

**Reserved**

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**CIRCUIT SITTING : INDORE**

**Original Application No.201/00804/2016**

Jabalpur, this Friday, the 30<sup>th</sup> day of November, 2018

**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER**  
**HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Pawan Kumar Yadav, S/o Gajaraj Singh Yadav, Age : 25 years,  
Occupation : Nil, R/o 17, Ma Shakti Vihar Colony, Kishanganj,  
Mhow – 453441, District Indore (MP) **-Applicant**

**(By Advocate – Shri C.B. Patne)**

**V e r s u s**

1. Union of India through Secretary to the Government of India,  
Ministry of Defence, Raksha Bhawan, South Block, New Delhi –  
110001.

2. The Commandant, Army War College, Mhow, Tehsil Mhow,  
Mhow – 453441, District Indore (MP).

3. Shri Pranay Verma, S/o Lakshminarayan Verma, Fatiguman,  
Army War College, Tehsil Mhow, Mhow – 453441, District Indore  
(MP) **- Respondents**

**(By Advocate – Shri Kshitij Vyas)**

*(Date of reserving order : 09.08.2018)*

**ORDER**

**By Ramesh Singh Thakur, JM.**

The applicant is aggrieved by his non selection and  
appointment to the post of Fatigueman in the respondent  
department.

**2.** He has sought for the following reliefs:

“8.1 to call the relevant records of the case from the respondents;

8.2 to quash the selection and appointment of respondent no.3 on the post of Fatiguelman in the Army War College, Mhow by an appropriate order or direction in the interest of justice;

8.3 to command the respondent no.1 and 2 to issue appointment order to the applicant on the post of Fatiguelman, in the Army War College, Mhow, District Indore (MP with all consequential benefits by issuing appropriate order or direction in the interest of justice;

8.4 to allow this application with costs; and

8.5 to pass such other order as may be deemed appropriate to grant relief to the applicant.”

**3.** The case of the applicant is that respondent No.2 published an advertisement vide Annexure A-4 dated 06.11.2013 inviting applications for the post of Fatiguelman and other posts. The applicant submitted his candidature for the post of Fatiguelman and was issued call letter dated 28.11.2013 (Annexure A-5) by respondent No.2 for appearing in the written test. He participated in the said written test and stood at Sr. No.3 of the merit list, whereas respondent No.3 was at Sr. No.2 with a difference of only one

mark. The applicant has submitted that 200 meters running test was conducted in which the applicant stood at Sr. No.1 and the respondent No.3 was placed at Sr. No.5. Thereafter, the candidates were directed to dig a pit and the applicant's pit was the largest among all the candidates. The applicant submits that by overlooking the performance of the applicant, he was placed at Sr. No.3 of the select list and respondent No.3 was shown at Sr. No.2 on extraneous consideration and was appointed on the post of Fatiguelman.

4. The applicant has further submitted that he had sent a detailed complaint on 11.01.2014 (Annexure A-7) addressed to the Superintendent of Police, Central Bureau of Investigation (CBI), Bhopal alleging irregularities and illegalities committed by respondent No.2 in the selection process. The complaint lodged by the applicant was forwarded to the Adjutant General (Discipline & Vigilance), Army Headquarters, New Delhi by the CBI on 02.05.2015 and a letter dated 26.06.2015 (Annexure A-8) was sent to the applicant about this fact. Thereafter, vide letter dated 16.07.2015 (Annexure A-10), the applicant was called for enquiry before the Court of Enquiry. The applicant attended the enquiry on 29.07.2015, however, nothing was heard in the matter. He sent a

reminder on 16.09.2015 (Annexure A-11) to the Adjutant General for redressal of his grievances, however, no action was taken on it.

5. The main contention of the applicant is that he is more meritorious than respondent No.3 as though in the written test he was at Sr. No.3 and the respondent No.3 was placed at Sr. No.2, however, the difference was only of one mark. Further, in the running test of 200 meters, the applicant stood first and the respondent No.3 was in the fifth position. In the practical of digging pits, the applicant's pit was the largest one in comparison to all other candidates. But, by ignoring the overall merit, the respondent No.3 was given undue advantage on extraneous considerations and was given appointment by placing him at Sr. No.2 of the merit list.

6. The respondents Nos.1 & 2 have filed their reply. It has been submitted by the respondents that the complete recruitment was conducted by seven independent Board of Officers and the procedure adopted had inherent transparency to obviate any scope of manipulation. The procedure adopted for the conduct of recruitment tests was as per the laid down policies and the candidates were selected as per the merit. It has been further submitted by the respondents that the applicant had preferred

complaint to the CBI, Bhopal and in order to check the veracity of the allegations made by the applicant, a Joint Surprise Check (JSC), in association with vigilance of the Army was conducted by the ACB, CBI, Bhopal at Army War College, Mhow on 04.02.2015 (Annexure R-1) and relevant documents relating to recruitment for the above posts were collected and scrutinized by them.

7. The respondents have also submitted that the CBI referred the case to the Adjutant General (Discipline & Vigilance), IHQ of MoD (Army), New Delhi for taking necessary action vide letter dated 02.05.2015 (Annexure R-2). Based on their direction, a Court of Inquiry was conducted by Army War College, Mhow to pinpoint the responsibilities for the irregularities in conduct of recruitment test of Group 'C' category during November-December 2013. As per the findings and opinion of the Court of Inquiry, it was found that the accusations made by the applicant are false and misleading as no shortcomings or irregularities was found in the recruitment process. It has been stated that the anomalies pointed out by the CBI were based on the preliminary investigation report of the CBI, which was conducted as a surprise check. Thereafter, the Court of Inquiry had carried out a detailed investigation in the matter

including the facts mentioned in the preliminary report of the CBI and has examined all witnesses in the case.

