

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

% Judgment delivered on: 04.02.2014

+ **W.P.(C) 3008/2012**

AMANINDER SINGH VERKA

..... PETITIONER

VERSUS

UNION OF INDIA AND ORS

..... RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. Rajiv Manglik and Mr. A.K. Trivedi, Advocates

For the Respondents: Ms. Anjana Gosain, Adv. for R-1

Mr. Lalit Bhasin, Ms. Ratna Dwivedi Dhingra and Ms.
Bhavna Dhami, Advocates for R-2

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The petitioner, is aggrieved by the manner in which the recruitment of trainee pilots, has been made by respondent no.2, in particular, in so far as, it impacts him.

1.1 The petitioner, is admittedly a Scheduled Caste (SC) candidate, who had pursuant to a recruitment drive, carried out by respondent no.2, participated in the process. The petitioner was, however, declared unsuitable for the reason that, he had secured in the interview 35.2 marks out of a total of 60 marks; whereas in his category i.e., SC category, he was required to obtain a minimum of 36 marks. The petitioner, thus, lost out by 0.8 marks.

1.2 This aspect, is really, at the heart of the case.

2. In order to appreciate what ails the petitioner, let me briefly set out the following broad facts :-

2.1 In October, 2006, the petitioner joined the 4th Ab-initio batch, at the Indira Gandhi Rashtriya Uran Academy (IGRU Academy), Rai Bareli, for obtaining training as a Commercial Pilot.

2.2 It is the petitioner's case that in October 2008, in a campus recruitment drive initiated by respondent no.2, he participated. The petitioner, avers that, he had in fact passed the written examination but was not allowed to appear in the interview. The reason for the same, is though, not articulated before me. However, nothing much turns on this particular event.

2.3 The petitioner though in February, 2009, passed out from IGRU Academy, and was, thus, granted, consequently, the Commercial Pilots License (CPL).

2.4 In August, 2010, the petitioner received information that respondent no.2 was, once again, seeking to conduct on-campus recruitment for the post of a trainee pilots, at the IGRU Academy. The slated date, for this purpose, as indicated, in the E-mail dated 27.08.2010 received by the petitioner, was 31.08.2010. The recruitment process was thus, commenced from that date and continued thereafter.

2.5 To be noted, at this stage, respondent no.2, had decided to, only, hold interviews.

2.6 It is the petitioner's case that he along with 79 other candidates, participated in the interview held by respondent no.2.

2.7 It appears that 62 candidates out of a total of 80, who had appeared for interview were selected and an offer in that behalf, was made to them for appointment, on 11.07.2011.

2.8 The selected candidates were required to report for duty on 25.07.2011.

2.9 It is the case of the petitioner that out of the 62 candidates selected, only 44 reported for duty.

3. The petitioner, being aggrieved by the fact that he was not selected, filed an application under the Right to Information Act, 2005 (in short RTI Act) with respondent no.2. In response to the said application, the petitioner was informed by the PIO of respondent no.2 that, the procedure for selection of trainee pilots involves a written examination followed by an interview.

3.1 This flaw, in the recruitment process of respondent no.2 is, one of the grounds on which the challenge made in the present writ petition, is pivoted.

3.2 The petitioner, further avers that, since respondent no.2 became cognizant of its obvious mistake, it decided to hold a written examination on 11.01.2012; albeit restricted to those, who had been declared successful in the interview, which included even those who had not reported for duty on 25.07.2011, though the offer qua them had elapsed.

3.3 The petitioner, also avers that, as a matter of fact, the Board of Directors of Air India, on 24/25.01.2012, had decided to invite all candidates, who had participated in the recruitment process in September 2010, and that, a communication in that behalf had been sent to IGRU

Academy. This communication, however, it is averred, was withdrawn, on 25.01.2012.

3.4 In line with the decision taken by respondent no.2 on 11.01.2012, on 30.01.2012, written examination was held.

3.5 The petitioner claims, that his father, received an E-mail on 11.05.2012, which was indicative of the fact that, several candidates were finally selected by respondent no.2, who otherwise ought not to have been selected, in the first place.

4. It is, in this background, that the captioned petition has been filed.

4.1 This court vide order dated 18.05.2012, issued notice in the writ petition. On that date, the respondents were directed to maintain status quo till the next date of hearing. It was indicated that status quo would obtain in regard to the candidates, who were to join, the posts in question.

4.2 Respondent no.2, being aggrieved by the interim order, preferred an appeal. The said appeal was numbered as : LPA No.601/2012. The appeal was disposed of by the Division Bench, with a direction that, respondent no.2 herein, would keep one post vacant for the writ petitioner; a direction which was to abide by the final decision in the writ petition. The interim order dated 18.05.2012, was accordingly modified.

