
(2002) 09 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1618 of 2002

Amraram and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 WLC 242 : (2003) 1 WLN 5

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioners on 11.5.2002 against the respondents with the prayer that by an appropriate writ, order or direction, the order dated 19.4.2002 (Annex. 6) passed by the respondent No. 4 Superintendent of Police, Sirohi by which respondents No. 6 and 7 Kanaram and Babulal respectively and others were given promotions from the post of Constable to Head Constable, be quashed and set aside and the respondents be directed to conduct fresh selections for the post of Head Constable for the vacancies of the year, 2002.

2. The case of the petitioners as put forward by them in this writ petition is as follows:

Facts pertaining to petitioner No. 1 Amraram

The petitioner No. 1 Amraram was appointed in the Rajasthan Police on the post of Constable w.e.f. 10.11.1979 and since then he is serving the Department with utmost dedication and satisfaction to his higher authorities and he is presently posted under the respondent No. 4 Superintendent of Police District Sirohi.

3. The case of the petitioner No. 1 is that the respondent No. 4 Superintendent of Police, Sirohi issued provisional seniority list dated 1.4.2000 (Annex. 1) which

was ultimately finalised and the petitioner No. 1 stands at serial No. 100.

The further case of the petitioner No. 1 is that the respondent No. 4 Superintendent of Police invited applications for the post of Head Constable from amongst the eligible senior most candidates and in pursuance of that, the petitioner No. 1 being eligible also applied for the promotion test which was to be held on 18.3.2001. According to the petitioner No. 1, there were 13 vacancies available for the year 2001-2002 and, therefore, 78 candidates were called for the promotion test, as per the criteria adopted for the promotion. A copy of the order showing that there were 13 vacancies and 78 eligible candidates were called upon for the promotion test is marked as Annex. 2.

The further case of the petitioner No. 1 is that he appeared in the departmental promotion examination conducted under the Chairmanship of the respondent No. 3 Deputy Inspector General of Police, Jodhpur Range, Jodhpur and he got through in the written examination and thereafter, he appeared for interview and other physical examination. But, surprisingly the Selection Board selected only two candidates for the promotion to the post of Head Constable and 11 vacancies were kept unfilled.

The further case of the petitioner No. 1 is that the respondent No. 6 Kanaram was appointed on the post of Constable with effect from 5.12.1991 in Bharatpur Range under the Superintendent of Police, Bharatpur from where he was transferred to Dholpur, Alwar, Jaipur and then at Pali which is his home District.

The further case of the petitioner No. 1 is that the respondent No. 7 Babulal was initially appointed on the post of Constable in the Kota Range under the Superintendent of Police, Kota with effect from 5.12.1991 from where he was transferred to Jaipur and then to Pali which is also his home District.

The further case of the petitioner No. 1 is that though he qualified the written examination, but he was not promoted to the post of Head Constable. According to the petitioner No. 1, the respondent No. 5 Pukhraj Sirvi, Dy. Inspector General of Police, Jodhpur Range, Jodhpur with a view to make promotions of respondents No. 6 and 7 Kanaram and Babulal, who are respectively brother's son and son of sister-in-law of respondent No. 5, managed to transfer them to the District Sirohi and furthermore, the respondent No. 5 Pukhraj Sirvi managed not to fill in 11 vacancies and, therefore, the selections of the respondents No. 6 and 7 Kanaram and Babulal respectively were made against the rules and in violation of the principles of natural justice.

The further case of the petitioner No. 1 is that since the respondents No. 6 and 7 were transferred in the District of Sirohi, therefore, they got better seniority in the District Sirohi and had they would have been kept in Pali, they would have not been promoted and furthermore, the Chairman of the Interview Board for viva-voce test was respondent No. 5 Pukhraj Sirvi, Dy. Inspector General of Police and since the respondents No. 6 and 7 were close relatives of the respondent No. 5, therefore, the promotions of the respondents No. 6 and 7

deserve to be quashed on this ground alone.

Case of petitioner No. 2 Gajraj Singh

4. So far as the case of the petitioner No. 2 Gajraj Singh is concerned, it may be stated here that he did not qualify the written test and therefore, he was not called for interview.

Hence, it has been submitted by the petitioners that whole selection for promotion from the post of Constable to Head Constable, which was made by the respondents No. 3, 4 and 5, was illegal, arbitrary and against the Rules and was made with a view to favour the respondents No. 6 and 7 and even irregularities have been committed by the respondents No. 3, 4 and 5 while conducting the written examination and, therefore, whole selection should be quashed and set aside. Hence, this writ petition with the prayers as stated above.

