

Natthu Lal Nishad S/o Munna Lal Vs Union Of India Through Its Secretary, Ministry Of Defence (Army), New Delhi. & Ors.

Court: Central Administrative Tribunal - Allahabad Bench, Allahabad

Date of Decision: Jan. 23, 2025

Acts Referred: Administrative Tribunals Act, 1985 " Section 19

Hon'ble Judges: Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench: Division Bench

Advocate: M.K Yadav, Shestha Yadav, K.K. Ojha

Final Decision: Allowed

Judgement

Om Prakash-VII, Member (J)

1. The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following

reliefs:-

i) This Hon'ble Tribunal may graciously be pleased to issue a writ order or direction in the nature of certiorari quashing impugned

orders dated 29.11.2014 passed by the respondents No.2 (Annexure A-3) in Compilation 1 to this original application.

ii) This Hon'ble Tribunal may further be pleased to give appointment the applicant from the date when he was selected w.e.f. 1.5.2009

along with consequential benefits and with arrears.

iii) To issue order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iv) To award cost of the petition in favour of the applicant.

2. The brief facts of the case are that in pursuance of the advertisement issued in the year 2009 for selection to the post of Safaiwala Group

post, applicant applied. The qualification mentioned in the advertisement was shown as Class 5th pass and knowledge of Hindi. Applicant

appeared in the written examination conducted on 02.03.2009 by the respondent No.3, in which he was successful. After passing the written test,

applicant was called for document verification vide letter dated 01.05.2009. In pursuance of aforesaid letter, applicant has reported and submitted all

requisite documents before the authority concerned. Applicant also submitted police verification report. After verification of police report, applicant

sent for medical board. Applicant has passed all the examination conducted by the respondents but joining report has not been issued without rhyme

and reason. Applicant sought information under Right to Information Act to the respondent No. 3 and he was replied vide letter dated 03.04.2010 in

which it has been stated that as per recommendation of 6th Central Pay Commission and under the new Rule of 2011, the minimum qualification for

recruitment of Group A is matriculation. Thereafter applicant was informed vide impugned order dated 29.11.2014 that he could not be given

appointment on the post of Safaiwala as his qualification is only 5th class. Aggrieved against the aforesaid order, applicant preferred the present

original application.

3. Respondents filed counter reply, inter alia contesting the case of the applicant on the ground that in pursuance of the advertisement for appointment

of Safaiwala, applicant applied and had been provisionally selected subject to production of medical fitness. In the meantime, with the

recommendations of 6th CPC, the minimum education qualification for a candidate has been mandatorily increased to 10th pass. This was applicable

for Group A posts Thus, as per direction of the Army Headquarter, the recruitment process has been stopped.

4. We have heard Shri M.K. Yadav, learned counsel for the applicant and Shri K.K. Ojha, learned counsel for the respondents and perused the record

as well as written submission filed on behalf of applicant.

5. Learned counsel for the applicant argued that the selection has not been formally cancelled, as no official cancellation order has been issued by the

respondents. Minimum qualification required for the post advertised was "5th pass or equivalent." Learned counsel for the applicant contends that this

criterion cannot be altered in mid-process. The applicant was provisionally selected and was expecting an appointment letter. However, the

respondents stated that the minimum educational qualification was revised to "10th pass" based on the recommendations of the 6th Central Pay

Commission (CPC). Learned counsel for the applicant has relied upon following case laws:-

(i) Tej Prakash Pathak & others Vs. Rajasthan High Court and others reported in 2013 (4) SCC page 540;

(ii) Ghanshyam Das Vs. Union of India and others decided on 30.01.2023 in OA No. 1611/2011 by CAT, Allahabad Bench.

6. In rebuttal learned counsel for the respondents argued the minimum educational qualification for the post was revised from "Class 5th" to "Class

10th" based on the recommendations of the 6th Central Pay Commission (CPC), which reflects that the revision was a policy decision and not specific

to the applicant's case. Learned counsel for the respondents states that the cancellation of the selection process was carried out following a direction

of a higher authority (the Headquarters). This demonstrates that the respondents acted in compliance with instructions given by the Headquarter. It

has also been stated that the applicant was duly informed of the cancellation. This indicates their intention to ensure transparency in their actions.

7. We have considered the rival submission and have gone through the entire record including the case laws relied upon by the applicant.

