

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00906/2016

DATED THIS THE 02ND DAY OF NOVEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C V SANKAR, MEMBER (A)

1. Sri Madana Kumar S,
S/o Shivanna B,
Aged about 36 years,
Working as Driver,
National Institute of Mental Health &
Neuro Sciences (NIMHANS)
Hosur Road, Bangalore – 560 029

2. Sri Nanda Kumar B,
S/o Balakrishna B,
Aged about 28 years,
Working as Driver,
National Institute of Mental Health &
Neuro Sciences (NIMHANS)
Hosur Road, Bangalore – 560 029

3. Sri C. Nagendra,
S/o Chikkanna @ Basavanna,
Aged about 31 years,
Working as Driver,
National Institute of Mental Health &
Neuro Sciences (NIMHANS)
Hosur Road, Bangalore – 560 029

4. Sri V. Ramesha,
S/o Vajrappa,
Aged about 36 years,
Working as Driver,
National Institute of Mental Health &
Neuro Sciences (NIMHANS)
Hosur Road, Bangalore – 560 029

.....Applicants

(By Advocate M/s Subbarao & Co.)

Vs.

1. The Union of India,
Rep. By its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi – 110 011

2. National Institute of Mental Health &
Neuro Sciences (NIMHANS)
Hosur Road, Bangalore – 560 029
Rep by its Director

3. The Registrar,
National Institute of Mental Health &
Neuro Sciences (NIMHANS)
Hosur Road, Bangalore – 560 029

....Respondents

(By Shri K. Prabhakar Rao, Counsel for Respondent No. 2 and 3)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

Heard. The matter is in a very small compass. The applicants had been selected by an apparent regular process as adhoc drivers and while so it appeared to the concerned authority to hold a regular selection as there were regular vacancies. They held a regular selection after observing all formalities in correct way according to law as it stood then. They notified the vacancies, invited the applications and conducted Skill Test for the applicants.

2. Apparently on 31.12.2014 applicants were also selected but then before they could be given appointment letter, on 29.12.2015, Annexure-A35 letter was issued by the DoPT which we quote below:

***“No 39020/01/2013-Estt (B)-Part
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)***

*North Block, New Delhi.
Dated the 29th December, 2015*

OFFICE MEMORANDUM

Subject:- Discontinuation of Interview at Junior Level Posts in the Government of India- recommendation of Committee of Secretaries.

The undersigned is directed to refer to this Department's D.O. of even number dated 04.09.2015 and subsequent OM's dated 09th October, 2015, 09th November, 2015 on the above subject seeking detailed information on the progress made/action taken in the matter.

2. *It is informed that Secretary (Personnel) had convened meetings on 14th December, 2015 and 17th December, 2015 to review the progress of implementation of the "No Interview Requirement Proposal" and to get the updated status on the decision/progress made by the various Ministries/Departments. Keeping in view the queries raised by the representative of various Ministries/Departments the following is once again clarified:-*

(a) The decision to discontinue interview for recruitments is for all Group 'C', Group (which are now reclassified as Group 'C') Posts and for non-gazetted posts of Group 'B' Category and all such equivalent posts.

(b) The 'No Interview Requirement' proposal has to be implemented for all the junior level posts in Government of India Ministries/Departments/attached Office/Subordinate Office/Autonomous Bodies/Public Sector Undertakings.

(c) Instructions issued by the Department of Public Enterprises on 14th December, 2015 vide OM No. DPE-GM to all Administrative Ministries concerned with CPSES under them with advice to dispense with the practice of interview (copy enclosed).

(d) The timelines set regarding completing the process of the discontinuation of interview by 31.12.2015 has to be adhered to strictly. From 01st January, 2016 there will be no recruitment with interview at the junior level posts as mentioned at 2(a) above, in Government of India Ministries / Departments / attached Office / Subordinate Office / Autonomous Bodies / Public Sector Undertakings. All the advertisement for future vacancies will be without the Interview as part of the recruitment process.

(e) The interviews will be done away even in cases where in the past the selections used to be made purely on the basis of performance in the interview. The Ministries/Departments/Organizations' will consider revising the scheme for selection for such cases.

(f) It is also clarified that as Skill Test or Physical Test is different from Interview, and they may continue. However, these tests will only be of qualifying nature. Assessment will not be done on the basis of marks for such tests.

(g) In case of specific posts where the :Ministry/Departments wants to continue undertaking Interview as a process of recruitment, a detailed proposal seeking exemption will have to be sent to the DoPT with the approval of the Minister/Minister In-Charge.

3. *All the Central Ministries/Departments are therefore requested to ensure that necessary action in respect of their Ministry/Department/Organizations are completed within the stipulated time. A consolidated report with the details of the decision taken/progress made in this regard should also be furnished to this Department at the earliest and not later than **7th January, 2016**. Report so to be furnished with the approval of the Minister/Minister In-Charge shall include the details of the name and number of posts where the interview is discontinued and posts for which the exemption has been sought within the purview of the administrative Ministries/Departments.*

4. *A soft copy of the consolidated information may also be sent to this Department at sumita.singh@nic.in.*

sd/-

(Manisha Bhatnagar)

Under Secretary to the Government of India

Tel. No. 2309 3175

Encl: As Above

To

***All the Secretaries of the Central Ministries/Departments
As per list attached."***

3. The crux of this Office Memorandum issued by the DoPT is that there is no further need to conduct interviews for Group 'C' and Group 'D' post and it is also stated that this Office Memorandum will have an effect and application from 01.01.2016. Therefore obviously it does not have a retrospective effect

but maybe misinterpreting or misunderstanding this Office Memorandum the selection process already undergone in 2014 was set aside by the concerned authority and challenging this the applicants are before us now.

