

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

Reserved on: 20.05.2021

Date of Decision: 04.06.2021

+ **LPA 168/2021**

ABHISHEK KUMAR

..... Appellant

Through Mr.Ajay Garg, Adv.

versus

OFFICE OF DISTRICT AND SESSIONS

JUDGE (HQ) & ANR.

..... Respondents

Through Mrs.Avnish Ahlawat, Standing
Counsel GNCTD (Services)
with Mr.Nitesh Kumar Singh,
Mrs.Tania Ahlawat, Ms.Palak
Rohmetra, Advs.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

1. This appeal has been filed challenging the Judgment and Order dated 20.04.2021 passed by the learned Single Judge of this Court in W.P.(C) 7122 of 2020, titled *Abhishek Kumar v. Office of District and Sessions Judge (HQ) & Anr.*, dismissing the said writ petition of the appellant herein.

2. By way of the above-mentioned writ petition, the appellant had sought for the following reliefs:

- “a. *To quash the Circular dated 19-08-2020 and the previous and subsequent circulars of the respondents inviting the candidates directly for Interview by bypassing/dispensing with the Descriptive Test of 100 marks and reducing the Interview to 12 Marks being illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and prevalent rules and advertisement issued by the respondents and quash all subsequent steps taken by the respondent thereto; and*
- b. *direct the respondents to conduct as well as complete the examination and selection process as per the notified scheme and selection procedure given in the said Advertisement dated 14-09-2020 and prevalent Rules as applicable.”*

3. The respondent no. 1 issued a Vacancy Notice/Advertisement dated 14.09.2020 for recruitment to various cadre posts *inter alia* including 161 vacancies for the post of Junior Judicial Assistant (‘JJA’) in the establishment of the District & Sessions Courts and Family Courts, New Delhi, with respect to which the writ petition and the present appeal relates.

4. The Advertisement prescribed a four-Tier selection process/scheme of examination. Tier-I was an Objective Test containing questions of General English and Comprehension, General Knowledge (including Current Affairs) and General Intelligence, for a total 120 marks. Tier-II was a Skill Test (Typing Test) and was qualifying in nature. Tier-III was a Descriptive Test, and the

Advertisement prescribed the following conditions insofar as Tier–III was concerned:

“Tier-III:- Descriptive Test for the posts of Junior Judicial Assistant & Data Entry Operator

*The candidates who qualify the Skill Test will be called for a “Descriptive Test” of English language (Total 100 Marks). It would consist of Essay (300 words = 50 Marks), Grammar (30 Marks) and Translation (25 words = 20 Marks). Minimum passing marks for General Category candidates will be 50% (i.e., 50 Marks out of 100 Marks) and for Reserved Category candidates will be 45% (i.e., 45 Marks out of 100 Marks). **Duration of the test will be of 120 Minutes.***

*The Descriptive test will be conducted for the posts of **Sr. Personal Assistant, Personal Assistant, Junior Judicial Assistant, & Data Entry Operator.** However, District & Sessions Judge (HQ), Delhi reserves the right to modify or dispense with any stage of the selection process, if deemed appropriate especially in view of the number of applications received for any particular post and as may be permissible under Delhi District Court (Establishment) Rules, 2012.”*

5. Tier–IV was an Interview which was prescribed to be of 30 marks. The minimum passing marks in the interview for the General Category candidates was 12 marks while for the Reserved Category (including PwD) candidates was 10 marks.

6. A total of 24,173 candidates applied for the 161 posts of JJA, for which Tier-I (Objective Test) was conducted on 29.11.2019. A total of 14,256 candidates appeared in the same. 4,471 candidates, including the appellant herein, qualified in the Tier-I test with the appellant being placed at serial number 1606, having secured 87.5 marks out of 120 marks in the unreserved category with the highest being of a candidate with 115 marks in the same category.

