

(2010) 09 GAU CK 0059

In the Gauhati High Court

Case No : W. P.(C) Nos. 480, 481,483 & 484 of 2005

Abdulsahid & Ors.

APPELLANT

Vs

State of Tripura & Ors.

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Tripura State Rifles (Recruitment) Rules, 1984 — Rule 37, 37

Citation : (2010) 5 GLT 462

Hon'ble Judges : A.C.Upadhyay, J

Bench : Single Bench

Advocate : Advocates appeared for the Petitioners: Mr.S.Talapatra, Sr.Advocate & Mr.B.Banerjee, Advocate appeared for the Respondents: Mr.T.D.Majumder, Addl.G.A., Advocates appearing for Parties

Judgement

A. C. Upadhyay, J.—Heard Mr. S. Talapatra, learned senior counsel assisted by Mr. B. Banerjee, learned counsel for the petitioner and Mr. T. D. Majumder, learned Additional Government Advocate for the Staterespondents.

2. In this batch of writ petitions, the petitioners have challenged the order dated 25.10.2005 issued by the Director General of police terminating their promotions to the posts of Havildar (Clerk). The petitioners have also prayed for issuing a writ of mandamus directing the respondents to allow them to continue in the posts of Havildar (Glerk), in Tripura State Rifles Battalion.

3. The facts of the cases and the points of law raised in all these writ petitions are more or less covered and, as such, this batch of five writ petitions are being disposed of by this common order.

4. The question for consideration before us is whether the reversion order of the petitioners is illegal and/or dehors the Rule 37 B of the Tripura State Rifles (Recruitment) Rules, 1984 (hereinafter referred to "the 1984 Rules").

5. The facts, leading to filing of these writ petitions, may be stated in brief as follows:

By a Crash Message dated 13.10.2003, the Deputy Inspector General of Police, A. P. (ADM & TRG) issued an advertisement for filling up the vacant posts of Havildar (Clerk) in Tripura State Rifles (for short "TSR") by inviting names of willing and eligible candidates of Tripura State Rifles Personnel working in various eligible ranks/cadre of the service. The advertisement so issued by the respondent is reproduced herein below, for the sake of convenience:

"Crash

To: CO sall BNs TSR NR2933

Info: IGP (AP &OPS) Tripura Gr140

From: DIG, AP(Adm & Trg) Tripura No.638494/F.2(40)/DAP/TSR/RSV/2002

Dated 13.10.2003

Filling up of vacant post of Hav (Clk) in Tsr Bns(.) Reference this office letter No. S73443/F.2(40)/DAP/TSR/RSV/2003 dated 18.09.2003 in the above subject(.) please furnish the names of willing and eligible candidate as already indicated earlier from among the TSR personnel of various trade in addition to G.D. personnel(.) names of any other G.D. personnel in addition to names already furnished should also be indicated(.) full particulars of willing and eligible trade personnel/G.D. personnel should be sent by 18.10.2003 along with the service particular(.) name of eligible person if on leave should also be sent(.) date of dpc shall be finalized all receipt of the fresh list of the candidate(.) TH11630/13 TOR1820/13

Sd/13.10.2003

Dy. Inspr. Genl of Police,

AP(Adm & Trg)

Tripura West"

Pursuant to the above advertisement, a written test and type test was held on 12.01.2004. The Government of Tripura vide its order dated 21.01.2004 declared the list of successful candidates and accordingly, vide order dated 10.02.2004, appointed/promoted all the petitioners along with others in the posts of Havildar (Clerk), against the existing vacancies in various TSR Battalions in usual pay and allowances, as admissible under the Rules. In pursuance of the said order, the petitioners joined the posts and were discharging duties as usually. All of a sudden, by an order dated 14.12.2004, the respondent authority cancelled the promotion order dated 10.02.2004 of the petitioners on the ground that in terms of the Rules of 1984, the petitioners were not entitled to be promoted to the aforesaid posts.

