

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 4465/2013

Reserved on 28.03.2017
Pronounced on 30.03.2017

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

Bhuvnesh Kumar Sharma,
S/o Shri P.D.Sharma,
R/o A-330, Sector 31,
NOIDA (UP). ... Applicant

(By Advocate: Mr. L.R.Khatana)

VERSUS

1. Chairman
Delhi Jal Board,
Govt. of NCT of Delhi,
Varunalaya Phase-II,
Karol Bagh, New Delhi-110005
2. Chief Executive Officer,
Delhi Jal Board,
Govt. of NCT of Delhi,
Varunalaya Phase-II,
Karol Bagh, New Delhi-110005
3. Member (Admn.),
Delhi Jal Board,
Govt. of NCT of Delhi,
Varunalaya Phase-II,
Karol Bagh, New Delhi-110005 ... Respondents

(By Advocate: Mr. Arvind Kumar Verma)

O R D E R

Hon'ble Mr. P.K.Basu, Member (A) :

The applicant is an employee of Delhi Jal Board (DJB) holding the post of Head Clerk on regular basis and at present performing the duties of Assistant Accounts Officer (AAO) on local officiating arrangement basis.

2. Vide Circular dated 12.11.2012, the respondents invited applications for filling up the vacant posts of Junior Accounts Officer

(now AAO) through Limited Departmental Examination (LDE). The examination was to be in two parts. After clearing part-1, the candidates were required to take part-II examination which has following three papers:

"PAPER-I: PUBLIC WORKS ACCOUNTS

Maximum Marks	:	200
Marks for Passing	:	80

PAPER-II: ADVANCED COMMERCIAL ACCOUNT

Maximum Marks	:	150
Marks for Passing	:	60

PAPER-III: COST & MANAGEMENT ACCOUNTS

Maximum Marks	:	100
Marks for Passing	:	40. "

The Circular dated 12.11.2012 regarding LDE for JAO part-II is placed at A-2. On perusal, it appears that only the cut off marks of 80:60:40 are mentioned. Beyond this there is no other condition laid down.

3. The applicant received 95, 60 and 40 marks in papers 1, II and III and thus successfully passed the said examination.

4. It is further stated that the respondents considered the candidates for appointment on the basis of their inter-se-seniority first from among the Head Clerks, thereafter Upper Division Clerks and thereafter LDCs. It is stated that the applicant is no 3 in the cadre of Head Clerks.

5. When the final order dated 29.04.2010 for promotion to the post of JAO came out, the applicant's name did not find mention. Aggrieved by this, applicant approached the respondents and he was told that he

was not successful/qualified in the examination because he has not secured 45% marks in the aggregate.

6. According to the applicant, there was no such stipulation of 45% marks in the aggregate in the Circular dated 12.11.2012 as well as Circular dated 09.10.2009 (Annexure-B to respondents reply) and Circular dated 24.06.2009 (Annexure-C to respondents reply). Learned counsel states that in para 9 of the Circular dated 9.10.2009, the following has been mentioned:

"Rules/guidelines as applicable in Govt. of National Capital Territory of Delhi for Junior Accounts Officer Examination shall apply in Delhi Jal Board, which are also available on the website <http://www.delhi.gov.in>. OR <http://coa.delhigovt.nic.in>."

It is stated that the applicant downloaded the conditions stipulated by GNCT of Delhi from their website, which he has annexed with his rejoinder dated 7.08.2014 (Annexed as R-1). These are consolidated instructions on common JAO (Part-I & Part-II) examination and on perusal of these instructions again there is no mention of 45% minimum marks.

