
(2007) 04 GAU CK 0035
In the Gauhati High Court

Bicitra Bora and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 4 GLT 147

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The process initiated by the State respondents in the year 1999 for recruitment in the cadre of Assistant Inspector of Excise in the Excise Department of the State is under challenge. The petitioners claim to have offered their candidature there for but were arbitrarily denied participation there in. Though the petition was entertained and a Rule was issued, no interim order had been passed. In the meantime, the process stands completed.

2. I have heard Mr. S.D. Choudhury, learned Counsel for the petitioner and Mr. A.C. Buragohain,, learned Additional Advocate General, Assam, for the respondents.

3. The petitioners" pleaded case is that they are graduates and having come across an advertisement published in the month of March, 1999, in the local daily inviting applications from persons belonging to Scheduled Caste, Scheduled Tribe (Plains), Scheduled Tribe (Hills) and others for the post of Assistant Inspector of Excise in Grade III of Assam Subordinate Excise Service responded thereto and submitted their applications which were duly accepted by the authority concerned. As inspire of a long wait they did not receive any call letter for the written test scheduled to be held, they made necessary enquiries. Having formed an impression there from that there was a move to appoint some favourable persons by skipping the procedure professed, they approached this Court with

WP(C) 4654/2000 amongst others for restraining the respondent authorities from abandoning the process and appointing persons without reference thereto. This Court on 28.8.2000 by its order directed the respondents therein not to appoint any person without being appointed as per the provisions of the recruitment Rules. Long four years passed thereafter without any further progress.

4. It was subsequent thereto that by letter being Memo No. I-II/2003-04 dated 16.5.2005 the Commissioner of Excise, Assam, requested the Director of Employment and Craftsmen Training, Assam, to forward a panel of 100 candidates covering all categories of communities including General, SC, ST(P), ST(H), OBC/MOBC, Physically handicapped from each district on or before 30.5.2005 for filling up 35 vacant posts of Assistant Inspector of Excise. The letter discloses that during 1999-2000, 50,000 applications had been obtained for the same posts through open advertisement. It was clarified that eligible candidates who had already applied for the said post in the year 1999-2000 need not apply afresh. The petitioners having approached the District Employment Officer, Nagaon, were told that as they had already submitted their applications pursuant to the earlier advertisement were not required to apply again. The said authority assured the petitioners that the Office of the Commissioner of Excise, Assam, would issue the call letters in due time.

5. As inspire of written test being fixed on 11.9.2005, admit cards though issued to other candidates had not reached the petitioners, they submitted a representation on 2.9.2005 before the Commissioner of Excise, Assam, at Guwahati, requesting the said authority to arrange for issuing call letters to them. The Commissioner of Excise, Assam, assured them that the call letters would be issued before 11.9.2005. The petitioners on 7.9.2005 again submitted a representation before the District Employment Officer, Nagaon, with a similar prayer. Same assurance was again extended. No admit card was, however, issued for which the petitioners could not attend the written test. On visiting the examination center as well they were told that no arrangements had been made enabling them to appear in the written test.

6. Situated thus, they approached this Court on 15.9.2005 contending inter alia that they had been illegally and arbitrarily denied the opportunity of participating in the selection process. They also questioned the validity of the decision to suspend the process initiated in the year 1999 and restarted in 2005 for enhanced vacancies by increasing these from 26 to 34. In their additional affidavit, the petitioners have pleaded that they had submitted their applications in the Office of the Commissioner, Guwahati, but no receipt there for had been granted to them as it was not done for any candidate. The Office of the Commissioner of Excise, Assam, also did not realize any fee or receive any treasury challan with regard thereto from any candidate along with the application. Referring to WP(C) 4654/2000 they have asserted that the respondents had not pleaded therein of not having received their applications for the post. The petitioners asserted that the process suffers from serious

irregularities inasmuch as though admit cards to many genuine candidates had not been issued; the same had been released for some candidates twice. They have cited the instances of Sri Chandan Goswami, Shri Hiranya Hazarika and Shri Birinchi Kumar Bhattacharjee to whom admit cards had been issued twice by showing names of different centers. The petitioners have expressed apprehension that in doing so, the Office of the Commissioner of Excise might have adjusted the total number of candidates and in the process had omitted to issue admit cards to them.

