

**Central Administrative Tribunal
Principal Bench**

OA No. 2241/2017

New Delhi, this the 19th day of August, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Divyank Chauhan, Aged 27 yrs.
S/o Shri Anil Kumar Chauhan,
R/o 59, Moh. Majhauaa,
Posted Jasrana, Firozabad-215 126,
Uttar Pradesh - Applicant

(By Advocate: Mr. Vineet Sinha)

VERSUS

Union of India
Ministry of Defence,
Chairman, Defence Research & Development Organization,
Centre for Personnel Talent Management,
Metcalfe House Complex,
New Delhi-110 054 - Respondent

(By Advocate: Mr. Kumar Onkareshwar)

: O R D E R (ORAL) :

Justice Permod Kohli :

The applicant earlier approached the Hon'ble High Court of Delhi by filing WP (C) No. 5281/2017. The said Writ Petition was, however, withdrawn with liberty to move the Tribunal by way of an Original Application vide order dated 14.06.2017 (Annexure A-11).

2. The facts relevant for adjudication of the present Application are being noticed. Vide Advertisement No. CEPTAM-08 published in the Employment News dated 16-22, January, 2016, online applications were invited for direct recruitment through DRDO Entry Test-2015 for the post of Senior Technical Assistant "B" (STA "B"). The examination comprised of written examination (Tier-I) and those who were shortlisted in written examination will be called for document verification and interview. The aforementioned advertisement was followed by a corrigendum stating therein that as per the Government directive, interview will not be held for the post of STA "B". However, Tier-II written examination will be conducted for the candidates shortlisted on the basis of written examination of Tier-I. Qualifying criteria for Tier-II examination and mode of selection were prescribed therein. The relevant extract of the corrigendum reads as under:-

"2. QUALIFYING CRITERIA (FOR TIER-II EXAM): Tier-II examination will be held for those candidates who qualify in written examination of CEPTAM-08 to be held on 17 July 2016 (to be referred as Tier-I examination henceforth). Candidates will be further shortlisted for Tier-II examination in a ratio of 1:6 for STA "B" and Junior Translator and 1:8 for all other post codes where Skill/Trade test are mandatory.

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7. MODE OF SELECTION (AFTER TIER-II EXAM): The final selection will be based on combined merit of

post/category/subcategory of the candidate and on the basis of marks obtained in Written Examination of Tier-I & Tier-II examination taken together in the ratio of 85% and 15% respectively. However, it would be mandatory for the candidate to secure minimum 45% marks for SC/ST and 50% marks for others to qualify the Tier-II examination. It is reiterated that it is also mandatory for the candidates appearing in Tier-II examination to pass the prescribed skill/trade tests, as per the norms, wherever applicable. If there are two or more candidates in the same category having equal marks, the candidate older in age will get preference. The mode of section may change depending upon the contingencies.”

On the basis of the aforesaid corrigendum, Tier-II examination was to be held in place of interview.

3. The applicant submitted his application on 26.01.2016 for the post of STA “B” (0123-Zoology). The applicant was issued admit card for appearance in written examination to be held on 17.07.2016. The applicant participated in the Tier-II written examination on the abovementioned date and successfully qualified the same. He was shortlisted for Tier-II written examination. Second admit card was issued for appearance in Tier-II written examination which was scheduled to be notified on 16.04.2017. The applicant participated in the Tier-II written examination as well and was provisionally shortlisted. He was communicated vide letter dated 12.05.2017 that he has been provisionally shortlisted based on his performance in the written examinations held on 17.07.2016 (Tier-I) and 16.04.2017 (Tier-II)

and information furnished in the application form. The applicant was required to be present on 09.06.2017 at 1.30 PM at Document Verification Board, Centre for Personnel Talent Management (CEPTAM), DRDO, Ministry of Defence, Delhi, for preliminary verification of all the certificates/testimonial documents. The applicant was further required to produce the documents/certificates as indicated in para 2 of the aforesaid letter. Later, a notification was issued on 26.05.2017 withdrawing the letter dated 12.05.2017 with further stipulation that the result of CETAM-8 will be declared based on the pooled merit of Tier-I and Tier-II examinations. It is stated that the applicant gathered information from the official website of the respondent on 29.05.2017 wherein the status of the applicant was reflected as 'not shortlisted'. It is under these circumstances the applicant initially approached the Hon'ble High Court of Delhi and thereafter the present OA has been filed seeking following reliefs:-

