

(21)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 2606/QWS
TA No.

5-6-02 Date of Decision

Titender & Co. ...Petitioner (s)
Sh. Sachin Chohan & Sh. Sant Lal ...Advocate for Petitioner (s)

V E R S U S

Govt & Co. ...Respondents
Sh. Vijay Pandit ...Advocate for respondents

Coram :-

Hon'ble ~~Sh. A. Vedavelli~~, Member (T)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not ? YES
2. Whether it needs to be circulated to other Benches of the Tribunal ? NO

(GOVINDAN S. TAMPI)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2606/2000

New Delhi this the 5th day of June 2002

Hon'ble Dr.A. Vedavalli, Member (J)

Hon'ble Shri Govindan S.Tampi, Member (A)

1. Jitender, Roll Number 212271
S/O Sh.Amer Singh
R/O D-11, Institute of
Economy Growth, Delhi
Univerity Enclave, Delhi
2. Kiran Pal ,Roll No. 214018
S/O Sh.Pitam Singh
R/O Vill & P.O. Salena,
Distt- Bagpat, Uttar Pradesh.
3. Rajvir Sharma, Roll Number 241718
S/O Sh.Duli Chand
R/O Village- P.O. Garhi,
Tehsil- Hansi, Distt.
Hisar, Haryana.
4. Ajay Kumar, Roll Number 200276
S/O Sh.Hari Singh
R/O Vill.-Jalal Pur Karera,
P.O.Shikar Pur,
Distt. Bullandsher,U.P.
5. Satpal Roll Number 232951
S/O Sh.Dev Mani Yadav
R/O L-110/C, Dilshad Garden,
Delhi-95
6. Dinesh Kumar Roll Number 208441
S/O Sh.Captan Singh
R/O Vill. & P.O.Kulasi,
Distt- Jhajhar,
Haryana.
7. Satish Kumar Rai, Roll Number 232773
S/O Late Shri Ram Saran
R/O 1/5, Neepe Staff Qtrs,
N.C.R.T. Campus, Arvindo
Marg, New Delhi-17

....Applicants

(By Advocates Shri Sachin Chauhan
with Shri Sant Lal)

VERSUS

1. Union of India, through
Its Secretary, Ministry of
Home Affairs, North Block,
New Delhi.
 2. Commissioner of Police,
Delhi, Police Headquarters,
I.P.Estate, MSO Building,
New Delhi.
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3. Dy. Commissioner of Police,
2nd Bn. DAP Kingsway Camp,
Delhi.

.. Respondents

(By Advocates Shri Vijay Pandita
with Ms. Shabana

O R D E R

(Hon'ble Shri Govindan S. Tampi, Member (A))

The challenge in this OA filed by seven applicants, is directed against their non-selection to Delhi Police in spite of their having qualified both in the written test as well as in the interview.

2. This OA has been heard along with OA 2499/2000, 2701/2000 and 60/2001, as all of them are directed against the same selection and have a few common points. However, separate order is being passed in respect of each OA on account of the specific points relating to the applicant(s) concerned in each OA.

3. Heard Shri Sachin Chauhan, learned counsel for the applicant Shri Vijay Pandita along with Ms. Shabana appeared for the respondents.

4. MA 3045/2000 for joining is allowed.

5. Shri Jitendar (roll number 212271) and six others ~~are~~ are among those who seek appointment to Delhi Police as Constables (Executive) on the basis of the recruitment test conducted. All of them had filed their applications in response to Notification issued by the Delhi Police under 2nd phase of recruitment to the posts of Constable (Ex.). After having cleared the written examination their roll numbers appeared in the list of those who had qualified for the interview. They also appeared in

