

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 1 DAY OF Oct, 2009)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. D.C. Lakha Member (A)

Original Application No.277 of 2004

(U/S 19, Administrative Tribunal Act, 1985)

Along with

Original Application No.249 of 2005

(U/S 19, Administrative Tribunal Act, 1985)

1. Suraj Bhan son of Shri Gabbu Prasad, aged about 29 years resident of village-Rajahi, Tehsil-Sadar, District-Gorakhpur.
2. Vinod Kumar Yadav, son of Shri Indrajeet Yadav, aged about 26 years resident of Village-Girdharganj, Tehsil-Sadar, District-Gorakhpur.
3. Dhurendra Kumar Singh, son of (late) Shri Dev Lal Singh aged about 22 years resident of Village-Bhatwaliya, Post-KLhabasi, District-Chapra (Bihar).
4. Ramkesh Yadav, son of Shri Badri Yadav, aged about 26 years resident of Mahadeo Jharkhandi, Tukra No.3, Tehsil-Sadar, District-Gorakhpur.
5. Rama Shanker Yadav aged about 26 years, son of Shri Chandra Kishore Yadav, resident of Mahadeo Jharkhandi, Tukra No.3, Tehsil-Sadar, District-Gorakhpur.
6. Anil Kumar aged about 23 years son of Shri Ram Nath resident of Shahpur, Tehsil-Sadar, District-Gorakhpur.
7. Radhey Shyam Yadav, Son of Shri Kedar Yadav, a/a29 years resident of chillbillua, Pst-Unwl, District-Gorakhpur.

..... ***Applicants***

Versus

1. Union of India through Secretary Ministry of Defence, New Delhi.
2. Wing Commander (SPSO), Headquarter Central Air Command, Indian Air Force, Bamrauli, Allahabad.
3. Air Force Commanding, Air Force Station, Indian Air Force, Gorakhpur.
4. Sarda Prasad, son of Shri Lallu Ram, resident of Lal Vihar Colony, Bamrauli, Allahabad.

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5. Suraj Kumar, son of Shri Bhagwati Prasad, resident of Lal Vihar Colony, Bamrauli, Allahabad.
6. Rajesh Kumar, son of Shri Ramrit Bari, resident of Village-Ashapatti Parsabri, Post Office-Karnaut, District-Muzaffarpur (Bihar).
7. Diwan Singh Patel, son of Shri Sarju Prasad Patel, resident of Nauhari Ka Pura, Sayed, Chail, Allahabad.
8. Raju Thapa, son of Shri Santu Thapa, resident of New Project, Air Force, Gorakhpur.
9. Raja Ram Son of Shri Mahango Ram, resident of Unadi Khalsa, Gauspura, Kaushambi, Allahabad.
10. Zaid Akhtar, son of Shri Pudan, Resident of Mohalla-Amidpur, Bamrauli, Allahabad.

..... **Respondents**

Present for Applicant : Shri V.P. Tripathi

Present for Respondents : Shri P. Krishna

Along with

Original Application No.249 of 2005

(U/S 19, Administrative Tribunal Act, 1985)

1. Ramesh Chandra Yadav Son of Sri Ram Briksha Yadav, resident of Mohalla-Jungle Tulsiram, Bichhia, Azadnagar, P.O. P.A.C. Camp, District-Gorakhpur.
2. Sati Ram Sahani son of Sri Matelu Ram Sahani, R/o Mohanpur, Jungle Hakim No.2, P.O. Padri Bazar, District-Gorakhpur.

..... **Applicants**

Versus

1. Union of India through the Secretary Ministry of Defence, Govt. of India, New Delhi.
2. Senior Personnel Staff Officer, Headquarter, Central Air Command, Indian Air Force, Bamrauli, Allahabad.
3. Air Force Commanding, Air Force Station, Indian Air Force, Gorakhpur.
4. Sarda Prasad, son of Shri Lallu Ram, resident of Lal Vihar Colony, Bamrauli, Allahabad.
5. Suraj Kumar, son of Shri Bhagwati Prasad, resident of Lal Vihar Colony, Bamrauli, Allahabad.
6. Rajesh Kumar, son of Shri Ramrit Bari, resident of Village-Ashapatti Parsabri, Post Office-Karnaut, District-Muzaffarpur (Bihar).

