
(2000) 06 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 10044 of 1997

Bhagaban Mishra and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 90 CLT 709 : (2000) 2 OLR 137

Hon'ble Judges : R.K. Patra, J;P.K. Patra, J

Bench : Division Bench

Advocate : N.C. Panigrahi, K.P. Panda, B.P. Mohanty, N. Paikray, R.P. Kar and A.N. Ray, for the Appellant; S.P. Mishra, Additional Government Advocate for O.Ps. 1 to 3, J. Patnaik, A.A. Das, B. Mohanty, T.K. Pattanaik, S. Das and R. Rath for O.Ps 4 to 6 and Banej Kumar Pattanaik and Prasenjit Sinha for O.Ps. 7 and 8, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—In this application under Articles 226 and 227 of the Constitution of India, the petitioners assail the propriety of the directions of the learned Chairman, Orissa Administrative Tribunal, Cuttack Bench, Cuttack in his order dated 8.11.1996 (Annexure-5) made in a group of cases filed before him u/s 19 of the Administrative Tribunals Act, 1985. Pursuant to the directions, the petitioners have been discharged from service as "Junior Stenographers" by office order dated 1.5.1997 at Annexure-8 and in their place opposite parties 4 to 6 have been appointed by order of the even date at Annexure-10. The legality of both the orders have also been questioned. Some of the petitioners challenged the order discharging them from service and the learned Chairman, Orissa Administrative Tribunal by order dated 19.5.1997 did not grant any relief. The validity of this order is also the subject-matter of challenge in this writ application.

2. Background facts :

The State Police Headquarters, Orissa, Cuttack published an advertisement in the daily "The Samaj" on 6.3.1993 (Annexure-2) inviting applications from eligible candidates for filling up of 10 posts of Junior Grade Stenographers (General 3, Ex-Servicemen 1, S.C. 3, S.T. 3) in Orissa Police in the scale of pay of Rs. 1200-2040/-. It was indicated in the advertisement, inter alia, that the candidates must have (i) intermediate or equivalent qualification from a recognised University, (ii) must have passed shorthand (80 words per minute) and typewriting (40 words per minute). Pursuant to the advertisement, 1187 applications were received in the State Police Headquarters. After scrutiny of those applications, 1105 candidates were called for type-writing test. However, 887 candidates appeared in the test which was held from 10.1.1994 to 14.1.1994. Out of them only 185 candidates who committed six or less mistakes qualified in the said test. Those 185 candidates were called for Stenography test which was held on 28.9.1994. During the interregnum some more vacancies in the post of Junior Grade Stenographer arose. In a result, vacancies in the general category were increased to 16 and the S.C./S.T. category to 10. Accordingly, 48 candidates from the general category (being three times of the vacancies) and 10 S.C. and S.T. candidates were called to appear at the viva vocetest before the Selection Committee. After interviewing 58 candidates including S.C. and S.T. (who appeared at the viva voce test), the Selection Committee selected only 15 general candidates (Men-11 and women-4) and did not select any S.C. and S.T. candidate. The proceedings of the Selection Committee were placed before the Director General of Police, Orissa, for approval who by order dated 29.5.1996 did not approve the list on the grounds (1) that no member of S.C./S.T. candidate was selected which was violative of the reservation policy of the Government and (ii) allotment of 100 marks by the Selection committee at the viva voce test instead of 15 marks was inconsistent with the Government order dated 27.2.1995 as well as contrary to the law laid down by the Supreme Court in Munindra Kumar and others Vs. Rajiv Govil and others, The Director General of Police accordingly sent back the list to the Selection Committee for fresh selection according to law. In the meantime 60 vacancies (including the earlier 26) came to be available following the Government's acceptance of the proposal of the State Police Headquarters to convert the posts of Assistant Sub-Inspector of Police to that of Stenographers. As those posts were required to be filled up immediately and as process of selection was in progress, the Director General of Police decided to fill up all the posts from the available candidates. The Chairman of the Selection Committee was Shri K.D.Bajpai, I.P.S., Inspector General of State Armed Police. On his transfer and posting elsewhere, he was substituted by Shri Anadi Sahu, I.P.S., former Special Inspector General of Police (Administration). Altogether 121 candidates (general 111 + 10 available S.C/S.T. candidates) were called to appear in the viva voce test which was held on 27/28.7.1995. After assessing their mental alertness, ability, tact, self-confidence and general demeanour, the Selection Committee selected 46 candidates (General Men-31, Women-5, S.C./S.T.-5) in order of merit for appointment as Junior Grade Stenographers and sent

