

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

Judgment reserved on: March 06, 2013

% *Judgment pronounced on: March 08, 2013*

+ **W.P.(C) 696/2013**

MUKESH KUMAR Petitioner

Represented by: Mr.B.S.Rana, Advocate.

versus

EMPLOYEES STATE INSURANCE Respondents
CORPORATION & OTHERS

Represented by: Ms.Rekha Palli, Advocate with
Ms.Poonam Singh, Advocate.

AND

W.P.(C) 1497/2013

RAJAT KUMAR Petitioner

Represented by: Mr.B.S.Rana, Advocate.

versus

MINISTRY OF LABOUR AND ANR Respondents

Represented by: Ms.Rekha Palli, Advocate with
Ms.Poonam Singh, Advocate.

AND

W.P.(C) 1498/2013

RAHUL SHARMA Petitioner

Represented by: Mr.B.S.Rana, Advocate.

versus

MIN. OF LABOURS AND ANR Respondents

Represented by: Ms.Rekha Palli, Advocate with
Ms.Poonam Singh, Advocate.

AND

W.P.(C) 1504/2013

SEEMA

..... Petitioner

Represented by: Mr.B.S.Rana, Advocate.

versus

MIN. OF LABOURS AND ANR

..... Respondents

Represented by: Ms.Rekha Palli, Advocate with
Ms.Poonam Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The Employees State Insurance Corporation had notified '*The Employees State Insurance Corporation (Lower Division Clerk/Adrema Operator/Telephone Operator/Computer Operator) Recruitment Regulations 2006*' on March 13, 2006. The said posts were non-selection Group 'C' posts. 75% posts had to be filled up by direct recruitment on basis of a competitive examination and 10% by promotion, based on seniority subject to fitness being declared from Group 'D' employees and 15% by promotion through Limited Departmental Competitive Examination from amongst the Group 'D' employees.

2. On October 19, 2006, vide office order No.A-36(14)/2006-Exam it was notified that henceforth for promotion of Group 'D' employees and appointment by direct recruitment the Competitive as also Limited Departmental Competitive Examination would be as indicated in the office memorandum.

3. Pertaining to Group 'D' employees, for promotion in the 15% quota through Limited Departmental Competitive Examination it was

stipulated that the candidates would have to clear the prescribed examination as per standards at serial No.1 to 10. The same read as under:-

1. Candidates will be issued with a printed passage containing a minimum of 400 words or 2000 strokes in English or 350 words or 1750 strokes in Hindi. The passage may preferably be the one being regularly used in the day-to-day office working like a D.O. letter, proposal for creation of a post etc.

2. The duration of the test will be 10 minutes subject to (3) below Candidates will be required to type the given passage on the computer in a word-processing software within 10 minutes at the rate of 40 words per minute for English or 35 words per minute for Hindi.

3. Candidates will be given additional time to the extent of 5 minutes to format the typed passage in the same way as it is in the supplied hand-out and to print the passage in the printer. The following formatting features used in routing should be tested:-

(i) Indenting of paragraphs, (ii) selected text in Bold, (iii) underline, (iv) italics, (v) using different font type (vi) using different font size, (vii). Inserting of paragraph numbers, (viii) centre, left, right, justification, (ix) setting of left/right margin, (x) line spacing of the passage, viz. Single, double (xi) creating data and totalling thereof.

4. The test shall carry 50 marks out of which 10 marks shall be given to quality of formatting of a final output and remaining 40 marks should be given to error-free printed matter/passage.

5. 10 feature of formatting, as listed at para (3) above should be tested with 1 mark each for every feature of formatting.

6. *There is no bar to candidates*
(a) Correcting the mistakes by using of editing tools while typing the passage; and
(b) For each spelling mistake, one mark will be deducted.

7. *The speed, accuracy and mistakes shall be evaluated as under:-*
(a) For one omission/addition of word, one mark will be deducted.
(b) For each spelling mistake, one mark will be deducted.

8. *Mistakes to the extent of 3% of the total number of words typed in the passage will only be allowed. In case, the mistakes exceed 3% the matter shall not be evaluated.*

9. *Out of the 10 marks for the formatting features a candidate should secure at least 6 marks to qualify.*

10. *In order to qualify the Test, the candidate should secure at least 6 out of 10 marks for Formatting features and speed of 40 words per minute in English or 35 words per minute in Hindi.”*

4. Pertaining to appointment by selection through a competitive examination for direct recruitment, the office order stipulated as under:-

“(a) Knowledge of type writing with a speed of 30/25 words per minute in English/Hindi respectively” of a given passage within the time specified.

