
(2019) 02 DEL CK 0137

In the Delhi High Court

Case No : Civil Writ Petition No. 11507 Of 2017

Ravinder Sirohi

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Citation : (2019) 02 DEL CK 0137

Hon'ble Judges : S.Muralidhar, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Abhishek K. Choudhary, Arun Bhardwaj

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. Aggrieved by not being offered appointment to the post of "Chowkidar" despite having cleared all stages of selection process, the Petitioner has filed the present petition.

2. In July 2016 the Commanding Officer, Military Hospital, Doda Respondent No.3 issued a recruitment notification for various posts including that of "Chowkidar" for which the Petitioner applied. The Petitioner cleared the exam held on 14th September 2016. He was asked to report to the Military Hospital for completion of pre-appointment documentation and other formalities. It is stated that on 11th January 2017 the Petitioner produced all the relevant documents for verification.

3. Thereafter, he kept waiting for the appointment letter. When it did not come through, the Petitioner issued a legal notice to the Respondents dated 6th November 2017. A reply dated 21st November 2017 was sent stating that the hospital was not empowered to issue appointment letter and that the issue was pending with the headquarters. On 30th November 2017 the Petitioner was informed that the appropriate authority has quashed the entire board

proceedings due to "procedural anomalies" and fresh recruitment process would be initiated shortly.

4. This led the Petitioner to file the present petition in which notice was first issued on 21st December 2017. On 15th October 2018 the following order was passed by this Court:

"1. Counter affidavit has been filed by the respondents.

2. Learned counsel for the respondents states that the entire recruitment process that had commenced on 18.07.2016, in terms of the advertisement issued by the respondents for filling up the vacancies of Chowkidar, Washerman, Cook, Safaiwala, Mali and LDC has been quashed by the Competent Authority for the reasons stated in the letter dated 18.11.2017 enclosed with the counter affidavit (Annexure A-12).

3. Learned counsel for the petitioner states that the said letter clearly indicates that there were some discrepancies observed in the recruitment process which are attributable to the respondents and that being the position, the petitioner cannot be made to suffer, as by now, he has become overage and therefore even if fresh vacancies are advertised, he would not be eligible to apply for the same.

4. We have enquired from learned counsel for the respondents if the Department would consider giving relaxation to the petitioner and other similarly placed candidates for any advertisement that may be issued for the subject vacancy in the future. Learned counsel for the respondents states that he may be permitted to obtain instructions from the Department.

5. While obtaining instructions, learned counsel for the respondents shall also indicate a timeline within which a fresh advertisement would be issued by the Department for filling up the subject vacancy.

6. At the request of learned counsel for the respondents, list on 29.10.2018."

5. A counter-affidavit has been filed by the Respondents in which inter alia the reasons for cancelling the entire selection process has been set out. In an internal communication dated 18th November 2017, enclosed with the counter-affidavit as Annexure A-12, the following discrepancies in the selection process were highlighted:

"(a) Vacancy not fixed correctly as per reservation roster for Washerman and Chowkidar categories which has resulted in candidates getting misled with regard to eligibility and number of vacancies for each category.

(b) The guidelines for civilian Recruitment Group "C" has not been followed as fair chance was not given to all candidates by asking for character certificate from police at the time of submission of application. This has resulted in rejection of a very large number of applications.

(c) Question paper is of high std. not commensurating with minimum academic

qualifications."

6. Mr. Arun Bhardwaj, learned counsel for the Respondents, states that in addition to the above three reasons, one more reason was that no typing test was held in terms of IHQ of MoD (Army) letter dated 3rd January 2012.

7. A reference is also made by Mr. Bhardwaj, to the decision of Supreme Court in *Vinodan T. v. University of Calicut* (2002) 4 SCC 726 and in particular observations in para 14 that "persons merely selected for the post was not thereby acquired right to acquire such post."

