
(2012) 07 UK CK 0009

In the Uttarakhand High Court

Case No : Writ Petition No. 455 of 2012 (S/S)

Maresh Chandra Nagila

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 11-07-2012

Acts Referred:

Citation : (2012) 2 UC 1570

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Manoj Tiwari assisted by Sri Alok Mahra, for the Appellant; Ashish Joshi, Learned Standing Counsel for the State, for the Respondent

Judgement

Tarun Agarwala, J.—Director, Corbett Tiger Reserve, Ramnagar, Nainital issued an advertisement dated 31st October, 2011 inviting application for direct recruitment on 17 posts of Forest Guard. The process of the selection procedure is, that a candidate was required to give a physical examination, a written examination and, thereafter, a physical endurance test. The petitioner is a permanent resident of Berinag, District Pithoragarh and served in the Army for 20 years. The petitioner holding the requisite qualification, applied for the post of Forest Guard under the category of an ex-service man. The respondents constituted a Committee in terms of Lower Subordinate Forest Service Rules, 1980 which consisted of Director, Corbett Tiger Reserve as the Chairman of the Committee and Deputy Director, Corbett Tiger Reserve, Incharge, Director Corbett Wildlife Training Centre Kalagarh, Assistant Conservator of Forest and Employment Officer Ramnagar as a nominee of District Magistrate were other members of the Committee. This Selection Committee in its meeting dated 23rd February, 2012 took several decisions with regard to conducting the examination, etc. The Committee took a decision that the physical examination would be held on 15/16th March, 2012 and the written examination would be held on 18th March, 2012. Based on the aforesaid, decision, the petitioner applied and appeared in the physical examination and, thereafter, appeared in the written

examination. The petitioner qualified in the aforesaid examination. Written examination was scrutinized by the experts and the result was declared on 26th March, 2012. In the merit list, the petitioner's name was found as one of the successful candidates.

2. The Assistant Conservator of Forest, Corbett Tiger Reserve who was nominated as examination and evaluation officer issued a letter dated 24th March, 2012 to the Nodal Officer indicating the measures which were taken for conducting the written examination in a free and fair manner. In this letter, it was indicated that the written examination would be held in the presence of the faculty members and other staff of Govt. Post Graduate College, Ramnagar under the supervision of S.D.M., Tehsildar and Employment Officer Ramnagar. Assistance of local police was also taken. The Officer indicated that the examination was conducted in a free and fair manner and that there was no irregularity of any kind whatsoever.

3. Based on the declaration of the results, respondent No. 3 issued a letter dated 27th March, 2012 calling of the selected candidates to present themselves on 2nd April, 2012 for the physical endurance test. However, prior to the said date, a notification dated 31st March, 2012 was issued by the Deputy Director on behalf of the Director intimating the cancellation of the selection process. This notification was published in the newspaper on 1st April, 2012. Subsequently, on 11th April, 2012, the respondents issued a fresh notification intimating all the candidates concerned that a fresh physical and written examination would be held in May, 2012. The petitioner, being aggrieved by the cancellation of the selection process, has filed the present writ petition for quashing of the notification dated 31st March, 2012 by which the respondents has cancelled the selection process for the posts of Forest Guard and further prayed for a writ of mandamus commanding the respondents to continue with the selection process and take it to its logical end and give appointment to the successful candidates.

4. Heard Sri Manoj Tiwari, the learned Senior Counsel assisted by Sri Alok Mahra, the learned counsel for the petitioner and Sri Ashish Joshi, the learned Standing Counsel for the respondents State.

5. The learned Senior Counsel contended that from the information gathered under the Right to Information Act, no complaint was received with regard to the selection process and that the respondents admit that the selection process was carried out in a free and fair manner and that there was no extraneous consideration. The learned counsel submitted that there was no reason to cancel the entire selection and, it is apparently clear that there was no sufficiency of material for forming an opinion for taking the extreme steps for cancellation of the entire selection process. The learned counsel submitted that the cancellation of the selection has a serious consequence which may result in the denial of the petitioner of a public employment and, consequently, before taking such an extreme step, it was incumbent upon the respondents to form an opinion before for cancelling the selection process.

