

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.968/2016

Order Reserved on: 10.03.2016
Order Pronounced on: 31.03.2016

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

Dr. Sangita
W/o Shri Kaushal Mishra
R/o Flat-K-1007, Amrapali Princely Estate,
Sector-76, Noida,
Distt. Gautam Buddha Nagar U.P. -Applicant

(By Advocate: Shri Naveen Kumar Tripathi)

Versus

1. Union of India
Through its Secretary,
Ministry of Health and Family Welfare,
Department of Health and Family Welfare,
Nirman Bhawan, New Delhi.
2. National Institute of Health and Family Welfare,
Through its Director,
Baba Gang Nath Marg,
Munirka, New Delhi-110067.
3. Director
National Institute of Health and Family Welfare,
Baba Gang Nath Marg,
Munirka, New Delhi.
4. Deputy Director (Admn.),
National Institute of Health and Family Welfare,
Baba Gang Nath Marg,
Munirka, New Delhi. -Respondents

O R D E R

Per Sudhir Kumar, Member (A):

This case was heard and reserved for orders at the stage of admission itself. The applicant of this OA is aggrieved that the

respondents have since decided to cancel the process of selection for the post of Assistant Research Officer (ARO, in short) initiated through Advertisement dated 09.07.2013, for which even the written test was held on 13.02.2016, and have now issued the impugned Memorandum dated 25.02.2016, at Annexure A-1, in pursuance of the Department of Health & Family Welfare, Ministry of Health and Family Welfare, Govt. of India, Office Memorandum dated 15.02.2016, produced at Annexure A-9. She had represented to the Director of Respondent No.2 Institute on 03.03.2016 through Annexure A-10, and to Respondent No.1 through Annexure A-11 ostensibly on the same date, but of no avail. The basic ground taken by the applicant is that once almost the entire recruitment process was over, after the written test had been held on 13.02.2016, and she had even been issued letter for appearing at an interview on 27.02.2016 through Annexure A-6 dated 19.02.2016, the Respondent No.2 Institute had thereafter issued the letter dated 24.02.2016 (Annexure A-7), regarding cancellation of interview, and had followed it up with the impugned general Explanatory Memorandum dated 25.02.2016 (Annexure A-1), giving intimation to all the candidates as follows:-

“No.A.12024/10/2013-Admn.I

National Institute of Health and Family Welfare
Baba Gang Nath Marg, Munirka New Delhi-110067

Dated: 25.02.2016

Explanatory Memorandum

Subject: Recruitment to the post of Assistant Research Officer (HG), NHFW-**Cancellation** of Interview and fresh conduct of written examination-regarding.

The Institute had undertaken the process of recruitment of the post of A.R.O. (HG) by inviting applications through an

advertisement published in leading news paper in the month of July 2013. The application so received were screened and an examination was held on 13.02.2016 which was to be followed by an interview to be held on 27.02.2016.

However, while the above process was on, directives from the MoHFW were received by the Institute vide O.M. No.Z28014/3/2015-Estt.III dated 15.02.2016 whereby the interview had been dispensed with. Since, this direction has been received during the process of recruitment leading to change in the mode selection of candidates for appointment to the aforementioned post. It is therefore, the considered view of the institute that the process has to undergo to a change. Therefore, the current process of recruitment has been cancelled.

In the fresh process of recruitment all the candidates who were applicant as per the advertisement dated 9.7.2013 would be subjected to fresh written examination for the selection which would be based strictly on merit prepared on the basis of the marks obtained in the examination. All applicants would have equal opportunity of participation for the selection to the aforesaid post. Adopting such a course is as per the mandate of the Constitution of India.

The inconvenience caused to the candidates is regretted.

Director, NHFW.”

2. The applicant has taken the ground that the Office Memorandum dated 15.02.2016 (Annexure A-9) had been issued by Respondent No.1 only stating about discontinuation of holding of interviews for recruitment to Group 'B' Non-Gazetted, Group 'C' and Group 'D' posts only, and did not contain any order or instruction to the Respondent No.2-Institute for cancelling any previous process of selection for which even the examination had been held. She has also taken the ground that the original Advertisement dated 09.07.2013 issued by Respondent No.2 also had not mentioned interview as a Mode of Selection, and yet the Respondent No.4 had sent her an interview letter dated 19.02.2016, which itself was in utter violation of the Office Memorandum dated 15.02.2016 (Annexure A-9). She has further alleged that the conduct of

the re-test, proposed to be held on 12.03.2016, was with an ulterior motive, and to serve vested interests of a few officials, including the Respondent No.3, and that it is in violation of the accrued rights of the candidates who had qualified the written test earlier conducted on 13.02.2016.

3. The applicant is further aggrieved that the respondents had since issued Admit Cards to all the 87 applicants, who had applied in response to the earlier Advertisement dated 09.07.2013, even though some of them had not even appeared at the written test held earlier on 13.02.2016, which had violated the rights of those who had appeared in the written test conducted on 13.02.2016, and had been selected.

