

11 & 12

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

**+ W.P.(C)No.2674/2010**

Date of Decision : 13<sup>th</sup> September, 2010

%

VIKAS SAKSENA ..... Petitioner  
Through: Mr. Ajay Kumar Porawali, Adv. with

versus

UNION OF INDIA AND OTHERS ..... Respondents  
Through: Mr. A.K. Bhardwaj, Adv. with  
Mr. A.K. Chauhan, DIG, Chief Law  
Officer, Coast Guard.  
Commandant G. Singh.

**AND**

**+ W.P.(C)No.4390/2010**

NAGENDER SINGH ..... Petitioner  
Through: Mr. G.D. Gupta, Sr. Adv. with  
Mr. Yashpal Rangi, Adv.

versus

UOI AND ORS ..... Respondents  
Through: Mr. A.K. Bhardwaj, Adv. with  
Mr. A.K. Chauhan, DIG, Chief Law  
Officer, Coast Guard.  
Commandant G. Singh.

**CORAM :-**

**HON'BLE MS. JUSTICE GITA MITTAL**

**HON'BLE MR. JUSTICE J.R. MIDHA**

- |    |   |     |
|----|---|-----|
| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. | To be referred to the Reporter or not?                                | Yes |
| 3. | Whether the judgment should be reported in the Digest?                | Yes |

**GITA MITTAL, J. (Oral)**

1. These two writ petitions lay a challenge to the change in the selection process effected by the respondents for appointments to the post of Deputy Commandant (Law) in the Indian Coast Guard Service after the notified process stood completed and was at the stage of medical examination of the successful candidates. The petitioners also assail the denial of appointment to the said post to them despite their having

admittedly successfully qualified in the notified selection process.

2. The undisputed facts giving rise to the writ petitions are noted hereafter. The respondents had issued an advertisement dated 12<sup>th</sup> November, 2009 inviting applications from Indian citizens for several posts including the posts of Deputy Commandant (Law) at a pay scale of ₹15,600-39100 (revised) with grade pay ₹6600/-.

3. So far as the procedure of selection was concerned, the advertisement has notified the applicants as follows:-

“SELECTION PROCEDURE

*(a) Short listed candidates will be called for selection test/interview at CGSB, Noida (UP). Candidate's excellence in Academics, Sports and NCC will be given due weightage whilst short listing the candidates through call up letters by Mid Dec 2009. Candidates who do not receive call up letter may assume that they have not come in the zone of short listing. Updated list of short listed candidates will be hosted on ICG website.*

*(b) The selection process consists of two phases*

*(i) Preliminary Selection Board (PSB), It consists of General Mental Ability Test in which the candidates will be tested for General Awareness, General Intelligence and Reasoning.*

*(ii) Final Selection Board (FSB), It consists of Psychological Test, Group Testing and Interview (Personality Test).*

*(c) Selection will be made only on the basis of performance of the candidate in FSB. Those found medically fit will be placed in the merit list. The candidates who qualify in the merit list vis-à-vis number of vacancies available will be issued with appointment letter.*

*(d) Medical examination will be held at Delhi."*

(underlining by us)

4. Shri Vikas Saxena, petitioner in WP(C)No.2674/2010 and Shri Nagender Singh, Petitioner in WP(C)No.4390/2010 had fulfilled the eligibility requirements and submitted applications for undergoing the selection process and appointment to the said post pursuant to the advertisement dated 12<sup>th</sup> November, 2009. Their applications were found in order resulting in issuance of a call letter dated 3<sup>rd</sup> December, 2009 to Shri Vikas Saxena and a call letter dated 30<sup>th</sup> November, 2009 to the other writ petitioner for appearance before the preliminary and final selection board. The directives contained in this letter as well have a bearing on the issue raised before this court and read as follows:-

*"4. Only those candidates who are qualified in Preliminary Selection Board (PSB) will appear in Final Selection Board (FSB) from 13-17 DEC 2009 at Coast Guard Selection Board, Noida. Those candidates who are finally recommended by FSB will undergo medical examination."*

(underlining by us)

5. It is noteworthy that the Preliminary Selection Board (PSB hereafter) was conducted by the respondents from 10<sup>th</sup> December, 2009 and was held for three days. Out of the total of 32 candidates who appeared in the Preliminary Selection Board, only five candidates including the petitioners were recommended for appearance in the final selection process. It is an admitted fact that the Final Selection Board ('FSB' hereafter)

was held between 13<sup>th</sup> and 17<sup>th</sup> December, 2009. Out of five candidates who appeared in the Final Selection Board, three candidates, again including the two petitioners, were declared as successful.

