

## CENTRAL ADMINISTRATIVE TRIBUNAL

## MADRAS BENCH

DATED THIS DAY OF SEPTEMBER, TWO THOUSAND NINETEEN

## PRESENT:

HON'BLE MR. P. MADHAVAN, MEMBER (J)  
&  
HON'BLE MR. T. JACOB, MEMBER (A)

OAs.310/00936 & 937/2015

Muniammal  
No. 2, 'O' Block  
Viduthalai Nagar  
Mudaliarpet  
Puducherry – 605 004. ....Applicant in OA 936/2015

R. Mahalakshmi  
No. 9, Seikiar Street  
Vishwanathan Nagar  
Muthiyalpet  
Puducherry – 605 003. ... Applicant in OA 937/2015

By Advocate M/s. Svaak Legal

Vs

1. Union of India, through  
Government of Puducherry  
Rep. by its Secretary to Govt. (Power)  
Puducherry.

2. The Superintending Engineer – I  
Electricity Department  
Government of Puducherry  
Puducherry. ... Respondents in both OAs

By Advocate Mr. R. Syed Mustafa

O R D E R

(Pronounced by Honble Mr. T. Jacob, Member (A))

The applicants have filed separate OAs under Sec.19 of the Administrative Tribunals Act, 1985 seeking the similar reliefs:-

"To direct the respondents to appoint the applicants in the post of Construction Helper (Work Charged) with effect from the Notification No.1-22/ED/Estdt /A.4/2010 dated 12.02.2010 issued by the 2<sup>nd</sup> respondent and consequently direct the respondents to pay all consequential benefits arising therefrom and pass such further or other orders"

2. As a common question of law has arisen in these two OAs and the relief prayed for is also common in nature, we propose to dispose of these two OAs by way of a common order.

3. The brief facts of the case as submitted by the applicants are as under:

The applicants, in pursuance of a Notification dated 27.02.2009 issued by the second respondent inviting applications from Male Indian Citizens to fill up the post of Construction Helper (Work Charged) in the Puducherry Electricity Department, applied for the same having fulfilled the required educational and technical qualification. When the applicants were waiting for the call letters for the interview, the second respondent without any intimation suddenly issued another notification dated 12.02.2010 in supersession of the earlier notification dated 27.02.2009 thereby denying a chance for female citizens. The applicants submitted individual representation dated 23.02.2010 stating that the recruitment rules does not impose any restrictions for female

candidates to apply for the above said post for which they have not received any reply from the respondents. Being aggrieved, the applicants herein along with others filed OA.267/2010 wherein this Tribunal by interim order dated 09.03.2010 permitted the applicants to participate in the recruitment process and any further development was to follow subject to the result of the OA. Accordingly, the respondents vide Memorandum dated 23.06.2010 called the applicants for verification of all original documents followed by Physical ability test (including ability to climb on electric post) and personal interview. The applicants attended the interview but were exempted from climbing on the electric posts in pursuance of their representation dated 05.07.2010. However, the respondents in their reply statement filed before this Tribunal have stated that none of the women candidates could qualify in the physical ability test and on that basis, Tribunal by order dated 02.03.2012 closed the OA stating that nothing survives in the OA as the applicants were allowed to participate in the selection process. Aggrieved by the said order, the applicants in the instant O.As had approached the Hon'ble High Court by filing W.P.No.32963/2013, which was dismissed giving liberty to the applicants to challenge their non-selection in a separate proceedings, if there is any deficiency in the selection process.

4. It is further submitted by the applicants that the respondents have again issued notification dated 03.06.2015 through daily newspapers, wherein fresh applications were called for, for the post of Constructions

Helper (Work Charged) and the earlier conditions of Physical Ability Test and Personal Interview in the selection process have been deleted. Hence the applicants have filed these OAs seeking the above reliefs on the following grounds:-

- (a) The action of the respondents is against the principles of natural justice and is violative of Art.14, 15 & 21 of the Constitution of India.
- (b) Discriminating the applicants from male candidates in applying to the post of Construction Helper (Work Charged) is against the law of the land and Constitution of India which provides equality among both the genders.
- (c) The respondents ought not have rejected the applicants who have not climbed the trees so as to check whether they have the ability of climbing electric poles. The respondents ought to have checked only the physical ability of the applicants herein to climb electric poles and should not have insisted them to climb trees which they are capable enough but refused to do so and hence the respondents declared that none of the female candidates were selected in the physical ability test. The applicants are otherwise eligible for the above said post and as such the action of the respondents has to be restrained.
- (d) The female candidates were at par with the male candidates and they were equally qualified against male candidates in each and every field. Therefore, the act of the respondents is discriminating the female candidates with the male candidates in terms of physical ability of climbing trees should be condemned. Every one of the female candidates participated in the selection process for the post of Construction Helper (Work Charged) had refused to climb trees when it was insisted by the respondents to qualify in the selection process.
- (e) The applicants before attending the interview had given a representation to the second respondent not to compel them to climb the electric posts in order to check their physical ability. Since the

applicants could not climb the electric posts, they were not selected. The women candidates were discriminated from men only because of their gender and their right to get a job were denied by the respondents 1 & 2.