8. Mr. Abhishek K.Choudhary, learned counsel for the Petitioner, on the other hand points out that there is no denial by the Respondents that the Petitioner is on top of the merit list; in fact he is No.1 in the order of merit. He further points out that the Petitioner has successfully qualified for the post of "Chowkidar" and, that the non-holding of a typing test is of no relevance to that post.

9. The Court has considered the above submissions. Indeed none of the three discrepancies noted in the internal communication dated 18th November 2017 appear to justify cancelling the Petitioner's candidature. None of those discrepancies actually apply to the Petitioner. He has in fact provided all certificates/documents as required and he is not one of the candidates who got misled with regard to the eligibility and number of vacancies since they were not fixed as per the reservation roster for the Washerman and Chowkidar candidates. That the question paper was of high standard and not commensurate with minimum academic qualifications also does not come in the way of the Petitioner's candidature since he has in fact cleared all the papers and is at Serial No.1 in the merit list. Further, even according to the Respondents the typing test was to be taken only by the candidates who applied for the posts of LDCs and Cooks. Therefore, this was not relevant for the post of "chowkidar" for which the Petitioner applied.

10. Turning to the decision in *Vinodan T. v. University of Calicut* (supra) it is necessary to set out the entire para 14, one line of which was relied upon by Mr. Bhardwaj. It reads as under:

"14. The principle that persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established by judicial precedent. Even if vacancies exist, it is open to the concerned authority to decide how many appointments should be made. However the selected candidates have a right to compel such authority not to make appointments by travelling outside the batches in the college for delinking, issue of executive orders, orders stopping admission for the batches proposed to be discontinued and suitable deployment of the staff, both teaching and non-teaching which may be rendered surplus. For protecting the service interests of the existing teaching and non-teaching staff, it was also decided that further appointments of teaching staff and non-teaching staff in the colleges and university should be stopped immediately. The circular also states that though the decision in this regard was taken in December, 1996

"it is reported that the private colleges and universities have been resorting to recruitment of teaching and non-teaching staff which may become a great financial burden for Government in future".

11. It would be seen that in the above decision a panel of Assistants Grade-II in the University was prepared as stop-gap arrangement pending regular recruitment to the post. Two years after the said panel was drawn up, a decision was taken to limit its validity to two years. This decision was upheld by the Supreme Court which permitted the University to engage 40 - 50 Assistants on daily wage/work need basis. It is in these circumstances, the contention was put forth by the Appellants that the validity of the rank list for future selection should be fixed at three years and since they had been in continuous service for seven years, they should be regularised. This contention was rejected by the Supreme Court and in that context the above observations were made.

12. Clearly, the facts of the present case are different inasmuch as pursuant to a regular selection the Petitioner has qualified on top of the merit list. There appears no valid reason for invalidating his candidature by cancelling the entire selection when his candidature is not affected by any of the reasons given by the Respondents for such cancellation. In *Onkar Lal Bajaj v. Union of India* (2003) 2 SCC 673 the Supreme Court observed that en masse cancellation was worse than the problem. In *Joginder Pal v. State of Punjab* (2014) 6 SCC 644 the Supreme Court emphasised the importance of segregating the tainted candidates from the untainted ones and not en masse cancel the entire selection.

13. As a result of the impugned decision of the Respondents cancelling the entire selection, the Petitioner, who has qualified at the top of the merit list is now permanently rendered disqualified for further selection on account of being overage for any subsequent selection. Therefore, the cancellation has severely prejudiced the Petitioner. This was certainly not the factual situation in *Vinodan T. v. University of Calicut* (supra). There must be good reasons for cancellation of the candidature of a qualified candidate. That is missing in the present case.

14. Consequently, this Court sets aside the decision of the Respondents qua the Petitioner cancelling his candidature and directs that he be appointed as "Chowkidar". The Respondents will issue an appropriate order to that effect within a period of eight weeks from today. The petition is allowed in the above terms.

15. Dasti.