

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 28 DAY OF 8, 2009)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. S.N. Shukla Member (A)

Original Application No.1280 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

Arvind Gupta Son of Shri Gorakh Prasad Gupta, Resident of H.No. 94-C, 'M' Block, Yashoda Nagar, Kanpur.

..... *Applicant*

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110 111.
2. The Scientific Adviser & Director General, Research & Development, Research & Development Orgn., Ministry of Defence, Govt. of India New Delhi 110 011.
3. The Director, Defence Materials Stores Research & Development Establishment G.T. Road, Kanpur.
4. The Honorary Secretary, St. John Ambulance Association, 38/162, Chaman Ganj, Mohd. Ali Park, Kanpur.

..... *Respondents*

Present for Applicant : **Shri R.K. Shukla**

Present for Respondents : **Shri R. Sharma**

O R D E R

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

By means of the aforesaid Original Application, applicant has claimed for following main relief/s:-

"(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 30.05.2003 (Annexure A-I) issued without sufficient reasons.

(ii) To issue a writ, order or direction in the nature of Mandamus commanding the respondents to appoint the petitioner on the post of Medical Attendant 'C' grade on the basis of selection made by the Selection Board."

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2. In response to an advertisement published by the respondent no.3 in Employment News dated 25th November-1 December 2000. Applications were invited for the post of medical Attendant 'C' at Defence Materials Stores Research & Development Establishment, Kanpur (Annexure A-4). The applicant applied for the said post and in the advertisement, Column No.5 & 6 the essential qualifications are required and age limit has been specified, which are reproduced as under:-

5. Essential Qualification required:-

- (i) Secondary School Certificate (10th Standard pass under 10+2 system) recognized by Central/ State Govts.
- (ii) First Aid Course passed (minimum 06 weeks duration) from St. John Ambulance or a reputed recognized organization/Institution.

6. Age limit : Between 18 to 25 years (upper age limit relaxable for ex-service. Government Servant etc. as per the orders of Central Government issued from time to time).

- (i) The crucial date for determination of age is 31.12.2000.

Under note column, it has been mentioned in Note Column:

“That only candidates fulfilling the ORs may apply on plain paper as per the application format. The application duly completed alongwith photocopies of testimonials should reach to the Director, DMSRDE, G.T. Road, Kanpur-208013 on or before 31.12.2000. Incomplete applications will outrightly be rejected. The candidates short listed in merit will be called for interview/test. The candidates who are not called for interview/test may assume that they have not been short-listed on merit or due to incomplete application form. No correspondence on this issued will be entertained.”

3. The respondent no.3, short listed the applicant on merit and called for interview alongwith others on 20/21 November, 2001. The applicant, accordingly, appeared in interview/test. From the daily order part-II published by the respondent no.3 dated 03.04.2002, the applicant came to know that despite of having best academic record and performance in the interview, one Shri Mohan Sharma has been appointed. The applicant also came to know that due to irregularities,

illegalities and extraneous considerations of respondent no.3, Shri Mohan Sharma, who was underage on the crucial date of selection i.e. 31.12.2000, was selected and appointed by him. After coming to know this crucial fact, the applicant represented against the appointment of Shri Mohan Sharma through respondent no.3, but no heed was paid to the said representation of the applicant. Having no option left to the applicant, he approached the Tribunal by way of filing Original Application No.521 of 2002 (Arvind Gupta Vs. Union of India & Ors.). Vide judgment and order dated 19.08.2002, notices were issued to the respondents, and time for filing Counter & Rejoinder affidavits were granted to the parties before the date of final hearing fixed by the Tribunal. The respondent no.3 vide order dated 08.05.2002 terminated the services of Shri Mohan Sharma wrongly selected by the respondents instead of the applicant (Annexure A-7). In the light of cancellation of appointment, it is clearly mentioned that since the appointment of Shri Mohan Sharma was not in order, hence his services were terminated with immediate effect. Vide letter dated 30.10.2002, the applicant was intimated by the respondent no.3 that he has been selected on the post of Medical Attendant 'C' by the duly constituted Selection Board and was required to forward the Attestation Forms in triplicate. It is alleged that at the time of deposit of aforesaid attestation forms in the office of respondent no.3, the applicant was scolded chided and reprimanded by respondent no.3, also expressed his annoyance over filing of O.A. before Tribunal and the applicant was asked to withdraw the same. The respondent no.3 also showed the letter dated 21.08.2002 issued by the respondent no.2 to the respondent no.3, which reads as follows:-

