
(2014) 03 CAL CK 0161
In the Calcutta High Court

Case No : W.P. No. 1190 of 2013 and G.A. NO. 422 of 2014

Biswajit Maji

APPELLANT

Vs

Coal India Ltd.

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Citation : (2016) 6 WBLR 716

Hon'ble Judges : Harish Tandon, J.

Bench : Single Bench

Advocate : Mr. A. Lahiri, Advocate, for the Added Applicants; Mr. R.N. Majumder and Ms. S. Barman Roy, Advocates, for the E.C.L.; Mr. Partha Ghosh, Advocate, for the Petitioners

Final Decision : Disposed Off

Judgement

Harish Tandon, J.- The challenge is made to a recruitment process for the post of Security Guard-Technical and Supervisor Grade "G" undertaking by the Eastern Coalfield Limited, the respondent no.2 herein, being the subsidiary of the Coal India Limited, the respondent no.1 herein, which is a Government of India undertaking, commenced on the basis of the advertisement/notice no.1 of 2011 published on 25.06.2011. By the said notice, the applications were invited from Ex-Army/Ex-BSF personnel or NCC B&C Certificate Holder or Sportsman of All India repute for the above post. 215 vacancies were notified in the said notice and the eligibility criteria relating to qualification was indicated as matric or equivalent examination from any recognised Board or examination. The different age limits were also provided for the candidates under the General, O.B.C & SC/ST.

2. The general instructions appended to the said notice require the application to be filled up either in English or in Hindi. A corrigendum was issued by the General Manager (MP & IR) on the last date for submission of the application i.e. 12.07.2011 relaxing the upper age limit for Ex-Army personnel and extending the last date for submission of the application till 14.08.2011. Pursuant to the

said advertisement, 16,400 applications were received by the respondent no.2 and 2580 applications were found in order in terms of the eligibility criteria indicated in the said employment notice.

3. For merely one year, no progress could be shown in the said recruitment process until a date was notified for conducting the Physical Efficiency Test (PET) to be conducted between 15th June, 2012 to 27th June, 2012. The lists of 2580 candidates were also published who were found eligible for the said PET. It was further indicated that the male candidates have to run 5 kilometer within 24 minutes and the female candidates have to run 1.6 kilometers within 8.30 minutes. The Physical Efficiency Test could not be conducted on the notified dates and was rescheduled between the period of 25th July, 2012 to 6th August, 2012. The PET could not be conducted because of the extreme hot condition, which may result into a fatal casualty. However, the PET was conducted on the subsequent notified date in which 524 candidates appeared out of which 149 candidates could qualify. It is pertinent to record that on both the occasions, the list of the candidates eligible to participate in the PET was posted on the web site containing 2580 names. It is not in dispute that some of the names which do not figure in the first list, were shown in the second list. Subsequently the respondent no.2 issued a notice dated 28th February, 2013 whereby and where under the conditions for running the distance within a specified time was relaxed to a run of 1600 meters within 10 minutes for the male candidates and 400 meters within 3 minutes for the female candidates. The said notice further clarified that the candidates, who could not complete the distance within the specified time on an earlier occasion, shall also be eligible to re-participate. The PET was conducted between 20th March, 2013 to 25th March, 2013 when 406 candidates appeared out of which 392 candidates could be able to qualify. Before proceeding further for the written test and interview, a corrigendum to the said employment notice was issued on 10th May, 2013 by the respondent no.2 by which the candidates having NCC "A" certificate were called to participate in the said recruitment process and the last date for the submission of the application was fixed on 1st July, 2013. This time, a list of 2546 candidates, who were found eligible for PET, was published on 6th August, 2013. The said test was scheduled to be held from 26th August, 2013 to 31st August, 2013 under the relaxed condition. It is not in dispute that the candidates who successfully run the distance within the notified time under the first condition and the relaxed conditions were allowed to sit in the written examination held on 6th October, 2013. On 6th December, 2013, the respondent no.2 published the 641 names of short listed candidates for interview.