6. The respondents have filed a counter affidavit and admit that there was no irregularity in the selection process and that the examination was conducted in a free and fair manner. The respondents submitted that upon the declaration of the results, five complaints were received and the relevant points of the complaints were that the entry of serial numbers of the OMR sheets were done manually and that relatives of the Corbett Tiger Reserve staff have obtained top position in the select list and that irregularities were conducted by the office staff of the Establishment Branch to favour certain candidates.

7. In the light of the aforesaid complaints, cognizance was taken and, in order to ensure total transparency of the selection process, a detailed analysis of the result was conducted in which it was found that out of total 21 rooms where the written examination was conducted, of the selected candidates were relatives of the Corbett Tiger Reserve employees and that one female candidate was working as a Receptionist in the Corbett Tiger Reserve who stood first in the general category (woman). Thus, the selection of four relatives of the Corbett Tiger Reserve employees and the selection of one female candidate working as a Receptionist in the Corbett Tiger Reserve raised a question mark on the principle of transparency in the process of selection.

8. It was also contended that three of the relatives of the employees of the Corbett Tiger Reserve as well as the female candidate working as a Receptionist gave their examination in Hall-A which also raised a suspicion about the free and fair examination being conducted in this hall coupled with the fact that four of the wait listed candidates were also from Hall-A.

9. It was further contended that this pattern of selection of four relatives of the employees of the Corbett Tiger Reserve and one female candidate working as a Receptionist in the Corbett Tiger Reserve was found quite disturbing and, accordingly, a meeting of Senior Departmental Officers was convened on 30th March, 2012 in the office of the Director, in which, after a discussion, it was concluded that "inadvertent human error might have occurred during any stage of the selection procedure which has resulted in such pattern". On this basis, a decision was taken on 30th March, 2012 to cancel the selection keeping in view that genuine candidates should be selected which was essential for the demanding nature of service in Corbett Tiger Reserve as well as to maintain absolute transparency in the selection process. A decision was also taken that every candidate who had applied will again re-appear for the physical examination as well as for the written examination in May, 2012.

10. The sole stand of the respondents for cancellation of the selection process is the needle of suspicion based on the pattern of selection of relatives of the employees of the Corbett Tiger Reserve, especially, from one particular hall, namely, Hall-A and, in order to ensure transparency, steps for cancellation of the selection process was taken, The question asked is, whether such suspicion is sufficient to cancel the selection process? Can the selection process be cancelled on the basis of surmises and conjectures which is based on suspicion and which

has not been proved? Is suspicion, a sufficient indication for cancellation of the selection process when there is no allegation to the effect that these four relatives of the employees were given undue benefit or were given advantage by the examiners or those persons who were on duty in the examination hall?

11. These questions raised above are no longer *res integra* and has been settled by the Supreme Court in a catena of cases. Recently, the Supreme Court in *Girjesh Shrivastava and Others Vs. State of M.P. and Others*, , has held that participation of near relatives in the selection process was not such a factor as to vitiate the entire selection process. Even if, there were some illegal beneficiaries from the selection process, they should have been weeded out instead of striking down the entire selection process.

12. In the aforesaid case, appointment on the post of Samvida Shala Shikshak was advertised. Two public interest litigations were filed on the ground that no proper advertisement for reservation for ex-serviceman had been made and that near relatives appeared as candidate in the selection. The High Court quashed the selection process holding that there was a grave illegality in allowing near relatives to appear in the selection process. The Supreme Court after considering the matter held:-

From these facts it can be concluded that the alleged participation of near relatives in the selection process was not such a factor as to vitiate the entire selection process. Even if there were some illegal beneficiaries from the selection process, they should have been weeded out instead of striking down the entire selection process.

13. The Supreme Court held that in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all pervasive nature had undermined the selection process, was not sufficient to vitiate the entire selection process. The Supreme Court held that illegal beneficiaries should have been weeded out instead of striking down the entire selection process unless it was impossible to weed out the beneficiaries of one or other or irregularities or illegalities.

