rail Vihar,
Mansa Devi Complex,
Sector-4, Panchkular,
Presently residing at House No.161,
Pocket-C9, Sector 7, Rohini-110085. -Applicant

(By Advocate: Mr. Manish Soni)

Versus

1. Govt. of NCT of Delhi through
Chief Secretary,
Delhi Secretariat,
Players Buildings,
IP Estate, New Delhi-110002
2. Delhi Subordinate Services Selection Board
Through its Chairman,
FC-18, Institutional Area,
Karkardooma, Delhi-110092.
3. Delhi Subordinate Services Selection Board
Through its Deputy Secretary-CII,
FC-18, Institutional Area,
Karkardooma, Delhi-110092.
4. Sh. Mohineesh
S/o Shri S.H. Gyan Chandra,
Presently working as Assistant Professor,
Grade-I, Galgotias University,
Greater Noida, U.P.
5. Ms. Sarita Dhama,
Presently working as
Scientific Assistant (Chemistry),
FSL, Madhuban Chowk,
New Delhi. -Respondents

(By Advocate: Mr. Vijay Pandita, for official respondents 1 to 3
Mr. Ashim Shridhan, for R-4 & R-5)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA is aggrieved by the impugned Result Notice dated 20.05.2015, whereby she has not been selected, and she has alleged that the respondents had declared the result in an arbitrary and illegal manner, taking into consideration the academic record, and experience, along with the marks of interview, whereas, as per the Rules, the selection was to be made only on the basis of marks of the screening test, followed by interview. The applicant is also aggrieved that though she had obtained top position in the marks of the screening test held on 09.03.2014, it was incumbent upon the Respondent-Board to evaluate and add the marks awarded in the screening test, while preparing the final merit list.

2. The facts of this case lie in a very brief compass. The Respondent No.2 had issued Advertisement dated 25.06.2013 for recruitment for various posts including two posts of Senior Scientific Assistants (SSA, in short) (Chemistry) in the Forensic Science Laboratory (FSL, in short), Delhi, against Post Code 28/13, duly prescribing the essential qualifications and mode of selection etc., along with many other posts.

3. The applicant had passed M.Sc. Forensic Science in the year 2009, and fulfilled all the essential qualifications, and also possessed more than two years' experience in the relevant field, which was required as

per the Advertisement. She applied for multiple posts of SSA (Chemistry) bearing Post Code 28/13, and also Scientific Assistant (Chemistry), bearing Post Code 33/13, as she was already working with the FSL at Delhi on contractual basis since November, 2013.

4. The Respondent-Board prepared a list of eligible candidates Post Code-wise, as well as a list of eligible candidates, who had applied for multiple posts like the present applicant, through Annexure A-3. After the screening test dated 09.03.2014, its marks statement was made available as per Annexure A-4. The grievance of the applicant is that her marks at that stage were more than the marks of Private Respondents/R-4 & R-5. The applicant, along with other candidates had appeared before the Interview Board dated 24.03.2014, and felt that she had performed exceptionally well in the interview, and was quite confident about her selection against the post of SSA (Chemistry), Post Code 28/13. She was, therefore, later surprised when the list of successful candidates against the Post Code 28/13 was declared, and it was categorically mentioned therein that that merit list had been drawn on the basis of marks of academic records' assessment, experience and marks assigned in interview, whereas, according to her, the Advertisement clearly stipulated otherwise.

5. It was submitted that the Mode of Selection, as described at Sl. No.10 of the Advertisement, was as follows:-

“The Board may shortlist the candidates for written examination on the basis of marks in qualifying exam in case there is large number of candidates. In case of

post of technical and specialized nature, the selection may be made on the basis of academic record & experience and interview if the number of eligible candidates does not exceed 100 and through a screening test followed by interview if the number of eligible candidates is more than 100 but does not exceed 500.”

6. The applicant has submitted that as in the instant case the number of eligible candidates was more than 100, that was the reason that a selection screening test was conducted, followed by an interview. The applicant has contended that this was done in disregard of the prescribed mode of selection, and that the final merit list has statedly been prepared on the basis of the marks attributed to academic records’ assessment, experience and marks assigned in the interview, thereby giving a total go bye to the result of the screening test, and the marks obtained by all the candidates therein.

