

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 536/99.
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this the 1st day of November 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Bawaja, Member(A)

Anil Kumar Ramnathan,
C/o.Shri A.K.Ramnathan,
Quarter No.185/4,
Institute of Armament Technology,
Girinagar,
Pune - 411 025.

...Applicant
(in OA 536/99)

K.V.Manoj,
C/o. Shri K.V.Bhaskaran,
Quarter No.187/3,
Institute of Armament Technology,
Girinagar,
Pune - 411 025.

...Applicant
(in OA 537/99)

(By Advocate Mr.N.K.Iyer)

Vs.

1. Union of India
Secretary to the Government of India,
Ministry of Defence, Raksha Bhavan,
New Delhi - 110 001.
2. The Director and Dean
Institute of Armament Technology,
Girinagar,
Pune - 411 025.

...Respondents
(in both OAs
536 & 537/99).

(By Advocate Mr.R.R.Shetty on behalf
of Mr.R.K.Shetty)

: ORDER :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

gsl
These are two OAs filed by the respective applicants
under section 19 of the Administrative Tribunals Act, 1985. The
respondents have filed their reply. We have granted interim

order. Since the point involved is a short point and in view of the continuation of the interim order, after hearing both the counsels, we are disposing of both the OAs at the admission stage. We have heard Mr.N.K.Iyer, the learned counsel for the applicants and Mr.R.R.Shetty on behalf of Mr.R.K.Shetty, the learned counsel for the respondents.

2. The dispute raised in this case is about appointment of applicants to the post of Fireman in the office of the second respondent. There was an advertisement in March, 1999 for recruiting Fireman in the establishment of Respondent No.2. The applicants and many others responded to the advertisement. Though, there were 250 candidates who applied for the post, only 55 candidates were called for interview, but actually 41 candidates attended the interviews. The interviews were held on 10th and 11th May, 1999. The candidates were subjected to medical test and those who were fit in the medical test were called for oral interview. The candidates were also subjected to physical standard test. On the basis of oral interview and the physical standard test, the applicants and one more candidate came to be selected. Then, the applicants were informed that they have been selected subject to undergoing fresh medical examination. According to the applicants, they underwent this further medical examination in Sassoon Hospital at Pune and gave the medical certificate in the office of the second respondent. When they were waiting to receive the appointment order, they were informed that fresh interviews and fresh medical examination will be held for all the 55 candidates. When they received such notice from the respondents, they approached this Tribunal by filing the present application and challenging the action of the

administration in ordering fresh interview and fresh medical test. An interim order has been granted directing the respondents to go ahead with the second interview, but they should not publish the results and we also gave liberty to the applicants to participate in the second interview without prejudice to their legal contentions. The applicants, therefore, are challenging the action of the administration in not appointing them in pursuance of the first interview and in cancelling the previous selection and proceeding to hold second interview again.

3. The respondents in their reply have justified the action taken by them. According to them, they received number of complaints about the previous interview and medical examination. After making informal enquiry, the Competent Authority came to the conclusion that there were some irregularities and lapses in conducting the first interview and medical test and therefore he cancelled the entire selection process and ordered fresh selection by holding fresh interview and fresh medical examination to the 55 candidates who had earlier been called for interview.

4. The learned counsel for the applicants contended that when the applicants have already been selected, the administration had no right to cancel the selection and order fresh interview and fresh medical examination. He, therefore, contended that the action of the administration is arbitrary, unreasonable and illegal. On the other hand, the learned counsel for the respondents pointed out the circumstances under which the earlier selection had to be cancelled and why fresh selection was ordered.

5. It is true that when one selection process has taken place

normally it should come to a logical conclusion by issuing appointment orders to the selected candidates. But, if in a given case certain irregularities or lapses come to the notice of the Competent Authority, there is no legal obstacle to cancel the entire selection process and order fresh selection process. If the respondents can show that the previous selections were vitiated due to certain lapses or mis-conduct on the part of the concerned officials then there is no legal impediment to cancel the selection process. There must be purity in the selection process. In this case, after the selection process was over, an anonymous complaint was sent to the Hon'ble Minister for Defence making certain allegations about wrong selection and allegation of mischief by certain officials who were already working there in promoting the interest of their relatives and friends. The copy of the anonymous letter is at page 56 of the paper book. Then, the copies of the letters were sent to the Hon'ble Prime Minister and also to Dr.A.P.J.Abdul Kalam, SA to Raksha Mantri. One of the candidate who had failed in the selection had also made a complaint about his non-selection. It is true that selection process should not be cancelled on mere anonymous letter or on a complaint made by one of the failed candidates. The learned counsel for the respondents has placed before us the entire file pertaining to the selection process. The appointing authority in this case is the Director and Dean of the Institute of Armament Technology, Pune. In the noting sheet the Director

has considered the allegations pertaining to the selection. He has passed an order dt. 17.6.1999 and paras 5, 6 and 7 are relevant for our present purpose which read as follows :

