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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.729/2017

Date of Decision: 30.04.2019.

CORAM: R. VIJAYKUMAR, MEMBER (A)
R.N. SINGH, MEMBER (J)

1. Pranil Pandurang Patil, Aged 25 years,
R/at Room No.1, Laxmi Niwas Chawl,
Near Hanuman Temple, Golfadevi Road,
Worli Koliwada, Mumbai 400 030.
2. Dipesh Ashok Chandorkar, Aged 25 years,
R/at 129/D, Jayhind Nagar Welfare Society,
Navneet Chowk, Worli Koliwada,
Mumbai 400 030.
3. Amit Harishchandra Mahagavkar,
Aged 29 years. R/at Flat No.907, Manzil No.9,
Gharkul Housing Society, Near Bhusa Industrial
Estates, Prabhadevi, Mumbai 400 025. ... ***Applicants***

(By Advocate Shri A.I. Bhatkar)

VERSUS

1. Union of India, through
The Secretary, Ministry of Defence,
South Block, New Delhi 110 001.
2. The Director General, Coast Guard,
Coast Guard Headquarters, Nation
Stadium Complex, New Delhi 110 001.
3. The Coast Guard Commander,
Coast Guard Region (West), Worli Seaface
Post Office, Worli Colony,
Mumbai 400 030. ... ***Respondents***

(By Advocate Shri A.M. Sethna)

ORDER (Oral)

Per : R.N. Singh, Member (J)

This application has been filed by the Applicant on 23.11.2017 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"8.a) This Hon'ble Tribunal will be graciously pleased to call for the records and proceedings pertaining to the recruitment for 5 posts of MTS (Peon) held in April 2016 pursuant to the advertisement published in Employment News dated 23-29 January 2016 and after going through the same hold and declare that the cancellation of the said recruitment/selection is discriminatory, arbitrary and is in violation of Article 14 and 16 of Constitution of India.

8.b) This Hon'ble Tribunal will be graciously pleased to call for the records and proceedings pertaining to the recruitment for 5 posts of MTS (Peon) held in April 2016 pursuant to the Advertisement published in Employment News dated 23-29 January 2016 and after going through the same hold and declare that the applicants, being placed in Combined Merit List, are eligible to be appointed to the post of MTS (peon) and order accordingly.

8.c) This Hon'ble Tribunal will be graciously pleased to call for the records and proceedings pertaining to the recruitment for 3 posts of MTS(Peon) to be held pursuant to the Advertisement published in Employment News dated 10-16 June 2017 and after going through the same quash and set aside the same.

8.d) This Hon'ble Tribunal will graciously pleased to pass such other and further orders as deemed fit in the facts circumstances of the case.

8.e) Cost of this application be awarded to the applicants."

2. The Respondents had advertised for recruitment of five posts of MTS (Peon) with one post in OBC category and four in General (UR) category in Advertisement published in Employment News dated 23-29.01.2016 and then written examination was conducted on 25.04.2016 after which qualified candidates were called for documents verification. In spite of long lapse of time after the examination when the respondents neither notified the results nor issued any letter of appointment to any of the candidates, the applicants herein submitted applications under the Right to Information Act seeking the information with regard to the fate of examination held on 25.04.2016 for recruitment to the post of MTS and also about the marks obtained by the applicants, copies of answer-sheets, merit list etc. In response to such applications under the Right to Information Act, the applicants received the information indicating that though the applicants have been in the merit list of successful candidates, however the respondents have taken a decision to cancel the said selection/recruitment. But the

same was found without any justifiable reasons. The respondents did not notify that the aforesaid recruitment process has been cancelled, however, they proceeded ahead with the new recruitment process by making fresh Advertisement for the same post vide notification in the Employment News dated 10-16.06.2017. Aggrieved of the same, the applicants have approached this Tribunal challenging the Advertisement dated 10-16.06.2017 (Annex. A-1) with the following prayers as noted herein above.

3. Learned counsel for the applicants argues that though there is no dispute that the respondents are having the power of cancellation of the selection process but that power is required to be exercised in just, equitable, transparent and fair manner and the same cannot be exercised arbitrarily and discriminatory. He further argues that in the present case the applicants' candidature was found provisional in accordance with the notified vacancy and the applicants have participated in the selection process and after participating in the written examination followed by Trade

Test they have found place in the merit list of the select panel. However, for no reasons either communicated to the applicants or notified to the public at large, the respondents at their own whims and fancies have cancelled the selection process and proceeded ahead with new Advertisement for the said post vide the aforesaid impugned notification made in the Employment News dated 10-16.06.2017.

