

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

DATED THIS THE 30 DAY OF JULY, TWO THOUSAND NINETEEN

PRESENT:

HON'BLE MR. P. MADHAVAN, MEMBER (J)

HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/01648/2013

V. Padmanaban
No. 121, Vellalapuram
Otupatarai
Coonoor – 643 105
The Nilgiris.

....Applicant

By Advocate M/s Ayyar & Iyer

Vs

1. Union of India rep by
The Secretary to the Government of India
Ministry of Defence
South Block, DHQ (PO)
New Delhi 110 011.

2. The Commandant
The Madras Regimental Centre
Wellington – 643 231
The Nilgiris.

3. Colonel R N Muthalik
Deputy Commandant
The Madras Regimental Centre
Wellington – 643 231
The Nilgiris.

... Respondents

By Advocate Mr. G. Dhamodaran

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"Pursuant to the various tests and interview conducted at the 2nd respondent's office on 23.10.2013 and 24.10.2013 in connection with the selection/appointment of Boot Maker by the 3rd respondent, pursuant to the interview letter No. 2515/XX/Q5(Civ) dated 03.10.2013, this Tribunal may call for records, after perusing the same may be pleased to quash impugned process of selection leading to the appointment of the less qualified and inexperienced two individuals Ajay Anthony, S. Vimal Kumar, as the police verification report is underway – picked up by the 3rd respondent for appointment to the post of Boot Maker under the 2nd respondent, being non est, unconstitutional and patent non-observance of mandatory instructions is writ large, and direct the 2nd respondent to consider the applicant's case for the appointment to post of Boot Maker in the aforesaid facts and circumstances as the applicant had out performed in all respects during tests and interview that took place on 23.10.2013 and 24.10.2013 and also pray any omission to consider the applicant's case to the selection /appointment to the Boot Maker post would be a travesty of justice culminating in thwarting the rule of law and fairness and further to pass any such orders or directions"

2. The brief facts of the case as submitted by the applicant are as under:

The applicant, in pursuance of an advertisement in the News Paper applied for the post of Boot Maker under the 2nd respondent. He has trade experience and has passed 12th standard. He belongs to 'SC' Arunthathiyar community. Out of six candidates who attended the test and interview, he was better qualified whereas less qualified and inexperienced candidates who lacked skills of Boot Making were selected by the 3rd respondent and their names were also sent for police verification ignoring his claim. Learned counsel for the

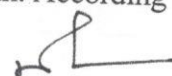


applicant states that the applicant's father Late Veeraian who was employed as Boot Maker died in harness on 02.03.2012 when he had six years of service left for retirement. The second respondent should have considered the claim of the applicant in a humane manner especially when the family of the applicant was in indigent circumstances with three daughters, wife and the only son, the applicant herein. Hence the applicant has filed this OA seeking the above reliefs on the following grounds:

- i. The respondents could not show any differentia in the matter of recruitment to the post with the same eligibility criteria. Thus the selection leading to the appointment of (1) Ajay Anthony and (2) S. Vimal Kumar by the selection committee headed by the 3rd respondent cannot be sustained.
- ii. The 2nd respondent ought to have shown the even handed approach and should not have relegated merit to background and denied appointment to the applicant after observing the procedures mandated under law. Thus GOI, DOPT orders were not followed.
- iii. The respondents wantonly overlooked the facts that the applicant has passed HSC/12th.
- iv. The respondents ought to have known that the applicant belongs to the community which historically has expertise and dexterity of cobbling and possess 12th standard with relevant experience.
- v. The respondents ought to have known that the applicant's late father with over six years to retire died in harness while working as Boot Maker under the 2nd respondent. They have failed to consider the case of the applicant in the manner it deserves.



- vi. The respondents erred in omitting the applicant from selection/appointment as Boot Maker who outshone others in the interview with better experience and better qualification of the competitors.
- vii. The official respondents bound to have satisfied whether there was any compliance with the relevant rule in the conduct of interview by the selection committee. In not doing so, the allegations and arbitrariness against the official respondents are liable to be interfered with on the irregularities and illegalities. (1994) 4 SCC 163: 1994 (SCC L&S) 937).
- viii. The 3rd respondent has shown undeserved benefits towards the less qualified inexperienced two individuals Ajay Anthony, S. Vimal Kumar on extraneous reasons, to the peril of the applicant.
- ix. The official respondents ought to have known that mala fide exercise of power is apparent dishonesty. A power is exercised fraudulently if the repository intends to achieve an object other than that for which he believes the power to have been conferred.
- x. It is submitted that the doctrine of legitimate expectation is impaired for no fault of the applicant.
- xi. The action of official respondents flagrantly violates Articles 14, 15, 16, 21 and 41 of the Indian Constitution and the applicant is subjected to hostile discrimination.
3. Per contra, the respondents have filed a detailed reply statement stating that two Boot Maker vacancies were released by IHQ of MoD during February 2013. Accordingly, vacancies were notified and published in the Tamil local daily Dinakaran. According to the