6. In terms of the notified procedure, the Commandant (JG) on 17<sup>th</sup> December, 2009 issued the medical examination forms in the prescribed format to both the petitioners requiring them to appear before the Base Hospital, Delhi Cantt. for the medical examination, which was the only remaining step of the selection procedure.

7. The petitioners have complained that after leaving the premises of the Coast Guard Selection Board, they were telephonically informed to have a word on 18<sup>th</sup> December, 2009 with the Chief Law Officer at the Coast Guard Head Quarter, New Delhi. The submission is that as per the applicable and prescribed procedure, the Chief Law Officer has no role in the selection process for appointment to the post of Commandant (Law).

8. In terms of this telephonic direction, the petitioners submit that they reached the Coast Guard Head Quarter, New Delhi on 18<sup>th</sup> December, 2009 at 10:00 hrs. when they were directed to return on 21<sup>st</sup> December, 2009. To their surprise on 21<sup>st</sup> December, 2009, the petitioners were directed to appear before a new selection board chaired by the Chief Law Officer and undertake a written test as well as an interview on that very day. The result of this new selection procedure was informed on

23<sup>rd</sup> December, 2009 when the petitioners were informed that they had failed in the interview which had been conducted, and consequently not selected.

9. The petitioners separately represented against the procedure which had been adopted and the refusal of the respondents to appoint them to the post for which they had successfully undertaken the prescribed selection procedure. Upon failure of the respondents to accept the representation of the petitioners and do justice to them, Shri Vikas Saxena filed WP(C)No.2674/2010 on or about 28<sup>th</sup> March, 2010 seeking a declaration that the selection made by the respondents for the post of Deputy Commandant (Law) is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and issuance of the writ of mandamus quashing the selection made by the respondents for the said post. A further prayer was made for a direction to the respondents to make the selection in accordance with the notified procedure and for completion of selection in terms of the notified procedure and permit the petitioner to undertake the medical examination.

10. We may note that along with the writ petition, the petitioner has filed an application seeking interim orders against the respondents to keep one post of Deputy Commandant (Law) vacant so as to enable the petitioner to get appointment during the pendency of the writ petition. When the writ petition came up for hearing on 22<sup>nd</sup> April, 2010, notice was issued to the respondents to show cause and so far as the stay application

was concerned, the following directions were made:-

***“CM No.5342/2010 (Stay)***

*Notice. Mr. Gaurav Khanna, Advocate for Union of India accepts notice.*

*It is directed that appointment, if any, made by the respondents shall be subject to the final outcome of the writ petition. The respondents shall inform the appointees in terms of the order passed by this Court during the pendency of the writ petition.*

*Dasti to the parties.”*

11. Shri Nagender Singh has filed WP(C)No.4390/2010 shortly thereafter also seeking directions to the respondents to act upon the recommendation of the Final Selection Board in terms of the advertisement dated 12<sup>th</sup> November, 2009 and to appoint the petitioner to the post of Deputy Commandant (Law) in terms of the notified norms and procedure with all consequential benefits. In as much as these writ petitions raise identical questions of law and fact, we have heard them together and propose to decide them by the single judgment.

12. The petitioners have primarily made a grievance that the respondents had no authority to change the selection process mid way after its commencement and after the petitioners had successfully undertaken the entire notified selection process. Mr. G.D. Gupta, learned Senior counsel appearing for Shri Nagender Singh has submitted that the petitioners had been in fact recommended for appointment and, for this reason, only the formality of the medical examination was remaining to be

undergone by them. In this behalf reliance has been placed upon the forms in prescribed format for undergoing the medical examination at the Base Hospital, Delhi Cantt. duly signed by the Commandant which had been handed over to the petitioners on 17<sup>th</sup> December, 2009.

13. The writ petitions are opposed by the respondents who have filed counter affidavits taking an identical stand in the matters.

14. So far as the procedure which was adopted on 21<sup>st</sup> December, 2009 is concerned, the respondents have in the counter affidavits stated that *“the decision for appearance of the candidates recommended by the final selection board for the post of Deputy Commandant (Law) had been approved before hand by the competent authority on 24<sup>th</sup> November, 2009.”* It is further stated that in this background, the three candidates who had been selected in the final selection board were required to appear before the Professional Competency Board held at the Coast Guard Head Quarters on 21<sup>st</sup> December, 2009.