4. In response to notice issued by this Tribunal in the aforesaid OA, the respondents have filed reply and the applicants have filed rejoinder.

5. During the course of final hearing, it was found that no justifiable reasons viz-a-viz mass copying in the written test or any malpractices alleged or found to have been the reasons for cancellation of the said selection process. The learned counsel for the respondents sought time to file additional affidavit to bring on record the actual reasons for cancellation of the selection process and making fresh Advertisement for the same post. In view of the request so made, liberty was granted to

the respondents and the respondents have filed additional affidavit on 18.03.2019.

6. With the assistance of the reply affidavit as well as the additional affidavit filed on behalf of the respondents, Shri A.M. Sethna, learned Senior Central Government counsel vehemently argues that the respondents are well within their right to cancel the selection process as certain information furnished by some of the candidates were not in accordance with the requirement prescribed in the Advertisement. They have filed a list of candidates along with that affidavit and the same indicates that error in 'surname' of a few candidates were found and error in 'experience certificate' and 'Caste certificate' in respect of a few candidates were found. However, it is admitted fact that there is no allegation of any malpractices, cheating, copying or any kind of illegality has been found by the respondents in completing the selection process by preparing a merit list of the candidates. Learned counsel for the respondents however submits that in the very

Advertisement on the basis of which, the selection process was conducted and completed, there is a provision which gives right to the competent authority to cancel the examination at any time and in this regard he invites our attention to para 9, 12 & 13 of the relevant Advertisement which reads as under:

"9. The no. of vacancies indicated in this Employment News is provisional and may increase or decrease or even become NIL, depending upon the actual needs of the Region. The Administration also reserves the right to cancel the notified vacancies, at its discretion and such decision will be final and binding on all in the event of cancellation of notified vacancies.

.....

12. Applications which are not in the prescribed format, without the required certificate, duly self attested/without photographs/without signature of the candidates will be summarily rejected.

13. The decision of the Commander, Coast Guard Region (West), Worli Sea Face P.O. Worli Colony, Mumbai 400 030 regarding selection/rejection will be final and no correspondence will be made on rejection of the

application."

7. He further argues that as no offer of appointment was issued to the applicants, no enforceable right has accrued to the applicants to claim appointment under the respondents on the basis of their merit position in the select panel which has subsequently been cancelled by the respondents and challenged by the applicants in the present OA. He submits that no further action has been taken in pursuance to the fresh Advertisement dated 10-16.06.2017 impugned in the present OA, so far post in question in the present OA.

8. We have considered the pleadings on behalf of the parties. We have also considered the rival contentions. It is not in dispute that the respondents are having the power to cancel the selection process but the respondents are not entitled to exercise such power in arbitrary manner. To exercise such power, they must have reasonable and justifiable grounds. It is admitted fact that in selection there is neither any allegation or proof of malpractice, copying, cheating, corruption

or favoritism. The respondents are only able to show that they have found certain errors in 'surnames' of a few successful candidates, and or same minor 'errors' in 'experience certificate' and or 'caste certificate' of few of the candidates. However, the same cannot be a just and valid ground to cancel the entire selection process. The appointments are always subject to the satisfaction of the employer with regard to the eligibility conditions or the documents in this regard. The Applicants herein may not have enforceable right to appointment merely on the basis of their position in the select panel on participation in selection process in response to the notification made by the respondents, however, they are having the right to be considered in just, fair and equitable manner. About their eligibility, they can be asked for document verification and on satisfying the competent authority under the respondents about their eligibility and correctness of their documents, the respondents can either issue offer of appointment or they can even in

appropriate cases cancel the candidature but in no manner the cancellation of the entire selection process can be found as apt in law.

9. In view of the aforesaid facts and circumstances, we find merit in the OA. Accordingly, **it is partly allowed** with the following directions;

i) The impugned Advertisement dated 10-16.06.2017 to the extent the same concerns with filling-up the post of MTS (Peon) is quashed.

ii) The previous order issued by the respondents regarding cancellation of the selection for the post of MTS (Peon) in response to the original notification dated 23-29.01.2016 are set aside.

iii) The Respondent No.2 - i.e. The Director General, Coast Guard, Coast Guard Headquarters, New Delhi is directed to ensure that the selection conducted for the post of MTS (Peon) under the Respondent No.3 in pursuance to the Advertisement issued vide Notification dated 23-29.01.2016 is given effect on the basis of merit/select list prepared after verifying the documents

of the applicants or any other eligible candidates for such post and after other suitability like medical examination and character antecedents etc in accordance with relevant rules within three months of receipt of a certified copy of this order.

10. MA No.163/2018 stands closed.

11. No order as to costs.

(R.N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

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