

CASE NO.:
Appeal (civil) 2563 of 1988

PETITIONER:
HAVILDAR CLERK HANS RAJ SHARMA ETC.

RESPONDENT:
UNION OF INDIA AND ORS,

DATE OF JUDGMENT: 09/09/1994

BENCH:
R.M. SAHAI & A.S. ANAND, JJ.]

JUDGMENT:
JUDGMENT

1994 SUPPL. (3) SCR 339

The following Order of the Court was delivered :

The question that arises for consideration in these two appeals is whether Army Instruction Nos. 69-73 issued on 11th September, 1976 for Permanent Commission in the Army Medical Corps (Non-Technical) contemplate selections one by the Service Selection Board (for short 'the Board') and another by the Director General, Armed Forces Medical Services (DGAfms) and in any case whether the Department was justified in denying the Permanent Commission to the appellants for 1986 quota as the practice prevalent in the Department till 1987 was to appoint candidates on basis of the list prepared by the Board in order of merit.

The appellants who were enrolled in the Army as an Other Rank and were serving on the date of selection in the rank of Havildar Clerk, Army Medical Corps, applied for grant of Permanent commission in the Army Medical Corps for the quota of 1986. They having been found to be eligible for the grant of the Commission as provided in the Army Instruction Nos. 69-73 of 1976 appeared before the Board which, after vigorous test held for days, found them suitable to be appointed and placed them in the merit list at 4th and 5th position. The recommendation of the Board was forwarded to DGAfms for, 'final selection' upto the required number. In May 1986, the DGAfms had issued a letter wherein the eligibility for the grant of Permanent Commission was to be strictly based on merit of the candidates depending on their performance before the Board. It further provided that henceforth number of chances for grant of commission were to be restricted to six only. The letter, therefore, except for this restriction did not envisage any change in the method of selection. Even the interview for personality test was to be held by the Board. This procedure underwent further change and by letter dated 5th May 1987 the eligibility of the candidates was further made subject to their performance in the Board 'followed by selection interview by the board as constituted by DGAfms if the candidates are otherwise eligible as per AI 69/76 as amended'. It appears in pursuance of this amended eligibility criteria the appellants along with others were required to undergo personality test in which the Candidates who were lower in order of merit were selected. Against this selection appellants approached the High Court, but their writ petitions were dismissed as their selection was in accordance with the Army Instructions issued in 1976.

The relevant portion of the Army Instructions on which there has been divergence and which have been subject matter of argument in this Court is extracted below :

"Eligible candidates will appear before the Services selection Board convened by the Adjutant General's Branch. The Services Selection Board

will grade candidates according to their suitability and forward the completed application forms including their recommendations and grading to DGAFMS for final selection upto the required number".

The claim of the appellants is that in view of the vigorous selection which is held by the Board, the expression 'final selection' in the Instructions should be read and understood as issuing of the appointment letter upto the required number. The learned counsel urged that this power has been given under the Instructions to the Director General because the vacancies are not notified and the knowledge of the required number is always within the knowledge of the Director General. On the other hand, the learned counsel appearing for the Union of India urged that the language used in the Instructions left no scope for argument that the selection made by the Board was final. The learned counsel urged that since competency and efficiency is the hallmark of the army selection, therefore, it is not only physical test which makes a person suitable for the job of Permanent Commission, but he is also required to undergo personality test. It is not necessary to express any opinion on this question as the appellants had further specifically claimed in the Special Leave Petition that the Department has never deviated from the selection made by the Board and at no point of time the candidates recommended for appointment were ever subjected to a personality test by the Director General. Since the reply of the Union of India was not satisfactory on this aspect, this Court after hearing learned counsel for the parties passed the following Order on 7th October, 1993 :

"The main rather the only controversy in this appeal is whether for grant of permanent commission in Army Medical Corps (Non-Technical) an eligible candidate was to undergo two selections, one, by the Service Selection Board and another by the Director General, Armed Forces, Medical Services (DGAFMS) in 1987. The instructions issued in 1976 are not very clear. In one of the appeals it is claimed that the department resorted to second and final selection by D.G.A.F.M.S. for the first time in 1987. The reply to this averment by the Union is vague. In fact it is stated that it did not need any comment. In our opinion this requires clarification. We, therefore, permit the Union of India to file a supplementary counter-affidavit within six weeks from today explaining the practice which was prevalent in the Department from 1976 to 1987 and whether after the recommendations were made by the Service Selection Board, any further interview was held for final selection by D.G.A.F.M.S. or not. Details of selections shall also be furnished. The affidavit shall further explain if prior to 1987 there was divergence in selections made by the Board and D.G.A.F.M.S., to what extent.

The learned counsel for Union of India shall further produce the records for perusal by this Court on the next date.

List as part-heard immediately after six weeks".

The Union, however, did not file any affidavit and, therefore, when the appeal was listed and heard on next date, the Court passed the following Order :

"On 7th October, 1993 an order was passed by this Court directing the learned counsel for Union of India to file a supplementary counter-affidavit and to produce the record. Six weeks' time was granted for this purpose. Today when the case was taken up the learned counsel for Union of India Shri Goswami stated that he came to know of the order only today. He did not want to explain nor put up any excuse for non-filing of the affidavit. But he made a request that as a last chance three weeks' time may be allowed to him to comply with the order of the Court. Although the conduct of Union of India cannot be commended but considering the importance of the matter the request is accepted and three weeks' time is allowed as a last chance. It is made clear that in case the affidavit is not filed or the record is not produced the Court may be left with no

option except to draw an adverse inference against the respondent."

In pursuance of these Orders, the supplementary counter-affidavit has been filed by the Union of India. The two paragraphs which are relevant are extracted below:

The Hon'ble Court may kindly appreciate that the rules are framed in the service keeping in view the service requirements and they can be changed in the interest of the service by the competent authority as the when required. In this particular case too, the new system of final selection interview was introduced by the DGAFMS to have a better selection procedure under the powers vested in him. Above all commission cases are examined by the Ministry of Defence in their all proximity of governing rules and regulations and finally cleared, after obtaining the approval of Raksha Rajya Mantri.

As already explained above prior to 1987 when interviews for 1986 years quota was held the candidates were being commissioned from amongst the list forwarded by the SSB strictly on the basis of merit and no further interviews were held. Since the final selection was being made on the basis of SSB grading and no final selection boards was being held there was no question of any divergence whatsoever on the final selection,"

The supplementary counter-affidavit filed by the Union supports the claims of the appellants that at least till 1987 the practice followed by the Department was that the candidates who were recommended by the Board were not subjected to any interview and were appointed straightaway by the Director General in accordance with the merit as determined by the Board. In view of this affidavit, it does not appear necessary to decide the question of law raised on behalf of the appellants that the Army Instructions issued in 1976 contemplated only one selection or that the Army Instruction 69-76 amended from 1987 would apply to future selections only. Since the Department till 1987 adopted the practice of appointing candidates in order of merit on the recommendation made by the Board, and the procedure was altered from May 1987 which did not apply to 1986 quota the respondents were not justified in not following the recommendation in the case of appellants and denying them Permanent Commission to which they were entitled by virtue of their selection.

In the result, these appeals succeed and are allowed. The respondents are directed to allow Permanent Commission in the Army Medical Corps (Non-Technical) to the appellants from the date it was granted to other candidates selected for 1986 quota. The appellants shall be entitled nationally to all consequential benefits including promotion and seniority, except the payment of back wages. It is, however, made clear that while determining seniority of the appellants the seniority or promotion given to any selected candidate who is already working on a promotional post shall not be disturbed. Parties shall bear their own costs.