- “(a) Issue an order or direction upholding the validity of letter dated 12.05.2017 issued by the Respondent provisionally selecting the Applicant subject to documents verification, as a successful candidate of CEPTAM-08 Senior Technical Assistant “B” (STA “B”) written examination;
- “(b) Issue an appropriate order or direction directing the Respondent to include the name of Applicant in the list of shortlisted candidates for CEPTAM-08 Senior Technical Assistant “B” (STA “B”) Zoology;

- (c) Issue an appropriate order or direction directing the Respondent to give employment to the Applicant in CEPTAM-08 Senior Technical Assistant "B" (STA "B");
- (d) Issue any other order and/or directions which this Hon'ble Tribunal may deem fit and proper to the facts and circumstances of the case in hand in the interest of justice."

4. Notice in the OA as also for interim relief was issued for which a separate MA No. 2399/2017 was filed. The respondent filed a short affidavit. In the short affidavit, the respondent mentioned that the applicant was not finally selected as he was below the last qualified and selected candidate in the merit list prepared on the basis of pooled merit of Tier-I and Tier-II examinations as per CEPTAM-08 advertisement. On noticing this submission of the respondent, vide order dated 09.08.2017, the respondent was directed to produce the complete merit list. Accordingly, a complete merit list has been produced.

5. With the consent of the learned counsel for the parties, the OA itself has been heard and is being decided by this order.

6. The grievance of the applicant, as projected in the OA and argued by the learned counsel for the applicant, is that by virtue of the letter dated 12.05.2017, the applicant was conveyed that he is provisionally selected on the basis of his performance in the written examination (Tier-I) and it was only the question of

verification of the documents to ascertain the eligibility of the applicant. The learned counsel for the applicant has vehemently argued that the applicant was declared successful on the basis of his performance in both the Tier-I and Tier-II examinations, which was conveyed to him and thus, by withdrawing the aforesaid communication dated 12.05.2017, the applicant's vested right has been taken away. The merit list allegedly prepared by the respondent is contrary to law and arbitrary and violative of fundamental rights of the applicant to seek appointment.

7. The respondent, in their short counter affidavit, while referring to issuance of the advertisement and holding of the tests, stated that since Government of India decided not to hold interview for non-gazetted posts, corrigendum was published by the CEPTAM in Employment News as well as uploaded on CEPTAM website on 04.07.2016 informing the candidates that in place of interview, as mentioned in the CEPTAM-08 Advertisement, another written examination as Tier II shall be conducted for those candidates who were shortlisted on the basis of written exam (Tier-I, i.e., through DRDO Entry Test-2015). It is stated that the Tier-I written examination was conducted on 17.07.2016 across 25 cities of country. Based on performance in Tier-I written examination, the candidates were provisionally

shortlisted. These provisionally shortlisted candidates were further called for Tier-II written examination, which was held on 16.04.2017. Based on the performance of Tier-II written examination, the candidates, who secured minimum qualifying marks in Tier-II examination, were provisionally shortlisted and called for preliminary document verification on various dates in June 2017. The applicant was also called upon for preliminary document verification on 09.06.2017 vide letter dated 12.05.2017. It was specifically mentioned that the applicant has been provisionally shortlisted for preliminary document verification. The applicant was intimated that his candidature is purely provisional and does not confer any right upon him for final selection. It is further stated that in the meantime, it was decided by the Highest Decision Making Authority of DRDO, namely, DRDO Management Council (DMC) and directed "CEPTAM to publish results at the earliest without any document verification. Documents verification will be the responsibility of the individual lab during the process of issuance of appointment letter" on 22.05.2017. Accordingly, CEPTAM issued a notice for cancellation of preliminary document verification to be held during 05-14 June 2017 through its website, email & SMS to candidates. It is accordingly stated that in accordance with the available/published vacancy, CEPTAM declared the result of

