

**(2010) 04 DEL CK 0261**

**Delhi High Court**

**Case No:** Writ Petition (C.) No. 1842 of 2010

Government of NCT of Delhi

APPELLANT

Vs

Hira Singh Rawat

RESPONDENT

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**Date of Decision:** April 22, 2010

**Acts Referred:**

- Administrative Tribunals Act, 1985 - Section 19
- Constitution of India, 1950 - Article 226

**Hon'ble Judges:** Mool Chand Garg, J; Anil Kumar, J

**Bench:** Division Bench

**Advocate:** Rakesh Tikku and Aruna Tikku, for the Appellant; Nemo, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Mool Chand Garg, J.

C.M. 3661/2010

Exemptions allowed subject to all just exceptions.

W.P. (C.) No. 1842/2010

1. This writ petition has been filed to assail the orders passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") dated 17.10.2008 in O.A. No. 531/2008 and order dated 22.09.2009 in R.A. No. 82/2009. The Tribunal vide order dated 17.10.2008 gave the following directions:

The prayer made in this Original Application filed u/s 19 of the Administrative Tribunals Act, 1985 is for declaration to the effect that the action of the respondents in not allowing the applicant to join his duties to the post of Lab Assistant is illegal. There is no dispute on facts that the applicant was promoted as Lab Assistant but was not allowed to join his duties only for the reason that he was not matriculate. It has been the case of the applicant that he had done matriculation and the stand

taken by the respondents that the certificates produced by him would not meet the requirement of passing matriculation examination is incorrect. There would, however, be no need to go into the issue whether the applicant had done matriculation or not, as he has now indeed passed matriculation examination on 05.09.2008. In the circumstances, the promotion of the applicant would not be disputed. The only discordant view taken by the counsel for the respondents is that the applicant cannot seek promotion from the date the same was made as at that time he was not matriculate. Mr. Yogesh Sharma, counsel for the applicant, in all fairness accepts this position and states that let the applicant be promoted from the date he passed the matriculation examination i.e. 05.09.2008.

2. In view of discussion made above, we partly allow this application and direct the respondents to promote the applicant as Lab Assistant w.e.f. 5.9.2008 on which date he has passed matriculation examination. No costs.

2. Against the aforesaid order the petitioner approached this Court by filing a Writ Petition bearing No. 8446/2009 which was disposed of vide order dated 23.04.2009. As per the said order following directions were given:

Nobody appears on behalf of the petitioner even on second call. We find from the judgment that the respondent herein had filed OA claiming promotion to the post of Lab Assistant, which was denied to the respondent on the ground that he was a non-matriculate. The Tribunal noted that since the respondent had subsequently passed Matriculation Examination, i.e. on 05.09.2008. He had become entitled to be considered for the promotion to the post of Lab Assistant, at least from 05.09.2008 if not from an earlier date.

In this petition, it is pointed out that the necessary eligibility condition for promotion to the aforesaid post is Matriculation with Science subject and therefore, he is still not eligible. However, we find from the impugned judgment that this aspect was not specifically brought to the notice of the Tribunal. It would, therefore, be appropriate to the petitioner to file a review application before the Tribunal raising the aforesaid issue. We are confident that the Tribunal shall consider these aspects on its own merits and would not dismiss the review application as time barred in case the same is filed within one month. With the aforesaid observations, this writ is disposed of

3. The petitioner, thereafter, filed a Review Application registered as R.A. No. 82/2009. The said review application has been decided by the Tribunal vide impugned order dated 22.09.2009.

4. The Tribunal as per the order passed in the review application made the following observations:

3. In this review application, like in the counter reply in the OA, there is a mention of the applicant having passed his matriculation examination from UP Board in 1983 with Hindi, English, Gen. Maths, Civics and Economics (non-science subjects), and his

