

(2008) 12 CAL CK 0047
In the Calcutta High Court
Case No : Writ Petition No. 2806 (W) of 2008

Dileshwar Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-12-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Railway Protection Force Rules, 1987 — Rule 64, 70, 70.7.1, 70.7.2, 70.8

Citation : (2008) 12 CAL CK 0047

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : Saktinath Mukherjee and Achin Kumar Majumdar and Sounak Banerjee, for the Appellant; P.K. Mullick and A.K. Gayen, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Talukdar, J.—Both the applications under Article 226 of the Constitution relate to the same facts and involve identical points of law. Those are governed by this common judgment.

2. Grievance of the writ petitioners, as ventilated in the said applications, relate to alleged illegality on the part of the respondent authority in cancelling the selection proceedings as reflected from the order passed by the Chief Security Commissioner, being Annexure-"P-6" at page-53 in W.P. No. 2806(W) of 2008.

3. The petitioners are enrolled members of the Railway Protection Force of Eastern Railway. They are in the rank of Constables and Head Constables and are posted in different divisions. In response to the notification issued by the Deputy Chief Security Commissioner, RPF, Eastern Railway relating to holding of limited departmental competition under Rule 72 of RPF Rules, 1987, the writ petitioners appeared and contested the said selection test along with other eligible candidates. They were successful both in the written examination and the practical test including IT, PT and Riot Drill. A viva-voce test was held under Sub-rule (2) of Rule 71 of RPF Rules, 1987. After the said test a final select list of 28

candidates was prepared and the petitioners were placed in the said final list according to the merit in the selection test. The petitioners were also declared fit for selection in the rank of Assistant Sub-Inspectors by the Departmental Promotion Committee and their names were placed in the final select list dated 26.5.2007 as per merit. Rule 64 of RPF Rules, 1987 provides that enrolled members of the force on being regularly selected for promotion to the rank of Assistant Sub-Inspectors shall undergo a Special Course which has been referred as a promotion course at any Training Institution of the force and the duration of the said training may be fixed by the Director General. The petitioners being so selected were directed to attend the Kanchrapara Training Institution for their promotional post training. Such training continued for a period of 10 weeks.

4. After successful completion of such training, the petitioners became eligible for posting to the said promotional post of Assistant Sub-Inspectors. In terms of the letter of the Principal, RPF Training School, Kanchrapara, dated 14th August, 2007, a Board of Examiners comprising of a Senior Security Commissioner was constituted for holding the final examination for Assistant Sub-Inspectors promotional course. The petitioners qualified in the said promotional course training and were declared fit for promotion and posting to the said post of Assistant Sub-Inspectors. The writ petitioners having successfully completed all required tests so as to be eligible for promotion to the post of Assistant Sub-Inspectors, they accrued such right of promotion.

5. Unfortunately for them, the authority concerned did not grant such promotion and for a long time, the reason for not giving effect to the said selection process was not communicated. The petitioners were, thus, compelled to make representations to the Chief Security Commissioner, but to no avail. It could be learnt that when the petitioners were waiting for their orders of promotion, a vigilance enquiry was initiated by the concerned respondent on the basis of an anonymous complaint lodged by one unsuccessful candidate. There had been allegation of manipulation in the selection process and on the ground of pendency of vigilance investigation, the promotion of the petitioners was kept in abeyance. The vigilance authority sent a report to the Director General, RPF and recommended for cancellation of selection process. The Director General, RPF, at the dictation of the said vigilance authority, cancelled the selection proceedings. Being aggrieved by the same, the petitioners approached this Court for redressal of their grievances. Both the cases were contested by the respondent authorities. In the Affidavits-in- Opposition filed, the material allegations made by the writ petitioners had been denied. The respondent authorities alleged that a vigilance investigation into the subject selection was started based on complaints received by zonal vigilance, which was not anonymous. The genuineness of one of the complaints was also verified before investigation was undertaken.

