

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-1604/2015

With

OA No.1953/2012

Order Reserved on: 03.03.2016

Order Pronounced on: 16.03.2016.

Hon'ble Mr. Sudhir Kumar, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

OA-1604/2015

1. Mohit Chauhan (Aged about 26 years)
S/o Shri Attar Singh
R/o T-85 Kabul Line
Delhi Cantt.-10.
2. Karmbir, (Aged about 27 years)
S/o Shri Matu Ram
R/o Pochanpur Post Office Dhul Saras
Near S-23, Dwarka New Delhi-77
3. Vinit Godara, (Aged about 20 years)
S/o Shri Raj Singh
R/o VPO Bharthal Near Sec-26
Dwarka, New Delhi -77
4. Sandeep Kumar (Aged about 28 years)
S/o Shri Ramesh Kumar
R/o RZH-70-B Street No.10
Raj Nagar Pt. II Old Mehrauli Road
Palam Colony, New Delhi-77
5. Govind Singh, (Aged about 28 years)
S/o Shri Ramesh
R/o P-133/2 Yuri Enclave Brar
Square Delhi Cantt
(All are Mate (SSK) in MES)

-Applicants

(By Advocate: Shri S.N. Sharma)

Versus

1. Union of India
Through its Secretary,
Ministry of Defence,
South Block, New Delhi-1

2. Engineer-in-Chief
Rajaji Marg,
Kashmir House, New Delhi.
3. Chief Engineer,
Western Command
Pin-908543
C/o 56 APO
4. CWE (Utility)
Delhi Cantt.-110010

-Respondents

(By Advocate: Shri Ashok Kumar)

OA No.1953/2015

1. Pardeep Kumar, aged about 20 years
S/o Sh. Ranbir Singh
R/o K-04, Civil Zone,
Suboroto Park, Delhi Cantt.-10
2. Shiv Kumar, aged about 22 years
S/o Ranbir Singh
R/o K-04, Civil Zone
Suboroto Park, Delhi Cantt.-10
3. Usha, aged about 27 years
W/o Sh. Jai Kavar,
R/o MC-01, MES Colony,
Suboroto Park, Delhi Cantt.-10
4. Vijay Kumar Sehrawat, aged about 22 years,
S/o Shri Rajkumar Sehrawat
R/o MC-01, MES Colony,
Suboroto Park, Delhi Cantt.-10
5. Kapil Sehrawat, aged about 18 years
S/o Rajender Sehrawat
R/o House No. 60, Village Amberhai,
Sector-19, Dwarka, PO Dwarka,
New Delhi-75.

-Applicants

(By Advocate: Shri S.N. Sharma)

Versus

1. Union of India
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 Delhi Cantt.-110010

-Respondents

(By Advocate: Mrs. Sumedha Sharma)

ORDER

Per Sudhir Kumar, Member (A):

These two OAs came to be heard one after another and reserved for orders.

2. Since the learned counsel for respondents in both these cases had referred to the same Advertisement and its Corrigendum brought out by the respondents in respect of the same process of recruitment, and the learned counsel for the applicants of both the cases being the same, whose arguments were similar and parallel in both these cases, and only the respondents' counsel being the different, these two OAs are being disposed of through a common order. However, for the sake of convenience, we can discuss the facts of the case in OA No.1604/2015 as the leading case.

OA No.1604/2015

3. This OA was filed on 27.04.2015 by five applicants. They are aggrieved by the fact that after the respondents had issued the

Employment Notice No.34303/LRS 12-13/E1B(S) MES (Annexure A-2) for a number of Civilian Posts in the Military Engineering Services (MES, in short), indicating the last date for receipt of the application to be 03.01.2015, and indicating therein that the written examination will tentatively be conducted on 14.02.2015, they had thereafter extended the last dates/cut off dates three times, on 03.02.2015, on 03.03.2015, and on 03.04.2014, after the applicants herein had applied against the first Advertisement itself for the 2255 posts of Mate (SSK), thereby inviting many more applications, and thus increasing the number of candidates against whom the applicants had to compete. They are aggrieved that even when the total number of applications, as per the requirement for short-listing criteria for the vacancies concerned, had already been reached, and the respondents had already received more than 4500 applications for the 95 vacancies in CWE (U) Delhi for the said posts of Mate (SSK), such extension of the last date of receipt of applications thrice had caused serious prejudice to the applicants, as they had to ultimately compete against approximately 63,520 candidates, as per the information received by them under the Right to Information Act, 2005 (RTI, in short). The applicants are aggrieved that in this process, in the process of short-listing of candidates, they had been left out from being called to appear at the concerned examination.