the recommendations for approval of the Director General of Police. This recommendation was duly approved by the Director General of Police and accordingly appointment orders were issued as per office order Nos. 1714 and 1715 (Admn.) dated 31.1.1995. Some of the candidates who had not come out successful in the selection filed O.A.No. 1462 (C) of 1995, O.A.No. 1438 (C) of 1995, O.A.No. 1602 (C) of 1995, O.A.No. 2429 (C) of 1995, O.A.No. 2119 (C) of 1996, O.A.No. 2259 (C) of 1996 and O.A.No. 2455 (C) of 1996 before the Orissa Administrative Tribunal, Cuttack Bench, Cuttack (hereinafter referred to as "the Tribunal"). The Chairman of the Tribunal by a common order dated 8.11.1996 at Annexure-5 allowed those applications to the extent indicated therein. The operative portion of the order is extracted hereunder :

"A list of selected candidates normally remains valid for one year under the service rules. When a vacancy arises candidates are appointed from out of the list. I direct that the list to be published shall remain valid for one year from the date of its publication and vacancies may be filled up if required from out of that list. If, however, there is already another selection in process, the list will be valid till the next list is published. If any of the applicants finds place in the merit list, he shall not be excluded merely on the ground that he has filed application before the tribunal."

3. After receipt of the aforesaid order of the Chairman of the Tribunal, the Director General of Police found that no marks were awarded in the typing test or Stenography test. He sought for opinion from the Government Advocate of the Tribunal who advised that a standard may be laid down and typing and stenography materials may be examined in the same standard and marks may be awarded and the marks so awarded were to be added with the marks obtained in the viva voce test and merit list was to be prepared on the basis of the total marks. Following the advice, the Director General of Police decided that 50 marks would be the total marks for typing test and 50 marks would be total marks for stenography. For each mistake in typing, one mark would be deducted and for each mistake in stenography 0.5 marks would be deducted. On the basis of this principle, typing sheets and stenography sheets of the candidates were examined. The marks awarded in the viva voce test conducted by the Selection Committee on 27/28.7.1995 were taken into consideration without any alteration. The Selection Committee held another meeting on 8.4.1997 and prepared the merit list and placed 102 candidates from general category (Men and Women) and 9 candidates from S.C./S.T. category in order of merit. The aforesaid proceeding of the Selection Committee was approved by the Director General of Police on 29.4.1997. The petitioner's name having not been included in the merit list, by office order No. 2784 Admn. dated 1.5.1997 (Annexure-8) they were discharged from service and in their places by office Order No. 2785/ Admn., dated 1.5.1997 (Annexure-10), opposite parties 4 to 6 came to be appointed as Junior Grade Stenographers. Some of the petitioners and others who were discharged from services filed O.A.No. 1712(C) of 1997 and O.A.No. 1597 (C) of 1997 before the Tribunal and the learned Chairman by a common

order dated 19.5.1997 (Annexure-9) did not interfere with the order of discharge and disposed of the matters by making certain observations.