8. It is clear from perusal of the records that the advertisement said that the required qualification for the post of Safaiwala was 5th grade or above,

but according to the respondents, the minimum qualification was raised to 10th grade following the sixth CPC. The applicant passed the written and

interview exams based on their 5th qualification. A medical test was ordered for him. The applicant provided a medical certificate and is waiting for

appointment letter; however, the selection procedure was cancelled by the respondents due to direction of the Higher Authority.

9. The legal position is well settled by repeated pronouncements of Hon'ble Supreme Court and of various Hon'ble High Courts in a catena of

judgments that "the Rules of the games cannot be changed after the game is over or even in the midst of the game". In other words, the terms

and conditions of selection and appointment contemplated in the recruitment notifications cannot be altered in the mid of the selection process or after

completion of the recruitment. Neither the eligibility criteria nor the nature of the appointment or vacancies advertised can undergo any change after

the publication of the recruitment notification.

10. In Bishnu Biswas and others Vs. Union of India and others (2014) 5 SCC page 774, an advertisement was published calling applications

for appointment to the post of Group D staff. The recruitment rules only provided for a written examination having 50 maximum marks. After

holding written examination, notice was issued, calling the successful candidates for interview. Although, such interviews was not part of the

recruitment process, a select list was published, which was challenged in the Tribunal. The Tribunal returned the finding that the manner in which

marks have been awarded in the interview to the candidates indicated lack of transparency. The Hon'ble High Court upheld the reasoning of the

Tribunal. Matter reached up to Hon'ble Supreme Court and Hon'ble Supreme Court in para 19 and 20 in its judgment has held as under:-

"19. In the instant case, the rules of the game had been changed after conducting the written test and admittedly not at the stage of

initiation of the selection process. The marks allocated for the oral interview had been the same as for written test i.e. 50% for each. The

manner in which marks have been awarded in the interview to the candidates indicated lack of transparency. The candidate who secured

47 marks out of 50 in the written test had been given only 20 marks in the interview while large number of candidates got equal marks in

the interview as in the written examination. Candidate who secured 34 marks in the written examination was given 45 marks in the

interview. Similarly, another candidate who secured 36 marks in the written examination was awarded 45 marks in the interview. The fact

that today the so called selected candidates are not in employment, is also a relevant factor to decide the case finally. If the whole selection

is scrapped most of the candidates would be ineligible at least in respect of age as the advertisement was issued more than six years ago.

20. Thus, in the facts of this case the direction of the High Court to continue with the selection process from the point it stood vitiated does

not require interference. In view of the above, the appeals are devoid of merit and are accordingly dismissed. No costs. *Āĉâ,~â€*

11. Likewise, in *Tej Prakash Pathak (supa)*, it has been held by Hon^{Āĉâ,~â„}ble Apex Court that the criteria for selection cannot be changed during the

course of the selection arbitrarily.

12. In *Ramesh Kumar Vs. High Court of Delhi* and another decided on 1.2.2010, Hon^{Āĉâ,~â„}ble Apex Court held that a selection has to be

made as per existing rules. After the selection process has been initiated, the selection criteria cannot be changed in the midst of

selection process. Once the selection process starts, it is not permissible for the competent authority to change the selection criteria.

13. In the case of *K. Manjusree Vs. State of Andhra Pradesh*, Appeal Civil No. 1313/2008, decided on 15.2.2008 (three Judges Bench),

(2008) 3 SCC page 512, Hon^{Āĉâ,~â„}ble Supreme Court, on finding that the introduction of requirement of minimum marks for interview, after the

entire selection process consisting of written examination and interview was completed, held that it will amount to changing the rules of game

after the game was played and therefore, impermissible.

14. In this matter as is evident from the record that in the advertisement minimum qualification for Safaiwala post was class 5th and applicant^{Āĉâ,~â„}s

candidature has been cancelled on the ground that minimum qualification was changed after implementation of 6th Central Pay Commission as class

10th. It is pertinent to mention here that if advertisement issued for appointment for the aforesaid post required only 5th pass the respondents cannot

change the said requirement after advertisement. It is also pertinent to mention here that advertisement was issued in the year 2009 whereas minimum

qualification has been changed later-on, which is not permissible under the eye of law. Hence the applicant is entitled for the relief as prayed for and

O.A. deserves to be allowed.

15. Accordingly, O.A. is allowed. Orders dated 29.11.2014 is quashed. Respondents are directed to issue appointment letter to the applicant on the

post of Safaiwala considering the qualification as 5th as published in the advertisement. If post is not available, respondents are directed to create

supernumerary post. This exercise shall be completed within a period of 4 months from the date of receipt of certified copy of this order. There shall

be no order as to costs. All MAs are disposed of.