4. This writ petition have been filed on 4th December, 2013 and was moved on 13th December, 2013. Subsequently the matter came up before me on 18th December, 2013 after assignment when Mr. Majumdar, the learned Advocate appearing for the respondent no.2 was directed to bring the records on 24th December, 2013. This Court, on the returnable day, passed an interim order restraining the respondent authorities from filling up the posts without obtaining

leave but permitted to complete the process of interview with clear stipulation that all candidates should be made known that it is subject to the result of the writ petition. The parties have exchanged affidavits. Several applications for addition of party are filed either in support of the writ petition or opposing the same. All those applications were allowed as this Court found that they stand on the same footing and shall be affected by the decision of this writ petition. One of the added respondent filed supplementary affidavit, with the leave of the Court, disclosing that one of the member of the evaluation committee of the recruitment process have asked for the illegal gratification for promise to give employment and annexed the compact disc recording the conversations made in this regard. It is further disclosed that a FIR is lodged with the CBI but no steps have been taken as yet. The learned Advocate appearing for the CBI informed the Court that the actions have been taken and the necessary permission, so required, have not been obtained as yet. Mr. Majumdar also apprise the Court that a letter is issued upon the alleged member of the evaluation committee and the respondent no.2 shall certainly take steps on being satisfied as to the commission of the alleged act.

5. The petitioners have argued that certain favoured candidates have been included in the second list published by the respondent no.2 who do not figure in the first list. It is further submitted that there has been an alteration of the conditions in the middle of the recruitment process with clear motive to favour certain candidates who were otherwise ineligible to participate in the recruitment process in terms of the original advertisement. It is strenuously argued that where a serious allegations relating to unfair means adopted by the selection committee is evident, the selection process is required to be cancelled and/or revoked. Lastly it is submitted that it is a clear case of discrimination as the candidates who were ineligible were allowed to complete with the eligible candidates thereby offending Article 16 of the Constitution of India. In support of the aforesaid contentions, the following decisions are cited:

- (1) Rajkumar & Others; v. Shakti Raj & Others; reported in AIR 1997 SC 2110,
- (2) M.P. State Co-op. Bank Ltd., Bhopal v. Nanuram Yadav & Ors; reported in (2007) 8 SCC 264.

6. Mr. Majumdar, the learned Advocate appearing for the respondent no.2 audaciously submits that the selection process is undertaken by following the Rules and has not been deviated. He further submits that some of the candidates who were otherwise eligible inadvertently could not be shown in the first list but have been included in the second list in place of some candidates whose name were shown twice. He, further, submits that sufficient numbers of candidates could not be made available because of the stringent conditions of the PET, and therefore, the authorities issued further circular relaxing the conditions so as to allow more candidates to participate for the above posts. He thus submits that by relaxing the conditions, more candidates were allowed to participate in the recruitment process and, therefore, the question of discrimination has no manner

of applicability in the instant case. He points out that the petitioner no.1 was found eligible to sit in the written test and all other candidates could not qualify in the Written Test after participating therein, they cannot challenge the selection process. He vehemently submits that most of the petitioners were found eligible to participate in the selection process on the altered conditions and have joined the writ petitioner after being unsuccessful. Lastly he submits that the member, against whom the allegation is made, is mere a part of the selection process and does not play an important and vital role. In support of the aforementioned contentions, he relies upon the following judgments:

(1) Amlan Jyoti Borooah v. State of Assam & Others; reported in (2009) 3 SCC 227,

(2) Manish Kumar Shahi v. State of Bihar & Others; reported in (2010) 12 SCC 576,

(3) Jaswant Singh Gill v. Bharat Coking Coal Ltd. & Ors; reported in (2007) 1 SCC 663,

(4) Arunachal Pradesh Public Service Commission & Anr. v. Tage Habung and Ors; reported in AIR 2013 SC 1601.

