

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(orders reserved on 24.10.2018).

O.A.NO.060/00420/2016 Date of order:- 2.11.2018

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs. Ajanta Dayalan, Member (A).

Paramjit Singh son of Sh. Kuldeep Singh, (SC category) resident of Kalewali, Tehsil Kharar, District Mohali, Punjab.

.....Applicant.

(By Advocate :- Shri Aalok Jagga)

Versus

1. Union of India, Ministry of Home Affairs, Govt. of India, New Delhi, through its Secretary.
2. Chandigarh Administration, Chandigarh, through Home Secretary.
3. Inspector General of Police, Union Territory, Chandigarh Police Head quarters, Additional Deluxe building, Sector 9-D, Chandigarh.
4. The Chairman (PET cum Selection Committee), W/Deputy Inspector General of Police, UT Police Head quarter, Sector 9, Union Territory, Chandigarh.
5. Senior Superintendent of Police, UT, Chandigarh Police Head quarters, Additional Deluxe building, Sector 9-D, Chandigarh.
6. Sh. Rajinder P. Upadhyay, IPS, Inspector General of Police, UT, Chandigarh.
7. Mandeep Singh son of Sh. Rajinder Singh c/o Deputy Superintendent of Police(Training), RTC, Police Lines, Sector 26, Chandigarh.

...Respondents

(By Advocate : Shri Rajesh Punj, for respondents no.2 to 6
Shri Bipan Sharma, for respondent no.7).

O R D E R
Sanjeev Kaushik, Member (J):

The applicant has filed this O.A. challenging the validity of order dated 26.2.2016 (Annexure A-1), whereby he has been declared as fail, in the event of race, for appointment to the post of Assistant Sub Inspector (ASI) and for issuance of a direction to the respondents to reconsider the case of the applicant, by conducting test through an independent agency, in terms of Standing Order dated 8.3.2010 etc.

2. The facts giving rise to filing of this O.A. are that the applicant, belongs to Scheduled caste category and was working as Fireman in Municipal Corporation, Chandigarh. An advertisement dated 12.1.2007 was issued by respondent no.2 inviting applications for filling up 20 posts of ASI, in Chandigarh Police in the pay-scale of Rs.4550-7220 with usual allowances. The selection was to be conducted in terms of criteria provided in Standing Order No.33/2007. As per the criteria, the candidates were to undergo physical measurement and efficiency test. After clearing it, they were to go through the written test and interview. The applicant was also a candidate in the selection. He reached to the stage of interview on 21.1.2008 and on being successful, was placed at sr.no.2 in the wait list.

3. The official respondents cancelled the entire selection on 21.4.2008, which was challenged in three O.As being No.160-CH-2008 etc, which were disposed of vide common order dated 26.9.2008 by directing the respondents to identify the tainted candidates and then taken a view. This was tested in judicial review

in three Writ Petitions leading one being No. 6340 of 2009 (Chandigarh Administration etc. Vs. Yash Pal & Others), which were allowed vide order dated 8.3.2011, setting aside view taken by this Tribunal, as it was not possible to segregate the tainted from untainted candidates. However, Chandigarh Administration was also granted liberty to proceed with the selection process afresh.

4. Pursuant to aforesaid liberty, the respondents re-conducted the written test followed by interview in 2011 and the result of which was declared on 17.6.2011. Again applicant was selected and placed at Sr. No. 2 under SC category. He was issued appointment order, but was not allowed to join the duties. After waiting for some time, he preferred O.A.No.302/PB/2012 in this Tribunal for allowing him to join his duties, which were disposed of on 25.4.2012, with a direction to the respondents to consider his case for appointment, if he is otherwise eligible.

