

**Central Administrative Tribunal
Principal Bench**

OA No. 4616/2015

Orders Reserved on: 03.09.2019.

Pronounced on: 06.09.2019.

Hon'ble Mr. Pradeep Kumar, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)

Honey Heera, aged 24 years,
S/o Sh. Avinash Heera,
R/o H.No.10468, Street No.3,
Vikrant Nagar, Delhi-110007.

-Applicant

(By Advocate Shri S.S. Pandey)

-Versus-

1. Commissioner of Delhi Police
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi-110002.
2. The DCP/Addl. DCP (Estt.),
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi-110002.
3. The DCP/Recruitment Cell,
New Police Lines, Kingsway Camp,
Delhi-110009.

-Respondents

(By Advocate Ms. Neetu Mishra for Ms. Rashmi Chopra)

O R D E R

Hon'ble Mr. Pradeep Kumar, Member (A):

Delhi Police have issued a recruitment notice where last date for submission of application forms was

11.06.2013. The said notice contained eight different posts and the present applicant applied for the post of Assistant Sub Inspector (Radio Technician). There were total 41 vacancies (21 UR, 16 OBC, 1 SC and 3 ST). 10 % of the vacancies were reserved for ex-servicemen as per the Government of India's instructions.

The applicant claims that he belongs to OBC but, since requisite OBC certificate was not available with him earlier at the relevant point of time, he applied as a general candidate.

2. The applicant qualified for physical measurement standards test and physical endurance test held on 13.10.2014 and was accordingly allowed to appear in the written examination which was held on 12.03.2015. The result was declared in April, 2015 and having qualified in the written examination by way of securing 71 marks, he was allowed to appear in the trade test, which was in the nature of qualifying test, as the final merit was to be prepared based on the result of written examination only.

The applicant appeared in the trade test on 28.05.2015 and qualified in the same. The final result

was declared in August, 2015. The applicant was not selected.

He applied for RTI query on 21.09.2015 and received certain information including his answer-sheet of the written examination. Based upon a model answer key to the multiple choice objective question, he made a representation to the respondents on 28.09.2015 that answer to multiple choice objective question no.24 was not evaluated correctly.

This was taken into account by the respondents and it was found that while the applicant was required to be given marks for question no.24, marks awarded incorrectly for two other multiple choice objective questions, viz., question nos. 9 & 55 due to mistake, were required to be deducted also. Accordingly, after re-evaluation applicant secured 70 marks (71+1-2). The cut off was fixed as 71 marks for general category and hence applicant has not qualified in the written examination.

3. Feeling aggrieved at his non-selection, the applicant had filed the instant OA. It has been pleaded that Standing Order No.83/2013 issued on 04.02.2013, by Commissioner's office specifies that multiple choice objective type examination is to be conducted by printing

the answer sheets in OMR pattern whereas the instant test was conducted by giving a question paper which also included four options for answer, out of which a candidate was required to choose only one correct option and tick it in blue or black pen. It was pleaded that this system, as adopted, can lead to errors and hence improper evaluation.

3.1 The applicant has also relied upon a judgment by the Hon'ble High Court of judicature for Rajasthan wherein certain matter was considered in Civil Writ Petition No.117/2012 with other connected Writs (**Irshan**

Rashid Pathan & Ors. v. State of Rajasthan & Ors. etc.

etc.) wherein it was held that insofar the quota meant for ex-servicemen is concerned, unfilled seats would be filled from amongst the candidates belonging to general category. And since certain posts are still vacant, including the one where an ex-serviceman was declared successful, applicant needs to be considered for all such vacancies.

4. Applicant sought the following reliefs:

“(i) Call for the records based on which the Respondents have denied the employment to the Applicant as ASI (Radio Tech) being illegal, unfair and contrary to the procedure prescribed by the Respondents resulting in denial of rightful claim of the Applicant.

(ii) Direct the respondents to issue the joining instruction/offer of appointment to the Applicant as issued to other successful candidates.”

5. Per contra, the respondents opposed the OA. It was pleaded that as per the recruitment notice issued by Delhi Police, following criteria was specified for the written test, trade test and the basis to prepare the final result:

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| Written Test | All candidates, who qualify the PE&MT, shall be put through a written test of 02 hours duration which will carry 100 marks. The paper shall be in two parts – first part consisting of question of 80 marks on theory on electronics and telecommunication of diploma standard, the second part shall consist of question of 20 marks on general knowledge. The paper shall be Multi Choice Questions (MCQ). |
| Trade Test | <ul style="list-style-type: none"> (a) Those candidates who secure 40% marks and above in the written test would be called for a ‘trade test’ (b) The trade test shall comprise of identifying faults, analysis and repair of faults in the wireless communication equipments used in Delhi Police. (c) Specific faults will be introduced in a working set which to be repaired and made operational by the candidates. (d) Similarly, the candidates will be tested for repairing of power supply, public address system and various tests/measuring equipments. (e) The trade test will be of 50 marks and the candidate securing less than 25 marks (50%) will be eliminated while preparing the final result. |
| Final Result | The final result will be prepared on the basis of marks obtained in the Written Examination (100 marks). Where equal marks have been obtained by candidates their merit will be fixed as per date of birth. The older candidate will be given |

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| | preference and in case the date of birth is also the same, marks in the trade test would decide the merit. |
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The applicant had applied as a general candidate and having secured 71 marks in written examination, whereas the cut off marks was also 71, he was declared as successful and he was called to appear in the qualificatory trade test. The applicant qualified for the trade test also.