4. The case further put forward by the respondents is that, following an interim order granted as against Annexure-A35 and its application retrospectively by the Tribunal, they had issued a fresh notification on 21.01.2017 and applicants were applicants in it. But then that is of no credence at all. It has absolutely no relevance because there is nothing under law which will compel the respondents to scrap the 2014 selection. If it is to be argued that just for a selection no right will ensue to the candidates who appeared for the selection it must be taken that atleast some right would be. Therefore, without a significant obstacle being pointed out against the continuation in selection, that selection cannot be set aside especially as this selection was held on competitively meritorious basis. Therefore the way to understand this Office Memorandum is two-fold:

- 1) It is issued on 29.12.2015 and therefore the selection made in 2014 will not come within its ambit.
- 2) This OM has an effect, according to the OM, from 01.01.2016 only.

5. On both these grounds, the OM will not have a retrospective operation and there is no cause for the respondents to believe that this OM will forbid them to appoint and conclude the selection made on 31.12.2014. As the respondents admit that applicants were also selected in the selection held in 2014, we will now remit the matter back to the respondents to complete the

process of selection of 31.12.2014 and if the applicants are eligible then grant them appointment. Since the applicants are continuing in selection they can be considered for regular appointment from the date of appointment issued under the selection of 31.12.2014. When considering these matters, the respondents will look into the effect of Sachivalaya Dainik Vetan Bhogi Karamchari Union V/ s State of Rajasthan & Others reported in AIR 2017 11 SCC 421.

6. The OA is disposed off as above. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/00906/2016

Annexure-A1: Copy of the NTC Certificate of the first applicant

Annexure-A2: Copy of the certificate issued by BHEL to the first applicant

Annexure-A3: Copy of the National Apprenticeship Certificate dated 25.01.2013 issued to the first applicant

Annexure-A4: Copy of the Heavy Motor Vehicle Driving Licenses of the first applicant

- Annexure-A5: Copy of the Experience Certificate issued by Sanchar Tours and Travels to the first applicant
- Annexure-A6: Copy of the certificate dated 14.01.2015 issued by Karnataka State Mental Authority to the first applicant
- Annexure-A7: Copy of the Experience Certificate dated 08.01.2015 issued by the PRO to the first applicant
- Annexure-A8: Copy of the HMV Driving License issued by the jurisdictional RTO to the second applicant
- Annexure-A9: Copy of the certificate dated 23.01.2013 issued by Popular Hospital
- Annexure-A10: Copy of the notification dated 18.01.2013
- Annexure-A11: Copy of the interview letter issued to the 1st applicant
- Annexure-A12: Copy of the interview letter issued to the 2nd applicant
- Annexure-A13: Copy of the appointment order of the 1st applicant
- Annexure-A14: Copy of the appointment order of the 2nd applicant
- Annexure-A15: Copy of the Driving License issued by the Regional Transport Authority to the 3rd applicant
- Annexure-A16: Copy of the Experience Certificate dated 05.11.2012 issued to the 3rd applicant
- Annexure-A17: Copy of the Experience Certificate issued by Dr. Shoba Srinath to the 3rd applicant
- Annexure-A18: Copy of the SSLC marks card of the 4th applicant
- Annexure-A19: Copy of the HMV Driving License of the 4th applicant
- Annexure-A20: Copy of the certificate dated 16.03.2013 issued to the 4th applicant
- Annexure-A21: Copy of the notification dated 31.12.2014
- Annexure-A22: Copy of the application submitted by the 1st applicant
- Annexure-A23: Copy of the application submitted by the 2nd applicant
- Annexure-A24: Copy of the application submitted by the 3rd applicant
- Annexure-A25: Copy of the application submitted by the 4th applicant
- Annexure-A26: Copy of the intimation letter dated 10.12.2015 addressed to the 1st applicant
- Annexure-A27: Copy of the intimation letter dated 10.12.2015 addressed to the 2nd applicant
- Annexure-A28: Copy of the intimation letter dated 10.12.2015 addressed to the 3rd applicant
- Annexure-A29: Copy of the intimation letter dated 10.12.2015 addressed to the 4th applicant
- Annexure-A30: Copy of the eligibility list prepared and published by the 3rd respondent
- Annexure-A31: Copy of the order dated 04.02.2016 communicated to the 1st applicant
- Annexure-A32: Copy of the order dated 04.02.2016 communicated to the 2nd applicant
- Annexure-A33: Copy of the order dated 04.02.2016 communicated to the 3rd applicant
- Annexure-A34: Copy of the order dated 04.02.2016 communicated to the 4th applicant

Annexure-A35: Copy of the Government of India DOPT OM dated 29.12.2015

Annexures with MA 61/2017

Annexure-A36: Copy of the Notification dated 21.01.2017

Annexures with reply statement

Annexure R-1 to R-4: Copies of undertakings given by the applicants

Annexure R-5: Copy of the OM dated 11.01.2016 issued by the 1st respondent

Annexures with Memo

Annexure A: Copy of the application scrutiny sheet of the 1st applicant

Annexure B: Copy of the application scrutiny sheet of the 3rd applicant

Annexure C: Copy of the application scrutiny sheet of the 2nd applicant

Annexure D: Copy of the application scrutiny sheet of the 4th applicant