7. The learned counsel for the applicant, therefore, argues that the respondents have deviated from their initial Circular dated 12.11.2012 as well as Circular dated 09.10.2009, 24.06.2009 and all on a sudden added this condition of 45% marks minimum. In this regard, learned counsel relied on **Hemani Malhotra Vs. High Court of Delhi** (2008) 7 SCC 11), wherein the Hon'ble Supreme Court has held as follows:-

"14 It is an admitted position that at the beginning of the selection process, no minimum cut off marks for vive-voce were prescribed for Delhi Higher Judicial Service Examination, 2006. The question, therefore, which arises

for consideration of the Court is whether introduction of the requirement of minimum marks for interview, after the entire selection process was completed would amount to changing the rules of the game after the game was played. This Court notices that in Civil Appeal No. 1313 of 2008 filed by K. Manjusree against the State of A.P. & Anr. decided on February 15, 2008, the question posed for consideration of this Court in the instant petitions was considered and answered in the following terms:-

"33. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview."

From the proposition of law laid down by this Court in the above mentioned case it is evident that previous procedure was not to have any minimum marks for vive-voce. Therefore, prescribing minimum marks for vive-voce was not permissible at all after written test was conducted.

15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement / qualification that the candidate should also

secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at vive-voce, test was illegal.

16. The contention raised by the learned Counsel for the respondent that the decision rendered in K.Manjusree (Supra) did not notice the decisions in Ashok Kumar Yadav v. State of Haryana (1985) 4 SCC 417 as well as K.H.Siraj v. High Court of Kerala and Others (2006) 6 SCC 395 and therefore should be regarded either as decision per incuriam or should be referred to Larger Bench for reconsideration, cannot be accepted. What is laid down in the decisions relied upon by the learned Counsel for the respondent is that it is always open to the authority making the rules regulating the selection to prescribe the minimum marks both for written examination and interview. The question whether introduction of the requirement of minimum marks for interview after the entire selection process was completed was valid or not, never fell for consideration of this Court in the decisions referred to by the learned Counsel for the respondent. While deciding the case of K.Manjusree (Supra) the Court noticed the decisions in (1) P.K.Ramachandra Iyer v. Union of India (1984) 2 SCC 141; (2) Umesh Chandra Shukla v. Union of India (1985) 3 SCC 721; and (3) Durgacharan Misra v. State of Orissa (1987) 4 SCC 646, and has thereafter laid down the proposition of law which is quoted above. On the facts and in the circumstances of the case this Court is of the opinion that the decision rendered by this Court in K.Manjusree (Supra) can neither be regarded as Judgment per incuriam nor good case is made out by the respondent for referring the matter to the Larger Bench for reconsidering the said decision."

The basic issue emphasized by the learned counsel is that once the Rule of the game has been prescribed before the selection process is started, subsequently the respondents cannot change the rules of the game. It is emphasized that the part-II examination was only a qualifying test and since the applicant had qualified he cannot be denied promotion.

8. Learned counsel for the respondents in their reply has stated that the DJB has, on the analogy of Delhi Government, adopted the condition that at least 45% marks is obtained by a candidate for consideration for promotion and that the applicant was well aware of

this provision. He also pointed out that the following clause has been added in the GNCT Notification:

"The provisions of the scheme are subject to change as per the instructions issued by the Govt. of NCT of Delhi & Office of CGA, Ministry of Finance, from time to time."

9. Heard the learned counsels and perused the various instructions as also the judgment cited by the applicant.

10. The examination is a qualifying examination and the applicant has qualified. His name also appears in the successful candidates list. Thereafter, he was not promoted because according to the respondents, they have a stipulation that the candidate has to obtain a minimum of 45% marks in part-II examination which the applicant has not been able to obtain. The applicant has obtained only 43.33% marks. However, the fact remains that neither in the main Circular dated 12.11.2012 nor in the Circulars dated 9.10.2009 and 24.06.2009 as well as the GNCT Notification is there any mention of this 45% minimum marks. If this was a condition that the respondents intended to apply then it should have been made clear in the 2012 Circular, which they have not. The same condition is not also specifically mentioned in the 2009 Circulars quoted above or in the GNCT instructions. Therefore, this condition seems to have been added later on, which is not permissible in law.

11. We, therefore, allow the OA and direct the respondents to grant promotion to the applicant with effect from the date his immediate junior has been granted promotion with all consequential benefits.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K.Basu)
Member (A)

'sk'