7. The State respondents have countered contending that in response to the advertisement dated 11.3.1999 approximately 40,000 applications were received from all over the State out of which 3167 were from Nagaon District. The applications received from Nagaon District were entered in book No. 1 to 4 maintained for the purpose. According to them, the written test could not be held in the year 1999 due to a ban imposed by the Government on recruitment in Grade III and Grade IV posts. The ban having been withdrawn and the approval for filling up the vacancies in the cadre of Assistant Inspector of Excise granted in the year 2005, fresh applications were called from the Director of Employment and Craftsmen Training, Assam, Guwahati, by office letter No. I-II/2003-04/1147 dated 16.5.2005. In response to the new advertisement that followed, the Employment Exchange all over the State forwarded more than 20,000 applications including 2809 applications from Nagaon District. The total number of candidates from the said District, therefore, was $6076 = \{3167 (1999) + 2809(2005)\}$. The names of the candidates with necessary particulars for both the years were entered district wise in the computer. The answering respondents have categorically stated that the petitioners did not apply for the post of Assistant Inspector of Excise in the year 1999 and their names were also not recommended by the District Employment Exchange Officer, Assam, in 2005. The petitioners also did not approach the authorities concerned before the conduct of the written examination. They have maintained that all the applications received in the year 1999 were recorded and were eventually fed in the computer.

8. The answering respondents have pleaded that the applications in the year 1999 were received by post, personal delivery or otherwise. Those received by post as well as by hand were first entered in four registers and then recorded in the computer along with the names of fresh applicants received through Employment Exchanges. No treasury challan was insisted or any fee was charged from the applicants. No acknowledgement of receipt was issued to the applicants. However, the names and particulars were first entered in the above registers, which along with those of the applicants of 2005 were eventually registered in the computer.

9. With reference to the duplication of admit cards to the candidates named in the affidavit, it was averred that it happened so as they had applied in the year 1999 and had also send their names through the concerned Employment Exchange in 2005. None of the said candidates was, however, selected. The

respondents dismissed the representations dated 2.9.2005 and 7.9.2005 as yields of after thought as the receipt registers of the Office of the Commissioner of Excise, Assam and Superintendent of Excise, Nagaon, do not disclose that the same had been received. The said respondents maintained that on the completion of the process, acting on the select list, appointments have already been made on 9.1.2006 against 44 vacant sanctioned posts and further appointments on 15.12.2006 against eight additional vacant posts and that there is no vacancy at present.

10. Mr. Choudhury has argued that the petitioners having duly applied for the post in terms of the prescriptions of the advertisement of the year 1999, the action of denying them the right to participate in the process is patently arbitrary and violative of their fundamental right guaranteed Under Article 14 and 16 of the Constitution of India. The State respondents not having issued any acknowledgment on receipt of applications from the candidates though required under the advertisement such a contention ought not to be taken cognizance of to cover up the wrongdoings. The State respondents not having denied in WP(C) 4654/2000 that the petitioners had applied in response to the advertisement of the year 1999, the plea to the contrary now taken is wholly unfair, unreasonable and unjust besides being impermissible in law. The learned Counsel further questioned the validity of the State action in deferring the process initiated in the year 1999 for 26 posts only to re-launch the same in the year 2005 for increased number of vacancies of 34 thus depriving the earlier candidates of a fair opportunity of competing for their recruitment. Referring to the candidates named in the pleadings to whom the admit cards had been issued more than once, Mr. Choudhury urged that the same were indicative of attempts of duplication of candidates to oust deserving ones thus vitiating the process. According to him, the name of one such candidate, Sri Birinchi Kr. Bhattacharjee, who had been issued admit cards under Sl. No. 3241 and 1501 was not available in the four registers produced before this Court in course of the arguments. The action of appointment against 48 posts against 34 advertised has also been assailed as illegal, arbitrary and indefensible in law. In support of his submissions Mr. Choudhury placed reliance on the decision of the Apex Court in *State of U.P. and Others Vs. Rajkumar Sharma and Others*, .

