

Court no. 4



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 1923/2019

Reserved on 21.04.2023
Pronounced on 17.05.2023

Hon'ble Mr. Manish Garg, Member (J)
Hon'ble Dr. Chhabilendra Roul, Member (A)

Poonam
W/o Sh. Mukesh Kumar
Aged about 32 years,
R/o A-68, Gali No. 04,
Rajiv Nagar Mandoli,
New Delhi-110093
Mob. No. 7011552379, 9911571833
Post: Domestic Science Teacher
Post Code: 92/17
Group-B

.....Applicant

(By Advocate : Mr. Anuj Agarwal with Mr. Shakib Malik)

Versus

1, Delhi Subordinate Services Selection Board
(DSSSB)

Through its Chairman
Govt. of NCT of Delhi,
FC-18, Institutional Area,
Karkardooma, Delhi-110092

2. The Director of Education
Directorate of Education,
Govt. of NCT of Delhi
Old Secretariat Building,
Civil Lines, Delhi-110054

... Respondents

(By Advocate : Mr. Ujjawal K. Jha)

**ORDER**

By Hon'ble Dr. Chhabilendra Roul, Member (A):-

The present Original Application has been preferred by the Applicant being aggrieved by the action of the Delhi Subordinate Services Selection Board (henceforth, DSSSB) in not considering the candidature of the Applicant in the Scheduled Caste (SC) category and not accepting her E-dossier for the post of Domestic Science Teacher.

2. Brief facts of the case are that DSSSB vide their Advertisement No. 04/2017 dated 20.12.2017 invited applications for selection to the post of Domestic Science Teachers (Post Code 92/17) and other posts for the Directorate of Education, Govt. of NCT, Delhi. The Applicant appeared for the written examination, which was conducted on 16.09.2018. Thereafter, a general notice was published on 21.01.2019 on the web site of DSSSB informing the candidates the cut-off marks for each category of the candidates. The list of short listed candidates was also uploaded on the web site of DSSSB. The candidates were informed through this general notice as well as through SMS that the short listed candidates were supposed to upload their e-dossiers between

Court no. 4



23.01.2019 to 01.02.2019. Though the Applicant was shortlisted for selection, she failed to upload the e-dossier by the stipulated period and a rejection notice bearing No. 399 was issued to such candidates on 03.04.2019. The rejection notice included the present Applicant with the statement "The candidature of the following candidates is also rejected for failing to upload their e-dossier during the scheduled time i.e. "23.01.2019 to 01.02.2019". Being aggrieved, the present applicant has approached this Tribunal seeking the following relief:

"(i) set aside the impugned Notice dated 21.01.2019 (Annexure A-1), as issued by the DSSSB, to the extent it provides "If, any candidate fails to upload the e-dossier during the above said period, her candidature will be rejected and no further opportunity for uploading e-dossier will be given on whatsoever ground.";

(ii) Direct the respondents to accept the e-dossier (or hard copies of the qualification certificates and other requisite documents) and, thereafter, consider her candidature for appointment on the post of Domestic Science Teacher (Post Code 92/17) and grant him all the consequential benefits thereof;

(iii) allow the present Original Application with costs in favour of the applicant; and

(iv) pass any other order as this Hon'ble Tribunal may deem fit in the interest of justice and in the favour of the applicant."

Court no. 4



3. Notices were issued to the respondents who have filed their counter reply. The applicant has also filed rejoinder to the counter reply of the respondents.

4. The main ground taken by the Applicant in her OA is that the Notice dated 21.01.2019 as well as her result were never communicated to her personally through e-mail or SMS. The applicant got married on 22.01.2019 and was busy in subsequent rituals and ceremonies. Because of that she could not check the DSSSB website. She was under the bonafide belief that the results would be informed to her personally via her registered e-mail and through SMS to her mobile. Furthermore, the notice dated 21.01.2019 mentioned that the shortlisted candidates would be separately informed through SMS and e-mail. The respondent DSSSB failed to inform her through e-mail and SMS, which resulted in rejection of her candidature for no fault of her. As she has scored more than the minimum qualifying marks, she has been unfairly deprived of her right to get selected to the post of Domestic Science Teacher.

5. The second ground taken by the Applicant is that after knowing her rejection of candidature, she made a

Court no. 4



representation on 05.03.2019 to the respondent DSSSB requesting to consider her candidature and accept her e-dossier or accept hard copies of the dossier. The respondent DSSSB preferred to remain silent on her representation.

6. The Applicant has challenged the impugned Notice date 21.01.2019 containing the following stipulation:

“if, any candidate fails to upload the e-dossier during the above said period, her candidature will be rejected and no further opportunity for uploading e-dossier will be given on whatsoever ground.”

