

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: December 23, 2021

+ W.P.(C) 749/2019, CM No. 3273/2019

KAMLENDRA KUMAR VERMA

..... Petitioner

Through: Mr. Himanshu Shekhar, Mr. Jamnesh
Kumar and Mr. Parth Shekhar, Adv.

versus

INDIAN OIL CORPORATION LIMITED

..... Respondent

Through: Mr. V.N. Kaura, Adv. with
Mr. Paramjeet Benipal, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present writ petition has been filed by the petitioner with the following prayers:

“In view of the above facts and submissions, it is most respectfully prayed that this Hon’ble Court may graciously be pleased to:-

a. Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent to declare the petitioner to be successful for the post of Human Resource Officer (Grade-A) for which the respondent had held Written Test, GD/GT and Personal Interview pursuant to the advertisement no. RD-2017.

b. Direct the respondent to republish the result for the post of Human Resource Officer (Grade-A) for which the respondent had held Written Test, GD/GT and Personal Interview

pursuant to the advertisement no. RD-2017 after including the name/roll number of the petitioner in the list of successful candidates; and/or

- c. Quash the result published for- the post of Human Resource Officer (Grade-A) for which the respondent had held Written Test, GD/GT and Personal Interview pursuant to the advertisement no. RD-2017*
- d. issue any other order, direction or writ as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioner and against the respondents."*

2. The petitioner is a B.A and M.B.A, who belongs to Scheduled Caste category (*hereinafter*, 'SC'). On the other hand, the respondent / Indian Oil Corporation Limited (*hereinafter*, 'IOCL') is an instrumentality of the State having its office at New Delhi.

3. The respondent / IOCL brought out an advertisement (Advertisement No. RD-2017) for different posts including the post of Human Resource Officer (*hereinafter*, 'HR Officer') (Grade-A). There were altogether 50 posts advertised for HR Officer (Grade-A) in which 7 posts were reserved for SC candidates, 3 posts for Scheduled Tribes (*hereinafter*, 'ST') candidates, and 13 posts for Other Backward Classes (*hereinafter*, 'OBC') candidates.

4. The minimum eligibility criteria / qualification was 2 years full-time regular M.B.A. / for the post of HR Officer (Grade-A). In this regard, Mr. Himanshu Shekhar, learned counsel appearing on behalf of the petitioner has placed on record the relevant extracts of the Advertisement No. RD-2017 reproduced hereunder:

"Qualification

2 year full time regular MBA / Masters Degree or Post Graduate Diploma equivalent to MBA with HRM/IR/Labour welfare as major subjects or Masters Degree in Human Resource Management & Industrial Relations / Labour Welfare / Social Work with specialization in Personnel Management & Labour Welfare - from a recognized Indian Institute / University with minimum 60% marks or equivalent CGPA (55% for SC/ST/PwBD candidates only).

The candidate must have completed the qualification under an "in Campus program" from an University duly approved by UGC. In case the qualifying degree is PGDM (or equivalent) offered by an Institute or a college, affiliated or otherwise, under an "Off-Campus Program"; such degree/diploma offered by the institute/college must have a subsisting approval from AICTE. Further, such degree/diploma must have a recognition Association of Indian Universities (AIU)' declaring the program as equivalent to MBA.

Post Qualification Experience required (as on 31st Oct, 2017)

Minimum 2 years of post qualification professional experience in any Govt./PSU/MNC/Private organization in the field of HR/Employee Relations/Social Work/CSR etc.

Note : Experience of teaching and research in an Academic Institute will not be considered as a relevant experience. "

5. That according to the said advertisement, age relaxation of 5 years for SC / ST candidates was given. According to Mr. Shekhar, the petitioner being an SC candidate claimed the aforesaid age relaxation of 5 years. In this regard, Mr. Shekhar placed on record the selection process for the post of HR Officer (Grade-A). The said portion of the advertisement is reproduced hereunder:

"Selection Process :

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2. Post Codes 05 & 06 :

- a. The selection process for the Posts Codes 05 & 06 will comprise Written Test (objective type consisting of two parts – General Aptitude and Discipline Knowledge), Group Discussion/ Group Task and Personal Interview.
- b. Candidates will have to qualify through each stage of selection process successfully before being adjudged as suitable for selection.
- c. The candidates should secure minimum qualifying marks as mentioned below in each stage i.e. Written Test, GD/GT and Personal Interview, for consideration of next stage of selection process and finally adjudged suitable for selection.