4. As already noted, the learned Chairman of the Tribunal by the common order dated 8.11.1996 at Annexure-5 disposed of the original applications. The learned counsel for the petitioners seriously contended that the learned Chairman alone was not competent to dispose of the applications, as under the rules framed under the Orissa Administrative Tribunals Act, 1985 they are required to be disposed of by a Division Bench of the Tribunal. We need not examine this aspect as the matter can be disposed of on other grounds. The learned Chairman in the impugned order recorded the following findings :

- (i) Abnormal high percentage of marks in the viva voce test;
- (ii) By the time of the second viva voce test as more number of vacancies were available, calling more candidate does not vitiate the selection;
- (iii) There is no material to infer that favouritism was shown to any one and, as such, on this ground the selection of candidates cannot be struck down;
- (iv) If higher weight would have been given to marks in viva vote test, possibly the applicants (petitioners herein) would have grievance. Since marks were not disclosed and the merit list of the candidates was not published, the applicants have no opportunity to raise objection to the same. Therefore, the marks in the three tests added together should be the basis of the merit list and the same should be accordingly drawn; and
- (v) The list to be published shall remain valid for one year from the date of its publication and the vacancies may be filled up, if required, from out of that list.

The aforesaid order dated 8.11.1996 at Annexure-5 is the basis from which the consequential order dated 1.5.1997 at Annexure-8 discharging the petitioners from service, the order of the even date at Annexure-10 appointing opposite parties 4 to 6 in their places and the second order of the learned Chairman dated 15.5.1997 at Annexure-9 mandate.

5. It is, therefore, first necessary to consider the validity of the base order at Annexure-5. At this stage, we may take up for consideration the preliminary objection raised on behalf of the learned counsel appearing for the opposite parties who submitted that this writ application is not maintainable so far as it relates to the validity of the order dated 8.11.1996 of the learned Chairman at Annexure-5. According to the counsel, the said order having been pronounced prior to the judgment dated 18.3.1987 of the Supreme Court in Chandra Kumar v. Union of India, AIR 1997 SC 1135, the petitioners ought to have, if they felt aggrieved, challenged it directly before the Supreme Court. We have duly considered the aforesaid submission and we do not find any merit in it. It is true that prior to the judgment of Chandra Kumar (supra), if a writ application would have been filed in this Court challenging the order dated 8.11.1996 at Annexure-5 of the learned Chairman, the same could not have been entertained

by this Court as the same was available to be challenged only before the Supreme Court under Article 136 of Constitution of India. The petitioners admittedly have not filed any SLP before the Supreme Court. Instead they have filed the present writ application on 22.7.1997 after the position of law was clarified by the Supreme Court in Chandra Kumar (supra). Therefore, the jurisdiction of this Court under Article 226 and 227 of the Constitution of India to consider the validity or propriety of the order of the learned Chairman is not ousted.

6. After having cleared the preliminary objection, let us devote our attention to the principal grounds of attack of the petitioners. It was contended that the learned Chairman assumed to himself the role of the appointing authority and modulated the principle for drawing up the merit list as well as the life of such list.

In Durga Devi and another Vs. State of H.P. and others, the Supreme Court held that the State Administrative Tribunal constituted under Administration Tribunals Act, 1985 cannot interrogate to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the selection committee. In State of Andhra Pradesh v. Sadanandan, AIR 1980 SC 2060 the Supreme Court held that the mode of recruitment and category from which recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for the judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive. In B.N. Sinha Vs. Union of India (UOI) and Others, it has been held by the Supreme Court that in absence of any recruitment rules, the Tribunal cannot invalidate the appointment by holding that appointment to the post is to be governed by stretching a recruitment rule made for another post.

7. As already indicated, initially advertisement was issued on 5.3.1993 for filling up of ten posts of Junior Grade Stenographers. After the selection process started, more vacancies occurred which rose to sixty. The Director General of Police, therefore, has not committed any illegality in deciding to fill up all the tests from the available candidates. The learned Chairman, therefore, rightly held that calling of more candidates for the test did not vitiate the selection. The learned Chairman has also held that there is no material placed before him to draw any inference of showing favouritism to any candidate. With regard to the aforesaid two findings recorded by the learned Chairman, we may state that no exception can be taken to them. Instead of disposing of the matter on the basis of the aforesaid findings, the learned Chairman, however, arrogated to himself the role of appointing authority and required the Director General of Police to prepare a fresh merit list by adding together the marks secured in the three tests (typing, stenography and viva voce). Admittedly, there is no rule or