7. At the very outset, it is recorded that there is no prescribed rules for conducting the recruitment process for the post of the Security Guard (Technical and Supervisor Grade "G"). It is clearly discernible from the advertisement published on 25.06.2011 that applications can be made only by the Ex-Army/Ex-BSF personnel or NCC "B" & "C" certificate holder or Sportsman of All India repute having educational qualification of matric or equivalent examination from any recognised Board. It was understood clearly that the examination shall be held in three phases; namely the Physical Efficiency Test, Written Test and Interview. At least no case is made out by either of the parties about any ambiguity in this regard. Though the date for Physical Efficiency Test was announced wherein a specific criteria was indicated that in case of a male candidate who was to run 5 kilometers in 25 minutes which was relaxed in case of a female candidate who have to run 1.6 kilometers in 8.30 minutes, the Physical Efficiency Test was postponed on the extraordinary circumstances as the authorities thought that because of the extreme hot weather which may be proved fatal.

8. Before further announcement of the date for the Physical Ability Test, a list was published by the concerned respondent containing the names of 2580 candidates. The authorities thereafter announced another dates for conducting the Physical Efficiency Test by publishing another list wherein certain names, which were not incorporated in the first list, were included therein. Undisputedly the names of some candidates were appearing twice in the first list which was rectified in the second list by inserting the names of the candidates who did not figure in the first list. The explanation offered by the ECL in this regard is acceptable as certain eligible candidates were inadvertently not shown in the first

list though entitled to be included. The mistake which was ministerial-in-nature can be rectified as the candidates whose names were appearing twice in the first list shall not be prejudiced by such act. After holding the Physical Efficiency Test, the ECL published a corrigendum on 10th May, 2013 whereby and where under the candidates having NCC "A" Certificate were also made eligible to apply in the ongoing recruitment process. It is pertinent to record that the second Physical Efficiency Test held by the authorities before the issuance of the corrigendum was conducted under the relaxed conditions wherein a male candidate was to run 600 meters within 10 minutes whereas the female candidate have to run 400 meters in 3 minutes. After inviting the further applications from the candidates under the corrigendum notice, another Physical Efficiency Test was undertaken under the relaxed conditions and all the candidates who qualified therein were allowed to sit in the written examination. It would be apparent without any doubt that the recruitment process which commenced on the basis of the notification dated 25.06.2011 continued with the altered conditions made from time to time either by relaxing the conditions for the Physical Efficiency Test or inviting several applications from the candidates who were not otherwise eligible under the original eligibility criteria.

9. It is manifest that the rule of the game was changed after it is played. In this regard, the reference can be made to a judgment of the Supreme Court in case of Maharashtra State Road Transport Corpn & others v. Rajendra Bhimrao Mandve & Others; reported in (2001) 10 SCC 51 wherein it is observed that the criteria for selection can be altered by the authorities concerned in the middle or after the process of selection has commenced.

10. In case of K. Manjusree v. State of Andhra Pradesh & Another reported in (2008) 3 SCC 512, the Apex Court applied the ratio laid down in case of Rajendra Bhimrao Mandve (supra) and held that any change and/or alteration in the recruitment process is unacceptable and impermissible in these words:

"32. In Maharashtra SRTC v. Rajendra Bhimrao Mandve this Court observed that "the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced". In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game had been played and the results of the game were being awaited. That is unacceptable and impermissible."

11. The Apex Court in case of Secretary, A.P. Public Service Commission v. B. Swapna & Others; reported in (2005) 4 SCC 154 held that relaxation of the essential qualification in the middle of the selection process offends the fair play policy. It is further held that in absence of any power to relax the essential conditions, the entire selection process get vitiated. The aforesaid proposition can aptly be quoted as under:

"14. The High Court has committed an error in holding that the amended rule

was operative. As has been fairly conceded by learned counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. (See *P. Mahendran v. State of Karnataka* and *Gopal Krushna Rath v. M.A.A. Baig.*)

15. Another aspect which this Court has highlighted is scope for relaxation of norms. Although the Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In *P.K. Ramachandra Iyer v. Union of India* this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised."

12. The ECL could not produce any source of power to relax the eligible qualification as the entire selection process is commenced in absence of any prescribed rules. The authority should have been more vigilant and cautious in proceeding with the recruitment process in absence of any prescribed rules as any alteration and/or changes made in the middle of the recruitment process is viewed zealously and the possibility of unfair means cannot be ruled out.