However, in keeping with the number of vacancies and the number of qualified candidates, the name of the applicant could not be included in the list of those who were finally selected. The respondents had issued a final list of 19 candidates under open category, 14 under OBC, 01 SC 01 ST and 01 under ex-servicemen, i.e., total 36 candidates.

6. Once the applicant got his answer-sheet re-evaluated, he secured 70 marks in the written test which was less than the minimum cut off marks set at 71. Accordingly, his name could not be included.

The applicant's plea that out of total 41 vacancies only 36 were filled and thus 05 vacancies were still vacant and the applicant should be considered for one of these 05 vacancies, is not acceptable because there was no

system to keep a waiting list and the applicant did not secure minimum cut off marks for the general category.

7. The respondents also pleaded that in the rejoinder the applicant has now pleaded to be considered as an OBC candidate. It was pleaded that applicant had initially applied as a general category candidate and submitted a representation subsequently that he was issued an OBC certificate on 30.03.2016, and he be considered as an OBC candidate. This could not be taken into account for the purpose of this examination, as category cannot be changed midway.

8. The matter has been heard. Shri S.S. Pandey, learned counsel represented the applicant and Ms. Neetu Mishra for Ms. Rashmi Chopra, learned counsel represented the respondents.

9. After arguing the matter for some time, the applicant did not press his candidature as an OBC candidate. Hence, this aspect has not been delved further by this Tribunal.

10. The applicant herein had applied as a general category candidate. He qualified the physical measurement standards test (PM) and the physical

endurance test (PE) as well as the written examination by securing 71 marks. The applicant did not question the method of examination or evaluation etc. at that stage.

The law is fairly well settled in this regard. If the rules or guidelines of selection for appointment are indicated in the recruitment notification, a candidate who participated in the selection cannot assail the same when it is found that he is not selected. In a way, the principle of estoppel operates against him. In other words, if he had any objection to the selection process, he is required to approach the Court or Tribunal, well in advance, and before participation. He cannot challenge the conditions after conclusion of the selection process. Reference in this context can be made to the judgments of Hon"ble Supreme Court in **Madan Lal & Ors. vs. State of Jammu and Kashmir & Ors** 1995 (3) SCC 486; **Chander Prakesh Tiwari & Ors. v. Shakuntla** 2002 (6) SCC 127; **Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and Others** (2011) 1 SCC 150, to mention a few.

10.1 Even on merit also, the pleas of applicant do not succeed as para 14 (iv) of the same Standing Order No.83/2013 dated 04.02.2013 also gave certain leeway to respondents to follow an alternate system. Even

otherwise, no prejudice has been caused to the applicant by the system of examination as adopted as this very same system was applicable to all candidates.

10.2 Having qualified in the written examination, he appeared in the trade test also and qualified the same. No question was raised even at that stage.

10.3 It was only after his name was not included in the final select list, that he obtained RTI information and questioned evaluation of his answer-sheet in respect of question no.24. At that stage, he was awarded marks for question no.24 which was not awarded earlier. However, during this re-evaluation, it was seen that for two other questions, viz., question nos.9 and 55, applicant was incorrectly awarded marks earlier. Accordingly, after this re-evaluation, the applicant secured 70 marks (71+1-2). These are admittedly less than the cut off marks (71 marks) for general category. On this basis alone, the result of the applicant cannot be declared as successful as per the scheme of this recruitment (para 5 supra).

10.4 The merit list for the said examination was prepared as per the criteria notified in the recruitment notice for preparing the final select list, wherein candidates securing equal marks in written examination

were to be put in the order of their date of birth and the older candidate being ranked higher in merit. In case the date of birth also remains the same, the marks obtained in the trade test would decide the merit.

This criterion would have been relevant for all those candidates who secured 71 marks in written examination, which was the minimum cut off marks. However, once the applicant secured 70 marks, this criterion no more remains relevant for him.

10.5 The applicant's plea for filling up of the vacant five posts by lowering cut off marks, is not acceptable. Accordingly, the question of allocation of vacancies to ex-servicemen does not need any adjudication at this stage in regard to the instant applicant.

11. The pleas put forth by applicant are not finding acceptability. Accordingly, Tribunal is not finding any merit in the OA and the same is dismissed. No costs.

(R.N. Singh)
Member (J)

(Pradeep Kumar)
Member (A)

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