11. The learned Additional Advocate General in reply has submitted that the names and particulars of the candidates for the year 1999 were initially entered in four registers and, thereafter along with those of the candidates applying in 2005 were recorded in the computer. The admit cards were issued after compiling the names and particulars of all the candidates in the computer. As many candidates who had applied in 1999 also offered their candidature in 2005 duplication of admit cards occurred, he urged. Referring to the registers produced and the computerized list of candidates, Mr. Buragohain submitted that there was no inconsistency whatsoever. Referring to the entries therein, he urged that the petitioners not having applied either in 1999 or 2005 no admit card therefore was issued to them. Mr. Buragohain relied on the receipt registers

maintained by the Office of the Superintendent of Excise, Nagaon, and Commissioner of Excise, Guwahati, to contend that no representation either on 2.9.2005 or 7.9.2005 had also been submitted by the petitioners. According to him, admit cards having been issued to thousands of candidates, there is no conceivable justification to exclude the petitioner. No cause of action having arisen to warrant interference with the process, the petition ought to be dismissed, he urged. The learned Counsel passed into service the decision of the Supreme Court in *Prem Singh and Others Vs. Haryana State Electricity Board and Others*, , *Virender S. Hooda and Others Vs. State of Haryana and Another*, , *Rhone-Poulenc (India) Ltd. Vs. State of U.P. and Others*, , *Secretary, A.P. Public Service Commission Vs. B. Swapna and Others*, , *Reference Under Article 317(1) of the Constitution Sri M. Purandara and Others Vs. Mahadesha S. and Others*, .

12. The primary facts around which the competing arguments have been built up are admitted. The advertisement dated 11.3.1999 setting the process in motion was for filling up 26 posts of Assistant Inspector of Excise in Grade III of the Assam Subordinate Excise Service under the administrative control of the Commissioner of Excise, Assam, Guwahati. Apart from outlining the conditions of eligibility therein, it required the applications to be submitted in standard form published in Part IX of the Assam Gazette mentioning inter alia the name of the Employment Exchange with which the candidate concerned was registered. The applications were to reach the Commissioner of Excise, Assam, on or before 31.3.1999. It disclosed that the candidates would have to appear in a written examination on the subjects disclosed therein whereafter those selected would have to appear in an interview. According to the State respondents, the exercise had to be put on hold thereafter due to a ban imposed by the Government on appointments. The embargo having been lifted only in the year 2005, the process was furthered and by the letter dated 16.5.2005, the Commissioner of Excise, Assam, requested the Director of Employment and Craftsmen Training, Assam, to furnish a panel of 100 candidates from different districts of the State. By then the number of vacancies in the said post had swelled to 34.

13. The letter mentioned that in response to the advertisement of 1999, 50,000 applications had been received. By the notice dated 16.5.2005 of the Commissioner of Excise, Assam, which was subsequent thereto published for general information, the eligible candidates were invited to forward their candidatures through the respective employment exchanges of Assam by 30.5.2005. The notice clarified that candidates who had already applied in the year 1999-2000 to the Commissioner of Excise, Assam, need not apply afresh. It is on record that the said notice was published on the local daily of the State on 17.5.2005 as well.

14. The Assam Subordinate Excise Rules, 1961, (hereafter referred to as the Rules) regulate recruitment and the conditions of service of persons appointed to the Assam Sub-ordinate Excise Service. Rule 2 thereof prescribes that members of such service holding posts in Grade II would be designated as Assistant

Inspectors of Excise. Under Rule 5, which enacts the procedure for recruitment to Grade II of the Service a competitive examination has to be held at such intervals as the Commissioner of Excise may from time to time determine. The examination has to be conducted by the said authority in accordance with such Rules and procedure as the Government may from time to time ordain. The said provision of the Rules stipulates reservation in favour of candidates of the categories referred to therein. Thereunder, the Commissioner has to prepare a list of candidates who qualify in the examination in order of merit, which shall be determined in accordance with the aggregate marks obtained by each candidate and the appointment of a selected candidate would be subject to his suitability in all respects. The Commissioner of Excise as the above provision of the Rules demonstrate is, therefore, the center figure of the process for induction to Grade II of such service by direct recruitment and a discretion is conferred on him to conduct the same, however, in consonance with the Rules and procedure as framed by the Government.