13. The authorities should act fairly and their action should be legitimate and fair without any aversion, malice or affection. The transparency and fair play in action is a necessary concomitant for an administrative authority discharging functions in an administrative sphere or society at large. The plausible explanation sought to be offered by the ECL is that the number of candidates could not qualify under the stringent conditions put for the Physical Efficiency Test and precisely for such reason; the conditions were relaxed so that more candidates would be able to sit for the written examination. Such an explanation, if accepted, may result into the possibility of the bringing the undeserving candidates to the pedestal of the successful candidates offending the principle of Justice, equity and fair play. The action of the authority should be above the

nexus of vested interest, nepotism and eschew window dressing. Every action of the authorities should not only be fair, legitimate but should be without any affection or aversion. The action should not be such which may apparently give an impression of bias and favouritism.

14. The respondent authorities say that the recruitment to the above post was not done for a longer period of time and, therefore, to complete the same by allowing more candidates to participate therein, the advertisement relaxing the conditions were issued. It is further contended that the process was intended to be completed expeditiously so that the appointment can be made. Such an explanation is not acceptable for the reason that anything done in undue hardship may be termed as arbitrary and lacks bona fide. The decision is required to be made by application of known principles, which should be predictable and should not give an impression in the mind of a common people against the fairness, reasonableness and objectivity. Procedural fairness is an implied mandatory requirement to protect the arbitrary action and should not offend the fundamental fairness or established ethos or shocks the conscience. The ECL not only change the conditions which were set initially for Physical Efficiency Test but also altered the requisite essential qualification by permitting other candidates who were not otherwise eligible at the initiation of the recruitment process. There is another striking feature which cannot be lost sight of that except one or two candidates who qualified the Physical Efficiency Test under the original conditions were found unsuccessful in the written examination. The selection process clearly enshrined that the person, who qualified in a Physical Efficiency Test, shall be allowed to sit in the written examination and the interview. The qualifying candidates could not have been put on the same platform with the unsuccessful candidates who were otherwise placed on the same pedestal under the relaxed conditions.

15. The aforesaid action of the respondent authorities offends Articles 14 & 16 of the Constitution and, therefore, cannot be held to be valid. The respondent should have adopted the uniform policy and cannot be allowed to alter the same in the middle of the selection process. The selection process is, therefore, liable struck down as the manner in which it is being conducted is opposed to fair play policy.

16. Though the other points have become academic but since the same has been raised, this Court feels that the same is required to be addressed.

17. The ECL is having a colliery not only the State of West Bengal but in the neighbour States as well. At the time of initiation of the selection process, it is expressly indicated that the application should be made in English or Hindi language. The minimum educational qualification provided therein is matriculate or equivalent examination from the recognised Board. The petitioners have not made out any case that the advertisement indicates the conducting of the examination in other languages than the aforesaid two languages. After having known the procedure, the candidates cannot turn around and say that the

conducting of the examination under English or Hindi language and not under any other regional languages is bad and offends the provision of the Constitution. They participated in the said proceeding and, therefore, cannot turn around and say that the entire process should be vitiated. In case of *Union of India v. S. Vinodh Kumar & Ors*; reported in (2007) 8 SCC 100, the Apex Court held that it is well-settled that those candidates who have taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. The aforesaid judgment was taken note of in a subsequent judgment rendered by the Supreme Court in case of *Amlan Jyoti Borooah v. State of Assam & Ors*; reported in (2009) 3 SCC 227 as relied by the respondent no.2. The aforesaid judgment is relevant on two aspects. The respondent relied upon the said judgment on the principle of estoppel and acquiescence by placing reliance upon the following paragraphs:

"31. The appellant was aware of his position in the select list. He was also aware of the change in the procedure adopted by the Selection Committee. He appeared at the interview without any demur whatsoever although he was not called to appear for the physical ability test prior thereto. The appellant chose to question the appointment of 77 candidates not only on the premise that the procedure adopted by the Selection Committee was illegal but also on the premise that no new vacancy could have been filled up from the select list.

