

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO. 5256 OF 2018

Rakesh Kumar Mathur & Ors.	...Petitioners
Versus	
Union of India & Ors.	...Respondents

Mr. Sandeep Marne for Petitioner.
Mr. T. J. Pandian for Respondent Nos. 1 to 3.
Mr. Vicky Nagrani for Respondent Nos. 4 and 5.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 26th FEBRUARY 2018

P.C.

1] Heard Mr. Marne for the petitioner, Mr. Pandian for respondent nos. 1 to 3 and Mr. Nagrani for respondent nos. 4 and 5.

2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 16th February 2018 in Original Application No. 474 of 2017 made by the Central Administrative Tribunal,

Mumbai (CAT) dismissing the petitioners OA seeking grant of 25 additional marks at the written test for filling up the posts of staff nurse, health and malaria inspectors and pharmacists by way of additional weightage in the light of the directions issued by the CAT in its judgment and order dated 24th June 2014 in OA No. 210/00207/2014.

4] Mr. Marne, the learned counsel for the petitioners submits that though OA 474 of 2016 was instituted by 16 applicants, the present petition is instituted and being pursued by only 4 petitioners, who upon grant of 25 additional marks by way of weightage will cross the cut off percentage limits and therefore be entitled to be appointed on regular basis to the respective posts to which their applications pertain. Mr. Marne submits that there is no dispute that the petitioners had been engaged on contractual basis by the respondents for several years. The petitioners therefore instituted OA 210/00207/2014 before the CAT seeking for relief of regularization of their services. By judgment and order dated 24th June 2014, though, no relief of regularization as such was granted, the CAT, directed that the respondents must consider the case of the petitioners sympathetically waiving age restriction and

giving weight-age for the services that they have rendered as health inspectors, pharmacists and staff nurses.

5] Mr. Marne submits that the weightage directed to be given by the CAT means and implies award of additional marks in the written test prescribed for regular selection, as otherwise, the petitioners, will be rendered ineligible for appointment for want of securing the cut off percentage.

6] Mr. Marne submits that taking into consideration the years of services rendered by the petitioners on contractual basis with the respondents, addition of 25 marks to the written test marks already secured by the petitioners, will be the most reasonable manner of granting weightage to the petitioners for the years of service rendered by them with the respondents. Mr. Marne submits that if there is no addition of marks, then, the direction issued by the CAT in the earlier round of litigation, will stand frustrated.

7] Mr. Marne submits that the denial of weightage for past service, despite directions from the CAT to do so, will virtually amount to exploitation and/or rendering the past service of the petitioners, completely futile. Mr. Marne

submits that the impugned judgment and order is required to be set aside because the CAT has failed to appreciate all these aspects in making the impugned judgment and order dated 16th February 2018, dismissing OA 474 of 2017 instituted by the petitioners.

8] Mr. Pandian and Mr. Nagrani, the learned counsel for the respondents submit that there is no provision in the recruitment rules for addition of 25 marks to the marks secured by the petitioners in the written test which is the basis for selection. The learned counsel submit that it is not open to the petitioners to insist upon award of such additional marks determined by them, arbitrarily and *de hors* the recruitment rules. The learned counsel for the respondents submit that in terms of the earlier directions of the CAT, the petitioners, at the highest, could have claimed for some relaxation as regards age restriction.

9] The learned counsel for the respondents submit that the CAT, in the earlier round of litigation, was not apprised of the position that the regular selection is on the basis of marks obtained in the written test, where, there would arise no question of grant of any additional weightage. The

learned counsel for the respondents submit that the CAT, in making the impugned judgment and order, has appreciated all relevant facts as also the applicable law and rightly dismissed the petitioners OA 474 of 2017. They submit therefore, that this petition may be dismissed with costs.

10] Rival contentions now fall for determination.

