

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: November 12, 2013

+ W.P.(C) 3381/2002

COMMANDER & ORS. Petitioners
Represented by: Ms.Anjana Gosain, Advocate
with Mr.Pradeep Derodya,
Advocate

versus

BHUPENDERA KARDEAM & ORS. Respondents
Represented by: Mr.Sachin Chauhan, Advocate
for R-1, R-2 and R-4 to R-6

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The writ petition lays a challenge to the order dated January 22, 2002 in Original Application No.303/2000, whereby the Tribunal allowed the Original Application filed by the respondent Nos.1 to 6 herein and set aside the selection of respondent Nos.7 to 13 as Mazdoors.
2. The brief facts are that 24 vacancies of Mazdoors were notified to the Sub Regional Employment Exchange, Kirby Place, Delhi Cant. by the petitioners. Simultaneously an advertisement to this effect was also released in 3 national dailies.
3. The required qualifications and age for the candidates was notified as 8th class pass and 18 to 25 years age with relaxation upto 30 years in case of scheduled caste/scheduled tribe candidates and 3 years

relaxation in the case of OBC candidates as per recruitment rules and prevailing policy of the Government of India.

4. The Board was constituted by the petitioner No.1 consisted of Deputy Commander Works Engineers, 2 Assistant Garrison Engineers Technical and 1 Chief D's Man for conducting the recruitment test. An administrative officer was also detailed for preparation of list and production of applications/certificates.

5. The criteria comprised of testing stamina by performing 2 k.m running on road within 10 minutes, test of strength by lifting, carrying and unloading a bag of sand weighing 50 k.g. This test was of qualifying in nature.

6. The total applications received were 2912. The final selection list was issued would find the names of respondent Nos.7 to 13 as candidates selected. The respondent Nos.1 to 6 filed the Original Application inter-alia challenging the selection of the respondent Nos.7 to 13 herein on the ground that the same was influenced by illegal gratification as well as connection with persons concerned with the selection. According to the respondent Nos.1 to 6, in their Original Application, 6 posts out of 24 were filled by the children of the Members of the Selection Committee or those of the staff attached to the Members of the Selection Committee. The petitioners filed a reply before the Tribunal.

7. On perusal of the stand taken by the petitioners before the Tribunal, we note that the petitioners have tried to justify the appointments of respondent Nos.7 to 13 herein.

8. The Tribunal disagreed with the contention of the respondent Nos.1 to 6 herein, who were the applicants before it that the selection

should not have included the criteria of interview. This was not accepted by the Tribunal. However, the Tribunal found the allegations made by the respondent Nos.1 to 6 herein who were the applicants before the Tribunal as justified by observing as under:

“However, the process adopted for selection calls for some criticism as against 6 out of 24 ultimately selected, allegations have been made of their proximity to those concerned in selection. It is stated that respondent No.8 is the son of the Driver of the Presiding Officer of the Selection Committee, No.9 is one who failed in both of the physical tests. Respondent No.10 is the son of the Administrative Officer who was himself the Member of the Selection Committee, respondent No.11 was closely known to respondent No.4, respondent No.12 & 13 are the children of the staff attached to the Presiding Officer while No.14 is the son of the Member of the Selection Committee. These are not disputed facts. However, the official respondents plead that the above respondents had made the grade on their own superior merit and performance and their selection had nothing to do with their relations with Member of the Selection Committee. While there is no evidence of any bribe taking, we cannot totally sideline the allegation that influence could have played a part in the selection, as 6 out of 7 persons selected, referred to, are the dependents of those employees in the organisation who would have had some connection with the Selection Committee, so as to influence the selection atleast in a remote way. Infact two of them were sons of the Members of the Selection Committee and it will be difficult to conceive that their presence would not have influenced in the proceedings of the Committee.”

9. Ms.Anjana Gosain, learned counsel for the petitioners would submits that the Tribunal has mis-directed itself by not appreciating the facts in proper perspective. The conclusion is not borne out from the pleadings on record. She would state that every selectee whose appointment has been challenged should not be painted with the same

brush. According to her even though petitioners have justified the selection based on merit but still if the selection is vitiated on the ground that the relatives were part of the selection committee that may be true only with regard to two selectees. She would further submit that merely because the relatives of the selectees were working in the same department, which were headed by the members of the selection committee would not be a ground to set aside the selection of those candidates. She would further submit that the respondent Nos.1 to 6 who were applicants before the Tribunal had purposely challenged the appointment of certain persons leaving aside the selection of some persons who were also relative to persons working in the department and holding position in the union which raked up the issue of selection process.

10. Mr.Sachin Chauhan, learned counsel for respondent Nos. R-1, R-2 and R-4 to R-6 would support the order of the Tribunal. According to him it is apparent that the selection of 6 respondents, respondent Nos.7 to 13 was vitiated because of detailed facts averred by his clients in the Original Application.

