

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 303/2000

New Delhi, this the 22nd day of January, 2002

(22.1.2002)

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

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- 1.. Bhupendera Kardam
S/o Shri Chhote Lal
R/o 76/31, Pinto Park
Delhi Cantt - 10.
2. Daya Chand
S/o Shri Tikka Ram
R/o Village Amberhai
House No.214, Pappan Kalan
Sector-19, P.O.Palam Village
New Delhi - 110 045.
3. Sanjay Solanki
S/o Shri Mohender Singh Solanki
R/o 75/2, Pinto Park
MES Colony
Delhi Cantt - 110 010.
4. Sunil Sabarwal
S/o Shri Ram Singh Sabarwal
R/o P-72/3 MES Colony
GE Air Force
Tughlakabad
New Delhi - 110 019.
5. Umesh Kumar
S/o Shri Mahabeer Singh
R/o P-72/5 MES Colony
GE Air Force
Tughlakabad
New Delhi - 110 019.
6. Vijay Sharma
S/o Shri Chander Parkash Sharma
R/o 172/5 WAC Qrs.
Subroto Park
Delhi Cantt. 110 010.

...Applicant

(By Advocate Dr. D.C.Vohra)

V E R S U S

UNION OF INDIA : THROUGH

1. Secretary
Ministry of Defence
South Block
New Delhi - 110 011.
2. The Engineer in Chief
MES/Ministry of Defence
Kashmir House
Shahjahan Road
New Delhi - 110 011.

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3. The Commander
Works Engineer (AF)
Palam, Delhi Cantt - 110010.
4. Col. B.C. Verghese (in personal capacity)
MES, Air Force
Palam Delhi Cantt - 110 010.
5. Mr. J.S.Sidhra (in personal capacity)
DCW (B&R), MES
Air Force, Palam
Delhi Cantt - 110 010.
6. Mr. Veer Singh (in personal capacity)
Asstt. Garrison Engineer
ME Air Force
Palam, Delhi Cantt- 110 010
7. Mr. Rattan Pal (in personal capacity)
Admn Officer (II)
MES, Air Force
Palam, Delhi Cantt - 110 010.
8. Mr. Mahesh Kumar,
S/o Shri Laxmi Narain
9. Mr. Ajay Pal
S/o Shri Sukh Lal Yadav
10. Mr. Sudesh Kumar
S/o Shri Rattan Pal
11. Mr. Radhey Shyam
S/o Shri Ram Lakhan
12. Mr. Anup Singh Rawat
S/o Shri J.S.Rawat
13. Mr. Ranjan Kumar
S/o Shri Budheshwar Singh
14. Mr. Sanjay Singh
S/o Shri Veer Singh

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... Respondents

(By Advocate Mrs. Meera Chibber for
Respondents 1-7.
Shri A.K.Bhardwaj for
Respondents 8-14).

O R D E R

By Hon'ble Shri Govindan S.Tampi,

Selections of Mazdoors in the respondents' organisation dated 8-2-2000, is under challenge in this OA.

2. Heard Dr. D.C.Vohra, learned counsel for the applicants and Smt. Meera Chibber as well as Shri A.K.Bhardwaj, representing the respondents during the oral submissions.

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3. All the six applicants were among those who were sponsored by the Employment Exchange for consideration for selection to the post of Mazdoors in the respondents' organisation. The applicants qualified themselves in to two physical tests - 2 kms. race and weight lifting. They were, thereafter called for personal interview between 3/23-12-1999 for verification of their certificates. However, when the selection list was put up on 8-2-2000, they found themselves excluded, while a number of individuals with dubious merits were found empanelled. They were informally advised that the selection was made on the result of the interview, which was strange. Further enquiries revealed that the selection was influenced by payment of illegal gratification as well as connections with persons concerned with the selection. Children of the members of the Selection Committee or those of the staff attached to the Members were given six out of the twenty four posts, thereby denying the chances of the meritorious candidates like the applicants. Protest letters written by the Workers Union and the Scheduled Castes Uplift Union against the above improper selection did not elicit any response. Hence the OA.

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4. Grounds raised by the applicant are as below :-

- i) respondents have misused their position to facilitate selection of undeserving candidates ;
- ii) unreasonable classification has been created between those who qualified by merit and those who pursued wrong methods :
- iii) meritorious candidates have been denied

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their due ;

iv) applicants include OBC/SC/ST candidates whose rights have been infringed ;

v) the applicants would be overaged, if they are not selected now ;

vi) the selection interview was a sham, illegal and unconstitutional and did not adopt only correct criterion i.e. pure merit.

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In view of the above, the impugned selection should be set aside and the applicants should be considered for the posts, as they were suitable and meritorious, plead the applicant.

5. During the oral submissions, Dr. Vohra, applicant's counsel strenuously argued that the applicants who had been denied the selection, inspite of being meritorious - to favour the selectees who have brought in corruption and nepotism in the selection - should be rendered justice.