administrative instructions governing the mode of recruitment and selection of Junior Grade Stenographers in the establishment of the Director General of Police. The modality of recruitment and selection is a matter which is exclusively within the domain of the appointing authority. It is not for a judicial body to formulate or evolve the method for recruitment and selection. In the circumstances, his direction that the marks in the three tests should be added together to draw up the merit list is not tenable in law. The further direction of the learned Chairman that the merit list shall remain valid for one year from the date of its publication is unwarranted in law. There is no rule or instruction with regard to the life of the merit list prepared for appointment of junior grade stenographers in the office of the Director General of Police. Therefore, the learned Chairman fell into error in limiting its validity for a period of one year from the date of its publication. As is evident from the subsequent order of the learned Chairman dated 19.5.1997 at Annexure-9, the role of the government counsel in suggesting the standard for selection of candidates to the Director General of Police cannot be approved. As State Counsel appearing before the Tribunal, he has a limited role to play and he cannot assume to himself the power of the appointing authority in prescribing the mode for recruitment and selection.

It is on record (vide paragraph 13 of the counter affidavit filed on behalf of the State of Orissa and the Director General and Inspector General of Police opposite parties 1 and 2 that the following procedure was followed for recruitment of Junior Grade Stenographers :

(1) English Typewriting : (i) 40 words per minute 400 words to be typed out in 10 minutes (ii) Admissible mistake : (iii) 1% of total words i.e. 6 mistakes admissible in 400 words (2) English Shorthand : (i) 80 words per minute, 240 words to be dictated in 3 minutes and 15 minutes time will be allowed to the candidates for transcription. Admissible mistakes : (ii) 10% of the total words i.e. 24 out of 240 words (3) Viva voce test : 15 marks.

It has been averred in their counter affidavits (vide paragraph 13) that the authority has been following the above procedure. On the basis of proficiency in typewriting and stenography eligible candidates were called to appear in the viva voce test which was held on 27/28.7.1995. The Selection Committee accordingly selected 46 candidates in order of merit for appointment as Junior Grade Stenographers on the basis of their performance. As already stated, out of 1187 applications which were received at the State Police Headquarters, 1105 candidates were called to appear in the typewriting test. Out of them, 887 candidates appeared but only 185 candidates qualified in the said typewriting test. All those 185 candidates were called for the stenography test and merit list was prepared on the basis of the same. After shortlisting, 121 candidates (General 111 available S.C./S.T. 10) were called to appear in the viva voce test. After assessing their mental alertness, ability, tact, self-confidence and general demeanour, the Selection Committee selected 46 candidates (General Men 31,

General Women 5 and S.C./S.T. 9) in order of merit for appointment as Junior Grade Stenographers and sent the recommendation for approval of the Director General of Police which was duly approved. On careful consideration of the entire issue, we are inclined to hold that the aforesaid procedure for recruitment and selection of Junior Grade Stenographers cannot be faulted with. The merit list which was ultimately approved by the Director General of Police prior to the first order of the Tribunal therefore shall remain valid.

For the aforesaid reasons, the impugned directions of the learned Chairman in his order dated 8.11.1996 at Annexure-5 cannot be sustained in law and are hereby quashed. As a necessary corollary, it follows that other steps taken by the appointing authority pursuant to the direction of the learned Chairman dated 8.11.1996 are hereby quashed. Resultantly, the impugned order at Annexure-8 discharging the petitioners from service and appointing in their place opposite parties 4 to 6 as per the impugned order at Annexure-10 are hereby quashed. The subsequent order of the learned Chairman dated 19.5.1997 at Annexure-9 being an off-shoot of his previous order dated 8.11.1996 has lost its force and the same is hereby quashed.

In the result, the writ application is allowed. The opposite parties are directed to reinstate the petitioners forthwith. No costs.

P.K. Patra, J.

8. I agree.