having appeared in secondary school examination of National Open School in May, 1992 with subjects including science. It is once again mentioned that the applicant failed in maths and he reappeared in the said subject in November, 1992 but once again failed, and could not be awarded secondary school certificate by the National Open School. Mention is then of his appearing in the senior secondary school examination from National Open School in 1993 with Hindi, Economics, Pol. Science and English (nonscience subjects), which the applicant cleared. There is not a word mentioned with regard to the applicant having passed matriculation with science on 5.9.2008. We do find from the relevant clauses of the order dated 24.5.2007 that matriculation or higher secondary has to be with science (physics and chemistry) and the candidates who are without science, too would be eligible provided they have successfully undergone a three months orientation course in science conducted by the Directorate of Education. There is no averment in the review application that the subject science cleared by the applicant in matriculation in 2008 in science was only of physics or chemistry and not both. No arguments had been raised on that count. It is only while preparing the judgment that we have found out from the order dated 24.5.2007 that science has to be with physics and chemistry. Once, it is not even now the case of the respondents that the subject science cleared by the applicant did not have any questions on physics or chemistry, there would be no need for us to go into the same. We only hasten to mention that when a person clears matriculation examination with science, the paper of science would include combined questions of physics and chemistry. It is not the case of the respondents either that all subjects cleared by a candidate in matriculation must be related to science, and that if only one of the subjects is science, the candidate would not be eligible. These aspects have not been highlighted during the course of arguments, but we are making mention of every possible aspect of the case. As mentioned above, even though the controversy to be decided was limited and there was no dispute after the applicant had passed yet another examination of matriculation with science and proved it by bringing on record his matriculation certificate, yet the respondents pleaded before the High Court that the applicant may be matriculate but he had not passed it with science. This resulted into giving permission to the respondents to file a review application, which would be only at the cost of delaying the relief granted to the applicant and also burdening him with unnecessary finances.

5. Thus, from the observations made by the Tribunal vide order dated 22.09.2009, it is apparent that the basic dispute between the parties was with regard to the eligibility criteria for the promotion of the petitioner to the post of Lab Assistant which required Matriculation certificate with Science. It was the contention of the respondent that after having passed High School examination from U.P. Board in 1983 with Hindi, English, General Maths, Economics and Civics, he was eligible for promotion whereas it was the case of the petitioner that this was not so. According to the petitioner, the matriculation was required with Science which was not so in

the case of the respondent. The respondent later on appeared for Matriculation examination through National Open School with Science and was able to pass the same on 05.09.2008.

6. It was, in these circumstances, the petitioner was directed to consider the respondent for promotion vide orders dated 22.09.2009 as referred above.

7. It seems that the petitioner was not happy with the said direction and kept on raising the issue of qualification of the respondent. It was, in this context that they filed the Writ Petition which, as stated above, was disposed of by permitting them to file a Review Application.

8. However, in the review application as well as the submission made before the Tribunal, it was not the case of the petitioners that merely because the respondent had qualified by passing a second examination of matriculation with Science, he was eligible for promotion from 05.09.2008 and that for that purpose he was required to be considered by the Departmental Promotion Committee which is the sole argument addressed before us by the learned Counsel for the petitioner.

9. Even though the petitioner has taken us through the writ petition filed by them before this Court and the Review Application filed before the Tribunal subject matter of order dated 22.09.2009 but nowhere it is stated that the respondent could not have been promoted with effect from 05.09.2008 as no DPC was to be held on that date or that he was to be promoted only after DPC is held for the purpose of his consideration which recommended his promotion with effect from 05.09.2009. In this regard it may also be observed that as per earlier order passed by Tribunal in OA No. 531/2008, it has been observed that the respondent was eligible for promotion to the post of Lab Assistant of which he was performing the duties formally but not promoted because he was not having requisite educational qualification at that time.

10. It is surprising that if the petitioners were so conscious of the fact that the directions given by the Tribunal as per the order dated 7.10.2008 considering the respondent for promotion w.e.f. 05.09.2008 should have been subject to Departmental Promotion Committee, why have not they taken this ground as ground of review and before that took this ground as part of the writ petition.

11. Having gone through the contents of the writ petition as well as the review application we do not find that any such ground has been even pressed by the petitioner. The petitioner is, therefore, debarred from raising such an issue now once they failed to take up this issue either before the Tribunal while passing an order in the Original Application or before this Court and thereafter in the review application filed by them, therefore now they are not entitled to raise this issue. The plea taken by them that there were other persons who also qualified in similar examinations though taken would not permit the petitioners to postpone the date of promotion of the respondent.

12. For the foregoing reasons, we do not find any illegality or irregularity in the order of the Tribunal which would necessitate any interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

13. The writ petition is without any merit and it is, therefore, dismissed with no order as to costs.

14. All the pending applications are also disposed of.