

\$~

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

Reserved on: 7th November, 2019
Decided on: 28th November, 2019

+ **W.P.(C) 1026/2011**

UNION OF INDIA & ANRPetitioners

Through: Mr. Tanveer Ahmed Ansari with
Mr. Amit Sinha and Mr. Vaibhav
Pratap Singh, Advocates.

versus

SONWATI SHARMARespondent

Through: Mrs. Niddhi Raman with Mr
Himanshu Gautam, Advocates.

+ **W.P.(C) 1031/2011**

UNION OF INDIA & ANRPetitioners

Through: Mr. Subhash Gosai with Mr.Amit
Kumar Dogra, Advocates.

versus

ARUN KUMAR & ORS.Respondents

Through: Mrs. Niddhi Raman with
Mr.Himanshu Gautam, Advocates.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. These are two petitions by the Union of India (Petitioner No.1) through the Secretary, Ministry of Defence ('MoD') and the Director General ('DG') of the Armed Forces Medical Store Depot ('AFMS Depot'), Delhi Cantonment challenging the common order dated 24th September, 2010

passed by the Central Administrative Tribunal ('CAT'), Principal Bench in TA Nos. 9 and 11 of 2010.

2. While W.P.(C) 1026/ 2011 is directed against the decision of the CAT in TA No.11 of 2010 where, Ms. Sonwati Sharma is the sole Respondent, W.P.(C) 1031 of 2011 is against the decision in TA No.9 of 2010 where Arun Kumar and Sushil Kumar Panchal are Respondent Nos. 1 and 2.

3. The background facts are that the AFMS Depot is a unit of the Directorate General, Armed Forces Medical Services ('AFMS'). The DG is the appointing authority of Group 'C' posts in terms of part V of Schedule 2B (viii) of the CCS (CCA) Rules. It is stated that the DG has delegated the responsibility and powers of making appointments to the DDG (ELS) which had been redesignated as Addl. DG AFMS (E&S).

4. In the year 1998, eight vacancies arose in the post of Store Keeper, out of which, one vacancy each was reserved for members of the Scheduled Caste ('SC') and Scheduled Tribe ('ST') respectively. Three vacancies were to be filled up from Other Backward Class ('OBC') candidates and the General Category ('GC') candidates respectively. The vacancies were advertised in the National Daily Newspaper. A Board of Officers ('BoO') was constituted to make the selection. The BoO recommended three GC candidates in the following order: Mr. Kamal Singh, Ms. Krishna and Ms. Sonwati Sharma. It recommended three OBC candidates: Mr. Sushil Kumar Panchal, Mr. Vijay Kumar and Mr. Arun Kumar.

5. The appointing authority on perusing the documents was of the view that

the three GC candidates had been over-assessed in their performance. He accordingly ordered revaluation of their papers independently by constituting another independent Board. Based on such re-evaluation independently arrived at by two senior officers acting as examiners, only two candidates were selected, one each from OBC (Mr. Vijay Kumar) and GC (Mr. Kamal Singh). As regards the remaining candidates, their marks on re-evaluation were found to be grossly inadequate. By a letter dated 4th January, 1999 the AFMS Depot was asked to initiate fresh action for recruitment for the remaining vacancies of Store Keepers. It was also directed that the candidates recommended by the previous BOO and not found eligible on re-evaluation, could be included in the fresh recruitment process.

6. Aggrieved by the above action while Ms. Sonwati Sharma filed CWP No.4773 of 1999, Mr. Arun Kumar and Mr. Sushil Kumar Panchal filed CWP No.6004 of 1999 in this Court.

7. By an order dated 16th May, 2002 this Court dismissed CWP No.4773 of 1999 holding that there was no infirmity in the procedure adopted by the appointing authority who was not bound by the recommendation of the BOO.

8. Aggrieved by the above judgment, Ms. Sonwati Sharma filed LPA No.7762 of 2002. By a judgment dated 8th January, 2004 a Division Bench of this Court set aside the order dated 16th May, 2002 on the ground that the Single Judge had taken into account the marks scored on the re-evaluation,

whereas the stand taken by the Petitioner herein was that Ms. Sonwati Sharma had in fact failed to qualify the test. Accordingly, CWP No.4773 of 1999 was revived and the Single Judge was asked to dispose it of in light of the facts pleaded.

9. In January, 2010 both the revived CWP No.4773 of 1999 and the pending CWP No.6004 of 1999 were transferred to the CAT in New Delhi and renumbered as TA Nos.11 of 2010 and 9 of 2010 respectively.

10. By the impugned common judgment dated 24th September, 2010, the CAT allowed both the TAs, with the directions to the Petitioners to offer the Respondents herein, appointments in the categories to which they belonged on the post of storekeeper, though prospectively within a period of three months.