(b) For testing computer knowledge of candidates under Direct Recruitment Quota, the same standard from 1 to 10 shall be adopted except to the extent that candidates will be issued with a printed passage containing minimum of 600 words or 2500 strokes in English or 450 words or 2250 strokes in Hindi.

(c) Candidates themselves shall bring typewriters for typing test and ESIC shall make arrangement (PCs) for testing computer knowledge for all.”

5. On November 05, 2009 an advertisement was issued inviting applications from eligible candidates to fill up 70 vacant posts of Lower Division Clerks by direct recruitment by Employees State Insurance Corporation. It was indicated in the advertisement that information pertaining to the proposed examination may be accessed on the website ‘www.esicdelhi.org.in’. It was indicated that the written examination of 200 marks would be held in the month of January 2010 and that on merit basis pertaining to the written test, in a ratio, candidates would be called to take the Computer Skill Test.

6. Pertaining to the written test, the website displayed as under;-

“Maximum Marks :200

Number of Questions :200

Test Duration : upto 3 Hours

Sections in the Test:

(i) English Language

(ii) General Intelligence & General Aptitude

(iii) Numerical Aptitude and

(iv) General Awareness

(v) Clerical Aptitude(Sometimes this section is removed)”

7. Pertaining to the Computer Skill Test, the website indicated:-

“Skill Test is conducted to judge the knowledge of computer. Candidates are called for the skill test based on their performance in the Part I (written test).

Note:

- The candidate has to secure minimum qualifying marks in each part.*
- There is negative marking for wrong answers”*

8. It may be noted that the website did not display the conditions prescribed in the office order dated October 19, 2006 i.e. the manner in which the candidates would be evaluated and in particular that pertaining to the Computer Skill Test, 10 marks would be allocated for formatting and that a candidate should secure at least 6 marks to qualify.

9. Writ petitioners were a few of the thousands of applicants. They were the few hundred who successfully cleared the examination and were called to take the Computer Skill Test, but success eluded them notwithstanding they and a few more, obtaining higher marks in the aggregate vis-a-vis a few who were selected. The reason being that the writ petitioners obtained less than 6 marks out of 10 marks pertaining to the Computer Skill Test which had 50 marks, but out of which, formatting was assigned 10 marks.

10. Petitioners approached the Central Administrative Tribunal alleging that without disclosing to them that the evaluation process would require them to obtain at least 6 marks out of 10 marks for formatting the department could not determine the merit, except according to the aggregate marks obtained at the skill test. They alleged that once the selection process commences the rules of the game could not be changed. They alleged that the website simply declared that the written objective test would be of 200 marks. No eligibility was prescribed for said paper. The website clearly stated that candidates would be subjected to the skill test based on their performance in the written test, meaning thereby, that the written test was akin to a screening process.

11. The Employees State Insurance Corporation defended its action

by relying upon the Office Order dated October 19, 2006 as per which the skill test carried 50 marks out of which 10 marks were assigned to quality of formatting and remaining 40 marks for error free printed matter/passage with further stipulation that a candidate should secure at least 6 marks out of 10 marks for the formatting features to qualify. It was highlighted that the Rule of the game i.e. the selection process had been fixed in the year 2006 and therefore the question of the selection criteria being changed midstream did not arise. Conceding that the Office Order dated October 19, 2006 was not displayed on the website, it was indicated that pertaining to the computer skill test the website clearly displayed that : *'Skill Test is conducted to judge the knowledge of computer. Candidates are called for the skill test based on their performance in the Part I (written test).'*' Further the Note clearly indicated:-

"The candidate has to secure minimum qualifying marks in each part."

12. Thus, it was urged that the candidates were made aware that they had to secure minimum qualifying marks in each part.

13. The first decision in the batch of matters was pronounced by the Central Administrative Tribunal on February 15, 2012. The Bench took the view that the Office Order dated October 19, 2006 clearly mandated that the computer skill test would carry 50 marks out of which 10 marks shall be allocated to the quality of formatting of final output and a candidate has to secure at least 6 marks to qualify. The Tribunal took the view that it was incumbent upon the candidates to exercise due diligence and keep themselves informed of the minimum qualifying marks which they had to secure in each part.

