

(2019) 08 CAL CK 0064

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 8274, 8275, 8276, 8277, 8278, 8279, 8281, 8283, 8291, 8294, 8296(W) Of 2015

Ashim Kumar Guha And Others

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 7.2, 70, 70.5, 70.6, 70.7.1. 70.7.2, 70.5, 70.7, 72
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 CAL CK 0064

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : A. K. Gayen, A. A. Gayen, Partha Ghosh, Sourav Mondal

Final Decision : Dismissed

Judgement

Protik Prakash Banerjee, J

1. This batch of 11 writ petitions has been filed before this Court invoking its writ jurisdiction under Article 226 of the Constitution of India. It seeks to undo the decision by the competent authority to hold afresh the written test for a process of selection to the post of Sub-Inspector in the Railway Protection Force on the ground of rampant corruption and malpractice on an anonymous complaint. The grounds of challenge are jurisdictional, as shall appear from what is stated below. The immediate effect of such complaint, as alleged, was the cancellation of the selection process for promotion to the post of Sub-Inspector (Executive)/ Railway Protection Force in the Eastern Railways by an order dated February 23, 2015, described in a later document to be an office order of the Inspector General/Chief Security Commissioner of the Railway Protection Force, (the respondent no. 3) communicated by the respondent no. 4, and a further order dated March 03, 2015 communicated by the respondent no. 4 as a continuation of the order dated February 23, 2015 of the respondent no. 3, whereby the

selection process from the stage of written test was decided to be renewed. Since these 11 writ petitions being W.P. No. 8274(W) of 2015, W.P. No. 8275(W) of 2015, W.P. No. 8276(W) of 2015, W.P. No. 8277(W) of 2015, W.P. No. 8278(W) of 2015, W.P. No. 8279(W) of 2015, W.P. No. 8281(W) of 2015, W.P. No. 8283(W) of 2015, W.P. No. 8291(W) of 2015, W.P. No. 8294(W) of 2015, W.P. No. 8296(W) of 2015 raise common questions of law and fact, with the consent of the parties, I have consolidated them and heard them analogously.

2. As it appears from the writ petitions, all the writ petitioners including the writ petitioner in W.P. No. 8274 (W) of 2015 are employed in the post of Assistant Sub-Inspector/ Railway Protection Force with the Eastern Railways. An advertisement dated August 28, 2014 later cancelled and replaced by the advertisement dated October 14, 2014, was issued by the Eastern Railway authorities for selection to the post of Sub-Inspector/ Railway Protection Force in which the writ petitioners participated and went through the selection process upto the stage of written test and outdoor testing. It was mentioned expressly that the selection process would be under Rule 70 of Railway Protection Force Rules, 1987 and the rule specified in Director General's Standing Order No.87. A list was prepared of those who were thereafter eligible to be called for viva voce, but no panel was published or recommended for approval to the competent authority by the departmental promotion committee appointed by the respondent no. 3, comprising three Deputy Security Commissioners. An anonymous complaint addressed to the respondent no. 3 was received by him, during the continuance of the selection proceeding and before any panel of candidates selected for appointment was published, notified or even recommended for approval. This anonymous complaint pointed out serious lapses in the selection process some of which pertained to an allegation of special favour being shown to candidates who were informally sponsored by a named person, close to the chairman of the departmental promotion committee. For this reason, the result of the written test and outdoor tests were withheld from publication and the orders as referred to in paragraph 1 were passed.

The writ petitioners have challenged both these orders and have come before this court in its writ jurisdiction seeking, inter alia, the principal reliefs as set out below:

a) A writ in the nature of Mandamus commanding the respondents and their agents and/or servants and/or associates and each of them to revoke, cancel, withdraw and/or forbear from giving any effect and/or further effect to the said purported cancellation order dated 23.2.2015 and notice for the fresh selection dated 03.03.2015 as contained in Annexures 'P-6' & 'P-7' respectively and to act and proceed in accordance with law;

b) A writ in the nature of Mandamus commanding the respondents and each of them to give effect to the panel prepared and duly submitted by the Departmental Promotion Committee to the Chief Security Commissioner/RPF, Eastern Railway forthwith to fill up the posy of sub-Inspector/RPF within Eastern