..... **Respondents**

Present for Applicant : Shri B. Tiwari

Present for Respondents : Shri P. Krishna

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ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

As the facts, controversy and point of law involved in both the cases are similar and identical; both the cases are being disposed of by a common order.

1. By means of the aforesaid Original Application, the applicants have challenged the selection conducted pursuant to notification dated 06.12.2003, issued for appointment to the posts of Cook, Mechanical Trained Driver (MTD), Safaiwala and Mess Waiter at Air Force Station, Gorakhpur. The applicants have also challenged the result dated 05.03.2004 and copy of Nominal Roll of candidates for the post of cook selected in Physical and Trade Test.

2. The brief facts of the case are that the respondent no.2 issued an Advertisement dated 06.12.2003 published in the "Employment News" invited applications for appointment to the posts of Cook, MTD, Safaiwala and Mess Waiter at Air Force Station, Gorakhpur. A corrigendum to the aforesaid advertisement was also issued by the Competent Authority. In the corrigendum it was clearly stated that there was two posts of Cook (one for General Category and one reserved for Schedule Caste Candidate), two posts of MTD (one for General category and one reserved for OBC candidate) and one post of Safaiwala (reserved for schedule Caste Candidate). In the advertisement it was clearly and specifically mentioned that the candidates to be selected and appointed on the posts in the advertisement were required to be registered with the Employment Exchange in District-Gorakhpur.



3. In O.A. No. 277 of 2004, it is alleged that the Applicant No.1 is a Schedule Caste, Applicant Nos. 4 & 5 belong to OBC Category, and Applicant No.6 is a member of Schedule Caste Community. In O.A. No. 249 of 2005, it is submitted that both the applicants are belonging to Backward Category. In support of their contentions they have filed their Caste Certificates. It is alleged that the names of Respondent No.4 to 10 in O.A. No.277 of 2004, were not at all registered with the Employment Exchange, Gorakhpur. According to the applicants, the applicant no.1 alone was the Schedule Caste, who had applied for appointment to the post of Cook against the post reserved for the Schedule Caste Candidate. The applicants were selected in the Physical & Trade Test held in pursuance to the aforesaid advertisement. It is also alleged that the respondent no.6 was not selected in the physical & trade test for appointment to the post of Cook in Air force Station Gorakhpur. Sri J.P. Mishra, Squadron Leader, posted at Air Force Station, Gorakhpur was one of the members of the Board constituted for considering candidates for appointment as MTD in Air Force Station, Gorakhpur. The Respondent No.8 and his wife were working as domestic servants at the residence of the aforesaid Sri J.P. Mishra, while the selection for appointment as MTD took place. The result of the selection held for the aforesaid posts were declared by the respondent no.3 on 05.03.2004 (Annexure A-18). In O.A. No. 249 of 2005 it is clearly submitted that both the applicants belong to backward category and were fully qualified to be appointed as cook. Both the applicants are matriculate and have sufficient experience in their trade. It is alleged by the applicants that the candidates, who have been selected were earlier deputed at the residence of member of

selection committee, namely Sri J.P. Mishra. The grievance of the applicants is that the whole selection was conducted in a most arbitrary manner. The persons who have been selected were quite familiar to the member of Selection Committee. According to the applicants, there was no member of Schedule Caste Community and no member of Minority Committee in the Selection Committee and due to this reason alone, the entire selection proceedings are vitiated in law.

4. Notices were issued to the respondent nos. 4 to 10, but no Counter Affidavit has been filed by them. Official respondents have filed Counter Affidavit denying the averments contained in Original Application and submitted that the selection proceeding was constituted by the Competent Authority of Air Force Station, Gorakhpur. The Selection Committee after completion of entire formalities on 20.02.2004, provisionally selected candidates, who were informed by letter dated 05.03.2004. In O.A. No. 277 of 2004, the respondent nos. 4 and 5 namely, Sri Sarda Prasad and Sri Suraj Kumar, though belong to Other Backward Class, have been selected on merit in Physical and Trade Test and they have fulfilled all the laid down criteria for general category candidates. Sri Rajesh Kumar (respondent no.6) belongs to Schedule Caste Community and on the merit of physical and Trade Test, he has been selected for the post of Cook. Similarly respondent nos.7 to 10 have been selected in the post of MTD, Safaiwala and Mess Waiter respectively on the merit and physical and Trade Test. Sri Rajesh Kumar, respondent no.6 belongs to Schedule Caste Community and not other Backward Class. All the provisionally selected candidates were asked to complete the required