7. It was submitted that in the past also the Respondent-Board had made selections in the FSL Department on the basis of the academic records’ assessment, experience and interview, but only in those cases where the number of eligible candidates for the Post Code concerned were found to be less than 100, and no screening test had been conducted.

8. Her contention is that since in the instant case, eligible candidates were more than 100, and a screening test was conducted, the respondents could not have overlooked the marks obtained by her in that screening test, and made selections only on the basis of academic records’ assessment, experience and interview.

9. She has submitted that it is well settled law that the object of any process of selection for entry into public service is to secure the best and most suitable person for the job, and for avoiding patronage and favouritism, and selections based on merit, incomplete consonance with the Rules and instructions contained in the Advertisement, is the essential foundation of any useful and efficient public service. It has been submitted that these cardinal principles have not been followed by the respondents in the instant case, and they have thus committed a grave irregularity, by not adding and considering the screening test marks while preparing the final selection list. The applicant further submitted that she has a reasonable apprehension in her mind that the Respondent-Board has deliberately, and with ulterior motive, provided undue benefit to the Private Respondents R-4 & R-5 in this manner, who had been declared successful. In the result, she had prayed for the following reliefs and Interim Relief:-

Reliefs:-

- “i) quash of the impugned result notice no.320 dated 20.05.2013 (Annexure A-1), whereby the respondent no.3 has declared the result for the post of Senior Scientific Assistant (Chemistry) (Post Code No.28/13) in Forensic Science Laboratory (Government of NCT of Delhi) in a total illegal and arbitrary manner and in violation of Rules and Norms prescribed in the advertisement no. 1/13 dated 25.06.2013 (Annexure A-2) issued for the aforesaid post and also in violation of well settled provisions of law, in the interest of justice, equality and fair play;
- ii) direct the respondents to consider the applicant for aforesaid post in the light of rules and norms prescribed in the advertisement no.2/13 dated 25.06.2013 (Annexure A-) and thereby to issue the fresh result notice;

- iii) pass any order or direction, which this Hon'ble Court may deem fit in the facts and circumstances of the present case."

Interim Relief:-

Till the final disposal of the OA, direct the respondent no. 1 to 3 not to proceed with the selection/appointment process for the post of Senior Scientific Assistant (Chemistry) bearing post code 28/13, in pursuant to impugned result notice 320 dated 20.05.2015 (Annexure A-1) in the interest of justice and status quo as regards with regard to the appointment on the aforesaid post may be maintained".

10. At the time of issuance of notice on 26.05.2015 itself, the Bench directed that appointments, if any, made to the posts of Senior Scientific Assistants (Chemistry), would be subject to the outcome of the O.A.

11. The Private Respondents R-4 & R-5 filed their joint counter reply on 07.08.2015. It was submitted that the present OA is a blatant abuse of the process of the Court, having been instituted on the basis of misleading averments. It was submitted that in the Advertisement/Notification it was clearly stated that in respect of the posts of technical and specialized nature, the selection would be made on the basis of academic record and past experience if the number of eligible candidates does not exceed 100, and, in the alternative, through a screening test, followed by an interview, and an assessment of the academic record and experience of the shortlisted candidates, if the number of eligible candidates is more than 100, but it does not exceed 500, as per the portion of the advertisement "Sl.No.10 Mode of Selection" already reproduced above.

12. It was submitted that since in the instant recruitment, the number of eligible candidates turned out to have exceeded 100, a screening test was conducted, and the screening test the marks of 263 candidates were thereafter published, and both the Private Respondents R-4 & R-5 were shortlisted. It was submitted that the screening test was held only for the limited purpose of weeding out the excess candidates, and that the marks obtained in the screening test were not at all to be the basis of preparation of final merit list, as it was already notified as per the Interview Policy dated 18.12.2013 of the Official Respondent, Delhi Subordinate Services Selection Board (DSSSB, in short), that an assessment of the academic records and experience of each candidate short-listed for the purpose of selection would be done after the interview.

13. It was submitted that knowing fully well about the above prescription, the applicant and the Private Respondents R-4 & R-5 had participated in the interview process, and, that, therefore, this Rule was applicable to each candidate appearing for the interview. The Private Respondent R-4 & R-5 had, therefore, justified the DSSSB, Respondent No.2, having declared the result in the manner it had done, by taking into consideration only the marks of the interview held, along with the academic records and qualifications, and past experience, in respect of each candidate.

