

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.NO.060/00195/2016

Orders pronounced on: 06.09.2018
(Orders reserved on: 24.08.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

Pritam Chand son of Relu Ram,

Tent Mentor,

9 Field Ordinance Depot,

Sub Unit (Ancillary Part) of 21 Sub Area,

Pathankot,

resident of Mohalla Anandpur,

H.No. 565 Pathankot,

Tehsil and District Pathankot (Punjab).

Age 50 years, Group D now C.

Applicant

By: **MR. MUNISH PURI, ADVOCATE.**

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. Commanding Officer, 9 Field Ordinance Depot, C/o 56 APO.
3. Personnel Officer, 9 Field Ordinance Depot C/o 56 APO.
4. Administration Officer, 9 Field Ordinance Depot C/o 56 APO.
5. Deepak Mehra, T.No. 781 T/M (S), 4 Sub Depot, 9 Field Ordinance Depot C/o 56 APO, Kandrori C/o The Commanding Officer, 9 Field Ordinance Depot, C/o 56 APO.

...

Respondents

By : **MR. SANJAY GOYAL, ADVOCATE.**

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, inter-alia, for quashing the order dated 10.2.2014 (Annexure A-2), vide which respondent no.5 (Deepak Mehra) has been appointed as Skilled T/M and challenge is also to reply dated 30.7.2015 (Annexure A-1) to legal notice dated 17.2.2014 vide which his claim has been rejected.

2. The facts leading to the filing of the instant Original Application (OA), that applicant was appointed as Tent Mentor on 14.8.1995. The respondents prepared a list of candidates for promotion to 4 posts of Tent Menders (Skilled) from the posts of Tent Menders in which applicant was at Sr. No.4. The oral and practical test was conducted in which applicant performed well but to his surprise, Respondent No.5, who was at Sr. No. 6 in the list, was promoted, leaving the applicant in lurch. The grievance raised by him vide legal notice was declined by the respondents on 30.7.2015, on the ground that he has not cleared the test meant for promotion, which is purely based on merit and mere seniority of a candidate does not create any right of promotion. He submits that the respondents have followed the policy of pick and choose and thereby preferred respondent no. 5 over applicant, which is illegal. He claims that 75% marks were for oral test and 25% marks were for practical test and he had fared well and as such there was no question of his getting less marks. He also challenges legality of award of more than 50% marks for interview, in view of law laid down in **P. MOHANAN PILLE VS. STATE OF KERALA & OTHERS**, AIR 2007 SCW 5171. Hence the O.A.

3. The respondents have filed a reply. They submit that test was conducted to assess suitability of the eligible candidates. There were 10

candidates in the test. Suitable candidates, who topped the merit were promoted. Respondent No.5, junior to the applicant, had qualified the requisite test and was higher in merit than applicant and as such was rightly promoted. Mere seniority of a candidate does not create any right for promotion. The applicant has not filed any rejoinder.

4. We have heard the learned counsel for the parties at length and examined the material on file.

5. A perusal of the pleadings and documents available on record would show that the selection for appointment to the post of T/M (Skilled) was conducted by the respondents in which all the eligible candidates had participated and the respondent no.5 having been found in the merit list, was appointed to the post in question. The applicant, who was though senior to the respondent no.5, could not come in the merit and as such was not appointed. The entire thrust of the applicant is that since he was senior and much better than respondent no.5, so he should have been appointed to the post which obviously has no substance. The respondents have also produced Board proceedings for promotion to the post in question which indicates that 70 marks out of total 100 marks, were earmarked for practical test relating to practical knowledge of trade work, capably including positional, quality of work / workmanship and completion of task as per time allotted for the same and 30 marks out of total 100 marks was for interview that also included theoretical knowledge, past experience, knowledge of tools, service and personal details of individual, including attitude and aptitude of the individual with reference to trade work etc. etc. Thus, the claim of the applicant that interview marks were 70% is incorrect and has to be rejected out rightly. He has participated in the selection process and has failed. He has secured only 37 marks,

whereas respondent no.5 has secured 60 marks. The comparative chart is as under :-

	Oral Test (Max 30)	Practical (Max 70)	Total out of 100	Result
Pritam Chand	10	27	37	Fail
Deepak Mehra	20	40	60	Pass

Thus, one cannot find any fault with the action of the respondents in promoting the respondent no.5 and declining promotion to applicant, who has not even qualified the selection, what to talk of coming in merit. In any case, a Court or Tribunal is not expected to interfere in wisdom of the selection committee.

6. In the case of **DALPAT ABASAHEB SOLUNKE, ETC. ETC. VS. DR. B.S. MAHAJAN ETC.** AIR 1990 SC 434, it was held by Hon'ble Apex Court as under: -

"9. It is needless to emphasize that it is not the function of the court to hear appeals over the decisions of the selection committees and to scrutinize the relative merits of the candidates. Whether the candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved malafides affecting the selection etc....."

7. Not only that the Hon'ble Supreme Court of India in **MADAN LAL AND ORS. VS. STATE OF JAMMU AND KASHMIR AND ORS.** AIR 1995 SC 1088, has observed as under: -

"9. Therefore, the result of interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to re- assess the relative merit of the concerned candidate who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the interview committee which amongst other consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we

(O.A.No. 060/00195/2016
Pritam Chand Vs. UOI etc.)

are certainly not acting as a court of appeal over the assessment made by such an expert committee."

8. The Hon'ble Supreme Court in **DURGA DEVI & ANR. VS. STATE H.P.** AIR 1997 SC 2618, has categorically laid down that the Tribunal by itself cannot scrutinize the comparative merits of the candidates for fitness for the post. It is the function of the Selection Committee. It is by now well settled that if a candidate takes a calculated chance and appears at the interview and the result of the interview is not palatable to him, in such an event, he cannot be allowed to turn around and contend that the process of interview was unfair.

9. In the instant case the applicant has not been able to show that there was any discrepancy in the selection process and the consequent result or there was any malafide on the part of the members of the selection committee. He has participated in the selection and has failed. His junior has qualified in the selection and as such was appointed to the post. Though, he has levelled allegations of favouritism but has failed to prove. Thus, we do not find any grounds made out to interfere with the selection process and appointment of respondent no.5 to the post in question.

10. In view of the aforesaid discussion, this O.A is found to be bereft of any merit and is dismissed. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh.
Dated: 06.09.2018

HC*