"On receipt of draft counter affidavit vide your letter dated 19.06.2002, the matter was thoroughly examined and it was found that action suggested vide HQ letter of even number dated 3 May,

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2002 was not taken by your Estt., Resulting in filing of the above O.A. by Shri Arvind Gupta./

Your attention is invited to Do letter No. DOP/Pers-9/94003/M/14 dated 03.08.2002 from DOP to Director, DMSRDE wherein appropriate action has been suggested.

You are once again requested to appoint Shri Arvind Gupta being second on merit list." However, a copy of aforesaid letter dated 21.08.2002 is being filed herewith and marked as Annexure A-IX to the compilation No.II."

4. According to the applicant, the respondent no.3 wielded pressure on the applicant to withdraw the O.A. on the ground that since the process of appointment in respect of the applicant, had already been initiated, and due to pendency of case, the image and reputation of the department is gradually lowering in the eyes of public and higher authorities. The letter dated 11.11.2002 of the respondents addressed to Shri Rajiv Sharma, Advocate is necessary to be reduced hereunder:-

"This is to inform you that date of hearing in the above referred case is 12.11.2002 at CAT Allahabad Bench.

In this connection, it is brought to your kind notice that Respondent nO.3 i.e. Diector, Defence Materials & Stores Reserch & Development Establishment, G.T. Road, Kanpur has initiated action for appointment to the post of Medical Attendant 'C' in respect of Shri Arvind Gupta and accordingly Attestation Forms have been sent to him vide this Establishment letter No. AE/0552/Med.AttDt.'C' dated 30.10.2002 (copy enclosed) for filing.

Now applicant Shri Arvind Gupta has submitted Attestation Forms duly completed and the same are being sent to District Magistrate of the concerned area for his detailed Police Verification.

You are, therefore, requested to kindly apprise the Hon'ble Court with above facts for closing the case."

5. In view of the aforesaid fact, the applicant thought that since his recruitment process has already been initiated and Shri Mohan Sharma's appointment has already been cancelled, it would not be in the interest of his future career not to have bad relations with the Head of Office. The applicant accordingly, decided to withdraw the O.A. No. 521 of 2002, and the O.A. was got dismissed as not pressed and withdrawn. But,

Respondent no.3 did not honour his commitment of words and cancelled the appointment of the applicant to the post of Medical Attendant 'C' on the ground that his first Aid Course Certificate dated 14.12.2000 produced from St. John Ambulance Association, New Delhi, is of 8 days durationaly and not of 6 weeks duration as provided in SRO 191 dated 29.10.1999. According to the applicant, this action of the respondent no.3 is highly irregular, arbitrary and not according to law, inasmuch as, that after appointment by the selection committee, the respondent no.3 had no right to cancel the appointment of the applicant. It is allege that the first Aid Course Certificate issued by the St. John Ambulance Association, New Delhi is bearing no duration as alleged by the respondent no.3.

