

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

(THIS THE 21 DAY OF April 2011)

Hon'ble Dr. K.B.S. Rajan, Membr (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No. 1072 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

Anand Kumar, Son of Vishnu Kumar,
Resident of House No.195/12 Babupurva
Colony, Kidwai Nagar, Kanpur Nagar.

.....Applicant

Present for Applicant: Shri Rakesh Verma, Advocate

VERSUS

1. Union of India Ministry of Defence
Through its Secretary,
New Delhi.
2. General Manager, Ordnance Parchute
Factory, Napier Road (Cantt),
Kanpur Nagar.
3. R.D. Chandras, Management Officer
Administrtrion, Ordnance Prachute Factory
Napier Road (Cantt), Kanpur Nagar.
4. M.R.Ghai, A.G.M Ordnance Parachute
Factory, Napier Road (Cantt),
Kanpur Nagar.
5. Dr.P.P.Vadhikhai, P.M.O Ordnance
Parachute Factory, Napier Road (Cantt)
Kanpur Nagar.
6. Dr.V.M.P. Rao, P.M.O Ordnance Hospital
Armapur, Kanpur Nagar.
7. Arvind Kumar Gupta, S/o G.P. Gupta

R/o 94-C M Block Yasoda Nagar
Kanpur Nagar.

8. Satyabhan Sakya, R/o Village
Shaheedpur Kala, post Karwa
Bujurg, District Etawah.

.....Respondents

Present for Respondent: Shri R.C. Shukla, Advocate

O R D E R

(Delivered by Dr.K.B.S.Rajan, Member (J)

The grievance of the applicant in this case is two fold:-

(a) There was no reason for the respondents to subject the applicant for interview for the post of Medical Assistant as many as three times;

(b) Respondents 6 & 7 were "inferior in the selection list called for the medical"; yet they have been selected.

2. The brief facts of the case are that in response to a notification published in August 2002 for the post of Medical Assistant in Ordnance Parachute Factory, Kanpur, the applicant preferred his application. Result of the written examination was declared and seven persons qualified in the written examination and were to be sent for medical examination. The applicant, with Roll no. 73, figured in at the 5th position. The interview was organized and conducted by the Medical Board on 5.1.2003 and the applicant appeared in the same. Another interview was organized on 12.1.2003 and the same did not appear to be official. There was no change in the selection list published on 6.1.2003 in which the applicant ranked at No.5. To the surprise of the applicant, yet another interview was held on 3.2.2003.

3. The applicant filed writ petition No.14888/03 before the Hon'ble High Court. However, the Hon'ble High Court on the ground of availability of alternative remedy and giving liberty to the applicant to move the Tribunal dismissed the writ petition and hence this OA has been filed by the applicant, alleging manipulation in the selection process and seeking the following relief:-

- (i) To quash the impugned orders dated 06.1.2003 and 10.2.2003 i.e. Annexure 1 & 2 to this application.
- (ii) allow all consequential benefits to applicant in relation to his proposed post for which applicant has applied.

4. Respondents have contested the OA. They have denied any manipulation in the selection. According to them interviews were held ranging from 6.1.2003 to 3.2.2003. The final result was declared only on 10.2.2003 and the same was displayed in the notice board. Respondent No.7 was at Sl.No.11 in the result of written test. The order of selected persons in the written test was in sequence of roll number and not in order of merit as claimed by the applicant. The applicant claims that he was working as a Medical Assistant in a private institution but during the relevant period as the applicant was studying as a regular student in SJMY-ICK-Nagar Ajhuwa Kaushambi which is about 150 kms away from Kanpur city, it would not be possible to work simultaneously as Medical Assistant during the period at Danish Hospital Kanpur.

5 In his Rejoinder the applicant stated that he was working as Medical Assistant in the private institution on part time basis and he was simultaneously prosecuting the further studies as well.

6. Counsel for the applicant argued that there has been definite manipulation of the results as otherwise there was no need to call the applicant three times for the interview. He has also submitted that if the relevant records were called for, the same would surface out the truth. Accordingly, the records were called for.

Counsel for the respondents justified the action taken by the respondents.

7. Arguments were heard and documents including the records produced, were perused.

9. From the records, it is seen that the number of posts advertised was three, two for unreserved and one for OBC. The applicant is an SC candidate. He could aspire for the post under the unreserved category. Persons who have been selected under unreserved category happened to secure 79 and 73 marks while the applicant secured only 69. Therefore he could not be selected in the general category. Among the OBC, it is Arvind Gupta who had secured highest marks. As such, he has been selected against the OBC quota. As the applicant ranked only third in the unreserved category, and there were only two vacancies, the applicant could not be selected.

10. One aspect has to be observed at this juncture. When the applicant has staked his claim for selection, on the basis of the results, the respondents could have easily indicated that the applicant could be considered only against the unreserved category and not for OBC and since there are already two persons with higher merit the applicant could not be selected. This was strangely not done. It is not known whether there had been a change in the reservation of vacancies. In case the third vacancy has also been thrown open to general category, the applicant would certainly have a case. **This aspect has to be ascertained by the respondents.** We leave this part to the administration to decide.

11. Independent of the same, on the basis of the records we have, in view of the fact that the applicant could not aspire against the OBC vacancy and he could aspire only against general category, his position being only third and the vacancy being two, we do not discern any illegality in the non-selection of the applicant. Hence, with the observations made at para 10 above, the OA is dismissed.



(D.C. EAKHA)
Member (A)



(DR.K.B.S.RAJAN)
Member (J)

Uv/