

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 18.12.2019

PRONOUNCING ORDERS ON 20.12.2019
CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

WP No.14573 of 2019 and
WMP Nos.24221, 14549, 14550, 14552,21972, 21973,26216, 14573
of 2019

Mr.Chetty Siddhan

..Petitioner

Vs.

1. Government of India,
Represented by its Secretary,
To the Government of India,
Ministry of Defence,
New Delhi - 110 011
2. The General Officer Commanding (GOC)
HQ Dakshin Bharat Aread,
Island Ground,
Chennai 600 009.
3. The Station Commander,
Station Head Quarters (Army),
Red Fields,
Coimbatore - 641 018.
4. The Board of Officers (BOO),
Rep by its Chairman,
Mr.Col DK Haridas, now re-employed as Adm Commandant,
Station Head Quarters (Army),
Red Fields,
Coimbatore - 641 018
5. Mr.Col.K.S.Gunasekaran (Retd),
No.6/34, Karthik Nursing Home,
Thalaivasal,
Thalaivasal post,
Salem - 636 112
6. Lt.Col.D.Srinivasan (Retd),
H.No.1, 3rd Cross,
Jakkapan Nagar,
Krishnagiri - 635 001

..Respondents

Prayer: Writ petition has been filed under Article 226 of the Constitution of India prays to issue a Writ of certiorarified Mandamus to call for the records relating to the proceedings of the 2nd respondent dated 01.04.2019 approving selection the 5th and 6th respondents of OIC ECHS Polyclinic Salem and Krishnagiri, respectively, quash the same and consequently, direct the respondents to reconstitute of Board of Officers as per the provisions of the Army Act and ECH Scheme and consider the other candidates including the petitioner for the post of Officer in Charge for appointment at Salem or Krishnagiri ECHS Polyclinics.

For Petitioner : Mrs.Hema Sampath
Senior Counsel for Mr.S.Raveekumar

For Respondents : Mr.G.Rajagopalan
Additional Solicitor General
Mrs.Swarnalatha
Central Government Standing Counsel
for R1 to R4
Mr.M.Ravi for R5 and R6

ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent dated 01.04.2019, approving the selection of the 5th & 6th respondents as contractual staff in OIC post at Salem and Krishnagiri and for a consequential direction to the respondents to reconstitute the Board of Officers and consider the candidature afresh.

2. The brief facts of the case are as follows :-

The petitioner worked in Indian Air Force and after completing 35 years of service, he retired in the year 2012. Thereafter, he was working in a Public Sector Company. The petitioner applied for the Officer incharge of ECHS, Salem and he got selected in the year 2017. This contract was extended initially up to 2018 and further extended up to 30.07.2019. The petitioner had applied for further extension of the Contract. The employment of staff is purely contractual in nature and it is Governed by Ex-Serviemmen Contributory Health Scheme of the Government of India, Ministry of defence and the procedure is provided by letter dated 22.09.2003.

The respondents decided to conduct a selection process by calling for fresh applications to ensure that the best candidate is employed for the scheme. Advertisement was published in Newspapers and applications were received from totally six retired officers including the petitioner. The interview for selection for the Officer In-charge for ECHS

Polyclinics at Salem and Krishnagiri was conducted on 15.03.2019 by the Board of Officers chaired by the Station commander. The Board assessed all the candidates as per the criteria laid down in the procedure and the 5th & 6th respondents were selected on their merits as Officers in-charge for the Salem and Krishnagiri, ECHS Polyclinic, respectively. This selection has now been put to challenge in the present writ petition.

3. Mrs. Hema Sampath, learned Senior counsel appearing on behalf of the petitioner submitted that the Board of Officers must be headed by a Station Commander. However, it was headed by one Col. D.K. Haridas on 15.03.2019 and he was not authorised to head the Board, since he was made as a Station In-charge Commander only on 17.03.2019. The learned Senior counsel submitted that the selection must be set aside on this ground alone. The learned counsel further submitted that the said Col. D.K. Haridas had intentionally acted in favour of the respondents 5 & 6, who did not satisfy the requirements under the procedure. The learned Senior counsel submitted that the 5th respondent was appointed for the Theni Division and he declined to take up the contractual employment and the same is a disqualification for him to be considered in any other station as per Clause 23 of the Procedure. The learned Senior counsel further submitted that both the 5th & 6th respondents did not possess the necessary work experience as provided under the procedure and they ought not to have been considered for selection.

4. The learned Senior Counsel further submitted that the respondents 5 & 6 have lesser qualification than the petitioner in terms of Technical knowledge, expertise and experience and therefore, they could not be awarded higher marks than the petitioner. The learned Senior Counsel submitted that the 6th respondent participated in the selection to the post of Officer In-charge in Salem in the year 2017 and he was not selected and therefore, it is illogical to consider the 6th respondent more suitable than the petitioner during the present selection. The learned counsel submitted that the entire process was carried out in an hasty manner and the result was neither displayed in the notice board nor in the website and the 5th respondent was talking about his selection even before the results came out. The learned senior counsel therefore submitted that the selection of the 5th and 6th respondent requires interference and a fresh selection must be considered by a Competent Board constituted under the relevant procedure.