32. The appellant, in our opinion, having accepted the change in the selection procedure sub silentio, by not questioning the appointment of the 169 candidates, in our considered opinion, cannot now be permitted to turn round and contend that the procedure adopted was illegal. He is estopped and precluded from doing so."

18. In a preceding paragraph no. 27, the Apex Court clearly held that when a selection committee has laid down the procedure for specific purposes, such purpose could not be changed in these words:

"27. In tune with the said requirements only, the candidates were asked to appear in the written test on 25-4-1998/26-4-1998 and in the physical test on 27-4-1998/28-4-1998. There cannot, however, be any doubt whatsoever that a Selection Committee in a given situation may lay down a procedure for the purpose of shortlisting the candidates but that does not mean that for the said purpose the order of holding a requisite test would be changed."

19. The case relied upon by the respondent rendered in case of *Manish Kumar Sahi v. State of Bihar & Ors*; reported in (2010) 12 SCC 576, where the challenge to a selection process was made over the marks prescribed for viva-voce to be excessive. The Apex Court held that although there is no straight jacket formula for determining whether the prescription of a particular percentage of marks for viva-voce would introduce an element of arbitrariness in the process of selection or to give unbridle power to selection committee to select list of the meritorious candidates. There is no constitutional infirmity in prescribing the higher

percentage of marks of the viva-voce test. The Supreme Court further proceeded to dismiss the writ petition on the plea that after participating in the selection process having fully known that the viva-voce would be conducted for such marks, challenge cannot be made to an entire selection process.

20. I fail to comprehend whether the aforesaid decision has any manner of applicability in the present case, when this Court specifically found that frequent change in the conditions should not get the blessings of the Court and the action to be justified on the plea of acquiescence or waiver. On the somewhat identical fact, the ratio laid down in case of Manish Kumar Sahi (supra) was accepted and applied in a subsequent judgment rendered by the Supreme Court in case of Arunachal Pradesh Public Service Commission & Anr. v. Tage Habung & Ors; reported in AIR 2013 SC 1601.

21. The judgment rendered in case of Jaswant Singh Gill v. Bharat Coking Coal Ltd; & Ors; reported in (2007) 1 SCC 663 relied upon by the respondent, relates to a disciplinary proceeding initiated against an employee on the allegation of the shortage of stock of coal in Lodna area. A question cropped up therein as to whether the rules framed by the Coal India Ltd; would prevail over the substantive statute, it is held thus:

"10. The provisions of the Act, therefore, must prevail over the Rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of loss caused to the Company by negligence or breach of orders or trust. Penalties, however, must be imposed so long an employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event the employee retires from service, the question of imposing a major penalty by removal or dismissal from service would not arise. Rule 34.2 no doubt provides for continuation of a disciplinary proceeding despite retirement of employee if the same was initiated before his retirement but the same would not mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rule 27 can be imposed."

22. The aforesaid decision is not pointed to the issue involved in the instant case.

23. I conclude that the action of the respondent no.2 by altering and/or changing the conditions of the recruitment process and inviting the undeserving candidates under the original conditions, vitiates the entire selection process and the reasoning sought to be assigned behind such changes/alteration smacks arbitrariness and offends the fair play policy.

24. If the Court finds that there is a glaring illegality in the selection process affecting an individuals" right, the unsuccessful candidates can legitimately question a concluded selection process and cannot be denied relief by application of the principle of estoppel by conduct/acquiescence/waiver.

25. A serious allegation is made against one of the member of the evaluation

committee for which the complaint is made before the Central Bureau of Investigation (CBI). Although the entire selection process is found to be illegal, the same should not be any fetter on the part of the CBI to proceed on the basis of the complaint in accordance with law, nor shall stand in the way of the respondent authorities in initiating any departmental proceedings against the said erring member.

26. With these observations, the writ petition is disposed of.

27. However, there shall be no order as to costs.

28. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

Harish Tandon, J.

Later :

After the judgment is delivered, Mr. Majumdar prayed for stay of operation of the order. After considering the above submission, this Court does not find that any case is made out warranting the stay of operation of this Judgment. The prayer is refused.