

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A: No. 313/96

12

DATE OF DECISION 02.7.2002

Surendra Kumar Sharma

Petitioner

Mr. P.V. Calla

Advocate for the Petitioner (s)

Versus

Union of India & Others

Respondent

Mr. T.P. Sharma

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. M.P. Singh, Member (Administrative)

The Hon'ble Mr. J.K. Kaushik, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

J.K. Kaushik
(J.K. Kaushik)
Member (Judicial)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA No. 313/1996

DATE OF ORDER : 2-7-2002

Surendra Kumar Sharma son of Shri Bhagwan Sahai Sharma, aged about 35 years, working as Pharmacist in the pay scale of Rs. 1350-2200 (RP) in the office of Bandikui, Western Railway, Jaipur.

....Applicant.

VERSUS

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager (Estt.), Jaipur Division, Western Railway, Jaipur.
3. The Selection Board through its Chairman Dr. N.K. Meena (DMO), Western Railway, Jaipur.
4. Dr. N.K. Meena, DMO, Western Railway, Jaipur.
5. Shri Avtar Singh, Pharmacist, C/o M.O. Bandikui Hospital, Western Railway, Bandikui.

....Respondents.

Mr. P.V. Calla, Counsel for the applicant.

Mr. T.P. Sharma, Counsel for the respondents.

CORAM

Hon'ble Mr. M.P. Singh, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)

Applicant, Shri Surendra Kumar, has filed this OA u/s 19 of the Administrative Tribunal's Act and has prayed for the following reliefs:-

(i) In the facts and circumstances of this case, it is, therefore, prayed that this Hon'ble Tribunal may call for the entire record relating to this case and by an appropriate order or direction declared the result of written test issued vide office order dated 15.2.1996 by the Selection Board as illegal in as much as ineligible candidates were called for viva voce test.



(ii) the panel dated 10.5.1996 may kindly declared illegal in so far as it relates to the respondent No. 5.

(iii) Official respondents may be directed to consider the candidature of the applicant afresh objectively and if he found eligible otherwise he may be placed in the panel prepared for appointment to the post of Pharmacist in the scale of Rs. 1400-2600 (RP) with all consequential benefits.

(iv) If any order prejudice to the applicant is issued during the pendency of the OA, the same may also be declared illegal.

(v) Any other relief to which the applicant is found entitled in the facts and circumstances of the case, may also be granted.

(vi) The OA may kindly be allowed with costs.

2. The factual matrix of the case is that the applicant was appointed to the post of Pharmacist on 25.6.1986 after passing selection conducted by RRB, Ajmer. He was allowed own request transfer from Kota Division to Jaipur Division. He joined in Jaipur Division on 9.4.90, where from he got his seniority in Jaipur Division. It has been averred that the post of Pharmacist, scale Rs. 1350-2200 is a feeder post for promotion to the post of Pharmacist, scale Rs. 1400-2600. The post of Pharmacist scale Rs. 1400-2600 is the first promotional post which is always filled in by seniority cum suitability. As per the knowledge of the applicant, the said promotional post was always filled in on the basis of seniority in the past. Therefore, holding of the selection to the grade of Rs. 1400-2600 was not as per the practice prevailing in the department.

3. The second respondent issued a notification dated 2.9.94 and decided to fill up two vacancies in the said grade through selection. A written test was also conducted and the selection process was also completed. One Shri Anshu Kumar Malhotra was placed on the panel and one reserved post was kept vacant as no SC employee was available. However, the applicant passed the written test and the another post was



kept vacant probably to bestow favour to a particular community.

4. There are three grades available in the cadre of pharmacist under Group 'C'; 1350-2200, 1400-2600 and 1640-2900. The employees working as Pharmacist in the base grade of Rs. 1350-2200 and next higher grade i.e. 1400-2600 are discharging the same duties. Thus there was no requirement for any selection. In the present case, a selection board was constituted with the orders of ADRM whereas as per the rules in force, the selection board is required to be constituted under the order of General Manager or Head of the Department and other competent authority not lower than DRM. IN the present case, the selection board was not constituted as per the rules. The earlier selection Board which consists of Sr. DCOs, Sr. DPOs and Sr. DMO was the proper Board but it was cancelled and in the Members of the Board were changed and a new Board was constituted in which Members were two DMO and one APO.

5. After joining in Jaipur Division, applicant was posted under the control of M.O. Bandikui. In addition of his normal duties, the applicant also performed other activities in the department and taken pains in the National Programme i.e. Family Planning Programme. He was heartily dedicated to Family Planning work and looking after the Accident Relief Medical Equipments.

6. Another selection was held and panel prepared on 10.5.1996. In this panel there were three vacancies. One vacancy was reserved for reserved category but three persons from reserved category were considered.