"5. After approving the Board Proceedings, the undersigned received a number of complaints containing allegations of improper selection of candidates and injustice done to some of the candidates interviewed/tested on 10th & 11th May, 1999. In view of these allegations, the undersigned referred to all the 05 candidates (as per 'select list') to IAT MI Room, for the RMO's fresh medical opinion, on 27th May, 1999. With a view to find out the truth of the said allegations, the undersigned held a Meeting with the Presiding Officer and other Members of the Board (in Dean's Office) and gathered their view points.

6. Taking all the relevant facts and circumstances into consideration and having regard to the fact that ~~25%~~ of the candidates (14 out of 55) remained absent from the interview/test on 10th & 11th May, 1999, the undersigned has come to the conclusion that the selection of the candidates by the Selection Board on 10th & 11th May, 1999, was not properly done by the Board and that there is a strong case to remove the 'needle of suspicion' in the matter of selection, so that the selection is based on fair-play and justice and the merited/ deserving candidates are recommended for selection for appointment.

7. The undersigned, therefore, directs that a fresh Selection Board be reconvened to re-interview/re-test all the 55 candidates (originally called for the interview/test on 10th and 11th May, 1999) in the second week of July, 1999 (preferably on 16th & 17th July, 1999), for which, the undersigned will approve the constitution of the Selection Board in advance."

From a perusal of the above we find that the Appointing Authority has mentioned that he has received number of complaints making allegations of improper selection of candidates. In order to satisfy himself, he sent all the five selected candidates for fresh medical opinion on 27.5.1999 including both the applicants. It has come on record that on fresh medical examination it was

found that out of the five selected candidates two were not at medically fit, but still they had been selected. In order to find out the truth of the allegations the Competent Authority had a discussion with the Presiding Officer and members of the Interview Committee. Then, the Competent Authority has come to the conclusion that there was no proper selection and he felt that in order to remove the 'needle of suspicion' and in the interest of fair-play and justice he has ordered fresh interview and medical examination.

6. Therefore, this is a case where the Appointing Authority has applied his mind and considered all the relevant facts and has reached the conclusion that all was not well with the selection process and hence in the interest of fair-play and justice he has ordered fresh interview and medical examination for all the 55 candidates. Having regard to the facts and circumstances of the case, we cannot say that the order of the Competent Authority is illegal or arbitrary or unreasonable. We are not sitting in appeal over the decision of the Competent Authority. The question is whether in the facts and circumstances of the case and for the reasons mentioned by the authority whether the Competent Authority has exercised discretion properly in ordering fresh selection. After going through the facts and circumstances of the case and in the light of the arguments addressed before us and having perused the original records, we are not in a position to interfere with the impugned order of the Competent Authority.

7. We are not impressed by the argument of the learned counsel for the applicant that second respondent was not competent to order fresh interview or fresh medical examination. The second respondent is the appointing authority. The power of appointment

includes power of dismissal or removal. He has power to approve selection and appoint candidates, he has the power to reject the selection and order fresh selection. There is no hard and fast rule in a matter like this, when a selection should be cancelled. It is a matter to be decided on the peculiar facts and circumstances of the case. As already stated, after having considered the entire case papers and the official files produced before us, we do not find that the competent authority has committed any illegality or irregularity in ordering fresh interview and fresh medical examination.

From the record, we find that one of the requirements of physical standard is that one must have vision of 6/6 in both the eyes. In the first medical examination, the applicant K.V.Manoj was declared to have the vision of 6/6 in both eyes. But, after the Competent Authority entertained a doubt about the previous selection and ordered fresh medical examination, one of the applicants viz. K.V.Manoj (Applicant in OA 537/99) was found to have vision of 6/6 in the right eye and 6/24 in the left eye and that is why K.V.Manoj was declared medically unfit and therefore he was not even subjected to oral interview and test of physical standard. Similarly, one more candidate who had been selected was also found to be medically unfit in the second examination. In the facts and circumstances of the case, we are not inclined to interfere with the second interview and second medical examination ordered by the Competent Authority.

