

**CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH**

CCP No.37/04

Jabalpur, this 16 th day of December, 2004

CORAM

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

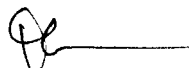
1. Lalit Kumar
S/o Shri Indla
R/o Vill.Bodki, Amla,
Dist.Betul (M.P.)
2. Mohadeo
S/o Shri Baburao
R/o Andheria, Amla,
Dist. Betul.
3. Tikam Chand
S/o Shri Deep Chand
R/o Andheria, Amla,
Dist.Betul.
4. Jham Singh
S/o Shri Tulsi Ram
R/o Purani Basti, Amla
Dist.Betul.
5. Prashant
S/o Shri Basant
R/o Govind Colony, Amla,
Dist. Betul. (M.P.)

Applicants

(Advocate: Shri Naveen Dubey)

Versus

1. Group Captain P.Aneja
Station Commander
Air Force Station
Amla Dist., Betul.
2. Air Marshal Nigam



Air Officer Commanding-in-Chief
Maintenance Command
IAF, Nagpur.

3. Chief of the Air Staff
Air Headquarters
New Delhi.

(By advocate: Shri Om Namdeo)

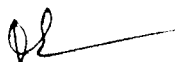
O R D E R

By Madan Mohan, Judicial Member

The applicants have filed this CCP to issue rule nisi against condemners and to punish them deterrently.

2. The facts of the CCP are as follows:

The applicants had filed OA No.352/03 in which they had prayed for direction to be issued to the respondents that they ^{shall} appoint seasonal anti-malaria Lascars for the season commencing from 1.6.03 purely on the basis of seniority in the register and experience subject to medical fitness of the candidates and not on the basis of the practice of pick and choose. The said OA was disposed of, by order dated 5.11.03, partly allowing it, with direction to respondents to consider the case of the applicants with reference to whether there is a need to subject them to the kind of physical ability test to which they have been subjected to. The respondents were further directed to go into the question with reference to the job requirements of SAML and proper physical ability test as distinct from medical test being carried out in respect of them . The respondents were directed to dispose of the matter by issuing a reasoned and speaking order. It is alleged in the petition that the respondents have started holding tough



physical test whereby the petitioners who are above 36 years of age, were required to run with young boys of 18-20 years of age and strenuous test was held in comparison to such young boys and some these petitioners were rejected on the ground of being physically and medically unfit to sustain such tough physical tests. The contemnors cannot be permitted to hold such hard physical test to select these lascars who are required to operate sprayers on drainages/culverts/water ponds for which such tough physical test was uncalled for. No material was placed by the respondents to support such extraneous test calculated to oust the petitioners. Thus there is clear flouting of the mandate of the Tribunal.

3. Heard learned counsel for both parties. It is argued on behalf of the petitioners that the OA 352/03 was disposed of, by order dated 5.11.03, partly allowing it, with direction to respondents to consider the case of the applicants with reference to whether there is a need to subject them to the kind of physical ability test to which they have been subjected to. The respondents were further directed to go into the question with reference to the job requirements of SAML and proper physical ability test as distinct from medical test being carried out in respect of them. The respondents were directed to dispose of the matter by issuing a reasoned and speaking order. Contemner No.1 has passed an order dated 5th April 2004 (Annexure D) in which he has mentioned that a medical test as distinct from the physical ability test is essential as the medical test is a pre-requisite to ascertain whether the candidate is suffering from any disease or infirmity, which makes him ineligible for the appointment. Whereas the physical ability test is essential to ascertain the physical fitness of the



candidate to undertake a physical task as required in the performance of the duties of SAMLs, whereas in the reply the respondents have mentioned that in compliance of the order of the Tribunal, a reasoned and speaking order dated 5.4.04 has been issued in which the issue as directed by the Tribunal had been taken into consideration and there was no occasion to carry out any physical test on the petitioners after the aforesaid order of the Tribunal. It is further argued that the aforesaid order dated 5th April 2004 of contemner No.1 Gp.Capt.P. Aneja is contradictory and it is apparently against the directions given by the Tribunal. Thus it is willful disobedience of the orders of the Tribunal.

4. In reply, learned counsel for respondents/contemnors argued that the respondents have fully complied with the directions given by the Tribunal and the respondents have issued a reasoned and speaking order dated 5.4.04 in which issue has been taken into consideration and the petitioners were not subjected to any kind of physical test after the aforesaid order of the Tribunal. Hence they have not committed any contempt of the Tribunal's order.

5. After hearing the learned counsel for the parties and careful perusal of the records, we find that the Tribunal had partly allowed the OA No.352/03 a direction to respondents to consider the case of the applicants with reference to whether there is a need to subject them to the kind of physical ability test to which they have been subjected to. The respondents were further directed to go into the question with reference to the job requirements of SAML and proper physical ability test as distinct from medical test being carried out in respect of them . The respondents



were directed to dispose of the matter by issuing a reasoned and speaking order. In para 6 of the said order, it is also observed that "on the question of why a physical ability test in the nature of rigorous physical ability test as is required in the case of personnel employed by the police organizations or forest organizations or similarly placed organizations involving such duties as would require a special kind physical ability test, the respondents had no satisfactory reply. They did not appear to be familiar with the job requirements of the SAMLs necessitating the special kind of physical ability test and they were not in a position to reply satisfactorily." The petitioners have mentioned in the petition that the respondents have started holding tough physical test whereby the petitioners who are above 36 years of age, were required to run with young boys of 18-20 years of age and strenuous test was held in comparison to such young boys and some these petitioners were rejected on the ground of being physically and medically unfit to sustain such tough physical tests. The contemnors cannot be permitted to hold such hard physical test to select these lascars who are required to operate sprayers on drainages/culverts/water ponds for which such tough physical test was uncalled for. The petitioners have to work on the post of Lascars and they are simply to spray pesticides. A perusal of the order passed by P. Aneja would show that he has found physical test necessary along with medical test. Hence the counter reply submitted on behalf of the respondents seems to apparently contradictory to the order passed by P. Aneja dated 5.4.04. Shri Aneja has not mentioned any rule position about the physical ability test in his order dated 5.4.04.



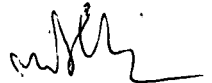
6. After considering all the facts and circumstances of the case, we are of the considered view that Shri P. Aneja has willfully disobeyed the order of the Tribunal. Therefore, Shri P. Aneja is directed to be present in person before the Tribunal to explain for not complying with the order of the Tribunal.

7. List the matter for orders on 20.01.2005.

8. The Registry is directed to send the notice alongwith the copy of this order to the alleged contemner Shri P. Aneja by speed post/registered post immediately.



(Madan Mohan)
Judicial member



(M.P. Singh)
Vice Chairman

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Notice Issued
on 17.12.04
COA issued
Cmnd for Co 76
+4-10/11/05
2012/