15. With regard to information to the candidates with regard to the Professional Competency Board is concerned, in the counter affidavit the respondents have stated that *“before commencement of PSB/FSB, the candidates who reported for the Deputy Commandant (Law) selection were informed during the inaugural address that those qualifying FSB will have to appear before a Professional Competency Board (PCB) since Deputy*

*Commandant (Law) is a higher rank.”*

16. These assertions of the respondents have been vehemently contested by both the petitioners who have on affidavit submitted that no such information was given at any stage till they were compelled to undergo the testing on 21<sup>st</sup> December, 2009.

17. We may notice yet another plea which has been taken in the counter affidavit. The respondents have further stated that the board conducted the professional competency assessment through a *“short test of general law and basic maritime law, followed by interview both aimed at assessing the professional knowledge, legal awareness and suitability of candidate for induction into the post of Deputy Commandant (Law).”* A further prescription that *“it is expected that the candidates would score at least 50% marks in the written test”* is mentioned in the counter affidavit.

18. It is an admitted position that in the advertisement which had been issued on 12<sup>th</sup> November, 2009, the respondents did not notify that candidates who were successful in the final selection board would be required to appear before a further professional competency board or the manner of its testing. No syllabi or distribution of marks was also provided.

19. In view of the pleas which have been set up in the counter affidavit, we called upon the respondents to produce the relevant records. A file bearing No.RT/0103/FAST TRACK captioned as *“RECRUITMENT OF ASST COMDTS-FAST TRACK –*

01/2010 BATCH" was produced before us. This file refers to the advertisement which was issued for fast track selection of Assistant Commandants of GD/GD P/N/CPL/Tech which had been published all over India in national daily newspapers on 10<sup>th</sup> November, 2009 and telecast on six T.V. channels. Interestingly, there is not even a reference to any issue involving Deputy Commandants in this file.

20. In this file, on 18<sup>th</sup> November, 2009, a Note 9 was recorded by Shri Braj Kishore Commandant (JG) which included at Sl.No.3 the proposed schedule for the recruitment of Assistant Commandants (Fast Track) commencing from the stage of the last date of receipt of applications till the commencement of basic training on 4<sup>th</sup> of January, 2010. At Sl.No.4, of Note 9 the following was also proposed:-

"4. The Preliminary Selection Board of officers for Fast Track Selection will comprise of total 06 members (one set of 03 assessors including the President and 03 other members as nominated by the Admin directorate). The Board will conduct written test (GMAT-verbal and Non-verbal) as well as Stage-I screening during the PSB. (10-12 Dec 09). On completion of PSB, the FSB will be conducted at CGSB, Noida w.e.f. 13-17 Dec 09."

The above schedule was recommended for the DDG's approval on 20<sup>th</sup> November, 2009 by Shri B.K. Patasahani, DIG, PD (HRD).

21. This file then went up to the Deputy Director General who on 20<sup>th</sup> November, 2009 called upon the Chief Law Officer to comment thereon. A noting of the Chief Law Officer ('CLO' for

brevity) made on 23<sup>rd</sup> November, 2009 was relied upon by the respondents before us as the proposal for assessment by a Professional Competency Board in the cases in hand and deserves to be considered in extenso. The same reads as follows:-

*"Since candidates for SI(e) of Encl 1A are for higher rank, propose suitability be assessed by professional board also in addition."*

22. This proposal and the file was then on 24<sup>th</sup> of November, 2009 placed before the Deputy Director General who has endorsed the following comments thereon:-

*"Para 5 of noting 10, and C.L.O. proposal above approved."*

23. As noted above, this file relates to the selection for Assistant Commandants only. Obviously this noting also refers to the same selection. No other record was placed before the Court. On the contrary, it was stated before us that the counter affidavit is premised on this record.

24. In view of the noting dated 18<sup>th</sup> November, 2009 on which this decision appears to have been taken, it is clearly evident that there is no issue relating to selection of deputy commandant (law) which was put up to the Deputy Director General. Therefore, the averment in the counter affidavit to the effect that the Proficiency Competency Board of those candidates recommended by the FSB for the post of Deputy Commandant (Law) had been approved by the competent authority on 24<sup>th</sup> November, 2009 is not supported by official

record and is incorrect.

25. Certain further queries which arose during the hearing could not be answered on behalf of the respondents and time was sought to produce further record. It is only in the hearing in the afternoon that the respondents placed file No.RT/0103/LAW OFFICER captioned "RECRUITMENT OF LAW OFFICERS (DY COMDT) – 01/2010 BATCH" before the court. It is unfortunate that this record was not produced before this court in the earlier hearing and appears to be an attempt to deliberately mislead this court. We were not even informed that there is any other record available on the issue.

