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

+ **W.P.(C) 7989/2015**

AAFTAB ALAM

..... Petitioner

Through: Ms. Garima Sachdeva and Mr. Pranav
Chadha, Advs.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC
with Mr. Kamaldeep, Advocates for
R-1, R-2.

Mr. Karunesh Tandon, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER
20.12.2018

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1. The petitioner has preferred the present writ petition to assail the order dated 17.11.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, (the Tribunal) in T.A. No. 53/2013. The Tribunal has rejected the said Transfer Petition of the petitioner, wherein the petitioner had assailed the rejection of his candidature by the Cadre Controlling Authority in respect of the post of Pharmacist. He also sought a direction in the nature of mandamus – directing the respondents to not to fill the vacancy without considering his claim.

2. By the convening order dated 15.03.2011, a Recruitment Board was convened to fill up a few vacancies of Group C posts. The Board was convened on 15.03.2011 at 0900hrs. The posts which were sought to be

filled were the following:

S. No.	Trades	Vacancies reserved for					Date of recruitment		
		Gen	SC	ST	OBC	TOTAL	Written Test on	Practical on	Interview on
(a)	Electrician	02	-	01	02	05	15 Mar 2011	16 Mar 2011	17 Mar 2011
(b)	Cook	01	-	-	-	01	-do-	-do-	-do-
(c)	Lab Asstt.	01	-	-	-	01	-do-	-do-	-do-
(d)	Pharmacist	01	-	-	-	01	-do-	-do-	-do-

3. The petitioner was a candidate in respect of the post of pharmacist under the General Category. As per the convening order, the written test was scheduled to be held on 15.03.2011; the practical test on 16.03.2011 and; the interview on 17.03.2011. The convening order provided in Clause 6 (b) that “All admin arrangements for the test will be responsibility of TT Cell who may seek help from GM (P&A)/Bn Cdr (Mil Wing) as required.”

4. The same convening order also provided that the “Board proceedings duly completed in all respect giving parameters and recommending Select Panel/ Reserve Panel in various categories in order of merit will be submitted to the Commandant through Col. Adm for approval/ countersignature by 19 Mar 2011.”

5. The case of the petitioner is that he appeared in the written examination held on 15.03.2011. Thereafter, he was called for interview. When the result was declared, he was not declared as selected, even though he was issued a provisional letter of selection on 11.05.2011.

6. The petitioner also claims that he was shocked to learn that the result had been compiled by showing the marks obtained by the candidates in the practical examination when, as a matter of fact, no practical examination was ever conducted.

7. The Tribunal rejected the petitioner's application on the premise that it was for the petitioner to establish that no practical test was held by the Selection Board. At this stage itself, we may observe that this approach of the Tribunal appears to be patently laconic. Firstly, the petitioner could not have been asked to establish a fact, which, according to the petitioner, did not exist. The petitioner could not have been expected to establish the negative. It was the respondents' case that the practical test was held and, thus, it was entirely for the respondents to establish the same. Secondly, the petitioner was not privy to the records of the respondents and, therefore, it was in any event, incorrect on the part of the Tribunal to expect him to establish the same. On this short ground, the impugned order cannot be sustained. This Court, therefore, repeatedly called upon the respondents to file an affidavit and to disclose as to how and when the practical test was held. Pertinently, the officers concerned with the holding of the Board have not chosen to file a short affidavit. One additional affidavit has been filed on 02.04.2018 by one Ms. Maj Megha Gupta, the IOC, Legal Cell. In her affidavit, she states that she had approached the then Presiding Officer of the concerned Board of Officers for filing the affidavit, but the Presiding Officer expressed his reservation for filing the same.

8. This itself raises a doubt in the mind of the Court. The respondents have, however, placed on record the letters dated 09.05.2016 and 31.03.2018, stated to have been issued by Harendra Kumar Lt. Col., who was the then Presiding Officer of the Board of Officers. When these letters are seen in the light of the other materials placed on record and, the failure of the respondents in placing on record those materials which ought to have been placed on record is considered, we are left with no doubt that the

selection process was sham and it was completely vitiated.

9. First and foremost, the advertisement did not prescribe that there would be a practical examination. It only spoke of the written examination. Secondly, even the admit card issued to the petitioner – which was a hand written admit card, only read the date of examination as 15.03.2011. The candidates were never informed that the practical examination would be held on 16.03.2011, and the interview will be held on 17.03.2011. Thus, the candidates were not even expected to make arrangements to stay at the place where the selection process was undertaken for three days. Pertinently, it is claimed that there were 700 candidates for all the posts aforesaid and 73 candidates appeared in the written examination for the post of Pharmacist above. The number of candidates issued the admit cards would, we take it, have been even higher. We find it difficult to accept that so many hand written Admit Cards were prepared and issued. This raises doubt on the claim of the respondents that there were 700 candidates who appeared for all the posts in question, or that 73 candidates appeared for the written exam for the post of Pharmacist.