(f) In the era of technology, climbing of poles which is a colonial and redundant practice is not necessity for any job. Almost Government Departments and other Electricity Boards have done away with such a requirement. Respondents 1 & 2 under Art. 12 of the Constitution of India is required to be a model employer is bent upon discriminating women by seeking such a requirement of climbing poles is nothing but unconstitutional.

(g) There are several females working as Construction Helpers (Work Charged) right from 1995 in the Electricity Department, Puducherry which is imminent from the OM dated 18.12.1996, 08.10.1999 and 27.10.2005. The Recruitment Rules framed for the above said post does not provide any condition of ability to climb electric pole under the Physical Ability test.

(h) In the present notification dated 03.06.2015 the respondents have deleted the earlier column (1) Physical Ability Test and (2) Personal Interview in their selection process. The respondents are changing their selection according to their whims and fancies and it would definitely affect the right of the applicants.

5. Per contra, the respondents have filed their reply statements in the respective OAs stating that the selection of candidates to the post of Construction Helper (Work-charged) has been done as per the notification in G.O.Ms.No.16 dated 09.04.2010 of the Industrial Development (Power) Department, Puducherry.

The classification of marks allotted for each category reads as follows:-

a	Percentage of marks obtained in S.S.L.C /Matriculation or its equivalent	50% of marks
b	Percentage of marks obtained in the I.T.I. final examination	90% of marks
c	For a pass in Apprenticeship training in Electricity Department or in any company sponsored by the Labour Department under the Apprenticeship Act, 1961	10 marks
d	Marks for seniority based on the registration of I.T.I. Certificate in the Employment Exchange @ one mark for every year of registration limited to 10 marks	10 marks
e	Physical ability test (including ability to climb on electric pole)	25 marks
f	Personal interview	15 marks
	Total	200 marks
g	5% marks shall be deducted for second or subsequent attempt in I.T.I	

6. The Recruitment Committee for the post of Construction Helper (Work-Charged) in its meeting held on 24.02.2011 has drawn a Provisional Merit List for 127 candidates in the order of merit as per the notified mode of selection process for recruitment of candidates to the post of Construction Helper (Work-charged) and published the same in the Notice Board of Electricity Department on 25.02.2011, according to which, the last candidate in OA.936/2015 selected under M.B.C. category has secured 150.271 marks as per the notified selection process and the applicant had secured only 133.200 marks, whereas in O.A. 937/2015, the last candidate selected under OBC category has secured 150.200 marks as per the notified selection process and the

applicant therein had secured only 101.914 marks and hence the name of the applicants did not find place in the published provisional select list. Hence, the respondents pray for dismissal of these OAs.

7. We have heard the learned counsel for the respective parties and perused the pleadings and documents on record.

8. Admittedly this is the second round of litigation before this Tribunal. Earlier the applicants had filed OA.267/2017, wherein this Tribunal by way of interim order permitted the applicants to participate in the selection process notified by the Government of Puducherry. However, in the selection process they were found to be 'unfit' for selection. Since the reliefs sought for by the applicants in the OAs have become infructuous, this Tribunal closed the OAs granting liberty to the applicants to file a fresh OA if they are aggrieved by any deficiency in the selection process. Challenging the above order of this Tribunal, the applicants filed WP.32963/2013 before the Hon'ble High Court of Madras wherein the said WP was dismissed by order dated 04.12.2013. However, on the basis of liberty given by this Tribunal, the applicants are now before us seeking the above reliefs.

9. As per the notified selection process, the applicant in OA.936/2015 has secured 133.200 marks as against the last candidate selected under 'MBC' category who has secured 150.271 marks. The applicant in OA.937/2015 has secured 101.914 marks as against the last candidate selected under 'OBC' category who has secured 150.200 marks. Even assuming that both the applicants are awarded 100% marks in the

physical ability test, they cannot come in the merit list in their respective categories. The applicants rely on the subsequent Government of Puducherry G.O.Ms.No.45 dated 22.01.2015, which dispenses with weightage marks for awarding physical ability test. In supersession of the earlier notification in G.O.Ms.No.16 dated 04.02.2010, the Government revised the mode of selection of candidates for recruitment to the post of Construction Helper in the Department with the approval of the Lieutenant Governor vide G.O.Ms.No.45 dated 22.01.2015. In the instant cases, this may not be applicable as each selection process is separate and has to be conducted as per the provisions contained in the respective notifications and the provisions contained in the subsequent notification cannot be made applicable to previous selection process.

10. As per the position of the applicants in the merit list under respective categories in the provisional select list, the applicants were not selected. Hence the rejection of the candidature of the applicants was purely on the basis of merit. We do not see any illegality or infirmity in the award of marks and ranking to the applicants. The applicants have been afforded an opportunity to participate in the selection process by way of interim order of this Tribunal and there is no discrimination. Further, the applicants have not alleged any malafide against the selection committee in the process of selection. Keeping in view the settled law that a candidate who is not successful in the selection, is not entitled to assail the selection process. The applicants after coming to

know that they were not successful in the selection, cannot take a u-turn subsequently and challenge the same as an after thought.

11. 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 Hon'ble 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.

12. As there have been more meritorious candidates, rightly the applicants could not be accommodated under the respective quota.

13. In the conspectus of the above facts and circumstances of the case, the OA is liable to be dismissed and is accordingly dismissed.

14. No order as to costs.

(T. Jacob)  
Member (A)

/kam/

.09.2019

(P. Madhavan)  
Member (J)