7. It is the case of the respondents, which has also been confirmed by the learned Single Judge having perused the relevant records, that in the meeting of the Recruitment Committee held on 06.01.2020, it was decided to dispense with the holding of the Descriptive Test of the candidates for the post of JJA. The relevant extract from the Minutes of Meeting dated 06.01.2020 excerpted from the counter affidavit filed by the respondents before the learned Single Judge, is as under:

“11. That vide Minutes of Meeting dated 06.01.2020 of the Recruitment Committee duly approved by Ld. District & Sessions Judge (HQs), Delhi, dispensed with the holding of Descriptive Test (100 marks) of candidates for the post of JJA. The relevant Para is reiterated as under:

“In view of the urgency in the recruitment of ministerial staff, the holding of descriptive test of the candidates for the post of JJA, may be dispensed with, subject to the approval of Ld. District & Session Judge (HQs), Delhi.””

8. Vide the Minutes of Meeting dated 14.02.2020 of the Recruitment Committee, the consequent change in marks for Interview was made with total marks being reduced to 12, and the qualifying marks being reduced to 5, in the unreserved category. The same was duly approved by the learned District and Sessions Judge (HQs), Delhi.

9. A total of 3,775 candidates appeared in the Tier-II test, which was the Skill Test (Typing Test), held on 21.01.2020, out of which 460 candidates were declared as qualified.

10. Due to the outbreak of Covid-19 pandemic further selection process was delayed and finally on 05.08.2020 notice for holding Online Interview was issued. The respondents issued notification dated 19.08.2020 in continuation thereof, informing the candidates that the interview shall be conducted through video conferencing on 30.08.2020 and 12.09.2020. The candidates were also informed that the Descriptive Test (Tier-III) had been dispensed with and the marks for the interview had been revised, as mentioned hereinabove.

11. The appellant filed a representation against the same and also appeared in the interview.

12. The representation against the decision to dispense with the Descriptive Test and the change in the marks of the Interview was received only from the appellant and was rejected by the Recruitment

Committee on 22.09.2020. The appellant, as noted hereinabove, duly appeared before the Interview Board.

13. The final results were declared on 13.12.2020 for the 63 posts of JJA in the unreserved category. The candidates from rank 64 to 70 were kept on the panel, with the last selected candidate in the unreserved category securing a total of 110.494 marks and the last candidate in unreserved category in the wait-list panel securing 109.432 marks, while the appellant secured a total of 92.5 marks.

14. The appellant thereafter filed the above writ petition challenging the dispensing with of the Tier III Descriptive Test and the reduction of total marks for the Tier IV- Interview, which has been dismissed by the learned Single Judge of this Court by way of the Impugned Judgment and Order.

15. The learned counsel for the appellant submits that the learned Single Judge has erred in holding that the respondent no. 1 could have dispensed with the Descriptive Test (Tier-III) in the scheme of examination, exercising the power given in the Advertisement. He submits that the power of dispensation with any stage of examination process could be exercised only if deemed appropriate in view of the number of applications received and, in any case, only when the same is permissible under the Delhi District Court (Establishment) Rules, 2012 (hereinafter referred to as the 'Establishment Rules'). He submits that in the present case, the number of applicants who had qualified

Tier-II (Skill Test/Typing Test) were in excess of number of vacancies available to be filled and in any case, the dispensing with the Descriptive Test (Tier-III) was not permissible under the Establishment Rules. He submits that the Establishment Rules prescribe the mode of direct recruitment to be on the basis of the written test and interview. The 'written test' can only mean descriptive test and not objective test, as for other posts like Process Server the Establishment Rules specifically prescribe the selection to be on the basis of an Objective test. He submits that therefore, descriptive test was an essential basis for selecting candidates to the post of JJA and could not have been dispensed with by the respondent no. 1.

16. No submission was made by the learned counsel for the petitioner as far as reduction of marks for Interview was concerned.

17. We have considered the submissions made by the learned counsel for the appellant, however, find no merit in the same.