15. Admittedly the petitioners have not been able to produce any unimpeachable evidence of having applied in response to the advertisement dated 11.3.1999. Indubitably they had refrained from applying in terms of the notice dated 16.5.2005. It is the categorical and unequivocal stand of the respondents in the instant proceeding that the petitioner's had not applied for the posts advertised and that therefore no admit card for the written examination was issued to them. Though the petitioners have insisted that the standard form published in Part IX of the Assam Gazette requires a deposit to be made by way of treasury challan and contains an acknowledgement to be issued in favour of the applying candidates on receiving his application, they have admitted in their additional affidavit that in the process involved, neither any fee was sought for to be deposited through a treasury challan nor was any receipt issued to any applicant by way of acknowledgement of having received his/her application. In course of the arguments, Mr. Buragohain has also produced a copy of the standard form of application published in the Assam Gazette Part IX currently in vogue without any column of acknowledgment of receipt there of from the candidate concerned. The standard form of application produced on behalf of the petitioner's seems to have been published in the issue dated 15.6.1983 of the Assam Gazette. In view of the marked variations in the two forms as above, it is not possible to conclude that the candidates were indispensably required in the instant case to apply in the form referred to by the petitioners. In any view of the matter, neither any fee by treasury challan having been insisted upon from candidates nor any acknowledgment of receipt of their applications having been issued to any candidate, I do not feel persuaded to hold that in absence thereof, the process ought to be adjudged as incurably illegal so much so to warrant interference of this Court. Noticeably though the first advertisement referred to the standard form in which the applications were to be made, it neither called for any deposit of fee by treasury challan nor delineated the mode of submission there of or stipulate issuance of any receipt therefor.

16. True it is that the petitioner No. 1, Shri Bichitra Bora had approached this Court earlier with WP(C) 4654/2000 being apprehensive that the process launched by the advertisement dated 11.3.1999 would be forsaken to facilitate appointments on extraneous considerations and that no affidavit by the State respondents therein had been submitted denying receipt of his application, this omission on the part of the State authorities ipso facto cannot be construed to be an admission of the petitioner's candidature. This is more so as the said writ proceeding is pending as on date. The contention raised on behalf of the petitioners that the absence of such denial ought to be inferred as admission on the part of the State respondents of having received their applications therefore cannot be sustained.

17. There is nothing on record to dismiss the assertion of the respondents that the full in the exercise initiated in the year 1999 was due to the ban imposed on appointments by the State Government. The fact that they restarted the process in the year 2005 signifies that the same had never been abandoned. As in the meantime, the number of vacancies had increased to 34, the pursuit was furthered to fill up the same. The two stages comprised the composite whole of the same venture for appointments to 34 posts and cannot be construed to be an attempt to fill up the said posts without advertising the same. The mere fact that in course of time, the number of posts had increased is not demonstrative of any illegal or collateral purpose or motive on the part of the State respondents. The same is not suggestive either of any endeavour to favour any ineligible candidate on impertinent considerations. The pleadings do not disclose any allegation of malafied in particular.

18. The aspect of issuance of admit cards to some of the candidates twice or more may now be adverted to. Whereas the petitioners allege that this is a clear indicator of some foul play on the part of the State respondents, to oust candidates like them and favour others, according to the respondent authorities, this was due to inadvertent mistake, such candidates having applied both in the year 1999 and 2005. The averment in the State counter that in all, 6076 candidates had applied from Nagaon District has remained uncontroverted. Out of the said number 3167 had offered their candidature in the year 1999 and the remaining 2809 in 2005. The State respondents have claimed that the names and particulars of 3167 candidates had been entered in four registers maintained in the official course of business which along with 2809 candidates of the year 2005 were furnished in the computer.

19. In course of the arguments, it was clarified by Mr. Buragohain that "12A" was used as a prefix to identify the candidates from Nagaon District. The computerized list of candidates of the said Districts bears out that in all 6076 persons had applied therefrom. The list starts with 12A-1 and ends with 12A-6076. The total number of candidates whose names and particulars were recorded in the four registers produced before this Court is 3167. On a scrutiny of the registers and the computerized list of the said candidates? refened to

above, the following transpires vis-?-vis the four candidates referred to in the additional affidavit of the petitioner and the arguments.

In	Register	in	Compu-	card	terized	list
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47 and 3228	3228				Hernia Hazarika 34 47 and	
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and 678 and 3322	3322				Chandan Goswami 683 678	
-----	-----	-----	-----	-----	-----	-----
1654, 1657 1654, 1657 and 2904 and 2895 and 2895					Pradip Kr. Bora 1653, 1656	
-----	-----	-----	-----	-----	-----	-----
1501 and Bhattacharjee 3241 3241					Brinchi Kr. 1519 1501 and	

20. The names of all the above candidates appear both in the registers as well as in the computerized list of candidates on the basis of which admit cards had been issued. Though some anomalies with regard to the their serial numbers on compilation of the entries in the registers and computerized list are apparent, the same per se in the face of the explanation provided by the State respondents do not vitiate the process with an all pervasive invalidation so as to render the same null and void. The entries in the registers and the computerized list proclaim that the said candidates had applies more than once. Though it was expected of the concerned authorities to be vigilant enough to avoid duplication, the issuance of more than one admit card to them for different centers by itself is not suggestive of any oblique objective of excluding the petitioners from the process. In an exercise of such a magnitude it was not unlikely though undesirable that inadvertent slips as above would occur.