11. Having considered the rival submissions and the record of the case, it is apparent that the wards of service personnel are pitted against each other. Be that as it may, in this writ petition we have to see that on facts which selectee's appointment is said to be vitiated on the ground of likelihood of being bias.

12. For this purpose we reproduce hereunder the averments made by the petitioners in para 5(i) to para 5(vii) for proper appreciation.

(5)(i) That Mahesh Kumar, who was arrayed as Respondent/8 is the son of the Driver of the Respondent/5Mr.J.S.Sidhra, CW(B&R) who was the

Presiding Officer of the Selection Committee. The Appellant had refuted the said allegation in the Counter Affidavit wherein it was stated that the said Respondent is the son Shri Laxmi Narain, MT Driver employed in GE (AF) North Palam. However, due to shortage MT Drivers he was deputed for short duration at HQ CWE (AF) Palam and deputed to drive the Jeep of Shri R.C.Trikha, DCME E/M temporarily who has absolutely no connection with Shri J.S.Sidrah the Presiding Officer of the Board. Therefore the averment is absolutely wrong and denied.

(5)(ii) That Shri Ajay Pal arrayed as Respondent/9 is one candidate with no merit and has been taken on extraneous consideration. He had failed in the 2 km/10 mts race and never participated in the 50 Kgs. Weight lifting/carrying it for 50 metres. In the counter affidavit the said allegations were denied. Shri Ajay Pal had participated in all the tests and was selected on merits.

(5)(iii) That Shri Sudesh Kumar arrayed as Respondent/10 is the son of the Administrative Officer (II) Mr.Rattan Pal who was a member of the Selection Committee/Respondent/7. In the counter affidavit it was clarified that the father of the said Respondent, Shri Rattan Pal, was the Admn. Officer, and was not a member of the selection board. He was put simply in attendance for Admn. Duties and was not involved in selection process. Respondent 10 has been selected on his merits. His father being a very junior Officer was in no position to pressurize or influence members of the Board which consisted of Senior Officers. The said Respondent was selected purely on merit.

(5)(iv) That Shri Radhey Shyam arrayed as Respondent/11 is the son of the milk vender of Col.B.C.Verghese/Respondent-4 and runs a shop next to the House of the Respondent/4, "Rock View" AF Station/Palam. In the counter affidavit the same was denied and it was stated that Radhey Shyam, is neither a milk vendor nor having any connection with Col.R.C.Verghese nor runs any shop next to the house of

the above officer at Rock View Palam. He was a general candidate and selected on merits. The Respondents were with malafide intentions defaming the officers for their self interests by concocting, baseless and false stories in order to have the selection set aside.

(5)(v) That Shri Anup Singh Rawat arrayed as Respondent/5 who was the son of a UDC attached to the Respondent/5 who was the Presiding Officer of the Selection Committee. In the counter affidavit it was stated that MR.Anup Singh Rawat, was the son of UDC serving since last 6 years and his duties are rotated in various sections/officers. The UDCs of E-2 section are working under AE Plg./Office Supdt. Of respective section and have nothing to do with senior officers. Simply doubting the integrity of an officer is not fair especially when the selection had been finalised on the basis of various physical tests/interview by a board of officers comprising of 4 members and concurred by Head of the office of the full Colonel Rank. These are only baseless allegations having no merit and liable to be rejected our rights.

(5)(vi) That Shri Ranjan Kumar arrayed as Respondent/13 is the son of the Peon attached with the Presiding Officer/Respondent-5 of the Selection Committee. In the Counter Affidavit it was denied that the father of Mr.Ranjan Kumar, Respondent NO.13 was serving with the Presiding Officer of the Selection Committee. In fact his father was an old group D employee working in Drawing Section.

(5)(vii) That Sahri Sanjay Singh arrayed as Respondent/14 is the son of a Member of the Selection Committee Mr.Veer Singh Asstt. Garrison Engineer/Respondent No.7. In the counter affidavit it was clarified that although the said respondent i.e. Shri Sanjay Singh was the son of a Member of Selection Committee but his father has nothing to do with his selection as he is selected by a group of senior officers and not by a single officer and the selection is based purely on his merits. Simply because he happens to son of a member, it cannot be a dis-qualification.”

13. On perusal of the stand of the petitioners in the writ petition, it is noted that two respondents i.e. respondent Nos.10 and 14 are the wards of the members who were part/associated with the selection committee. In the case of respondent No.7 Sanjay Singh, he is the son of the member of the selection committee Mr.Veer Singh Asstt.Garrison Engineer. A person should not be a judge of his own cause. The fact that the father is part of the selection committee ex-facie make the selection illegal.