26. The notings which have been made by the Commandant (JG) on 18<sup>th</sup> December, 2009 with regard to the present selection and thereafter on this file deserves to be considered in extenso and reads as follows:-

-1-

*"Extract of Advt for the Post of Dy. Comdt (Law)-  
01/2010 Batch - 1A*

-2-

1. *Refer to Encl 1A.*

2. *It is submitted that the advertisement was published for DY. Comdt (Law) as approved by the competent authority. Total 168 applications were received at CGSB. After scrutiny and vetting, 62 call letters were issued. Only 05 candidates qualified PSB (comprising GMAT) Verbal and Non Verbal and stage-1) conducted 10-12 Dec 09 at CGSB Noida.*

3. *Out of these 05 candidates, 03 have qualified during Final Selection Board (FSB) conducted w.e.f. 13-17 Dec 09 at CGSB Noida as follows:*

| <u>Sl.No.</u> | <u>Name</u>           | <u>Roll No.</u>     |
|---------------|-----------------------|---------------------|
| a.            | <i>Vaishali Sood</i>  | <i>DLW/GEN/1592</i> |
| b.            | <i>Vikas Saxena</i>   | <i>DLW/GEN/1451</i> |
| c.            | <i>Nagender Singh</i> | <i>DLW/GEN/1290</i> |

4. *Since these candidates are likely to be inducted at a relatively elevated level (Dy. Comdt) in the Law branch It is opined that their professional competence and suitability, may appropriately be ascertained by the Directorate of Law, prior to sending them for the medicals and issuance of appointment letters.*

5. *Submitted for perusal and approval please.*

*Sd/-  
(Brij Kishore)  
Comdt (JG)  
DD(Rectt)  
18 Dec 09  
I.Com: 3953"*

27. It is evident from the above that no decision at all with regard to any further testing of the persons who had successfully qualified the final selection board for the post of Deputy Commandant (Law) had been taken even till 18<sup>th</sup> December, 2009. In fact, it is proposed for the first time then. This matter travelled through various authorities in the chain of command.

28. On the above proposal, we may note here the comments of the Chief Law Officer dated 21<sup>st</sup> December, 2009 which read as follows:-

*"It is proposed to conduct a short test and interview for judging professional competence, if approved pl,*

*Sd/-  
CLO  
**21 Dec 09"***

It is clearly evident from the above that the proposal for holding a test or interview for assessing professional competency of the candidates was mooted for the first time only

on the 21<sup>st</sup> of December, 2009. The legal experts guiding the functioning of the respondents would be expected to know the well settled applicable legal principles with regard to change of selection criteria and method after commencement of the selection process laid down by the Supreme Court in the plethora of judgments noticed herein as well as the consequences of concealment of material records.

29. The record also shows that matter moved very fast on 21<sup>st</sup> December, 2009. On the very same day, the Deputy Director General proposed to constitute a Board (for the professional competency testing) and recorded the following noting:-

*“1. Further to note 2, it is proposed to constitute a Board (for Professional Competency Test) comprising of following officers.*

| <u>Sl.No.</u> | <u>Rank</u> | <u>Name</u>            | <u>No.</u>  |
|---------------|-------------|------------------------|-------------|
| a.            | DIG         | AKS Chauhan (0161-P)   | – President |
| b.            | Comdt.      | SS Malik (5002-Q)      | – Member    |
| c.            | Comdt.      | Donny Michael (0258-L) | – Member    |

*2. If approved, the Board is required to assemble on 21 Dec 09, at CGHQ. The BPs along with recommendations to be submitted by 22 Dec 09 to facilitate medical examination of successful candidates.*

*3. Submitted for perusal and approval please.*

*Braj Kishore  
COMDT.(JG)  
4082.C  
DD(Rectt)  
**21 Dec -09**  
I. Com 3953”*

30. The above narration of facts also would show that there was no decision at all to conduct any further test of the candidates till 21<sup>st</sup> December, 2009. So far as the approval of

this proposal is concerned, the file would disclose that the matter was not placed before any higher authority and the entire decision to conduct the professional competency test and suitability examination has been taken by the Deputy Director General of the service himself.

31. This is also manifested from the fact that in terms of the notified procedure, the Commandant had issued the medical examination forms to the candidates declared selected by the FSB.