6. In the counter reply filed by the respondents it is submitted that on receipt of attestation form from the applicant and during the scrutiny of the same following discrepancies have been found by the respondents:-

- (a) *Applicant has concealed the material fact that he has passed High School only whereas at the time of applying for the above mentioned post he was intermediate passed. In fact he was doing B.Sc. degree from Kanpur University which he completed during June, 2002 and declared this qualification in Attestation Form.*
- (b) *Applicant has passed course of First Aid of 08 days duration from St. John Ambulance whereas minimum QR for the post has been 06 weeks duration from the recognized institution as per SRO No.191 dated 29-10-1999.*

7. The applicant, by filing rejoinder affidavit denying the averments contained in Counter Affidavit and submitted that the higher qualification acquired by the applicant is no bar for the appointment as medical attendant 'C' and First Aid course of St. John Ambulance having higher educational qualification for the post of Medical Attendant 'C' and

the First Aid Course of St. John Ambulance Association is equal and recognized course for the said post and in other DRDO's establishments and in other sister organizations. According to the applicant, had the filed O.A. No.521 of 2002, the respondents would have raised their finger in reorganization of the First Aid Course of St. John Ambulance Association Kanpur, and the candidate having said certificate have been permitted to continue in the department, even Mohan Sharma the person who was appointed and his appointment was subsequently cancelled was having the same document. According to the applicant, respondent no.4 i.e. the Hon. Secretary, St. John Ambulance Association Kanpur has not filed any counter affidavit and also did not authorize the official respondents to file counter affidavit on their behalf. In the advertisement issued by the respondent no.3, it was clearly specified that candidates short listed on merit will only be called for interview. It is falsely pleaded by the respondents that they could not scrutinize the applicant's certificate and only on submission of attestation form after selection, they could notice discrepancies in requisite qualification of the applicant.

8. We have heard Shri R.K. Shukla, learned counsel for the applicant and Shri R. Sharma, learned counsel for the respondents and perused the written argument.

9. Learned counsel for the applicant argued that St. John Ambulance Association conducts two types of examination- (i) Junior Examination of shorter duration and (ii) Senior Examination of longer duration. It is also pointed by the learned counsel for the applicant that applicant has passed senior examination before being selected by the respondents, these certificates was verified and the applicant was short listed for

interview by the selection committee. The certificate issued by the St. John Ambulance Association is on Page-35, Annexure A-11 of the O.A. Learned counsel for the applicant would contend that in the recruitment rules filed as Annexure-1 of the written argument there is no mention of any duration for the examination. Learned counsel for the applicant further argued that similar certificate is possessed by all the candidates selected or not selected. Since the applicant's selection was made by the selection committee and hence only selection committee alone the power to cancel the applicant's selection and not the other authority. It has been argued by learned counsel for the applicant that no person can be denied equality before law or equal protection especially in selection process. In support of this contention he has placed reliance on the decision of this Tribunal rendered in **O.A. No.285 of 1998 decided on 24.04.2006 (Rajendra Pal Singh & another Vs. UOI and Ors.)** Learned counsel for the applicant would further contend that Shri Mohan Sharma, who was selected and placed at Sl. No. 1 in the selection list, he was also having the same certificate, which applicant is having. Lastly, it has been contended by the learned counsel for the applicant that the respondents issued direction to their counsel to apprise the present position of his case and to withdraw the case, and in pursuance to that association the applicant withdraw his O.A. as indicated above. The only argument advanced by the learned counsel for the applicant is that the certificate of experience, submitted by the applicant is only of 8 days duration whereas, minimum QR for the post has been Six weeks duration. It is also argued on behalf of the respondents that the minimum qualification required was High School only, whereas, at the time of applying for the post in question the applicant was Intermediate and in fact he was doing B.Sc. from Kanpur University.

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10. We have carefully gone though the pleadings of the parties and written arguments submitted by the learned counsel for the applicant. We may observe that the certificate in question was duly verified by the selection committee and the applicant was short listed for interview on the basis of the said experience certificate. A perusal of the Recruitment Rules published in the Gazette of India on August, 2005, we may observe that for the post of Medical Attendant 'C' following experience is required:-

"Non-Ex-service Persons

- (i) Passed 10+2 or equivalent examination.
- (ii) Undergone a course of Instructions in First aid from a recognized Institution/ St. John's Ambulance.
- (iii) Knowledge of First aid.
- (iv) Knowledge of Operation Theatre and sterilization procedure.

Ex-service Persons:

Worked as Nursing Assistant in the Armed Forces after passing qualifying test of the Medical Corps.