formalities in connection with their employment. It is also submitted, in reply to the Original Application No.277 of 2004 by the respondents that the respondent nos.4, 7, 9 and 10 have already got their names registered in the Employment Exchange of their respective Districts and all of them have submitted Xerox copy of Employment Exchange Registration Card. The names of the respondent nos. 5, 6 and 8 have already been registered with the Employment Exchange, Gorakhpur. The allegation made by the applicants that the names of respondent nos. 4 and 5 were not registered with the Employment Exchange in District Gorakhpur, is false and completely wrong. Respondent No.6 Sri Rajesh Kumar belongs to Schedule Caste Community. As one post of Cook was reserved for Scheduled Caste Community, on the merit of physical and trade test, respondent no.6 was found suitable and provisionally selected for the post of Cook. Similarly the provisional Selection of respondent no.6 for the post of Cook and the respondent no.10 for the post of Mess Waiter is valid and legal, as both the respondents appeared in the physical and Trade Test conducted by the respondents. The respondent no.8, Sri Raju Thapa and his wife have never worked as domestic servants at the resident of Sri J.P. Mishra, with a view to lend colour to the present case all these allegations have been made. The provisional selection of Respondent No.4 to 10 was carried out within the frame work of Rules. The following vacancies were allotted to Air Force Station Gorakhpur:-

| | | | |
|-------------|--------------------|-----------|--|
| <i>"(a)</i> | <i>Cook</i> | <i>02</i> | <i>(One general and one SC)</i> |
| <i>(b)</i> | <i>MTD</i> | <i>02</i> | <i>(One general and one SC)</i> |
| <i>(c)</i> | <i>Safaiwala</i> | <i>01</i> | <i>(Schedule Cast)</i> |
| <i>(d)</i> | <i>Mess Waiter</i> | <i>01</i> | <i>(General)</i> |
| <i>(e)</i> | <i>Cook</i> | <i>01</i> | <i>(12 AF Hospital) (general category)</i> |

(b) *The last date of receipt of applications by the candidates was 10 Jan, 2004. Date of appearing before the Board of Officers for interview/test was scheduled at 1000h on 10 Feb. 02.*

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(c) A Board of Officers for recruitment of the above mentioned post assembled at AF Stn. Gorakhpur on 10 Feb. 04. Local Employment Exchange was also approached by Air Force Station Gorakhpur to sponsor candidates in a letter dated 12 Jan, 04. No candidates was sponsored by the Employment Exchange at Gorakhpur.

(d) After scrutiny of the applications received at the Station, candidates as mentioned against the trades reported for recruitment:-

| | | | |
|-----|-------------|-----|----------------------------|
| (a) | Cook | 120 | candidates (55 for 12 AFH) |
| (b) | MTD | 43 | candidates. |
| (c) | Mess Waiter | 39 | candidates. |
| (d) | Safaiwala | 145 | candidates. |

(e) The number of candidates who qualified in the physical test and trade test for the above posts are as under:-

| | | | |
|-------|-------------|----|----------------------------|
| (i) | Cook | 34 | candidates (14 for 12 AFH) |
| (ii) | MTD | 17 | candidates |
| (iii) | Mess Waiter | 13 | candidates |
| (iv) | Safaiwala | 25 | candidates |

(f) Based on merit the following candidates were provisionally selected and concurred Board proceedings were forwarded to HQ CAC, IAF:-

| | | |
|-------|-------------|---|
| (i) | Cook | Sri Suraj Kumar S/o Bhagwati Prasad Sri Rajesh Kumar S/o Ramhit Bari Sri Sarda Prasad S/o Lallu Ram (12AFH) |
| (ii) | MTD | Sri Dewan Singh Patel S/o Shri Sarju Prasad Patel Sri Raju Thapa S/o Santu Thapa |
| (iii) | Mess Waiter | Sri Jaid Zkhtar S/o Puddan |
| (iv) | Safaiwala | Sri Raja Ram S/o Mahango Ram |