6. Complaints were received at vigilance office through various sources including reference from CVC (Central Vigilance Commission) and Railway Board's Vigilance Directorate etc. Accordingly, the senior DGM/E. Rly.-cum-CVO/E. Rly.

advised the CSC/RPF/E. Rly. not to take further step for publication of the result of the test on completion of subject training as well as publication of final panel and posting without clearance from the vigilance. As such, in spite of having been completed the promotion course training, no posting order on promotion could be issued in favour of these petitioners till final outcome of the said investigation.

7. Referring to para 219(L) of the IREM Vol.-I, it was claimed that "after the competent authority has accepted the recommendations of the Selection Board, the names of candidates selected will be notified to the candidates. A panel once approved should normally not be cancelled or amended. If after the formation and announcement of the panel with the approval of the competent authority, it is found subsequently that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel.

8. The DG/RPF being the next higher authority than the CSC/RPF, thus, ordered for the cancellation of the subject selection proceedings. The respondent authorities further claimed that cancellation of the selection proceedings had been done not at the dictation of the vigilance authority but after consideration of the investigation report of the zonal vigilance and being satisfied with the irregularities which took place in the selection proceedings. It was further claimed that while consideration of promotion of a railway employee is in process, vigilance clearance is required to be obtained. It is intended to verify the past records of the candidates for any type of vigilance cases pending or contemplated before finalization of panel and incorporation in the selection proceedings minutes. The respondent authorities further referred to para 219(L) of IREM Vol.-I while stating that "after the competent authority has accepted the recommendations of Selection Board, the names of candidates selected will be notified to the candidates. A panel once approved should normally not be cancelled or amended. If after the formation and announcement of the panel with the approval of the competent authority it is found subsequently that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel."

9. The respondent authorities, thus, claimed that the grievance of the writ petitioners has no legal basis.

10. Dismissal of the writ applications was so prayed for.

11. Mr. Saktinath Mukherjee, appearing as learned Senior Counsel for the writ petitioners, sought to assail the order of cancellation of the selection proceeding first on the ground that the Director General of RPF did not have the competent authority to do so and on the further ground that it was a decision taken under the dictation of another authority, being the vigilance wings of the concerned

authorities.

12. Mr. Mukherjee further submitted that the selection process took its legal route thereby inviting no scope for criticism. It was further contended that there could be no justification whatsoever to direct cancellation of the selection proceeding merely on the basis of a vigilance report and that too, on the basis of an anonymous complaint made by some unsuccessful candidates.

13. He emphatically submitted that unsuccessful candidates having participated in the selection process cannot be permitted to raise their voice of protest. In response to this, Mr. Mullick, as learned Counsel for the respondent authority, sought to justify the action taken by the authorities. It was submitted that since there had been malpractice in the selection process, the authority concerned was perfectly justified in cancelling the same. It was then submitted that in absence of any infringement of any legal right, far less a constitutional right, the petitioners had no scope to knock the doors of this writ Court. On behalf of the petitioners it was submitted that there is a statutory scheme for promotion and in this context, learned Senior Counsel, Mr. Mukherjee, referred to Rule 70 of the Railway Protection Force Rules, 1987. Rule 70 deals with the procedure for promotion of enrolled members of the force. It clearly lays down how such selection process is to proceed. It also deals with the Departmental Promotion Committee and how members of the said committee are to be nominated. Rule 70.7.1 lays down that all panels drawn up by the Departmental Promotion Committee shall be submitted for approval to the authority who nominated the said Committee. Rule 70.7.2 refers to the steps to be taken when the authority does not accept the recommendation of the said Committee. Such authority is required to record the reasons for the same and the matter thereafter is required to be referred to the next higher authority, which may, for reasons to be recorded in writing pass such orders as are considered appropriate. It follows from Rule 70.8 that a panel drawn up in accordance with this rule shall remain operative for a period of one year from the date of its approval or till it is exhausted, whichever is earlier. Inviting attention to the same, it was contended that the manner in which the selection process has been cancelled, cannot have any support in the eyes of law nor the relevant rules permit the authority to do so.