The learned counsel for the applicant during arguments averred that this stipulation was not part of the Advertisement No. 04/2017 dated 20.12.2017. This stipulation is subsequent insertion by the Respondent DSSSB. Hence, the Applicant had legitimate and reasonable expectation that in the eventuality of her being short listed, she would be informed personally about her selection and for further necessary follow up action by her. Hence, the action of Respondent No.2 in inserting this requirement post the advertisement and not informing the Applicant personally amounts to arbitrariness on the part of DSSSB.

Court no. 4



7. The counsel for the applicant relied on judgement of the Hon'ble Delhi High Court in **Govt. of NCT of Delhi & Ors Vs Jagdeep** in WP (C) No. 2786 of 2018 decided on 22.10.2018 wherein it was held:

“14. Having considered the submissions of learned counsels and perused the record, we are of the considered view that there is no merit in the present petition for the reasons recorded by the tribunal. The OA preferred by the respondent could not be said to be time barred or belated. The notice dated 10.09.2013 was not sufficient notice of the rejection of the candidature of the respondent, since the respondent was not expected to check the website of DSSSB for such a notice. The DSSSB did not, in advance, instruct the candidates to expect further notification only on their website and they were not informed that they would not be issued individual notices in relation to their candidature. Thus, the candidates could not be expected to keep checking the website of the petitioner on their own from time to time. The statement of the respondent that he did not become aware of the notice dated 10.09.2013, therefore, has to be accepted. Once the results were declared in November 2015, the respondent made successive representations in November and December 2015, which remained unanswered. Consequently, the respondent preferred the aforesaid O.A.

16. For all the aforesaid reasons, we find no merit in this petition and the same is, accordingly, dismissed.”

8. The counsel for the applicant has cited order dated 11.04.2023 of this Tribunal in OA No. 862/2020 wherein in a similar case this Tribunal has directed the Respondent DSSSB to consider the candidature of the applicant

Court no. 4



therein, who failed to upload his e-dossier in time as he was busy in nursing his pregnant wife. This order of the Tribunal quoted the English Judgement in ***Carlill Vs Carbolic Smoke Ball Company*** where law has been laid down regarding sanctity of the Advertisement. It was held that:

“Though, they have informed the applicant by issuing Roll No. of the said exam that he has to upload his e-dossier, the fact remains that the case of the applicant squarely falls under English judgment in Carlill vs. Carbolic Smoke Ball Company's case where law has been laid down century ago that if an advertisement is acted upon and later on respondents cannot relegate from their responsibility. The crux of the said judgment reads as under :-

Carlill v Carbolic Smoke Ball Company [1892] EWCA Civ 1 is an English contract law decision by the Court of Appeal, which held an advertisement containing certain terms to get a reward constituted a binding unilateral offer that could be accepted by anyone who performed its terms. It is notable for its treatment of contract and of puffery in advertising, for its curious subject matter associated with medical quackery, and how the influential judges (particularly Lindley and Bowen) developed the law in inventive ways. Carlill is frequently discussed as an introductory contract case, and may often be the first legal case a law student studies in the law of contract.”

9. The counsel for the Applicant drew attention to the Note on page 14 of the Advertisement No.04/2017 dated 20.12.2017 which reads as follows:

Court no. 4



“4. The successful candidates will be required to submit legible Self attested copies of the documents, Admit Card alongwith the hard copy of printout of online application form at the time of verification of documents (any information contained in the attached certificates shall not be considered unless it is claimed in the application form.”

10. The learned counsel for the applicant averred that as the Advertisement has not excluded clearly the submission of physical dossiers and as this advertisement has not stated that the selected candidates would be required to upload only e-dossiers, the action by the DSSSB, Respondent No.2 in notifying the same requirement vide their Notice dated 21.01.2019 is unlawful. Such additional requirement or changed requirement, not contained in the original advertisement, and the action of the DSSSB in not informing the Applicant personally, amounts to arbitrariness and violative of Articles 14 and 16 of the Constitution of India. In view of this, he argued that the present OA should be allowed.

11. The respondents in their counter affidavit have stated that the Applicant was aware of the requirement of submission of e-dossier in the event of her shortlisting/selection. This was clearly mentioned in the Advertisement that only on line applications would be accepted. The counsel for the respondents cited judgement

Court no. 4



of Hon'ble Delhi High Court in W.P. (C) No.2892/2019

dated 25.3.2019 in **Puspinder Singh Parnami Vs Delhi subordinate Services Selection Board** wherein it was

held:

“The submission of the petitioner is that he belongs to a very remote area in the State of Rajasthan and due to lack of internet connectivity and his illness he could not learn about the result declared by the DSSSB on its website. We are unable to accept this submission. The petitioner while applying for the post of PGT (History) was well aware that the result of the written examination would be uploaded by the DSSSB on its website and it was for the petitioner to track the same and to respond in-terms-of the advertisement issued by the respondent.