Railway authorities by quashing and/or setting aside the purported orders dated 23.2.2015 and 03.03.2015 respectively;

c) A writ in the nature of prohibition by restraining the respondents and each of them to give effect and/or further effect of the order dated 23.2.2015 and the notice dated 03.03.2015 till the disposal of this application;

d) Rule 'NISI' in terms of prayers (a), (b) and (c) above;

3. While at paragraph 8 of the writ petition it has been alleged that after successful completion of the written examination and outdoor testing about 36 persons were asked on December 17, 2014 to report on December 24, 2014 at a venue and at a time fixed thereby, for viva voce, paragraph 9 abruptly alleges that a panel was prepared and submitted before the respondent no. 3 for approval, without however any allegation that the petitioners or any of them appeared for the viva voce. Out of these 36 persons, some of the persons were implicated by name in the anonymous complaint to be the recipient of special favour at the instance of the person mentioned in paragraph 2 above.

4. Appearing for the writ petitioners, Mr. A.K. Gayen, Learned Counsel submits that the decision not to publish the said panel was not taken in the manner prescribed by the Railway Protection Force Rules, 1987, more specifically rule 70.7.2 since no inquiry was made by a competent authority in respect of the said matter nor any approval was taken from the next higher authority. It is for the sake of convenience that the aforesaid provisions has been set-out below:

Rule 70.5: Nomination of members of Departmental Promotion Committee for holding selections to various ranks mentioned in column (1) of the Table below shall be made by the superior officers mentioned against that rank, in column (2) of the said Table.

TABLE

(1)

(2)

Head Constable and Asst. SubInspector

Deputy Chief Security Commissioner

Sub-Inspector

Chief Security Commissioner

Inspector

Director-General

Rule 70.6: The composition of Departmental Promotion Committee shall be as under:

Promotion from Constable to Head Constable

Three Assistant Security Commissioners.

Promotion from Head Constable to Assistant Sub-Inspector.

Two Security Commissioners and one Assistant Security Commissioner.

Promotion from Assistant SubInspector to Sub-Inspector

Three Security Commissioners

Promotion from Sub-Inspector to Inspector

Three Chief Security Commissioners

Rule 70.7.1: All panels drawn up by the Departmental Promotion Committee shall be submitted for approval to the authority who nominated the said Committee.

Rule 70.7.2: If the said authority does not accept the recommendations of the said Committee, it shall record the reasons for the same and the matter shall be referred to the next higher authority, which may, for reasons to be recorded in writing pass such orders as are considered appropriate.

5. It has been alleged that the panel was withheld from publication and was later cancelled by the office of the respondent no. 3 without citing any reason for it. Rather the decision was taken on account of an anonymous complaint citing certain lapses in the selection process made before the Chief Security Commissioner/ Railway Protection Force cancelled and the order dated 03.03.2015 by which fresh process of selection was initiated. The writ petitioners submit that they fulfill all necessary criteria as required by the appropriate rules and guidelines for being promoted to the post of Sub-Inspector/Railway Protection Force and therefore they have accrued the right of promotion to the aforesaid post.

6. The writ petitioners further submit that the reason cited to cancel the selection process revolve around a vague allegation of procedural lapses which is completely unfounded as well as totally unsustainable in law. It is alleged that the respondent authorities not only failed to substantiate such allegation by necessary particulars as to what lapses occurred nor did they show that on which stage of selection the said lapses were committed and how they came to be noticed. It is further contended by the writ petitioners that even though the respondent no. 3 in terms of rule 70.5 of the RPF Rules, 1987 is the sole authority for nominating the members of the Departmental Promotion Committee and for conducting the process of selection for selection to the post of Sub-Inspector/RPF of the writ petitioners, the authority to cancel the said process do not rest with the respondent no. 3.