14. Deriving inspiration from the decision in the case of *Union of India and Another Vs. N. Chandrasekharan and Another*, , it was submitted by Mr. Mukherjee that unsuccessful candidates are not entitled to challenge the selection procedure afterwards.

15. The aforesaid view finds further support from the decision of the Apex Court in the case of *University of Cochin, Rep., by its Registrar, University of Cochin Vs. N.S. Kanoonjamma and others*, .

16. In the case of *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , the Apex Court held that when the petitioners take a chance in order to

get selected on the basis of a particular selection process and after discovering that they could not succeed in the same, they cannot turn round and assail the selection process. It is well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In support of the contention that unsuccessful candidate cannot raise dispute regarding the selection process, reference was made to the decision of the Apex Court in the case of *Trivedi Himanshu Ghanshyambhai Vs. Ahmedabad Municipal Corporation and Others*, .

17. The action taken by the authority had also been sought to be assailed on the ground that the Director General of the Railway Protection Force did not apply his own mind but the order of cancellation was a decision, which he took being so dictated. Referring to the decision in the case of *Anirudhsinhji Jadeja and another Vs. State of Gujarat*, , it was submitted on behalf of the petitioners that in absence of independent and unfettered judgment of the competent authority, the decision whereby the selection process was cancelled, cannot pass the test of legal scrutiny. Learned Senior Counsel, Mr. Saktinath Mukherjee, in this context sought to derive inspiration from *De Smith's* judicial review of administrative action. It was submitted that an authority entrusted with a discretion must not, in the purported exercise of its discretion, act under the dictation of another body or person. It may be mentioned that authorities directly entrusted with statutory discretion, be they executive officers or members of distinct tribunals, are usually entitled and are often obliged to take into account considerations of public policy, and in some contexts the policy of a Minister or of the Government as a whole may be a relevant factor in weighing those considerations; but this will not absolve them from their duty to exercise their personal judgment in individual cases, unless explicit statutory provision has been made for them to be given binding instructions by a superior, or (possibly) unless the cumulative effect of the subject-matter and their hierarchical subordination (in the case of civil servants and local government officers) make it clear that it is constitutionally proper for them to receive and obey instructions conveyed in the proper manner and form.

18. Mr. Mukherjee while assailing the decision whereby the selection process was cancelled, drew attention of the Court to the judgment of the Apex Court in case of *Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc.*, . It was observed that Article 14 guarantees to everyone equality before law. Unequals cannot be clubbed. Likewise, an arbitrary exercise of executive power deserves to be quashed.

19. Moreover, an order passed without application of mind deserves to be annulled being an arbitrary exercise of power. However, if two views are possible and the Government takes one of it, it would not be amenable to judicial review on the ground that the other view, according to the Court, is a better view.

20. It is true that the role model for governance and decision taken thereon should manifest equity, fair play and justice. It must not only base on transparency but must create an impression that the decision-making was motivated on the consideration of probity. On the other hand, Mr. Mullick on behalf of the respondent authority, categorically submitted that ordinarily a Superior Court in exercise of its power of judicial review would not interfere with the right to make appointment by an employer unless its action or inaction is found to be wholly arbitrary so as to offend Article 14 of the Constitution of India. In this context, he referred to the decision of the Apex Court in the case of *Aryavrat Gramin Bank v. Vijay Shankar Shukla* as reported in 2007 (8) Supreme 728.

21. It was further submitted that there could be no enforceable legal or constitutional right in favour of the writ petitioners deserving protection of the writ Court. Referring to the decision in the case of *State of Bihar and Others Vs. Secretariat Assistant Successful Examinees Union 1986 and Others*, , it was contended that candidates selected and empanelled do not acquire indefeasible right to be appointed. Relying upon the decision of the Apex Court in the case of *Shankarsan Dash Vs. Union of India*, , it was submitted that a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at the best a condition of eligibility for purposes of appointment, and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary.

