
(2012) 08 RAJ CK 0052

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5492 of 2012, 5515 of 2012, 5676 of 2012 and 6570 of 2012

Dinesh Choudhary and Others

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Rajasthan Police Subordinate Service Rules, 1989 — Rule 21(6)

Citation : (2012) 4 WLN 40

Hon'ble Judges : Narendra Kumar Jain, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : R.S. Saluja, Dr. P.S. Bhati and Mr. Mahaveer Bishnoi, for the Appellant;

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—These four writ petitions, involving similar and akin issues in relation to the same process of direct recruitment under the Rajasthan Police Subordinate Service Rules, 1989 ("the Rules of 1989"), are taken up for disposal by this common order. The relevant background aspects are that in response to an advertisement dt. 25.11.2010, as issued by the Rajasthan Public Service Commission, Ajmer, the petitioners of these writ petitions offered their candidature for the post of Sub-Inspector under the Rules of 1989. The petitioners appeared in the written examination for the recruitment in question and having secured the necessary qualifying marks, were called to appear in the physical efficiency test. As per the process of recruitment delineated in Rule 21 of the Rules of 1989, the candidates who are declared successful in the written test and in the physical efficiency test are eligible for aptitude test and interview but the number of candidates to be called in such aptitude test and interview is to be restricted to three times the number of vacancies by way of the merit prepared on the aggregate marks obtained in the written and physical efficiency test. The petitioners having failed to secure the requisite position in the merit so

prepared, have not been found eligible for interview.

2. The petitioners now seek to challenge the relevant clauses, particularly those in sub-rule (6) and (7) of Rule 21 of the Rules of 1989, which provide for the method of selection after the written and physical test on the ground that the ultimate select list is prepared only on the basis of the marks obtained in the written test and in the interview; and therein, the marks as obtained in the physical efficiency test are not counted. The petitioners contend that the methodology as adopted by the respondents remains invalid when the intervening merit for the purpose of interview is prepared on the basis of the marks obtained in the written test and physical efficiency test although the marks of physical efficiency test are not counted in the final merit list. In this position, according to the petitioners, the marks of physical efficiency test are wholly irrelevant for the final merit; and a candidate cannot be deprived of the chance to appear in interview with reference to such irrelevant component of the marks pertaining to the physical efficiency test.

3. Elaborating on the stand of the petitioners, the respective learned counsel have referred to the provisions contained in the Rules of 1989 and vehemently argued that though a candidate is required to secure minimum 50% marks in the physical efficiency test but such a test is otherwise irrelevant for the final merit. The learned counsel contended that in the scheme of the selection process, when the physical efficiency test is only of shorting-listing nature, the marks therein ought not to have been added in the first instance for preparation of the intervening merit for the purpose of interviews. The learned counsel questioned the impugned provisions, particularly that contained in proviso to sub-rule (6) of Rule 21 of the Rules of 1989 while relying on the decision of the Hon''ble Supreme Court in the case of Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others, and contended that a proviso cannot undo the theme and operation of the principal provision. It is also contended that the criterion as provided is wholly unreasonable particularly when the proviso is rather repugnant to the other provisions. The decision of the Hon''ble Supreme Court in the case of Narinder Pal Sharma and Another Vs. State of Punjab and Others, has also been referred to show that when the relevant attributes were left out of consideration, the selection process was held illegal and unreasonable.

4. After having given thoughtful consideration to the contentions urged and having examined the material placed on record with reference to the relevant provisions of the Rules of 1989, we are clearly of the view that no case for interference is made out.

5. The scheme of the recruitment in question is contained in Rule 21 of the Rules of 1989. In order to appreciate the contentions urged, the entire of Rule 21 could be taken note of as under:-

21. Authority for conducting the competitive examination.-(1) The competitive examination for direct recruitment to the post of Sub-Inspector in Sections-I and

II and Platoon Commander in Section-IV shall be conducted by the Commission in accordance with the procedure laid down in Schedule-II appended to these Rules, and for the posts of Inspectors, Sub-Inspectors and Asstt. Sub-Inspectors in Section-III, shall be conducted by the following Recruitment Boards as constituted by the Director General-cum-Inspector General of Police.

(a) For post of Inspectors:-

(b) For the post of Sub-Inspector:-

(c) For the post of Asstt. Sub- Inspectors:-

Provided that when the post of the Director, Tele-Communications is held by a Deputy Inspector General of Police, he shall act as Chairman of the Board.

(2) The syllabus for the examination to be conducted by the Recruitment Board referred to in sub-rule (1) and for the Physical Efficiency Test which shall also be essential prior to interview and aptitude test by the board under rule 25 (2) shall be such as may be prescribed by the Director General-cum-Inspector General of Police from time to time.

(3) Candidates who obtain 36 percent of marks in each paper and 40 percent in the aggregate, shall be deemed to have passed the qualifying examination conducted by the Commission or the Recruitment Board as the case may be. The Commission shall send the list of such successful candidates to the Recruitment Board referred to in sub-rule 6(a):

Provided that relaxation up to 5 marks will be available to candidates belonging to the Scheduled Castes and Scheduled Tribes in each paper and in the aggregate.