32. The present case raises a basic question on well settled first principles. It is trite that the appointing authority has no jurisdiction at all to change or vary the selection process after its commencement. In view of the above, the issue raised before this court is the jurisdiction of the respondents to vary the selection procedure which they had notified to the candidates in the advertisement dated 12<sup>th</sup> November, 2009, more so after the candidates had undertaken the entire notified selection procedure and had been declared successful.

33. In this regard, reference can usefully be made to the pronouncements of the Supreme Court on the same issue which have been placed before us by learned senior counsel for the petitioner.

34. The law in this issue was laid by the Supreme Court as back as in the judgment reported at **1983 (3) SLR 293, Dr.Vinay Rampal Vs. The State of Jammu & Kashmir & Ors.** in the following terms:-

“3. If the petitioner's eligibility for admission to the course for which he had applied is to be judged on the qualifications as set out in the advertisement, it is indisputable that he was eligible for admission under Clause (b)(iv) of the advertisement. Mr. Altaf Ahmed, however drew our attention to item No. 12 in Notification No. 4 of 1981 issued by the Government Medical College at Jammu, which recited that the selection of the candidates will be made strictly in accordance with the instructions issued by the Government. That may be so. But can it be urged that advertisement was issued ignoring Government instruction if any relevant to the subject. In any event such a vague direction that the selection of candidates will be made strictly in accordance with the instructions issued by the Government, in the face of advertisement, leave us cold because any such instruction must be in conformity with some rules and if there be rules the same must be in conformity with the Regulations framed by Indian Medical Council if its jurisdiction extends to Jammu and Kashmir. It was never suggested at any point of time that in issuing the advertisement there was any error. If that be so the College authority including Principal issuing advertisement and inviting applications for admission must be held bound by it unless shown otherwise.xxxxx”

35. In **1992 (2) SLR 379, N.T. Devin Katti Vs. Karnataka Public Service Commission & Ors.**, statutory rules for selection and appointment were amended after the commencement of the selection process. The Supreme Court set aside the selection which was effected pursuant to the amended rules and held that the selection could have been made only in terms of the rules which were in vogue and applicable at the time of commencement of the selection process. In this regard the observations of the Court deserve to read in extenso and read as follows:-

“11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing Rules or Government Orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing Rules and Government Orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selections in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystalises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication, if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the Rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant Rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right for selection, but if he is eligible and is otherwise qualified in accordance with the relevant Rules and the terms contained in the advertisement, he does acquire a vested right for being considered for selection in accordance with the Rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of Rules during the pendency of selection unless the amended Rules are retrospective in nature.

13. xxxx It is a well accepted principle of construction that a statutory rule or Government Order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and Government Orders and any amendment of the rules or the Government Order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended rules or the amended Government orders issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections. See *P. Mahendra and Ors. v. State of Karnataka and Ors., 1983(3) Speed Post Judgments 276 (SC).*”

(Underlining by us)

36. Mr. G.D. Gupta, learned senior counsel has drawn our attention to the following observations in **(2001)10 SCC 51, Maharashtra State Road Transport Corp. & Ors. Vs. Rajendra Bhimrao Mandre & Ors.**, which are also instructive and clearly state the position thus:-

“5. xxxx. It has been repeatedly held by this Court that the games of the rules meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.xxx”

37. In similar facts, another decision of the Supreme Court reported at **(2008) 2 SCC (L&S) 203, Hemani Malhotra Vs. High Court of Delhi & Anr.** is topical and reads as follows:-

“14. It is an admitted position that at the beginning of the selection process, no minimum

cut off marks for viva-voce were prescribed for Delhi Higher Judicial Service Examination, 2006. The question, therefore, which arises for consideration of the Court is whether introduction of the requirement of minimum marks for interview, after the entire selection process was completed would amount to changing the rules of the game after the game was played ...xxx."

xxxx

"15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at vive-voce, test was illegal."

38. We may note that in the aforementioned precedents the court placed reliance on its earlier pronouncement reported at **(2008) 1 SCC (L&S) 841, K. Manjushree Vs. State of A.P.** which placed reliance on an earlier precedent, and in para 32 held as follows:-

"32. In *Maharashtra State Road Transport Corporation v. Rajendra Bhimrao Mandve* MANU/SC/0737/2001 : (2002)ILLJ819SC , this Court observed that "the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced." In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game has been played and the results of the game were being awaited. That is unacceptable and impermissible.

