
(2010) 08 UK CK 0075
In the Uttarakhand High Court

Dan Singh Mehta and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Uttar Pradesh Police Regulations, 1948 — Regulation 445(B)(2)

Citation : (2010) 2 UC 1345 : (2010) 1 UD 558

Hon'ble Judges : Barin Ghosh, C.J.; V.K. Bist, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—In order to be promoted from the post of Constable or Head Constable to the post of Sub-Inspector Civil Police, there appears to be no dispute that the Police Regulations of the U.P. State are still applicable to the State of Uttarakhand. In terms of Clause 445 of the said Regulations, the persons, eligible in terms thereof, are required, at the first stage, to appear in a pre-examination test. A person, who has qualified in the pre-examination test, in terms of the provisions contained in the said Regulation, is thereupon entitled to appear at a test of general drill and physical examination. Clause (B)(2)(c) of the said Regulation provides the necessary parameters for general drill and physical examination of such persons. The same is as follows:

After then one board, constituted with Deputy Inspector Generals, one commandant of P.A.C. nominated by Deputy Inspector Generals of Police, Range and concerned local Superintendent of Police, should visit each district and should examine the character roll of all those eligible candidates, who have qualified the written examination. For the purposes of excluding physically disabled persons a general drill and physical examination of all such candidates should be conducted. Board should award marks, according to the standard fixed by Inspector General of Police, to candidates on their character roll and merit shown in the drill and physical examination.

2. The composite State of Uttar Pradesh, while following the directions contained in Regulation 445 (B)(2)(c), as appears from the order dated 27.02.1999, constituted one board for the purpose of general drill and physical examination. While the State of Uttarakhand initiated the process of promoting Constables/ Head Constables to the post of Sub-Inspector Civil Police, by an order dated 15.03.2007, it indicated that it would take steps in terms of what had been provided in the order of State of Uttar Pradesh dated 27.02.1999. After having had said so in paragraph 2 of the said order dated 15.03.2007, the State of Uttarakhand in its order dated 15.03.2007 at paragraph 6 provided for constitution of two boards, one for Kumaon Range and the other for Garhwal Range for conducting general drill and physical examination.

3. The appellants took steps for being promoted to the post of Sub-Inspector Civil Police in terms of the said order dated 15.03.2007, and accordingly, offered themselves for appearing in the pre-examination. After they qualified pre-examination test, they appeared before the board constituted for Kumaon Range for general drill and physical examination. They failed. After having had failed, they filed a writ petition and thereby contended that general drill and physical examination of the appellants by the board constituted for Kumaon Range is inappropriate, for general drill and physical examination of the appellants should have been conducted by a State Board. On the writ petition an interim order was passed permitting the appellants to make a representation. Against the said order, an appeal was preferred. A Division Bench, while setting aside the said interim order, permitted the appellants to take steps subsequent to the stage of qualifying general drill and physical examination subject, however, to the outcome of the writ petition. In terms of the said order of the Division Bench, the appellants were permitted to appear in the written examination. Subsequently, writ court passed an order, in terms whereof the State-respondents were directed to declare the result of the written examination of the appellants and to take further steps in terms of such result, once again subject to the outcome of the writ petition. Accordingly, result of the written examination of the appellants was declared, when they, having succeeded, were granted promotions. The writ petition was thereafter taken up for consideration. Before the writ court the State-respondents, having, in the meantime, granted promotions to the appellants, took a stand, which we whole-heartedly deprecate, that the promotions given to the appellants be not interfered with without creating precedents. Ignoring such stand taken, a learned Single Judge of this Court dismissed the writ petition by the judgment and order under appeal, principally on the ground that a person having had taken a chance unsuccessfully before an authority constituted to examine the standard of candidates appearing before the said authority, cannot turn around and contend that the authority was incompetent. The learned Single Judge also did not take into account the contention that the appellants having been promoted and they having been permitted to work since their promotion should not be disturbed holding that the appellants crossed over to the third stage on the basis of orders passed by the

Court and their going to the third stage which resulted in promotions were subject to the outcome of the writ petition. The Court did not express in so many words its views pertaining to the contention that there should be one board and not two boards.

4. In the event, we accept that the appellants, having had failed to succeed before the board, were competent to challenge the constitution or the authority of the board and hold that the appellants are right and that instead of two boards there ought to have had been one board, then the logical conclusion would be that the authority competent in terms of the said Regulation to declare that the appellants have passed the general drill and physical examination has not yet declared them to have passed the same. In such view of the matter, the success at the third stage and consequent promotion is without selection at the second stage. We fail to understand how the State Government could agree to promote a person or persons who has/have not been judged to have passed general drill and physical examination by a competent board. In such view of the matter, we have deprecated the stand taken by the State Government before the writ court.

5. A look at the Clause set out above of the said Regulation may give an impression that one singular board should be constituted. However, a closer look would make it clear that the requirement was of not one singular board but by a board constituted by the members mentioned in the said Clause. In the circumstances, there was no difficulty in constituting more than one board by those members mentioned in the Clause. There is no dispute that the persons entitled to constitute the board had constituted the boards in question. In the circumstances, we answer the principal contention raised in the writ petition as above in the negative and against the appellants and at the same time we uphold the decision of the learned Single Judge rendered in the judgment and order under appeal to the effect that a person is not entitled to challenge constitution of the authority, after having had appeared before such authority and loosing before him. We also uphold the decision of the learned Single Judge to the effect that in the instant case only because of interim orders passed from time to time by the Court, the appellants went to the third stage and to subsequent stages and by the orders of the Court those were made subject to the outcome of the writ petition.

6. It appears to us that the very reason for the appellants to approach this Court was to obtain a direction for constitution of yet another board for re-examining the appellants, they having lost before a board already constituted, before whom they had appeared without any reservation. Such an approach by litigants to the Judicial Review Court should be shunned and nipped in the bud. The appellants approached this Court to whittle down their failure. The object and purpose of approaching this Court being unjust, the writ petition should have been, according to us, nipped in the bud. Because the writ petition was kept pending and because from time to time various orders were passed thereon as and by way of interim orders the appellants got something which they in law could not

get for as yet no board has declared that the appellants have passed the general drill and physical examination which comes in between the preliminary examination test and the final examination. We, accordingly, dismiss the appeal. We have with great effort restrained ourselves from imposing exemplary costs in the appeal.