Desirable:

Preliminary working knowledge of computers.

From the perusal of the aforesaid Rules, it is evident that there is no mention of any duration for the examination. The fact enumerated in the O.A. by the applicant that the applicant was short listed for interview by the Selection Committee after verifying the experience certificate and the same certificate was filed by Shri Mohan Sharma, who was selected earlier and subsequently his appointment was cancelled on the complaint of the applicant and this vital fact has not been denied by the respondents in the Counter Affidavit. The pleadings taken in the O.A.

shall be deemed to have been accepted by the respondents and the principle of non traverse shall apply.

11. We have also carefully perused the experience certificate issued by the St. John Ambulance Association, Kanpur, dated 14.12.2000 and we are satisfied that the said certificate has properly been issued by the competent authority. Accordingly, the applicant has passed senior examination from St. John Ambulance Association; we may also observe that the applicant's selection was made by selection committee consisting of Board of Officers senior most responsible Office, the Chairman. We have also noticed that 117 applications were received from the post, interview were held on November 20/21, 2001, ^{out of} all the 75 candidates ^{who} appeared for interview following candidates have been selected and recommended for appointment to the post of Medical Attendant 'C' Group 'D' post, in order of merit shown:-

S.N.	Name	Reference	Recommendation
1.	Mr. Mohan Sharma	(MAG-29)	Selected
2.	Mr. Arvind Gupta	(MAG-01)	Waiting-I
3.	Mr. Sarju Prasad Misra	(MAG-38)	Waiting-II

Sd/-III. (Mr. S.K. Kreel) Scientist 'D' Member	Sd/-III. (Mr. R.P. Bhatt) Scientist 'E' Member	Sd/- III. (Dr. Mrs. P. Venkatramani) Chief Medical Officer Member
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Sd/- III.
(Dr. M.K. Dheer)
Scientist 'F'
Chairman

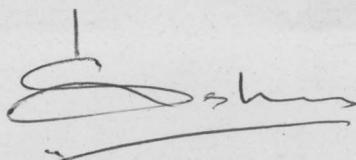
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12. We may also observe that the applicant was duly selected by the Selection Board, His documents were also verified but before issue of appointment letter, his appointment has been cancelled on the baseless ground that the certificate issued by St. John Ambulance Association of 8 days, There is no such mention of days in the certificate issued by St. John Ambulance Association, before cancellation of appointment respondents have failed to afford any opportunity of hearing to the applicant. In support of this contention we may place reliance on the decision of Hon'ble Supreme Court reported in **1995 SCC (L&S) - 447 M.S. Usmani & Ors. Vs. Union of India & Ors. and 1998 SCC (L&S) - 85 N.K Durga Devi Vs. Union of India.**

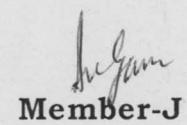
13. Having gone through the pleas advanced by the parties counsel, we are fully satisfied that the cancellation of selection of the applicant is bad in law without proper reasoning. It is settled principle of law that a candidate is selected and enters in the selection list for appointment in accordance with the regulation, he get a right to be considered for appointment as an when vacancies arise. Removal of name of the person from the select list leads to forfeiture of his right for consideration for employment to the post in future which is a serious consequence. Such a candidate, whose name is deleted from the select list is entitled for an explanation. Similar view has been taken by the Tribunal in case of **Sarwan Kumar Vs. State of Bihar in 1991 (16) ATC (SC) 937.** We may also rely upon the decision reported in **AIR 1986 (SC) 1680 S. Govind Raji Vs. KSRTC and another.**

14. In the result the impugned order of cancellation of the selection of the applicant as Medical Attendant 'C' dated 30.05.2003 (Annexure A-1)

is quashed and set aside and consequently the respondents to restore the appointment of the applicant to the post in question. It is also ordered that the applicant will enjoy all consequential benefits including seniority, promotion, etc., on reinstatement which are available to a regular employee in that grade. Without back wages. No costs.



Member-A



Member-J

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