7. The writ petitioners have also taken the ground that a conjoint reading of rule 70.7.2 of the RPF Rules, 1987 along with regulation 17(c) of the Standing Order

would render the order of cancellation of the selection process dated 23.2.2015 and thus, the same is liable to be quashed. A further ground invoked on behalf of the writ petitioners is that the order of cancellation nowhere discloses that the same was passed on any recommendation by the vigilance authority. They submit that even if a complaint concerning procedural lapses in the selection process existed, the fact that the complaint was anonymous in nature is in itself sufficient to suggest that no action be taken on such complaint. Furthermore, even if the complaint appears genuine and points out alarming irregularities in the selection process, same must only be looked into by the respective vigilance authority and therefore, the inquiry conducted by the Additional Chief Security Commissioner/RPF is unsustainable in law on account of it being conducted without jurisdiction. In support of this contention the writ petitioners have, for the first time in the affidavit-in-reply, relied upon the regulations of the Indian Railway Vigilance Manual concerned with the Guidelines regarding handling of complaints dated April 01, 2014, the relevant regulations of which are set-out below:

405. Handling of Complaints:

405.1- No action is to be taken on anonymous complaints, irrespective of the nature of allegations and such complaints need to be simply filed. Such complaints shall not be treated as registered complaints.

405.2- Complaints containing vague allegations could also be filed without verification of identity of the complainant and treated as not registered.

405.3- In case complaints other than those listed under sub-paras

405.1 and 405.2 above are held as containing verifiable allegations by the concerned Deputy CVO in the case of Zonal Railways/PU/PSUs and/or the concerned Director/Jt. Director in Vigilance Directorate of the Railway Board/RDSO, it shall immediately be referred to the complainant for genuineness verification (owning/disowning) and if no response is received within 15 days, it shall be followed up through a reminder. And, if no response is received even after waiting for 15 days from the date of sending the reminder, the said complaint shall be filed as pseudonymous, and not registered.

406. Examination of Complaints

406.1- Anonymous complaints and/or complaints containing vague allegations shall be dealt in accordance with provisions contained in Paras 405.1 and 405.2 respectively.

406.2- The process of determining whether or not a complaint is pseudonymous shall be governed in terms of the provision specified in para 405.3.

406.3- Any complaint from a person known to make frivolous complaints (unreliable complaint) may be filed with the approval of the SDGM/CVO.

406.4- Complaint containing allegations devoid of any vigilance angle shall be

forwarded to the administrative department concerned for necessary action with the approval of the CVO/SDGM.

The writ petitioners even relied upon a notice dated January 31, 2002 issued by the Central Vigilance Commission, Government of India concerned with improvement in vigilance administration. The said notice laid down the following:

The commission had reviewed the instructions regarding action to be taken on anonymous/pseudonymous complaints and observed that the enabling provision in the DOPT's orders No. 321/4/91-AVD.III dated 29.09.1992 had become a convenient loophole for blackmailing and detrimentally affecting the career of public servants whose promotions/career benefits were denied owing to consequent investigation. Considering all aspects, the Commission by virtue of powers invested under Para 3(v) of the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training Resolution no. 371/20/99-AVD.III dated 4th April 1999 had instructed all Govt. Deptts./Orgns., PSEs and Banks not to take action on anonymous/pseudonymous complaints. All such complaints are to be filed vide CVC's instruction No. 3(v)/99/2 dated 29th June, 1999.

2. However, it has come to the notice of the Commission that some Govt. Deptts./Orgns. and, in particular, banks are not complying with the CVC's instructions and have been taking cognizance/action on anonymous/pseudonymous complaints. Very often, the content of the complaints described as verifiable, is used as a justification for such action. The instruction of the Commission does not permit this line of action.

3. It is hereby reiterated that, under no circumstance, should any investigation be commenced or action initiated on anonymous/ pseudonymous complaints; these should invariably be filed. Any violation of this instruction will be viewed seriously by the Commission.

4. This issues with the approval of the Commission.

8. Finally, it was argued by the writ petitioners that in terms of Regulation 18 (d) of the Standing orders any complaint or representation against the selection procedure can only be made to the Chairperson of the Departmental Promotion Committee who will take necessary action to dispose of the representation. Since the complaint in the present matter was made to the Chief Security Commissioner and not the chairperson of the DPC and an inquiry was sanctioned by the former, it was submitted that the action violates the regulation mentioned above and that entire process of inquiry must be set aside. It has even been argued by the writ petitioners that since the complainant himself was an unsuccessful candidate and a person having a vested interest in the selection process he cannot be allowed to turn around and assail the selection process.

9. On the basis of the exposition of facts and circumstances cited above and on the basis of the submissions made, the writ petitioners contend that on account of their empanelment they have accrued a right to be promoted to the post of

Sub-Inspector/Railway Protection Force.

