

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

MA 1810/2016 in
TA 27/2010

Reserved on: 02.04.2018
Pronounced on: 04.05.2018

(Yogendra Singh Vs. Ministry of Youth Affairs & Sports)

Present: Shri Rakesh Kumar Singh, for the applicant.

Shri R. Ramachandran, for respondent no.2.

Mrs. Jasmine Ahmed, Member (J)

This execution application has been filed in regard to judgment passed in TA No.27/2010 decided on 5.12.2013. Originally, this matter was filed before the Hon'ble High Court of Delhi and it was transferred before this Tribunal on account of alternative remedy available before this Tribunal. The issue involved in this case was that the respondents had initiated selection process to fill up 45 posts of Youth Coordinator although the process was stayed by the Ernakulam Bench of this Tribunal. Because of that reason, the concerned Joint Secretary and Director from the Ministry of Sports and Youth Affairs were called to know the fate of vacancies of District Youth Coordinator (DYC), which were to be filled up on the basis of selection in question. The concerned Joint Secretary and Director informed the Court that there were total 630 posts of DYC and it was not

permissible to fill up more than 10% of the sanctioned strength during one year. It was also informed to the Court by the Joint Secretary that they had already started the selection process to fill up 45 posts by way of special recruitment drive and it would not be possible to undertake another selection process for remaining vacancies. He also submitted that after the special recruitment drive for recruitment to 45 posts of DYC is finalized, the respondents would be able to initiate fresh selection process. To the above submission made by the Joint Secretary before this Tribunal, the learned counsel for the applicant stated as under:

“Shri Rakesh Kumar, learned counsel for applicants submitted that he would be satisfied if the applicants are allowed to participate in the fresh selection process to be held in accordance with the recruitment rules in vogue at the time of selection dated 07.11.1997 and right of the applicant to raise the issue of cancellation of the selection brought into focus in the present petitions is preserved.....”

2. Taking into consideration the statement given by the learned counsel for the applicant at the Bar, the Tribunal disposed of the TA with direction to the respondents as under:

“3.....we dispose of the present Transfer Applications with direction to respondents to consider the candidature of the applicants for the post of District Youth Coordinator within one month of finalization or call off the special recruitment drive for filling up 45 posts of District Youth Coordinator in accordance with the recruitment rules in vogue on 7.11.1997. Since the petitioners are before Court for last more than 14 years,

their candidature would not be rejected on the ground that they are age barred.....”

3. To understand clearly the background of the case, certain facts are needed to be elaborated or discussed here. The respondents herein initiated selection process for over 50 posts of Youth Coordinator on 3.01.1996 and invited applications from eligible candidates. They issued advertisement dated 26.12.1996 and the selection was held on 7.11.1997. However, ultimately the respondents cancelled the selection held on 7.11.1997 for the post of Youth Coordinator, which was advertised on 26.12.1996. Challenging that cancellation and non-declaration of result, a Writ Petition was filed in the Hon'ble High Court before a Single Judge. The learned Single Judge allowed the Writ Petition, which was challenged by the respondents by way of filing LPA and ultimately in view of Notification dated 31.10.2008 issued by the Government of India, the Hon'ble High Court transferred the Writ Petition to this Tribunal.

4. When the order of this Tribunal dated 5.12.2013 was not being complied with by the respondents, the applicant approached this Tribunal again by filing MA No.1971/2014 through which the applicant sought issuance of direction to the respondents to consider him for appointment as per the order of this Tribunal dated 5.12.2013 in terms of Recruitment Rules (RRs) in vogue as on 7.11.1997 by assessing his suitability through a Selection Committee

within a specific time limit. At that point of time, it was brought to the notice of this Tribunal that the process of filling up 45 posts of DYC vide letter dated 9.05.2013 has been challenged before the Hyderabad Bench of this Tribunal in OA 834/2013 as well as also OA 779/2013 before the Ernakulam Bench of this Tribunal and in both the OAs the interim orders were passed directing the respondents not to finalize the select panel. Accordingly, the respondents took the plea that since the selection process after finalization of which the applicant herein was to be considered for the post in question could not be finalized due to aforementioned interim orders passed by the Tribunal, no time limit could be specified to assess the candidature of the applicant in terms of orders passed in TA 27/2010. Taking into consideration the hurdle, this Tribunal disposed of that MA No.1971/2014 vide order dated 14.05.2015 directing the respondents that if the two OAs aforementioned are not decided within six months, the respondents shall go ahead with the selection process of the applicant against the available vacancies as per direction given by this Tribunal in TA 27/2010.

5. Learned counsel for the applicant contended that since the two orders in favour of the applicant dated 5.12.2013 and 14.05.2015 have not been complied with as yet by the respondents, the applicant has filed this MA for execution of the order dated 5.12.2013.