CEPTAM-08 on the basis of pooled merit of Tier-I & II examinations as per CEPTAM-08 advertisement. It is further stated that the applicant was not finally selected as he was well below the last qualified and selected candidate in the merit list for unreserved category.

8. We have heard the learned counsel for the parties at length and perused the pleadings/records as also the merit list prepared by the respondent on the basis of the combined marks awarded in Tier-I and Tier-II examinations.

9. The eligibility of the applicant is not in dispute. Earlier in the original advertisement, the mode of selection prescribed therein was written examination. The candidates shortlisted based on the written examination are to be called for document verification, trade/skill test and interview based on their rankings in written examination in the ratio of 1:6 (for STA 'B' and Junior Translator) and 1:8 (for all other post codes). It was also provided that the final selection will be based on combined merit of post/category/sub-category of the candidates and on the basis of the marks obtained in written examination and interview taken together in the ratio of 85% and 15% respectively. It is also stipulated that it would be mandatory for the candidate to secure minimum 45% marks for SC/ST and 50% marks for others to

qualify the interview. If there are two or more candidates in the same category having equal marks, the candidate older in age will get preference. Vide corrigendum issued by the respondent, the only change that took place was substitution of the interview comprising of 15% marks by Tier-II written examination and all other conditions/stipulations remained the same. Letter dated 12.05.2017 was issued to all candidates who successfully qualified the Tier-I written examination in the ratio 1:6 and Tier-II examination by securing threshold 50% marks as per the conditions stipulated in the advertisement as also in the corrigendum. It is relevant to notice that in the original advertisement, 85% marks were earmarked for written examination and 15% marks for interview. Even while Government of India decided not to hold interview and the DRDO decided to substitute the interview with the second written examination (Tier-II), marks kept for the Tier-II examination were 15% only without effecting any change in the percentage for the written examination and interview as per the original advertisement. Under the mode of selection both in the original advertisement as also corrigendum, the merit is to be prepared on the basis of the combined marks secured by the candidates in the abovementioned Tier-I & II examinations. The expression "pooled merit" does not change the original feature of

the selection. It only means a combined merit of written examination (Tier-I) and written examination (Tier-II). In the advertisement, for the Post Code 0123-Zoology, i.e., STA 'B' for which the applicant applied, had 11 advertised vacancies, out of which 5 for the unreserved category, 3 for OBC, 2 for ST and 1 for SC. The applicant belongs to unreserved category. From the merit list, we find that the applicant does not fall within first 5 candidates on the basis of combined merit of written examination (Tier-I) and written examinations (Tier-II). Thus, he has not been selected for the appointment. Learned counsel appearing for the applicant, however, argued that vide communication dated 12.05.2017, the applicant has been provisionally selected on the basis of his performance in both the examinations, a vested right is created. We fail to appreciate this contention. The selection has to be made on the basis of the merit obtained by a candidate in written examinations. It is not the case of the applicant that his merit position in the written examinations (Tier I & II) has been altered in any manner. Merely because he was shortlisted provisionally does not *per se* confer any right upon the applicant/candidate for appointment. The candidates, including all those, who come within the ratio 1:6 in the first written examination, i.e. Tier-I and those, who secured minimum threshold marks in Tier-II examination, i.e., 50%, were called for

document verification being provisionally selected. Learned counsel for the applicant submits that the respondent has changed the rules of game during the selection process, which is impermissible in law. He has referred to and relied upon the judgment of the Apex Court in the case of **Hemani Malhotra v. High Court of Delhi** reported as (2008)7 SCC 11. In the aforesaid case, selection to Delhi Higher Judicial Service was to be held on the basis of written examination and viva voce test. The advertisement notice specified minimum of qualifying marks in the written examination as 55% for general category and 50% for SC/ST category and no minimum marks were fixed in viva voce to declare the candidate as qualified. It was under these circumstances, the Hon'ble Supreme Court noticed in para 14 and 15 as under:-