14. This decision has been assailed by petitioner Rahul Sharma in WP(C) No.1498/2013.

15. The remaining batch of Original Applications were decided by another Bench of the Tribunal on July 30, 2012, which decision has been challenged by the writ petitioners of WP(C) No.696/2013, 1497/2013 and 1504/2013. The view taken by the Tribunal is that the Office Order dated October 19, 2006 was not applicable to appointment by direct recruitment. The Tribunal took the view that the Office Order dated October 19, 2006 was restricted to promotion through the Limited Departmental Competitive Examination from amongst eligible Group 'D' employees. The Tribunal thereafter noted that as per the Recruitment Rules, for the post in question, candidates had to possess a working knowledge of computers, which was indicated to the candidates in the advertisement when it was informed that based on the performance of the candidates in the written test they would be called for the Computer Skill Test. The Tribunal held that the scheme of the examination, including marks to be awarded, could not be expected to be published in an advertisement and law requires the scheme of a test in a selection procedure to be left to the discretion of the experts. On the subject of minimum qualifying marks in the formatting part of the Computer Skill Test, noting the decisions reported as 1990 (2) SCC 367 Manjeet Singh & Ors. v. Employees State Insurance Corporation & Anr., JT 1997 (5) SC 379 University of Cochin v. N.S.Kanjoonjamma & Ors., SC SLJ 1997 (1) 626 Kuldeep Singh v. State of H.P. & Ors. and SC SLJ 2003 (1) 140 Jasvinder Singh & Ors. v. State of J&K & Ors. the Tribunal held that it was permissible to prescribe minimum cut-off marks to be obtained.

16. Noting that the selected candidates had not been impleaded as

respondents and that the demand raised in the Original Applications was prejudicial to the interest of the selected candidates, relying upon the decision reported as JT 1996 (9) SC 630 S.Jaffer Saheb v. Secretary, APPSC & Ors. the Tribunal took the view that even on said account the Original Applications merited a dismissal.

17. Same contentions which were urged by respective parties before the Central Administrative Tribunal were urged before us at the hearing of the writ petitions on March 06, 2013.

18. Indeed, law recognizes the right of the experts in the field to take into consideration the requirement of the job and the nature of employment and prescribe the procedure as also the criteria to recruit candidates. Law recognizes that one cannot lose sight of the fact that if the selection process is divided into series of steps and each step has a purpose to serve; and where the procedure devised eliminates arbitrariness, the selection procedure has to be upheld.

19. The Tribunal has rightly noted the decisions which hold so, and thus we need not re-burden our opinion by referring once again to the said decisions.

20. As noted above, one Bench of the Tribunal, deciding the Original Application No.358/2012 filed by Rahul Sharma, took the view that the Office Order dated October 19, 2006 governed the selection process under Direct Recruitment Quota and as a consequence concluded that the prescribed guideline promulgated three years prior to the examination, required minimum 6 marks out of 10 marks to be obtained in the test pertaining to computer application skill on the subject of formatting features. The other Bench took a contra view on the applicability of the Office Order

dated October 19, 2006. But taking a different path i.e. the entitlement of a Selection Committee to evolve any fair selection criteria, the destination arrived at was the same.

21. The view taken by the Tribunal in the decision dated July 30, 2012 that the office memorandum dated October 19, 2006 was applicable only when appointments were made by promotion in the 15% quota reserved for Group 'D' employees through Limited Departmental Competitive Examination and not when the appointment was by direct recruitment, is patently incorrect for the facts noted by us in paragraph 3 and paragraph 4 of our opinion hereinabove. The office memorandum is clearly in two parts. The first part enlists the selection criteria when Group 'D' employees are to be promoted through Limited Departmental Competitive Examination, the prescribed standards pertaining to the selection criteria are enlisted at serial No.1 to 10 of the first part of the office memorandum. These are the ones noted by us in paragraph 3 above. Thereafter, the second part of the office memorandum clearly states that the criteria prescribing the standards to determine the merit when appointment is by direct recruitment would be as laid down in sub-para (a) to (c). Pertaining to the computer knowledge test, clause (b) clearly states that for '*Direct Recruitment Quota*' the same standards from serial No.1 to 10 shall be applicable. In other words the office memorandum clearly stipulates that for the Limited Departmental Competitive Examination as also when direct recruitment is resorted to through an examination process, the computer knowledge test would be as per standards at serial No.1 to 10 of the office memorandum.