4.3 The learned Single Judge on 05.02.2013, in line with the order of the Division Bench disposed of the interlocutory applications being : CM Nos.6147/2012 and 8198/2012, directing that one post will be kept vacant for the benefit of the petitioner, in case, he were to succeed in the writ petition.

4.4 The parties, in the meanwhile, have completed pleadings in the matter.

4.5 In view of the modification carried out by the Division Bench and thereafter, by the learned Single Judge, the other private respondents are really not affected on account of the pendency of the writ petition.

4.6 The petitioner before me, has challenged the decision of respondent no.2 whereby, he was excluded from the recruitment process; on several grounds.

5. Mr. Manglik, the learned counsel for the petitioner encapsulated the ground challenge, broadly, as follows :-

(i). The process of recruitment adopted by respondent no.2 was flawed for the reason that even though its own policy required that a written examination had to precede the interview, a reverse methodology was adopted. In other words, the interviews were held for selected candidates in September, 2010, while the written examination, was held in January 2012. According to Mr. Manglik, this process cannot be sustained, as it was contrary to respondent no.2's, own policy.

(ii). The respondent no.2, failed to maintain a proper roster for SC/ST candidates, resulting in denial of opportunity to the petitioner who, as indicated above, is a SC candidate.

(iii). The respondent no.2, failed to conduct interviews of SC/ST candidates as per the guidelines laid down by the Department of Personnel and Training (DOPT). It was contended that the interview process was flawed as SC and ST candidates were interviewed by the same Committee and, that too, alongwith general category candidates.

5.1 In line with the first submission, it was submitted that the opportunity given to sit for the written test (which was held after the interviews), ought not to have been confined only to those who had been selected in the interview but should have been given to all 80 candidates, who had participated in the recruitment process in September, 2010.

5.2 In respect of this submission, it was contended that even those candidates, who had failed to report for duty after being selected, were invited, to appear in the written test, while the petitioner and several other similarly placed persons, were given no such opportunity.

6. Mr. Bhasin, who appears for the contesting respondent i.e., respondent no.2 rebutted the submissions made on behalf of the petitioner to the extent they laid challenge to the policy and the procedure adopted by respondent no.2, to recruit trainee pilots.

6.1 It was Mr. Bhasin's contention that, the petitioner, had no case, in view of the fact that the petitioner, had failed to secure the minimum qualifying marks prescribed for a SC category candidate, which was 36 marks. Mr. Bhasin submitted that, once, cut off marks were fixed, it made no difference as to whether the petitioner lost out by 0.1 mark or 0.8 marks; as was the situation, in the present case.

6.2 Mr. Bhasin, further submitted that, the fact that, interviews were held prior to the written test, would not impact the recruitment process for the reason that the interviews were conducted only to short-list candidates. The written test was conducted thereafter, which is also, the admitted case of the petitioner.

6.3 Mr. Bhasin, also informed that, out of the total number of 80 candidates, who had participated in the recruitment process, 10 were SC

candidates. He further informed the court that 62 candidates were selected, out of which : 51 belonged to the general category; 4 fell in the OBC category; 2 candidates belonged to the SC category; and lastly, 5 fell in the ST category.

6.4 In view of the above, it was submitted that the two SC candidates, who were selected in the interview, were called for the written test, on 30.01.2012. The court, was further informed that both, the SC category candidates qualified for the written test. Pertinently, these facts are not disputed by the petitioner.

6.5 I must point out though, that the learned counsel for the petitioner has brought out the fact that out of the 2 SC candidates, who qualified the written test, held on 30.01.2012, one of them was slotted in the General category, while the other, filled in, the post reserved for a SC candidate. Mr. Bhasin, has not been able to indicate with certainty, as to whether this assertion, is correct.

6.6 I must, however, in this behalf, refer to the letter dated 02.09.2011, addressed by the Operations Department of Respondent no.2 (situate in Santa Cruz, Bombay) to the Executive Director (Personnel) of respondent no.2, located at Delhi. This letter is indicative of the position, which has been put forth by the counsel for the petitioner.

6.7 Mr. Bhasin, continuing with his submissions stated that the contention of the petitioner, that the recruitment exercise qua the reserved category was not carried out in line with the relevant DOPT guidelines, was not correct. In this behalf, Mr. Bhasin, referred me to paragraphs 9 to 12 of the affidavit dated 23.05.2012, filed by him.

6.8 As indicated above, since the private respondents, who were selected, (being 41 in all), have joined service, they are presently, not affected by the outcome of the writ petition. Accordingly, no submissions in reply, were made either way by counsels representing them. Suffice it so say that, Mr. Ravi Sikri, put in appearance, on behalf of respondent nos.4 to 35, while Mr. Ganesh Kumar, appeared for respondent nos.36 to 41.