6. The respondents have filed their reply and stated that they have already published the advertisement for filling up the post and the applicant may participate as per the schedule. The respondents have stated that the applicant needs to apply and get qualified in the ensuing examination as per the schedule for being considered for appointment. The learned counsel for the respondents argued that as per the contention of the learned counsel for the applicant, no separate procedure qua the applicant can be framed and it is not permissible to formulate a Scheme and time schedule only for the applicant. It was further argued that relief as prayed by the applicant is being extended and therefore, it is now for the applicant to participate in the selection process.

7. The limited issue for consideration is whether candidature of the applicant has to be considered only as per 1997 RRs and how far it is permissible in today's scenario.

8. The learned counsel for the applicant vehemently argued and stated that the respondents are estopped from forcing the applicant to participate in the selection process which is not in accordance with the RRs of 1997 as the order dated 5.12.2013 categorically speaks that the post be filled in accordance with the RRs in vogue as on 7.11.1997. Thus, the learned counsel for the applicant stated that if the respondents force the applicant to participate in the recent selection process which is not as per order dated 5.12.2013,

it will be in complete disregard and disobedience of the order of this Tribunal. Learned counsel for the applicant also stated that in the year 1997, as per the RRs, the process of selection was twofold, one - written test and the other - interview. 60 marks was allotted for written test and 40 marks for interview. He also clarified that the written test was of an essay in English and an essay in Hindi or one of the languages in the 8th schedule of the Constitution. Both essays used to carry equal marks and 40 marks was for personal interview.

9. Learned counsel for the applicant stated that selection of the applicant has to be only on the basis of essay writing and no other method of written test can be adhered qua the applicant. The learned counsel in this regard drew our attention to page no.27 of reply filed by him on 9.11.2017 where he has filed RRs as in vogue on 7.11.1997. He further drew our attention to page no.22, 23 and 24 of the reply filed by him. At page no.22, we find is chapter-V of Nehru Yuva Kendra Sangathan (Service) Revised Regulation 1996. Page no.23 is chapter - IV of RRs whereas page no.24 speaks about RRs. It is seen that at page no.24 it is written clearly that as on today the NYKS is having a draft RR (annexed) which governs the recruitment of personnel into the Sangathan. In continuation, at page no.27 and 28, we find the guidelines regarding arrangements for the recruitment of Youth Coordinators. The learned counsel submitted that the

respondents are duty bound to follow the same procedure as prescribed in the draft RRs and the applicant should be subjected only to the writing of essays.

10. The learned counsel for the respondents stated that the order of this Tribunal was only to allow the applicant to participate in the fresh selection process to be held in accordance with the RRs in vogue at the time of selection dated 7.11.1997 and right of the applicant to raise the issue of cancellation of selection brought into focus in the petition was preserved. Since the petitioners are before the Court for the last more than 14 years, their candidature would not be rejected on the ground that they are age barred.

11. Learned counsel for the respondents vehemently argued that the claim of the applicant about the RRs of 1997 is baseless as it itself states that these are only draft RRs. He also stated that the guidelines are issued every year and it gets changed in accordance with the necessity. The learned counsel for the respondents argued that even the procedure which was being following in 1997 was also twofold, consisting of written test and interview - 60 marks for written test and 40 marks for interview. Even at that point of time, the respondents did not deviate from that procedure and it is still 60 marks for written test and 40 marks for interview. Learned counsel for the respondents stated that the applicant cannot press for a separate procedure to be followed for him

as it will create a disturbing situation and is not at all permissible. It has also been stated that the respondents would be following the same selection process i.e. written test and interview. He further stated that while in the year 1997 the pattern for the written test was an essay in English and an essay in Hindi or one of the languages in the 8th schedule of the Constitution, in the ensuing selection process, the pattern of written test proposed to be conducted for selection of DYCJs is as under:

	Name of Written Test	No. of Questions	Max. Marks	Medium	Duration	Penalty (negative mark for wrong answer)	Passing Marks
1.	Reasoning	40	40	Hindi and English	120 minutes	Yes	No pre determined passing
2.	General Knowledge	40	40				
3.	English Language	40	40	English			
4.	General Paper on understanding of Indian economic, social, cultural, logical and political environment, understanding community and youth development programme	40	40	Hindi and English			
5.	Quantitative Aptitude	40	40				

12. Learned counsel for the respondents contended that the aforesaid pattern of written test has been made in order to remove any personal bias nor would it create any discrimination amongst the candidates. Learned counsel stated that the process adopted for the ensuing selection is in accordance with the broad principles and guidelines laid

down by various Courts including the Hon'ble Apex Court and as per the overall government norms which are applicable for the UPSC exams also to promote objectivity and to reduce subjectivity, arbitrariness and discretion in the selection process. Written examination will have 80% weightage and interview will have 20% weightage.

13. Learned counsel for the respondents further added that the applicant is at liberty, as per the direction, to participate in the ensuing selection process for being considered for appointment. He stated that no arbitrariness has been caused by the respondents to the applicant.