(4)(a) The Commission or the Recruitment Board, as the case may be, may order re-totalling of the marks obtained by a candidate during such period as may be decided by the Commission or the Recruitment Board, as the case may be, in their discretion on payment of such fee as may be fixed by the Commission or the Recruitment Board, as the case may be, from time to time but evaluation of the answer paper shall not be re-examined.

(b) The Commission or the Recruitment Board, as the case may be, may take steps to rectify such mistakes as are detected on re-totalling of the marks in pursuance of the provisions of (a) above.

(c) (i) If as a result of such rectification, in case of Sub-Inspector in Sections-I and II and Platoon Commander in Section-IV, the Commission discovers that the candidate becomes eligible for selection, such fact shall be immediately and in any case not later than 40 days from the announcement of the result, reported to the Recruitment Board and shall stand protanto modified;

(ii) If as a result of such rectification, in case of Inspector/Sub-Inspector / Assistant Sub-Inspector in Section-III the Recruitment Board discovers that the

candidate becomes eligible for selection, the result announced by the Recruitment Board shall stand protanto modified.

(5) All candidates who are declared successful under Rule 21 (3) shall be required to appear before a Physical Efficiency Board, consisting of the Director General-cum-Inspector General of Police or his representative not below the rank of Inspector General of Police, One Deputy Inspector General of Police, One Superintendent of Police/ Commandant nominated by the Director General-cum-Inspector General of Police for physical efficiency test for various districts or group of districts as may be notified.

The physical efficiency test would be vigorous as laid down by the Director General of Police to adjudge suitability of the candidate. The physical efficiency test shall carry 100 marks and the candidate who secure 50% marks therein shall be eligible for selection.

(6) Candidates who are declared successful in the written test under sub-rule (3) and in the physical efficiency test under sub-rule (5) shall be eligible for aptitude test and interview.

Provided that the number of candidates called for aptitude test and interview shall be restricted to three times the number of vacancies on the basis of merit based on the aggregate marks obtained both in the written and in the physical efficiency test except in the case of scheduled castes and scheduled tribes candidates who shall be eligible for interview in excess of the prescribed limit if they have qualified in the written examination and the physical efficiency test

(7)(a) The aptitude test and interview of the candidates qualifying physical efficiency test, shall carry 50 marks. For the posts of Sub-Inspectors in Section-I, II and Platoon Commanders in Section-IV shall be held by a Recruitment Board, which shall consist of the following:-

The Recruitment Board shall award marks to each candidate in respect of suitability to the post, taking into consideration personality, address, tact, behaviour, specialised training, aptitude for the post, judgment, leadership and knowledge of Rajasthani Culture. The marks so awarded shall be added to the marks obtained in the written test by each such candidate. Candidates holding Degree or Diploma in Criminology or N.C.C. "C" Certificate or who have offered Police Administration as one of the Papers for the degree examination may be given weight.

(b) The Recruitment Board, in the case of Inspectors/Sub-Inspectors/Assistant Sub-Inspectors, in Section-III, shall thereafter interview and award marks to each candidate, out of a maximum of 50 marks in respect of suitability to the post, taking into consideration personality, address, tact, behaviour, specialized training, aptitude for the post, judgment, leadership and knowledge of Rajasthani Culture. The marks so awarded shall be added by the Recruitment Board to the marks obtained in the written test by each such candidate.

6. The sum and substance of the contentions urged on behalf of the petitioners is that proviso to sub-rule (6) of Rule 21 *ibid.*, whereby the candidates are to be called for interview on the basis of aggregate of marks obtained in written test and physical efficiency test is *ultra vires*; and the basis of this contention is the provision as contained in sub-rule (7) of Rule 21 *ibid.*, whereby, the marks awarded in the interview are added only to the marks obtained in the written test and not to the physical efficiency test for final merit. We are unable to agree with the contentions as urged on behalf of the petitioners that only for the reason that the marks awarded in the physical efficiency test are not counted in the final merit, the proviso to sub-rule (6) is required to be declared invalid.

7. As to what mode and method of selection is to be provided for which post, is ultimately for the employer concerned to decide. A particular scheme of recruitment cannot be declared invalid by the Court only on the suggestions that some other method was desirable; or that the particular set of marks at a particular stage of the process ought or ought not be provided any particular weightage. All such aspects relating to the process of selection are essentially for the employer to provide; and in the case of the Government taking up any such selection process, the basic requirement is that the provisions therefor ought not be offending the Constitution of India or any other statutory provision. Of course, if there is any such method provided that appears entirely irrational or unreasonable or leaving the scope for arbitrariness, its validity could be examined on the touch-stone of the constitutional scheme; but it is too far stretched to contend that a particular method be declared invalid only because it operates adverse to any particular candidate.