A reply to the writ petition was filed by the respondents No. 1 to 4. The respondent No. 5 Pukhraj Sirvi, Dy. Inspector General of Police has also filed a separate reply. In the reply, it was submitted that the criteria for promotion to the post of Head Constables has been laid down under Rule 27 of the Rajasthan Police Subordinate Service Rules, 1989 (hereinafter referred to as "the Rules of 1989") and according to the said criteria, the recruitment process shall be held in two stages. In Part-I stage, a candidate will be required to appear in the written examination and if he secures minimum 40% marks, he qualifies for the Parade and Practical and other out-door tests, wherein also he is required to secure minimum 40% marks. Part-II stage of examination consists of record and interview. However, a candidate securing 45% marks in aggregate in written examination and Parade and practical qualifies for interview, which is called Part-II stage.

It was further submitted by the respondents that so far as the petitioner No. 2 is concerned, he did not qualify in Part-I stage and, therefore, he was not called for interview, but there is no dispute on the point that the petitioner No. 1 qualified the written test and thus, he was called for interview.

The further case of the respondents is that in Rule 27 of the Rules of 1989, the composition of the Selection Board for making promotion to the post of Head Constable has been provided and according to Rule 27 of the Rules of 1989, for promotion to the post of Head Constable, the Selection Board shall consist of:

(i) Dy. I.G., Police--Chairman

(ii) Superintendent of Police/Commandant of the District/Unit concerned.--Member

(iii) One Addl. S.P. outside the range concerned to be nominate by the D.G.P.--Member

Before proceeding further, it may be stated here that there is no dispute on the point that the respondents No. 6 and 7 are close relatives of the respondent No.

5 Pukhraj Sirvi, Dy. Inspector General of Police, who was Chairman of the Selection Board.

The further case of the respondents is that since as per Rule 27 of the Rules of 1989, Dy. Inspector General of Police could only be the Chairman, because of the doctrine of necessity, there being only one Dy. Inspector General of Police in that range, therefore, the respondent No. 5 had to preside over the Selection Board.

The further case of the respondents is that a person, who qualifies the written examination is called for interview and in part-II stage, the assessment of the candidate is based on record and interview. A copy of the syllabus issued by the Director General of Police is marked as Annex. R. 5/1. The "Record" of a candidate is examined under various heads i.e. (i) Education, (ii) Annual remarks in service rolls; (iii) Rewards and punishments, (iv) Training and (v) Sports. Under these heads the record consists of 60 marks and only 15 marks have been earmarked for interview. Thus, a candidate is required to secure a minimum 19 marks out of 60 in the service record even if he is able to secure 15 out of 15 marks in the interview because according to the the scheme of selection, a candidate is required to secure minimum 33.75 marks out of 75 marks under the head Service Record and Interview.

So far as the petitioner No. 1 is concerned, he was able to secure 18 marks out of 60 marks for the service record and he was awarded 13 marks out of 15 marks in the interview, which makes the total at 31 and even if he was awarded 15 marks out of 15 marks in the interview, still he would have secured 33 marks which is 0.75 below the minimum marks and thus, even if the petitioner No. 1 would have been awarded 15 marks out of 15 marks in the interview, he would have still not found place in the select list.

The further case of the respondents is that when the petitioner No. 1 has not been able to get minimum required marks in the service record, his result in selection is not in any way affected on the basis of the marks obtained by him at the interview. On the contrary, if the case of the respondents No. 6 and 7 is taken, they not only qualified the written examination and parade, but they were able to secure 37 marks and 35 marks respectively under the head "Service Record" and even if they were awarded "zero" mark at the interview, they would have still found place in the select list as there was no requirement for seeking minimum marks in the interview. Thus, the interview in no way has materially affected the result either of the petitioner No. 1 or of the respondents No. 6 and 7 and in these circumstances, the writ petition filed by the petitioners is wholly misconceived and liable to be dismissed.

5. I have heard the learned Counsel appearing for the petitioners and the learned Counsel appearing for the respondents and gone through the materials available on record.

6. There is no dispute on the point that the petitioner No. 1 qualified the written test and he was called for interview and as per the record available with this writ

petition, he secured 13 marks out of 15 marks in the interview and the respondents No. 6 and 7 also secured 13 marks out of 15 marks respectively in the interview.

7. There is also no dispute on the point that the Chairman of the Interview Board was respondent No. 5 Pukhraj Sirvi in capacity as Dy. Inspector General of Police and there is also no dispute on the point that the respondents No. 6 and 7 were his close relatives.