22. It was submitted on behalf of the petitioners that there is clear guideline issued by the Ministry of Railways that no action should be taken on any anonymous or pseudonymous complaints. Such complaints may just be filed. This was essentially a guideline issued by the Central Vigilance Commission and was circulated for necessary guidance to different organizations.

23. Mr. Mullick while reacting to the same emphatically submitted that the Indian Railway Establishment Manual clearly authorizes such cancellation in certain circumstances. True, a panel once approved should normally not be cancelled or amended. If after the formation and announcement of the panel with the approval of the competent authority it is found subsequently that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel. In the present case, as reflected from the Force Order No. 162/2007 dated 25.5.2007, as many as 28 persons were listed and provisionally placed in the panel for promotion to the rank of ASI subject to passing the requisite promotion course training. No doubt, this was further followed up and promotion course training was arranged.

24. But even after completion of all procedural formalities as per extant RPF Rules, when such promotion was not given effect to, the petitioners became apprehensive and approached the concerned authority for redressal of

grievances. The anxiety of the writ petitioners and the agony arising out of the delay can be well appreciated. As reflected from the impugned order being Annexure-"P-6" at page-53, on receipt of a complaint alleging anomalies in selection, the vigilance department conducted an enquiry on the selection proceedings.

25. During enquiry, some lapses were detected. The Director General of RPF on perusal of the vigilance report cancelled the selection proceedings. This was communicated by the said order on limited departmental competition under Rule 72 of the RPF Rules, 1987 by the Chief Security Commissioner.

26. It is well settled that mere empanelment does not create an enforceable right for appointment. But, it would not be just and right on the part of any authority to ignore such selected panel in an arbitrary manner. In the present case, it cannot be said that the selection process has been cancelled on the basis of any anonymous or pseudonymous complaint. A regular vigilance enquiry was conducted and as it is reflected from the impugned order, the Director General of Railway Protection Force, being the highest authority in the organization, applied its mind to the vigilance report. Consideration of relevant materials is essential for arriving at a decision. A decision taken after consideration of all relevant factors cannot be said to be an action under dictation. A decision cannot be taken without application of mind to relevant materials. It would be an absurd proposition, if an authority takes a decision without taking into consideration the relevant materials.

27. Here in the present case, what was taken into consideration is the report prepared on vigilance enquiry. Such vigilance authority is certainly not occupying a rank superior to that of the authority, which cancelled the selection process. In such circumstances, I do not think it will be proper to attempt to read something more than what meets the eyes. Having regard to the factual backdrop of the present case, it also cannot be said that the Director General of RPF could not be the appropriate authority for cancellation of the selection process. There is no such material averment in the writ application, which could give impression that process of cancellation was vitiated with mala fide. Mere vague allegations do not constitute mala fide or arbitrariness. There is no such material to the satisfaction of the judicial conscience of the Court so as to hold that the decision of cancellation of the selection process suffers from any mala fide on the part of the authority.

28. Copies of various documents annexed to the Supplementary Affidavit filed on behalf of the petitioners go a long way to suggest that the initial complaint was not anonymous or pseudonymous in the true sense. Such complaint does not seem to suffer from any crisis of identity. It is not a question of some unsuccessful candidates raising grievance after participating in the selection process. This is an instance of unfair deal as could be revealed on vigilance enquiry.

29. It is, perhaps, needless to mention that any action, which does not pass the test of fairness, suffers from incurable wound. Initial vice persists and whatever is done on the basis of such inherently defective foundation cannot stand.

30. In the present case, the selection process is not free from controversy. It has been severely assailed and the manner of conducting the same is also not free from criticism. The matter was looked into by the appropriate authority and the enquiry report certainly went against the writ petitioners.

31. In such circumstances, the order of cancellation of selection process cannot be held to be unjust or unfair.

32. In the considered opinion of this Court, the action taken by the authority, which is under challenge in the present writ application does not seem to suffer from any infirmity or impropriety so as to justify any interference by this Court. Accordingly, the present applications fail and be dismissed.

33. There is no order as to costs.

34. Xerox certified copy of the judgment be supplied to the parties, if applied for, as expeditiously as possible.