

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.555 of 2015 (O&M)

Date of Decision:-18.10.2016

Kunal Sharma

.....Appellant

Versus

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Appellant in person.

Mr. Brijeshwar Singh Kanwar, Advocate for Union of India
for respondent Nos.1 and 2.

Wing Commander Sanjeev Bindra, OIC Legal Cell, 3 BRD
in person.

Mr. G.S. Sandhu, Advocate for respondent Nos.3 to 10.

SURYA KANT, J. (ORAL)

1.) This Letters Patent Appeal is directed against the order dated 13.3.2015 whereby the appellant's writ petition challenging the selection to the posts of Safai Wala made by the Air Force authorities at Base Repair Depot, Chandigarh, with a further direction for his own appointment on such post, has been dismissed by learned Single Judge.

2.) The appellant qualified the written test and was called for appearing in the interview for the post of Safai Wala. Since he was not selected, he filed the writ petition in which the respondent Authorities took

a stand that he “*could not be appointed as he was low in order of merit*”.

Learned Single Judge dismissed the writ petition, giving rise to this appeal.

3.) When the matter came up for hearing on December 7, 2015, a Co-ordinate Bench noticed that no proceedings were recorded by the Selection Committee and the entire selection appears to be “*mala fide*, null and void”. Notice was also issued to the selected candidates.

4.) In order to satisfy ourselves, we directed the authorities to produce the original selection record as the appellant was ousted from selection zone on the basis of his alleged poor performance in the interview. What has been produced today is a final 'Marksheet-cum-Merit List' which is a computer-generated print out and is signed by all the members of the Selection Committee. It is stated at the Bar that there is no other record of award of marks to the candidates under different “sub-heads” which were admittedly prescribed by the Selection Committee to determine the overall suitability of candidates who were short-listed for the interviews.

5.) It is interesting to note here that the Mark-sheet-cum-Merit List produced today contains 'practical marks' also which could possibly be not held simultaneously while interviewing the candidates. Practical Test was in fact held after the interviews were over. The Computerized merit list thus is concededly not the original selection proceeding. It is rather the compilation of marks secured by a candidate under different heads of selection para-meters.

6.) Taking notice of the non-availability of original Award-Lists, the Co-ordinate Bench on December 7, 2015 observed and directed as follows:-

“As we are prima-facie satisfied that in the absence of any proceedings of the Selection Committee, the entire selection may be malafide, null and void, the selected candidates namely Ameet Kumar, Mister Alam, Pradeep Saini, Balvinder Kaur, Amit Kumar, Kartar Singh, Rinkoo Kamboj and Gopal Ojha presently working as Safaiwala (UR) with the respondent department are impleaded as respondent Nos.3 to 10. At the same time, we also issue notice through the respondent department to the respondents to show cause why officers who are members of the Selection Committee be not held responsible for any infraction / misconduct namely i) JV Sunil Kumar, GP Capt. President, ii) P. Rajendra WG CDR, Member, and iii) Avtar Singh, CGO (E).”

7.) In response to the show cause notices, similar worded replies were given by the members of the Selection Committee, copies whereof have been placed on record. They claimed that-

“6. Interview and practical (trade) test were conducted as scheduled from 16th to 20th Oct 12. As per HQ MC Letter MC/5901/1/1/PC dated 20 Oct 10 (Copy enclosed as Appendix F), for one post, ten candidates are to be interviewed. For the said post of safaiwala, under UR category, a total of 80 candidates were interviewed for eight posts.

7. The committee formulated the criteria encompassing the various aspects of SOP, guidelines and terms of reference in form of matrix (Copy enclosed as Appendix 'G') for evaluation of candidates for the post of safaiwala as follows:-

a) General turnout

- b) Confidence*
- c) Body language*
- d) Qualification*
- e) Sports*
- f) Extracurricular activities*
- g) Experience*
- h) Attitude*
- j) Aptitude*
- k) General Questions (including GK, Current affairs, Constitutional Rights, General Awareness, Qualification based questions, Job expectation, Orientation towards hygiene and Sanitation, Hobbies, Integrity & Honesty, Security Awareness, Discipline).*

8. *The BOO (selection committee) assessed the candidates under various enlisted criteria individually and the same has been compiled. The average of the marks awarded by three members during the interview including the weightage (i.e. out of a total of 73 marks) has been reflected in interview column of the final marks cum merit list. (Copy enclosed as Appendix 'H'). The additional weightage over and above the interview marks for enlisted activities such as NCC, Sports, National events, Graduation or Post-Graduation (either of them) and experience was strictly awarded to candidates after due scrutiny of original documents submitted by them during the interview.*

9. *The BOO conducted the practical (trade) tests for candidates under the following criteria:*

- a) Attitude towards the trade job*
- b) Motivation and Involvement*
- c) Equipment and Cleaning material handling*

d) Execution/General Cleaning

e) Team spirit

10. The BOO evaluated the candidates as per the above mentioned criteria for the practical (trade) test with assistance from depot administration for professional evaluation as detailed by the department vide letter no.3 BRD/2502/1/A/PC dated 28 Sep 12 (copy enclosed as Appendix 'J').

