

BEFORE

THE HON'BLE MR. JUSTICE P. G. AGARWAL

(1) Heard Mr. T. Son, learned counsel for the petitioner and Mr. B. L. Singh, learned Sr. Government Advocate, Arunachal Pradesh. Also heard Mr. R. Saikia, learned counsel appearing for the private respondent No. 4.

(2) Pursuant to an advertisement dated 12. 6. 2002 for recruitment to the post of Computer Programmer, the writ petitioner, Sri Yomi Karbi participated in the selection process along with others. There was a written examination and on the basis of the said written examination the petitioner, the private respondent No. 4. Miss Tomen Rumi and one Sri Marpe Sora were called for interview/viva-voce and thereafter, on the basis of the written examination as well as the viva-voce / interview, the respondent No. 4 was selected for the post and accordingly she was appointed. The writ petitioner has challenged the said appointment of respondent No. 4 in this writ petition stating, inter alia, that in the written examination the petitioner had secured the highest mark of 225. 5 out of 500; whereas the respondent No. 4 has secured only 176 marks. However, the viva-voce test was conducted with some ulterior motive and in the said viva-voce test the petitioner was given only 35 marks and the other candidate was given 40 marks, whereas the respondent No. 4 was allotted 87 marks. According to the petitioner this was done arbitrarily with a view to appoint the private respondent No. 4 as the Director of the Administrative Training Institute, who was a Member of the Selection Board, was biased towards her.

(3) The private respondent has filed an affidavit justifying her selection. The State Government has produced the relevant records of Selection Board and it is submitted that as the petitioner has participated in the said selection process and being an unsuccessful candidate, he cannot challenge the selection process as he had taken a chance to get himself selected in the impugned interview. Learned counsel has placed reliance on decision of the Apex Court in the case of Madan Lal Vs. State of Jandk, 1995 (3) SCC 486.

(4) The broad facts of the case, as stated above, are not in dispute. From the records produced before us we find as follows :

Sl.
No.
Name of the Candidate
Roll No.
Interview
Total Mark obtained in written test/practical test

(4 subjects)

Total-400 marks
Progressive

Gard Total
Remark

I) Viva-Voce Marks-60
II) Experience

Marks-40

1.
Sri Yomi Karbi
02

35
0
225. 5
260. 5
Sl. No. 2

Selected

2.
Miss Tomen Rumi
06
47
40
176. 0
263. 0

3.
Sri Marpe Sora
04
40
0
169. 5
209. 5

(5) In the present case, the result of the written test are not challenged or disputed by the other parties. The bone of contention is regarding holding of the viva-voce test and the manner in which the marks were allotted in the said interview. Shri T. Son, learned counsel for the petitioner was fair enough to submit that in view of the decision in Mandan Lal (supra), the petitioner is not challenging the allotment of marks in viva-voce test. We find that in the interview total 60 marks were allotted in the viva-voce and three candidates were given marks considering their performance. The petitioner has, however, disputed the allotment of 40 marks for experience on two counts. Firstly, it is submitted that as per the Rules, experience of the candidates was not a required norm, i. e. the Rules nowhere provided that a candidate for recruitment to the post of Computer Programmer must have 'experience' not to speak of any minimum experience. We have been taken through the advertisement issued by the competent authority wherein against Column No. 9 of the application format it was mentioned 'experience, if any'. Moreover, in the method of recruitment there is no mention that the candidates must have any experience. It is, therefore, submitted that the Selection Committee had no jurisdiction or power to go beyond the Rules. We have perused the relevant Rules and the Schedule in the said rules providing for recruitment method for the post of Programmer, wherein against the column of Educational Qualification requiring for direct recruitment, it is stated 'graduate in Arts/science/commerce from any recognized university with P. G. Diploma/ Diploma in Computer Science'. The Rules thus, nowhere, provide that the working experience is a must for the said recruitment. Thus allotting 40 marks for experience in the interview was not provided for under the Rules and we have no hesitation to hold that the Selection Committee travelled beyond the Rules in earmarking or allotting 40 marks for 'experience' which was not the requirement under the Rules for recruitment to the post of Computer Programmer.