6. It would be appropriate to indicate herein the rank of the writ petitioners prior to their selection and appointment as Havildar (Clerk):

(a) the petitioner, Sri Abdul Sahid in W. P. (C) No. 480 of 2005, was appointed as Rifleman (GD) in TSR on 24.07.1992 and thereafter he got promotion to the post of Naik (Operator) w.e.f. 23.08.2001; (b) Sri Aswani Kumar Debbarma, the petitioner in W. P. (C) No. 481 of 2005, was initially appointed as Rifleman (GD) in TSR on 12.10.1996 and subsequently on 30.10.2003 he was promoted to the post of Naik (Operator); (c) the petitioner, Sri Dulal Debnath, in W. P. (C) No. 483 of 2005, was initially appointed as Rifleman (GD) in TRS on 20.07.1992 and thereafter he was promoted to the post of Naik (Medical Assistant) on 10.11.2003 and (d) the petitioner, Sri Tejaram Khareshya in WP (C) No. 484 of 2005, joined in TSR as Rifleman on 31.07.1992 and thereafter he was promoted to the rank of Naik (Operator) on 23.08.2001.

7. The petitioners being aggrieved with the order cancelling the appointment/promotions to the rank of Havildar (Clerk) issued by the Deputy Inspector General of Police, A.P. (ADM & TRG) vide order dated 14.12.2004, filed a writ petition being W. P. (C) No. 463 of 2004 before this Court alleging arbitrary and illegal action by the respondent authorities. In the said writ petition, the respondents State Government and others contested the claim of the petitioners by filing counter affidavit, refuting the assertion of arbitrary action by the respondents and others. The respondents State Government took the stand that the promotion to the posts of Havildar (Clerk) was contrary to 1984 Rules, i.e., subRule 1 of Rule 37 of the 1984 Rules. In the aforesaid writ petition (W. P. (C) No. 463 of 2004), this Court on 03.06.2005 after hearing the parties at length, issued the following directions:

"106. Therefore, the writ petition is being disposed of. The impugned order dated 14.12.2004 is set aside. However, keeping in view the settled law on the subject that the out put of defective or spoil system or selected person illegally de hors "the Rule" shall have no right to the post. However, since the legal right was alleged to have been created in favour of the petitioners in the present case and the petitioners are being deprived of their alleged legal rights without notice or enquiry or providing opportunity of hearing, therefore, in the public interest and in the interest of justice, to uphold the rule of law it is necessary that the respondents are directed to issue a notice to the petitioners a fresh and if necessary make a summary enquiry necessary in the facts and circumstances and after providing to the petitioners opportunity of hearing, a fresh decision has to be taken for this purpose I direct the Director General of Police, State of Tripura to issue a fresh notices to the petitioners within two months from the date of production of the certified copy of this order indicating the illegalities, infirmities, deficiencies or draw backs or lapses and non observance of requirement of "rules" in making the said promotional selection and shall provide the petitioners the opportunity of hearing fixing date and time and place to accept the reply, if necessary, provide oral hearing and even written statement may be treated as sufficient for providing the opportunity of hearing or for observance of principles of natural justice. After considering the reply, after providing opportunity of hearing, the Director General of Police shall pass a

speaking order within three months from the date of issuance of notice to the petitioners. The petitioners shall be expected to render cooperation and shall not take unnecessary adjournment and shall keep in touch with the Director General of Police or the person authorized for the purpose and the petitioners shall not be disturbed from the present post of assignment till the decision of the Director General of Police to be made in accordance to the law keeping in view the settled position of law and observations made above. The retention of the petitioners at subsequent stage shall depend upon the decision to be passed by the Director General of Police, Tripura. No order as to costs."