5. Per contra, Mr. G. Rajagopalan, Additional Solicitor General (ASG) appearing on behalf of the respondents 1 to 4 submitted that the selection process was conducted strictly in accordance with the Procedure. The learned ASG submitted that Col. R. J. Rane was the Station Commander during the relevant

point of time. However, on the date of interview that is on 15.03.2019, he had to immediately leave to his native place to attend an emergency and therefore, in his place Col.D.K.Haridas was directed to take over the duty of the Station Commander. The learned Additional Solicitor General submitted that oral instructions were given to Col.D.K.Haridas, who took charge on 15.03.2019 and the same was subsequently confirmed by the order passed on 17.03.2019. The learned ASG submitted that the written order was only a confirmation of the appointment of Mr.D.K.Haridas, as the In-charge Commander and that does not mean that he did not start discharging his function from 15.03.2019 onwards.

6. The learned Additional Solicitor General in order to support his submissions relied upon the affidavit that has been filed by Col.Anoop Kumar Nair dated 18.12.2019. The learned ASG submitted that there is absolutely no ground to interfere with the selection, since the selection was conducted by a Board and it considered the comparative merits of the six candidates who participated in the selection and found respondents 5 & 6 to be more meritorious and both of them were made as an Officer In-charge of Salem and Krishnagiri, ECHS Polyclinics. The learned ASG submitted that the appointment is purely contractual in nature and it does not confer any right of regularization or permanent absorption and the allotment of marks considering the comparative merits of the candidates cannot be interfered by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, unless there is a flagrant violation of the procedure and therefore, the learned ASG sought for dismissal of this writ petition.

7. Mr.M.Ravi, learned counsel appearing on behalf of the 5th & 6th respondents adopted the arguments of the learned Additional Solicitor General. The learned counsel further submitted that the 5th respondent was selected both for the Theni Station as well as the Salem station, due to his overwhelming merits and the 5th respondent had opted for the Salem Station and has given up the Theni Station. The learned counsel submitted that this cannot be put against the 5th respondent and the disqualification that is contemplated under Clause 23 cannot be applied in the instant case. The learned counsel submitted that there are absolutely no grounds to interfere with the appointment of the respondents 5 & 6.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.When the matter was taken up for final hearing, this Court wanted to satisfy itself as to whether the constitution of the Board of Officers was in accordance with the Procedure. Therefore, this Court sought for clarification from the respondents by passing the following order on

The learned Senior Counsel appearing on behalf of the petitioner has raised various grounds challenging the selection of 5th and 6th respondents. One ground which requires consideration as a preliminary ground is with regard to constitution of the Board of Officers. The Ex-servicemen Contributory Health Scheme (ECHS) selection for contractual employment is governed by Rules. The Rule regarding the selection contractually, specifically states that the Chairman of the Board of Officers shall be the Station Commander. According to the petitioner, Col.R.J.Rane was the Station Commander, on the date when the interview was conducted on 15.03.2019. However, the Board of Officers was lead by one Col.DK.Haridas, as the Station Commander and he did not have the authority to act as the Chairman of Officers on 15.03.2019. In order to substantiate her submissions, learned Senior Counsel brought to the notice of this Court the order appointing Col.DK.Haridas as the in-charge Commander. This order was passed only on 17.03.2019 and was signed on 18.03.2019. By pointing to this order, the learned counsel submitted that Col.DK.Haridas could not have acted as the Station Commander on 15.03.2019.

2. Mrs.Swarnalatha, learned Central Government Standing Counsel submitted that Col.RJ.Rane had to leave immediately on 15.03.2019 since, his father was seriously ill. Therefore, Col.DK.Haridas, was made as the Station in-charge Commander and later it was followed with a written order on 17.03.2019. The learned counsel pointed out ground 'E' of the counter affidavit filed before this Court in order to substantiate her submissions.

3. A look at the order passed on 17.03.2019 shows that the order came into effect only on that day and it was not given any retrospective effect from 15.03.2019. The order does not even ratify the functioning of Col.DK.Haridas as the Station Commander on 15.03.2019. This touches upon the very authority of Col.DK.Haridas, who had acted as the Chairman of the Board of Officers. The learned Central Government standing counsel seeks time to clarify of this issue.

10. In order to clarify this issue, an Additional Affidavit has been filed by Col.K.Anoop Kumar Nair on 18.12.2019. The relevant portions in the Additional Affidavit is extracted hereunder :-

1.I submit that the Lt Gen ST Upasani, AVSM, SM, VSM, the then GOC Dakshin Bharat Area was on Temporary duty with effect from 13th March 2019 till 15th March 2019. He has rejoined on 16 Mar 2019 and 17 March being Sunday, the Area Order No.03/2019 dated 17 March could only be signed on 18 Mar at the earliest.