14. In so far as the respondent No.10 Mr.Sudesh Kumar is concerned, he is the son of the Administrative Officer Mr.Ratan Pal who even if not part of the selection committee but was assigned administrative duties connected with the selection process. The very association of Mr.Ratan Pal with the selection process even for discharging administrative duties would demonstrate likelihood of the selection of respondent No.10 having been vitiated.

15. Regrettably, neither Mr.Ratan Pal nor Mr.Veer Singh, Asstt. Garrison Engineer had recused themselves from the selection committee. It talks volumes as to why they had continued their association despite knowing that their wards are in the fray.

16. In this backdrop the role of the Head of the Selection Committee would also need to be adverted to. It is noted that even the Head of the Selection Committee had not asked Mr.Ratan Pal and Mr.Veer Singh to recuse themselves. No such averment has been made in the affidavit filed by Mr.J.S.Sidrah. In fact Mr.J.S.Sidrah in his affidavit has not adverted to the presence/association of Mr.Ratan Pal and Mr.Veer Singh in the selection committee, for the reasons best known to him.

17. In so far as other selectees are concerned, allegations have been

made by respondent Nos.1 to 6 in their Original Application that Mr.Ajay Pal respondent No.8 herein had failed in 2 k.m/10 minutes race and he never participated in 65 k.gs weightlifting and carrying it for 100 meters. Mr.J.S.Sidrah who was the head of the selection committee also does not deal with the allegations so made against respondent No.8 Mr.Ajay Pal. In fact the petitioners in their reply affidavit before the Tribunal had only stated that he had qualified all tests as is evident from test reports and merit for selection. No such report has been placed on the record. Even the affidavit filed by Mr.Ajay Pal does not reflect the manner in which he has passed the physical examination in the time taken by him to complete 2 k.m etc. Three candidates namely Mahesh Kumar, Anoop Singh Rawat and Ranjan Kumar are the wards of personnel working in the department. The 4th one Mr.Radhey Shyam is an outsider alleged to be close to Col.B.C.Vergheese respondent No.14 herein.

18. Given the background of the case and the allegations made therein, more specifically the constitution of the selection committee including the relatives of the candidates who have applied for appointment would highlight the manner in which the whole exercise was sought to be carried out. The exercise has not been fair, transparent and open. To set right such a selection, if the Tribunal has directed for a fresh consideration by a fresh selection committee we do not see any infirmity in such directions. This would also obviate any allegation of nepotism and bias. The Supreme Court in its opinion reported as (1969) 2 SCC 262 A.K.Kripak vs. Union of India & Ors. has held as under:

“The members of the selection board other than Naqishbund, each one of them separately, have filed affidavits in this Court swearing that Naqishbund in no

manner influenced their decision in making the selections. In a group deliberation each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge. Ms bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of selection board functioned like computers. At this stage it may also be noted that at the time the selections were made, the members of the selection board other than Naqishbund were not likely to have known that Basu had appealed against his supersession and that his appeal was pending before the State Government. Therefore there was no occasion for them to distrust the opinion expressed by Naqishbund. Hence the board in making the selections must necessarily have given weight to the opinion expressed by Naqishbund.”

19. Further the Supreme Court in its opinion reported as (1985) 4 SCC 417 Ashok Kumar Yadav & Ors. vs. State of Haryana & Ors. (connected matters) has held as under:

“We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a Judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic

principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power stricto sensu is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a welfare state where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. This was the basis on which the applicability of this rule was extended to the decision-making process of a selection committee constituted for selecting officers to the Indian Forests Service in [A.K. Kraipak v. Union of India](#). What happened in this case was that one Naquisbund, the acting Chief Conservator of Forests, Jammu and Kashmir was a member of the Selection Board which had been set up to select officers to the Indian Forest Service from those serving in the Forest Department of Jammu and Kashmir. Naquisbund who was a member of the Selection Board was also one of the candidates for selection to the Indian Forest Service. He did not sit on the Selection Board at the time when his name was considered for selection but he did sit on the Selection Board and participated in the deliberations when the names of his rival officers were considered for selection and took part in the deliberations of the Selection Board while preparing the list of the selected candidates in order of preference. This Court held that the presence of Naquisbund vitiated the selection on the ground that there was reasonable likelihood of bias affecting the process of selection. Hegde, J. speaking on behalf of the Court countered the argument that Naquisbund did not take part in the deliberations of the Selection Board when his name was considered, by saying:

(SCC p. 270, para 15)

But then the very fact that he was a member of the Selection Board must have its own impact on the decision of the Selection Board. Further, admittedly, he participated in the deliberations of the Selection Board when the claims of his rivals ... were considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberation of the selection board, there was a conflict between his interest and duty The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct.

This Court emphasised that it was not necessary to establish as but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection."

20. For the reasons stated above, we do not see any merit in the writ petition. The same is accordingly dismissed.

21. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

NOVEMBER 12, 2013
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