(6) There is another aspect to the matter also. The Selection Committee did not lay down any guidelines as to how this 40 marks meant for experience are to be

allotted, i. e. criteria for allotment of 'experience' were not spelt out or reflected anywhere. There may be candidates having varied experience, i. e. six months, one year, two years, three years or more and, as such, it was required to have some guidelines on the matter that for experience for a particular period a candidate will be allotted a particular marks. In the present case the respondent No. 4 was allegedly having experience of one year working, so she was allotted full 40 marks. There might have been some other candidates having more than one year experience and in that case where there was the scope for allotting highest marks to a candidate having better experience. He could not have been equated with a candidate having lesser experience. We, thus, find force in the submission that this allotment of 40 marks to the respondent No. 4 on the head 'experience' was meant solely to oust the writ petitioner and others who have secured higher marks in the written examination and this was done to accommodate or favour the private respondent No. 4.

(7) The second limb of the argument as regards the 'experience' is that at the relevant point of time the writ petitioner was also serving as a Computer Operator under the Central Information Centre, Government of India in the State of Arunachal Pradesh on contract basis and prior to that the petitioner was working under a non-governmental organization as well as North Eastern Development of Finance Industry, NEDFI, and had done some project works as the petitioner is the only Degree holder in Computer Science amongst three candidates. It is also submitted that the petitioner has mentioned about his experience in the application form filed by him pursuant to the advertisement dated 12. 6. 2002. The application has been produced before us by the respondent State and we have perused the same wherein we find that as against the Column No. 10, Experience, if any, the writ petitioner has mentioned, Yes worked in NGO, YVS as Project Engineer, Working in CIC Operator. We thus find that the application of the petitioner was found in order in all respects and thereafter the petitioner was directed to face the written test, examination and practical computer test.

(8) Learned counsel for the respondent State has, however, submitted that the petitioner did not produce the copies of the required testimonials/certificates/working experience at the time of interview and, as such, the same was not considered and the petitioner was allotted 'nil' marks out of 40, meant for experience. We have perused the advertisement dated 12. 6. 2002 and the Column No. 3 reads as follows :

3. Application must be accompanied with the following.

(a) Two recent copies of passport size photo passport size photo graphs of the candidate duly attested.

(b) Attested copies of Certificates in respect of Educational Qualifications and age etc.

(c) Attested Copies of ST Certificates.

(d) Postal Order for Rs. 25. 00 (not crossed) non-refundable being application fees in the name of Director, Administrative Training Institute, Arunachal Pradesh,, Naharlagun.

(9) Thus, we find that the petitioner was not required to submit any certificate as regards the working experience along with his application. The call letter issued to the candidates for interview also does not provide that the candidates required to produce or bring with them any certificates or testimonials as reg

ards their experience and as such, except the respondent No. 4, the two other candidates may not have carried or produced the experience certificates as they were not made aware or informed about any such requirement.

(10) On perusal of the documents, records and materials and after hearing the submissions of the learned counsel for both sides, we find that the recruitment rules nowhere provided for any requirement of 'experience' in the matter of selection/ recruitment. However, even if we accept, that the Selection Committee in its wisdom decided to consider the experience for the purpose of selection of the candidates, it should have been made known to all the candidates in the advertisement itself and at least the candidates who have been called to the interview should have been informed before hand that they are required to bring the copies of their testimonials at the time of interview as regards their experience as the said experience shall be considered by the Selection Board/expert Committee. In the present case it has not been disputed that the writ petitioner, at the relevant point of time was serving under the State of Arunachal Pradesh as the Computer Operator and he had also some working experience. The question as to what credit was due to the petitioner cannot be considered by us in this Writ petition. However, we find that the method adopted by the Selection Committee was arbitrary and mala fide. We are conscious of the judicial pronouncement that in such matters the judicial wisdom is judicial restraint but this is a case where we find that the Interview Committee has acted arbitrarily and mala fide to shut out certain candidate without any basis and it has resulted in showing undue favour to respondent No. 4. We have, therefore, no hesitation to hold that the impugned selection/ appointment suffers from the vice of malafide and bias and it was not in accordance with the Rules and regulations governing the matter.

(11) In the result, the Writ petition is allowed and the impugned order of appointment vide No. TRG/ati-62/2002 dated 10. 10. 2002 issued under the signature of Director (Training) appointing the respondent No. 4 to the post of Computer Programmer (CP) in the Department of Personnel and Administrative Reforms, Administrative Training Institute, Government of Arunachal Pradesh, Naharlagun pursuant to the advertisement dated 12. 6. 2002, is hereby quashed. The matter is remitted back to the respondent authorities to hold fresh interview strictly in accordance with the Recruitment Rules and prior intimation to the concerned candidates and thereafter make fresh selection. The appointment order issued in favour of Respondent No. 4 stands quashed. The process may be completed within a period of eight weeks from the date of this order.