

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) NO.13822 of 2009

Date of Pronouncement: 21-01-2011

MOHD. IRSHAD Petitioner
Through: Mr. M.S.Bhatia, Advocate

Versus

DENA BANK & ORS. Respondent
Through: Mr. Rajat Arora, Advocate

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. (ORAL)

1. It is the case of the petitioner that pursuant to an advertisement by respondent no. 1 for filling up of regular vacancies for the post of "Probationary Officers" (JMG SCALE -I), the petitioner applied for the same as an OBC candidate and was also invited to appear for the pre-examination training for recruitment to the aforesaid post. The selection process, admittedly, included a written test (Descriptive and Objective) and an interview. The petitioner got a call letter from the respondents stating that the written examination is to be held on 21st September, 2008. In the "Acquaint Yourself" booklet received by the petitioner along with the call letter, it is stated in the last paragraph of page 11:

“Candidates have to pass in each of the objective and descriptive test separately. Those candidates who secure the minimum qualifying marks stipulated for the written test (descriptive test as well as objective) shall be called for interview in “order of merit in the ratio of up to 1:4 (1:5 in case of SC/ST/OBC/PWD candidates)”

2. The petitioner took the written examination. He claims to have made repeated telephone calls to the respondents enquiring about the examination results, but failed to get any positive response from them. He states that on 10th August, 2009, he then filed an application under the RTI Act seeking information about his position in the merit list and the marks obtained by him as well as the list of selected candidates and the marks obtained by them. In the reply to the application, dated 14.09.2009, the petitioner was informed that he had not figured in the merit list as he was absent for the interview. It is the case of the petitioner that he was never informed about or called for any interview.

3. In its counter affidavit, the respondent submits that the relief sought for cannot be granted to the petitioner in view of the fact that the petitioner was never appointed or recruited by the respondent bank and therefore, the question of resumption of duties cannot arise. The respondent further alleges that the petitioner is guilty of suppression of the material fact that a letter dated 3rd November, 2008 was sent to the petitioner, whereby, he was called for an interview on 21st November, 2008. Therefore, the contention raised in the petition that the petitioner was unaware of the interview is without any substance.

4. Counsel for the respondent also submits that there has been an unusual delay on the part of the petitioner in approaching the Court and therefore, the petition has become infructuous. Pursuant to the written examination as well as the interview, the recruitment process had already been carried out and completed by the respondent bank and all the vacancies have been filled up. Therefore, the present writ petition, filed after a year of the said recruitment process was over, is barred by laches.

5. Counsel for the respondent further submits that the call letter regarding the written examination had a clear noting at the bottom which, inter alia, stated that the roll numbers of the candidates who qualify for the interview would be notified on the website of the respondent bank in due course. It was also mentioned therein that the candidates who qualify for the interview would be intimated directly also and that the bank was not responsible for any delay or loss in transit of such communication. The petitioner was, thus, well aware that he could check whether he was selected or not from the website of the bank. It is also pointed that the list of successful candidates who were to appear for the interview was put up on the website of the bank on 4th November, 2008 and the same remained on display till 4th December, 2008. He further states that, in fact, besides putting up the list of successful candidates who were called for the interview on the website of the bank, individual call letters were also issued to the successful candidates. The petitioner was individually informed about the interview, to be held on 21st November, 2008, vide letter dated 3rd November, 2008. This interview letter was sent at the same address

under UPC where the initial call letter for the written examination was sent.

6. In its rejoinder, the petitioner reiterated that the petitioner was never informed about the scheduled date of the interview and also denied the allegation that there has been an inordinate delay in filing the writ petition. He explains the delay on the ground that when the petitioner did not get any response from the respondent inspite of the repeated telephone calls, he filed an application under the RTI Act, which according to him, shows that he had been vigilant and had not been sitting idle.