7. While the applicant while discharging his duties in Kandi Kui, Dr. N.K. Meena visited Bandi Kui in respect of a camp launched for Family Planning work. The applicant was

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and have controverted the facts and grounds mentioned in the OA. It has been averred that Shri Anshu Kumar Malhotra was selected against the general category post and other post was kept reserved for want of availability of the candidates. Nextly DRM and ADRM are of the same rank and Selection Board can be nominated by ADRM on behalf of DRM. However, Selection Board consisted Sr. scale officers as per the rules in force. Thus the constitution of Board was as per the rules. In the year 1995, there were three vacancies; two for general and one for reserved. Relaxation was also to be provided to reserved category and one reserved category was considered for promotion by giving relaxation as per General Manager's letter dated 9.3.95. Therefore, it is wrong to say that any person was considered in the selection. No illegality can be said to have been committed and it is requested that the OA may kindly be dismissed.

11. No counter reply/counter affadavit has been filed on behalf of respondents No. 4 & 5 despite that there was specific allegation of malafide against respondent No. 4.

12. We have heard the learned counsel for the parties and have carefully perused the records of the case. The selection proceedings and the answer sheets etc. have also been produced before us for perusal by this Tribunal.

13. In the first instance we shall with the question as to whether the selection board was constituted by the competent authority and also as to whether the members of the selection board were nominated as per the rules in force. As far as rule position is concerned, in the present case, it was the DRM who was competent to constitute the selection Board since no further delegation could have been been permissible. As regards the competence of ADRM, the ADRM is of lower rank than the DRM and rules in force specifically emphasises that the authority competent to constitute the selection board will now below the rank of DRM. In the



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called by him and was directed not to distribute the medicine to patients and first do the work of Family Planning. The applicant made a request to him that there was a long queue of patients and distribution of medicines was to be done on priority and if there was any urgency, help can be taken from other clerks working in the hospital. The Respondent No. 4 threatened the applicant that "I will see, how you worked at Bandikui and to get the next higher scale." The applicant had clean records and he attempted all questions and also replied all questions asked by the members of the Board. There was no reason to fail him except that Dr. N.K. Meena, Respondent No. 4, was biased against him which resulted in non selection of the applicant. The applicant is a senior most candidate who was under consideration for promotion to the post of Pharmacist scale Rs. 1400-2600.

8. It is also the case of the applicant there were number of persons especially respondent No. 5 who had minimum requisite number of two years of service in the feeder and he has still been considered and empanelled. It has been urged that the only reason for keeping out the applicant from the selection panel was biasness of respondent No. 4, Dr. N.K. Meena.

9. The OA has been filed on number of grounds e.g. there is no change in the working duties on the present post and on the higher post; the post of Pharmacist scale Rs. 1400-2600 cannot be a selection post; ADRM was not empowered to constitute the selection board and the very Selection Board was not constituted as per rules in force. The Selection Board was also not constituted by the Members as per the rules. Ineligible persons and having one years experience in the feeder post were called for the selection and have been empanelled. The applicant has been discriminated. Hence this application.

10. The respondents have filed a detailed reply to the OA



and have controverted the facts and grounds mentioned in the OA. It has been averred that Shri Anshu Kumar Malhotra was selected against the general category post and other post was kept reserved for want of availability of the candidates. Nextly DRM and ADRM are of the same rank and Selection Board can be nominated by ADRM on behalf of DRM. However, Selection Board consisted Sr. scale officers as per the rules in force. Thus the constitution of Board was as per the rules. In the year 1995, there were three vacancies; two for general and one for reserved. Relaxation was also to be provided to reserved category and one reserved category was considered for promotion by giving relaxation as per General Manager's letter dated 9.3.95. Therefore, it is wrong to say that any person was considered in the selection. No illegality can be said to have been committed and it is requested that the OA may kindly be dismissed.

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present case, on perusal of the records it reveals that a Note was prepared for constitution of Selection Board for preparing the panel for two general posts one reserved post for SC, which was addressed to ADRM. The Sr. DPO also made a remark to the ADRM to nominate the selection board. Thereafter the nomination has been made in and the name of DRM and ADRM has been shown as 'Oblique'. Thereafter, the selection panel was prepared and it has been put up before the ADRM and the same has been approved by the ADRM on 26.4.1996 as noting on Page No. 6. IN the reply, it has not been denied that the selection board was not constituted by the ADRM. Despite the specific averment in the OA in corresponding Para 4(8) that selection board was constituted by ADRM. On the other hand, the respondents have tried to justified that the ADRM was also competent to constitute the selection Board. It has been submitted that DRM and ADRM are of the same rank and, therefore, selection board can be nominated by ADRM on behalf of DRM. In this view of the matter, we have no hesitation in arriving to a conclusion that the selection board was not constituted by the competent authority. As regards the members of the selection board, the selection board consisting of the member of proper rank and also one of the Member i.e. APO, was from the other department. Thus there is no illegality in the members nominated in the selection board. Thus the contention of the applicant that the Members of the Selection Board were not of rank as required as per the rules has no force. The same is repelled being without any basis.