14. It was submitted that the entire selection procedure was conducted by the DSSSB in a wholly free, fair and transparent manner, and has not been assailed even by the applicant, and it is not even the case of the

applicant that the Rules of the game were varied to the disadvantage of other candidates, and that, therefore, no reason whatsoever existed for the applicant to plead for the Private Respondents R-4 & R-5 being denied their rightful selection. It was submitted that there is no material on record to show that the marks of the screening test could ever have been a factor in drawing up the final merit list.

15. It was further submitted that the screening test conducted by the DSSSB itself was only an examination of a general nature, and the candidates were not in any manner tested in relation to their job profile, and the question paper of the screening test itself had also been annexed as Annexure R-3 of the counter reply. It was further submitted that even in respect of other posts of technical and specialized nature, selection/appointment had been carried out exactly in the same manner, and accepting the wholly baseless and vague plea of the applicant in the present OA would open a Pandora's box in respect of many rightfully selected and already appointed candidates against the other corresponding Post Codes, who would also be affected, and which would amount to a retrospective change in the Rules of the game, which would be in violation of the basic principle of Service Law that the "procedure of selection cannot be altered after the selection process has started or has neared completion".

16. In making their submissions that a screening test cannot be the basis for drawing a merit list, the Private Respondents had relied upon the Hon'ble Supreme Court's judgment in **M.P. Public Service**

Commission vs. Navnit Kumar Potdar and Another (1994) 6 SCC

293, in which it was held as follows:-

“In most of the services screening tests or written tests have been introduced to limit the numbers of the candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates.”

17. Private Respondents R-4 & R-5 had thereafter submitted Para-wise replies to the submissions of the applicant, and had prayed that there exists no reason whatsoever to grant the reliefs as prayed for by the applicant, and, therefore, the OA is liable to be dismissed with exemplary costs.

18. The official Respondents No.1 to 3 filed their counter reply on 18.11.2015. They had also relied upon the same “Note-10 – Mode of Selection” of the Advertisement, as well as the Interview Policy dated 18.12.2013 mentioned earlier, the first para of which Policy was reproduced as follows:-

“As per policy for posts of technical/specialized nature where the no. of eligible candidates is not more than 500 recruitment may be done on the basis of academic records, experience, interview, and may also include screening test. Further as per new examination scheme notified by the Board and effective from 01/01/2013, for certain categories of posts of supervisory nature, the selection process include a component of interview (III-Tier examination).”

19. It was further submitted that the assessment of academic records and experience is an integral part of the interview, because of which only in Note-10 of the Advertisement, as cited above, this aspect had been clarified. In their Para-wise replies, and replies to grounds also, it was

submitted that the screening test was conducted only for the purpose of short-listing of the candidates for the purposes of interview, and it comprised only of questions of general reasoning/mental ability/numerical ability/psychology etc., which were not as per the prescribed qualifications of the posts concerned, and, therefore, the marks obtained in the screening test could not have been added in the final merit list, which was prepared on the basis of assessment of academic records, experience and marks obtained in the interview, as per the prescribed qualifications and procedure as prescribed in the Recruitment Rules.

20. It was submitted that as has been admitted by the applicant also, recruitment to the posts of SSA/SA had been processed on the basis of academic records, experience & marks obtained in interview, and that there has been no deviation in the mode of selection from the past practice. It was further submitted that just by virtue of her scoring higher marks in a screening test, which was not related to the prescribed qualifications, and which had been introduced only for short-listing purposes, the applicant cannot claim that she has become eligible for selection. It was further submitted that nowhere in the notice for the screening test, it was mentioned that the marks obtained in that shall be included in the final merit list, and that this submission of the applicant is her own interpretation, which is totally hypothetical. They had, therefore, prayed that the applicant has no cause of action, or even a prima-facie case, to seek any relief from this Tribunal, and the OA deserves to be dismissed with costs.