4. After notices had been issued in this OA on 29.04.2015, through interim orders dated 08.05.2015, the applicants were allowed by the

Bench that day to provisionally appear at the concerned examination, by passing the following orders:-

“We have heard both the parties on the prayer of interim relief contained in para 9 of the OA, inter alia to the effect that the applicants have all applied for the post before the due date for application and possess the requisite qualification to appear for the qualifying examination scheduled to be held on 10.05.2015. Learned counsel for the respondents submit that because of the short listing, admit cards would be issued because a number of candidates have appeared.

2. **At this stage the issue inter alia would also include adjudication as to whether the short listing criteria was required or not and if so whether the criteria was fair and just.** The balance of convenience is in favour of the applicant because of the fact that the examination are scheduled to be held on 10.05.2015 and there being no time left to adjudicate the issues in the OA, we direct that the respondents may permit the applicants to appear in the examination on 10.05.2015 on provisional basis and the result shall be kept in a sealed cover, to be opened only on directions of the Tribunal.

3. Respondents shall file detailed reply within four weeks. Rejoinder, if any, may be filed within two weeks thereafter.

4. List before Principal Registrar’s Court for completion of pleadings on 11.08.2015.

5. Issue Dasti to both the parties”.

(Emphasis supplied)

5. Thereafter, after completion of pleadings, when the case again got listed before the Bench on 04.02.2016, the following submissions were recorded:-

“Learned counsel for the applicants submits that the result of the applicants may be called, as they may be able to get relief only if they have succeeded in the examination and if they have failed, O.A. itself will not survive. Therefore, the respondents are directed to produce the result of the applicants in a sealed cover on the next date of hearing”.

(Emphasis supplied)

6. This was followed by the following orders being passed on 24.02.2016:-

“The respondents had been directed to produce the result of the applicants in a sealed cover. Learned counsel for the respondents has explained the difficulty about the non-availability of concerned official because of which he could not produce the result today, and seeks three days’ time. Allowed”.

7. Thereafter, the cases came to be heard, and reserved for orders. The applicants have assailed the actions of the respondents by submitting that they had applied well in time, after the first Advertisement itself, and as per the short-listing criteria, they were then certainly eligible to be called for the selection examination, if it had been held without extending the last date for receipt of applications, and by not holding the selection examination at that stage itself, and by extending the cut off date thrice, great mental tension and harassment has been caused by the respondents to the applicants, who were now feeling victimised.

8. They have taken the plea that such extensions of the last date of receipt of the applications thrice is discriminatory, and is violative of their rights under Articles 14,16 and 21 of the Constitution of India, as such extensions had only increased the total number of applications, and which had in turn resulted in cancellation of the candidature of the applicants, who had already applied before the original last date of 03.01.2015. They have submitted that their not being called for the selection examination held on 10.05.2015 was perverse, and violative of

the principles of natural justice, and they had prayed for the following reliefs:-

- “(a) Quash the last three dates for granting the extension of last date of receipt of the applications i.e. 3.2.2015, 3.3.2015 and 3.4.2015 orders and thereby quashing of all the applications of such applicants who have applied after 3.1.2015.
- (b) Direct the Respondents to make those applicants eligible for entrance examination held to be on 10.5.2015 who have applied on or before 3.1.2015.
- (c) Direct the Respondents to declare the cutoff date as 3.1.2015.
- (d) Pass any other order or orders as deemed fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant”.