14. In *Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others*, , one Ravinderpal Singh Sidhu, Chairman, Punjab Public Service Commission had maneuvered the recruitment on extraneous consideration. Raids were conducted and about Rs. 16 crores were recovered from him and from his relatives. Based on the vigilance report, the services of 173 persons appointed pursuant to the selection process was terminated which termination was upheld by the Full Bench of the High. The Supreme Court after considering all the previous cases held:

Apart from inferences drawn on certain facts and in particular the circumstances enumerated by the High Court which have been repeated by the learned counsel for the State before us, it is difficult to accept that it was demonstrated by the State that it was absolutely impossible for it to separate the innocent people from the tainted ones.

15. And further went on to hold:-

If fraud in the selection process was established, the State should not have offered to hold a re-selection. Seniority of those who were re-selected ordinarily could not have been restored in their favour. Such an offer was evidently made as the State was not sure about the involvement of a large number of employees.

A distinction moreover exists between a proven case of mass cheating for a board examination and an unproven imputed charge of corruption where the appointment of a civil servant is involved.

Both the State Government as also the High Court in that view of the matter should have made all endeavors to segregate the tainted from the non-tainted candidates.

16. In Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, , the Supreme Court held:

Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.

17. The Supreme Court held that when the services of the employees are terminated for aiding and abetting corruption, the Court must satisfy itself that the condition thereof exists. The Court while setting aside the selection required the State to establish that the process was so tainted that the entire selection process was liable to be cancelled. The Supreme Court held that where it is found to be impossible or highly improbable to separate cases of tainted persons from those of non-tainted persons, only in such cases, the cancellation of the entire selection process could be justified. The Supreme Court consequently held that it was imperative for the State to gather sufficient material by a thorough investigation in a fair and transparent manner and that the illegalities committed must go to the root of the manner vitiating the entire selection process and that the selectees in majority must be found to be part of the fraudulent system or the system itself must be found to be corrupt.

18. In Pawan Kumar Singh and Others Vs. State of U.P. and Others, , pursuant to an advertisement for appointment on the post of Constable, a large number of persons were appointed and, subsequently, on complaints and investigation, the

appointments were cancelled on the ground of unfair selection and adoption of extraneous consideration. The cancellation of the selection process and the appointments were challenged in a bunch of writ petitions which was allowed by the Allahabad High Court holding that the inquiry only gave tentative findings of unfairness which was made without proper application of mind. The Court held:

The errors or irregularities alleged by the State with regard to overwriting; award of more than prescribed marks etc., are peculiar and unique to certain selectees or a group of them. Apparently, on the allegations made, these recruitments fall in the difficult second category. Therefore, the State is under law to satisfy itself objectively that it was not possible to segregate the tainted from the good on valid and plausible reasons and it has to discharge the further burden and demonstrate before the Court that it was impossible to do so. The burden is heavy, but, it has to be discharged.

19. In the light of the aforesaid, the Allahabad High Court allowed the writ petition and quashed the direction of the State Govt. for cancellation of the selection process and the appointments.

20. The principle carved out from the aforesaid decisions is that the cancellation of the recruitment process would be justified where the recruitment was made without following the due procedure prescribed under the rules, viz., recruitment which has been made without the mandatory advertisement or by overlooking the mandatory eligibility requirement. Further cancellation would be justified where different irregularities are peculiar or unique to one or a group of selectees which is widespread and interwoven that it is impossible to segregate the tainted from the untainted despite a conscious and bonafide effort.