11] In the earlier round of litigation, the CAT, in its judgment and order dated 24th June 2014 in OA 210/00207/2014, whilst declining the relief of regularization to the petitioners, had directed the respondents to consider the case of the petitioners sympathetically waiving age restriction and giving weightage for service they have rendered as health inspectors, pharmacists and staff nurses (para medical staff). The relevant direction in paragraph 28 of the judgment and order dated 24th June 2014, reads as follows:

“28. However, having regard to the settled position of law as enunciated by the Hon'ble Supreme Court in various decisions, we are of the view that the impugned letter dt. 17.1.2013 does not warrant interference of this Tribunal. The Railway Authorities will be free to appoint the candidates selected by the Railway Recruitment Board in the vacant posts of

*Health Inspectors, Staff Nurse and Pharmacists. However, in the peculiar facts and circumstances of the case, we direct the respondents to consider the engagement of the applicants who would be displaced by the candidates selected by the Railway Recruitment Board in any existing vacancy or future vacancy or in any other suitable position to discharge duties of para medical staff under the Railways. **It would be open to the applicants to participate in the selection process for appointment in the regular posts of Health Inspector, Pharmacist and Staff Nurse whenever regular vacancy will arise. The respondents are directed to consider the case of the applicants sympathetically waiving age restriction and giving weight-age for the service they have rendered as Health Inspector, Pharmacist and Staff Nurse as para-medical staff.***

[Emphasis supplied]

12] The petitioners, in pursuance of the aforesaid, have participated in the selection process for regular appointment to the posts of health inspectors, pharmacists and staff nurses. There is no dispute that there are recruitment rules for making the recruitment on regular basis to such posts, which provide that such posts are to be filled up on basis of merit to be determined by written test.

The recruitment rules make no provisions for any relaxation in so far as the cut off marks required to be secured. The recruitment rules make no provisions for addition of any marks, much less 25 marks to any categories of applicants. There is also no dispute that the petitioners have answered such written test but failed to secure the cut off percentages. It is the case of the petitioners that if they are granted 25 additional marks, they will cross the cut off percentage and be eligible for securing regular appointment.

13] The direction of the CAT at paragraph 28 above, no doubt, may entitle the petitioners to age relaxation. There is however no dispute that such age relaxation has already been granted, wherever the same was found to be necessary. The direction, further makes reference to grant of weightage for the service which the petitioners may have rendered as health inspector, pharmacists and staff nurse (para medical staff). However, such direction, cannot be construed to mean that the petitioners are entitled to addition of any marks to the written test marks which they have secured. The addition of 25 marks proposed by the petitioners, is nothing but some arbitrary figure chosen by

them, possibly because that may have been the shortfall for crossing the prescribed cut off percentages. In the absence of any provision in the rules for grant of such additional marks, the petitioners, cannot insist upon such addition, on the basis of their own interpretation of the directions of the CAT.

14] The directions of the CAT will have to be reasonably construed. The reasonable construction, at the highest suggests that all matters being equal, the petitioners, could have claimed some preference in the matter of appointment by giving weightage to the services already rendered by them on contractual basis. The direction neither means nor can be construed as a direction for award of additional marks in the written examination as suggested by Mr. Marne, the learned counsel for the petitioners. Since, in this case, the petitioners, have failed to cross the cut off percentages and since there is considerable difference between the marks secured by the petitioners in the written examination and the marks secured by the respondents who have been selected on regular basis, the petitioners cannot be permitted to secure a march over such respondents by addition of 25 marks to

the written test marks secured by them. As noted earlier, there is no provision for such an exercise in the recruitment rules. There are no executive instructions, on basis of which, such additional marks can either be claimed or be granted. The CAT, has also, not issued any directions for award of such additional marks, assuming that the CAT, had been apprised of the position that the selection on regular basis was based upon the marks secured in a written test. Even otherwise, the CAT cannot rewrite recruitment rules which are statutory in nature. In fairness, it must be said, that the CAT, in this case, has not rewritten the statutory rules in its order dated 24th June 2014. In absence of any provision in recruitment rules, the petitioners, on the basis of their own interpretation of the CAT's order dated 24th June 2014, cannot insist on additional 25 marks in the written test.

15] Therefore, upon cumulative consideration of all the aforesaid aspects, it cannot be said that there is any error in the view taken by the CAT or that the view taken by the CAT suffers from any serious illegality so as to warrant interference with the same. This petition is therefore liable to be dismissed and is hereby dismissed.

16] Rule is discharged, However, there shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA