

HIGH COURT OF PUNJAB & HARYANA**Bench: Justice Jagmohan Bansal****Date of Decision: 25.01.2024**

CWP-15452-2019

SANDEEP KUMAR AND ANOTHER ...PETITIONERS**VERSUS****UNION OF INDIA AND ANOTHER ...RESPONDENTS****Legislation:**

Articles 226 of the Constitution of India

Subject: The petition challenges the decision of the respondent to refuse the petitioners' appointment as Tradesman Mate (T. Mate) despite them having completed the selection process, on the grounds of non-adherence to Standard Operative Procedure (SOP) by the local unit.

Headnotes:

Employment Law – Selection Process Cancellation – Arbitrary Cancellation of Selection Process Post-Completion Challenged – Petitioners selected for Tradesman Mate post, selection cancelled by respondent citing non-adherence to SOP – Petitioners contended no fault on their part, relied on Delhi High Court precedent. [Paras 1-3, 7, 11]

Administrative Action – Arbitrary and Unreasonable – Headquarter's cancellation of selection process deemed arbitrary – Lack of plausible and convincing reason for cancellation – Petitioners not responsible for alleged procedural deviations – Reliance on Delhi High Court judgment and principles of equality and arbitrariness under Article 14 of the Constitution. [Paras 7, 10-11]

Judicial Review – Conformity with Rule of Law – Public recruitment governed by Rule of Law – Cancellation of entire selection process not passing the test of rule of law – Respondents directed to permit petitioners to join, with service benefits from date of joining. [Para 12]

Decision – Petition Allowed – Arbitrary cancellation of selection process set aside – Respondents directed to allow petitioners to join within 3 months, with service benefits from the date of joining. [Para 12]

Referred Cases:

- Ravinder Sirohi v. Union of India and others, 2019 SCC Online Del 7041
- Onkar Lal Bajaj v. Union of India, (2003) 2 SCC 673
- Joginder Pal v. State of Punjab, (2014) 6 SCC 644
- Vinodan T. v. University of Calicut

- Maneka Gandhi v. Union of India, (1978) 1 SCC 248
- E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3

Representing Advocates:

Mr. Bhupinder Ghai for the petitioners

Ms. Anita Balyan, Senior Panel Counsel for the respondents-Union of India

JAGMOHAN BANSAL, J (ORAL)

1. The petitioners through the instant petition under Articles 226 of the Constitution of India are seeking setting aside of order dated 20.05.2019 (Annexure P-15 and P-16) whereby respondent has refused to permit the petitioners to join as Tradesman Mate (T. Mate).
2. Petitioners pursuant to an advertisement of the respondent applied for the post of T. Mate. The respondent conducted written test which was followed by physical test. The petitioners were also subjected to medical examination. Just before the joining of petitioners, the respondent like a bolt from blue intimated the petitioners that headquarter has refused to approve the selection process, thus, they cannot be made to join.
3. Counsel for petitioners submits that respondent has conducted complete selection process and thereafter cancelled on the sole ground that Headquarter 9 Corps (Med) has not approved the selection process. The ground for rejection of selection process by headquarter was that local unit i.e. 131 SHO (L) has not followed Standard Operative Procedure (SOP). There was no fault on the part of petitioners. They have cleared all the steps and if there was any infirmity, it was on the part of local unit and they cannot be denied appointment after completion of entire process. In support of his contention, he relies upon a Division Bench judgment of Delhi High Court in ***Ravinder Sirohi Vs. Union of India and others 2019 SCC Online Del 7041.***
4. Per contra, Ms. Anita Balyan, Senior Panel Counsel submits that there was violation of SOP on the part of local unit, thus, headquarter disapproved the selection process. The respondent was bound to strictly follow the SOP, thus, selection process was cancelled on account of non adherence of SOP.

5. I have heard counsel for the parties and perused the record.
6. Before advertizing with arguments of both sides, it would be apposite to reproduce relevant paragraphs of reply filed by respondents.