the interview and were declared as having cleared the same for being medically examined, as a prelude to their ultimate appointment. However, to their total disappointment the applicants found that none of them had been called for the medical examination in spite of their having cleared the written test and the interview while a few others have been so called. No reasons were adduced for the above. On 6.10.2000, an article appeared in Hindi News paper 'Dainik Jagran' indicating that certain interpolation has taken place in the list prepared by Delhi Police for selecting candidates for appointment as Constables (Ex.), that as many as 54 discrepancies have come to light and that a number of failed candidates have been declared as passed and vice-versa. This news-item read along with the fact that they had not been called for medical examination, convinced the applicants that something was ^{amiss} with in the selection. Some of the applicants filed representations with the Delhi Police authorities complaining against their non selection but the same have not been responded to. It was also learnt by them that after completing medical examination orders are being issued to certain candidates, directing them to join the training course. This has come in the way of the applicants, who apprehend that in spite of their having been selected in the test, they were being denied the appointment, to favour certain others who have exercised their influence to secure appointment at their expense. Hence this OA.

6. The main grounds raised in the OA are that:

- (a) failure of the respondents in not calling the applicants for medical examination was illegal, arbitrary, malafide and unjustified.
- (b) when it is admitted that all the applicants have cleared both the written test and the interview successfully there was no reason that they could not be called for medical examination.

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- (c) report appeared in Dainik Jagran and information gathered from reliable sources indicated that certain dubious methods were being followed by the respondents to recruit their own persons.
- (d) though a number of applicants had filed representations against the inaction of the respondents, no reply has been given by them thereby pointing to ~~deliberate~~ violation of the principle of natural justice.
- (e) it was highly illogical that after the selection has been gone through all the stages the respondents could come with the lame excuse that there were mistake in the selection which called for rectification and the same also casts doubts on the bonafides of the respondents.

In the above circumstances, the applicants feel that they have been denied their legitimate selection and only the immediate intervention by the Tribunal can grant them justice.

7. In the reply filed on behalf of the respondents, through Dy.Commissioner of Police (Hq.), it is shown that OA was not maintainable being an abuse of the process of law. It is pointed out that during 1998 (phase -II) an advertisement to fill up 1643 vacancies (General 442, SC 80, ST 700, OBC 441 with 10% in all categories for Ex-servicemen) of Constables (Exe.) was issued by the Delhi Police in all the leading News Papers of 19.9.1998 and Employment News dated 26.9.1998/ 2.10.1998. In response to the above advertisement, 89441 application forms were received. After scrutiny of the forms, 72611 candidates were asked to be present both for physical measurements/ endurance test from whom 41890 candidates were declared as qualified for the written test. The written test was held on 27.2.2000 and 2.4.2000 and 3446 candidates were declared as passed. These persons along with 342 ex-servicemen, who were exempted from the written test, appeared for interview between 25.5.2000 and 2.6.2000. The result of the interview, which was

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declared on 3.6.2000, showed that 1573 candidates (Genl.422, SC 80, ST 360 and OBC 441) had qualified for medical examination. The cut-off marks (minimum qualifying marks for selection were shown as below:-

<u>Sl.No.</u>	<u>Category</u>	<u>Cut off Marks</u>
1.	General (Ex-servicemen)	58.58 13.16
2.	O.B.C. (Ex-servicemen)	55.83 9.10
3.	Scheduled Caste (Ex-servicemen)	58.11 8.50
4.	Scheduled Tribe (Ex-servicemen)	48.16 NIL

8. After the declaration of the result of the interview, it had come to notice that there were certain errors/omissions in the interview sheets, on account of which, the Chairman of the Recruitment Board decided to have all the interview sheets rechecked to get the errors/omissions rectified. After the above rectification, the cut-off marks were changed as under:-

<u>Sl.No.</u>	<u>Category</u>	<u>Cut off marks</u>
1.	General (Ex.Servicemen)	58.83 13.00
2.	O.B.C. (Ex.Servicemen)	55.83 08.33
3.	Scheduled Caste (Ex.Servicemen)	58.15 08.50
4.	Scheduled Tribe (Ex.Serivemen)	48.16 Nil

9. In the above process of rectification, 52 candidates, including all the applicants were changed from the category of 'qualified to disqualified' and ~~the~~ 52 candidates ^{were} changed from 'disqualified to qualified'. ^{They have} have also been suitably informed. According to

the respondents, the ^{-6-earlier} ~~above~~ mentioned 52 candidates were placed in the qualified list only on account of certain error/omission which have crept in the interview sheet. After the rectification of the same, a number of persons who were originally in the list of qualified candidates, failed to make the grade ^{and} could not be called for medical examination. After having failed to make the grade in the interview, the applicants could not have been called for medical examination, as the first step towards the appointment. In the above circumstances, the applicants have no right whatsoever to agitate as they had been considered and found as not having made the grade in the selection. The respondents had acted correctly, properly and legally and therefore, the applicants cannot seek any further relief in this matter through the Tribunal.