5. In the reply to Original Application No.249 of 2005, the respondents have clearly stated that due to their poor performance in physical and trade test the applicants could`nt be selected, they have filed the aforesaid Original Applications on flimsy grounds. All the persons, who have been selected, were sponsored by respective Employment Exchange of their respective Districts. The applicant no.2, namely, Sri Sati Ram Sahani, although, qualified in the test and his name find place in the list of 34 candidates, who were qualified in the physical and trade test, but due to his low merit and availability of only

three vacancies, Sri Ram Sahani could not be selected. The applicant no.1, namely, Sri Ramesh Chand Yadav could not be qualified in the physical and trade test. In Para-10 of the reply, respondents have clearly stated that though the respondent nos. 4 and 5 belong to OBC, but they have been selected on merit in physical and trade test fulfilling all the laid down criteria for general category candidates. The respondent no.6 being a Schedule Caste candidate has been selected in the Schedule Caste Category. He also submitted his caste certificate in support of his proof being a Scheduled Caste. The merit list and the result of candidates for the category of Cook, MTD and Mess Waiter, has been annexed as CA-1 by the respondents. Respondents have also filed Supplementary Counter Affidavit in Original Application No.249 of 2005 and submitted that the selection and result dated 05.03.2004 published and declared by respondents is not contrary to law and has been prepared in accordance with the provisions of Rule. It is also submitted that the applicants have made false allegation and accusation against the member of Board with intention to tarnish the image of Indian Air Force.

6. No Rejoinder Affidavit has been filed either in O.A. No. 277 of 2004 or in O.A. No.249 of 2005 and the facts stated in the counter affidavit remained uncontroverted.

7. We have heard Sri B. Tiwari, learned counsel for the applicant and Sri P. Krishna, learned counsel for the respondents.

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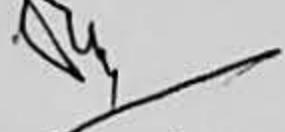
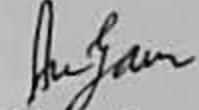
8. Learned counsel for the applicant, vehemently argued that the respondents have committed serious irregularity and bungling in conduct of the selection and the entire selection deserves to be cancelled. Learned counsel for the applicant would contend that the applicants could not be selected due to policy of pick and choose adopted by the respondents.

9. Learned counsel for the respondents invited our attention to the Annexure of CA-1 and submitted that the merit list of candidates prepared by the respondents would clearly indicate that the applicants could not be selected due to their poor performance in the physical and trade test. They appeared in the test without any demur or protest and after failing in the test/selection they have filed the aforesaid O.A. on false and flimsy grounds. In view of the following decisions of Hon'ble Supreme Court and High Court, they are estopped from challenging the validity of the order/result dated 05.03.2004. The case relied upon by the respondents are as follows:-

- (i) 2006(6) Scale 167 K.H.Siraj Vs. H.C. of Kerala.
- (ii) 1995(3) SCC 486 Madan Lal Vs. State of J&K.
- (iii) 2006 (5) Supreme Today 100 Sanjay Kumar Vs. N. Verma
- (iv) AIR 1976 SC 2428 Dr. G. Sarma Vs. V.C. Lucknow University
- (v) AIR 1986 SC 1043 Om Prakash Shukla Vs. Akhilesh Kumar Shukla

10. Learned counsel for the respondents has also vehemently argued that in view of the decisions reported in **AIR 1993 SC 2592 Naseem Bano Vs. State of U.P.** the Original Application deserves to be dismissed on the principle of doctrine of non traverse, inasmuch as, that the facts stated in the Counter Affidavit has not at all been denied or controverted by the applicants by filing Rejoinder Affidavit.

11. A careful analysis of the entire case clearly indicates that the applicants have made false allegations against the respondents with a view to tarnish the image of the Board's Officers. We have carefully considered the various pleas advanced by the parties counsel and we are fully satisfied that the applicants have failed to make out any case warranting interference in the matter. Original Applications are accordingly dismissed with no order as to costs.


Member-A
Member-J

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