9. Respondents filed their counter reply, and admitted the contents of the OA to the extent that the last date of receipt of the applications was extended thrice, but contended that such extension of the last dates for receipt of applications was well within the powers of the Recruiting Authority. It was pointed out that in Para-2 and Para-46 of the Advertisement of Recruitment concerned, it had already been indicated that the decision of the Recruiting Authority in all matters relating to eligibility, acceptance, or rejection of the applications etc., and the decision regarding final date, time and venue for the written examination, which was only tentatively declared to be conducted on 14.02.2015, would be final and binding on the candidates, and no enquiry and correspondence will be entertained in this regard. It was conceded that the applicants too possess the basic qualifications, but it was submitted that the mere fact that they are possessing the basic

qualifications does not entitle them to be called for the examination, or any assurance of the job.

10. It was submitted that the main objective behind thrice extension of the last date for receipt of applications was to grant sufficient and fair time to the candidates from all over India to apply, and in order to overrule any chance of suitable candidates missing an opportunity, due to the delay in publication of the advertisement. It was submitted that in such cases, applying initially, in the earlier stage, cannot be a criteria for being called for written examination, nor can it be a criteria to deny other meritorious candidates an opportunity to file their application later than the applicants of this OA, and be selected for the written examination. It was further submitted that no Rule position, either of the MES, or that issued by the Department of Personnel & Training (DoP&T, in short), has been violated by extending the dates of receipt of applications, and it was submitted that the applicants have lost out on merit in a fair and just time tested examination conducting system, which is purely based on merit. It was, therefore, prayed that the OA is devoid of any merit, and may be dismissed with costs.

11. During the course of hearing, the learned counsel for the respondents produced in a sealed cover the result of the applicants in respect of the said examination. It is seen from the result that in respect of the applicants of this OA, the following Confidential Remarks have determined their ineligibility:-

“Applicant No.1

1 to 4. xxxxxxxxxx(Not reproduced here)

5.	Marks in Written Examination (out of 130)	: 95
6.	Marks in written (out of 90)	: 65.77
7.	Marks for Education	: 0 (44.20%)
8.	Total Marks (out of 100)	: 65.77
9.	Marks of Last Candidate Selected in the Category	: 75.58
10.	Result	: Not selected for next stage of document verification.
11.	xxxxxxx(Not reproduced here)".	

Applicant No.2

1 to 4. xxxxxxxxxx(Not reproduced here)

5.	Marks in Written Examination (out of 130)	: 34.00
6.	Marks in written (out of 90)	: 23.54
7.	Marks for Education	: 2 (51%)
8.	Total Marks (out of 100)	: 25.54
9.	Marks of Last Candidate Selected in the Category	: 71.00
10.	Result	: Not selected for next stage of document verification.
11.	xxxxxxx(Not reproduced here)".	

Applicant No.3

1 to 4. xxxxxxxxxx(Not reproduced here)

5.	Marks in Written Examination (out of 130)	: 85.75
6.	Marks in written (out of 90)	: 57.98
7.	Marks for Education	: 4 (64.50%)
8.	Total Marks (out of 100)	: 61.98
9.	Marks of Last Candidate Selected in the Category	: 75.58
10.	Result	: Not selected for next stage of document verification.
11.	xxxxxxx(Not reproduced here)".	

Applicant No.4

1 to 4. xxxxxxxxxx(Not reproduced here)

5.	Marks in Written Examination (out of 130)	: 57.75
6.	Marks in written (out of 90)	: 39.98

7.	Marks for Education	: 0 (37.2%)
8.	Total Marks (out of 100)	: 39.98
9.	Marks of Last Candidate Selected in the Category	: 71.00
10.	Result	: Not selected for next stage of document verification.
11.	xxxxxxx(Not reproduced here)".	

Applicant No.5

1 to 4.xxxxxxxxxxx(Not reproduced here)

5.	Marks in Written Examination (out of 130)	: 58.75
6.	Marks in written (out of 90)	: 40.67
7.	Marks for Education	: 2 (60%)
8.	Total Marks (out of 100)	: 42.67
9.	Marks of Last Candidate Selected in the Category	: 71.00
10.	Result	: Not selected for next stage of document verification.
11.	xxxxxxx(Not reproduced here)".	