2.I submit that on 15 Mar 2019, on the verbal intimation by Col.Haridas, SSO Stn HQ, it was informed that Col.RJ Rane had to proceed immediately on leave on short notice due to compelling domestic reasons. This office then directed that senior most officer in station Head quarter i.e IC - 42076F Col DK Haridas must take over the duties of Station Commander in accordance with Para 23(b) and Para 53 of Defence Service Regulations (Revised Edition 1987) Vol-I for which the written orders will also follow.

3.I submit that the Col.Haridas on receiving the said verbal orders from this office, obeyed to it and officiated as Station Commander immediately for all purposes.

11.The Additional typed set of papers was also filed in order to substantiate the averments made in the Additional Affidavit and it is seen that the appointment of Col.D.K.Haridas, had taken effect from 15.03.2019 onwards. This has been confirmed by the Lieutenant Colonel by his letter dated 11.12.2019. It is clear from the above that Col.D.K.Haridas had taken charge as the Officiating Station Commander with effect from 15.03.2019 and this Court does not doubt the confirmation that has been made by the present Colonel by filing an affidavit before this Court and the letter of the Lieutenant Colonel dated 11.12.2019 also reiterates the said fact. Therefore, there is no doubt with regard to the fact that Colonel. D.K.Haridas, was the In-charge Commander on 15.03.2019 and the Board of Officers, who conducted the selection have been properly constituted in accordance with the procedure.

12.The next issue that requires consideration is with regard to the comparative merits of the Candidates, who participated in the selection. Normally, this Court will not interfere with the selection where the eligibility and the suitability of the candidates is considered and comparative merits are assessed, unless there is something patently wrong with the selection. In other words, this Court will not exercise its Jurisdiction under Article 226 of the Constitution of India and substitute its Judgment to the judgment of the Board, which has considered the comparative merits as among the candidates.

13. The selection of the candidates was for the post of Officer In-charge for ECHS Polyclinics. The selection is purely contractual in nature and it is for a maximum period of two years. Totally six candidates were considered for selection and the 5th & 6th respondents were found more meritorious and were posted as Officer In-charge in the Salem and Krishnagiri polyclinic.

14. This Court has carefully considered the proceedings that was conducted by the Board and the marks that was awarded to each of the candidate under various heads. The proceedings form part of the typed set of papers filed by the official respondents 1 to 4 from page No.24 to Pg.34 and it is found that the selection has taken place in a transparent manner and in accordance with the procedure by a duly constituted Board of Officers. The 5th and 6th respondents have secured more marks than the petitioner and this Court cannot go into the question as to why a particular mark is assigned to the candidate under the relevant criteria. Therefore, the contention raised by the learned senior counsel appearing for the petitioner with regard to the marks assigned to the candidates does not require any elaborate finding, since this Court does not find any flagrant violation or patent irregularity.

15. The last ground that was raised by the learned Senior Counsel with regard to disqualification of the 5th respondent for having refused to take up the Theni post is concerned, the same is liable to be rejected. Clause 23 of the Procedure only provides for a disqualification, where a person gives his willingness initially and thereafter, does not take up the assignment. In the present case, the 5th respondent never gave his willingness to act as Officer In-charge at Theni. Therefore, the said disqualification will not apply to the case of the 5th respondent.

16. In the result, this Court does not find any irregularity in the Selection of the 5th & 6th respondents as Officer In-charge at the ECHS Poly clinics stationed at Salem and Krishnagiri and accordingly, this writ petition is dismissed. No costs. Consequently, all connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

rka

To

1. Government of India,
Represented by its Secretary,
To the Government of India,
Ministry of Defence,
New Delhi - 110 011
2. The General Officer Commanding (GOC)
HQ Dakshin Bharat Aread,
Island Ground,
Chennai 600 009.
3. The Station Commander,
Station Head Quarters (Army),
Red Fields,
Coimbatore - 641 018.
4. The Board of Officers (BOO),
Rep by its Chairman,
Mr.Col DK Haridas, now re-employed as Adm Commandant,
Station Head Quarters (Army),
Red Fields, Coimbatore - 641 018
5. Mr.Col.K.S.Gunasekaran (Retd),
No.6/34, Karthik Nursing Home,
Thalaivasal,
Thalaivasal post,
Salem - 636 112
6. Lt.Col.D.Srinivasan (Retd),
H.No.1, 3rd Cross,
Jakkapan Nagar,
Krishnagiri - 635 001

+1cc to Mr.S.Raveekumar, Advocate SR.No.106342

WP No.14573 of 2019 and
WMP Nos.24221, 14549, 14550, 14552,21972, 21973,26216, 14573
of 2019

LN(CO)
GMY(27/01/2020)

WEB COPY