8. Pursuant to the aforesaid Judgment and order dated 03.06.2005, the Director General of Police, respondent No. 2 herein, issued show cause notice to the petitioners on 30.07.2005 asking them to make representation on the proposed order of reversion. In the said notice the respondent No. 2 contended that the promotion to the posts of Havildar (Clerk) was given to the petitioners in violation of the subRule 1 of Rule 37 of the 1984 Rules. Accordingly, the petitioners herein submitted written representation against the show cause notice contradicting the basis of reversion and also by citing examples, past practice and precedents. However, the respondent No. 2, Director General of Police by the impugned order dated 25.10.2005 reverted the petitioners to the original posts w.e.f. 24.10.2005.

9. It has been contended on behalf of the petitioners that the impugned order is perverse and contrary to the directions and observations made by this Court in W. P. (C) No. 463 of 2004. It has been further contended on behalf of the petitioners that the interpretation given by the respondent No. 2 in respect of Rule 37 of the 1984 Rules is again perverse and purposive to facilitate cancellation of the promotion order of the petitioners.

10. Mr. S. Talapatra, learned senior counsel for the petitioners submitted that Rule 37 of the 1984 Rules provides that the post of Havildar (Clerk) shall be filled up from amongst the general duty Havildar, failing which from amongst Naiks, failing which from amongst Lance Naiks and failing which from amongst Riflemen, who (a) are willing for such transfer; (b) have passed at least matriculation or an equivalent examination; (c) possess minimum speed of 30 words per minute in English typing; (d) have put in at least 2 years service in the Rifles; and (e) have been approved for such transfer by the Deputy Inspector General. Learned counsel for the petitioners pointed out that the petitioners have all requisite qualifications in terms of Rule 37 of the 1984 Rules, for being appointed as Havildar (Clerk). Further more, the DPC, which conducted the typing test and written test of the petitioners, also found the petitioners suitable for the posts Havildar (Clerk), which would be evident from the communication No. 30317/F.2(40)/DAP/TSR/RS V/03 dated 21.01.2004.

11. Learned counsel referring to a past practice/precedent of such appointment from different trades to the general duty post in the past in TSR, pointed out that one Sri Joyanta Chakraborty was appointed as Naik (Operator) from Rifleman

(GD) in terms of the above rules.

12. Learned counsel for the petitioners further pointed out that Rule 37 of 1984 Rules clearly contemplates a situation, when general duty Havildar, which is the feeder cadre, for manning the post of Havildar (Clerk) on transfer, is not available in the police department. Evidently, when general duty Havildars are not available in the department to man the posts of Havildar (Clerk), the police department fallback to recruit Havildar (Clerk) either from among the junior cadres or from other sources. Therefore, apparently in order to tide over such a situation, this rule has been incorporated to enable the department to select any one amongst Naiks, failing which from Lance Naiks and failing which from amongst the Riflemen, who are having requisite qualifications to carry on the assignment of a clerk in the department.

13. As a matter of fact, learned senior counsel for the petitioners pointed out that any interpretation to specify a particular cadre of personnel, when there is no specific mention about it, would be defeating the intention of the legislature. The contingency in which the post of Havildar (Clerk) has been opened up for recruitment from amongst officers of lower cadre is obviously nonavailability of personnel in the feeder cadre. Therefore, the word "Naik", "Lance Naik" and "Rifleman" appearing in Rule 37 of the 1984 Rules would obviously included all categories of the cadres of service.

14. In reply to the submissions made by the learned counsel for the petitioners, Mr. T. D. Majumder, learned Additional Government Advocate strenuously submitted that the words "general duty" appearing in Rule 37 of the Rules 1984 connotes restrictive meaning and if the doctrine of ejusdem generis is applied to interpret the cadre "Naik" appearing in Rule 37 of the Rules 1984, it would only mean general duty Naik. Learned Addl. Government Advocate further pointed