10. With specific reference to the applicants in this OA the respondents indicate the following as the reasons for their disqualifications:-

S. Name and Roll No. Reasons for disqualifications

1. Jitendra No error/omission, but could not
Roll No.212271 make the grade in merit.

2. Kiran Pal Could not make grade in merit.No
214018

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3. Rajvir Singh Wrong marking for army education.
241718 Also a calculation error. On
correction, he failed, to make the
4. Ajay Kumar grade in merit.
200276
5. Satpal Disqualified being younger in age.
231951
6. Dinesh Kumar Disqualified on ground of younger in
208441 age.
7. Satish Kumar Calculation error. He belongs to SC
232773 Category, but was treated under
ST category inadvertently.
Upon correction, he could not made
the grade in merit.

11. From the above it would be clear that the respondents had acted correctly and the applicants had to lose out in the selection only because they did not make the grade in the interview. Having participated in the written test, ^{followed by the interview} but having failed to clear the same, the applicants did not have any right to question the mode of selection or the selection process. The OA should therefore, fail in the pleadings by the respondents.

12. In their rejoinder, the applicants vehemently contest the points raised by the respondents. It is stated that no mistake or mischief of any sort was committed by any

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of the applicants and mistake, if any, had happened only at the respondents' end. And the same appeared to have been manipulated by the respondents to meet their own ends and to support their chosen favourites. The grounds taken by the respondents like wrong marking for army education, calculation error, change of category of the candidates and their younger age, do not properly explain the process of selection or the modalities adopted by the respondents after the first selection has been gone through. During the oral submissions Shri Sachin Chauhan, learned counsel, strongly reiterated the points raised in the written pleadings. Without establishing by any evidence, that any of the applicants were guilty of any mistake or mis representation of facts, the respondents could not have unilaterally held that 52 persons already qualified have to be taken out of the list of qualified candidates to make way for another set of 52 whom the respondents have chosen to bring in. This was clearly illegal, arbitrary and violative of the provisions of the articles 14, 16 and 21 of the Constitution of India. This showed total malafide on the part of the respondents and called for intervention of the Tribunal.

13. Shri Sachin Chauhan, learned counsel also referred to the decision of the Hon'ble Supreme Court in the case of S. Govindaraju Vs. K.S.R.T.C. and another (AIR 1986(2) SC 362) and prayed that if any rectification of mistake was called for, all the affected persons should have been put to notice. Not having done so, the entire action of the respondents was vitiated and liable to be quashed and set aside. On the other hand, Shri Vijay Pandita, learned counsel for the respondents states that the persons who have not made the grade in the revised selection process have no reason at all to complain. Even when a person is placed in

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the selection panel, appointment thereafter was not automatic, as brought out in the decision of the Hon'ble Supreme Court in the case of Rani Laxmibai Kshetriya Gramin Bank Vs. Chand Behari Kapoor and others (1998(7) SCC 469).

Shri Vijay Pandita also brought to our attention one or two other judgements of the Principal Bench in certain OAs assailing the above selection process which, the Tribunal had declined to interfere with. The facts and circumstances being the same, the Tribunal should not interfere in this OA also, pleads Shri Pandita.