“14. It is an admitted position that at the beginning of the selection process, no minimum cut-off marks for viva voce were prescribed for Delhi Higher Judicial Service Examination, 2006. The question, therefore, which arises for consideration of the Court is whether introduction of the requirement of minimum marks for interview, after the entire selection process was completed would amount to changing the rules of the game after the game was played. This Court notices that in *K. Manjusree v. State of A.P.* [(2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] the question posed for consideration of this Court in the instant petitions was considered and answered in the following terms: (SCC pp. 526-27, para 33)

“33. The Resolution dated 30-11-2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.”

From the proposition of law laid down by this Court in the abovementioned case it is evident that previous procedure was not to have any minimum marks for viva voce. Therefore, prescribing minimum marks for viva voce was not permissible at all after the written test was conducted.

15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional

requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva voce test was illegal."

10. Based upon the aforesaid ratio of the judgment, it is argued that the respondent has changed the rules of game during the process of selection which is impermissible in law and is illegal warranting interference by the Tribunal in exercise of power of judicial review. We have examined this contention of the learned counsel and carefully gone through the judgment referred to. It is an admitted position of the parties that the selection was based upon two stages: (i) written examination comprising of 85% marks; and (b) interview comprising of 15% marks. Government of India decided to do away with interview. The applicant has not challenged this part of the action of the respondents whereby interview was replaced by another written examination. Tier-II examination introduced in place of interview by corrigendum also contained 15% marks. The only alteration during the selection process is replacement of interview by written examination (Tier-II). Here, we may observe that in the interview, there can be a scope for some kind of arbitrariness in awarding marks, but insofar as written examination is concerned, there is hardly any scope for tampering the written examination. It is not the case of the applicant that there has been any kind of

tampering with the written examination (Tier-II). In the original advertisement, the mode of selection as prescribed was written examination (Tier-I) and candidates to be shortlisted for interview in the ratio 1:6. It was also stipulated that it would be mandatory for the candidate to secure minimum 45% marks for SC/ST and 50% marks for others to qualify the interview. In the corrigendum also, securing of threshold, i.e., 45% marks for SC/ST and 50% marks for others in Tier-II examination was mandatory. The ratio between the first written examination i.e. Tier-I and second written examination (Tier-II) continued to be 85% and 15% respectively. We do not find that there has been any change in the rules of game during or after the process of selection. The ratio of the judgment of the Apex Court in **Hemani Malhotra** (supra) is not applicable in the present case. The applicant's merit may place him in the wait list, if the same is to be prepared, but definitely he does not fall within the first 5 candidates in the unreserved category. The applicant cannot claim a vested right merely on the strength of letter dated 12.05.2017. The said letter was issued for preliminary document verification stating therein that the issue of the letter does not in any manner, imply that the candidate fulfills the eligibility criteria for the post and does not confer any right upon the candidate for selection. It is nobody's case that merit of the applicant has been altered in any manner.

On the basis of main advertisement also, the selection was made on the basis of combined marks obtained by the applicant in written examination and viva voce and it continues to be so even when Tier-II examination was introduced substituting the interview. The expression used by the respondent "pooled merit" has been misunderstood by the applicant. The parameter of mode of selection continues to be same without any change. Under the given circumstances, we do not find any merit in this OA and the same is hereby dismissed. The original merit list produced by the respondent be returned to the learned counsel for the respondent.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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