14. As a matter of fact, we have come to the conclusion that that the very selection board was not constituted by the competent authority, and thus there was hardly any need to examine the matter further. However, for the reasons mentioned in the succeeding para, we also find it expedient to examine the other contentions of the applicants. The next contention of the applicant is that he commanded a clean record and good experience. He has been performing his duties to the entire satisfaction of the authority. He has earned the appreciations from his superiors. There was no



substantial difference between the work on the feeder post on which he has been working and promotional post for which the selection board was constituted. The only reason may be that of the malafide of respondent No. 4 who has threatened the applicant with specific words in as much as he told the applicant that he will see him (applicant) and as to how the applicant could get his promotion. The specific averments have been made in this OA to this effect and Shri N.K. Meena has been impleaded as party respondent. The said pleadings relating to the malafide as well as of failing the applicant intentionally remained uncontested in as much as no counter affidavit to controvert the said pleadings has been filed by the said Dr. N.K. Meena, respondent No. 4. It has been argued that since the pleadings of malafide remained uncontested, they are required to be taken as admitted. The matter is said to be supported by the verdict of Hon'ble Supreme Court in PraTAP Singh vs. State of PUnjab, AIR 1964 SC 72. In the said case, an affidavit was filed by the Secretary on behalf of the Minister which was not accepted since the allegations were of personal character have been made against the Chief Minister. It was further held as under. The relevant portion at Para 14 is extracted as under:

"if they were relevant, in the absence of their intrinsic improbability, the allegations could be countered by documentary or affidavit evidence which would show their falsity. In the absence of such evidence they could be disproved only by the party against whom the allegations were made denying the same on oath. In the present case there was serious allegations made against the Chief Minister and there were several matter of which he alone could have personal knowledge and therefore which he alone could deny, but what was, however, placed before the Court in answer to the charges made against the Chief Minister was an affidavit by the Secretary to Government in Medical Department who could only speak from official records and obviously not from personal knowledge about the several matters which were



alleged against the Chief Minister. In these circumstances, we do not think it would be proper to brush aside the allegations made by the appellant, particularly in respect of those matter where they are supported by some evidence of a documentary nature seeing that there is no contradiction by those persons who alone could have contradicted them. In making this observatin we have in mind the Chief Minister as well as Mrs. Kairon against whom allegations have been made but who have not chosen to state on oath the true facts according to them."

15. Further in this matter, we have also perused the selection sheet and other relevant papers. There is a totalling mistake. The total marks obtained by the applicant is shown as 64 whereas it comes to 67. This way in written test his marks would be 23.45. In personality, address, leadership, academic qualification etc. he has been given only 6 marks whereas others have been given 11 to 13 marks out 15 marks. Similarly he has been given only 4 marks out of 15 marks despite the fact that he is senior most person. The respondents have also not denied regarding his good working. Taking all the circumstances of the case, we are of the considered opinion that the contention of the applicant has force and he has not been visited with a fair and reasonable treatment. The possibility of biasness of respondent No. 4 and failing the applicant in the selection deliberatley cannot be rulled out. Here we would like to make it clear that we are conscious in our mind to the decree of mob required to draw reasonable inference of malafidee action and such inference cannot be drawn on the basis of insinuation and vague suggestions. In this view of the matter also the selection proceedings deserves to be quahsed.

16. It would be relevant to say that in the present case all the employees (except one Respondent No. 5) who have been selected and placed onthe panel have been promoted to the promotional post as early as in the year 1996, and have



not been impleaded as party respondents. We also do not get any answer to the specific query how the persons who did not fulfill the eligibility condition of two years working on feeder post, even though the process of selection said to be relaxed by the orders of General Manager, as per the reply which has also remained uncontroverted since no rejoinder has been filed. We are not in a inclined to quash the impugned selection in absence of the necessary parties despite the fact that we are of the firm opinion that the selection Board was not constituted by the appropriate authorities. The applicant is the victim of malafide of respondent No. 4. and no fault or wrong is attributable to the persons placed on selection panel in question. However in the facts and circumstances of this case, we pass the order as under:

"Respondents are directed to constitute a fresh board for the post of Pharmacist scale 1400-2600 in accordance with law in the matter who shall conduct the viva voce of the applicant afresh as well as review the marks especially regarding personality, ability, qualification, leadership etc. and in case he is found fit/selected, he shall be allowed all the consequential benefits on proforma basis at par with his next junior. For this purpose, if need be, the respondents may create superannuary post which may be adjusted against future vacancy. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. The OA stands disposed of accordingly. No costs.



(J.K. KAUSHIK)

MEMBER (J)



(M.P. SINGH)

MEMBER (A)