

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

Judgment Reserved on August 08, 2013

Judgment Delivered on September 13, 2013

+ **W.P.(C) No.3510/2012**

SANDEEP KAUSHIK

..... Petitioner

Represented by: Mr.S.N.Bhardwaj, Advocate

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Represented by: Mr.Shariq Mohammad, Advocate
for R-1 and R-2

Ms.Avnish Ahlawat, Advocate for
R-3 and R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The petitioner challenges the order dated May 26, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Original Application No.1656/2010, whereby the Tribunal had dismissed the Original Application filed by the petitioner who was seeking appointment as Driver in Delhi Transport Corporation (DTC).

2. The respondent No.2, Delhi Subordinate Service Selection Board (DSSSB) issued an advertisement for recruitment to the post of Drivers under respondent No.3-DTC. The petitioner applied for the said post. The advertisement issued prescribed two tier selection process, one through 'main examination' and other through 'skill test'. The final merit

list of the candidates was to be prepared on the basis of the performance of candidates in the 'main examination' only. The 'skill test' was of qualifying nature. The minimum standard for the 'skill test' was to be in terms of the one prescribed in the Recruitment Rules. The petitioner cleared the 'main examination' and was subsequently called for the 'skill test' held on July 30, 2008. The petitioner did not qualify the 'skill test'.

3. Aggrieved by the failure to qualify the 'skill test', the petitioner, on January 31, 2009 filed an application under the Right to Information Act, 2005 with the respondent No.2. In response to the RTI Application, the petitioner was informed that he had secured 63 marks in the written examination and he had failed the driving 'skill test'.

4. The petitioner got issued a legal notice on October 06, 2009 through his Advocate to the respondent No.2 wherein he alleged that the entire selection made by the respondent No.2 was a sham. He had made serious allegations against the respondent No.2.

5. A reply to the legal notice was sent by the DTC denying the allegations. Petitioner's further representation dated September 19, 2009 with a prayer to appoint him to the post of Driver resulted in a personal hearing given to the petitioner by the respondent No.2.

6. Since the petitioner could not be appointed as a Driver, he filed an Original Application No.1656/2010 before the Tribunal which was heard by the learned Tribunal and the Tribunal dismissed the said Original Application. The Tribunal concluded that the grievance of the petitioner primarily was that he could not get information regarding the 13 questions asked by him in his RTI application and the remedy against the same was under the RTI Act, 2005. The Tribunal also further concluded that it cannot go into the allegations of corruption made by the petitioner

in the process of selection. The Tribunal dismissed the Original Application.

7. Mr.S.N.Bhardwaj, learned counsel for the petitioner would contend that the whole selection process was a sham inasmuch as the petitioner, despite securing 63 marks has not been appointed, whereas a person attaining 55 marks stood appointed. He would also submit that the 'skill test' which was conducted by three outside agencies was a mere formality. They resorted to pick and choose policy. He would further submit that the petitioner is driving DTC buses, having been appointed on contract basis. He argued that it is an anomalous position that for the purpose of regular appointment the petitioner is considered as unfit but for contractual appointment, to meet the exigencies, he is considered fit and is allowed to drive the buses.

8. Ms.Avnish Ahlawat, learned counsel for R-3 & R-4 would submit that the selection process was fair and based on two tier selection process conducted by DSSSB. According to her, the petitioner was required to pass in the driving 'skill test' which was outsourced. Since the petitioner failed to achieve the minimum 60 marks in aggregate fixed for the 'skill test', he could not be said to have passed in the selection process and was rightly not appointed.

9. We have considered the rival submissions of counsel for the parties.

10. The advertisement issued stipulate two tier examination system/evaluation criteria. One is the 'main examination' and other is the 'skill test'. The 'main examination' consists of two sections 'A' and 'B', both comprising of 100 objective type questions carrying total 100 marks. The 'skill test' was of qualifying nature. The final merit list of the

candidates was prepared on the basis of performance of the candidates in the 'main examination'. The candidates were to qualify 'skill test's at the minimum standard prescribed in the Recruitment Rules (emphasis supplied). The petitioner secured 63 marks in the 'main examination', whereas in the 'skill test' he had failed.

