
(1985) 07 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil Special Appeals No. 476 to 484, 496 to 501, 515 and 516 of 1983

Bakshu Khan and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-07-1985

Acts Referred:

Rajasthan Police Subordinate Service Rules, 1974 — Rule 24(3)

Citation : (1985) RLW 582 : (1985) 2 WLN 156

Hon'ble Judges : Milap Chand Jain, J;Farooq Hasan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Milap Chand, J.—These appeals are directed against the orders of the learned Single Judge, dated November 2, 1983, whereby the appellants writ petitions were dismissed. Brief facts leading to the present appeals are that the appellants were serving as Constables. On 24th January, 1976 under Sub-rule (3) of Rule 24 of the Rajasthan Police Subordinate Service Rules, 1974 (here in after referred to as "the Rules"), a Board was constituted for holding the examination and selection for promotion to the posts of Head Constables. According to the appellants, they undertook the qualifying examination and their names were included in the list of selected and suitable candidates. Under Sub-rule (2) of Rule 24 of the Rules they were given promotion on the posts of Head Constables on a temporary basis. The posts were also temporary. It was stated in their promotion order dated 6-7-1976 (Exbt. R-4) that they will be required to undergo qualifying examination again for inclusion of their names in the approved list for regular promotion to the posts of Head Constables. By letter dated 21st November, 1981 they were required to submit their application forms by 7th December, 1981 to undertake the qualifying examination. The petitioner's case is that they having undertaken the qualifying examination and cleared the same, they cannot be called upon to under take the qualifying examination over again. The condition embodied in the order dated 6th July, 1976 (Exbt. P4) is

invalid being contrary to Rules and the petitioners cannot be called upon to submit any application to undertake the qualifying examination second time as is required vide Exbt. P-5, dated 21st November, 1981. Exbt. P-4 and Exbt. P-5 have been challenged on the ground that they are contrary to the scheme of the Rules, particularly the scheme of Rule 24.

2. A reply to the writ petition has been filed. The stand taken by the Government is that there were only 14 permanent vacancies in the 6th Bn.R.A.C. and there were 28 temporary vacancies of Head Constables in R.C.F., Barmer, Airfield Jaisalmer and Uttarlai. These vacancies were determined by the D.I.G., R.A.C. and later on the D.I.G., R.A.C. constituted a Board. The Board held the written test for filling up the regular and temporary vacancies. The petitioners and the like persons, who qualified the test were interviewed by the Board and two lists of selected candidates were prepared, which are Exbt. R-4 and Exbt. R-5. The first list was of approved candidates selected for 14 regular and permanent vacancies, but the list contained the names of 27 candidates (1-1/2 times in accordance with the Rules) and these 27 candidates obtained the highest marks in the written examination as also in the interview. The second list was prepared of those candidates Who got less marks, which was prepared for temporary vacancies which were 28 in number. Both the lists were approved. It has also been stated in the reply that the petitioners were given appointment by promotion on the posts of Head Constables with a clear condition that for regular promotion to the posts of Head Constables they will have to undergo qualifying examination. They are bound by that condition and it is not open to them to challenge the same after expiry of more than 5 years. It should be taken that they accepted the condition at the time of their promotion on temporary posts.

3. The learned Single Judge after hearing arguments dismissed the writ petitions. It appears that before the learned Single Judge the case was argued as if there were 51 vacancies of Head Constables available for promotion and the learned Single Judge proceeded on the basis that there were only 27 permanent vacancies and so the Board prepared a list of 27 candidates under Sub-rule (2) of Rule 24. It is only those candidates whose names appeared in the list prepared under Sub-rule (2) of Rule 24, who are entitled to be sent up for undergoing promotion cadre course under Sub-rule (4) of Rule 24. The learned Judge proceeded on the basis that substantive promotion under the Rules can be claimed by the candidates when their names appeared in the approved list. Admittedly the names of the petitioners were not there in the approved list. As having not passed the promotion cadre course, they cannot claim appointment against the substantive posts. The learned Judge therefore held that the condition which has been imposed in the order of promotion Exbt. P4 is valid. These contentions also found favour with the learned Judge against the petitioners that the writ petitions have been filed after considerable delay and in view of the condition in the order of promotion, they are estopped, as they have accepted the benefit of promotion under the impugned order Exbt. P 4.

