

(2012) 12 DEL CK 0150
In the Delhi High Court
Case No : Writ Petition (C) 7651 of 2012

Vinay Kumar

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Citation : (2012) 12 DEL CK 0150

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Anuj Agarwal, for the Appellant; Ravinder Agarwal, Advocate with Mr. Amit Yadav and Mr. Satya Prakash, for the Respondent

Judgement

Pradeep Nandrajog, J.

CM No. 19369/2012 (Exemption)

Allowed; subject to all just exceptions.

WP (C) No. 7651/2012

1. One set counter affidavit filed is taken on record. On February 5, 2011, the Staff Selection Commission published an advertisement inviting

applications from eligible candidates to be recruited as Constable (G.D.) in BSF, CISF, CRPF and SSB, and for reference we would refer to the

same as "Constable (G.D.) 2011 Recruitment".

2. The advertisement indicated to the candidates that they would have to clear a written examination and those who qualify therein would have to

clear a Physical Efficiency Test and those who clear the same would be subjected to a medical examination. It was indicated in the advertisement

that only those who scored above the cut off marks would be required to appear at the medical examination and if a candidate was declared unfit

the candidate would have a right to appeal within 15 days against the decision of the Medical Board, but if found fit at the Review Medical Board,

the advertisement indicated:

If found fit by appeal panel in due course, will be recruited against the wastage.

3. Why do bureaucrats speak using derogatory language? We wonder!

4. To call a person as wastage, and this would be the meaning which is plain and simple in the advertisement, inasmuch as the candidates found fit

at the Review Medical Board being classified as recruited against wastage, in our opinion is derogatory, in any case the expression "wastage" is

totally out of sync with the concept.

5. Be that as it may, as the facts would unfold, it is plain and clear that the advertisement is designed in a manner which is capable of breeding

corruption and this would be obvious by the facts which we now note.

6. The petitioner successfully clear the Written and the Physical Efficiency Test and was called upon to appear before the Medical Board on

August 16, 2011. He was declared unfit. Exercising the right as per the advertisement, the petitioner appealed against the decision and as per the

advertisement was entitled to be re-examined by a Review Medical Board, and discharging its obligation under the advertisement the respondents

notified to the petitioner to appear before a Review Medical Board on October 22, 2011. Re-examined by the Board the petitioner was found fit

and certifying so on October 22, 2011.

7. By said date the select list had not been notified.

8. The final result was declared on November 28, 2011. People lower in merit was empanelled. Petitioner was not.

9. His repeated protest for the injustice caused was not even responded to.

10. Thereafter, the so called wastage list was notified. The petitioner's name was not included in this list which was published on July 31, 2012,

compelling the petitioner to protest once again by informing that notwithstanding he having obtained 52 marks, his name was not in the list and that

the last empanelled candidate had only 46 marks. The respondents did not furnish any reply to the petitioner and he was therefore compelled to file

the aforesaid petition.

11. Record produced would reveal that in the list published on November 28,

2011, the last empanelled candidate had secured 46 marks.

Indisputably the petitioner has obtained 52 marks.

12. The only justification given is that when the list dated November 28, 2011 was published, the Department did not have the decision of the

Review Medical Board and this was the reason the name of the petitioner was not included in the list. Thereafter, when the wastage list was

prepared, the same was with respect to those who were initially declared unfit but in the Review Medical Board were declared fit. The number

being large and all of them having secured very high marks, the name of the petitioner was not included in the wastage list dated July 31, 2012.

13. It is obvious that the system is being manipulated. If the Department gives a right to question the medical unfitness certified by Medical Board,

we see no reason why select list are finalized without taking into account the decision at the Review Medical Board. In the instant case, pertaining

to the petitioner, the decision of the Review Medical Board certifying petitioner fit is dated October 22, 2011. The final result was declared on

November 28, 2011. Just as the petitioner, many other similarly situated persons were left out. The result is that persons lower in merit were

empanelled. Thereafter, the revised list was drawn out for the few left over seats and needless to state, included in the list were the so called

wastage candidates, who had secured more marks than the last empanelled candidates when the result was declared on November 28, 2011. The

result is that at the end of the recruitment process, people lower in merit are empanelled and those higher in merit stand outside the door.

14. Now, Courts have insisted on cut off dates to be notified because this ensures no manipulation in a selection process. Otherwise, to favour

candidates the cut off dates can be manipulated. Similar would be the position with respect to date when a result is to be notified. All procedures

as per the advertisement relating to the selection process have to be completed before the said date. If the respondents gave a right to the

candidates to question the decision taken by the Medical Board qua their fitness, the final declaration of the result had to await the decision of the

Review Medical Board.

15. The facts of the instant case bring out the manner in which the system is being manipulated.

16. We dispose of the writ petition directing the respondents to revise the list dated November 28, 2011 and include in the said list the names of all candidates, in order of merit obtained, who were initially declared unfit but were later on declared fit at the Review Medical Board. All those who have qualified for selection in order of merit, which of necessity would include the petitioner would be issued letters offering appointment keeping in view their merit position and the force opted for. This would mean that the letter offering appointment would take into account the merit position and the option by a candidate.

17. We are issuing a general mandamus because experience have shown to us that whenever in the past a correction has been directed to be made good with respect to one person, the Court is flooded with a spate of writ petitions. Not that our only desire is to save precious judicial time, but even on principles of law we would be justified in issuing a general mandamus.

18. Where a wrong is found to be in rem by a public authority, it would be expected that the authority would take remedial action in rem and not with respect to a single individual. If a selection procedure is found to be contaminated, the benefit of decontamination must enure to all.

19. Compliance be made with the mandamus issued within eight weeks from today and needless to state all those who would be issued letters offering appointment would be entitle to their seniority as per their merit positions and all consequential benefits save and except wages, which need not be paid till they join service. No costs.

CM No. 19368/2012

Since the writ petition stands disposed of, instant application seeking stay of the impugned order till disposal of the writ petition stands disposed of as infructuous.