“1. 131 SHO (L) was issued non availability certificate for vacancies of two Tradesman Mate by IHQ, DGMS (Army) 3B vide their letter No. B/72748/Opt 2009-15/DGMS-3B dated 06.01.2017. Copy of the same is annexed herewith as **Annexure R-1**. Accordingly HQ 9 Corps (Med) i.e. appointing authority was approached for issue of convening order for recruitment of two Tradesman Mate at 131 SHO from 22 Feb 2017 to 21 Aug 2017. Convening order was issued by HQ 9 Corps (Med) for recruitment of two Tradesman Mate at 131 SHO with a presiding officer, two members and an independent member to be detailed by Station HQ Pathankot vide their letter No. 4463/2/M-3B (Appt) dated 21 Aug 2017. Copy of the same is annexed herewith as **Annexure R-2**. Based on this Stn HQ Pathankot issued convening order including independent member from non med unit vide their letter No. 303/31/Q dated 29 Aug 2017. Presiding Officer: Colonel from 167 MH, Member 1: Lt. Colonel from 167 MH, Member 2: Lt. Colonel/ Major/ Captain from 167 MH, Member 3: 01 x Offrs from HQ 616(I) AD Bde were detailed. Copy of the same is annexed herewith as **Annexure R-3**. Meanwhile this unit forwarded a letter to District employment officer of employment exchange, Pathankot for forwarding list of eligible candidates for filling up vacancy of two Tradesman Mate at 131 SHO(L) vide this unit letter No. SHO/1002/CE/32 dated 09 Jun 2017. Copy of the same is annexed herewith as **Annexure R-4**. Simultaneously letter was also forwarded to Advertisement Manager Punjab Kesari for publication of advertisement for appointment of post of two tradesman mate at 131 SHO vide this unit letter No. SHO/1002/CE dated 10 June 2017. Copy of the same is annexed herewith as **Annexure R-5**. Advertisement was published for filling up of vacancy of two Tradesman Mate at 131 SHO in Punjab Kesari News Paper on 13 June 2017 and amendment published on 18 June 2017. Copy of the same is appended herewith as **Annexure R-6**.

2. After publication of advertisement in Punjab Kesari, this unit received total 62 applications from candidates for the post of two tradesman mate at 131 SHO. This unit also carried out liaison with local employment exchange for forwarding of list of eligible candidates for filling up vacancy of two Tradesman Mate at 131 SHO (L), however no list was provided by the employment exchange to this unit & the 62 applications were accepted. Thereafter call letter was forwarded by 131 SHO to 62 eligible candidates for

appearing in written and physical test to be held on 11 Nov 2017 vide 131 SHO letter No. SHO/Civ/Est dated 29 Sep 2017. Copy of the same is appended herewith as **Annexure R-7**. A written and physical test of 48 candidates who appeared for the test were conducted by the board of officer on 11 Nov 2017 at 167 MH.

3. Board proceedings duly completed was received by 131 SHO (L) and the same was forwarded to HQ 9 Corps (Med) (appointing authority) for approval vide 131 SHO letter No. SHO/1002/CE dated 23 Jan 2018. Copy of the same is appended herewith as **Annexure R-8**. The board proceeding was returned to 131 SHO for rectification of observations and correspondence continued from 23 Jan 2018 to 24 Apr 2018. An approval was given by HQ 9 Corps (Med) on 25 May 2018 asking documents alongwith verification of a list of documents before issuing appointment letter. Based on the above letter, 131 SHOP forwarded letter to Shri Sandeep Kumar, S/o Sohan Lal & Shri Rahul Kumar, S/o Shiv Kumar requesting for submission of willingness certificate and informed them for further documentations as asked by HQ 9 Corps (Med) vide 131 SHO letter No. SHO/1002/CE/35 dated 01 Jun 2018. Copy of the same is annexed herewith as **Annexure R-9**. The verified documents were received by 131 SHO from various concerned departments along with other documents from Shri Sandeep Kumar and Shri Rahul Kumar between 09 Jun 2018 to 13 Aug 2018.