11. When the writ petition was listed for hearing on December 18, 2012, this Court, in order to ascertain whether the petitioner has attained the minimum standard on the basis of marks obtained by him had directed the respondents to produce the relevant records and recruitment rules.

12. The respondents had produced the necessary files/records (F55(284)/DSSSB/Exam/08 and one connected file) including the evaluation sheet of driving test held on July 30, 2008, when the petitioner had appeared in the 'skill test'. The Recruitment Rules as seen from the record produced by the respondent Nos.3 & 4, show the post of driver as a Class III post with requirement of 10th pass or equivalent from a recognized Board with suitable weightage given to the candidates who possess the higher qualification of 10+2 or equivalent provided they pass the 'skill test'.

13. There is nothing in Recruitment Rules which shows that minimum standards have been prescribed for the 'skill test'. In fact, during submissions, Ms.Avnish Ahlawat, the learned counsel for respondent Nos.3 &4 has brought to our notice from the file referred above two scribbled white sheets to contend that the 'scheme of exam' has been worked out before the 'skill test' was actually held. According to her, the 'skill test' consisted of practical and theory exam of 100 and 40 marks respectively. The marks obtained, out of maximum 140 marks, in both

the exam were apportioned and given weightage of 60% and 40%. Based on the percentage obtained, grades were awarded. The qualifying percentage was 60% in individual exam and aggregate. We reproduced hereunder the manner in which the scheme of exam in so far as 'skill test' is concerned was determined (by hand).

Extracts from Page 107 of the file

Scheme of Test

<i>Theory paper -</i>	<i>40 questions</i>
	<i>60%</i>
<i>Practical Test-</i>	<i>100 marks</i>
	<i>60%</i>
	<i>60% (not readable)</i>
	<i>140</i>
	$\frac{37 \times 40}{40} + \frac{74 \times 60}{100}$
	<i>37+44.4</i>

Extracts from Page 90 of the file

Scheme of Exam

	<i>Practical</i>		<i>Theory</i>	<i>Total</i>
	<i>100</i>		<i>40</i>	<i>140</i>
<i>Pass %</i>	<i>60%</i>		<i>60%</i>	<i>60%</i>
	<i>(60)</i>		<i>(24)</i>	<i>(84)</i>
	<i>Weightage</i>	<i>60%</i>	<i>40%</i>	<i>100%</i>
	<i>Grading</i>	<i>A</i>	<i>=</i>	<i>Above 90%</i>
		<i>B</i>		<i>80-90</i>
		<i>C</i>		<i>70-80</i>
		<i>D</i>		<i>70-60</i>
		<i>E-</i>		<i>60-50</i>

14. We are really surprised to see the casual manner in which the respondents have approached the issue of determining the minimum standards for the 'skill test'. This submission of Ms.Avnish Ahlawat would itself show that there was no minimum standard prescribed in the Recruitment Rules, otherwise there was no occasion for the respondents to carry out the exercise as mentioned above. It is not clear as to which officer had carried out the aforesaid exercise. Further, it is also not clear what were the relevant considerations in prescribing 60% as the minimum standard. Whether the same was accepted by the Competent Authority is also not clear. Everything has been left in the realm of speculation.

15. It is noted that a notice was issued on May 13, 2008, bringing out instructions to the candidates who were shortlisted for driving test. We have seen the entire notice but we could not find the minimum qualifying percentage/marks of 60 was/were notified.