4. Dissatisfied with the order of learned Single Judge these appeals have been filed.

5. We have heard, Shri Marudhar Mridul, learned counsel for the appellants and Shri R.C. Maheshwari, learned Additional Government Advocate. The controversy in these appeals centres round the question as to whether the appellants can be called upon to undergo qualifying examination second time as mentioned in the order of promotion Exbt. P 4. The stand taken by the Government is that two separate list were drawn. One list was for giving regular promotion and the other list was drawn for giving promotion on temporary posts on temporary basis with a specific condition that the candidates who have been given such promotion would be required to undergo qualifying examination again. Such a method as adopted by the Government is whether permissible under the Rules or not needs consideration? Rule 4 of the Rules provides for composition and strength of the service. Sub-rule (2) of Rule 4 lays down that the strength of posts in each Section shall be such as may be determined by the Government from time to time, provided that the Government may create any post, permanent or temporary, from time to time as may be found necessary and may abolish any such posts in the like manner without thereby entitling any person to any compensation. Rule 9 makes provision for determination of vacancies. The vacancies have to be determined by the Inspector General of Police or such authority as may be nominated by him each year anticipated during the following twelve months and under Rule 9 number of persons likely to be recruited by each method is also required to be determined. Thus the number of vacancies anticipated during the 12 months and the number of persons likely to be promoted are required to be determined under Rule 9. Rule 9 does not make any distinction between permanent vacancies and temporary vacancies. All vacancies whether permanent or temporary are required to be determined under Rule 9. Such a view of Rule 9 is in conformity with Sub-rule (2) of Rule 4 as the strength of posts may consist of both the categories permanent as well as temporary. For the purpose of disposal of these appeals Rule 24 is the most material rule. For facility of reference Sub-rules (1), (2), (4), (5), (6) and (7) of Rule 24 are reproduced as under:

24. Procedure for selection: (1) After the vacancies to be filled by promotion have been determined under Rule 9, the Board as referred to in Sub-rule (3) below shall be constituted. The Board shall prepare correct and complete list containing names not exceeding five times the number of vacancies out of the senior most eligible members of service, who have passed Part I of the qualifying examination specified in Rule 26 by obtaining;

(i) For armed Police/Rajasthan Armed Constabulary 40 per cent in parade, practical and other out door tests and 36 per cent in written tests with 45 per cent in aggregate;

(ii) For Civil Police including Prosecution and Intelligence Branch 40 per cent in written test and 36 per cent in parade, practical and other out door tests with 45

per cent in aggregate.

(iii) For Police Wireless Organisation 36 per cent in written tests and 40 per cent in practical, parade and other out door tests and 45 per cent in aggregate.

for promotion to the class of post concerned.

(2) The Boards constituted under this Rule shall consider the cases of all the persons included in the list, interviewing all of them and shall prepare a list containing names of suitable candidates in order of seniority, who secure 45 per cent marks in qualifying examination part II and 50 per cent aggregate of the total marks of the qualifying examination Part I and II upto one and half times and number of such posts as determined to be filled under Rule 9.

In interviewing candidates for promotion regard shall be had to the following factors that

(i) they have passed Part I qualifying examination (ii) there previous record of service (good and bad entries) (iii) integrity

(iv) intelligence tact and energy (v) technical and general knowledge (vi) pesonality and character (vii) experience and efficiency

(viii) physical fitness and capacity to discharge duties of the post to which promotion is to be made including aptitude to undertake extensive tours; and

(ix) practical knowledge of law and procedure.

(4) The candidates included in the lists prepared by the various Boards under Sub-rule (3) above including the candidates nominated under Rule 25 shall be required to undergo promotion cadre course. The candidates shall be sent for promotion cadre course in accordance with seniority.

(5) Names of the candidates who have successfully completed the Promotion Cadre Course in the first attempt shall be placed on an approved list for promotion in order of seniority, and the names of failure shall be added below the aforesaid list as and when they pass the Promotion Cadre Course.

(6) Names of the candidates who fail to attend or complete the Promotion Cadre Course shall be added below the approved list as and whey they the Pass Promotion Cadre Course.

(7) The approved list so prepared shall co me into force only when persons of previous approved list are appointed.