In this connection, we may refer to a decision of the Apex Court reported in 1996 (1) SC SLJ 122 (State of M.P. and Others Vs. Shyama Pardhi etc. etc.). That was a case where certain candidates were selected to the post of Auxiliary

Nurses-cum-Midwife, appointment orders were issued, then the candidates were sent for training, after successful completion of training the candidates were given appointments. Subsequently, it was noticed that some of the candidates did not possess the required qualification and therefore their selection was held to be illegal and their services were terminated. Then, those candidates approached the State Administrative Tribunal at Jabalpur. The Tribunal allowed the application on the ground that when the candidates have already been appointed, their appointments could not have been cancelled without holding any enquiry etc. The Supreme Court observed that when it is shown admittedly that the candidates did not have the required qualification, their very initial selection itself was illegal and the orders of appointment are in violation of statutory rules and therefore, the Tribunal was not right in interfering with the cancellation of appointments.

This shows that if the selection is illegal or improper then the Competent Authority has a right to cancel the same. At least that was a case where the candidates had been selected, underwent training and were regularly appointed. But, in the present case, no appointment orders were issued to the applicants, but they were only informed that they have been selected subject to further medical examination. At that stage, some anonymous complaints came and the Competent Authority made informal enquiry and was satisfied with the whole selection process is vitiated due to nepotism etc. and that is why he ordered fresh interview and fresh medical examination for all the

candidates. Hence, this is not a fit case calling for interference at this stage.

8. But, one thing we must point out. The applicant K.V.Manoj was examined earlier by Captain Naik and was found to be medically fit. In the second examination by Captain Jaiprakash K.V.Manoj was found to be medically unfit. We feel when the Competent Authority entertained a doubt about the earlier medical examination he should have got fresh medical examination by a Senior Officer or by a Regular Medical Board. When rightly or wrongly the earlier Doctor has given an opinion that the candidate is medically fit and if the Competent Authority entertains a doubt about it, he should refer the matter to a Medical Board and act upon the opinion of the Medical Board.

In the second selection, the applicant K.V.Manoj was subjected to medical examination by Captain Jaiprakash and he was found unfit and therefore he was not subjected to interview at all. We, therefore, feel that in the facts and circumstances of the case, the Competent Authority should be directed to get K.V.Manoj examined by a Medical Board. If the Medical Board finds him medically fit, then the applicant should be subjected to interview by the same committee which conducted the second interview in July, 1999 headed by Wing Commander S.Dev Gupta and other same Members of that Committee. If K.V.Manoj is cleared medically and based on the interview marks the selection committee should decide whether he is fit to be appointed or not depending upon his merit.

In the proceedings of the second selection committee dt.27.7.1999 three candidates have been selected and three candidates have been kept in waiting list. As far as A.K.Ramnathan is concerned he has been found medically fit and he has passed in the selection process, but however, having regard to the marks obtained by him he has not been selected, but he has been kept at No.3 in the waiting list. He can be selected only if the selected candidates do not join duties.

As far as K.V.Manoj is concerned, he must be subjected to fresh medical examination by a Medical Board and if he is found medically fit, he should be subjected to interview by the same committee which prepared the proceedings on 27.7.1999 on the basis of the marks obtained by him, the committee should decide whether he passed in the selection and if he is fit to be appointed ^{and then} he must be placed in the selection list either in the main list or in the waiting list depending on his marks obtained. We give liberty to the administration to appoint the first two candidates out of the selected candidates as per the selection committee proceedings dt. 27.7.1999 and the third candidate Sachin R.Dhawade should not be appointed for the present. If K.V.Manoj is qualified in the medical examination and if on the basis of his marks he is found fit to be selected as a candidate in the main list, then he should be appointed and given ranking among the three selected candidates as per his marks. In case K.V.Manoj is medically unfit or even if he is medically fit he gets less marks in the interview, then Sachin R.Dhawade may be appointed.

It is also stated in the office file that matter is being taken up at the administrative level to take action against the

officers who are responsible for this illegal or irregularity in selecting the candidates in the previous selection. We hope and trust that the administration will pursue this and take whatever disciplinary action that may be necessary against erring officers who are responsible for the irregularity or illegal selection.

9. In the result, both the OAs are disposed of at the admission stage subject to the observations made in para 8 above. The interim order granted in these two cases on 12.7.1999 and extended from time to time are hereby vacated subject to observations made in para 8 above. In the circumstances of the case, we direct the respondent to complete the exercise of subjecting one of the applicant, K.V. Manoj, for further medical examination by Medical Board and if necessary for further interview within a period of two months from the date of receipt of copy of this order. No order as to costs.

(D.S.BANEJA)

MEMBER(A)

(R.G.VAIDYANATHA)

VICE-CHAIRMAN

B.