In a judgment reported at **(2010) 3 SCC 104, Ramesh Kumar Vs. High Court of Delhi & Anr.,** the court was concerned with the situation where the appointing authority had not prescribed any minimum marks as the cut off marks in the interview for the selection till long after its commencement. This action was assailed before the Supreme Court which held as follows:-

“13. In *Shri Durgacharan Misra v. State of Orissa and Ors.* MANU/SC/0627/1987 : AIR 1987 SC 2267, this Court considered the Orissa Judicial Service Rules which did not provide for prescribing the minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in *B.S. Yadav and Ors. v. State of Haryana and Ors.* MANU/SC/0409/1980 : AIR 1981 SC 561; *P.K. Ramachandra Iyer and Ors. v. Union of India and Ors.* MANU/SC/0395/1983 : AIR 1984 SC 541; and *Umesh Chandra Shukla v. Union of India and Ors.* MANU/SC/0050/1985 : AIR 1985 SC 1351, wherein it had been held that there was no "inherent jurisdiction" of the Selection Committee/Authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. "inherent jurisdiction" is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm.

14. Similarly, in *K Manjusree v. State of Andhra Pradesh and Anr.* MANU/SC/0925/2008 : AIR 2008 SC 1470, this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent authority,

if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.”

39. Our attention has also been drawn to the Recruitment Rules which have been notified by the Government of India in exercise of power conferred under Section 123 of the Coast Guard Act 1978 which are titled as Coast Guard Officer (Law Officer) Recruitment Rules, 1984. The advertisement which was issued and published by the respondents on 12<sup>th</sup> November, 2009 was in terms of these recruitment rules.

40. The eligibility conditions which were notified in the advertisement dated 12<sup>th</sup> November, 2009 are stated to be in terms of these recruitment rules. The Supreme Court has struck down the action of the authorities even in fixing cut off marks or allocating marks for different stages of the selection process as illegal and impermissible.

41. So far as the selection procedure is concerned, we have been informed by learned counsel for the respondents that the procedure notified in the advertisement dated 12<sup>th</sup> November, 2009 was the procedure which was adopted and followed by the respondents for effecting appointments for the last 30 years.

42. The above discussion would show that the respondents had not only notified the candidates/applicants seeking appointment to the post of Deputy Commandant (Law) of the

selection procedure in the advertisement dated 12<sup>th</sup> November, 2009 but had in fact completed the process pursuant thereto.

43. The respondents had clearly notified the candidates that the applicants would undergo scrutiny process when eligible candidates would be shortlisted and call letters for the entrance test would be issued only to such shortlisted candidates. So far as the selection process thereafter was concerned, the respondents had clearly indicated that the same would consist of “two phases alone” and nothing further. The two phases about which the respondents notified the applicants included the preliminary selection and the final selection. The respondents had unequivocally notified the applicants that the selection would be made only on the basis of performance of the candidate in the final selection board. It was further stated that those candidates who were found medically fit would be placed in the merit list and the merit list would be prepared according to the number of vacancies which were available.

44. An admitted position is that the petitioners had successfully undertaken the Preliminary Selection Board as well as the Final Selection Board and had been given the prescribed medical forms for undergoing the medical examination. It is only thereafter that the respondents mooted for the first time a proposal to conduct “Professional competency and suitability” assessment. Even if it was to be assumed the Deputy Director General was the competent authority for approving such assessment, it is noteworthy that such proposal was put up to

and approved even by this authority only on 21<sup>st</sup> December, 2009. In view of the legal position noticed hereinabove, it has to be held that such decision and action requiring the assessment of the competency and suitability long after the commencement of the selection process, so much so that the Final Selection Board stood completed and results declared, is clearly without jurisdiction or authority of law and not sustainable.

45. We may also notice the manner in which the respondents have conducted the proceedings on 21<sup>st</sup> December, 2009. It is an admitted position that the candidates who were so tested and assessed were not put to notice of the fact that they would be required to undergo such procedure and testing. They were admittedly not informed about the prescribed syllabi for the tests and were given no opportunity to get ready or come prepared for the written test and examination. No syllabus or schedule was announced. Whereas the advertisement drew a distinction between 'essential' and 'desirable' qualifications in the prescribed eligibility conditions in the advertisement, the professional competency was assessed on the 21<sup>st</sup> of December, 2009 on subjects mentioned in the 'desirable' qualifications, that too without notice. On this basis the declared result has been changed.

46. We are informed that Shri Vikas Saxena, (petitioner in WP(C)No.2674/2010) was placed at the top of the selection list by the Final Selection Board. He was followed by Shri Nagender Singh, (petitioner in WP(C)No.4390/2010). Ms. Vaishali Sood,

was placed in the third position by the Final Selection Board. This position has been reversed by the so called Professional Competency Board in its testing and interviews held and conducted on 21<sup>st</sup> December, 2009 without opportunity to prepare to the candidates. In the result declared, the petitioners have been failed, while the third candidate declared as passed.