4 out that "Naik" in the plain interpretation of the Rules couldn't include all categories of Naik in Tripura State Rifles. The intention of the legislature was to recruit persons from hierarchy of general duty officers. Referring to the definition of general duty rank in Tripura State Rifles (Discipline, Control, Service Conditions, etc.) Rules, 1986 (for short "the Rules 1986"), learned Addl. Government Advocate submitted that "general duty rank" would mean persons, performing duties in the Rifles other than that of a transport, band, signal and medical platoon and persons performing duties other than those of tradesman, carpenter, tailor, mason, electrician, painter and enrolled followers. Admittedly there is no definition of general duty Havildar in the 1984 Rules, therefore, it would not be in consonance to the provision of 1984 Rules to import a definition from another rule. More so, the 1984 Rules did not specifically endorsed such an intention to import the definition of general duty from another Rules.

15. The cardinal rule of interpretation is that words should be understood in their usual, natural and grammatical meaning subject to the condition that in construing words in an enactment, the most liberal construction should be put

upon the words so that same may have effect in their widest amplitude. It is well settled principle that a piece of legislation should not be interpreted in a narrow and pedantic sense, but should be given a large and moderate interpretation.

16. The rule of ejusdem generis or the rule of noscitur a sociis for invocation of which there must be a distinct class or category and the words must apply not to different object of a widely different character, but to something which can be called a class or kind of objects. In an enumeration of different subjects in a statute, general words following specific words may be constructed with reference to the antecedent matters, and the construction may be narrowed down by treating them as applying to things of the same kind, as those previously mentioned, unless, of course, there is something to show that a wider sense was intended. If particular words exhaust the entire class, then the general words are construed as embracing a larger genus.

17. The Apex Court in the case of Kochunnu Vs. State of Madras as reported in AIR 1960 SCI 080 observed:

"the rule of ejusdem generis is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only a permissible inference ii) the absence of an indication to the contrary."

18. It is difficult to appreciate how the principle of ejusdem generis can be invoked for interpretation of Rule 37(1) of the 1984 Rules. The word "general duty" is not defined; it is followed by the word "Havildar" which contemplates only one specific cadre of employee in the department. Therefore, Naiks, Lance Naiks, Riflemen being junior cadres in the service appearing subsequently in the same sentence, can not be interpreted to mean general duty Naiks, general duty Lance Naiks and general duty Riflemen, unless indicated specifically, where there is something to show that a wider sense was intended. More so, when there is specific indication in the sentence, for resorting to a process of recruitment from lower cadre of the service, due to nonavailability of general duty Havildars to man the post of Havildar (Clerk). Consequently, the aforesaid rule of interpretation cannot be of any avail to the respondent State. On the contrary, the words general duty as employed by the Legislature in Rule 37 of 1984 Rules can not be interpreted to mean other categories of junior cadres to be of general duty of the police service, when wider sense was intended to expand the zone of consideration.

19. Learned Addl. Government Advocate further pointed out that it was due to incorrect interpretation of the Rules, the petitioners were wrongly selected in the posts. Since the respondent Department made the selection erroneously by misreading the said Service Rules, such selection contrary to Service Rules cannot be a ground to claim relief. In support of his contention, the learned

Government Advocate relied on a decision of the Hon"ble Supreme Court reported in Indian Council of Agricultural Research Vs. T. K. Suryanarayan (1997) 6 SCC 766 which reads as follows:

"8..... Even if in some cases, erroneous promotions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim for promotion contrary to the statutory service rules in law courts. Incorrect promotion either given erroneously by the Department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules. In a court of law, employees cannot be permitted to contend that the Service Rules made effective on 1.10.1975 should not be adhered to because in some cases erroneous promotions had been given. The statutory rules must be applied strictly in terms of the interpretation of rules as indicated in the decision of a threeJudges Bench of this Court in Khetra Mohan case (1994 Supp (3) SCC 595: 1995 SCC (L&S)179)."

20. However, fact remains before the principle of law laid by Hon"ble Supreme Court in Indian Council of Agricultural Research Vs. T. K. Suryanarayan (supra), can be followed and applied, an erroneous interpretation of Rule 37 of 1984 Rules will have to be established by the respondent authority.

