

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION(C) NO.4723/2008

Reserved on: 15.12.2010
Date of Decision : March 11, 2011

MS. MADHU KUKRETI Petitioner
Through Mr. Pradeep Kumar, Advocate

versus

UOI & ORS. Respondent
Through Ms. Madhu Sweta, Advocate
Md. Naushad Alam, Advocate for R3.

CORAM:
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

SUDERSHAN KUMAR MISRA, J.

1. In this petition, the petitioner impugns the decision of the second respondent to amend the selection criteria on the ground that the changes in question were brought about after the selection process had been completed. She states that under the circumstances, the changes brought in have placed her at a disadvantage. The petitioner, however, has not challenged the entire selection process but only the appointment of the third respondent, Raghubir Singh Kainturia. It is alleged that the selection process was amended with a view to manipulate the results and extend favour to the third respondent.

2. The second respondent is stated to have issued an advertisement on 29th July, 2006, in the Employment News inviting applications for the post of Executive Assistant for its corporate Office at New Delhi and the petitioner, admittedly, applied for the same. The advertisement set down the following requirements for recruitment as Executive Assistant (Direct Recruitment) :

“The candidate should be a graduate from a recognized University with a shorthand speed of 100 wpm and a typing speed of 50 wpm (in computer environment). The candidate should be a multi-skilled one with analytical mind and proficient in drafting and noting.”

In addition, in the sub-heading “General”, it was further prescribed as follows:

“Mere fulfillment of requirement as laid down in the advertisement does not entitle a candidate to be called for interview. Screening may be done for short listing the number of candidates to be called for interview. No correspondence in this regard will be entertained.”

3. Pursuant to the application of the petitioner, a communication was addressed to her on 4th October, 2006, informing her that the second respondent intends to hold a written test on General Awareness and skill test on Shorthand and Typewriting for the post of Executive Assistant on 28th October, 2006 and that she was invited for the same. It was also mentioned, therein, that those found suitable will be called for a personal interview on 29th October, 2006. The written test was conducted and five candidates, including the petitioner, were short listed for the interview, which was conducted thereafter.

4. The petitioner submits that on enquiry she was informed by the respondent's officials that that she has been selected and would shortly be receiving her appointment letter. Thereafter, on 8th December, 2006 the petitioner came to know that another candidate, who had appeared in the interview along with her, had been offered the appointment by the 2nd respondent. The petitioner wrote a letter dated 15th December, 2006 to the Senior DGM (HR) of the 2nd respondent stating that one of the successful candidates had already received the offer of appointment, whereas, the petitioner, who was one of the first three successful candidates, was yet to receive it. Since no reply to the letter was received, the petitioner personally met the officials of respondent No. 2, to no avail. The petitioner, thereafter, wrote another letter dated 9th January, 2007, requesting information under the Right to Information Act regarding the total marks obtained by her and the other candidates in the skill and written test, as well as marks obtained by the five selected candidates in the interview and the final merit list.

5. The information supplied by the 2nd respondent showed that the petitioner had secured 25 out of 60 marks in the Steno Skill test, 11 out of 40 in the written test and 7.20 out of 20 in the interview. Thus, the total marks obtained by the petitioner were 43.20 and accordingly, she was placed third in the merit list whereas another candidate, Raghubir Singh Kainturia, respondent no. 3 herein, had obtained a total of 37.40 and was placed fourth in the merit list.

6. The petitioner submits that, thereafter, the respondent no. 2 decided to moderate the marks obtained by the successful candidates in the first stage, consisting of the Steno Skill and Written

test. Consequently, the marks for the Steno Skill as well as the Written test were reckoned out of a total of 20. At the same time, marks for the interview were kept unaltered. By this method, the weightage given to the interview increased enormously. To begin with, the interview was of 20 marks out of a total of 120. Thus, the original weightage given to the interview was about 17%. However, by this method, it was brought up to about 33%. On the other hand, the weightage given originally to the steno skill test was 50% and that of the written test was 33.33%. By the new method, the weightage to the steno skill and written test decreased to about 33% each. Thus, after moderation, the marks of the steno skill test and written test were brought at par with the marks of the interview, i.e. 20 marks. Now, according to the new method, the total marks of the petitioner became 21.03, whereas that of the third respondent became 22.73. Thus, the third respondent, who was placed fourth according to the original merit list, was now placed third while the petitioner was now placed fourth. Since only three posts were available, the third respondent was given appointment and the petitioner was notified as No. 1 in the waiting list.

