

(2010) 01 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : L.P.A. No. 34 of 2003

Ajay Kumar and Others

APPELLANT

Vs

National Hydro Electric Power Corporation Limited and
Another

RESPONDENT

Date of Decision : 06-01-2010

Acts Referred:

Citation : (2010) 2 ShimLC 295

Hon'ble Judges : R.B. Misra, Acting C.J.; Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This Letters Patent Appeal is directed against the judgment of the learned Single Judge rendered in Civil Writ Petition No. 487 of 1998 on 19.9.2003".

2. Material facts necessary for the adjudication of this Letters Patent Appeal are that the appellants/petitioners (hereinafter referred to as "the petitioners" for convenience sake) were appointed as Draftsmen Grade-II on various dates in the pay scale of Rs. 330-560/-. They were considered and promoted as Draftsmen Grade-I. Thereafter, they were to be considered for the post of Senior Draftsmen Grade-II in the Supervisory cadre in the pay scale of Rs. 550-900/-. The initial promotion policy was revised by the management w.e.f. 1.7.1997 vide office order dated 07.10.1997. The promotion to the higher post was made subject to passing of a Trade Test including Supervisory Test and availability of vacancy. Petitioners sat in the examination and they were promoted to the next higher grades against the available vacancies. In view of this, the learned Single Judge has held that once the petitioners took part in the test as per the amended promotion policy, they were estopped from challenging the amended promotion policy.

3. In Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, , their Lordships have held that once the petitioner has appeared in the examination

without protest, the petitioner was not held entitled to any relief. Their Lordships have held:

23. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination.

4. In *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , their Lordships of the Hon''ble Supreme Court have held that if a candidate takes a calculated chance and appears in the interview, then because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. Their Lordships have held as under:

Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioners appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

5. In *Union of India and Another Vs. N. Chandrasekharan and Another*, , their Lordships of the Hon''ble Supreme Court have held that when the selection procedure is made known to the candidates before selection, unsuccessful candidates are not entitled to challenge it afterwards. Their Lordships have held as under:

13. We have considered the rival submissions in the light of the facts presented

before us. It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report.

6. In *Vijay Syal and Another Vs. State of Punjab and Others*, their Lordships have held that when candidates knowing well the criteria fixed for selection and allocation of marks appeared in interview, on being unsuccessful cannot be allowed to challenge the same criteria. Their Lordships have held as under:

12. As can be seen from the difference of marks secured by the candidates in interview, it does not appear abnormal or per se does not smell of any foul play or does not appear patently arbitrary. The lowest of the marks given in the interview are 11.5 and the highest are 22.87. Further marks secured in the interview and the marks secured in written test are also not grossly disproportionate. This apart, out of total marks of 240, only 25 marks were earmarked for interview. So 25 marks for interview out of 240 as against 200 for written test and 15 marks for qualification and other activities do not admit an element of arbitrariness or give scope for use of discretion by members of the interview Committee recklessly or designedly in giving more marks to show favour in interview so as to give an advantage or march to an undeserving candidate of their over others who had shown extraordinary merit in written test. From the chart, we find among the candidates, marks secured in the written test were between 119 to 128 except in one case belonging to Scheduled Castes were 114. This apart, the marks secured in the interview are based on the assessment of the Interview Committee. Normally, it is not for the Court to sit in judgment over such assessment and particularly in the absence of any mala fides or extraneous considerations attributed and established. The interview marks of 25 as against total marks of 240, cannot be taken as excessive. It comes to 10.4%. Possibly the selection would have been vitiated, if the marks for interview were 100, as against 150 marks for written test as sought to be made out. Unfortunately, for the appellants, their misrepresentation in this regard, is unfolded very clearly as already stated above. Further, the appellants, knowing the criteria fixed for selection and allocation of marks, did participate in the interview; when they are not successful, it is not open to them to turn around and attack the very criteria. The High Court in the impugned order has found that the criteria contained in Annexure R-1 filed in the writ petition was published and that such criteria was adopted earlier also in respect of other selections.

7. In *Dhananjay Malik and Others Vs. State of Uttaranchal and Others*, their Lordships have held that unsuccessful candidates posing challenge that recruitment was not done according to statutory rules are estopped from

challenging the selection criteria. Their Lordships have held as under:

7. It is not disputed that the writ petitioners-respondents herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

9. In the present case, as already pointed out, the writ petitioners-respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

8. In a recent judgment in *Amlan Jyoti Borooah Vs. State of Assam and Others*, their Lordships have held that a candidate who has subjected himself to faulty selection, he cannot question it later on. Their Lordships have held as under:

23. The State in an emergent situation would subject to constitutional limitations is entitled to take a decision which subserve a greater public interest. While saying so, we are not unmindful of the fact that the Constitution also demands that candidates who had acquired eligibility for recruitment to the post in the meantime should also be given opportunities to participate in the selection process. This Court times without number had lamented the lackadaisical attitude on the part of the State to treat the matter of selection for appointment to services in a casual and cavalier manner. If no appointment could be made from 1997 to 2001, it is the State alone who could thank itself therefor, but, unless there exists a constitutional or a statutory interdict so as to compel the Superior Court to set aside the selection which has otherwise been validly made; in exercise of their power of judicial review the same would not ordinarily be interfered therewith.

9. The learned Single Judge has also come to the right conclusion that the promotion to the next higher grade even as per the old policy was not automatic. The person could be promoted only on completion of the requisite prescribed period of service in lower grades.

10. Accordingly, there is neither any jurisdictional error nor any procedural irregularity in the judgment rendered by the learned Single Judge.

11. In view of this, there is no merit in the present Letters Patent Appeal and the same is dismissed. No costs.