4. It was submitted that the applicant is one of the 8 candidates who had qualified for the post of ARO in the unreserved category, and was even confident of securing 1st rank amongst all, but the respondents have now spoiled her chances, by misinterpreting the instruction dated 15.02.2016, issued through Annexure A-9 by Respondent No.1, and thus manipulating the whole process, which would have a direct and negative impact not only on the applicant, but would also set a precedent to let such practices continue in future also.

5. We have heard the learned counsel for the applicant on the point of admission, and given our anxious consideration to the facts of this case. The Annexure A-9 dated 15.02.2016 had been issued in pursuance of the instructions issued by the Department of Personnel & Training (DoP&T, in short) regarding discontinuation of holding of interviews for

recruitments at junior level posts, ordering abolition of the process of interview for all recruitments to Group 'B' Non-Gazetted, Group 'C' and Group 'D' posts. Apparently, this was on the basis of a DoP&T instructions issued on the basis of a Parliamentary assurance in this regard, in order to eliminate favouritism and allegations of corruption at the interview stage in many such selections.

6. We have perused the Vacancy Notice earlier issued in 2013, which has been produced by the applicant at Annexure A-3. The applicant is not correct in her submission that the said Advertisement did not envisage a process of interview also as a part of a selection process. It is seen that while in the case of Sl. No.1 Assistant Research Officer (Humanity Group), Sl. No.2 Librarian, Sl. No.3 Assistant Nursing Superintendent, Sl. No.4 Technical Assistant (Lab.), Sl. No.5 Stenographer Grade-II, Sl. No.6 Senior Artist, and Sl. No.7 Assistant, it was indicated in the General Instructions at Sl No.4 that "mere fulfilling of essential qualifications would not entail a candidate to be called for interview". Similarly, in the General Instructions in Para-6, it had been mentioned that the Respondent No.2 Institute "reserves the right to either fill up all the posts or some or none of them without giving any reason".

7. While it is a general proposition of law that the Rules of the game should not be changed once the process of recruitment had been started, as it may prove to be of an advantage to some or disadvantageous to others, but this proposition would not be available in the face of the

General Instructions as above contained within the Advertisement notifying the vacancies in 2013 itself. It had been stated therein that the Institute reserves the right to either fill up all the posts, or some, or none of them, without giving any reason. Also, when the General Instruction No.4 had talked about an interview as a part of the process of recruitment, it is a moot question of law as to whether the Government's major policy decision to do away with such process of interviews altogether, in order to eliminate subjective decisions and avoid allegations of favouritism and corruption, would amount to changing the Rules of the game to be adverse to the case of the applicant. To our mind, it does not.

8. It is further clear that when once earlier itself the process of selection was divided into two parts, one being written test, and the other being an interview, and when it is now replaced by a single process of a written test, as a part of a major policy decision, the new written examination will have to be more rigorous, and more focussed upon eliciting the basic competence of the candidates concerned, since such aspects, which could have been earlier elicited at the time of interview also, cannot be done in that manner now.

9. We also do not find any merit in the objection of the applicant about the respondents having issued admit cards to all 87 persons who had applied earlier in response to the 2013 Advertisement, as, according to the impugned explanatory Memorandum dated 25.02.2016 reproduced above, the respondents are maintaining the eligibility of all

the candidates; who were applicants earlier, as unchanged, and are now subjecting them to a fresh written examination, so that a new merit list can be prepared, only on the basis of the marks obtained in the examination alone, excluding those who had missed appearing at the written examination held earlier on 13.02.2016 would have resulted in injustice being done to those who could not appear at that examination. Therefore, the respondents have rightly permitted all the 87 original applicants to appear at the fresh examination scheduled for 12.03.2016.

10. It has been laid down by the Hon'ble Apex Court that an employer has the full right to choose the best candidates for its employment; including conducting a written test for doing the same. As has been held in Para-7 of the Hon'ble Apex Court judgment in **Nilangshu Bhusan Basu vs. Deb K. Sinha and Others (2001) 8 SCC 119**, it is an administrative function of the appointing/ appropriate authority to take a decision as to which particular method should be adopted for recruitment for any particular post, which may depend upon various factors relevant for the purpose, e.g., status of the post, its responsibilities, and job requirements, and suitable qualifications, as well as the age, as may be desirable, which may all be considered while making such an administrative decision. Therefore, the applicant cannot be allowed to assail the respondents' action of having resorted to a totally objective criteria, by removal of subjectivity, which was earlier present in the process of recruitment through the element of an interview.

11. As regards the applicant's claim of her accrued rights, since she was at Sl. No.8 in the Seniority List prepared after the earlier written examination, it may be noted that the Hon'ble Apex Court has in **Shankarsan Dash v. Union of India, AIR 1991 SC 1612**, held that even a finally selected candidate does not acquire any right to issuance of a letter of appointment, and, in the instant case, only the result of the first stage written test had been declared earlier, and the process of the interviews was yet to follow, by which the applicant herself may have perhaps found her to be out of reckoning, on the basis of subjective satisfaction of the Interview Board, which she would now be able to avoid.

12. Therefore, the OA is rejected *in limine*, at the admission stage itself, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

CC.