

Matter of Rao v Schneider
2019 NY Slip Op 30925(U)
March 27, 2019
Supreme Court, Suffolk County
Docket Number: 10461-16
Judge: Denise F. Molia
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Index No.: 10461-16

SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY

PRESENT:

Hon. DENISE F. MOLIA,
Justice

In the Matter of an Article 78 Proceeding
CHRISTINE RAO,

Petitioner,

- against -

ALAN SCHNEIDER as Personnel Director of the
Suffolk County Civil Service Commission and Suffolk
County Civil Service Commission and VINCENT F.
DEMARCO as Suffolk County Sheriff of Suffolk
County Sheriff's Office and the Suffolk County
Sheriff's Office,

Respondents.

CASE DISPOSED: YES
MOTION R/D: 12/19/16
SUBMISSION DATE: 12/7/18
MOTION SEQUENCE No.: 001 MD
002 MG

ATTORNEY FOR PETITIONER

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Upon the following papers filed and considered relative to this matter:

Notice of Petition and Verified Petition dated November 11, 2016; Exhibits A through G annexed thereto; Notice of Motion dated January 13, 2017; Affidavit in Support dated January 12, 2017; Exhibits A through G annexed thereto; Affirmation in Opposition dated January 31, 2017; Reply Affirmation dated February 10, 2017; Respondents' Memorandum of Law; and upon due deliberation; it is

ORDERED, that the Verified Petition of Christine Rao, for a judgment annulling and reversing the determination of the respondents discontinuing petitioner's application from consideration for the position of Suffolk County Corrections Officer with the Suffolk County Sheriff's Office and mandating that respondents reinstate petitioner to the list for Exam No. 15-5501-350 and/or directing the appointment of petitioner to the position of Corrections Officer; returning petitioner to the eligible list for Corrections Officer; or in the alternative, conducting a trial pursuant to CPLR 7804(h) to determine if the non-selection of petitioner for the position of Corrections Officer was arbitrary or capricious or irrational or in bad faith or not based on substantial evidence, is denied; and it is further

ORDERED, that the motion by respondents, pursuant to CPLR 3211(a)(1), (7) and CPLR

RST

7804, for a judgment dismissing the Article 78 petition of Christine Rao, is granted.

Pursuant to Notice of Examination promulgated by the respondent Civil Service Commission, the petitioner competed in a Civil Service examination for appointment as a Corrections Officer with the SCSO, being Examination Number 15-5501-350. As part of her qualification requirements, petitioner was evaluated by the Civil Service Commission ("Commission") on or about June 16, 2016. The Commission found Rao disqualified on the grounds of "failure to meet the psychological requirements for the position." Rao appealed the Commission's determination and attended a psychological/personality evaluation test appeal on July 13, 2016. At that time, the petitioner submitted the report of Dr. Gary S. Aumiller in support of her appeal. By correspondence dated July 26, 2016, Rao was advised that the prior determination of "not qualified" was affirmed. Petitioner then commenced the instant proceeding contending that the respondents' finding of disqualification was arbitrary and capricious, unlawful and discriminatory. The respondents have moved for dismissal of the petition.

As a pre-requisite for qualification to the position of Corrections Officer, a candidate must, *inter alia*, pass written, medical, psychological and agility examinations and undergo a thorough background investigation. As part of this process, Rao underwent a pre-employment psychological examination conducted by the firm of Stone, McElroy & Associates, which was retained to perform psychological assessments of candidates applying for law enforcement and public safety positions. The petitioner was evaluated by Mark Kirschner, PhD., ABPP, under the direction of Anthony V. Stone, PhD, M.P.H., on June 1, 2016.

After noting that the petitioner had been arrested on two occasions, was cited for thirteen moving violations, and had three license suspensions, Dr. Kirschner reached the following conclusion:

"The results of the current evaluation reveal substantial evidence of deficits in required competencies and/or counterproductive behavior incompatible with the safe and effective performance of the essential functions of a Correction Officer. The candidate's inability to explain her frequent job changes, lengthy periods of unemployment, or the incident in which she alleged another employee intentionally drugged her raise concerns about her ability to maintain stable employment and to get along well with others in the workplace. Further, her report of the suspected tranquilizer incident remained unclear and inconsistent with information provided by background investigation unit that suggests the applicant had a heavy odor of alcohol on her breath when she went to the hospital that day. Despite her admission that she had been drinking alcohol the night before, she denied that she had any remaining alcohol in her system and instead believed a more plausible explanation was that someone intentionally drugged her with a tranquilizer. If she were indeed intoxicated at work from drinking the night before, this raises concerns about her alcohol use, particularly since it occurred within 5 years of her arrest for DUI where she had a BAC of .16 in 1999.

She has a significant behavioral history of disregard for social norms and rules, including numerous moving violations, one for speeding 92 mph in a 55 mph zone, three license suspensions, one for being a repeat violator, as well as arrests for DUI and Disorderly Conduct. Her work history is sporadic and inconsistent, as she has held 12 different positions as a veterinary technician in the past 16 years. There is no evidence from the current position that she is able to handle the stress and demands of a full-time, shift-work law enforcement position. Many of the behavioral concerns reported here appear to have occurred in the past; however, her inability to clearly and consistently explain the circumstances surrounding her difficulty maintaining stable employment and seemingly illogical allegation that another employee would intentionally harm her raise concerns about her ability to adapt to her environment and to get along well with other people.