21. Learned Addl. GA. further contended that as per the Recruitment Rules, 1984 a general duty Lance Naik is not entitled to get promotion to the next rank in other trade like Medical, Wireless etc. and the promotion is given to the next rank from amongst the persons who belong to substantive posts of the same trade.

22. Before proceeding to examine and look closely upon the provisions contained in Rule 37 of the Rules 1984, in order to interpret, it would be appropriate to reproduce the relevant extract of the Rule 37 of the Rules 1984, which reads as follows:

"37. Recruitment Rules for the posts of

Havildar (Clerk):

(1) These posts shall be filled by transfer from amongst general duty Havildar failing which from amongst Naiks, failing which from amongst Lance Naiks and failing which from amongst Riflemen, who

(a) are willing for such transfer;

(b) have passed at least matriculation or an equivalent examination;

(c) possess minimum speed of 30 words per minute in English typing;

(d) have put in at least 2 years service in the Rifles; and

(e) have been approved for such transfer by the Deputy Inspector General.

(2) In case filling up of the posts by method specified in subrule (1) is not possible, these posts may be filled by reemployment of exservices or exCentral Police Organization personnel or by direct recruitment.

(3) To be eligible for reemployment an exservice or exCentral Police Organization personnel should

(a) have retired or discharged, not earlier than 24 months of such reemployment, in corresponding or higher clerical rank, from formation concerned;

(b) have possessed exemplary or very good character while in previous service;

(c) not have attained the age of 40 years as on 1st day of July of the year in which appointment is made; and

(d) have been approved for such reemployment by the Deputy Inspector General, who may relax any of the conditions specified in this subrule, in suitable cases, by order in writing.

(4) Direct Recruitment shall be made from amongst person who

(a) have passed at least matriculation or an equivalent examination;

(b) have minimum speed of 30 words per minute in English typing;

(c) are within age group of 18 to 25 years as on 1st day of July of the year in which advertisement for recruitment is made;

(d) possess chest and height measurements as are specified for recruitment as Riflemen in Rule 25; and

(e) should have qualified in such physical, written and oral tests as may be prescribed by the Inspector General.

(5) The Deputy Inspector General may relax, by order in writing any or all the qualification/conditions specified at item (c) and (d) of subrule (4) in suitable cases.

(6) The Board for making the recruitment specified in subrule (4) shall consist of the Deputy Inspector General, Commandant of the Battalion concerned and Deputy Commandant of the Battalion, concerned and when Deputy Commandant is not available the senior most Assistant Commandant of the Battalion concerned.

(7) The Inspector General may lay down, by order in writing, the procedure for screening of candidates considered for recruitment under subrule(4).

(8) The persons recruited under subrule (4) shall be liable to discharge, without compensation, if they fail to complete within 12 months of their recruitment, such training in drill, weapons, office procedure and accounts as may be laid down by the Inspector General by order in writing."

23. On careful examination of the provision of Rule 37 it appears that contrary to what has been submitted by the learned Government Advocate, apparently Rule 37 is an exception designed to meet the unforeseen event of non availability of appropriate person to man the post of Havildar (clerk) from normal source. In Rule 37 (1) of the Rules 1984, it is clear that post of Havildar (Clerk) shall be first filled up by posting general duty Havildars by way of transfer. Therefore, indication of other personnel belonging to the subordinate rank, as mentioned in the Rules, for the purpose of recruitment, in fact, is a contingency arrangement, in the event of failure to recruit Havildar (Clerk) from amongst the general duty Havildars.

24. On careful scanning of the 1984 Rules, it appears, in various categories of technical posts in TSR, contingency provision have been incorporated to the over the situation, in the event of failure of tide department to recruit or fill up the post from usual source in the cadre. Procedures have been made, by laying open such posts, for selection from amongst the eligible candidates from all cadres of the Tripura State Rules.