8. There is also no dispute on the point from seeing the process of selection that if the petitioner No. 1 would have been given 15 marks out of 15 marks in the interview, he would have not been selected because he was not fulfilling the criteria of qualifying marks for selection and there is also no dispute on the point that if the respondents No. 6 and 7 would have been awarded "zero" mark out of 15 marks in the interview, even then they would have been selected as they got better marks in other performances including written test etc.

9. Before proceeding further it may be stated here that so far as the allegations against the respondent No. 5 Pukhraj Sirvi, Dy. Inspector General of Police with respect to transfers of the respondents No. 6 and 7 from Pali to District Sirohi and the allegations that the respondents No. 3 to 5 committed irregularities in the written examination etc. are concerned, the same cannot be accepted at all unless and until some serious irregularities in conducting written examination are alleged and proved and in this case, they are missing. Even from the writ petition, it appears that the case of the petitioner No. 1 is that written examination was conducted under the Chairmanship of respondent No. 3 and he got through the written examination and the respondent No. 3 was not relative of the respondents No. 6 and 7. Therefore, to say that irregularities were committed in the written examination is wrong one. The petitioners have also failed to prove that transfers of respondents No. 6 and 7 were made at the instance of respondent No. 5 and were malafides in any manner.

10. Thus, looking to the fact that the respondent No. 5 Pukhraj Sirvi in capacity as Dy. Inspector General of Police presided over the Interview Board where his two close relatives, namely, respondents No. 6 and 7 Kanaram and Babulal respectively appeared; the question for consideration is whether by presiding over the Interview Board by the respondent No. 5, the whole selection has been vitiated or not or whether the case of the petitioner No. 1 has been affected or not or whether the respondents No. 6 and 7 have been given due benefits or not.

11. The above question has to be answered keeping in mind the principles of natural justice.

12. The doctrine of natural justice, as understood in England, rests on two broad principles resting on Latin maxims, which were drawn by common law from "jus naturale":

(a) "Nemo debet esse iudex in propria causa" which means that no one should

be a judge in his own cause or that the tribunal must be impartial and without bias.

(b) "Audi alteram partem", which means "hear the other side, or that both sides in a case should be heard" (before it can be decided) or that no man should be condemned unheard.

13. The maxim "Nemo debet esse judex in propria causa" means that no one should be a judge in his cause. The rule is of a wide application and means that a judicial or quasi-judicial authority should not only himself not be a party, but must also not be interested as a party in the subject-matter of the dispute which he has to decide.

14. In the celebrated observation of Lord Hewart in *R.V. Sussex Justices* ((1924 1 K.B. 256)) - "It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done"

15. A decision of the court or tribunal is vitiated by the mere fact that an interested person sat at the hearing, even though such person did not take part in the discussion or did not vote. The mere presence of the interested person may vitiate the decision if he sat in such a position that gave an appearance that he was a member of the Tribunal.

On bias

16. On the question of bias, it can be said that bias is a "condition of mind, which sways judgment and renders judge unable to exercise his functions impartially in particular case". Bias leads to leaning towards one side of a cause for some reason other than conviction of its justice. A predisposition to decide for and against one party, without proper regard to the true merits of the dispute is bias. "By bias", said Lord O'Brien, L.C.J., "I understand a real likelihood of an operative prejudice, whether conscious or unconscious." *Wide Rex v. Queen's County Justices* (1908) 2 IR 285).

17. Bias may be of different forms, such as, judicial bias, administrative bias, political bias. It may have different further types too, like, official bias, legal bias, legislative bias, bias of subject-matter, pecuniary bias and personal bias. Here we are concerned with administrative bias.

18. When one of the parties has close personal friendship with the decision maker, it becomes a bar for the decision maker to adjudicate upon a dispute since it may give rise to a real likelihood of bias.

19. Ties of Kinship with the decision maker always calls for close scrutiny. An adjudicator may be challenged on account of his family relationship with a party to the dispute. Disqualification on the basis of personal involvement may result whenever there is a sufficient nexus between the decision maker and a party to justify the appearance that this nexus may influence the decision reached. Where, therefore, reasonable likelihood of bias is alleged on the ground of

relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the decision.

20. The law has been laid down by the Hon^{ble} Supreme Court in Ashok Kumar Yadav and Others Vs. State of Haryana and Others, in this sphere to the effect that if a Selection Committee is constituted for the purpose of selecting candidates on merits and one of the members of the Selections Committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask the authorities to nominate another person in his place on the Selection Committee, otherwise all the selection made would be vitiated on account of reasonable likelihood of bias affecting the process of selection.