21. The applicant filed separate rejoinders to the two counter replies, both on 30.11.2015. It was submitted in the rejoinder to the counter of official respondents R-1 to R-3 that the respondents have declared the impugned result on the basis of the new Interview Policy dated 18.12.2013, which was not even in existence at the time of issuance of Advertisement for the post concerned, and that, thereby, they had illegally and arbitrarily placed the applicant in the waiting list, which is otherwise valid only for a period of one year.

22. The applicant had further pointed out that in the meanwhile the respondents have issued another Advertisement No.01/15 dated 20.10.2015, advertising the same posts in respect of which the applicant has acquired indefeasible right of appointment due to pendency of the present OA, and the indulgence of this Tribunal had been sought for directing the official respondents to consider the case of the applicant against the newly advertised posts also, though it was admitted and mentioned that out of two new posts of SSA (Chemistry) now advertised, one has been reserved for OBC category while the other post is unreserved, i.e., for General category, since she was in the waiting list of the same post on the basis of the previous Advertisement.

23. It was further submitted that even otherwise Private Respondent R-5 is already working on the regular post of SA (Chemistry) in FSL, Delhi, and is going to complete her sixth year of employment on the post, and her promotion to the post of SSA (Chemistry) is due in January 2016,

pursuant to which also, the present applicant, who has been kept in the waiting list vide the impugned result notice, would acquire the right of appointment to the Post Code No.28/13 pertaining to SSA (Chemistry). It was, therefore, prayed that the respondents be directed to recommend the candidature of the applicant for the post of SSA (Chemistry) in the Department of FSL, Delhi, being the most deserving meritorious candidate.

24. It was further submitted that the respondents could not have applied their new Interview Policy dated 18.12.2013, issued after the Advertisement concerned had been issued on 25.06.2013, and they ought to have declared the result on the basis of their earlier Interview Policy dated 09.04.2013, which was prevailing at the time of issuance of the relevant Advertisement. It was, therefore, submitted that the impugned Result Notice, presently declared on the basis of marks of academic record assessment, experience and marks assigned in the interview, is totally illegal, arbitrary and not sustainable in the eyes of law.

25. It was again alleged that the respondents have deviated from the past practice, as is apparent from the record, and have kept on changing their policy from time to time, and in every Advertisement the mode of selection is changed according to the then prevailing policy. It was, therefore, submitted that the alternative relief sought for by the applicant in her rejoinder may be read as a part and parcel of the relief sought in the main OA.

26. In the rejoinder to the joint counter reply of Private Respondents R-4 & R-5 also, similar averments had been made by the applicant. She had also made an allegation of *mala fide*, stating that the impugned Result Notice had been got procured and manipulated by the Respondent No.5 through bringing influence upon DSSSB, and thereby managing to secure higher marks in the interview. It was further submitted that the judgment of the Hon'ble Apex Court, cited by the Private Respondents, in **M.P. Public Service Commission vs. Navnit Kumar Potdar and Another** (supra), is not applicable to the facts of the present case.

27. Heard. During the arguments, learned counsel for the applicant had produced a copy of the Interview Policy dated 18.12.2013, which had not formed a part of the pleadings earlier, and had relied upon the judgments in the case of **Maharashtra State Road Transport Corpn. and Others vs. Rajendra Bhimrao Mandve and Others (2001) 10 SCC 51; K. Manjusree vs. State of Andhra Pradesh and Another (2008) 3 SCC 512; and Madan Mohan Sharma and Anr. v. State of Rajasthan and Ors. 2008 (3) SCC 724: 2008 AIR (SC) 1657.**

28. We have given our anxious consideration to the facts of this case and related case law as cited before us. It is seen that the applicant has not been able to deny the averments of the official respondents that the Screening Test conducted by them comprised of questions only relating to general reasoning/mental ability/numerical ability/psychology etc., and that the screening test did not have anything to do with regard to the Academic qualifications for the post of SSA (Chemistry), Post Code

No.28/13 concerned. That question paper of the Objective Type Screening Test was produced by the Private Respondents as Annexure R-3 of their reply, which has been perused by us. It is seen that only the Portion (iv) Test of General Science containing questions from 61 to 80 of this paper concerns questions related to General Science, while the Portion (iii) question Nos. 41 to 60 concern Arithmetical and Numerical Ability and question relating to General Awareness, General Intelligence and Reasoning Ability and English Language formed part of the Portions (i), (ii) and (v). Even the questions in the Portion (iv) General Science are clearly of a very lower standard, which, perhaps, a candidate who has passed only CBSE Class-10th, or at the most Class-12th examination, can answer, and these questions cannot at all be termed to be related to the Academic knowledge of the candidates concerned commensurate with their degree, as required for the post of SSA (Chemistry) in the FSL.

