

(1972) 11 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 5961 of 1970 connected with Civil Miscellaneous Writ No. 5347 of 1970

Jaipal Singh Naresh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 23-11-1972

Acts Referred:

Citation : (1973) 43 AWR 182

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Advocate : N.K. Rai, for the Appellant; S.C., R.A. Sharma and S.P. Kaushik, for the Respondent

Final Decision : Allowed

Judgement

R.L. Gulati, J.—The Petitioner is an Assistant Public Prosecutor in the Police Department of Uttar Pradesh. In July, 1969 a circular letter was issued by the Deputy Inspector General of Police, Uttar Pradesh Police Headquarters, Allahabad, inviting nominations of Assistant Public Prosecutors for promotion as officiating Public Prosecutors. In compliance with this circular, Assistant Public Prosecutors were nominated from various districts in August, 1969. Such nominated officers were interviewed by a Selection Committee. The interview was held in three batches. The first batch consisted of 33 candidates, who were interviewed on September 3, 5 and 6. The second batch was interviewed on September 25, 26 and 28 and the third batch was interviewed on October 16, 17, 19 and 20. The Petitioner was in the first batch and was interviewed on September 3, 1969. The result of the interview of the first batch was announced on September 9 and 23 persons were declared successful. The name of the Petitioner did not appear in the list of successful candidates. The results of the candidates in the second and third batches were announced on October 14 and 22 respectively. The Petitioner is aggrieved with the mode of selection and has arrayed as Respondents, all the persons who have been declared successful in

the three batches.

2. Mr. Shanti Bhushan, the learned Counsel for the Petitioner has challenged the selection on two grounds: (1) that the selection was contrary to the prescribed procedure for the selection of candidates, and (2) that an adverse entry in the Petitioner's character roll was considered by the Selection Committee while that entry was under appeal.

3. So far as the first point is concerned, the position is like this. The method of selection of Assistant Public Prosecutors for promotion to the rank of Public Prosecutors is contained in G.O. No. 4072/VIII-A-10 (13)/66 dated October 27, 1966, a copy of which has been annexed as Annexure II to the counter-affidavit of Sri Qamrul Hasan, who was a member of the Departmental Selection Committee. That G.O. says that the method of Selection of Sub-Inspectors for promotion to the rank of Inspectors laid down in G.O. No. 6379/VIII-A dated November 5, 1965 will be applicable to the selection of Assistant Public Prosecutors to the post of Public Prosecutors, both in the officiating and permanent vacancies. Copy of the G.O. dated November 5, 1965, relating to the promotion of Sub-Inspectors, is annexed as Annexure I to the counter-affidavit of Sri Qamrul Hasan. Since the question involved in this case relates to the interpretation of this G.O., it is necessary to reproduce its relevant portions.

Subject: Method of selection of Sub-Inspectors for promotion to the rank of Inspectors.

With reference to Deputy Inspector General of Police Hqrs. Letter No V-500-61, dated August 18, 1964, on the subject noted above, I am directed to say that after careful consideration of the recommendations contained in para 246 of the U.P. Police Commission report, 1960, the Governor in supersession of the provisions in the Police Regulations and in modification of the present orders on the subject, has been pleased to order that the procedure for selecting Sub-Inspectors for their promotion to the cadre of Inspectors shall henceforth be as follows:

A--The existing, quota system by which a certain number of Sub-Inspectors are at present selected from each Range should be abolished. Sub-Inspectors Civil Police who have put in not less than 10 years service as such and are below 50 years of age on the 1st day of January on the year in which the selection is made will now be eligible for promotion to the post of Inspectors. The Range Dy. Inspector General of Police will send to the Police Headquarters every year the following List:

(i) List of Sub-Inspectors Civil Police considered suitable for officiating promotion as Inspectors in order of seniority in a prescribed form, which may be laid down by the Police Hqrs.

(ii) Lists of Sub-Inspectors, Civil Police who are not considered fit for officiating promotion with brief reasons. The Departmental Selection Committee will

thereafter have a final consolidated list prepared of Sub-Inspectors Civil Police, considered suitable for officiating promotion arranged in the order of their seniority. From the final consolidated list, four times the number of Inspectors required to be approved for officiating promotion will be called for interview by the Departmental Selection Committee as constituted by Government vide G.O. No. 4381-A/VIII-A-288/1961 dated August 2, 1962. The assessment made by the Committee will be done by selection on merit, and a list of approval candidates will be prepared on which the names of selected candidates will be arranged in order of their seniority. Those who are borne on the approved list of an earlier year will rank above those selected and brought on an approved list of a later year

B--On the occurrence of substantive vacancies appointment to them shall be made from amongst the candidates on the approved list prepared under Para "A" on the basis of suitability. The claims of the candidates passed over will be considered in the subsequent selection. The selection will be made by the Departmental Selection Committee and there will be no further interview of the candidates for filling in the substantive vacancies.

C--....

In accordance with this G.O. the Assistant Public Prosecutors, who were considered to be unfit were weeded out. Thus, out of the total strength of 195 Assistant Public Prosecutors throughout the State, only names of 119 candidates, who were considered fit for nomination, were forwarded along with their service records. The Petitioner's name appeared in this list. As 25 vacancies were anticipated, 102 eligible nominated Assistant Public Prosecutors were called for interview by the Selection Committee. The Petitioner was among these 102 candidates. Out of these 102 candidates five did not turn up and the remaining 97 candidates were interviewed by the Selection Committee in three batches, as already stated. So far the procedure adopted was in accordance with the G.O. but the mistake made by the Selection Committee was that it announced the results of the interview of each batch separately so that the result of the first batch, in which the Petitioner appeared, was announced long before the second and the third batches were interviewed. This procedure is clearly contrary to the spirit of the G.O. It is clear that the intention behind the G.O. was to make selection on merits only. The test conducted by Selection Committee was competitive and not qualifying. In such a test, it is necessary that all the candidates, who compete must be adjudged together and a list in order of merit should be prepared of all the candidates and the required number of candidates should be taken from the list from top downwards. It is only in that way that comparative merit of the candidates can be assessed. If the selection is conducted in batches, the assessment of the merit of the candidates should be made only after all the batches have been interviewed. It is only then that the correct evaluation of the comparative merit of each candidate can be made. On the other hand, if the result of each batch is declared separately, it would

amount to assessment of merit inter se between the candidates of various batches and not an assessment of the entire body of candidates. The latter procedure is bound to give distorted result. Thus the first contention of the Petitioner is well founded and is upheld.

4. Coming now to the second contention, the selection committee while judging the merits of a candidate has to take into consideration besides other things his service record and naturally the adverse entries, if any, shall have to be taken into consideration. But an adverse entry, which is under appeal, cannot be regarded as final until the appeal is decided. Such an entry must, therefore necessarily be left out of consideration.

5. Now, in the instant case the Petitioner's grievance is that there was an adverse entry awarded to him on 21-5-1970. That entry was under appeal. Mr. Qamrul Hasan, a member of the Selection Committee, has stated in his counter-affidavit that the entire service record of the Petitioner was taken into consideration. That means that the entry of May 21, 1970 was also taken into consideration. This ought not to have been done.

6. Of course, there are other adverse entries in the Petitioner's service record, but it is not possible to say as to what extent the mind of the Selection Committee was influenced by the entry in question. In such a situation the decision of the Selection Committee stands vitiated as a whole.

7. For the reasons stated above, this petition succeeds and is allowed. The selection made by the Departmental Selection Committee is set aside. It would, however, be open to the Selection Committee to make a fresh selection in accordance with the law, keeping in view the observations made herein. There will be no order as to costs.