10. Pertinently, as per the result compiled by the respondents, the petitioner was shown to have got 18 marks out of 40 marks in the theory examination and the selected candidate – Mohan Kumar Sharma secured 15 marks out of 40 marks, which is less than 40 per cent.

11. It is interesting to note that in the letters relied upon by the respondents, issued by the Presiding Officer of the Board, particularly, the letter dated 09.05.2016 – he states “*In this connection pl ref para 4 of ibid rect bd proceedings wherein **the candidates appeared for the post of Pharmacist were provisionally selected in written test who scored more***

than 40% marks for further conduct of practical and interview. For further elucidation on the ibid subject, then Est Offr and EME Records may be apch.” (emphasis supplied)

12. Thus, if letter dated 09.05.2016 issued by the Presiding Officer is anything to go by, it was only those candidates who secured more than 40 per cent marks in the theory examination, who were called for the practical test and interview. Those who secured less than 40 per cent in the theory examination were not called for practical test or interview. If that was the position, we fail to understand as to how the successful candidate – Mohan Kumar Sharma was shown to have participated in the interview, and to have secured 35 marks out of 40 marks in the practical test and 15 marks out of 20 marks in the interview, since he secured less than 40% marks in the written test.

13. The same result also shows that there are several other candidates who got less than 40 per cent marks in the theory examination, yet they were shown to have participated in the practical test and interview as well. Some of these candidates (by way of an illustration only) are Vikas Sharma s/o Ram Niwas Sharma, who secured 14 marks in theory; 30 marks in practical and; 14 marks in the interview. Similarly, Ankit Porwal s/o Brajamchan Porwal secured 0 marks in theory; 15 marks in the practical and; 10 marks in the interview. Another candidate Sumit Kuamar s/o Desh Raj Singh is shown to have secured 12 marks in the theory; 30 marks in the practical and; 15 marks in the interview. If the published result is to be believed as correct, candidates who secured 0,7 (Jai Gopal S/o Chander Shekher), & (Devender Singh S/o Vijay Singh Shekhawat) marks, and several others with similar marks in the theory/ written test were called for practical test and

interview and assessed. Thus, there is a glaring contradiction in what the Presiding Officer of the Board of Officers says in his aforesaid letter, and the result published by the respondents.

14. We have repeatedly called upon the respondent authorities to produce any record to show that the practical test was, in fact, held. There is not even a shred of paper which the respondents have produced. If the practical test was indeed held – involving about 700 candidates who had applied for all the posts for which the Board was convened, and 73 candidates for the post of Pharmacist, there would certainly be ample record available both-on the administrative side, as well as in respect of the practical test and interview. No mark sheet/ worksheet of the marks that are claimed to have been rewarded during the practical test have been produced. There is nothing to show that any arrangement was made-at any particular place, for conducting of the practical test.

15. The Board of Officers was convened at 505 Army Base Workshop. There would certainly be record available in respect of the candidates who were provided entry, i.e. when they entered or exited the said area. Pertinently, the convening order itself required all such record to be maintained and submitted. The challenge to the selection process was raised contemporaneously. Thus, there can be no justification for the record not being maintained or produced before the Court, when directed. In these circumstances, we are inclined to raise an adverse inference against the respondent that such record, in fact, does not exist- which would be the case if no practical test was held.

16. All these aspects raise enough doubt in our mind with regard to the stand taken by the respondents that a practical test was held. It appears that

the test result has been compiled by showing that a practical test was held, when, in fact, none was held and the ranking of the candidates, post the written test has been altered by awarding random marks under the garb of a practical examination.

17. The submission of the newly added respondent No.3 – Mohan Kumar Sharma is that even one were to go with the marks obtained in the theory and in the interview, and one were to ignore the marks obtained in the practical test, the said respondent has secured higher marks than the petitioner.

18. We cannot accept this submission for the reason, that the stand of the official respondent is that a practical test was held, which appears to be not borne out from the record. If that is the position, the entire selection process stands vitiated.

19. We, therefore, quash the selection process undertaken by the Recruitment Board in terms of the convening order dated 03.11.2011 in respect of the post of pharmacist and, consequently,, the appointment granted to respondent No.3 cannot be sustained.

20. We direct the respondents to fill up the said post of pharmacist by holding a fresh transparent selection process.

21. Considering the fact that the petitioner has been agitating his claim since 2011, and respondent No.3 was selected and is serving in the said post since 2015, we are of the view that the petitioner and respondent No.3 should be entitled to age relaxation, in case, they have crossed the age limit under the Recruitment Rules.

22. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

DECEMBER 20, 2018

N.Khanna