12. At this stage, during his arguments, the learned counsel for the applicants started arguing about the weightage system adopted by the respondents in assessing the applications of the five applicants of the OA. However, it is seen that in no portion of his OA, or in the Relief clause, as reproduced above, the applicants had ever laid a challenge to the respondents having adopted such a weightage system. Learned counsel for the applicants very valiantly tried to argue that when it had been prescribed (through page-34 of the paper book of the OA) that in respect of 50 to 100 vacancies, 40 times but a minimum of 2500 applications were to be considered to be relevant in respect of the recruitment, the respondents were wrong in having extended the last

date thrice, and then entertained a very much large number of applications in respect of the posts they had applied for.

13. We do not feel that the applicants have in any manner been discriminated against by the respondents by applying the weightage system to the qualifications, which had already been notified by them through the Corrigendum No.4, published in the Employment News dated 13-19 December 2014.

OA-1953/2015

14. The five applicants of this OA were also candidates for appointments for the same posts, and their OA had also been exactly similarly drafted upto Para 4.6. However, in Para 4.7 of this OA, they had challenged the extension of last dates for receipt of applications, and in Para 4.8 they had laid a challenge to the Corrigendum issued by the respondents and through Para 4.9 they had submitted that by amending and issuing the Corrigendum dated 02.02.2015, the respondents had caused serious prejudice to the applicants, by stating as follows:-

“4.9 That by amending and issuing impugned corrigendum dated 2.2.2015 which says that basic qualification NIL upto 50% and two marks for every 10% over 50% also two marks for each year experience and lastly, two absolute marks in written test will be counted into proposal marks, however, this will cause a serious prejudice to the applicant and as well as all such candidates who are fresh and applied in time and certainly vacancies are of 2014 and such amendments by the impugned corrigendum is later on. The copy of the Recruitment Rules Gazette Notification of India July, 13, 2013, 2013/ASADHA 22. 1935 (Part-II- Sec-4). Copy of the said Recruitment Rules are annexed as Annexure A-6”.

15. They had thereafter submitted that issuing the above type of amendment, by way of Corrigendum, was not permissible under the

Rules, as no procedure has been followed by the respondents for making such amendments in the Recruitment Rules (RRs, in short), and, *uno flatu*, through Para 4.11, it was submitted that it was only an amendment of the process of recruitment, and without amending the RRs, such amendments in the process of recruitment could not have been brought about and implemented by the respondents, as, by doing this, they have effectively amended the selection criteria, as per their own wish, without amending the RRs.

16. In the grounds also, it was submitted that issuing such a Corrigendum is not permissible, and is illegal, and could not have been done without amending the RRs, and amounts to making a change in the process of selection after the Notification for the same had been issued, and, incidentally, the grounds for extending the last date for receipt of applications was discriminatory, and violative of Constitution. In this OA, the reliefs sought were as follows:-

- “(a) Quash the amended corrigendum Notice No. B/20075/LRS/12-13/89/E-1C(1) dated 2nd Feb., 2015.
- (b) Direct the respondents to make the selection process of Mate (SSK) as per the notified RRs of July, 2013.
- (c) Direct the Respondents to declare the cut-off date for receiving of the application as 3.1.2015.
- (d) Direct the Respondents to cancel the candidature of all the Applicants who have applied after 3.1.2015 i.e. cut off date.
- (e) Direct the Respondents to declare the cutoff date as 3.1.2015.
- (f) Pass any other order or orders as deemed fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant”.

17. At Annexure A-1 of the OA, the Corrigendum No.4 (supra) had been produced and impugned, without bringing the original Advertisement on record, and the RRs for the post concerned were produced at Annexure A-6.

18. The respondents filed their counter reply on 15.09.2015 and submitted that the Corrigendum to the original Advertisement was issued by the competent authority for bonafide administrative/technical reasons, which were explained as follows:-

“a) The corrigendum to the original advertisement were issued by the competent authority i.e. E-in-C’s Branch, for bonafide administrative/technical reasons as enumerated below:-

- (i) To correct the typographical error committed by Employment News.
- (ii) To specify criteria for reservation of vacancies against Physically Handicapped (PH) category.
- (iii) Specifying Command wise availability of vacancies.
- (iv) Earmarking post wise examination centres.
- (v) Specifying the pattern of making for various posts.

b) It is neither against the Recruitment Rules (RRs) nor involved any change in basic recruitment procedure”.

19. In response to Para 4.9 of the OA, it was submitted by the respondents as follows:-

“4.9 The para 4(L) of impugned corrigendum dt. 2.2.2015, specified the pattern of marking for various posts, it does not specify any marks on account of experience to the post of Mate (SSK), hence it does not cause any prejudice to the applicant”.

20. Heard. Learned counsel for the applicants submitted that when the RRs had prescribed Matriculation Pass from a recognized Board in the relevant trade, as the essential qualification required for Direct Recruitment, the respondents could not have thereafter prescribed any sort of weightage system for assessing the candidature of the applicant. However, learned counsel for respondents submitted that the impugned Corrigendum dated 02.02.2015 had in any manner impinged upon or amended the RRs, and for the purpose of short-listing and selecting the most appropriate and qualified candidates, enabling provisions had been notified for public knowledge as follows:-

Sr. No.	Category	Total	Basic Qualification (as per rules)*	Experience #	Interview	Written Test	Practical	Remarks
Gp. 'B'								
1 to 5	Not reproduced here							++Note as mentioned below
6.	Mate	100	10	-	-	90	-	-
7 to 11	Not reproduced here							

- * Nil up to 50% in basic qualification and 2 marks for every 10% over 50%
- # 2 marks for each year of experience limited to Max. Marks of 10. Experience must be in relevant field from reputed firm/organization/PSUs/Govt. and candidates should attach supported documents duly authenticated.
- ++ Absolute mark shown/mentioned in written test will be converted into proportional mark as per weightage of marks given for the posts as shown above.
5. All other terms and conditions remain unchanged”.

21. The learned counsel for the respondents submitted that the respondents had scrupulously followed this prescribed pattern of marking in respect of various posts, as had been advertised, and which

was in the public domain, and within the knowledge of the applicants, and it was further submitted by her that this pattern of marking did not in any manner impinge upon or amend the RRs, as was being tried to be made out by the learned counsel for the applicants.

22. After having given anxious consideration to the facts of this case, and to the language of the Corrigendum clarification issued through the Corrigendum, we are clear in our minds that this prescription of pattern of marking did not in any manner impinge upon or amend the minimum essential qualifications, as prescribed in the RRs. Therefore, we cannot accept the submissions of the applicants that this was a case of rules of the game being changed after the process of recruitments had started.

22. As has been held by the Hon'ble Apex Court in the cases of (i) **Union of India vs. T. Sundararaman & Ors.: (1997) 4 SCC 664;** (ii) **Govt. of Andhra Pradesh vs. P. Dilip Kumar: JT (1993) 2 SC 138;** (iii) **M.P. Public Service Commission vs. Navnit Kumar Potdar and Another: (1994) 6 SCC 293; JT (1994) 6 SC 302;** recruitment agencies, like the UPSC and the others, are eligible to devise their own methods and modalities for short-listing the number of candidates who apply in large number for few posts. Also, if the Rules have been made, but these are silent on any subject or point in issue, the omission can be supplied, and the Rules can be supplemented by executive instructions as held in **Sant Ram Sharma vs. State of Rajasthan & Ors: AIR 1967 SC 1910.**

24. Therefore, the applicants of OA No.1953/2015 who have challenged the contents of the Corrigendum, cannot be allowed to challenge the modalities and method adopted by the respondents to reduce the number of candidates, which was essential in order to undertake the process of selection in a smooth manner, and the respondents were fully within their powers to adopt any reasonable or rational criteria, for the purpose of such shortlisting on some rational and reasonable basis, as they did.

25. Therefore, both the OAs No. 1604/2015 & 1953/2015 do not have any merit, and are dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.