16. We have seen the evaluation sheet of driving test held on July 30, 2008 when the petitioner had appeared. From the evaluation sheet, it is seen that the petitioner had received 36 marks out of maximum marks of 40, in theory and 59 marks out of maximum marks of 100 in practical. The weightage percentage was 71. Since the petitioner did not secure 60 marks in practical, being short by 1 mark he was graded as 'E' and declared as failed. It is also noticed, the candidates securing less marks in theory got higher marks in practical exam, their aggregate was still less than the petitioner, such candidates were selected. We reproduced hereunder from the evaluation sheet of the 'skill test' held on July 30, 2008 with respect to petitioner and other candidates which would make the aforesaid position clear.

Sr.No.	X	2	X	8	X	12	13	X	15	X
Roll No.		18710593		18710601		18710606	18710607		18710609	
Registration No.		0008454		0008460		0008464	0008465		0008467	
Trainee's Name		Mr.Sandeep Kumar		Mr.Pawan Kumar		Mr.Sanjay Bhardwaj	Mr.Ashok Kumar		Mr.Sunil Kumar	
Father's Name		Sh.Narender Dahiya		Sh.Mukhtyar Singh		Sh.Dharam Veer	Sh.Amar Singh		Sh.Chhedi Singh	
Driving License No.		ET923/MTR/03		12929/MTR/03		4092/AG/06	C08052000181039		T5622	
Valid Upto		22-08-2009		21-10-2010		21-10-2010	18-07-2009		22-05-2010	
Theory Marks (MM:40)		36		31		29	29		31	
Practical Marks (MM:100)		59		65		60	63		65	
Weighted (%)		71		70		65	67		70	
Grade		E		C		D	D		C	
Result (Pass/Fail)		FAIL		PASS		PASS	PASS		PASS	
Remarks										

17. Suffice would it be to state that in the absence of anything specified in the Recruitment Rules, the respondents could not have prescribed the same in the manner they have done that too after the advertisement was issued and the 'main examination' was conducted, which ultimately determined the selection. The question that arises is whether the selection stand vitiated in the facts of the case.

18. The criteria of qualifying 'skill test' with 60% marks individually [theory and practical] and in aggregate is susceptible to misuse especially, practical exam, to eliminate some and to accommodate others. The advertisement stipulate the 'skill test' to include, test in driving skills, simulator test, reaction test etc. It is noted that the parameters laid down in the advertisement were not even adhere to and a lump-sum marks were allotted/granted in so far as practical exam is concerned, which was of 100 marks. It may be true that advertisement

did not prescribe separate marks to be allocated to separate parameters. That did not preclude the Committee prescribing so. Once such a procedure is followed, the element of subjectivity will be largely checked and the marks assigned for different parameters will reflect the skill of the candidate to be a driver. Except evaluation sheet we have not been shown any other record as to how the marks have been given to the candidates like a working sheet at the time of practical exam. A doubt arises in the whole exercise, more so where the petitioner is appointed on contract basis and has been driving buses without any difficulty.

19. We are conscious of the fact that the power to prescribe the manner of selection, marks, nature of exam in any selection is the prerogative of the executive. Unfortunately, selection determined on the basis of 'main examination' only and the 'skill test' being qualifying in nature that too in the manner it is conducted, make the 'skill test' meaningless and susceptible to arbitrariness. We hold so.

20. What should be the relief? The selection took place in the year 2008. 5 years have gone by. We see that the petitioner had been seeking information regarding the selection from that year itself. So, it is not the case where the petitioner has been sleeping over his rights. He is entitled to the relief. We would not like to quash the entire selection as it is noted that pursuant thereto many candidates have joined the Corporation and working since then. The petitioner being only candidate before us and he has secured 63 marks in the main examination is entitled to be appointed as Driver. We direct so. He would be entitled to the seniority as per his merit position pursuant to the selection in question. He would not be entitled to any back wages. The period shall be counted for the purpose of pensionary benefits, eligibility, if any, for the next higher post and

notional increments.

21. This order has been passed in the peculiar facts of this case. Any claim by any other candidate before the Tribunal shall be determined by the Tribunal in accordance with the law including the aspect of limitation/delay and latches.

22. We dispose of the writ petition accordingly.

23. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 13, 2013
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