6. Official respondents No.1-7, in their rebuttal through Smt. Meera Chibber, learned counsel state that the selection was done by the duly constituted Board and the applicants who have failed cannot question the process of selection. Selection began with approaching Employment Exchange to sponsor candidates and by advretising in the papers. Selection consisted of physical tests to assess the stamina or strength of the candidates, followed by the interview. After screening the 2912 applications by conducting physical tests and the interview, select list was prepared and the results were displayed on the board. The entire selection process was transparent and in conformity with the rules. Still

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this OA has been filed by the applicants, who are the children of the staff union office bearers, as they did not get the selection. The allegation made against Shri Rattan Pal, Admn. Officer in respect of his son who got selection on merit was improper. None could be denied selection merely because he happened to be a close relative of anyone in the respondents' organisation. The two unions or associations who have questioned the selection are unrecognised bodies and the applicants are the children of the office bearers of the above bodies. These kinds of pressure tactics being adopted by the applicants should not be tolerated. The charges are vague and improper and deserve to be rejected. Only those qualified in the physical tests were called for the interview and applicant No.5 was one who did not qualify along with physical tests. Interview also was used to arrive at the suitability of candidates. It was not for verification of certificates alone, as alleged by the applicants. Infact it was the main part of the selection. As the Selection Board consisted of proper officers, allegations of influencing the board were baseless. Allegations against the officers were malicious and fit only to be rejected. Official respondents do not deny the relationship that few of the respondents 8 to 14, have with officers and staff in the Organisation, but state that their selection has been only on account of their merit and not because of their connections, if any. It is stated that those who did not get the selection can have a grievance but that does not mean that all such grievances are genuine. Merely casting aspersions on the selection process or Selection Board was not the

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way or manner to deal with the situation, when one did not gain selection by one's merit. Smt. Chibber, learned counsel reiterated the above in her oral submissions for the official respondents.

7. Private respondents No.8-14 have to some extent adopted the arguments of the official respondents. According to them, the applicants who are backed by unrecognised Unions cannot challenge the selection process, having once participated but failed in it. All the respondents were eligible to appear, and have qualified in the physical test before they were called for the interview. The allegation that they had adopted wrongful means to secure selection was baseless and untrue. Selection of the candidates was fair, transparent and open. Allegations that the relatives (father) of a few respondents were concerned with the selection, even in a very distant manner, that should not come in the way of the respondents' selection, when it was based on merit and their superior presence. No influence was brought to bear upon the selection in any manner. As all of them had made the selection on the basis of their performance, the selection cannot be assailed in any manner and the OA has to fail. Shri A.K.Bhardwaj, learned counsel for private respondents, strongly reiterated the above pleas.

8. We have carefully deliberated upon the rival contentions.

9. The matter under challenge is the selection of Mazdoors ordered by the respondents on 8-2-2000 from amongst the candidates who were on being sponsored by Employment Exchange interviewed following the physical test of long walk and weight lifting.

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However, they did not make the final grade and their complaint is that this had arisen on account of the interview taken by the respondents, in which nepotism and corruption played a significant part. The applicants also state that in the scheme of selection, interview could not have been included, as what is required was the assessment of physical stamina and strength. The respondents contest the above and state that the selection process has been fair, transparent and open and that the allegations of nepotism and corruption are baseless. On carefully sifting the facts placed before us, we feel that the selection process does not appear to be totally transparent and open, as is made out, but some amount of secrecy has shrouded the process. We do not agree with the plea of the applicants that the interview should have been excluded in the selection process as where a large number of candidates have been found to be fit for consideration, interview is a must to assess the individual's overall personality. This cannot be assailed. However, the process adopted for selection calls for some criticism as against 6 out of 24 ultimately selected, allegations have been made of their proximity to those concerned in selection. It is stated that respondent No.8 is the son of the Driver of the Presiding Officer of the Selection Committee, No.9 is one who failed in both of the physical tests. Respondent No.10 is the son of the Administrative officer who was himself the Member of the Selection Committee, respondent No.11 was closely known to respondent No.4, respondents No.12 & 13 are the children of the staff attached to the Presiding Officer while No.14 is the son of the Member of the

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Selection Committee. These are not disputed facts. However, the official respondents plead that the above respondents had made the grade on their own superior merit and performance and their selection had nothing to do with thier relations with Member of the Selection Committee. While there is no evidence of any bribe taking, we cannot totally sideline the allegation that influence could have played a part in the selection, as 6 out of 7 persons selected, referred to, are the dependents of those employees in the organisation who would have had some connection with the Selection Committee, so as to influence the selection atleast in a remote way. Infact two of them were sons of the Members of the Selection Committee and it will be difficult to conceive that their presence would not have influenced in the proceedings of the Committee. While it would be nobody's case, that being the dependents of those working in an organisation ipso facto becomes a disqualification for being selected in the said organisation, the fact remains that when the Selection Committee itself, consisted of Members of their own family, influence would play a part. This is something which the respondents have not bothered about while going about with the selection process. This has vitiated the selection. On the other hand, the applicants are no better as they are attempting to make use of their positions as the children of the office bearers of the unauthorised unions, who are making use of the right for collective bargaining in meeting their personal ends. Therefore, on both sides, the position is bad, a fresh selection with a independent body would be only the answer to the above. This is necessary to

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retrieve the fair name of the Association.

10. In the above view of the matter, the OA succeeds and is accordingly allowed. The impugned selection of the individuals concerned is set aside. The respondents are directed to hold a fresh selection out of all those who have successfully completed the physical tests by interview through a fresh Selection Committee, wherein those related to the candidates do not play any part. This may be done within four months from the date of receipt of a copy of this order. This also would not cause any legitimate heartburn to those who are selected, as in terms of the interim order granted at the time of admission on 16-2-2000, the appointments have been made subject to the final order in the OA. No costs.

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S. Raju

(SHANKER RAJU)
MEMBER (J)

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(GOVINDAN S. TAMPI)
MEMBER (A)