18. The reasons for dispensing with the Descriptive Test were explained by the respondent no. 1 in its counter affidavit filed before the learned Single Judge, as under:

"It is submitted that due to urgency as also the fact that the office of the District & Session Judge is already facing severe crunch of ministerial staff and as the induction training of approximately 125 Judicial officers in the cadre of DJS was likely to have been completed by March, 2020 and in normal circumstances these officers would have been assigned their posting/duties by March, 2020

and presently their induction training programme has been completed and the said judicial officers are awaiting posting orders from Hon'ble high Court of Delhi. Therefore, in the absence of Ministerial Staff, it is nearly impossible to conduct/hold Court. It is respectfully submitted that the recruitment process of 75 DJS officers and 30 DHJS officers is presently going on. The status report is as under:

Sl. No.	Cadre	Nos. of vacant post of DHJS/DJS.	Remarks
01.	DJS	125	Training of 125 DJS officer has already been completed and they are awaiting their posting orders from Hon'ble High Court of Delhi which can be issued at any time.
02.	DHJS	11	Interviews of 11 DHJS have already been conducted on 17.10.2020 by the Hon'ble High Court of Delhi.
03.	DJS	75	Preliminary & Mains examination has already been conducted by the Hon'ble High Court of Delhi and Interview are scheduled to be conducted in the 4th week of December, 2020 after which the final result is likely to be declared on or before December, 2020.
04.	DHJS	19	Preliminary examination has already been conducted by the Hon'ble High Court of Delhi. The mains examination is

			<i>scheduled to be conducted by the Hon'ble High Court of Delhi on 12th and 13th December, 2020.</i>
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It is pertinent to mention here that the modification was also due to the fact that out of 24,173 total candidates only 4,471 qualified in the "MCQ/Written Test" and out of total 4,471 candidates total 460 candidates were declared as qualified in the "skill test/typing test" and in view of the pressing necessity to appoint sufficient number of candidates to the vacant post, the holding of the descriptive test was dispensed with. Furthermore, the evaluation of descriptive test might have entailed longer time span in the process of declaration of merit list of the successful candidates. The dispensing of descriptive test applied uniformly to all the candidates and brings them on an equal footing in the arena of considering their merit and suitability to the requirement of the duties of JJA, which are clerical in nature."

19. A reading of the above would clearly show that the respondent no. 1 has explained in detail the reasons for dispensing with the Descriptive Test, which we find to be germane and valid and therefore, the decision cannot be termed as arbitrary or whimsical. The learned Single Judge has also taken note of the above reasons and observed, as under:

"57. I have independently examined the Minutes of the Recruitment Committee to ascertain the reason for dispensing with the descriptive test. The Minutes placed before this Court fortify the stand of the Respondents, taken elaborately in the counter-affidavit, that the descriptive test was

dispensed with on account of urgency. Respondents have satisfactorily explained that on account of the induction training of Judicial Officers as well as recruitment of fresh Judicial Officers, both in the DJS and the DHJS, there was an urgent need of ministerial staff in the office of the District & Sessions Judge (HQs), which was otherwise facing a severe crunch of the Ministerial staff, it was decided to dispense with the descriptive test. The process was undoubtedly time consuming and cumbersome and would have prolonged the recruitment. The Competent Authority, in its wisdom and discretion, took a well considered decision, in the exigency and interest of administration and suffers from no arbitrariness, calling for interference by this Court.

58. It is a well settled law that it is the domain of the employer to fix the criteria of recruitment/selection to the posts that are intended to be filled. As observed by the Supreme Court, it is the employer who is best suited to decide the requirements of the post depending on the nature of work and also decide the evaluation/selection mechanisms or scheme of an examination, so as to ensure that the candidates selected meet the threshold of efficiency required to carry out the job requirement of a post. It is neither the domain of the Court to determine the method/criteria of selection nor does the Court have the necessary expertise to decide which criteria would be best suited to the job requirement. Supreme Court and various High Courts have repeatedly held that the Courts should not interfere in the examination processes with respect to requisite qualifications etc. and, in my view, this restraint and restrictions on the Courts shall apply with greater force to interference in the scheme of the examination, of course with a caveat that the applicable Statutory Rules are not violated.”

20. Insofar as the Establishment Rules are concerned, the same prescribed that 80% of the posts of JJA shall be filled by direct recruitment 'on the basis of written test and interview'. Ordinary and general meaning of a 'written test' is one which is administered on a paper or on a computer (as an eExam/electronic exam). It can be of various types such as, multiple choice, true-false, matching, completion, essay, etcetera. It need not be only descriptive in nature. An objective-type test is as much a written test as a descriptive test.