25. Learned Counsel for the petitioners submitted that the post of Havildar (Clerk) is not a promotional post for general duty Havildars, therefore, when general duty Havildar is not available to fill up a vacant post of Havildar (Clerk) on transfer, the post is laid open for recruitment from the eligible candidates of the department having requisite qualifications and, therefore, Rule 37 has been incorporated in such a way that it would be convenient to find out such employees in the Department itself, be them of any rank having the requisite qualification to work as a clerk in the office. More so, in the event of failure to recruit by resorting to the mode prescribed under Rule 37 (1) (2) (3), the posts are required to be filled up by way of direct recruitment in terms of Rule 37 (4).

26. Over and above Rule 37(1) has indicated specific qualifications, which may be acquired by any personnel of various cadres of TSR to avail a lift and/or a promotional opportunity, therefore, the provision incorporated in Rule 37 to recruit a qualified personnel to man the post of Havildar (Clerk), cannot be restrictive to only general duty personnel. Therefore, in my opinion, any narrow interpretation to restrict the recruitment of Havildar (Clerk) from amongst the general duty Naiks would not be in terms of the intention of the legislature.

27. Learned counsel for the petitioners by referring to a copy of the letter issued by Dy. IG of Police, AP (Adm & Trg), vide No."345970/F.3(116)/DAP/TSR/RSV/08 dated 20.05.2010 addressed to the Commandants, TSR 1st to 12th BNs. has submitted that the Department is considering amendment of the existing provisions of Rule 37 of the Rules. A copy of the proposed amendment of TSR recruitment Rules, 1986 has also been shown to the Court in the midst of the arguments. The relevant extract of the proposed amendment Rules is as follows:

"Proposed amendment of Rule 37 Recruitment Rules for the posts of Havildar (Clerk)

(1) (i) These posts shall be filled by transfer from amongst Havildar (GD), failing which by promotion from amongst Naiks (GD), failing which by promotion from amongst Lance Naiks (GD) and failing which by promotion from amongst Riflemen (GD), who

(a) are willing for such transfer (in case of General Duty Havildars and willing for promotion in cases of Naiks (GD), Lance Naiks (GD) and Riflemen (GD);

(b) have passed at least matriculation or an equivalent examination;

(c) have put in atleast 2 years, service in the Rifles as on 1st July of the year in which a selection committee or DPC is constituted;

(d) have passed the examinations specified in subrule (3) of this rule.

(e) Have been recommended by concerned selection committee/board of officers and approved by the Deputy Inspector General with due consent of the Inspector General or the Director General."

28. In view of the fact that the above interdepartmental communication proposing amendment of an existing rule cannot be considered by this court to be an acknowledgement of the mistake by the respondents, therefore, it would not be appropriate at this stage to initiate any discussion in this regard.

29. In adopting a construction the Court, as far as possible, should approve a construction, which will carry out the obvious intention of the legislature. We may watch the following words of caution, in the above background, echoed in Dadi Jagannadham Vs. Jammulu Ramulu & Ors., (2001) 7SCC 71 by the Apex Court:

"This settled principles of interpretation are that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly, if there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not there, especially when the literal regarding produces an intelligible result. The Court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

30. In yet another decision the Apex Court in JP Bansal Vs. State of rajasthan & Anr., (2003) 5 SCC134 observed that when the words of a statute are clear, that Court ought not to take up on itself the role of a law maker was highlighted by

"Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial

valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased."

31. Having regard to the specific and unambiguous language employed in Rule 37 of the Recruitment Rules, in my view, there is no scope whatsoever to suppose that the prohibition on the applicability thereof interpreted by the respondents is appropriate and, accordingly, the impugned order of reversion by cancelling the petitioners' promotion/appointment as Havildar (Clerk) is apparently illegal. Accordingly, the impugned order is set aside and quashed.

In the result the writ petition is allowed. However, I pass no order as to costs.