14. We have carefully considered the rival contentions and also examined the relevant documents including the minutes of the interview, relating to the applicants in this case. The facts are not disputed. The seven applicants in this are among those who had cleared the physical test, written test and the interview conducted by the respondents for the selection to the post of Constable (Ex.) in Delhi Police and should have, on account of the same, been selected and sent for medical test, followed by issue of orders of appointment. However, after their clearance in the interview and declaration to that effect, the respondents have not called them the medical examination on the ground that the interview sheets prepared, did contain certain errors/omissions which had to be rectified and in the process some of the individuals originally selected, like the applicants became disqualified, as they failed to make the grade on the basis of the changed criterion. While, according to the applicants they have been denied their rightful opportunity for selection and appointment, the respondents point out that what they have done is totally correct.

15. Perusal of the grounds/reasons for disqualification of the applicants, as brought out in the respondents' counter affidavit provides an interesting reading. In the cases of Jitendar (1) and Ajay Kumar (4), it is indicated that there were no error/mission, but they could not make the grade in merit. Kiran Pal (2) is described as not having made the grade while Rajvir Singh (3) is disqualified on account of ^{error in} marking for army education. Satpal (5) and Dinesh Kumar (6) are shown as disqualified being younger in age. In the case of Satish Kumar (7) it is shown that he was wrongly taken in the ST category while he was in the SC Category. As against the same, respondents show that Jitendear belonged to General category entitled for 5 bonus marks for NCC A Certificates. Kiran pal belonged to SC category while Rajvir Singh from the general category was an graduate from the Army. Ajay Kumar belonging to ~~General~~ category, Satpal from OBC & Dinesh Kumar from general category, all were entitled for bonus marks being Graduates. Satish Kumar belonged to SC category and had correctly shown himself to be so but the respondents have on their own categorised him as ST candidate and thereafter denied him the benefit of selection. Evidently therefore, the applicants have been penalised for no fault of theirs, but purely on the basis of mistakes committed by the respondents. And this has been done without even putting them on any notice. It is not at all the case of the respondents that any of these applicants have committed any mistake to obtain for themselves the selection by any wrong means. The mistakes, the attempted rectification, change in the criterion etc are all creations of the respondents after the selection was over and the result has been declared. In fact, if any mistake had arisen and called for rectification the proper course of action for the respondents was to have cancelled

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the entire selection process and ordered fresh selection instead of changing the criterion after the process has been completed and the results announced ^{bring about} just to the rejection of 52 candidates out of 1573 candidates as well as to facilitate the selection of another batch of 52 candidates in their place. It was all the more necessary, as according to the respondents' own confidential note dated 9.8.2000 that as many as 695 errors/omissions have been ^{noticed} in the selection of 1753 out of 3784 candidates who appeared for the interview. Applicants in the circumstances cannot be faulted when they allege illegality or impropriety in in this selection process. Our findings are fortified by the decision of the hon'ble Supreme Court in the case of S.Govindaraju's (supra), the relevant portion of which is reproduced as below:-

" Once a candidate is selected and his name is included in the select list for appointment in accordance with the Regulations he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequences entail as he forfeits his right to employment in future. In such a situation even though the Regulations do not stipulate for affording any opportunity to the employee, the principle of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary. Giving an opportunity of explanation would meet the bare minimal requirement of natural justice. Before the services of an employee are terminated, resulting into forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned. The appellant was not afforded any opportunity of explanation before the issue of the impugned order. Consequently the order is rendered null and void being inconsistent with the principles of natural justice".

16. It is also on record and came out during the oral submissions in response to a specific query from the Court that none of the applicants in this OA (as also those in OA 2606/2000, 2701/2000 and 60/2001) ^{has} ~~has~~ been issued any notice

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about the cancellation of their selection. In fact even in respect of those who were informed ^{in other cases} what was addressed was not a notice but an intimation which was after the event. In addition to irregularity in changing the criterion after the selection is over, clear violation of the principles of natural justice had also occurred in these cases.

17. The confidential note dated 9.8.2001 referred to in para 16, record as below " if the proper checking had been carried out at the appropriate time before declaring the result the mistake detected now could have been avoided but this could not happen as the result was declared in a hurried manner". Correction therefore, was called for but not as the respondents have chosen to do by the pick and choose method but by cancelling the result totally and initiating fresh selection. This they had failed to do and for no justified reason.

