

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 07.12.2009**

% **W.P(C) 6639/2008**

DALJIT KAUR SETHI Petitioner
Through: Mr. S.N. Kumar, Senior Advocate
with Mr. K.B. Soni, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS. Respondent
Through: Ms. Anusuya Salwan, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No. |
| 2. To be referred to Reporter or not? | No. |
| 3. Whether the judgment should be reported
in the Digest? | No. |

VIPIN SANGHI, J.

1. The petitioner Daljit Kaur Sethi has filed the present writ petition under Article 226 of the Constitution of India to impugn the order dated 25.02.2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A. NO. 64/2007 whereby the Tribunal has dismissed the said application as being without merit.

2. The petitioner was employed as a non technical supervisor on daily wage basis in the DDA in 1983. He was regularized as a Work Charge Mate in the pay scale of Rs. 800-1150 in 1989. He was subsequently placed in the higher pay scale of Rs. 950-1400. According to the petitioner, though he was regularized as a Work Charge Mate, he was performing the work of a Stenographer.

3. Vide office Circular dated 18.01.1990 the respondent DDA invited applications for the post of Stenographers from departmental candidates employed either on regular / work-charge / contract basis / ad-hoc basis. The following eligibility conditions were prescribed:

- i. They had passed matriculation or equivalent examination from recognized Board/University and
- ii. Had a speed of 80/40 w.p.m. and 80/30 words in English Hindi Shorthand and Typewriting respectively.

4. The petitioner fulfilled the eligibility conditions and applied for the post of Stenographer in English/Hindi in the pay scale of Rs. 1200-2040. The respondent DDA held a test in respect of the said recruitment process on 14.07.1990 wherein the petitioner also participated.

5. According to the petitioner the result of the said recruitment process was not declared. Without declaring the said result, by another Circular dated 12.09.1991, the respondent invited applications once again from the employees of DDA for the post of

Stenographer on the same terms and conditions as aforesaid. The petitioner states that he protested against the issuance of the said Circular on the ground that the result of the test earlier conducted on 14.07.1990 had not been declared. He claims that the respondent had assured that the petitioner's right under the earlier test would not be affected. Consequently, he applied once again in the selection process initiated vide Circular dated 12.09.1991. The respondent held the test on 21.01.1993. The petitioner claims that the result of the said recruitment process was also not declared. The respondent thereafter issued yet another Circular dated 21.01.1994 inviting applications for recruitment to the post of Stenographers (English) from DDA employees working as LDCs only who fulfill the following conditions:

- i) Passed Senior Secondary Certificate or equivalent from recognized Board/University.
- ii) Proficiency in Shorthand and Typing having speed of 80 w.p.m. in Shorthand and 40 w.p.m. in Typing.
- iii) Preference will be given to such persons who have acquired Diploma in office Management and Secretarial Practice from any recognized Institution.

6. At this stage the petitioner and one other person Ms. Ajit Kaur preferred C.W.(P) No. 2631/1994 in this Court praying for the following substantive reliefs:

- a) A writ of certiorari, or, any other appropriate writ, order or directions quashing office circular No. F-1(1)

(94)/PB-III dated 21.1.94 (Annexure P-7) issued by the office of the Respondent No. 3, Joint Director (P) III, whereby the respondents are seeking to reserve 100% of the vacancies to the posts of Stenographers to be filled vide the aforementioned circular dated 21.1.94 from amongst LDCs in DDA and thereby debarring other employees including the petitioners from being considered for recruitment to the posts of Stenographers which action of the respondents is wholly malafide, arbitrary, irrational and thus offending Articles 14 and 16 (1) of the Constitution.

- b) A writ of certiorari, or any other appropriate writ, order or directions quashing the test of LDCs in the office of the Respondents held on 21.5.94 for recruitment to post of Stenographers in the office of respondents in pursuance of the aforesaid circular No. F-1(1) (94)/PB-III dated 21.1.94 (Annexure P-7) and the consequent recruitment of Stenographers in the office of the Respondents made/ which may be made on the basis of the results of the said test held on 21.5.1994.
- c) Writ of mandamus, or any other appropriate writ, order or direction, directing the respondents to declare the results of the tests held on 14.7.90 and 21.3.1993 for recruitment to the posts of Stenographers in pursuance of the office circulars Nos. F-1(26)86/PB-III dated 18.1.90 and office circular No. F-1 (5)91/PB-III dated 12.9.1991 respectively.
- d) A writ of mandamus, or any other appropriate writ, order or directions directing the respondents to make recruitment to the posts of Stenographers (English) in the office of the Respondents on the basis of the aforementioned tests held on 14.7.1990 and 21.3.1993.