	Minimum qualifying marks	
	General & OBC candidates	SC, ST, PwBD/ EXM candidates
Written Test	35 out of 100	25 out of 100
GD/GT & Personal Interview	40%	40%

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6. Mr. Shekhar stated that the petitioner applied for the post of HR Officer (Grade-A) by submitting an online application form on November 17, 2017. He also stated that after one or two days the petitioner also sent a hard copy of the filled-up form with relevant / necessary documents. That the written test for the said post was held on December 10, 2017. Mr. Shekhar submitted that the petitioner qualified for the written test and he was called for Personal Interview (*hereinafter*, ‘PI’) and Group Discussion (*hereinafter*, ‘GD’) / Group Task (*hereinafter*, ‘GT’).

7. He further submitted that the final result of the said post was declared on May 21, 2018, wherein in General category 27 candidates

were declared successful while in SC, ST, and OBC category 7, 3, and 13 candidates were declared successful respectively. However, the petitioner was not declared successful.

8. After the declaration of the result the petitioner sought information regarding full details of his marks (written test, GD, and PI) along with details of marks of all the selected candidates (category wise) under the Right to Information Act, 2005 (*hereinafter*, 'RTI Act, 2005'). Consequently, the respondent / IOCL supplied the requisite information. Mr. Shekhar stated that from the information supplied by respondent / IOCL the petitioner could infer that he has secured altogether 48.45 marks in written test, 3.10 marks in GD / GT, and 4.00 marks in PI, and thus total marks obtained by the petitioner is 55.55.

9. It was submitted by Mr. Shekhar that the candidates at Serial No. 26 and 27 (last two candidates) in the General category had secured 55.10 and 54.95 marks respectively. That apart, the last candidate in the SC category (i.e., at Serial No.7) had obtained 55.60 marks. Furthermore, Mr. Shekhar stated that the petitioner again sought information from the respondent / IOCL under the RTI Act, 2005 regarding how many candidates (category wise) have joined in this recruitment process for the said post. Moreover, the petitioner also sought information as to how many selected candidates (SC category) were selected as Unreserved (*hereinafter*, 'UR') category.

10. According to Mr. Shekhar, the petitioner also requested the respondent / IOCL to provide him with his OMR sheet (answer response sheet) along with the model question paper and its answer key.

11. Mr. Shekhar stated that the petitioner was provided requisite information vide letters dated September 26, 2018, and October 12, 2018, which makes it clear that altogether only 26 candidates have joined under the UR category, and 1 seat, is still lying vacant / unfilled.

12. That the respondent / IOCL provided model question paper along with the answer key and OMR sheet to the petitioner. However, Mr. Shekhar contended that the petitioner was not provided model question paper booklet Series 'A' bearing No.400449 and its answer key. He further contended that the petitioner was given model question paper booklet Series 'A' at the time of written test, therefore, rather than providing model question paper booklet Series 'A' the respondent / IOCL provided model question paper booklet Series 'B', whereas the OMR sheet (answer sheet) was provided of model question paper booklet Series 'A'. Mr. Shekhar averred that from the OMR sheet (answer sheet) it is quite evident that the petitioner was supplied model question paper booklet Series 'A' bearing No.400449 at the time of the written test.

13. Mr. Shekhar submitted that the petitioner further sought information regarding the full list of candidates who had appeared in the interview along with their breakup marks and also to supply his model question paper Series 'A' bearing No.400449 and its answer key. He further submitted that the petitioner also sought information regarding the age of all selected candidates as on the advertisement date.

14. Mr. Shekhar stated that the respondent / IOCL vide letter dated October 26, 2018, rejected the RTI applications dated October 03, 2018, and October 07, 2018, of the petitioner on the ground that the

information has already been supplied. Thereafter, the petitioner filed an online Appeal dated October 30, 2018, against the reply of the respondent / IOCL dated October 26, 2018. Mr. Shekhar submitted that in response to the aforesaid Appeal dated October 30, 2018, the respondent / IOCL vide letter dated December 05, 2018, informed the petitioner that the model question paper booklet of the petitioner and its answer key is not available with the respondent / IOCL as the recruitment is conducted by third party recruitment agency and the same is retained by the agency.

15. Furthermore, Mr. Shekhar submitted that the reply dated December 05, 2018, not having been received, the petitioner filed Second Appeal u/s 19(3) of the RTI Act, 2005 before Central Information Commission (*hereinafter*, 'CIC'), New Delhi. However, having filed the Second Appeal on December 05, 2018, the petitioner on the same day in the evening received the aforesaid reply of First Appellate Authority regarding the information sought by the petitioner vide letter dated October 26, 2018.

16. Mr. Shekhar further submitted that CIC pointed out few defects in the Second Appeal dated December 05, 2018, filed by the petitioner and requested the petitioner to remove the defects / deficiencies. Thereafter, the petitioner by removing the aforesaid defects / deficiencies filed a fresh Second Appeal. The outcome of the Second Appeal before the CIC is not known.