5. On the basis of a CBI enquiry, respondents cancelled the candidature of nine candidates including that of the present applicant on 26.3.2012; on the ground that applicant had not cleared the long jump event. This was challenged by applicant and others, in a bunch of OAs, leading one being 748/PB/2012 (**PARAMJIT SINGH VS. UOI ETC.**), which were disposed of vide common order dated 19.10.2012 with a direction to the competent authority to re-visit their decision by applying the principles of natural justice. This order was challenged in a bunch of CWP, leading one being 387/CAT/2013 (**CHANDIGARH ADMINISTRATION ETC. VS. PARAMJIT SINGH & ANOTHER**) which were disposed of on 11.1.2013, approving the view of this Tribunal and directed the respondent Chandigarh Administration to grant an opportunity of hearing to the applicant and

till the respondents take a view in the matter, liberty was granted to Chandigarh Administration to keep the appointment orders in abeyance and they were granted one month's time to take action.

6. Vide order dated 25.4.2013, the selection of applicant was cancelled by the respondents on the ground that he had erroneously qualified the long jump event. This decision as challenged in OA No. 611/PB/2013, which was disposed of vide order dated 13.11.2014, taking a sympathetic view that hardship would be caused to the applicant as he had lost his earlier service also, Chandigarh Administration was directed to allow the applicant to undergo PET once again and if he qualifies it, his appointment as ASI may be revived with reference to original letter dated 14.10.2011. Instead of appearing in the PET test, the applicant filed Review Application No.60/133/2014, for review of order to the extent that he be subjected to undergo long jump only, instead of complete PET test. However, R.A. was dismissed on 14.5.2015.

7. The applicant was directed to appear for PET on 4.5.2015. The applicant submitted representations that he had already cleared the PET test in May, 2007, which was conducted as per standing order no.33 of 2007, about nine years back when he was quite young at 24 years of age. The said standing order stands modified on 8.3.2010, as per which the time prescribed for 1600 meters race has been increased to 5.45 minutes against 5.30 minutes in 2007. Thus, he be given 5.45 Minutes to clear the same, considering his age to be 35 years. Placing reliance on Rule 12.15 of the Punjab Police Rules, relating to relaxation in physical standards, in case of recruitment for genuine reasons, he also claimed that he is entitled to relaxation, which has been denied to him. Finding no response, the applicant

filed O.A.No.060/00784/2015 challenging the notice dated 25.8.2015, whereby he was directed to appear in PET, which was disposed of on 3.9.2015, directing the respondents to decide the representation of the applicant. However, without deciding his representation, respondents vide letter dated 7.9.2015 directed the applicant to appear for PET on 5.10.2015 at Police Lines, Sector 26, Chandigarh. On the scheduled date, the applicant appeared and was subjected to race in terms of standing order No. 33 of 2007 instead of 2010, requested by him. The applicant was, however, declared unsuccessful in race, therefore, his candidature was cancelled. In view of failure in race, he was not allowed to appear in other activities. Ultimately, vide order dated 26.2.2016, the applicant was informed that he has been declared as disqualified. Against this decision, the applicant is before this Court by way of filing the present OA.

8. The applicant has taken various grounds for invalidation of impugned orders. It is argued that he was not provided sufficient time and denied modified criteria introduced the next date of his test, in terms of extant instructions, for completing race and was subjected to criteria available in instructions of 2007, which has prejudiced his case. Secondly, he pleads that he should have been granted relaxation in physical standards, as per Rule 12.15 of the Punjab Police Rules in view of the fact that he had cleared the PET in the year 2007 when he was 24 years of age. Further, in terms of standing orders, if a person fails in long jump, then he should be given two more chances to qualify. The applicant cannot be expected to give same performance at the age of 33 years, which he had given when he was 24 years of age. In any case, he should have

been subjected to only long jump, which was doubted by the authorities.

9. The respondents have opposed the O.A. It is submitted that, the applicant appeared in the PET, without raising any objections, in terms of conditions of standing order 33/2007, and failed in the first event of race, within the stipulated time, thus, he was rightly declared disqualified and question of subjecting him to undergo further events of PET does not arise. He has been allowed to undergo test on the basis of old vacancy, old rule. The plea that he should have been given more time, is afterthought only, as he was given four weeks time as per his own request to prepare for the test. Earlier a Bench of this Tribunal, vide its order dated 13.11.2014, taking a sympathetic view, had directed the Chandigarh Administration to re-conduct the PET afresh. R.A. filed by applicant was also dismissed on 14.5.2015. Thus question of grant of any exemption from appearing in long jump does not arise, once it has already been negated by the Tribunal. The O.A. is also barred by the principle of res judicata as provided under Rule 1 & 2 of Order 11 of CPC, 1908 as the applicant cannot agitate the same matter twice, having failed in earlier proceedings. Lastly, it is submitted that once the applicant had already participated in the selection process without there being any objection, he cannot raise any accusing finger, and principle of estoppel would operate against him.