47. The pleas set up by the respondents in the counter affidavits are falsified by the records and documents which were issued to the petitioner as well as the records produced before us. On 30<sup>th</sup> November, 2009, the respondents issued a call letter to Shri Nagender Singh whereas this call letter was issued to Shri Vikas Saxena on 3<sup>rd</sup> December, 2009. Even these call letters refer to only the preliminary and final selection boards and do not even suggest any professional competency board. These letters were in the format prescribed for appointment to the post of Assistant Commandant with the necessary corrections have been effected in hand by the respondents.

48. The files produced before us do not contain any noting to the effect that information about the professional competency board was given to the candidates in the inaugural address. It is obvious that no such information could have been given for the reason that there was no decision till 21<sup>st</sup> December, 2009 for the candidates to undergo the assessment by a "Professional Competency Board."

49. There is nothing on record produced which even suggests a reference to the manner in which the testing and evaluation of

the professional competency would be effected. The constitution of the board was effected by the Deputy Director General on 21<sup>st</sup> December, 2009 which proceeded to conduct its proceedings on the same day. There is no disclosure of any decision on or the method of testing. There is no prescription of a written test or the nature thereof. The counter affidavit refers to “short written test” but its nature is not disclosed even in the counter affidavit. Even this court has been kept in the dark with regard to the prescribed curriculum and syllabi for the written test and the authority which had set the question papers thereof.

50. So far as the proceedings which were conducted by the above appointed board are concerned, it appears that this board assembled on 21<sup>st</sup> December, 2009 and required the three candidates who had successfully cleared the Final Selection Board to undertake a fresh written test as well as the interview.

51. We may notice that the petitioners contend that they had been telephonically informed on 17<sup>th</sup> December, 2009 to contact the Chief Law Officer on 18<sup>th</sup> December, 2009 which they did. The proposal to conduct such a professional competency test and interview was made only on 21<sup>st</sup> December, 2009.

52. The respondents submit that the board subjected the three candidates shortlisted by the Final Selection Board, to an initial thirty minutes objective test on general law and basic maritime law followed by the interview to assess their professional knowledge. The consideration of the professional competency

by the board was based on the performance of the candidates in the written test and interview. It is also not disclosed anywhere, either in the counter affidavit or in the record which has been produced before us, as to which was the authority who set the questions papers and evaluated the same. It is stated before us that the board which was constituted on 21<sup>st</sup> December, 2009, has followed a unique procedure and itself decided the method of evaluation, format of testing and set the question papers which the candidates were required to answer on the same day.

53. So far as the questions which were posed to the candidates during the interview is concerned, the submission before this court is that these were jointly prepared "in advance" by the president and the members of the board. The questions were asked by the President with further additional questions being asked by the Members, wherever necessary, depending on the reply of the candidate. Interestingly this entire narration in the counter affidavit does not set out as to which was the authority which had approved this syllabus or the procedure which was adopted by the board. Admittedly, there was no approval by any competent authority. This matter was not even examined by any officer even at the level of Deputy Director General, let alone the appointing authority under the provisions of Indian Coast Guard Act or by any person to whom such authority was legally or validly delegated. The same has been left to the absolute discretion of the board which had been appointed by him.

We are orally informed by Mr. A.K.S. Chauhan, DIG, Chief Law Officer, Coast Guard, who is present, that this board took all the decisions and steps and that it also corrected the answer sheets itself, announced the result and also conducted the interviews apart from making the recommendations in respect of the result on the same day.

54. So far as the result or grading of this assessment is concerned, the respondents said that the professional competency board submitted its proceedings on 22<sup>nd</sup> December, 2009 which were approved by the “competent authority”. The result was thereafter intimated to the candidates by the Directorate of Manpower, Recruitment and Training concerned with the subject. The respondents have contended that the result of the assessment by this board was declared on 23<sup>rd</sup> December, 2009 when both the petitioners were declared as having failed in the interview while the third candidate, Ms. Vaishali Sood was found to be the sole candidate with an average professional competency and was accordingly selected for appointment to the post of Deputy Commandant (Law) and she was sent for medical examination.

55. Mr. G.D. Gupta, learned senior counsel appearing for Sh. Nagender Singh has urged that under the provision of Coast Guard Act, 1978, only the Central Government is the competent authority to effect appointments to the force. This power stands delegated to the Director General of the Coast Guard Service and has not been delegated to any other person or authority

within the Coast Guard Service. This position is not disputed on behalf of the respondents. There appears to be substance in the objection of the petitioners that the decision to adopt the new procedure was not by an authority competent to do so.