21. The receipt registers maintained by the office of the Commissioner of Excise, Assam, Guwahati, and the Superintendent of Excise, Assam, Guwahati, do not disclose that the representations claimed to have been submitted by the petitioners had been received. The registers being records maintained in the official course of business, the plea to contrary does not appeal to this Court. The above discrepancies therefore in my opinion even if taken cumulatively are not unmistakably sufficient to impeach the process as irreversibly tainted so as to adjudge the same illegal and nonest in law. The presumption of validity of official acts rebuttable though, remains undisplaced in the present case.

22. The authorities referred to by the learned Counsel for the parties may briefly be noticed. In Munna Roy (supra), though the name of the appellant found place in the select list for recruitment to the post of Craft Teacher under the Railways, the list was cancelled as a whole on the purported ground that though the minimum academic qualification was prescribed to be matriculate, the appellant was a graduate and thus a dubious method had been adopted for her selection.

The Apex Court, while, reiterating the proposition that mere inclusion of a person's name in the select list does not confer on him or her any right, if the administrative decision and the reasons therefor, are erroneous, the same can be interfered with by a Court of law. In the contextual facts, the Apex Court held the reasons to be non-germane and irrational and interfered with the impugned order.

23. The Apex Court in *State of UP and Ors. v. Rajkumar Sharma and Ors.* (supra), had held that filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights granted Under Article 14 and 16 of the Constitution.

24. In *Prem Singh* (supra), while dwelling on the said proposition, it was, however, Ruled that the State can deviate from the advertisement and make appointments on post(s) falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that regard. It observed that even, if, appointments more than advertised is challenged, the Court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment.

25. In *Union of India and Ors. v. Rajesh P.U., Puthuvalnikathu and Ors.* (supra), the selection for the post of Constables under the Central Bureau of Investigation (hereafter for short "CBI"), was cancelled following a departmental inquiry into the allegation of nepotism/favouritism. The jurisdictional High Court on a consideration of the report of inquiry committee came to the conclusion that there was no justification to cancel the entire selection as the candidates with regard to whom the irregularities had been detected were identifiable. Sustaining the said finding, the Apex Court Ruled that in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, had undermined the very process itself in its entirety, there was hardly any justification in law to deny appointment to the other selected candidates whose selection was not found to be, in any manner, vitiated for any one or the other reasons. It pronounced that applying a unilaterally rigid and arbitrary standard to cancel the whole selection was nothing but a disregard of relevancies by giving a complete go-by to the contextual considerations throwing to the winds the principle of proportionality rendering the decision irrational.

26. The decisions of the Apex Court in *Virender S. Hooda and Anr.* (supra), *Rhone-Poulenc (India) Ltd.* (supra) and *M. Purandara and Anr.* (supra), being not of definitive relevance, are not dealt with in details.

27. On a cumulative consideration of the ratio decidendi of the above judicial pronouncements, I am of the view, considering the facts in hand that no interference with the impugned process is warranted.

28. The petitioners have failed to discharge the burden to conclusively establish

that they had applied in response to the advertisement of 1999. Neither any categorical assertion of malafide has been made nor established. The records produced substantiate the pleaded stand of the said respondents and do not disclose any vitiating illegality rendering the process unsustainable in law. In absence of any interim order of this Court, the exercise in the meantime has been completed and appointments of the selected candidates have been made in January, 2006. The appointments are also not in contravention of the order dated 28.8.2000 passed in WP(C) 4654/2000 restraining appointment of persons beyond those selected as per the recruitment rules. Though in doing so the State respondents exceeded the number of posts advertised, I am not inclined to interfere with the appointments beyond 34 posts at this distant point of time. It is, however made clear that the State respondents would forbear from resorting to such appointments in future lest the same be adjudged to be invalid with resultant penal consequences.

29. On a consideration of the totality of the facts and circumstances of the case as above, I, therefore, do not feel persuaded to sustain the challenge to the process undertaken by the respondents. The petition being devoid of merit therefore fails. No costs.