7. Admittedly, pursuant to an advertisement, the petitioner applied for the post of Probationary Officer in the respondent bank and got the call letter for the written examination scheduled to be held on 21st September, 2008. Consequently, the petitioner took the written examination, and pursuant to that, and presumably because he was successful in the same, a letter dated 3rd November, 2008 was also sent to him by the respondent calling him for the interview to be held on 21st November, 2008. It is the petitioner's case that this call letter for the interview never reached him. He also states that dispatch through UPC is not a valid and prescribed mode of service, and the prescribed mode of service should have been either by email or by SMS. However, he has failed to show any such prescription. On the other hand, counsel for the respondent states that this letter had been dispatched through UPC to all the candidates, including the petitioner.

8. The footnote at the base of the call letter sent to all the candidates selected for the written examination including the petitioner, states as follows :

"Note: The Roll Numbers of candidates who qualify for interview will be notified on website www.denabank.com in due course. The candidates who qualify for interview will be intimated directly. Bank/IBPS will not entertain any correspondence in this regard. The bank is not responsible for any delay/ loss in transit of the communication."

A perusal of the above clearly shows that the respondent bank was obliged to notify the result on its website which could be accessed by any interested party. Furthermore, candidates were also to be intimated directly by the respondent bank. There was no further limitation on the mode of communication to be adopted by the respondent. Under the circumstances, the respondent had adopted UPC as the direct mode of communication. The respondent has also annexed a copy of the receipt showing the dispatch by the UPC to 40 candidates in different States such as Uttar Pradesh, Bihar, Haryana, Punjab, besides Delhi. The petitioner's name appears at Serial No. 21. The receipt shows that it was dispatched on 7th November, 2008.

9. Counsel for the petitioner seems to think that the mode and method of "service" as prescribed by statute and rules with regard to the court's process, must automatically apply to the respondent bank's obligation to intimate the petitioner of the date of interview. Based on this premise, he submits that service through UPC is not a valid service in law and that there is some additional obligation imposed on the respondent to, "serve", the petitioner with the intimation for the interview. According to him, the intimation in

question should have been given through email or by SMS. I do not agree. This matter is not concerned with the service of court processes. The obligation of the bank was limited to the note appended at the bottom of the aforesaid call letter inviting the petitioner to take the written examination. In terms thereof, two modes were prescribed. By posting on the Bank's website and by, "Direct" intimation. Apart from publishing it on its website, direct intimation was sent by the Bank to all candidates, including the petitioner, through UPC. Significantly, the intimation in question was sent by the Bank at the same address, and by the same method, as the initial communication inviting the petitioner for written examination, which he admittedly received. The arrangements made by the Bank in this regard were even otherwise reasonable and rational and I can find no infirmity in this behalf.

10. Furthermore, the relevant interview was held on 21st November, 2008 and by 25th November, 2008 the recruitment process had been completed. However, the petitioner filed this petition only in December, 2009, i.e. more than a year later. In **Chandra Sain v. The Chairman, D.S.S.S. Board & Anr.**, Writ Petition (Civil) No. 1854/2008, decided on 10th March, 2008, the petition was dismissed by this Court on the ground that the petitioner waited for more than a year before approaching this Court, by which time all the vacant seats had been filled up and the recruitment process was complete.

11. Under the circumstances, and keeping in mind the maxim, **Vigilantibus, et non dormientibus, jura subveniunt** – the vigilant and not the sleepy are assisted by the laws, it would not be

appropriate for this Court to entertain this petition at this stage, that too when the relevant interview had already been held almost a year ago and all the vacancies that were there have been filled up. The allegation of having made repetitive phone calls to the Bank, or having applied under the Right to Information Act in connection with his candidature, do not improve the petitioner's case in this regard.

12. For the aforesaid reasons, besides being barred by laches, I also do not find any merit in this petition. The relief sought cannot be granted in the exercise of this Court's jurisdiction under Article 226 of the Constitution of India.

13. Dismissed.

CM No.15642/2009 (Stay)

14. Since the main petition has been dismissed, this application does not survive and the same is also dismissed.

SUDERSHAN KUMAR MISRA, J.

JANUARY 21, 2011