14. Heard the rival contentions of the parties and perused the documents on record.

15. The undisputed fact is that this Miscellaneous Application is an Execution Application and, therefore, any consideration of the same is circumscribed by the operative part of the order and to offer an interpretation, if there is a dispute about the same. The exact articulation of the order whose execution is being sought, is as follows:-

“3...In view of the stand taken by learned counsel for applicant, without going into the controversy whether the respondents were justified in not declaring the result of selection held on 7.11.1997 and cancelling the same or not, we dispose of the present Transfer Applications with direction to respondents to consider the candidature of the applicants for the post of District Youth Coordinator within one month of finalization or call off of the

special recruitment drive for filling up 45 posts of District Youth Coordinator in accordance with the recruitment rules in vogue on 7.11.1997..."

16. In other words, the respondents were directed to consider the candidature of the applicant in accordance with recruitment rules which were in existence or in practice on 07.11.1997. The fact of the matter, which was admitted by both the parties, is that there were no recruitment rules in existence on 07.1.1997. They were draft rules which were finalized later in 1998 and, therefore, for the purposes of implementation of this order, we will deem the draft rules, finalized in 1998, as the relevant rules for this purpose. The dispute between the applicant and the respondents is with regard to the interpretation of the Tribunal's direction.

17. The respondents argue that the rules which were the basis for recruitment in 1997 mentioned only about written examination and interview as the mode of selection whereas the scheme of written test, which was by way of an essay paper, and the marks allocated for that purpose and for interview were part of a guideline which was meant only to regulate the exact process of written test and interview. The respondents further argue that the guidelines could not be construed as part of the rules because the guidelines may vary from time to time, and while the rules are sacrosanct, the guidelines do not enjoy the same level of sanctity.

18. The applicant, on the other hand, contests this interpretation and contends that the intention of the Tribunal was to allow him to appear in a fresh selection process in the same terms and in the same manner in which the 1997 selection was envisaged. In other words, the applicant argues that he should be allowed to undertake the written examination by way of writing an essay which may carry 60 marks followed by interview carrying 40 marks. It has been clarified by the respondents that in the new process, while the basic process of selection still consists of written examination and interview, the design of written examination has been changed to objective type test followed by an interview and the allocation of weightage to written test and interview also has undergone a change vis-à-vis the process of selection in 1997 which is now 80 marks for written test and 20 marks for interview.

19. Guidelines, whether they are part of the rules or not, have been a subject matter of many controversies and, to our mind, the accepted position generally is that if the guidelines fill a gap or amplify the relevant rules without, in any way, changing the basic nature of the rules, thus could be deemed to be an extension of rules. However, this is also true that the guidelines do not enjoy the same legal stature vis-à-vis rules, particularly in regard to the conduct of examination like the one we are discussing.

20. It is certainly open to the respondents to change the design of written test or interview or alter the weightage of marks between the written test and interview because such details are not enshrined in the rules. Further, the guidelines may change from time to time and, therefore, if the respondents have decided to conduct the written examination and the interview in a certain manner for the fresh round of selection, insistence of the applicant that he be tested as per the old design is not understandable to us. Firstly, strictly in terms of rules, the respondents are at liberty to give the applicant an opportunity of appearing in the written test and interview. It needs to be remembered that the applicant is only one among several candidates who had applied for the post in 1997 and if we accept the contention of the applicant, the same would mean that for the same selection process, there will be two sets of written examination and interview – one set which would be only for the applicant which will consist of written examination comprising of an essay paper and the interview, while all others will appear in the written test of an objective nature followed by an interview. The inter-se allocation of marks also between the first set and second set would be different. In our view, such cannot be the intention of the Tribunal's order. Our reading of the Tribunal's order convinces us that the Tribunal was clear in its mind that the applicant must be given an opportunity of consideration at the time of fresh selection as per rules and

we do not certainly, reading the Tribunal's order, find that it also meant that the same pattern of examination and the same pattern of allocation of marks between written test and interview be followed in respect of applicant when he is being considered afresh along with other candidates.

21. There is also a practical side of this issue. The evaluation of an essay paper is quite subjective so is not the case as far as objective type test is concerned. Therefore, for the same examination, there will be two very different ways of evaluating a question paper. Likewise, while the applicant will be evaluated in the interview for 40 marks, the other candidates would be evaluated for 20 marks. This also will create avoidable problems and complications with regard to transparency and fairness of the process.

22. In conclusion, our considered view is that the ends of justice shall be met if the applicant is allowed to participate in the fresh selection process along with other candidates under the new scheme of written examination and interview and no injustice will be done to the applicant if he is allowed to do so without insisting that he be tested as per the old pattern of examination. We cannot fault the respondents for devising a better method of conducting a written examination which seems to be more transparent and objective. The key question is that the applicant must get a fair opportunity of participating in the fresh selection process and that in no way

is denied if he follows the pattern of examination and interview as envisaged in the new selection process. The MA stands disposed of accordingly.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

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