29. In the case of **Maharashtra State Road Transport Corpn. and Others** (supra), it was held by the Hon'ble Apex Court that in the case of recruitment of drivers, a process of selection, which was commenced prior to the issuance of Circular dated 24.06.1996, to replace the earlier Circular dated 04.04.1995, which had both replaced the prior Circulars dated 21.08.1980 and 23.01.1995, since the new Circular of 1996 was issued after the last date for receipt of applications and during the course of the selection, the same could not be made applicable, and the selection would rather attract the Circular orders dated 21.08.1980 and 23.01.1995, issued before the selection was started. Further, in that case marks had been allocated to interview and viva voce stages, and re-

allocation of marks for the interview had been done after commencement of selection process. It was held by Hon'ble Apex Court that reallocation of marks for interview in the middle, or after the commencement of selection process, was impermissible.

30. Both the above aspects of the ratio of the Hon'ble Apex Court judgment do not apply in the instant case, but, however, the ratio which emerges from that case, that the instructions issued prior to the last date of receipt of application alone can apply to a process of selection, would certainly apply. However, unfortunately for the applicant, even when that change in the Interview Policy is not considered in the instant case, it would not ensure to her any advantage in respect of the main prayers in this OA.

31. In the case of **Madan Mohan Sharma and Anr. vs. State of Rajasthan and Ors.** (supra), in the context of Rajasthan Panchayati Raj Rules, 1996, under which selection of Teacher Grade-III had been undertaken, the issue was as to whether selection criteria can be changed by subsequent amendment in the Rules, which was negated by the Hon'ble Apex Court. It was held that once the advertisement had been issued on the basis of the Circular obtaining at that particular time, the selection process should continue only on the basis of that criteria, and any criteria which was laid down subsequently cannot be made the basis for such selections, and any subsequent amendment of the Rules, which were prospective, cannot be made to apply retrospectively, so as to make the selection on the basis of the Rules, which were subsequently

amended. Since in that case the authorities had erroneously made the amended Rules applicable to the process of selection, and had proceeded ahead, it was held to be irregular. However, the Hon'ble Apex Court had ordered that if the subsequent amendment to the Rules was to be made applicable, then the only course open was to recall the earlier advertisement, and to issue fresh advertisement according to the new Rules which had come into force now. It appears that much benefit may not enure to the applicant from this cited judgment also, in respect of her main prayers in the OA.

32. In the 3rd cited case of **K. Manjushree vs. State of Andhra Pradesh and Another** (supra), the issue concerned only scaling down of marks, and also as to whether the selection criteria can be changed in between. On the latter aspect, the Hon'ble Apex Court had reiterated the law that selection criterion has to be prescribed in advance, and that the Rules of game cannot be changed afterwards, and it was held that the minimum qualifying marks for interview cannot, therefore, be changed after the interviews were over. It was also held that separate minimum qualifying marks can be prescribed both for the written examination, and for interview, separately, but that such prescription has to be done in advance. The applicant, however, cannot derive any benefit from this judgement also in respect of her main prayers in this OA.

33. Further, the applicant has also not been able to rebut the submissions of the respondents that the Scheme of Examination itself did not prescribe anywhere that the marks of the Screening Test, if held,

would be added at the time of declaration of the final result. Therefore, we cannot but accept the contention of both the official respondents, as well as the private respondents, that the Screening Test was found to be necessary by the official respondents only in order to reduce the number of candidates to be interviewed, since the number of eligible candidates had exceeded 100, and that the marks obtained by a candidate at such a generalized Screening Test cannot at all be added for any of the Post Codes concerned with that Advertisement, much less a super-specialised post like that of a SSA (Chemistry) in FSL, where a deep knowledge of Chemistry, relating to Forensic Science, should alone form the basis for final selection of candidates, in order to facilitate better analysis of forensic data related to the criminal cases pending before various Criminal Courts.

34. Therefore, we find no merit in the O.A., and the O.A. is, therefore, dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.