Having missed the bus, he cannot be permitted to submit his documents/e-dossier after the cut-off date. If such relaxation were to be granted to one candidate, it would be discriminatory in respect of others, who may have similarly missed the bus and this would render the entire process undertaken by the DSSSB as open ended.

In view of the aforesaid, we find no merit in the present petition and the same is dismissed.”

12. The counsel for the Respondents cited the Order dated 22.4.2019 in **Jyoti V/s GNCTD & Ans** wherein the division bench of Delhi High Court held that:

“The Tribunal has found and we agree with the said findings, that if the petitioner is permitted to upload her e dossier after the closing of the scheduled period, the same would amount to discrimination against others, who may have

Court no. 4



similarly not been able to upload their e - dossiers by the notified date....Merely because the petitioner claims that she was pregnant or Out of town is no ground for extension of time as the selection process which is undertaken on a very large scale, cannot be delayed or withheld on account of the circumstances of a particular candidate.”.

13. The counsel for the respondents averred that the ratio of the aforementioned two judgments of the Hon’ble Delhi High Court fairly applicable to the instant case. The uploading of e-dossiers as communicated by the DSSSB through its website was sufficient for information of the candidates to undertake further course of action. The late submission of e-dossiers or acceptance of physical dossiers after the scheduled date would create a situation where other similarly placed candidates will not get that opportunity and hence, it would be violation of principle of equality enshrined in the Constitution of India. In the alternative, allowing all such candidates to take corrective action in respect of their individual candidature would open pandora box and would upset the entire process of selection rendering it an never-ending exercise.

14. We have perused the records of the case thoroughly and heard the arguments by both the counsels carefully.

Court no. 4



15. It is our considered view that the conditions mentioned in the original Advertisement for a particular selection process is the foundation based on which the candidates would take appropriate action in respect of their candidature. The Standards Operating Procedure for filling the forms and the subsequent steps to submission of personal dossiers on being shortlisted or selected should be clearly spelled out in the initial advertisement in unambiguous terms. If there was a requirement of submission of only e-dossiers, the same should have been spelled out up front in the initial advertisement. We do agree with the rationale drawn by this Tribunal in OA No.862/2020 in **Arvind Kaushik vs DSSSB** (Supra) wherein the English law in **Carlill vs Cabolic Smoke Ball Company** (supra) has been quoted. In the instant case, even, the DSSSB has failed to observe their own stipulation in the Notice dated 21.01.2019, wherein it was mentioned “the shortlisted candidates are also being separately informed through SMS and E-Mail on their registered Mobile and e-mail id”. The respondents have failed to substantiate that they have separately informed all shortlisted candidates and particularly, the present applicant about their being shortlisted. In the age of IT and

Court no. 4



Mobile Technology revolution, it is not difficult and administratively time –consuming to inform hundreds of shortlisted candidates through their e-mail and SMS to their registered Mobiles regarding them being shortlisted and to undertake further action by the stipulated date. In view of this, the action by Respondent No 2 i.e. DSSSB amounts to arbitrariness and lack of application of mind in following their own stipulated SOP for informing the shortlisted candidates. There will be number of situations when a particular candidate may not be in a position to access the website of the DSSSB continuously to know the uploading of results by DSSSB, unless it is informed well in advance to all candidates that such uploading would take place within a stipulated time line/period. The candidates have missed the bus because there was no time table stipulated in the advertisement for the arrival and departure of the bus. The ratio of the judgement in ***Jyoti Vs GNCTD*** (Supra) not applicable to the case at hand as the facts and circumstances of that case is different than those in the present case. There the issue was plain request for allowing late submission of e-dossier despite knowledge of the stipulated time for uploading such e-

Court no. 4



dossier. Here the issue is no knowledge about such stipulation and no knowledge about being shortlisted.

16. In view of the above, we find sufficient merit in the present OA and hence the same is allowed. The respondents are directed to accept the e-dossier of the present applicant and if she has the legitimate eligibility for the post which she applied for, she should be offered the employment to the advertised post. Respondent no.1 is directed to accept the candidature of the applicant for employment against concerned category against existing vacancies or even creating a supernumerary post. The candidates belonging to the same category already selected by DSSSB (Respondent no.2) and employed by Respondent No.1 will continue to be in service and their rights shall not be affected by this order in any manner.

No order regarding costs.

(Dr. Chhabilendra Roul)
Member(A)

(Manish Garg)
Member (J)

/daya/