

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Original Application No.637 of 2000

With

Original Application No.469 of 1999.

Allahabad this the 09th day of December 2004.

Hon'ble Mr.A.K. Bhatnagar, Member-J.
Hon'ble Mr.S.C. Chauhan, Member-A.

1. Kailash Chand aged about 42 years (approx) son of Radhey Shyam resident of Village Ajipur Post Office Dhanauli District Agra.
2. Gangadhar aged about 34 years (approx) son of Shri Babu Lal resident of Village Nanda-ka-Nagla Post Dhanauli District Agra.

.....Applicants.

(By Advocate : Sri Satya Vijay)

Versus.

1. Union of India, through Ministry of Defence Air Force Wing North Block New Delhi.
2. Air Officer Commanding No, 4 Wing Air Force, Station Agra.

.....Respondents.

(By Advocate : Sri Ashok Mohiley)

ALONGWITH

Original Application No.469 of 1999.

1. Kailash Chand aged about 41 years (approx) son of Radhey Shyam resident of Village Ajipur Post Office Dhanauli District Agra.
2. Gangadhar aged about 34 years (approx) son of Shri Babu Lal resident of Village Nanda-ka-Nagla Post Dhanauli, District Agra.

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Versus.

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O R D E R

(By Hon'ble Mr. S.C. Chauhan, A.M)

The two applicants who were appointed as Lasker in ~~the~~ Class IV with effect from 01.06.1982 and 01.06.1988 respectively, have sought, through this O.A. direction to respondent No. 2 ~~not to hold~~ selection as per their advertisement dated 3rd April 2000/4th May 2000 and appoint them on the post of M.T.D. Driver in Grade II.

2. The facts as per the applicants are that their services are purely civilian in nature but they were working within ~~the~~ command of Air Force, Agra. A few ~~few~~ vacancies for the post of M.T.D Driver in Grade II were declared under the respondents in the year 1998 for which the applicants had applied earlier and appeared in the selection. The applicants had passed the selection test but were illegally declared medically unfit hence they were not given further promotion to the post of M.T.D. Grade II. This action of the respondents was challenged by the applicants by way of O.A. No.469 of 1999 pending disposal before the Central Administrative Tribunal, Allahabad Bench. Pleadings have been completed in the present case. The applicants have also referred to the letter No. MHQ/23064/GEN/PC-4 dated 24.09.1999 of the respondent No.2 that both the applicants may be given promotion to the next higher grade from Group 'D' for which they had successfully undergone the selection process but inspite of this respondent No.2 is not giving promotion to the applicant, even though the vacancy exists under respondent No.2. Further, requirement for the post of M.T.D. Driver grade II were advertised vide advertisement dated 3rd April, 2000/4th May, 2000.

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According to the applicants, this advertisement is illegal as they have a right of claim since they have passed the selection held by respondent No. 2 in the year 1998 and have therefore, challenged. The applicants have further stated that respondent No. 2 held the selection process vide advertisement dated 3rd April 2000/4th May 2000 to fill the post of M.T.D. Driver Grade II from the eligible Group 'D' employees. Thus, they have prayed to restrain the respondent No. 2 for holding the selection on the post of M.T.D. Driver from Group 'D' during the pendency of O.A. No. 469/99. In support of their claim, applicants have stated that they were eligible and legally and have right of claim as they passed the selection held by respondent No. 2 in the year 1998.

3. The respondents have contended that alongwith 8 eligible Group 'D' employees, the applicants applied for promotion to the post of M.T.Ds on selection basis. They were provisionally selected for the post of M.T.D subject to their medical fitness. Thereafter they were referred to Station Medical Officer alongwith four other candidates selected for the post of M.T.D. As the applicants were not found medically fit for promotion as M.T.D., they were not given appointment as M.T.D. On the other hand, four candidates, who were declared medically fit, were given appointment as M.T.Ds with effect from 2.6.1998. After having been declared medically unfit, applicants went to Dr. B.K. Agarwal, Surgeon, District Hospital, Agra and obtained Medical Fitness Certificates for their employment. The certificates were not accepted by the respondents as the applicants were not officially referred to the so called surgeon of the District Hospital, Agra. Since the applicants were not found medically fit, they were not given promotion as M.T.Ds. Thus, they filed the present

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O.A. The respondents have admitted that the advertisement for filling up vacant post of MD (Ord) through Departmental Promotion Committee has been published in Station Routine Order on 03.04.2000. The same has been cancelled in toto due to administrative reasons vide order dated 16.05.2000. Therefore, the allegation of the applicants that this action of cancellation by the respondents is arbitrary and illegal, is not based on concrete proof and, therefore, vehemently denied. For the selection held in 1998, the respondents have contended that the applicants were medically examined by the Station Medical Officer and declared medically unfit for promotion of M.T.D. Grade-II (Ordinary) at that time for the various reasons mentioned in para 5 of the counter affidavit. Referring to the order dated 27.09.1999 of Air Force Headquarters, the respondents have contended that they had approached the Air Force Headquarters to review the order dated 24.09.1999 on the ground that the applicant No.1 was declared medically unfit for promotion as M.T.D. It has been contended by the respondents that as per the existing recruitment rules civilians M.T.D are to be medically examined every year and on medical examination if they were found unfit then they cannot be detailed for M.T.D duties. The respondents have further stated that the advertisement published on 3.04.2000 and 4.05.2000 have been cancelled and no further action regarding selection through Departmental Promotion Committee has been initiated in this regard. They have also stated that the order dated 24.09.1999 was superseded by another order of Air Force Headquarters vide Signal No. PC/492 dated 10.11.1999. Accordingly, instructions were issued to keep the case of promotion to M.T.D. (Ordinary) in abeyance as the matter is already pending

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in the Central Administrative Tribunal, Allahabad. Lastly, the respondents have contended that the applicants are not entitled to claim any legal right over the post of M.T.D. (Ordinary) and no violation of constitutional provision, nor principles of natural justice has been caused in the present case.

4. We have perused the pleadings and heard the counsel for the parties.

5. The respondents have contended in para 18 of the counter affidavit that as per the existing recruitment rules, civilians M.T.D. are to be medically examined every year and on medical examination if, they were found unfit then they cannot be detailed for M.T.D. duties. The natural corollary flows from this that in an operational organisation like Indian Air Force medical fitness of the Motor Transport Driver is of paramount importance and that is why getting through medical examination is one of the conditions precedent for continuance as Motor Transport Driver. As applicants were declared medically unfit by the Medical Authorities, they are not, therefore, entitled to lay any claim on their appointment as M.T.D Grade II. In the peculiar facts and circumstances of the present case, no case for judicial inference is made out. More-over, the respondents have already cancelled the advertisement dated 3.4.2000 and 4.5.2000.

6. In O.A. No.469 of 1999, the applicants have sought a direction to respondent No.2 to constitute large medical Board and re-examine the applicants. The respondents in para 20 of their counter affidavit have stated that after the applicants were declared medically unfit, the applicants were referred to on the basis of their representation again for medical examination but were declared unfit. Accordingly,

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they cannot be permitted to work on the post of Motor Transport Driver which is a selection post where medical fitness is a mandatory requirement as driving of vehicle involves risk to human life and damages to Government property as well. In short, both the applicants have been found medically unfit twice in the course of medical examination. They are, thus not entitled to any relief.

7. For the aforesaid reasons, the O.As are devoid of merit and are, therefore, accordingly dismissed. We make no order as to costs.

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Member-A.

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Member-J.

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