4. This unit re-submitted the board proceeding along with the requisite documents to HQ 9 Corps (Med) vide 131 SHO letter No. SHO/1002/CE dated 16 Aug 2018, copy of the same is annexed herewith as **Annexure R-10**. However the board proceeding was returned by HQ 9 Corps to this unit due to incorrect format of medical examination form in respect of Shri Sandeep Kumar and Shri Rahul Kumar and incomplete copy of attestation form is r/o Shri Sandeep Kumar. This unit informed telephonically (to save dispatch and dak delivery time) to Shri Sandeep Kumar and Shri Rahul Kumar within 3 to 4 days of receipt of letter from HQ 9 Corps (Med) & letter handed over to Shri Sandeep Kumar and Shri Rahul Kumar by hand at 131 SHO (L) on the day (13 Nov 2018) of their arrival for submitting medical examination certificate in correct format vide this unit letter No. SHO/1002/CE dated 13 Nov 2018. Copy of the same is annexed herewith as **Annexure R-11**. After receipt of the medical certificate and attestation form from Shri Sandeep Kumar and Shri Rahul Kumar, this unit resubmitted the board proceeding to HQ 9 Corps (Med) along with connected documents vide 131 SHO letter No. SHO/1002/8Ce dated 20 Nov 2018. Copy of the same is appended herewith as **Annexure R-12**. The board proceeding was again returned by HQ 9 Corps

*(Med) to 131 SHO for rectification of observations and correspondence continued from 01 Dec 2018 to 01 Apr 2019. HQ 9 Corps (Med) returned the board proceedings to 131 SHO stating that the said board proceeding cannot be approved at present due to following observation vide their letter No. 4463/2/M-3 (Civ) (Appt) dated 22 Apr 2019, copy of the same is appended herewith as **Annexure R-13**.*

- (i) As per SOP, advertisement should be given in Employment News/ Rozgar Samachar along with local newspapers through the directorate of Visual Publicity and Advertising but the said recruitment was published in only one local news paper, which is not in order as per SOP. Copy of the same is appended herewith as **Annexure R-14 & R-15**.*
- (ii) District employment Exchange is reqd to be informed regarding recruitment for the said post before the written exam and NA/ list of candidate recd from employment exchange is reqd to be called for the said exam. However, no NAC/ list of candidates is found at with the documents.”*

[Emphasis Supplied]

7. From the perusal of the reply, it is evident that process was initiated after intimating the Headquarter. A convening order was issued by Headquarter. A Board as per order of Headquarter was constituted consisting of Presiding Officer, two members and an independent member, to be detailed from station Headquarter, Pathankot. The local unit issued advertisement in Local Newspaper. The post advertised was T. Mate i.e. Group-C as confirmed by counsel for the parties. The local unit sent communication to Local Employment Exchange but no response was received from their office. The respondent conducted written test, physical test and medical examination. After completion of the entire selection process, the petitioners came to be selected. The local unit sent the matter to headquarter for its approval which rejected the entire selection process on the ground that SOP has not been followed. The selection process was initiated in January' 2017 and it concluded in January' 2018. The headquarter was well aware of selection process which is evident from communication made between local office and headquarter. Board was constituted by Headquarter. It is apt to notice here

that both HQ 9 Corps (Med) and local unit are located at Pathankot, thus, there was no reason for lack of knowledge of ongoing recruitment process on the part of Headquarter. The Headquarter acting in a manifestly arbitrary manner has cancelled the entire selection process.