21. It is true that the Establishment Rules, for some of the posts including that of the Process Server do prescribe selection on the basis of an 'objective test', however, this cannot lead to a conclusion, that 'written test' for selection of JJA cannot be objective test or has to necessarily be 'descriptive test'. It can only mean that for the post of Process Server, the test cannot be descriptive test. Words of the Rule are to be understood in their natural, ordinary or popular sense, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. In the present case, we do not find such reason to depart from the ordinary meaning of a 'written test' used in the Establishment Rules.

22. Equally, though a presumption arises that where in relation to the same subject-matter, different words are used in the same statute, they are not used in the same sense, however, this is merely a presumption and not an inviolable rule. Its application is subject to the

primary rule that the words used must be given their natural and grammatical meaning. Rejecting similar argument as raised by the learned counsel for the appellant in the present appeal, the Supreme Court in ***Econ Antri Ltd. V. Rom Industries Ltd. & Anr.***(2014) 11 SCC 769, has held that the words “of”, “from” and “after” may, in a given case, mean really the same thing, and accordingly, it is not possible to hold that the word “of” occurring in Sections 138(c) and 142(b) of the Negotiable Instruments Act 1881 is to be interpreted differently as against the word “from” occurring in Section 138(a) of the Act.

23. The learned Single Judge has also considered the above submission of the appellant *in extenso* and has observed, as under:

“55. Coming to the present case, the Recruitment Rules prescribe a written test. The word ‘written’ only means and connotes something which is not oral or spoken and is transcribed on a paper or with the increasing technology, digitally. Objective test would certainly qualify to be a written test. This Court cannot read words into the Recruitment Rules, which do not exist and in this background the contention of the Petitioner that the Recruitment Rules mandate a descriptive test only cannot be sustained. Admittedly Respondents have held an Objective test and thus it cannot be said that written test was not held.

56. The position taken by the Petitioner that this Court as well as the Subordinate Courts have been holding descriptive tests in the past for filling up the posts of JJAs, is

certainly uncontroverted. However, in my view, the norms and practice cannot be a sufficient ground for this Court to read the Recruitment Rules differently from the way are drafted. Most certainly it is open to the Respondents to test candidates through a descriptive test, but the action of dispensing cannot be held violative of the Rules.”

24. We may also note that the Advertisement itself prescribed that the Descriptive Test can be dispensed with. The relevant extract from the Advertisement has been reproduced hereinabove. The appellant having participated in the selection process knowing fully well this condition, cannot now be allowed to challenge the same.

25. The submission of the learned counsel for the appellant that Tier III – Descriptive Test could have been dispensed with in terms of the Advertisement only where the number of candidates found eligible after Tier II was lesser than those advertised for, is only to be stated to be rejected as we find no such limitation on the power of District and Session Judge (HQ) in the advertisement. The Advertisement empowers the District and Session Judge (HQ) to dispense with any stage of the selection process “if deemed appropriate especially in view of the number of applications received for any particular post”. Therefore, the number of applications received or the number of candidates qualifying the Tier II is not the only reason on which the District and Session Judge (HQ) could have dispensed with the Tier III stage of the selection process.

26. We may also note that the Supreme Court in *Ashok Kumar Uppal & Ors. v. State of J&K & Ors.*, (1998) 4 SCC 179, has held that under service jurisprudence as also the administrative law, the power to relax the recruitment rules has necessarily to be conceded to the employer. In the present case, in our opinion, though the question of relaxation of rules does not arise as the rules itself do not mandatorily require a descriptive test to be taken, it was even otherwise, a fit case that the Establishment Rules could have been relaxed with respect to the impugned selection process, given the acute urgency to complete the selection process as explained by the respondent no. 1 in its counter affidavit.

27. The learned counsel for the appellant had also submitted that the appellant could have improved his standing in case the Descriptive Test was conducted by the respondent no. 1 and could have made the selection. However, we find the same to be only a matter of conjectures and surmises. It is not the case of the appellant that the decision of the respondents was *mala fide* or made to benefit anyone in particular.

28. In view of the above, we find no merit in the present appeal. The same is dismissed. There shall be no order as to costs.

29. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsels through e-mail.

NAVIN CHAWLA, J

MANMOHAN, J

JUNE 04, 2021/Arya/P/A.