7. The petitioner filed a second application under the Right to Information Act on 2nd February, 2007, to which no reply was given. He then filed a complaint before the Central Information Commission, dated 16th March, 2007, against refusal of the respondents to supply the necessary documents as requested by the petitioner. The Central Information Commission, vide order dated 31st May, 2007, directed the second respondent to supply the experience certificates of the five candidates who were called for the interview.

8. The petitioner alleges that the change of rules by the respondents after the selection process had already started is illegal and arbitrary and that it is settled law that selection or appointment has to be made in accordance with the rules that are in force at the time of initiation of the selection process. He further alleges that for a job that requires some special skill, the main criteria for selection ought to be that particular skill and not the interview or the written test, which are only required to be additional or supplementary tests.

9. In its counter affidavit, counsel for the 2nd respondent submits that the role of a writ court is confined to examining the correctness of the decision making process alone and it does not sit as a court of appeal over the decision made by an instrumentality of the government. In any case, the rule of moderation was applied equally to all the candidates falling in those categories and therefore, the question of there being any arbitrariness or unequal treatment being meted out to the petitioner does not arise. In fact, the moderation process was constantly being followed by the respondent no. 2 even in their earlier appointments, and therefore it cannot be said, there was any change in the methodology adopted for recruitment or the criteria set down for the same with regard to the impugned recruitment, either individually or generally, for that batch of candidates. The respondent also submits that the only exception to the moderation rule is the selection of Data Entry Operators-cum-Office Assistants, because there, the only requirement there was a typing speed of 40 wpm in English and proficiency in computer programmes dealing with office applications, and nothing else. Thus, the selection for all the posts, except for the post of Data Entry

Operators - cum - Office Assistants, has been on the same basis. Even the selection with regard to Executive Secretary has been carried out in the same manner. Respondent no. 2 states that therefore, there is no question of having changed any process midway, nor has there been any arbitrary selection.

10. Respondent no. 2 also contends that no details regarding the manner and mode of tests and the weight the tests would carry was given in the advertisement. In fact, it was never specified that the skill test would be of 60 marks, written test of 40 marks and the interview of 20 marks either in the advertisement or at any subsequent stage therein. The respondent further submits that the skill test and written test was only for short listing candidates having shorthand speed of 100 wpm and typing speed of 50 wpm. It was only at the interview stage that the analytical skill of the shortlisted candidates was ascertained and that it was therefore imperative that the weightage of the entire test be brought at par.

11. Counsel also points out that it was clearly specified in the sub-heading "General" of the advertisement that mere fulfillment of the requirements laid down in the advertisement does not entitle a candidate to be called for interview. It was further mentioned therein that the respondent no. 2 reserves the right to fill up all the posts, or alter the number of posts, or even to cancel the entire process of recruitment, without assigning any reason and accordingly, the number of posts were, in fact, increased from one to three.

12. The weightage to be given to the interview in the selection process depends on the requirement of service to which the recruitment is to be made. The recruitment in the present case was

being carried out for the post of Executive Assistant and not merely a Stenographer. The scope of duties of an Executive Assistant are much wider and the candidate is expected to have a more comprehensive grasp and understanding of various situations that he may be confronted with during the course of his employment. It was specified in the advertisement that the candidate is required to have multi-skilled ability with analytical mind and proficiency in drafting and noting. Such qualities of a person can only be assessed in an interview where the panel gets an opportunity to directly interact with, and assess the candidate, and form opinion about the suitability of such candidate for the job in question. It is the case of the respondent no. 2 that the moderation process was applied keeping in view the nature of the job and the very fact that the petitioner obtained 7.20 out of 20 in the interview shows beyond doubt that she failed to meet the essential criteria of suitability for the job.

13. I have pointed out to counsel for the petitioner that a system cannot be termed as illegal or arbitrary merely because the petitioner does not fare well under that system. Furthermore, if nothing that was not mentioned in the advertisement could be done then, since the advertisement does not mention any process of selection at all, the moment any process is applied, it will contravene the advertisement. An inquiry would then have to be made as to why, under what circumstances and at what stage the variation occurred and whether the variation was justified under law. In this case, no such thing has happened, therefore, the only thing that remains to be seen is whether the respondents have evolved some unreasonable process after advertising the posts. As a matter of fact, the process

which was ultimately applied was the same as that which had been applied in the previous years' recruitments. It was also the same as that which was applied for all other posts across the board save one, hence there is no question of the process being either varied or amended arbitrarily.