10. To begin with, I find that the claim of the writ petitioners that they have been empaneled after the completion of the selection process or that they have acquired a right to be promoted to the post of sub-Inspector/RPF, is unsustainable and far-fetched. On a bare perusal of the Standing Order No. 87 dated May 15, 2009 on the subject of the procedure regarding selection under Rules 70 and 72 of RPF Rules 1987, it can easily be identified that the selection process to the post of Sub-Inspector/RPF is a multi-stage process prescribing different stages of selection.

11. Therefore, I find that the aforesaid contention has been raised on an erroneous understanding of the Standing Order No. 87 dated May 29, 2009 issued by the Ministry of Railways, Government of India and appears as Annexure 'P-8' to the writ petitions. Even though the guidelines enumerated in the said Standing Order are similar in language and in effect to the provisions of the Railway Protection Force Rules, 1987, it is deemed necessary that the necessary portions of the said Standing Order must be set-out herein below:

Regulation 17: Approval of the Panel:

a) The recommended panel along with selection proceedings, broad sheets and with the sample question paper and model answer as well as attendance sheet shall be sent by the Chairperson to the authority nominating the departmental promotion committee for approval of the panel in accordance with Rule 70.7 of RPF Rules, 1987. Once the competent authority approves the panel, it should be notified immediately for information of all concerned.

b) In the event of the empaneled successful candidate being found facing disciplinary proceedings or punishment or criminal proceeding, his/her case should be made into a "sealed cover case", which will be decided on completion of the disciplinary proceedings or punishment or the said criminal proceeding. The office of CSC concerned should ensure that the provisional panel to be published does not contain names of the candidates who are facing disciplinary proceedings, punishments, criminal proceedings.

c) In case the competent authority appointing the DPC does not accept the recommendation of the committee, it shall record the reasons for the same and the matter shall be sent to the next higher authority, which may for reasons to be recorded in writing, pass such orders as are considered appropriate.

Regulation 18: General:

* * * *

d) Any representation from the candidate against the selection not done properly can be made to the Chairperson of the DPC who will take necessary action to dispose of the representation.

12. As per the records brought before the notice of this Court, I find that the writ

petitioners merely completed their written examination and outdoor tests and had been called for the viva-voce test. However, before the viva-voce exam could be conducted the selection process was cancelled with a decision to conduct the process afresh. The viva-voce can be considered to be the final stage of selection after which the candidates are not put to any other tests in respect to the selection process though an examination of the record of service is carried out at the behest of the authorities. Therefore, the question of preparing a panel and also getting the panel approved comes at a later stage. Since it has already been borne out from the records that no viva-voce tests were conducted for the candidates who participated in the written examination and the outdoor tests, the allegation that the panel, rather than a list of names for those who were eligible to participate in the next stage, was prepared by the Departmental Promotion Committee, cannot hold any substance.

13. In the backdrop of the aforesaid finding, the challenge of the writ petitioners raised against any violation of rule 70.7.2 of the RPF Rules 1987 seems to be a hollow claim made without proper understanding the factual circumstances attached to the matter. The said rule 70.7.2, as set-out above, clearly postulates a scenario where the Departmental Promotion Committee communicates its recommendation for approval of a panel, duly prepared after completion of the selection process, including viva voce, to the nominating authority after entire process of selection is completed. The nominating authority in respect of promotion to the post of Sub-Inspector is the Chief Security Commissioner as enumerated in the table attached to Rule 70.5. Since the process of selection was yet to be completed, there seems to be no violation of Rule 70.7.2, as suggested by the writ petitioners due to any failure on the part of the competent authority to conduct an inquiry in respect of the said matter nor a failure to take any approval from the next higher authority.

14. As regards the claim of the writ petitioner that the respondent no. 4 does not hold the authority to cancel the process of selection and therefore, the decision taken by the respondent no. 4 was beyond jurisdiction in terms of Rule 70.7.2 of the RPF Rules, 1987, I find that the order was only communicated by the respondent no. 4 as an office order of the respondent no. 3. The assumption that the order is of the respondent no. 4 as staff officer to the Respondent no. 3 is the order of the respondent no. 4 is based on a reading of both the orders impugned, in a manner contrary to what is written there clearly. The first is sent "for the" respondent no. 3, whereas the second is a continuance of the office order of the respondent no. 3. Even this point, that it is to be issued either by the Chairman of the Departmental Promotion Committee or the Director General (an officer superior to the respondent no. 3) is on an erroneous understanding of the circumstances attached to the case and the statutory provisions and rules associated with it. Since the process of selection yet to be completed, the question of referring the matter to any higher authority as prescribed under Rule 70.7.2 or the standing orders, does not arise. Thus, the nominating authority of the promotion committee was well within its jurisdiction to take steps to rectify

any anomaly arising out of the process of selection while the process was far from completion.