17. Mr. Shekhar gave the following reasons for filing the present petition:

- i. That the petitioner is not getting his model question paper booklet No.400449 of the 'A' Series. He further stated that the

petitioner is quite confident that he must have obtained more marks than what he has got and once his particular model question paper booklet is made available to him, he can demonstrate his assertion. However, even after repeated efforts at different levels, he has not been provided with his model question paper booklet No.400449 of the 'A' Series.

- ii. That the petitioner has a reasonable apprehension that his model question paper booklet No.400449 of the 'A' Series and its answer key may be destroyed or mutilated.
- iii. That large-scale malpractice has been committed by the respondent / IOCL in the whole recruitment process.
- iv. That the petitioner's candidature ought to have been considered by the respondent / IOCL in the UR category as he had obtained more marks than the last two selected candidates of the UR category. Moreover, the petitioner is quite confident that his answer sheet has not been properly evaluated or something has been done with his model question paper and the answer sheet. Mr. Shekhar contended that not including the name / roll number of the petitioner on the list of successful candidates amounted to violation of Articles 14 and 16(4) of the Constitution of India.
- v. That the petitioner ought to have been considered against the General category seat as he had obtained more marks than the last two General category candidates. It has been held by the Supreme Court that a reserved category candidate, in addition to the reserve seats can always compete for unreserved seats. In this regard, Mr. Shekhar stated that when certain seats are reserved, it would not result in making unreserved seats

compartmentalized for the General category i.e., unreserved candidates as there is no reservation for General category candidates. Also, the concession or relaxation in the matter of fee and age would not deprive a reserved category candidate of his right to be considered against an unreserved seat, it only enables certain candidates belonging to the reserved category to fall within the zone of consideration. That as per respondent's / IOCL's own disclosure one candidate belonging to the SC category was selected against the UR category. Hence, this present writ petition.

18. Learned counsel for the petitioner has relied upon the following judgments in support of his submissions:

- (i) ***Pradeep Singh Dehal v. State of Himachal Pradesh & Ors., (2019) 9 SCC 276;***
- (ii) ***V. Lavanya & Ors. v. State of Tamil Nadu & Ors., (2017) 1 SCC 322;***
- (iii) ***Vikas Sankhala & Ors. etc. v. Vikas Kumar Agarwal & Ors., (2011) 1 SCC 350;***
- (iv) ***Deepa E.V. v. Union of India & Ors., (2017) 12 SCC 680;***
- (v) ***Jitendra Kumar Singh & Anr. v. State of U.P. & Ors., (2010) 3 SCC 119;***
- (vi) ***Prem Chand Kumar & Ors. v. Railway Protection Force & Ors., W.P.(C) 1350/2017;***
- (vii) ***Jitender Yadav v. Union of India & Ors., W.P.(C) 7500/2013; and***

(viii) *Naveen Dahiya v. GNCT of Delhi & Ors., W.P.(C) 2125/2014.*

19. Counter affidavit has been filed by Mr. V.N. Kaura learned counsel appearing on behalf of the respondent / IOCL. According to Mr. Kaura, the petitioner has failed to disclose the correct facts regarding the selection of one candidate belonging to the SC category who was selected on merits in the UR category. Unlike the petitioner, the said candidate, Ms. Priyam Medhi had not availed of any relaxation available to the reserved category candidates, whereas the petitioner has availed the benefit of age relaxation available to SC candidates, but for which the petitioner would not have been eligible.

20. In this regard, Mr. Kaura contended that the petitioner could not, therefore, be considered for appointment under the General category in terms of the Office Memorandum (*hereinafter*, 'OM') No. 36011/1/98-Estt.(Res) issued by Ministry of Personnel, Department of Personnel and Training, Government of India which states as follows:

“3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age limit, experience qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.”

21. Mr. Kaura submitted that it is the settled legal position that a candidate who applies under a reserved category by availing age relaxation available to that category could not claim an appointment in

the General category. To support his view, Mr. Kaura relied upon the judgment of the Supreme Court in *Deepa E.V. (supra)*. Hence, according to Mr. Kaura, the present petition is ex facie not maintainable and liable to be dismissed.

22. Having heard the learned counsel for the parties, two issues arise for consideration in this writ petition, whether the petitioner was entitled to the model question paper booklet Series 'A' bearing No.400449 and its answer key and if he has secured 55.60 marks or more, is he liable to be appointed to the post of HR Officer (Grade-A). The eligibility of the petitioner to the said post is not in dispute. The ground on which the respondent / IOCL has denied the appointment to the petitioner is that he had secured 55.55 marks which is less than the last selectee under the SC category (to which he belongs), who had secured 55.60 marks.