8. It has been stated by the respondents that the selection to a post is based on merit obtained by a candidate in the written test as well as skill/practical test. Further, in addition to the physical attributes, the Board of Officers have graded the candidates on approach, demeanor and character while executing the task. The final grading in the practical test was a summation of the two aspects, averages out for the three members. The marks allotted by the members vary as per individual perceptions. In the composition of the Board of Officers, in addition to the officers from units, there were two civilian members in the conduct of written examination. Hence, the accusations made by the applicant are false and misleading and he is not entitled for any relief.

9. The applicant has filed rejoinder to the reply filed by the respondents. It has been submitted by the applicant that he was summoned to be present as a witness before the Court of Enquiry on 29.07.2015. However, one of the members of the Court of Enquiry threatened the applicant for filing complaint to the CBI and instructed him to leave the premises without recording his statement. The statements of all other selected candidates as well as

the presiding officer and Members of the Selection Board (except two Board Members) were recorded. It has also been stated by the applicant that the Selection Board did not have any civilian member, except in the written examination. Further, the Board of Officers have agreed regarding the best performance of the applicant in the practical. The applicant has further denied some of the factual facts regarding the statement of the witnesses. It has been stated that the videography covered while selection of the candidates clearly evidenced that applicant stood first in running and pit digging. Therefore, the applicant deserves for selection and appointment to the post of Fatigueman.

**10.** We have heard the learned counsel for the parties and also gone through the documents annexed therewith.

**11.** It is not in dispute that applications were invited for the post of Fatigueman and other posts. There is also no dispute regarding the participation of the applicant in the written test and his position at Sr. No.3 and respondent No.3 being at Sr. No.2. It is also established fact from the pleadings that there was a difference of only one mark between the applicant and respondent No.3 in the final merit. It is also not disputed by the parties that the applicant

participated in 200 meters running test and stood at Sr. No.1 and the respondent No.3 stood at Sr. No.5. Further, there is also no dispute that the applicant along with respondent No.3 and other candidates had participated in the practical test for digging a pit.

**12.** The grievance of the applicant is that he had performed better in running test and the pit dug by him was the largest among all the candidates. However, the respondent department have selected respondent No.3 on extraneous consideration for the post of Fatigueman. The applicant made a complaint on 11.01.2014 (Annexure A-7) addressed to the Superintendent of Police, CBI, Bhopal alleging irregularities and illegalities committed by respondent No.2 in the selection process. The complaint lodged by the applicant was forwarded to the Adjutant General (Discipline & Vigilance), Army Headquarter, New Delhi by the CBI and a Joint Surprise Check was conducted in the matter.

**13.** The respondents have specifically submitted in their reply that based on the directions of Adjutant General (Discipline & Vigilance), IHQ of MoD (Army), New Delhi, a Court of Inquiry was conducted to look into any irregularities in conduct of recruitment test of Group 'C' category during November-December 2013. In the Court of Inquiry, a detailed investigation



was conducted and all the witnesses were examined and it was found that the accusations made by the applicant are false and misleading as no shortcomings or irregularities were found in the recruitment process.

**14.** The respondents, in their reply, have categorically averred that selection to a post is based on merit obtained by a candidate in the written test as well as skill/practical test. Further, in addition to the physical attributes, the Board of Officers have graded the candidates on approach, demeanor and character while executing the task. The complete recruitment was conducted with inherent transparency by the seven independent Board of Officers. The Board of Officers have graded the candidates on their approach, demeanor and character while executing the task. The final grading in the practical test was a summation of the two aspects, averages out for the three members. In the composition of the Board of Officers, there were also two civilian members in the written exam including the officers from the other units. Thus, it cannot be said that the Board of Officers were biased against the applicant.

**15.** It is undisputed that there was only difference of one mark between the applicant and respondent No.3. The only dispute is regarding the more weightage given to respondent No.3 on the

analogy that the applicant has dug the pit which was the largest and more marks should have been given to him. In their reply, the respondents have specifically submitted that the practical test is being assessed on the basis of approach, demeanor and character while executing the task. In the pleadings and the arguments put forth by learned counsel for the applicant, there is no basis for favouring the respondent No.3 as there is no specific malafide alleged against any members of the selection board. Not only this, there is no evidence to prove the fact of malafide regarding favour to respondent No.3.

**16.** It is true that on receiving the complaint, the CBI Bhopal has given a preliminary report to the Adjutant General for taking further action and a Joint Surprise Check, in association with the ACB, CBI, Bhopal and with vigilance of Army, was conducted to check the veracity of the allegations made by the applicant and a Court of Inquiry was conducted accordingly. The whole contentions of the applicant have been found otherwise. It has been specifically indicated in the said report that respondent No.3 was graded almost at par with the applicant in running and digging of the pit and the additional factors of ability to comprehend the task i.e. mental ability and approach towards execution of the task, i.e.

emotional quotient and demeanor were also considered while allotting grades in the practical test.

**17.** In view of the above, we are of the view that there is no merit in this O.A. Resultantly, the O.A is dismissed. No order as to costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

**(Navin Tandon)**  
**Administrative Member**

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