15. The allegations of the writ petitioners that the cancellation of the entire process of selection based on an anonymous complaint by an unsuccessful candidate revolving around vague and unfounded allegation of procedural lapses has to be taken together with the contention that the anonymous nature of the complaint was sufficient to refer the matter for an inquiry by the vigilance authorities. I have gone through the affidavit-in-opposition and it does not appear that the allegations in the anonymous complaint were vague, and they contained sufficient particulars to warrant further inquiry if the concerned authority so chose.

16. On the question of jurisdiction, the entire process of selection was notified by the advertisement dated August 28, 2014 later cancelled and replaced by the advertisement dated October 14, 2014. Both of these expressly mentioned that the selection process would be under Rule 70 of Railway Protection Force Rules, 1987 and the rule specified in Director General's Standing Order No.87. The same are separate statutory rules meant expressly for the railway protection force and have statutory force. Therefore, the reliance placed by the writ petitioners as I have indicated in paragraph 7 of this judgment, on the regulations of the Indian Railway Vigilance Manual concerned with the Guidelines regarding handling of complaints dated April 01, 2014 is misplaced and cannot be countenanced. The challenge to jurisdiction on the basis of anonymous complaints being allegedly not entertainable, is not supported by the Railway Protection Force Rules or the standing orders of the Director General, which alone shall apply. Since the writ petitioner had taken this point only in the affidavit-in-reply as a new question of law, without the respondents having any opportunity of dealing with it their pleadings, I have chosen to allow the question to be argued as a pure question of law, and I have held against the writ petitioner on this point too.

17. In this situation, I find that if the anonymous complaint raised serious issues of procedural lapses and serious allegation of the entire process being compromised, at a time when the process of selection was not completed, it is perhaps in the best of interests of the candidates participating in the process of selection that an immediate action was taken by the authorities conducting the selection process in order to rectify these lapses of which complaint was made. A perusal of the report of inquiry annexed with the Affidavit-in-Opposition filed by the respondent authorities highlights many procedural lapses which are of imminent concern and therefore, the decision to cancel the selection process cannot be said to be illegal or materially irregular as alleged by the writ petitioner. Rather, since the writ petitioners have also been called for the fresh written test, it is clear that the intention of the authorities concerned was to appear purer than driven snow, so that those who would be promoted by selection to the post of Sub-Inspector in a disciplined railway protection force,

could be said to have been selected by a process which was completely transparent and above-board. In any procedure for selection, an allegation of widespread malpractice, corruption or lapses going to the root of the matter, which leads any person to think that there is opacity and lack of transparency is grievous - in case of a railway protection force, with its high responsibility for the goods and lives and limbs of the passengers, this must be dispelled at the outset, and so I find no infirmity in the decision.

18. On the basis of the observations made above I find that since the process of selection was never completed nor the names of the writ petitioners ever found a place in any panel of successful candidates, no right to be considered for promotion to the post of Sub-Inspector/RPF has accrued to the writ petitioners. Even if a panel had been prepared - which it was not - mere empanelment does not give any right to the empaneled candidate to claim appointment/promotion/selection. Here, the situation is simpler, for the reasons stated above. The challenge against the order dated February 23, 2015 passed by the Staff Officer to the Chief Security Commissioner/ Railway Protection Force cancelling the process of selection, as mentioned above as well as the order dated March 03, 2015 notifying fresh process of selection, fails. The orders impugned are upheld and logical consequence will be given to the result of the fresh written test, outdoor test and the viva voce in accordance with law.

19. Thus, the writ petitions are dismissed with no order as to costs.

20. A server copy of this order shall be retained in all the writ petitions enumerated by me in paragraph 1 of this judgment and shall govern each of those cases.