23. On the first issue, it is the case of the petitioner that he had asked the respondent / IOCL for providing him model question paper booklet Series 'A' bearing No.400449 and its answer key. It is his case, the respondent / IOCL has given the model question paper booklet Series 'B'. In other words, based on the said model question paper, though he was given the OMR sheet (answer sheet), it is not possible to ascertain the right answers and the marks secured by him. I note that this Court vide its order dated March 28, 2019, had called upon the respondent / IOCL to preserve the booklet No.400449 of 'A' Series to the extent it relates to the petitioner. Despite that they have, in fact, filed model question paper booklet of 'B' Series. The reasoning given by the respondent / IOCL in response to the RTI application filed by the petitioner for giving model question paper i.e., Series 'B' is that the

question booklet of the petitioner and its answer key is not available with the Authority, as the examination for the said post is conducted by a third party / recruitment agency.

24. It is the belief of the petitioner that if the model question paper of Series 'A' bearing No.400449 is compared with his OMR answer sheet, he would have secured 55.60 or more marks, i.e., marks secured by the last selectee under the SC category, he would have been appointed. I note that on pages 47 to 58 (Annexure-4) the reply documents received by the petitioner under the RTI application specifically on page No. 48 it clearly depicts model question paper booklet of Series 'B'.

25. It is also noted that the OMR sheet on pages 57 to 58 (Annexure-4) is that of the petitioner. According to the petitioner, based on the model question paper booklet of Series 'B' and the answer key being of 'B' Series, his OMR answer sheet cannot be tallied. The apprehension of the petitioner appears to be reasonable.

26. On issue No. 2, the counsel for the petitioner stated if the petitioner secures 55.60 or more marks he would liable to be appointed. A connected submission made by the learned counsel for the petitioner is that if the petitioner secures 55.60 or more marks which are above the marks secured by the last General category candidate then an SC category candidate must be appointed in place of General category candidate.

27. I am not in agreement with the last submission made by the counsel for the petitioner. It is a conceded case of the petitioner that he was given a relaxation of five years in age for applying for the post. Such an SC category candidate seeking the benefit of relaxation cannot

claim a right to be appointed under the General category even if he secures more marks. The Supreme Court in *Deepa E.V. (supra)* has in paragraphs 4 and 7 held as under:

“4. The Appellant, who has applied under OBC Category by availing age relaxation and also attending the interview under the 'OBC Category' cannot claim right to be appointed under the General Category.

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7. On a combined reading of Rule 9 of the Export Inspection Agency (Recruitment) Rules, 1980 and also the proceedings dated 1.7.1998, we find that there is an express bar for the candidates belonging to SC/ST/OBC who have availed relaxation for being considered for General Category candidates.”

Additionally, the OM No.36011/1/98-Estt.(Res) dated July 01, 1998, issued by the Ministry of Personnel, P.G.. & Pensions, Department of Personnel and Training, Government of India reproduced in paragraph 20 above also states that when a relaxed standard is applied in selecting an SC / ST / OBC candidates, for example in the age limit, experience qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC /ST / OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.

28. Insofar as the issue Nos.1 and 2 are concerned, I note that the respondent / IOCL have not placed on record the model question paper booklet Series 'A' and its answer key though the OMR sheet of the petitioner has been filed on record. It is not possible to ascertain whether the OMR sheet of the petitioner tallies with the answer key of

Series 'A'. If that be so, the petition is disposed of with the directions that the respondent / IOCL to call for the model question paper Series 'A' along with the answer key and tally the answers of the petitioner in the OMR sheet filed on record before this Court. On such comparison, if there is an increase in the marks of the petitioner, further action shall be taken by the respondent / IOCL in accordance with the law.

29. If there is no change in the marks secured by the petitioner then the matter shall be treated as closed. The above exercise must be carried out by the respondent / IOCL within a period of six weeks as an outer limit from today. With the above, the petition is disposed of.

30. In view of my above conclusion, the above-mentioned judgments relied upon by the learned counsel for the petitioner with the proposition stating "*that the reserve category candidates, who secured more marks than the marks obtained by the last candidate selected in General category would be entitled to be considered against unreserved category vacancies*", have no applicability in view of my above conclusion based on the judgment of the Supreme Court in *Deepa E.V. (supra)* and the OM as reproduced in paragraph 20 above.

CM No.3273/2019

In view of the order passed on March 28, 2019, and the order in the writ petition, this application is also disposed of.

V. KAMESWAR RAO, J

DECEMBER 23, 2021/aky