
(2005) 06 GAU CK 0031
In the Gauhati High Court

Md. Sahid Ali and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 24-06-2005

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 2 GLR 701 : (2006) 1 GLT 169

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Judgement

T. Vaiphei, J.—This writ petition is directed against the order dated 18.9.2002 issued by the Superintendent of Police, Tripura North, Kailashahar cancelling the offer of appointment issued in favour of the four petitioners for the post of constable under the Tripura Police Department and for issuance of a writ of mandamus directing the respondents to appoint them to the said posts.

2. The material facts of the case are not in dispute. To appreciate the controversy involved in the writ petition, a brief narration of the facts as gathered (from the pleadings of the parties, may be noticed at the very outset. The Government of Tripura constituted a Recruitment Board for filling up the vacant, posts of male constable and woman constable under the Tripura Police Department. Towards this end, an advertisement was published in the local papers (Annexure B) inviting eligible candidates for filling up the following vacancies for the posts of male constable, and female constables.

Name of post No. of vacancies Categories S.T./S.C./U.R./Ex-service Constable (Men) 518 160 82 266 10

3. Out of the aforesaid vacancies, 35% were reserved for working Home guards and 5% of the vacancies was reserved for the serving Civil Defence personnel while 2% of the said vacancies was reserved for Ex-servicemen. It would appear that during the said recruitment process, the Chairman of the Recruitment Board was further informed by the Police Head Quarter that the vacancies for both the

posts of male and female constable had been increased to 848, the break up whereof in respect of male candidate is indicated as follows:

Un-reserved- 450 Scheduled Caste 136 Scheduled Tribes 262 Total 848

Un-reserved Schedule Schedule Caste Tribes

Un-reserved	Schedule	Schedule	Caste	Tribes	From open market	263	81	155	
From Serving Home Guards	153	47	90	From Serving Civil Defence Personnel	22				
06	13	Ex-servicemen	12	02	04	Total	450	136	262

4. It may also be noticed that Home Guard candidates available against different categories of the vacancies are as follows:

Availability Vacancy H.Gs U.R. 240 153 H.Gs S.C. 27 47 H.Gs S.T. 54 90

5. From the above figures, it is apparent that the number of candidates in respect of Schedule Caste Home Guards and Schedule Tribes Home Guards available are less than the vacancies reserved for them.

6. It would further appear that as against the vacancies of 848 posts, the Recruitment Board prepared a select list of 848 candidates on the basis of merit from the lists sent by different Units. This list included the names of 153 serving un-reserved categories of Home Guards, 27 serving Schedule Caste Home Guards and 54 serving Schedule Tribe Home Guards. To make up the shortage of serving Schedule Tribe Home Guards, the Board selected candidates from the open market. On the basis of the select list prepared by the Recruitment Board, the position of the petitioners in the merit list is as follows:

__ Name of the petitioner Position in concerned Position in the list of 848 Merit list. Candidates. _____

_____ HG No. 892308 Sl. No. 104 Sl. No. 367 (petiti- oner No. 1)
Sahid Ali HG No. 932081 Sl. No. 105 Sl. No. 368 (Petiti- oner No. 3) Md. Abdul
Kader HG No. 892616 Sl. No. 85 Sl. No. 348 (Petiti- oner No. 2) Gopendra Nath
H.G. No. 902009 Sl. No. 116 Sl. No. 379 (Petiti- oner No. 4) Gour Mani Nath _____

7. After completion of the recruitment process, the Recruitment Board forwarded the select list as well as Minutes of the proceedings to the Home Department for approval of the Government. It may be noted that the selection as per advertisement was to be made State wise. However, the Home Department subsequently instructed the Police Headquarter to submit 848 selected candidates sub-division wise, which was apparently done by Police Headquarter. However, it transpires that the Home Department sent the approved list of only 468 candidates inclusive of woman candidates. Thereafter, the Police

Headquarter instructed the concerned District Superintendent of Police for issuing offers of appointment in respect of approved list of 468 candidates. In the meantime, it was detected that 53 candidates belonging to Schedule Tribes and Schedule Castes approved by the Home Department for appointment were taken from the list prepared from the open market and not from the serving Home Guard. The District Superintendents of Police were promptly informed not to call up those 53 candidates and not to issue any offer of appointment till the matter was clarified from the Government. While most of the District Superintendents of Police promptly kept in abeyance the appointment process, the Superintendent of Police, North had by then already issued offer of appointment. Thereafter, the Home Department forwarded a fresh approved list in respect of 425 male constables by cancelling the earlier list of 442 candidates. Since only 425 candidates of the merit list have been approved for appointment as against the vacancies of 848 posts proposed to be filled up earlier, naturally the posts reserved for unreserved home guards got reduced to 82. As the writ petitioners herein are in Sl. No. 104, 105, 85 and 116 in the merit list, they could not be accommodated against these 82 posts. Consequently, the offer of appointment issued to them came to be cancelled by the impugned order. Aggrieved by the same, they are approaching this Court by this Writ petition.