7. The aforesaid writ petition was transferred to the Tribunal on it being invested with jurisdiction to hear service matters relating to employees of DDA, and the same was re-numbered as T.A. No. 64/2007.

8. The respondent DDA filed their counter affidavit and contested the writ petition / transferred applications. On the basis of the facts disclosed in the counter affidavit of the DDA the Tribunal dismissed the transferred application.

9. The respondent DDA disputed the petitioner's claim that he was deputed to work as a Stenographer. The stand of the DDA in their counter affidavit was that the recruitment process initiated vide an office Circular dated 18.01.1990 was scrapped on account of irregularities found therein. No one was appointed as a result of that recruitment process. In respect of the recruitment process undertaken vide office Circular dated 12.09.1991, the petitioner had again submitted his application. In that recruitment process only three persons had qualified namely Ms. Reena Kocchar, Mr. Rajesh Kumar and Ms. Sunita Girdhar. These three persons were offered the post of Stenographer but only one Ms. Reena Kocchar had joined. The petitioner had failed in this attempt. The respondent DDA had further disclosed that the recruitment regulations for the post of Stenographers had been revised vide resolution no. 61 dated 1.06.1992, and as per the revised recruitment regulations, the

feeder cadre for the post of Stenographer is the cadre of LDCs who possess the requisite educational qualifications and minimum speed in typing. Since the petitioner was only working as a Work Charge Mate, in view of the amended regulation dated 11.06.1992, the petitioner was not eligible to apply for the post of Stenographer when the Circular dated 21.01.1994 was issued. Consequently, the petitioner's candidature was not considered.

10. Before us the submission of learned counsel for the petitioner is that the respondents should have produced the relevant record before the Tribunal in relation to the recruitment process initiated vide Circular dated 18.01.1990 for which tests were held on 14.07.1990. It is argued that the respondent ought to have declared the results, or at least the factum of the said recruitment process being quashed.

11. The respondent DDA was directed to produce the relevant record on the basis of which it was claimed by the respondent that a vigilance inquiry had been conducted into the recruitment process undertaken vide Office Circular dated 18.01.1990. The said record has been produced by the respondent and has been perused by us.

12. Before we deal with the vigilance record produced by the respondent we may observe that, even otherwise, there is no merit in the writ petition and we find no infirmity in the impugned order passed by the Tribunal. The petitioner, in our view, was estopped

from questioning the non declaration of the result in respect of the recruitment process initiated vide office Circular dated 18.01.1990, as the petitioner had not raised any grievance in relation to the non declaration of the said result when the Circular dated 12.09.1991 was issued by the respondent-once again initiating recruitment process for the post of Stenographer. Though the petitioner claims that he protested when the Circular dated 12.09.1991 was issued, nothing has been placed on record to show the lodging of any such protest. There is no basis for the petitioner's claim that the respondent had assured the petitioner that the petitioner's rights in respect of the recruitment process initiated vide Circular dated 18.01.1990 would be preserved. Having willingly participated in the subsequent recruitment process, in our view, the petitioner waived whatever rights the petitioner may have had on account of his participation in the recruitment process relating to the office Circular dated 18.01.1990 for which the test was conducted on 14.07.1990.

13. Even otherwise, we find no merit in the submission of the petitioner, and the stand of the respondents with regard to the recruitment process arising out of the Circular dated 18.01.1990 being scraped appears to be well founded. A perusal of the record shows that a complaint was received by the respondent in respect of the test held in July 1990. According to the complaint the examiners had been called from an outside department and they had failed candidates who had refused to oblige the examiners. The answer

sheets of the successful candidates were checked. It was found that mistakes committed by various candidates who were declared successful were ignored, whereas mistakes committed by those candidates who were declared failed were exaggerated. The matter was further examined and it was found that out of the three examiners, one examiner did not evaluate the answer sheets for about three and a half months and it was only after much persuasion that he submitted the same. The result submitted by the said examiner was unsigned. Once again on scrutiny of the answer sheets of various candidates it was found that they had been declared successful though they had committed more than the threshold number of mistakes. From the file notings it is seen that the proposal of scraping the examination in view of the vigilance report regarding the irregularities was taken on 26.05.1992. We are, therefore, satisfied that there was sufficient justification for the respondent to scrap the said test.

14. In view of the aforesaid position we find no merit in this petition and dismiss the same leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

December 07, 2009
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ANIL KUMAR, J.