Based on this psychological evaluation, CHRISTINE RAO is thus NOT RECOMMENDED as a CORRECTION OFFICER with Suffolk County at this time as it is the opinion of this examiner that the concerns noted above rise to the level at which she would be considered to be unsuitable for the position to which she has applied. If she were able to provide more clear and consistent information to explain her periods of unemployment, numerous job changes, and the allegations of being intentionally drugged at work, she may be considered to be a suitable candidate. In light of the fact that she was not able to do so during this evaluation, enough concerns remain to warrant not recommending her for employment.”

The petitioner appealed the primary psychological assessment and appeared before the Appeal Committee on July 13, 2016. The Psychological Appeal Committee Report prepared by Heather Jonas, PhD., echoed the concerns raised in the initial report. The Report also acknowledged receipt and consideration of the psychological report prepared by Gary S. Aumiller, PhD., ABPP and submitted by Rao. Jonas opined that the Aumiller report did not address or offset all of the reasons that resulted in Rao’s being found to be psychologically unsuitable in the respondents’ original disqualification. The Appeal Committee Report concluded that there was “no significant basis found to reverse initial determination.”

Administrative determinations will not be disturbed if there is a rational basis for the determination and it is neither arbitrary or capricious (see, Pell v. Board of Education of Union Free School District No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester Co., 34 N.Y.2d 222, 231-232). A reviewing court may not substitute its own judgment of the evidence for that of the administrative agency, but should review the entire record in determining whether a rational basis exists to support the findings on which the agency’s determination is predicated (see, Purdy v. Kreisberg, 47 N.Y.2d 354). The various civil service commissions are to be afforded wide discretion in determining the fitness of candidates and the exercise of that discretion should be sustained unless clearly abused (see, Cassidy v. Municipal Civil Service

Commission of the City of New Rochelle, 37 N.Y.2d 526). Such discretion has been found to be particularly necessary in the appointment of law enforcement officers to whom higher standards of fitness and character may be applied (see, Needleman v. County of Rockland, 270 A.D.2d 423).

In the instant matter, Stone, McElroy & Associates administered the standard psychological examination to Rao that is administered to all candidates for employment as a Suffolk County Corrections Officer, and concluded that petitioner was not qualified for the position. That determination was upheld by the three member Appeals Committee in a report that discussed the specific findings used to support such determination.

The Appellate Division, Second Department, has upheld the determination to disqualify a candidate for law enforcement positions based upon the evaluations and recommendations of a consulting psychologist and the Appeal Committee, holding that:

“An appointing authority has wide discretion in determining the fitness of candidates (*see Matter of Verme v. Suffolk County Dept. of Civ. Serv.*, 5 AD3d 498[2004]; *Matter of Mark v. Schneider*, 305 AD2d 685, 686 [2003]; *Matter of Needleman v. County of Rockland*, 270 AD2d 423, 424 [2000]). This discretion is particularly broad in the hiring of law enforcement officers, to whom high standards may be applied (*see Matter of Mark v. Schneider, supra*). As long as the administrative determination is not irrational or arbitrary, this Court will not interfere with it (*see Matter of Needleman v. County of Rockland, supra; Matter of Kelly v. Suffolk County Dept. of Civ. Serv./Human Resources*, 301 AD2d 525 [2003]).

Contrary to the petitioner’s contention, the respondents did not act irrationally or arbitrarily in relying upon the evaluations of a consulting psychologist and the Appeals Review Committee, which had a Psychologist as a member. These evaluators utilized objective tests to determine that the petitioner was not qualified for the position of Suffolk County Police Officer (*see Matter of Needleman v. County of Rockland, supra; Matter of Golimowski v. Bellamy*, 244 AD2d 1001 [1997]; *Matter of Conlon v. Commissioner of Civ. Serv. of County of Suffolk*, 225 AD2d 766 [1996]). The fact that the opinion of the petitioner’s two privately retained experts is contrary to that of the respondents’ psychologists is not controlling (*see Matter of Curcio v. Nassau County Civ. Serv. Commn.*, 220 AD2d 412 [1995]; *Matter of Keryc v. Nassau County Civ. Serv. Commn.*, 143 AD2d 669 [1988]). “It is not for the courts to choose between the diverse professional opinions. That is the function of the proper department heads and as long as they act reasonably and responsibly, the courts will not interfere” (*McCabe v. Hoberman*, 33 AD2d 547, 548 [1969]; *see Matter of Brussel v. LoGrande*, 137 AD2d 686 [1988]).” Winnegar v. County of Suffolk, 13 A.D.3d 382, 382-383 (2d Dept. 2004).

Petitioner's contentions to the contrary, a review of the record in this matter discloses ample evidence to support the recommendations and determination of the respondents. Under the circumstances presented, the documentary evidence submitted in the form of reports, psychological assessments and recommendations by Stone, McElroy Associates, and the Psychological Appeals Committee, has not been shown to be either arbitrary or capricious. Such evidence provides a rational basis to support the respondent's determination to disqualify the petitioner based upon the results of her psychological examination. Accordingly, the motion to dismiss the petition is granted.

The foregoing constitutes the Order of this Court.

Dated: March 27, 2019



Hon. Denise F. Molia, A.J.S.C.