6. A perusal of the above relevant Sub-rules of Rule 24 would show that after determination of the vacancies under Rule 9, the Board constituted under Sub-rule (3) is required to prepare correct and complete list containing names not exceeding five times the number of vacancies out of the senior most eligible members of Service, who have passed Part I of the qualifying examination specified in rub 26 by obtaining marks as provided in this Sub-rule. Thus the list

containing 5 times the number of vacancies is required to be prepared of those candidates who have passed the qualifying examination for promotion as contemplated under this rule. Under Sub-rule (2) of Rule 24 of Board is required to interview those candidates who have qualified and who have secured marks as provided under Sub-rule (1) and it shall prepare a list (1-1/2 times the number of vacancies) as determined to be filled under Rule 9. This would mean that the list of suitable candidates prepared under Sub-rule (2) of Rule 24 would be the list one and half times of the number of vacancies, permanent or temporary which are to be filled and which have been determined under Rule 9. Sub-rule (4) is the most important provision so far as these appeals are concerned. It lays down that the candidates whose names appear in the list prepared under Sub-rule (2) shall be required to undergo promotion cadre course and those candidates shall be sent for promotion cadre course in accordance with seniority. Those who successfully completed the promotion cadre course in the first attempt, their names would be placed in the approved list for promotion in order of seniority, and those who failed to attend or complete the promotion cadre course, their names shall be added below the approved list as and when they pass the promotion cadre course. Sub-rule (7) provides that the approved list so prepared shall come into force only when the persons of previous approved list are appointed on the promotion posts. From the scheme of Rule 24 it would appear that there is perennial source for promotion in the manner that qualifying examination is first held and thereafter a list of suitable candidates is drawn under Sub-rule (2) and the candidates are required to undergo promotion cadre course and those who complete or pass the promotion cadre course their names are included in the approved list and out of the approved list promotions are effected. Till the earlier approved list is exhausted further promotion would not be effected. If the matter is examined in the light of the scheme of the Rule 24, it would be abundantly clear that Rule 24 does not anywhere contemplate that candidates who once cleared the qualifying examination will be required to appear in the same examination again. No distinction is made under the scheme of Rule 24 between permanent or temporary vacancies. Whenever vacancies are determined under Rule 9, it is those vacancies which are to be filled and as already stated under Rule 9 permanent as well as temporary vacancies, both are required to be determined. Further, it cannot be said that the Rules have no application for the recruitment by way of promotion on the temporary posts. The rules will apply to fill in temporary posts as well and the procedure for selection for temporary posts as well is contained in Rule 24. Mr. R.C. Meheshwari, learned Additional Government Advocate made an attempt to invoke Rule 32. Rule 32 provides for urgent temporary appointment. That rule can only be attracted when vacancies cannot be filled immediately either by direct recruitment or by promotion under the Rules. Such is not the case here. Under the Rules a Board was constituted, qualifying examination was held, and lists of suitable candidates were prepared. Thus some formalities under the Rules were undertaken and thereafter promotions were given. In the present situation therefore, Rule 32 in our opinion would not be attracted.

7. It is true that the promotion order did contain a condition requiring the petitioners to appear in the qualifying examination again. They were appointed and they got their promotion knowing it fully well that the order of promotion contained a condition. It is also true that they did not challenge the condition for a period of more than 5 years. It may be stated in this connection that they were not called upon to appear in the qualifying examination in the next year and they continued to hold the temporary posts of Head Constable for more than 5 years. It was only in the year 1981 that they were called upon to submit their application to appear at the qualifying examination. Faced with the situation, in the year 1981 they approached this Court when no examination was conducted immediately in the next following year and it is only, when they were going to be affected by the order of the year 1981, real cause of action arose to them at that time. Besides that having regard to the scheme of Rule 24 they might have thought it that as and when they would require to under take qualifying examination, it would be open to them to challenge that action in view of the scheme of Rule 24. We also cannot lose sight of the fact that the appellants have been serving in the capacity as Head Constables though on temporary basis for period of about 9 years, it would be a great hardship for the appellants that they are refused relief in these writ petitions on the ground of delay and may be asked to appear in the qualifying examination after such a long lapse of time. Despite delay if considered as such we are the opinion that on the said ground the appellants should not be denied the relief which they can ultimately claim under the Rules. In the above view of the matter, in our opinion these appeals must succeed. No other point has been pressed before us.

8. In the result, the appeals are allowed. The order of the learned Single Judge is set aside. The writ petitions are accepted and the impugned condition embodied in the order of promotion Exbt. P 4 and the direction given for submitting application for undergoing qualifying examination under Exbt. P 5 are quashed. The parties shall bear their own costs of the writ petitions as well as of the appeals.