
(2004) 04 CAL CK 0042
In the Calcutta High Court
Case No : W.P.S.T. No. 841 of 2003

Abdur Rahim Sardar

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Calcutta Police Regulations, 1968 — Regulation 746

Citation : (2004) 2 CHN 602 : 108 CWN 148

Hon'ble Judges : Jyotirmay Bhattacharya, J; Altamas Kabir, J

Bench : Division Bench

Advocate : Sadananda Ganguly, Md. Yamin Ali and Sufi Kamal, for the Appellant; Subrata Mukhopadhyay and Saikat Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner was asked to appear at an interview for selection to the post of Constable in the Calcutta Police and pursuant to the interview letter dated 17th January, 1994 the petitioner appeared before the Selection Board on 6th April, 1994 for interview, which according to him was to be conducted on the basis of the Calcutta Police Regulations, 1968.

2. The petitioner was found fit and suitable in physical measurement and also successfully completed the physical tests, such as, hundred metres and four hundred metres run and fifteen feet long jump. Despite having succeeded at the aforesaid stages, the petitioner was ultimately informed that he had failed to qualify in the viva-voce test.

3. Since the petitioner was not officially informed as to the fate of his interview, he moved a writ application, being C.O. No. 10370(W)/94 in November, 1994, inter alia, for a direction upon the respondents to appoint him as Constable in the Calcutta Police. The said writ application stood transferred to the West Bengal Administrative Tribunal and was re-numbered as T.A. No. 46 of 2000.

4. The case as made out in the writ petition was that the Calcutta Police

Regulations, 1968 as existing on the date when the petitioner was interviewed, did not provide for any viva-voce test to be taken or for a candidate to run hundred and four hundred metres and participate in fifteen feet long jump. It was contended that the petitioner, having been found suitable and having succeeded in the physical measurements, such as height, weight and chest measurement as provided in the Recruitment Rules, 1968 of the Calcutta Police, he was entitled to be appointed in the post of Constable. It was contended that the introduction of a viva-voce test on the basis of which the petitioner was allegedly disqualified was contrary to the rules and the respondents acted illegally in taking recourse to the same in rejecting the petitioner's claim for appointment although he was eligible under the rules.

5. The learned Tribunal after considering the case made out on behalf of the respective parties dismissed the petitioner's application by its judgment and order dated 12th July, 2003 upon holding that the petitioner's application was devoid of any merit since he had failed to prove his merit in reading and writing skill in the vernacular.

6. Aggrieved by the said order of the learned Tribunal the petitioner has moved the present writ application and has reiterated the stand taken by him before the learned Tribunal.

7. Appearing in support of the application Mr. Yamin Ali and, thereafter, Mr. Sadananda Ganguly learned Advocate, submitted that as had been held in various cases the respondents had adopted an erroneous procedure beyond the recruitment rules in eliminating candidates who are otherwise eligible under the rules. Both Mr. Ganguly as well as Mr. AH urged that the respondents were not entitled to make a departure from the rules as existing as had been found by a Division Bench of this Court in F. M. A. No. 1044/90. The Division Bench in its judgment and order dated 21st April, 1999 dismissed the appeal preferred by the State of West Bengal and the police authorities upon holding that as there was no provision for interview or any other test, the adoption of such a procedure in deviation of the rules was improper and was of the view that the order of the learned Single Judge did not require any interference. It was submitted by Mr. Ali as also Mr. Ganguly that the SLP taken from the said judgment and order of the Division Bench, being SLP (Civil) No. 12627 of 1999, was dismissed on 3rd December, 1999. It was urged that having regard to such dismissal of the SLP it must be held that the Hon'ble Supreme Court had upheld the views expressed by the Division Bench in P. M. A. 1044/90.

8. Apart from the above, reference was also made on behalf of the petitioner to a Single Bench decision of this Court in the case of Ananta Paul v. State of West Bengal, reported in 1988 CRILJ 217 wherein it was held that since elimination or selection by an interview were not prescribed under Regulation 746 of the Police Regulations of Bengal for recruitment in the post of Constable the adoption of such a process was improper and could not be maintained by the authorities.

9. Mr. Ganguly, also urged that even if one were to take into consideration the concept of short-listing as had been considered by the Honb"le Supreme Court in various cases, such a procedure could have been adopted at the very initial stage and not after a candidate has been called for the interview on the basis of the existing recruitment rules. Mr. Ganguly urged that after having called the candidates for interview on the basis of the recruitment rules as existing on the date of the interview, it was no longer open to the authorities to resort to any other method not prescribed for elimination of candidates who are eligible under the existing rules.

10. Mr. Ganguly submitted that the learned Tribunal had erred in relying on the affidavit affirmed on behalf of the State where the procedure as adopted de hors the rules, viz., oral interview consisting of reading and writing and general knowledge, had been mentioned.

11. At this juncture it may be mentioned that in order to satisfy ourselves we had called for the results of the interview conducted by the authorities, as mentioned in the affidavit affirmed on behalf of the State and the same was duly produced by Mr. Mukherjee, appearing for the respondents.

12. Mr. Mukherjee urged that when a large number of candidates had applied for a given number of vacancies, a certain discretion has to be left with the recruiting authorities in eliminating them who would otherwise have been eligible for appointment. According to Mr. Mukherjee, this procedure had fallen for consideration in matters of this nature and had been considered by the Hon"ble Supreme Court in various other cases as well.

13. In support of his said submission Mr. Mukherjee firstly relied on a decision of the Hon"ble Supreme Court in the case of Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, , and also in Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, . In the said case the Hon"ble Supreme Court was called upon to consider a procedure of short-listing adopted by the Madhya Pradesh Public Service Commission which was in deviation of Section 8(3)(c) of the Madhya Pradesh Industrial Relations Act, 1960, which provided for recruitment of officers to preside over the Labour Court from candidates who had practised as Advocates or Pleaders for a total period of not less than five years. In the said case the period was enhanced from five years to 7½ years and the same was challenged on the ground that the authorities were not entitled to deviate from the statutory provision. Upholding the said procedure adopted by the Commission, the Hon"ble Supreme Court, inter alia, observed that where the selection is to be made purely on the basis of interview, if applications for such post are enormous in number with reference to the number of the posts available to be filled up, then the Commission or the Selection Board has no option but to short-list such applicants on some rational or reasonable basis.

14. As we have indicated in the instant case, a procedure was adopted by the

respondents under which candidates were required to appear for an oral interview consisting of reading and writing, in vernacular and general knowledge. This was a procedure adopted for all the candidates uniformly and it cannot be said that any particular candidate was put to disadvantage on account thereof. We have looked into the records to satisfy ourselves on this score and we are unable to find any mala fide intention on the part of the authorities in adopting such procedure.

15. We are also of the view that when there are a large number of candidates for a limited number of vacancies, a certain discretion has to be given to the recruiting authorities which is to be of uniform application to all the candidates and which must not be unreasonable to make a selection from out of many candidates who would otherwise have been eligible for selection to the limited number of vacancies.

16. While it is no doubt true that the Hon''ble Supreme Court dismissed the SLP in the case of State of West Bengal v. Abdul Barkat and Ors., [S.L.P. (Civil) No. 12627 of 1999], the same was dismissed without any detailed reasoning as was done in the case of Navnit Singh Potdar.

17. We accordingly see no reason to interfere with the judgment and order of the learned Tribunal and the present writ application is, therefore, dismissed.

18. There will, however, be no order as to costs.