

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A.No. 457 of 2010

W.P.(Civil) No. 9952 of 2009 of Delhi High Court

Rajbir SCPO No. 1632138

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. D.S. Kauntae, Advocate.

For respondents: Sh. Anil Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

19.01.2011

1. The petitioner by this writ petition has prayed that the impugned orders dated 23rd October 2008 and 31st March 2009 may be quashed and respondents may be directed to reconstitute a fresh DPC for consideration of the petitioner for promotion to the next higher rank of Master Chief Petty Officer-II ('MCPO-II') and grant him a notional seniority and consequential benefits retrospectively and further declare and hold that para 24 of Navy Order 83/03 is good and enforceable for practical purposes for grant of next higher promotion to the rank of MCPO-II and passing of such tests in second chance cannot be construed as an illegality for the said promotion.

2. This writ petition has been received on transfer from the Delhi High Court.

3. The petitioner is a citizen of India and joined Indian Navy as a Sailor on 31st July 1985 and on successful completion of his training, he was inducted in Indian Navy. In the year 2003, the competent authority introduced some career courses

namely (i) CPO Management Course (ii) PO Leadership Course as a prerequisite qualification for promotion to the next higher rank of MCPO-II as per the existing policy to elevate the senior Sailors to the next supervisory post. The syllabus for the said course was prescribed by the Integrated HQs of Navy/HQs Southern Naval Command from time to time. The syllabi for aforesaid courses is comprising of two aspects (a) Management Subjects of 150 marks and (b) Service subjects of 100 marks. The detailed guidelines and all other allied instructions are contained in the Naval Order 83/03. As per prescribed para 24 of the aforesaid Naval Order, the conditions for consideration of the promotion to the next higher rank of MCPO-II were made subject to fulfillment of physical fitness. A Physical Efficiency Test ('PET') was mandatory and conducted at the time of commencement of the aforesaid course for all eligible personnel attending the said course. Any personnel attending not qualifying in the aforesaid PET was entitled for another chance to qualify the said test. The petitioner was promoted to the rank of SCPO in the course of time on 1st March 2005 and he was also selected to undergo the MCPO course which was conducted at INS Agrani in July 2006. A detailed procedure for the selection and promotion to the post of MCPO-II has been laid down and certain guidelines are already there. It appears that the petitioner appeared in the first course but he could not make it in PET and therefore he was not selected in 2006 but in 2007 he qualified the PET and he was sent for MCPO course which he successfully passed with distinction. Then his case was considered for promotion to the post of MCPO-II but he could not make it as per the original record which has been placed for our consideration, only six persons who secured highest marks were considered for promotion. Petitioner could not be considered because he secured zero marks in CPO (M) course. He was given zero weightage in 2007 and also in selection of

2008. Therefore petitioner was driven to file this petition challenging his non-selection for the post of MCPO-II.

4. In this connection, a procedure has been placed on record by Naval Order 05/06. The Selection Procedure in para 6 says that promotions to the rank of MCPO-II and MCPO-I are the only selective promotions for Sailors. Para 7 deals with vacancies and para 8 deals with Categorisation of Branches, Para 9 deals with Incentive to Instructor Sailors and para 10 (b) deals with Eligibility Conditions for Promotion to MCPO-II which reads as under:

“10 (b) Eligibility condition for Promotion to MCPO-II

(i) Should be recommended for promotion by the Promotion Board.

(ii) Should have continuous VG conduct for four years, immediately before promotion.

(iii) Should be medically fit.

(iv) Should have passed CPO Management Course.”

Para 14 lays down the Points Considered by the Selection Board. This is a relevant para need to be reproduced as under:

“14. Points Considered by the Selection Board.

The Selection Board is to scrutinise the entire service record and confidential report rendered on each eligible Sailor. Owing to the limited number of vacancies available for promotion, the qualities displayed by an individual and his performance at every level especially after attaining the rank of Ag. PO are to be critically examined and compared with other Sailors of his rank in his own branch before deciding on his suitability for promotion to MCPO-II/I. The Selection Board is also to be guided by the Approach Paper being forwarded by Integrated Headquarters of Ministry of

Defence (Navy) wherein service requirements, which may change from time to time, will be incorporated. The specific attributes which are to be examined in addition by the Selection Board are:

- (a) Professional knowledge and performance in courses.
- (b) Qualities of Leadership including performance in PO(L) and CPO(M) Course.
- (c) Potential to shoulder higher responsibilities.
- (d) Maturity
- (e) Managerial ability or Power of Command.
- (f) Integrity and loyalty.
- (g) Potential as instructor.
- (h) Personal qualities
- (j) Conduct and discipline
- (k) Sports and extra curricular activities.
- (l) Any special talent.”

This Approach Paper is almost a guideline for the Selection Committee. This Approach Paper laid down by the Naval HQ on 23rd August 2007 for Selection Board of 2007 and in that ‘CPO(M) Course’ reads as under:

- (a) 10% of marks obtained.
- (b) 5 points if passed in re-examination.
- (c) Zero points if qualified after first failure.
- (d) Minus 5 points for second failure.”

5. As per this zero points was given to person if he has failed in the first CPO(M) Course attempt. The respondents in their reply has specifically mentioned with regard to this Approach Paper and said that since petitioner failed in the first attempt though he passed in the second attempt but still passing in second attempt will not avail him of any marks except zero marks out of 10 marks. The original papers which have been placed before us in that the incumbent had been given zero marks.

Since he was given zero marks therefore his total percentage of marks reduced to 61.47 in 2007 and similarly in 2008 it was 60.90%. But person selected obtained much higher marks than petitioner.

6. In view of this learned counsel for the petitioner has submitted that this Approach Paper which has been issued by the respondents cannot be treated as a part of the statute and it is something alien to it and, therefore, it should not be considered.

7. We have bestowed our consideration to this submission and the answer is in negative as it is clearly mentioned in the Naval Order 05/06 in para 14 reproduced above that the Selection Board shall be guided by the Approach Paper being forwarded by INHQ, Ministry of Defence wherein the service requirements which will be required from time to time will be incorporated. Therefore, this Naval Order shall be deemed to be part of the selection process and the Selection Committee cannot ignore it. Therefore, the submission of learned counsel for the petitioner that it may be treated alien to the selection process cannot be accepted.

8. Next, learned counsel for the submitted that awarding of zero marks on passing CPO(M) course second time will be a futile exercise if it does not entail any marks for that. It is true that once a person is given an opportunity to pass a test and he successfully passes the test but it entails no marks then it will be a worthless exercise though it may improve his personality. But if that improvement in personality is of no avail to him in the service promotion then it will be a futile exercise. The argument of learned counsel appears to be justified that if a person

who has been given a second attempt and if he passes the test and he entails no improvement in his service then it is a useless exercise. But this part of the Naval Order is not challenged before us, therefore, we cannot deal with this issue any further. However, we are constrained to observe that a person who has successfully passed in second attempt and awarded zero marks it will be a very negative approach. Incumbent when he passes in second time we can understand if his numbers may be reduced but to say that it will be treated zero marks and of no avail, does not appear to be a justified approach. A person who has failed first can make good in second attempt but some credit for the second attempt should be given but awarding zero marks will not be a positive approach and then the people will not make second attempt at all. It should be given some credit in the matter. It is for the Naval Authorities to consider since this is a part of the selection process which has been uniformly applied for all. Therefore, we have nothing to add then what we have said about. Since petitioner has not been able to make up in the selection as he secured less marks than the person who got selected, therefore, we do not find any merit in this petition and same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 19, 2011.