10. We have heard the learned counsel for the parties have perused the material placed before us.

11. Shri Jagga, learned counsel for the applicant vehemently argued that sequence of events shows that it was the fault of the respondent department, as such the applicant cannot be penalized

and considering the hardship faced by applicant, it was a fit case in which the respondents should have invoked Rule 12.15 of the Punjab Police Rules to provide relaxation in physical standards, as the applicant was indeed declared successful at the first instance and was offered appointment also, but due to cancellation of entire selection, as candidates were found to have indulged in mal-practice, new test was conducted. Not only that, the respondents have come with another plea that the applicant did not qualify the long jump with old criteria, and had disqualified him on that basis, which is illegal. He submitted that in terms of standing order 33/2007, the applicant should have been given two more chances to qualify only long jump instead of forcing him to go for entire PET at the age of 33 years i.e. after more than eight years of earlier test, which his physical capacity to qualify the test has been weakened. Thus, the impugned order be invalidated.

12. Learned counsel further urged that the action of respondents to declare the applicant as having failed in the long jump, is wrong because while allowing the earlier OA, this Court had directed the respondents to conduct PET, but the other part of the order is also to be read in conjunction therewith, where the Court had recorded a finding that the applicant was entitled to three chances for clearing the long jump and admittedly, in this case only one chance has been given. Learned counsel argues that the issue raised in this case was neither raised nor decided in earlier cases, as such the objection raised by the respondents qua principle of Res judicata, is also liable to be negated. Lastly, he submitted that participation in the fresh selection will not take away the right of the applicant to agitate the matter before a court of law, if it is otherwise available under the

rules. In support of his contentions, including that at the age of 33 years, he cannot be allowed to compete with criteria available to a 24 years male, the learned counsel for the applicant has cited the following judgments:-

- i) **State of Karnataka & Ors. Vs. K.Srinivasulu & Ors (Karnataka High Court)** (2003(7) KantLJ 115;
- ii) **Rajesh versus State of Kerala (Kerala High Court)** (2010(6) SLR Page 307); &
- iii) **Girdhari Lal Bugaliya versus State of Rajasthan & Ors.** (2013 (2) S.C.T. Page 520).

13. Per contra, Shri Rajesh Punj, learned counsel for the respondents reiterated what has been stated in the written statement apart from the judicial pronouncements of the Apex Court in the case of **Madan Lal versus State of J & K** (A.I.R. S.C. 1995 Page 1088), res-judicata and estoppel.

14. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

15. A conjunctive perusal of the pleadings makes it more than clear that earlier the applicant had approached this Tribunal by filing O.A.No.611/PB/2013 but in that case had never claimed grant of relaxation in terms of Rule 12.15 of the Punjab Police Rules. That O.A. was disposed of, considering the peculiar facts of the case that applicant was a scheduled caste candidate and had left his earlier job, with a direction to the respondents to allow him to appear in PET once again and if qualifies, his appointment as ASI may be revived as per original letter dated 14.10.2011. A perusal of the order dated 13.11.2014 passed by this Tribunal makes it clear that there was no prayer for grant of any relaxation. The only prayer was to afford

him two remaining chances in Long race. Even in the Review Application filed by the applicant, he did not succeed and he was directed to appear in test on 4th September, 2015. Upon this, a representation was made by the applicant for grant of four weeks time to enable him to prepare for the indicated test and that he be given some relaxation by invoking Rule 12.15. By accepting his request, the respondents granted him four weeks time to appear for PET on 5.10.2015. Even when the applicant appeared for re-test on 5.10.2015, he did not raise any alarm and he participated in PET without there being any protest by taking a calculated chance, and having failed, he cannot be allowed to raise the plea that the criteria adopted was wrong. It has been vehemently argued that his test was intentionally fixed for 5.10.2015 whereas it was changed on 6.10.2015 (the very next day itself), which has prejudiced case of the applicant. However, applicant has conveniently forgotten that test was fixed for 4.9.2015 and it was on his request that he was granted four weeks time to prepare for the test and it was conducted on 5.10.2015. So he cannot be granted any benefit of criteria prepared or modified on 6.10.2015, more so when same would apply to vacancies subsequently and it cannot be applied retrospectively to earlier vacancies, which would be governed by old criteria. The respondents have explained that they have followed the criteria of old vacancy, old rules and as such we do not find any fault in the action taken by them.