11. The marks secured in written, interview and practical (trade test), out of 323 marks (including weightage) were consolidated and recorded in a final mark sheet cum merit list. The same was enclosed along with board proceedings as mandated in order to indicate the final merit list. Evaluation matrix for interview and practical was not attached to the final BOO proceedings as it was not mandated as per terms of reference and moreover to maintain the confidentiality and sanctity of selection process.”

8.) It may be seen from the above reproduced contents of the reply that the members of the Selection Committee actually evaluated the merit of the candidates under different heads like General turnout, Confidence, Body language, Qualification, Sports, Extracurricular activities, Experience, Attitude and Aptitude etc. and then only the marks were awarded.

9.) Para 11 of their above extracted reply further unfolds that the final mark-sheet produced today consists of the marks secured by the candidates under different heads of the selection-criteria, namely, written test, interview and practical test. It establishes beyond any doubt that there must be a separate record of the interview, for without that the marks secured by each candidate in 'Interview' could not have been duly reflected

in the Final Result Sheet. Since the 'Interview' was admittedly divided under several 'sub-heads' and the candidates were assessed under each such sub-head hence, there has to be some record of award of such marks, as in its absence the total marks under the head of "interview" could not be counted. That record unfortunately is conspicuously missing and the authorities have expressed their inability to produce the same.

10.) Since the respondents either did not maintain or have deliberately chosen not to produce such original records, the tentative opinion drawn by this Court on December 7, 2015 doubting the legality of the subject selection, deserves to be confirmed.

11.) Having held so, the next question that requires determination is as to what directions should this Court issue, keeping in view the facts and circumstances of the case in hand?

12.) Learned counsel for the selected candidates submits that they are poor class-IV employees, who are working from the last more than three years and it would be too harsh and iniquitous to dislodge them at this stage. He further submits that but for the appellant, no other aggrieved candidate has come forward to challenge the selection.

13.) Learned counsel for Union of India also reiterates the same plea.

14.) Before advertng to the above contention, it may be observed that the respondent-Authorities were directed on July 8, 2016 to re-consider the appellant's claim for appointment, as an impression was given to the Court that the appellant was not being adjusted on the erroneous premise that he was over-age and also that no vacancy was available. Counsel for

Union of India has today produced two communications dated 4.10.2016 and 17.10.2016 from the Air Force Headquarters. One can easily gather from the contents of these communications that the Authorities are still harping under the impression that the appellant cannot be considered for appointment as he is an over-age candidate.

15.) The aforesaid plea, in our considered view, is totally erroneous. The age limit of a candidate has to be seen with reference to the cut-off date prescribed in the advertisement. The appellant was admittedly within the age limit at the time when he applied for the post of Safai Wala. Even if subsequently crosses the maximum age limit, he cannot be denied appointment, if he is otherwise found entitled to the same.

16.) Similarly, the oral plea taken before us on July 8, 2016 that no vacancy is available does not find mention in the communications dated 4.10.2016 and 17.10.2016. In fact, the officers who are present in Court have informed that one un-reserved vacancy is available and selection process to fill up that vacancy has also been started. No selection has been made so far.

17.) Taking into consideration all these attending circumstances including that:-

- (i) The selected candidates are working from last about four years;
- (ii) No other candidate has come forward to question the selection;
- (iii) The original record comprising proceedings of the Selection Committee are conspicuously missing and have not been produced before the Court;
- (iv) The manner in which selection-process has been carried out

somehow lacks transparency though it may not be expedient to set aside the same at this juncture and;

(v)The appellant though is stated to be lower in merit but he is not a 'failed' or 'unsuccessful' candidate;

(vi)The appellant who has appeared in person, is apparently from a poor background;

we allow this appeal; set aside the order passed by learned Single Judge and direct the respondents to consider and offer appointment to the appellant on the available post of Safai Wala within a period of two months from the date of receipt of certified copy of this order.

18.) It is further directed that no fresh selection be made without first appointing the appellant on a vacant post of Safai Wala.

(SURYA KANT)
JUDGE

(SUDIP AHLUWALIA)
JUDGE

October 18, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.