22. The view taken by the Bench of the Tribunal in the first decision dated February 15, 2012 is thus a correct view.

23. Since the selection criteria had been notified by the department on October 19, 2006; and the same has been applied to the examination conducted in the year 2009, the question of arguing that the rules of the game have been changed midstream would not even arise for consideration.

24. That takes us to the last question. What is the effect of neither the advertisement nor the website of Employees State Insurance Corporation making a reference to or displaying the terms of the office memorandum dated October 19, 2006?

25. Both decisions of the Tribunal have been premised on the assumptive fact that neither the advertisement nor the website indicated to the candidates that they would have to secure minimum qualifying marks. But, both decisions simultaneously hold that law recognizes minimum qualifying marks to be prescribed and as long as the said decision/criteria is taken/formed prior to commencement of the selection process, and as long as all candidates are subjected to the same standard, no fault could be found with the selection process. A reasoning with which we agree, but would highlight that the presumptive fact assumed by both Benches of the Tribunal is incorrect for the facts noted by us in paragraphs 5 to 7 above.

26. We have already noted hereinabove in paragraph 5 that the advertisement dated November 05, 2009 clearly indicated to the prospective candidates that information pertaining to the proposed examination may be accessed on the website: 'www.esicdelhi.org.in'. It was indicated in the advertisement that a written examination for 200 marks would be held in the month of January, 2010 and candidates would be called to take the Computer Skill Test in ratio of merit basis upon success at the written examination. Thus, the candidates were made aware that further

information may be accessed on the website. As noted by us in paragraph 6 above, the website displayed the subject on which the written test would be held. As noted by us in paragraph 7 above, the website displayed that the skill test to judge the knowledge of computers would require the candidates to 'secure minimum qualifying marks in each part'. The reference to securing minimum qualifying marks in each part is in a Note displayed on the website pertaining to the information relating to the Computer Skill Test and thus the argument that the Note made a reference to minimum qualifying marks in the written test and the Computer Skill Test, to be taken in the aggregate for the two papers, is rejected by us for the reason the website distinctly spelt out the information pertaining to the written test and distinctly to the Computer Skill Test; and only pertaining to the latter was the Note indicating minimum qualifying marks to be secured in each part. This would mean each part of the Computer Skill Test, wherever prescribed.

27. The candidates were thus made known that the different segments of the Computer Skill Test require minimum qualifying marks to be secured in some part. It may be true that what was the minimum qualifying mark prescribed was not made known to the candidates, but as rightly opined by the Tribunal, it was the duty of the candidates to have found out the minimum qualifying marks prescribed. In the view we have taken on facts, where we find that the decision containing the criteria to test the knowledge of the candidates had preceded the initiation of the selection process, we need not deal with the decision relied upon heavily by both sides reported as (2008) 3 SCC 512 K.Manjusree Vs. State of A.P. & Ors.

28. To conclude, we simply state that the relevant material would evidence that the applicable Recruitment Rule for the post in question

prescribed 75% posts to be filled up by direct recruitment. The Recruitment Rule required said quota to be filled up on the basis of a competitive examination. The criteria to determine competitiveness of the candidates was prescribed on October 19, 2006 and therein pertaining to the Computer Skill Test it was clearly indicated that for formatting features, candidates have to secure at least 6 marks out of 10 marks to qualify. The advertisement issued in the year 2009 clearly informed the candidates that information pertaining to the examination would be accessed on the website of the organization, and the website clearly made it known that pertaining to the Computer Skill Test the candidates have to secure minimum qualifying marks wherever prescribed in each part of the skill test.

29. Thus ignoring that selected candidates have not been impleaded as respondents and notwithstanding their presence may be necessary for the reason they could be prejudicially affected by a decision in the instant writ petitions, since on merits we find no case to interfere with the ultimate conclusion arrived at by both Benches of the Tribunal, the four captioned writ petitions are dismissed. Impugned orders dated February 15, 2012 and July 30, 2012 are upheld.

30. Parties shall bear their own costs.

(PRADEEP NANDRAJOG)

JUDGE

(PRATIBHA RANI)

JUDGE

MARCH 08, 2013

mm/dk