16. Be that as it, it is settled proposition of law that once a candidate appeared in the examination without there being any protest, and later on having remained unsuccessful, he or she cannot

be allowed to raise a finger with regard to criteria being illegal, which was open to him before appearing in test, as has been held by the Hon'ble Apex Court in the case of Madan Lal (supra). The Hon'ble Apex Court again in the case of **Dhananjay Malik & Ors.** versus **State of Uttaranchal & Ors.** (2008(3) S.L.R. Page 792) has also thrashed the issue as under:-

"It is not disputed that the writ petitioners-respondents herein participated in the process of selection knowing full well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection without any demur they are stopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the rules".

17. We would be failing in our duty if we do not consider the judgments cited by the applicant, as noticed herein above. Perusal of the judgments will show that the same do not help the applicant because the applicant claims relaxation and relaxed criteria but the fact of the matter is that in the indicated case, the Court had found that a whole lot of category of Ex-servicemen was being prejudiced due to criteria of physical standard applied cross the board. The relaxation cannot be granted in favour of a single individual. Secondly, there is no provision in the relevant Instructions containing criteria for grant of any relaxation. In any case, in a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax

the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible, as held in a number of cases, like **State of Haryana v. Subhash Chandra Marwah & Ors.**, AIR 1973 SC 2216; **J.C. Yadav v. State of Haryana**, AIR 1990 SC 857; and **Ashok Kumar Uppal & Ors. v. State of J & K & Ors.**, AIR 1998 SC 2812.

18. Besides, even the plea of the respondents, with regard to res-judicata, is also found to be meritorious. Undisputedly, the applicant could have raised the plea of relaxation in standard earlier, which he has not done and he has accepted the order dated 13.11.2014 of this Tribunal, having not challenged before the High Court. Thus, he cannot be allowed to raise same very plea again and again, thus, this petition deserves to be dismissed on res-judicata as well as constructive res-judicata.

19. The applicant has alleged malafide against the authorities time and again in the pleadings but none of the officers of respondent department has been impleaded as a party. Thus, the allegations leveled by applicant do not inspire any confidence, at all. Law is well settled that in order to level plea of mala fide a person against whom mala fide is pleaded must be impleaded by name. In the case of **State of Bihar Vs. P.P. Sharma**, 1992 Supp (1) SCC 222 it has been held that the person against whom mala fides or bias was imputed should be impleaded as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made.

Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Similarly, in **J.N. Banavalikar Vs. Municipal Corporation of Delhi**, AIR 1996 Supreme Court 326, it has been held that the person who allegedly passed mala fide order in order to favour such junior doctor, any contention of mala fide action in fact i.e. malice in fact should not be countenanced by the Court. Again, in, **A.I.S.B. Officers Federation and others Vs. Union of India and others** JT 1996 (8) S.C. 550, Hon'ble Apex Court has said where a person, who has passed the order and against whom the plea of mala fide has been taken has not been impleaded, the petitioner cannot be allowed to raise the allegations of mala fide. Similarly, in **Federation of Railway Officers Association Vs. Union of India**, AIR 2003 Supreme Court 1344 it has been held that the allegations regarding mala fides cannot be vaguely made and it must be specified and clear. In this context, the concerned Minister who is stated to be involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations." In these circumstances, the allegations leveled by the applicant cannot be enquired into at all.

19. In the wake of the above discussion on facts and law, the applicant has no case. Accordingly, the OA is found to be bereft of any merit and is dismissed accordingly. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A).

Dated:- 2.11.2018.

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