An identical question has been conceded by Division Bench of Delhi High Court in **Ravinder Sirohi (Supra)**. It would be apt to notice reply filed by respondent in the said case which is reproduced as below:-

“ 5. A counter-affidavit has been filed by the Respondents in which inter alia the reasons for cancelling the entire selection process has been set out. In an internal communication dated 18th November 2017, enclosed with the counter-affidavit as Annexure A-12, the following discrepancies in the selection process were highlighted:

- “(a) Vacancy not fixed correctly as per reservation roster for Washerman and Chowkidar categories which has resulted in candidates getting misled with regard to eligibility and number of vacancies for each category.*
- (b) The guidelines for civilian Recruitment Group ‘C’ has not been followed as fair chance was not given to all candidates by asking for character certificate from police at the time of submission of application. This has resulted in rejection of a very large number of applications.*
- (c) Question paper is of high std. not commensurating with minimum academic qualifications.” ”*

From the perusal of above-said paragraph, it is evident that in the said case like present case, post advertised was of Group-C and it was cancelled alleging violation of guidelines. The Court set-aside action of cancellation of selection process. The relevant extracts of the judgment read as:

“12. Clearly, the facts of the present case are different inasmuch as pursuant to a regular selection the Petitioner has qualified on top of the merit list. There appears no valid reason for invalidating his candidature by cancelling the entire selection when his candidature is not affected by any of the reasons given by the Respondents for such cancellation. In Onkar Lal Bajaj v. Union of India (2003) 2 SCC 673 the Supreme Court observed that en masse cancellation was worse than the problem. In Joginder Pal v. State of Punjab (2014) 6 SCC 644 the Supreme Court emphasised the importance of segregating the tainted candidates from the untainted ones and not en masse cancel the entire selection.

13. As a result of the impugned decision of the Respondents cancelling the entire selection, the Petitioner, who has qualified at the top of the merit list is now permanently rendered disqualified for further selection on account of being overage for any subsequent selection. Therefore, the cancellation has severely prejudiced the Petitioner. This was certainly not the factual situation in Vinodan T. v. University of Calicut (supra). There must be good reasons for cancellation of the candidature of a qualified candidate. That is missing in the present case.

14. *Consequently, this Court sets aside the decision of the Respondents qua the Petitioner cancelling his candidature and directs that he be appointed as 'Chowkidar'. The Respondents will issue an appropriate order to that effect within a period of eight weeks from today. The petition is allowed in the above terms."*

0. In ***Maneka Gandhi v. Union of India, (1978) 1 SCC 248***, a Constitution Bench elaborated and expounded the relationship between different articles guaranteeing fundamental rights and enunciated that every action of the State is violative of article 14 which is arbitrary. Equality is antithetic to arbitrariness. Equality and arbitrariness are sworn enemies. One belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Justice Bhagwati speaking for the bench has held:

*"7. Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its allembicing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E.P. Royappa v. State of Tamil Nadu (1974) 4 SCC 3* namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not*

arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.” In the case in hand, the local unit with the consent of Headquarter initiated selection process. A Board was constituted by Headquarter. The local unit sent a communication to employment exchange and an advertisement was published in a local newspaper. The post advertised was Group-C post and 62 candidates applied for the post. It is not a case where against two posts very few candidates applied. There is no allegation of bias or favouritism against the Board which selected candidates. The entire selection process was followed. As per stand of the Headquarter, the local unit deviated from SOP qua advertisement and report from employment exchange. The petitioners are not at fault. They have cleared all the steps. If there was infirmity, it was on the part of local unit and petitioners cannot be made to suffer. Employment is not a vested or Fundamental Right of a candidate and authorities have every right to cancel selection process, however, every public recruitment is governed by Rule of law. The action of respondent does not pass test of rule of law because reason assigned for cancellation of entire selection process is not plausible and convincing. The case of the petitioner is squarely covered by judgment of Delhi High Court in ***Ravinder Sirohi (Supra)***.

11. In the wake of above discussion and findings, the present petition deserves to be allowed and accordingly allowed. The respondents are directed to permit the petitioners to join within 3 months from today. The date of joining of the petitioners would be date of their appointment for all service benefits.

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