18. Relevant papers produced for our perusal makes it clear that the applicants have lost out/been disqualified only on account of the change in the criterion adopted by the respondents, as marks obtained by them have not changed though the cut off mark has been revised upward in the case of general and ST candidates. However, there is no explanation as to how in the same circumstances, these who were disqualified earlier have now entered the list of qualified candidates, ^{as it is not shown that their marks have gone up} Obviously there are factors which more than meet the eyes.

19. The respondents could not have changed the criterion for selection, two months, after the selection process has been completed and results announced, on account of their feeling that certain errors and omissions had crept

in the selection process, to the detriment of applicants, unless and until it is proved that the applicants were in any way responsible for any of the mistakes or misrepresentation, which alone would have vitiated the selection process. It is not the case of the respondents, as shown earlier that any of the applicants in this case had misrepresented facts to gain any undue advantage in the selection. That being the case, the action of the respondents in denying them the call for medical examination was patently illegal and unjust. The Tribunal, therefore, have perforce to interfere in this matter and render justice.

20. Our decision is also fully fortified by the decision of the Hon'ble Supreme Court dated 31.10.2001 in the case of Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and Others? [2002(1)ATJ 541] wherein the Hon'ble Apex Court has observed as below:

"It has been repeatedly held by this Court that the games of the rules meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced."

21. Our attention also has been drawn to one or two decisions of the Principal Bench of this Tribunal, assailing the same selection, where the Tribunal had declined to interfere in the matter. These, however, can be distinguished. In OA 278/2001 filed by Surinder Singh and decided on 9.4.2000, the applicant had lost out primarily on account of working out of the vacancies for OBC category. Persons of the same category with higher marks had to be accommodated and the applicant with lower marks had to be deleted. In fact in the category of OBC the cut-off marks had remained the same both before and after the rectification

process and the applicant failure was only on account of getting lower marks. The same is not the case in the present OA. Similarly in OA 884/2001 decided on 22.1.2002 the applicant an ex army candidate was disqualified as it was found that he was not a graduate but he was given extra marks treating him to be a graduate on the basis of a certificate produced by him. This case also is distinguishable from the OA presently before us. On the other hand, we have before us the decision of the Principal Bench of this Tribunal in OA 1445/1995, decided on 4.10.1999 where denial of promotion to the applicant on the basis of mistake committed by the Departments, was set aside and benefit granted to the applicant. We are of the view that in the circumstances of the case, the applicants in this OA should also gain.

22. We are also aware of the principle highlighted by the learned counsel for the respondents that empanelment of a candidate per se does not give him a right for appointment, as pointed out by the Hon'ble Supreme Court in Rani Laxmibai Kshetriya Gramin Bank Vs. Chand Behari Kapoor and Others (supra). The same is the finding of the Hon'ble Supreme Court in the case of Shankarsan Dash Vs. UOI & Ors (1991(3)SCC 47). However, the circumstances of the applicants in this OA are not the same as the parties concerned in the above two decisions. Here what is under challenge is not the non issue of appointment to those placed in the select panel but the same is directed against the action of the respondents in altering the criterion for selection after the selection process was complete, to shut out the applicants who have been selected earlier and to bring in others. Therefore, the rationale in the above two decisions cannot hurt the cause of the applicants in this OA.

23. In the result, the OA succeeds and is accordingly allowed. The respondents are directed to treat the applicants, as having cleared the recruitment test in full and send them for medical examination along with others. If found fit, the applicants should be considered for appointment to the post of Constable (ex) as per the relevant Rules, instructions and Judicial pronouncements on the subject. This should be done at the ^{earliest} ~~convenient~~ ₂ and in any event within 2 months from the date of receipt of copy of this order. This would not call for any fresh notice being issued to anybody as while issuing notice on 14.12.2001, for admission itself, the Tribunal had directed that all the appointments to be made to the post of Constable (Ex.) in the second phase of recruitment shall be subject to the further orders being passed while disposing the OA. No costs.

(Govindan S. Tampi)
Member (A)

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A. Vedavalli
(Dr. A. Vedavalli)
Member (J)