21. Thus, it can be said that it is one of the fundamental principles of our jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and commonsense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision.

22. Furthermore, in deciding the question of bias, we have to take into consideration the human probabilities and ordinary course of human conduct. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.

23. Keeping the above principles in mind, if the facts of the present case are examined, no doubt the respondent No. 5 presided over the Interview Board where maximum marks that could have been allotted to the person appearing before the Interview Board of viva-voce were 15 marks and out of 15 marks, the petitioner No. 1 secured 13 marks and in the same manner, the respondents No. 6 and 7 also secured 13 marks and there is also no dispute on the point that the respondent No. 5 should have not presided over that Interview Board because before him respondents No. 6 and 7, who were his close relatives were appearing.

24. At the very out-set it can be observed that so far as the select list Annex. 6 is concerned, that cannot be quashed because persons selected other than

respondents No. 6 and 7 are not party before this Court and, therefore, their selection cannot be set aside at their back. This is one of the aspect of the matter.

25. No doubt as the propriety demands the respondent No. 5 Pukhraj Sirvi should have not presided over the Interview Board in capacity as Dy. Inspector General of Police and should have withdrawn himself from that Board as before him, his two close relatives respondents No. 6 and 7 appeared for interview. But, the question that arises for consideration is whether by presiding over the interview Board by the respondent No. 5 for promotion from the post of Constable to Head Constable in which his two close relatives respondents No. 6 and 7 were selected, a case for interference by this Court under Article 226 of the Constitution of India has been made out or not.

26. So far as the case of the petitioner No. 1 is concerned, from the reply of the respondents and from the criteria for selection, it has become crystal clear that even if the petitioner No. 1 would have been awarded 15 marks out of 15 marks in the interview, he would have not been selected because he was required to secure minimum 33.75 marks out of 75 marks in the service record and interview, but against that, the petitioner No. 1 secured 18 marks out of 60 marks for the service record and 13 marks out of 15 marks in the interview which makes the total at 31 and even if he was awarded 15 marks out of 15 marks in the interview, he would have secured 33 marks, which is 0.75 below the minimum marks.

27. In these circumstances, it can easily be concluded that the case of the petitioner No. 1 is not affected at all by that Interview Board which was presided over by the respondent No. 5.

28. On the contrary, had the respondents No. 6 and 7 would have been given zero marks in the interview, even then they would have been selected as they got better marks in other performances including written test etc.

29. Thus, looking to above peculiar facts and circumstances of the present case, since selection process had taken place and select list was declared on 19.4.2002 through Annex. 6 and the respondents No. 6 and 7 have already joined their services, therefore, in these circumstances, this Court is not going to set aside the selections of even respondents No. 6 and 7 for the simple reason that had they would have been given zero marks in the interview, they would have been selected and the petitioner No. 1 would have been given 15 marks out of 15 marks in the interview, even then he would have not been selected. Thus, no useful purpose would be served if the selection of the respondents No. 6 and 7 is set aside.

30. In these circumstances, by presiding over the Selection Board by the respondent No. 5, it cannot be said that any prejudice is caused to the petitioner No. 1.

31. In view of the discussion just made above, I am constrained to observe that

it was not competent and proper for the respondent No. 5 Pukhraj Sirvi to have presided over the Interview Board in capacity as Dy. Inspector General of Police in which his two close relatives respondents No. 6 and 7 appeared. He should have disassociated himself from that Board in keeping with the high traditions of the institution so as to give effect to the rule that "justice should not only be done, it should manifestly be seen to have been done". Therefore, it would be just and proper to warn the respondent No. 5 Pukhraj Sirvi, Dy. Inspector General of Police in the manner that in future he should not sit in the Board in which his close relatives are to appear.

32. In coming to the above conclusion, the law as laid down by this Court in S.B. Civil Writ Petition No. 4314/2001 Miss Prabha Bhandari v. The State of Rajasthan and Ors. (decided on 30.8.2002) has been kept in mind, but because of the peculiar facts and circumstances of the present case, as narrated above, the selection of the respondents No. 6 and 7 is not being set aside.

33. So far as the case of the petitioner No. 2 is concerned, since he has not qualified the written examination, therefore, his case stands no where.

34. For the reasons stated above, the petitioners are not entitled to any relief under Article 226 of the Constitution of India and this writ petition is liable to be dismissed.

Accordingly, this writ petition filed by the petitioners is dismissed. However, the respondent No. 5 Pukhraj Sirvi, Dy. Inspector General of Police is warned that in future he should not sit in the Board in which his relatives are to appear. No order as to costs.