14. Counsel for the petitioner insists that the respondent has a duty to tell the Court why they have devised the moderation process and thereby reduced the weightage of the written test as well as the skill test. I do not agree. Each person is entitled to devise its own system and it is not the job of the court to sit in assessment over the efficacy of the system adopted and replace it by its own notions. Moreover, the wisdom of the Court with regard to a system for recruiting Executive Assistants cannot replace the wisdom of the employing authority. To my mind, the only challenge can be if the system adopted is patently absurd. For example, a person needs a Stenographer and the only test he devises is a swimming test.

15. A moderation process is normally adopted with a view to even out any discrepancy in the marking practice where there are a large number of candidates and they are examined by different set of examiners, because each examiner will apply his own yardstick to assess the answer scripts, as a result of which, some will be marked disproportionately high while others disproportionately low though the standard of the answers may be to some extent similar. In such situations, the moderation process is adopted with a view to eliminate the inconsistency in the marking standards of the examiners. The extent and nature of moderation is always decided upon by a moderation committee after the examination is complete and after

they see the nature of the result coming. However, in this case, what is being done is not truly moderation. The process which is being adopted is, in fact, part of an established system. Although it is called moderation, but it is actually a standard formula of assessment. For example, a person may be a good stenographer but he may not be good as an Executive Assistant.

16. In support of his proposition, counsel for the petitioner relies on the decision of **K. Manjushree v. State of Andhra Pradesh and Anr.** (2008) 3 SCC 512, wherein, two changes were incorporated after the entire selection process was over. The pre-determined criteria provided for 75 marks for the written examination and 25 for the interview, thus prescribing a ratio of 3:1. The written examination was, however, held for 100 marks, which changed the ratio to 4:1. Marks for the written examination were, therefore, proportionately scaled down to maintain the 3:1 ratio. Secondly, the criteria of minimum marks for the interview was introduced. The petitioner relies on paragraph 24 wherein it was held that the introduction of the requirement of minimum marks for the interview, after the entire selection process was complete, is clearly impermissible. This decision, however, does not help the petitioner's case and is, in fact, against her. This is because, in that case, for the selection in question, although the administrative committee had decided to adopt the previous procedure in vogue; the court found that in the earlier examination, minimum marks were prescribed only for the written examination and not for the interview and that the criteria of minimum marks for the interview had never been adopted earlier. It was only after the entire process was over, that the

committee introduced the criteria of minimum qualifying marks for the interview. This obviously cannot be permitted. On the other hand, in the instant case, the moderation procedure had been consistently followed in earlier recruitments as well. It was also held in the case of **K. Manjushree** (supra) that the scaling down of the written examination marks, with reference to 75 instead of 100 marks, is valid as it was in consonance with the criteria decided by the committee before commencing the selection process.

17. A perusal of the advertisement clearly shows that it was not specified anywhere that the steno skill test would be of 60 marks, written test of 40 marks and the interview would be of 20 marks. Every employing authority has the freedom to adopt any procedure for selecting the candidates, provided it is fair and not patently absurd. The selection procedure adopted by the respondent no. 2 was formulated by persons possessing a thorough knowledge of the essential requirements for that particular post. In such situations, the Court is always reluctant to substitute its own views as to what is the proper procedure for recruitment, in preference to those formulated by the employing authority. In any case, this system of moderation was not applied only for the post in which the petitioner was interested. It was, in fact, applied to all posts except one. A rational reason was also given for excluding the latter. It was also the same process that had been applied in the previous years' recruitments. Hence, there cannot be any question of arbitrariness or discrimination.

18. Further, the post was that of an Executive Assistant and not merely a stenographer. It was clearly mentioned in the

advertisement that the candidate should be a "multi-skilled one with analytical mind and proficient in drafting and noting." The Concise Oxford Dictionary (Tenth Edition, Revised) defines the word "analytical" as "relating to or using analysis or logical reasoning". Further, the Shorter Oxford English Dictionary (Sixth Edition) defines the word "multi" as "more than one" and the word "skilled" as "highly trained or experienced, esp. in a particular accomplishment". A multi-skilled person, therefore, would be someone who is highly trained and capable in a large variety of skills or activities. Thus, the nature of the job was such that the candidate, besides being proficient in drafting and noting, should also be able to comprehend and analyse what is involved in the drafting and noting. In other words, besides being a skilled stenographer, the candidate was also required to be able to apply his mind and logically reason out the substance of the matter, and also to demonstrate a high degree of accomplishment in other areas. These qualities, however, could be properly assessed only during an interview and it is for this reason that the weightage given to the interview assumed greater significance.

19. In that view of the matter, I do not think any manifest injustice has been caused to the petitioner requiring interference by this Court.

20. This writ petition is, accordingly, dismissed.

SUDERSHAN KUMAR MISRA, J.

MARCH 11, 2011