

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.2205/2015

Reserved on 13th July 2018

Pronounced on 25th July 2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Ravi Kumar, aged 39 years
r/o KG-1, 543, Vikaspuri
New Delhi – 110 018

..Applicant

(Applicant in person)

Versus

1. Dr. Satbir Bedi (Ex-Chairman)
Central Board of Secondary Education
Union Ministry of HRD
Shastri Bhawan, Delhi – 110 001
2. Mr. Emmanuel Joseph, Secretary (Former)
Central Board of Secondary Education
Shiksha Kendra, Preet Vihar
Delhi – 110 092
3. Union of India
Represented by the Secretary
Ministry of Human Resource & Development
Shastri Bhawan, Delhi – 110 001
4. Mr. Ram Veer, Assistant Secretary
Central Board of Secondary Education
Sheikhpura, Raza Bazaar, Bailey Road
Patna, Bihar 800014

(amended memo of parties as per M.A. No.1763/2018)

..Respondents

(Mr. Anil Srivastava and Mr. Mohit Kumar, Advocates)

O R D E R

Mr. K.N. Shrivastava:

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

- “i) Suitable directions to Respondent 1 to make an offer to Applicant for the post of Assistant Secretary as per Annexure A-1, and/or
- ii) Quashing of the entire process of selection or process at stage of interview, and/or
- iii) Conduct of the entire interview process by an independent body of professionals in a transparent manner.
- iv) Provision of details of interview weightage and respective marks of candidates with proper differentia.”

2. Factual matrix of the case, as noticed from the records, is as under:-

2.1 The Central Board of Secondary Education (CBSE) – respondent organization invited applications for various posts vide Annexure A-2 Advertisement Notice dated 08.02.2014. The Advertisement also included the post of Assistant Secretary. Four vacancies were indicated against the post of Assistant Secretary. One post each was reserved for un-reserved and SC categories, and the remaining two posts were reserved for OBC category. The applicant, who belongs to SC category, applied for the post. The selection process comprised three stages, namely, objective test of 100 marks with multiple choice questions, written examination of 100 marks and interview of 20 marks. The Advertisement Notice also stipulated age relaxation as well as it indicated that the vacancies may increase or decrease. A Note incorporated in the Advertisement Notice reads as under:-

- “Note (i) The number of vacancies may increase or decrease.
- (ii) The management reserves the right to short list the candidates on merit, experience, written and/or skill test.
- (iii) Reservation for SC/ST/OBC/PWD/Ex Serviceman will be as per Govt. of India rules.

(iv) Relaxation in age limit will be as per Govt. of India rules which is presently as follows:-

- a. SC/ST - 5 years
- b. OBC - 3 years
- c. PWD - 10 years
- d. Ex serviceman/Women – 10 years

2.2 The applicant participated in the selection process. He secured 42 marks out of 100 in objective test. The cut-off marks for the objective test was 25 marks for general category and 20 marks for SC/ST categories. The applicant, having secured 42 marks, was declared successful and thus became eligible for participation in the written test. The marks of objective test were not to be counted, as objective test was just a qualifying test.

2.3 The applicant appeared in the written test and secured 75 marks out of 100 marks, which, he claims, was the 3rd highest. He, however, was given only 2 marks out of 20 in the interview. As could be seen from the records, the marks secured in the written test was normalized in terms of reducing the maximum marks from 100 to 80, and accordingly re-working out the marks secured by the individual candidates.

2.4 There was no such normalization adopted in interview marks. The merit list was prepared considering maximum 80 marks in written examination and maximum 20 marks in interview.

2.5 The CBSE also reduced the number of vacancies from 4 to 3. While one vacancy each was retained for UR and SC category, the vacancy for OBC category was reduced from 2 to 1.

2.6 Vide Annexure A-1 memo dated 19.03.2015, CBSE declared the names of three selected candidates for the post of Assistant Secretary, namely, Mr. Virat Misra (UR), Mr. Rajesh Kumar Gupta (OBC) and Mr. Rakesh Kumar (SC). In the SC category, Mr. Ram Veer (respondent No.4) was kept in the reserved list. Mr. Rakesh Kumar did not join; as a result, operating the reserved list, the post reserved for SC category candidate was offered to respondent No.4.

2.7 The marks secured by Mr. Rakesh Kumar, Mr. Ram Veer (respondent No.4) and Mr. Ravi Kumar (applicant), all in SC category, are given in the table below:-

Marks	Names of candidates (1)	(2)	(3)
	Rakesh Kumar, Roll No.CST104818	Ram Veer, Roll No.CST104883	Ravi Kumar, Roll No.CST104991
Marks in objective test	32/100	34/100	42/100
Original marks in descriptive functional knowledge Test	60.5/100 (60.5%)	66/100 (66%)	75/100 (75%)
Interview marks	15/20 (75%)	10/20 (50%)	02/20 (10%)
Normalized scores (written test maximum marks 80 + interview maximum marks 20)	48.4 + 15 = 63.4	52.8 + 10 = 62.8	60 + 2 = 62

The grievance of the applicant is that unfairly his candidature for the post in question has been rejected and, accordingly, he has approached the Tribunal for justice in this O.A. praying the reliefs as indicated in paragraph (1) above.