Recruitment Rules, the minimum educational qualification required for the post of Boot Maker is a pass in Matriculation or its equivalent examination. Any additional qualification has no weightage. The candidates applying for the said post should have the work experience in the trade concerned. The applicant possessed HSC/12th standard qualification. The recruitment to the post of Boot Maker is by way of direct recruitment and not to be filled by compassionate appointment. Further the vacancy is to be filled up in accordance with the Recruitment Rules based on VI CPC recommendation. The mode of written examination, trade test and interview is to be conducted as per SOP issued by IHQ and MoD (Army). Pursuant to the above, six applications were received on 9.8.2013 for the said post. Candidates were also sponsored through Employment Exchange. After due verification of documents, candidates were called for written test on 23.10.2013, practical test and interview were held on 24.10.2013. Two candidates namely Vinith Ajay (BC) and S. Vimal Kumar (SC) came out victoriously whereas the applicant could not come in merit. Merely because the applicant belongs to the cobbler community and possess additional qualification the same does not entitle him to the post of Boot Maker. Selection of the two persons who were selected for the post of Boot Maker in accordance with the recruitment rules are working in the Department with required skill and ability to the satisfaction of the higher officials concerned and their selection was also approved by the 2nd respondent vide Board Proceeding dated 23.10.2013. Hence the respondents pray for dismissal of the OA.

4. The applicant has filed rejoinder contradicting the statement made by the respondents in the reply and challenging the procedures followed in conduct of written test and interview.



5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.
6. At the outset the respondents have raised preliminary objection for not impleading the names of two allegedly selected persons as party respondents in the OA and on that ground have prayed for dismissal of the OA. Non impleadment of parties against whom the applicant seeks relief is a serious legal lacuna and on the said ground itself the OA is liable to be dismissed.
7. The terms and conditions as specified in the Recruitment Rules notified and published in Tamil local daily Dinakaran on 9.8.2013 are reproduced below:-
 - “(a) The candidates applying for the post of Bootmaker should have passed Matriculation or its equivalent examination.
 - (b) Should possess sufficient experience in Bootmaker trade.
 - (c) Number of vacancies - Two
 - (d) Age limit --- 18 to 25 years (UR -category), for ex-servicemen, military service plus three years.
8. Admittedly, the applicant in pursuance of the recruitment rules applied for the post of Boot Maker and on his being found eligible he was also called for written test and interview. Out of six candidates who appeared in the written test, practical test and interview only two candidates namely I. Vinith Ajay (BC) and S. Vimal Kumar (SC) secured the requisite marks and accordingly it is they who have been selected on the basis of marks obtained by them. The applicant did not secure the requisite marks much less has

he come on merits.

9. The contention of the applicant is that he has higher qualification (Plus 2) than those selected ones (matric) and he belonged to cobbler community and thus he is the most suitable candidate for selection. This contention is liable to be rejected on the simple ground that the selection is based not on higher qualification but higher merit in the written examination and performance in the interview. Once a minimum qualification is fulfilled, all are treated to have qualified to participate in the selection and all are treated equally as eligible to participate in the examination. If rules prescribe for any additional marks for higher qualifications, the same may be offered to those who have such higher qualification. No such prescription has been available in the recruitment rules. Thus, it is purely on the basis of merit in the written examination followed by practical test interview, that selection is made and in that process, the two individuals whose performance was found to be meritorious have been selected and appointed. The applicant could not make it to the merit and he has not been selected. There is thus, no illegality in the appointment already made.

10. The Apex Court has, in the case of Madan Lal vs State of J & K (1995) 3 SCC 486 has held as under:-

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition.



It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.*, (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, 'the result of the 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 reassess the relevant merits of the concerned candidates 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 others 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 are certainly not acting as a court of appeal over the assessment made by such an expert committee".

The above decision of the Apex Court has been followed (reproducing the above two paragraphs) in the case of *Madras Institute of Development Studies vs K.Sivasubramaniyan* (2016) 1 SCC 454

11. The applicant contended that although he met the same eligibility criteria as specified in the advertisement, the respondents wantonly and deliberately omitted to select and appoint the applicant as Boot Maker ignoring the fact that he belonged to a community which historically has expertise and dexterity of cobbling. This contention has to be summarily rejected being more imaginative. No such accusation could be attributed to the authorities where there has been no basis for the same.

12. The applicant cannot attribute any mala fide or discrimination against the respondents



as the selection has been made as per the procedure and one of the selected candidates belonged to 'SC' community. If the applicant is aggrieved by any selection procedure or the notification issued by the respondents, he ought to have challenged the same well before the commencement of the examination or at the latest before the declaration of result. No such allegations have been made against the respondents. Once a person is not selected, he is precluded from challenging the selection procedure. Having participated in the selection, practical and oral interview and after coming to know that his name did not figure in the selection/appointment list, cannot take a U-turn as an after thought and make a claim challenging the vires of the recruitment rules and procedures followed therein by the respondents.

13. The applicant is also making a claim that he could have been considered for compassionate appointment on the ground that his father died in harness when he had six years of service left before superannuation leaving behind three daughters, wife and the applicant herein. The appointment on compassionate ground is done as per the scheme framed by the Department. The post in question is no doubt earmarked for direct recruitment quota and if the vacancy falls under the 5% quota for compassionate appointment, it could have been considered for being filled up under compassionate appointment scheme. Again, for appointment under compassionate grounds, specific norms have been prescribed and merit amongst the aspirants on compassionate grounds has to be evaluated. That is not the case in the instant application. Thus no premium could be given to the applicant on compassionate ground also

14. In the conspectus of the above facts and circumstances of the case and the



Judgement of the Hon'ble Supreme Court (supra), we do not find any merit in the claim of the applicant warranting interference. The OA is liable to be dismissed and is accordingly dismissed. No cost.