21. In the light of the aforesaid, the petitioner has categorically come out with a specific case that recruitment process was followed by following the mandatory requirement of the recruitments Rules. There was an advertisement and the candidates appeared for the physical and written test. The respondents have themselves stated that the selection was conducted in a fair and proper manner and no irregularity was found or committed. There was no case of mass cheating nor there was any complaint that certain candidates were favoured. In spite of this clear admissions by the respondents, the ground taken for cancellation of the selection process is that the pattern of selection was found to be quite disturbing, namely, four relatives of the employees of Corbett Tiger Reserve and one female candidate working as a Receptionist in Corbett Tiger Reserve have been selected and that all these four persons had given their examination in Hall-A. Upon query, the respondents filed a supplementary counter affidavit indicating that in Hall-A, there were 121 examinees and in the remaining halls the number of candidates ranged from 38 to 84. Consequently, the supplementary counter affidavit of the respondents clearly indicates that maximum numbers of candidates were found in Hall-A. Further, the mere fact that four of the candidates were selected from Hall-A does not lead to an inference of malpractices or undue favour being made to these candidates. The contention

that a disturbing pattern of selection was found is patently erroneous. The respondents have given a specific reasoning for the cancellation of the selection process, namely, that there might have been inadvertent human error which may have occurred during any stage of the selection process which has resulted in such a pattern. Such reasoning is per se based on suspicion and not on any cogent proof. Such decision is per se patently erroneous quite apart from it being misconceived.

22. Suspicion, however, strong it may be cannot replace proof. On mere suspicion, no selection process can be cancelled. Except for suspicion, there is no shred of evidence connecting any of the selectees to the suspicion raised by the respondents. No inquiry has been instituted to find out the disturbing pattern as indicated by the respondents. To cancel the selection on the ground "that the result seems to be erroneous and is denying justice to the remaining candidates who have appeared for the examination" is patently perverse and based on surmises and conjectures. The contention that cancellation was done so as to maintain absolute transparency in the selection process is basically an eyewash.

23. The cardinal principle of governance in a civilized society based on the rule of law not only has to base it on transparency but must create an impression that the decision making was motivated on the consideration of probity. The respondent has to rise above the nexus of vested interests and nepotism and eschew window dressing. The act of governance has to with(sic) the test of judiciousness and impartiality and avoid arbitrary or capricious actions.

24. Thus, the court is of the opinion that the principle of governance has to be tested on the touchstone of justice, equity and fair play and, if the decision is not based on justice, equity and fair play and the respondents have taken into consideration other matters which on the face of it, may look legitimate but the reasons are not based on values but to achieve popular accolade, such decision cannot be allowed to operate.

25. This is precisely what the Court finds in the present case. A decision has been taken that there could have been inadvertent human error which might have occurred during any stage of the selection procedure which has resulted in such a pattern that four relatives of the employees of Corbett Tiger Reserve and one female candidate working as a receptionist in the said reserve were selected from one Hall-A and, consequently, to maintain absolute transparency in the selection process, a decision was taken to cancel the selection. Such reasonings are not based on cogent reasons but is based to achieve popular accolade which decision cannot be allowed to operate. The competent authority completely misdirected itself in taking such an extreme decision in cancelling the entire selection which was wholly unwarranted. There is no allegation that the employees of the Corbett Tiger Reserve have aided and abetted corruption in getting their kith and kin selected nor such proof has been made to that effect. The Supreme Court has clearly held in the case of Girjesh Shrivastava (Supra) that mere participation of near relatives in the selection process was not such a

factor to vitiate the entire selection process and even if there was some illegal beneficiaries in the selection process, the said candidates should have been weeded out instead of striking down the entire selection process. Nothing has been said that there were widespread infirmities which had undermined the (sic) process in its entirety nor it has been show that it was impossible to weed out the (sic) beneficiaries.

26. Consequently, the Court is of the firm belief that there is hardly any justification in law to cancel the selection process. The Court, finds that the respondents have allowed themselves to be carried away by irrelevancy, giving a complete go by to the contextual consideration and have misdirected itself in taking such an extreme and un-reasonable decision of cancelling the entire selection. In the light of the aforesaid, the notification dated 31st March, 2012 which was published in the newspapers on 1st April, 2012 cancelling the entire selection for the post of Forest Guard pursuant to the advertisement dated 31st October, 2012 is quashed. The writ petition is allowed and a writ of mandamus is issued to the respondents to conclude the selection process and give appointment to the successful candidates on the post of Forest Guard after holding the third test, namely, physical endurance test. In the circumstances of the case, the parties shall bear their own cost.