3. In support the reliefs claimed, the applicant has pleaded the following important grounds:-

3.1 No rules have been framed for the selection process as well as the tests to be conducted.

3.2 The cut-off marks for written test was kept astonishingly low, i.e., 20 – 25 marks out of 100. The number of candidates called for interview was disproportionately very high. It should have been 10 times of the vacancies.

3.3 The applicant is highly qualified. He has done MBA from IIM, Kozhikode and is a full merit scholarship holder of Govt. of India. The applicant has been deprived of selection due to unusually high weightage of more than 30% to the interview.

3.4 Despite having secured very high marks in written test, he has not been considered.

4. Pursuant to the notices issued, the respondents entered appearance and filed their respective replies. In the reply filed on behalf of CBSE (respondent Nos. 1 & 2), following important averments have been made:-

The CBSE had right to shortlist the candidates on the basis of merit, experience, written and / or skill test. The selection process comprised three steps, i.e., objective type test, descriptive test and interview. The objective test was a qualifying test. The final merit list was to be made on the basis of marks secured in written test and interview, and again the written test marks were to be re-adjusted from maximum of 100 on a scale

of 80. The applicant has secured less marks in comparison to the selected candidates.

5. In reply filed on behalf of respondent No.4, it is stated that he has been selected to the post of Assistant Secretary under SC quota as per his own merit and has joined the post at CBSE, Regional Office, Guwahati on 13.08.2015. It is further stated that the selection process was legitimate. The applicant has participated in selection process and he has started foul crying only after he could not get selected to the post.

6. After completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 13.07.2018. Arguments of applicant, as party in person and that of Mr. Anil Srivastava with Mr. Mohit Kumar, learned counsel for respondents were heard.

7. Reiterating his pleadings in this O.A. and the rejoinder, the applicant submitted that there was no transparency in the selection process, and that the rules of the selections were not notified to the candidates. He further stated that the candidates were never informed that the marks secured in the written test are going to be reduced from maximum 100 marks to a maximum of 80. He vehemently argued that the partisan attitude of the respondent Nos. 1 & 2 is evident from the fact that the applicant, after having secured one of the highest marks of 75 out of 100 marks in the written test, has been declined appointment, whereas those, who secured much less marks in the written test, have been considered. He also alleged unfairness in awarding him just 2 marks out of 20 in interview, even though he is highly qualified and possesses MBA from IIM, Kozhikode.

8. Placing reliance on the following judgments of Hon'ble Supreme Court, the applicant submitted that skewed distribution of marks in interview has also been deprecated by the Hon'ble Supreme Court:-

- i) **Ashok Kumar Yadav & others v. State of Haryana & others**,
(1985) 4 SCC 417; and
- ii) **Ajay Hasia & others v. Khalid Mujib Sehravardi & others**,
(1981) 1 SCC 722

9. The applicant alleged discrimination in award of interview marks. He said that he has been given just 2 marks out of 20 in the interview, whereas Rakesh Kumar was given 15 marks and respondent No.4 was given 10 marks.

10. *Per contra*, Mr. Anil Srivastava, learned counsel for respondent Nos. 1 & 2 submitted that the CBSE does not have any bias against the applicant. The selection process was transparent. The applicant has participated in the selection process and hence, after having failed to make the grade, he cannot question the selection itself.

11. We have considered the arguments of both the parties and have also perused the pleadings and documents annexed thereto.

12. The Annexure A-1 Advertisement Notice of CBSE has spelt out the terms of selection. It is not the case of the applicant that he was not aware that the selection would comprise three stages, namely, the objective test of 100 marks with multiple choice questions, written examination of 100 marks and interview of 20 marks. The normalization process adopted by

the respondent – CBSE for adjusting the written test to a maximum of 80 marks and retaining the interview marks of 20 and to prepare the merit list within the maximum of 100 marks (80 for written test and 20 for interview), was common to all the candidates. We fail to understand as to how such a method could have been prejudicial to any candidate. Although the applicant has done very well in the written test, but in the interview his performance has not been so good in comparison to others. Possessing of higher qualification, such as MBA from IIM, Kozhikode does not guarantee that such a candidate is going to perform better in comparison to others in the interview. The applicant has not alleged any bias against the members of the Selection Committee either, nor is there any pleading to that effect.

13. The Hon'ble Supreme Court in **K.A. Nagamani v. Indian Airlines & others** (2009) 5 SCC 515 has held that an unsuccessful candidate after having participated in a selection process, without any demur or protest, could not be permitted, later on, to question the process of selection.

14. In the conspectus of discussion in the foregoing paragraphs, we do not find any merit in this O.A. It is accordingly dismissed. No costs.

(**K.N. Shrivastava**)
Member (A)

(**Justice Dinesh Gupta**)
Member (J)

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