56. Before parting with this case, it is necessary to notice one extremely distressing fact. The relevant file was not placed before this Court till the final stage of hearing. We find that in the counter affidavits a completely false plea has been taken to the effect that the candidates who reported for the selection process were further informed during the inaugural address that those qualifying the final selection board would have to appear before such board. According to the respondents, this address was effected before holding the preliminary selection board. The above discussion amply shows that the respondents had not even proposed the holding of a professional competency board on the date when the inaugural address was allegedly given to the candidates. Such plea taken on affidavit filed at the highest level not supported by any record is reprehensible and deserves to be condemned.

57. We were inclined to take strong view in the matter and proceed against the authorities concerned in respect of such a plea and the attempt to conceal the correct record from this Court. **(Ref : AIR 1994 SC 853, S.P.Chengalvaraya Naidu Vs. Jagannath & Ors; 1980 Crl.LJ 684, Advocate-General, State of Bihar Vs. M/s.Madhya Pradesh Khair Industries & Anr.; (1978) 1 SCR 742, T.Arbandam Vs. T.V. Satyapat**

**& Anr. and of this Court in 71(1998)DLT 1= 1998(44)DRJ**

**109, T.Arvandandam Vs. T.V. Satyapat & Anr.)** However,

our attention has been drawn to the communication dated 31<sup>st</sup> March, 2010 addressed by DIG B.K. Patasahani to Shri Nagender Singh (petitioner in WP(C)No.4390/2010) wherein he has been informed that there were five vacant seats of the post of Deputy Commandant which existed on 31<sup>st</sup> December, 2009 for which the selection process was undertaken.

58. We are informed by Ms. Barkha Babbar, learned counsel on instructions from the officers present, that the directions made by this court in the order dated 22<sup>nd</sup> April, 2010 in W.P.(C)No.2674/2010 have been complied with by the respondents. We are further informed that the respondents have effected one appointment to the post of Deputy Commandant (Law) following the new procedure which was adopted on 21<sup>st</sup> December, 2009.

59. It is noteworthy that despite our directions made on 22<sup>nd</sup> April, 2010, no other person has come forward to contest these writ petitions.

60. It is admitted before us that the petitioners have been found successful in the Final Selection Board in terms of the notified procedure. Only the medical examination, for which the requisite medical forms have been issued to the petitioners by the competent authority, remained to be completed. It is an admitted position that other than filling up one post, the other

four posts remain vacant for completing the procedure of selection pursuant to the advertisement dated 17<sup>th</sup> December, 2009. It is, therefore, possible to ensure justice to the petitioners without taking this matter further.

In view of the order passed by us on 22<sup>nd</sup> April, 2010 in W.P.(C) No.2674/2010, the respondents are required to effect restitution in terms of the same.

61. In view of the above, we hold and direct as follows:-

- (i) The selection process undertaken by the Professional Competency Board on 21<sup>st</sup> December, 2009 and the result thereof declared on the 23<sup>rd</sup> of December, 2009 are held to be illegal and hereby set aside and quashed.
- (ii) The respondents are directed to complete the selection process effectuated pursuant to the advertisement dated 12<sup>th</sup> November, 2009 and to give effect to the result of the Final Selection Board conducted between 13<sup>th</sup> and 17<sup>th</sup> December, 2009.
- (iii) The petitioners shall be permitted to undertake the medical examination in terms of the documents issued to them on 17<sup>th</sup> December, 2009 by the Base Hospital, Delhi Cantt.,
- (iv) The respondents shall issue necessary orders in terms of the above including the requisite intimation to the Base Hospital, Delhi Cantt. within a period of six weeks from today with written notice to both

the petitioners.

- (v) In case the petitioners are found medically fit, the respondents shall complete the appointment of the petitioners to the post of Deputy Commandant (Law) within a period of four weeks of the medical examination.
- (vi) The respondents shall ensure that the seniority and any other consequential benefits of the petitioners shall be maintained strictly in terms of the recommendation of the Final Selection Board dated 17<sup>th</sup> December, 2009.
- (vii) Each of the petitioners shall be entitled to costs of 25,000/- each which shall be paid within a period of four weeks from today.

This writ petition is allowed in the above terms.

**GITA MITTAL, J**

**J.R. MIDHA, J**

**SEPTEMBER 13, 2010**

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