11. As already noticed, this Court by its order dated 18th February, 2011, stayed the impugned order of the CAT.

12. A perusal of the impugned order reveals that although time was granted by the CAT, replies were not filed. The Petitioner, although, filed an additional affidavit, enclosing the Standard Operating Procedure ('SOP') for filling up of posts in the unit and the DGAFMS by direct recruitment. The CAT was informed that Ms. Sonwati Sharma had failed to clear the typing test with 30 words per minute.

13. The CAT allowed both TAs observing as under:

“We have carefully considered the rival contentions of the parties perused the departmental records produced by the respondents whereby insofar as the general category candidate is concerned, even the minimum typing test was 25 marks whereas the selected persons has obtained less than that but out of total score, as the applicant (Sonwati Sharma) was selected with scoring 70% marks and stood first, as also in case of others in OBC category, their marks and typing speed make them in the selected category. On perusal of the departmental records, we do not any discrepancy as stated by the respondents.”

14. The CAT further observed that since the candidates had been called for medical examination, it indicates that “they have come on merit, including qualifying the typing test, otherwise they would not have been offered to undergo medical examination”. Characterising the denial of appointment to them as ‘legal malafide’, as explained in the *Swaran Singh Chand v. Punjab State Electricity Board (2009) 13 SCC (3) 758*, the CAT concluded that the Petitioners herein had “without any reasonable justification and basis”, denied the Respondents herein their appointment to the post of Storekeeper, despite vacancies. Since there had been a considerable lapse of time, they were asked to offer the appointments prospectively.

15. This Court has perused the original record that has been produced before it, pursuant to an order passed on 24th September, 2019. The SOP required the candidates to qualify in the typing speed test. Indeed, the initial evaluation of the typing answer sheets, reveals a lack of proper evaluation. It does appear that the appointing authority was justified, on perusing such answer sheets, in ordering a re-evaluation. This power of the appointing authority to order such revaluation is consistent with the SOP, which clearly

indicates that it is only the decision of the appointing authority which is accepted as final. Up to that stage, the decision of the BoO, would only be recommendatory. Para 9 of the SOP reads as under:

“9. After compilation of the result, a Merit list will be prepared by the Board of Officer-based i.e. marks obtained in the written test and subject to qualifying the typing test. Candidates selected five times the number of vacancy for consideration of final selection by the appointing authority. The candidates will be clearly informed that the screening by Board of Officer cannot be claimed as selection. The decision of Appointing Authority will only be accepted as the Final Selection.”

16. The CAT appears to have ignored para 9 of the SOP completely. It was in error in concluding that since the candidates had been called for the medical examination, they should be considered as having qualified on merits. As rightly pointed out by the Petitioners, medical examination and police verification were done to complete the BoO proceedings and by no means gave them any vested rights of appointment. In such circumstances, the right of revaluation has been recognized. It is pertinent here to refer to the decisions of this Court in **CBSE v. Samarth Mittal AIR 2017 Delhi 43** and a decision dated 18th January, 2018, in LPA No.1267/2017 (**Kritichandrayan v. State of Bihar**).

17. On behalf of the Respondents, reliance was placed on the decisions in **K. Manjusree v State of AP (2008) 3 SCC 512** to urge that the rules of the game cannot be changed after it has commenced. In other words, it was contended that the prescription of the minimum typing speed test was done after the test had been conducted and, therefore, could not have been applied to disqualify the Respondents.

18. The Court notices that the SOP makes it implicit that passing of the typing test is essential. Para 8 of the SOP makes this abundantly clear and reads as under:

“8. The candidates will be tested for their Typing Speed preferably in the afternoon of the same day to avoid calling them again or definitely by next day. Passing the typing test is mandatory for the Store Cadre and Clerical Cadre, irrespective of the Score in the Written Test.”

19. Annexed to the SOP, is the ‘plan of examination’, para 3 of which reads as under:

“3. The distribution of marks is as below:

Marks for Written Test	-	90
Marks for Oral Test (Interview)	-	10
Typing Test	-	30 wpm (Qualifying Test)
(a) Objective Test	-	i) History -10
	-	(ii) Polity -10
	-	(iii) Mental Ability-10
	-	(iv) Arithmetic -10
	-	(v) General Science-15
	-	(vi) Current Affairs -15
(b) General Essays 20 marks	-	2 questions of 10 marks each (about 150 words each)”

20. It is plain therefore that not only were the candidates aware of the need to have qualified in the typing test at the minimum prescribed speed, but the fact that on revaluation, they did not qualify, is also undeniable. Therefore, the decision in *K. Manjusree v State of AP* (*supra*) is also of no assistance

to the Respondents herein. Reliance was also placed on decision dated 22nd December, 2015 of the Madras High Court in W.P. (C) No.17428 of 2015 (*S. Muthu Krishnan v. The Senior Superintendent of Police Offices*). However, the said decision appears to have turned on the issue of ‘wrong key answers’, which is not the issue in the present case.

21. For all of the aforementioned reasons, the Court finds the impugned order of the CAT to be unsustainable in law and hereby sets it aside.

22. The writ petitions are allowed in the above terms. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 28, 2019

tr/rd