7. I have heard the learned counsel for the parties at length and perused the record; what emerges thereupon is as follows:

7.1 The petitioner was declared unsuitable in the interview held by the Selection Committee on account of his failure to attain the minimum qualifying marks; which was 36 marks in his category. The petitioner, in effect, required 60% marks to qualify the interview. The petitioner, admittedly, falls in the SC category. The Selection Committee, comprised of 5 persons. While 4 out of 5 interviewers, allocated marks in the range of 36 to 38, one interviewer, allocated 30 marks to the petitioner. It is because of this that, the average marks of the petitioner, dropped to 35.2, as against, the minimum qualifying marks, which was fixed at 36 marks.

7.2 While, respondent no.2 may have some justification for holding the written exams after the interviews were held; there can be no doubt that, in the previous years, it had been following a different practice - which was that, written examination were held in the first in point of time; followed by interviews. What comprised, in a sense, in the petitioner's case sorely was the fact that he had no opportunity to prove his ability in the written test held by respondent no.2. Respondent no.2, on its part,

perhaps, for reasons of practicality, narrowed the zone of consideration by adopting a short-listing procedure, which was not in vogue earlier, of having interviews, in the first instance, followed by a written examination.

7.3 Because of this methodology being followed by respondent no.2, the petitioner never got an opportunity of being called for the written exam and, therefore, in a sense, was eliminated based on a subjective selection process; which was the route of interviews. All interviewers except one, found the petitioner suitable for the post of a trainee pilot.

7.4 It is also not in dispute that there were two posts reserved in the SC category; one post has been filled, while the other remains vacant; albeit under orders of this court. Though, there was another candidate who had qualified in the SC category, he has, admittedly, been absorbed in the general category.

7.5 I had adjourned the matter for Mr. Bhasin to obtain instructions in the matter, as to whether, in the peculiar facts and circumstances of the case, without making this case a precedent, respondent no.2 could absorb the petitioner, given the fact that one post is available and, there is, perhaps, a need for trainee pilots in the organisation.

7.6 Mr. Bhasin, did place the request before his client. His client has, however, chosen to obtain a directive from court, in this behalf. Mr. Bhasin though, in his usual fairness, does not join issue with the fact, that there is a need for a trainee pilot, and that, but for the apprehension of making it a precedent, respondent no.2 organisation would have readily absorbed the petitioner, in the given facts. This sentiment also comes through, in the letter written by respondent no.2's own officer, which is

dated 02.09.2011, to which I have already made a reference hereinabove; albeit in a different context. The last two paragraphs of this letter being relevant for the present aspect are extracted hereinbelow :-

“..On going through the selection panel report, it has been observed that Mr. Amaninder Singh Verka (SC) did not qualify in the personal interview as he had not secured requisite marks i.e., 60% which works out to 36 marks against which he has obtained 35.2 marks and it is a fact that one SC candidate out of 2 selected ones has been treated as GEN as he was selected on the general standards.

Notwithstanding the above, it is upto the competent authority to re-consider the left over SC candidate of IGRUA, particularly non-selection of Mr. Amaninder Singh Verka, SC, one of the eligible candidates appeared for the personal interview.

Trust the above suffices..”

(emphasis is mine)

8. Having regard to the above, I am of the view that, without making this case as a precedent, given the fact situation that respondent no.2 organization, in any event, requires trainee pilots, directive should be issued to respondent no.2, to absorb the petitioner, as a trainee pilot.

8.1 There is another aspect of the matter, which has impelled me to pass such a direction, which is this, that even though the petitioner has obtained a CPL, the validity of this license, is expiring on 16.02.2014, and if, the license is allowed to lapse, he would have to go back to the drawing board, in a manner of speaking, to obtain a CPL. This would entail expense and time.

8.2 In these circumstances, the writ petition is allowed, with a direction to respondent no.2, to absorb the petitioner as a trainee pilot subject to, however, the petitioner appearing and qualifying both the written test and the simulator test. His appointment will also be subject to the petitioner being declared fit, in the medical examination.

8.3 In view of the fact that the CPL of the petitioner is expiring on 16.02.2014, Mr. Bhasin assures the court that the aforementioned tests will be conducted before that date and that if, the petitioner qualifies, the aforesaid tests and is declared medically fit, he would be recruited in the respondent no.2 organisation.

8.4 It is, however, made clear that the petitioner's seniority in the organization shall commence from the date he joins respondent no.2 organisation.

9. With the aforesaid directions in place, the writ petition is disposed of.

10. Dasti.

RAJIV SHAKDHER, J

FEBRUARY 04, 2014

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