8. We are unable to find the Rules in question suffering from any vice of irrationality, unreasonableness or arbitrariness. Put in a nutshell, the scheme as provided in Rule 21 of the Rules of 1989 appears to be that the candidates are first put to a written test; then, the candidates who obtain minimum qualifying marks in the written test are subjected to the physical efficiency test; and then, the candidates are called for interviews but limiting the number to three times the number of vacancies and for this purpose, a merit based on the aggregate of the marks obtained in written and physical efficiency tests is prepared. However, in the physical efficiency test, a bench-mark of obtaining minimum 50% marks has been provided in order to make a candidate eligible for selection. After calling such restricted number of persons to aptitude test and interview, i.e., three times the number of vacancies, the marks are awarded to the candidates taking into consideration the traits of personality, address, behaviour, aptitude etc. Thereafter, the marks obtained in interview are added to those obtained in the written test for preparing the final merit.

9. It is true that in the scheme of the Rules, the physical efficiency test marks are not taken into account in preparation of the final merit but for that reason, the physical efficiency test cannot be said to be totally redundant. It cannot be over-looked that the recruitment in question is for the post of Sub-Inspector

under the Rajasthan Police Subordinate Service Rules, 1989. The requirement of the physical efficiency for the job in question needs hardly any emphasis. In Rule 14 of these Rules, minimum standards of physical fitness for the job in question are distinctly spelt out. The respondents have consciously provided 50% marks as the minimum in the physical efficiency test for making a candidate eligible for selection. Thus, the scheme of the Rules is definitely to ensure minimum physical efficiency.

10. Then, for the purpose of determining the number of candidates to be called for interview, an intermediate merit is prepared on the basis of the aggregate of the marks obtained in the written and physical efficiency test. It appears from the scheme of the Rules that the marks of physical efficiency test serve out their purpose after the list is prepared for calling the candidates to interview; and hence, in the final merit list, only the marks obtained in the written test and interview are taken into consideration. It gets, per force, reiterated that as to what method is to be provided for the recruitment in question is required to be left to the discretion and wisdom of the authority concerned. For the present purpose, suffice is to say that the scheme of Rule 21 *ibid.* does not appear *ultra vires* the Constitution or any enactment.

11. The principles of interpretation in *M/s. Aphali Pharmaceuticals Ltd. (supra)* do not support the contentions sought to be urged in this matter. If at all, the principles therein, operate rather against the petitioners where the Hon''ble Supreme Court has said,-

...An explanation is different in nature from a proviso for a proviso excepts, excludes or restricts while an explanation explains or clarifies...

12. Proviso to sub-rule (6) of Rule 21 *ibid.*, is, obviously, meant to restrict the operation of the principal provision in sub-rule (6).

13. The case of *Narinder Pal Sharma (supra)* represents a peculiar position where nominations were called from various departments to fill-up 9 vacancies in Punjab Civil Services Executive Branch. The Rules did not provide for the procedure for selection; and when large number of candidates applied, the Chief Secretary, as the Head of Department evolved out a procedure, by an administrative order, where he awarded marks out of 70 for ACRs, 10 for experience and 20 for ability test in English and Punjabi. Then, the candidates who secured more than 33% marks in the ability test were recommended while leaving aside the marks of ACRs and experience. In the given scenario and after finding that some of the persons with higher marks in ACRs and experience had been omitted, the Hon''ble Supreme Court observed that the criterion adopted was unjust and unfair; and that the criterion must be to include for consideration all those who secured marks on all heads.

14. The situation in the present case is remarkably different. Herein, the written test, physical efficiency test and interview appear to be of different stages for the selections in question. The candidates securing a particular percentage of marks

[vide sub-rule (3)] in the written test are declared successful and enter the second stage so as to appear before the Physical Efficiency Board; and the candidates securing minimum percentage of marks in the physical efficiency test are considered eligible for selection. Then, in the third stage, the marks of written and physical efficiency tests are taken into consideration to prepare an intermediate merit for being called to interview. Of course, after interview, the final merit is prepared on the basis of the written tests marks and the interview marks but for these reason alone, it cannot be said that the physical efficiency test marks are considered redundant altogether. In fact, in order to be eligible for selection, a person is required to secure minimum 50% marks in the physical efficiency test. Thus, it is the minimum physical efficiency that has been provided for. It is difficult to draw a parallel of the present case with the decision in Narinder Pal Sharma (*supra*); and the directions therein do not, therefore, make out a case in favour of the writ petitioners.

15. It has been attempted to be argued on behalf of the petitioners that they had secured much higher marks in the written test than several other candidates and yet have been left out. This cannot be helped if they had failed to stand in the merit prepared at three times the number of vacancies on the basis of written and physical efficiency test marks. In our opinion, after uniform criterion has been adopted and employed, the petitioners cannot be considered carrying a legal grievance when they failed to secure the cutoff marks for interview.

16. Apart from the above, these writ petitions do not merit consideration for another strong reason that the petitioners seek to question the method of selections under the Rules of 1989 only after having taken a chance there under. The method of selection had been clearly provided in the Rules and was further distinctly stated in the syllabus and in the scheme of examination (at page 40 of the paper-book of CWP No. 5676/2012). The petitioners, having taken a chance while being aware and conscious about the procedure and method of selections, cannot be extended a liberty to question the same after they have been unsuccessful. For the reasons foregoing, these writ petitions fail and are dismissed.