8. Mr. P.R. Barman, learned Counsel for the petitioners vehemently submits that the respondents have acted arbitrarily in not appointing the petitioners in terms of the select list and that no reason, much less valid reason, has been furnished by the respondents for cancelling the offer of appointment made to them. According to the learned Counsel, it is true that the persons in the select list have no indefeasible right to appointment, but at the same time, since such select list was made through a recruitment process in accordance with law, the petitioners can not be denied of appointment arbitrarily or without justifiable ground and that the ground shown by the respondents for cancelling of the offers of appointment made to the petitioners was no ground at all. By cancelling the offer of appointment made to the petitioners without any rhyme or reason, the respondents have reduced the recruitment process to a mockery. It is also submitted by the learned Counsel for the petitioners that once the vacant posts have been increased to 848 posts during the recruitment process in question, the respondents ought to have filled up those vacancies and if these increased vacancies were filled up, all the petitioners would have been accommodated to the posts. He, however, contends that even though it is the prerogative of the respondents not to fill up all the vacancies notified for recruitment, but if they choose not to fill up all such posts, it must be for bona fide reason. In other words, the contention of the learned Counsel for the petitioner is that in the absence of bona fide reason, the respondents cannot de-notify these vacant posts at their whims or caprices. In support of his various contention, learned Counsel for the "petitioners placed strong reliance upon the following decisions:

(1) R.S. Mittal Vs. Union of India (UOI),

- (2) Bhagwan Parshu Ram College and Another Vs. State of Haryana and Others,
- (3) Munna Roy Vs. Union of India (UOI) and Others,
- (4) Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another,
- (5) State of Tripura v. Nevedita Dutta (1996) 2 GLR 223.
- (6) Raman Singh Nath v. State of Assam (1994) 2 GLR 293.

9. Per contra, Mr. T.K. Ray, learned Advocate General submits that the petitioners were merely selected and have no indefeasible rights to be appointed to the posts so advertised. According to the learned Advocate General, when the respondents detected that 53 candidates of Schedule Tribes and Schedule Castes approved for appointment by the Home Department were found to have been taken from the open market, a decision was taken not to issue offer of appointment to the candidates, for which the concerned District Superintendent of Police were promptly informed, but the Superintendent of Police, North Tripura by then had already issued offers of appointment to some candidates including the petitioners. Moreover, contends the learned Advocate General, since the Government decided to approve only 425 candidates for appointment thereby cancelling the earlier approved list of 442 based on the merit list, the petitioners who are Sl. No. 85 and above in the merit list cannot be accommodated against the 82 posts proposed to be filled up, for which they can make no legitimate grievance. The learned Advocate General strenuously contends that only those candidates who were senior to the petitioner in the merit list were considered for appointment and, as such, the question of discrimination does not arise. In so far as the reduction of number of posts to be filled up from 848 to 425 is concerned, referring to the additional affidavit filed by the respondents, the learned Advocate General submits that such reduction had to be made since the budgetary provisions of 2002-03 permitted filling up of only 425 vacant posts of men constable, which, according to him, is a relevant consideration for not filling up all the vacant posts.

10. From the pleadings of the parties and upon hearing rival submissions advanced on behalf of the parties, the following undisputed facts have emerged. The selection process does not suffer from any illegality or irregularity. Secondly, if the entire vacancies of 848 posts are to be filled up from the select list prepared by the Recruitment Board, all the petitioners are entitled to appointment by virtue of the position secured by them in the merit list. The reason, which prompted the respondents in cancelling the offers of appointment, made to the petitioners and/or not completing the recruitment process is the inadvertent approval given to 53 candidates of Schedule Tribes and Schedule Castes. The first point for consideration in this writ petition then is whether irregularities in the selection of Schedule Caste and Schedule Tribe candidates can be a valid ground for cancelling the selection process in respect of other candidates who do not belong to Schedule Castes and Schedule Tribes.

11. In a catena of decision rendered by the Apex Court, the legal position with respect to the status of selectees in a selection process has now been well settled. Although a person on the select list has no vested right to be appointed to the posts for which he has been selected, the appointing authority cannot ignore the select list or on its whim decline to make appointment. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him keeping in view his merit position, then ordinarily, there is no justification to ignore him for appointment. There has to be justifiable reason to decline to appoint a person who has been in the select list. In *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, the Apex Court held that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category, thus, in pursuance of which, the Commission issued a notification, holds a written test, conducts interviews, prepare a select list and then communicates to the Government, the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. In other words, there must be a valid justification for denying appointment to a person duly selected in a selection proceeding. In the instant case, it is not the case of the respondents that the selection process in so far as candidates belonging to unreserved category suffer from the vice of irregularity or illegality. If the selection process of the writ petitioner does not suffer from any infirmity which is undoubtedly the case here, whether the extreme steps taken by the respondents in cancelling the offer of appointment made to the petitioner is warranted or justifiable is a matter which requires serious consideration. In this connection, it will be appropriate to detail the case of *Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another*, In that case, applications were invited for filling up of 134 posts of constables by CBI. The selection process consisted of a written examination and interview followed by a physical fitness test held. However, the selected candidates including the respondent were informed that the selection list had been cancelled by the Special Committee constituted to enquire into the allegation of favouritism and nepotism on the part of the officer in conducting the Physical Efficiency Test and irregularities committed during written examination. This is what the Apex Court says.

Considering the contentions on either side in the light of the materials brought on the record, including the report of the Special Committee there appears to be no scope for any legitimate grievance of any malpractices as such in the process of the written examination - either by the candidates or by those who actually conducted them. The Special Committee had extensively scrutinized and reviewed the situation by re-evaluating the answer-sheets of all candidates and ultimately found that except 31 candidates found to have been declared

successful though they were not really entitled to be so declared successful and selected for appointment, there was no infirmity whatsoever in the selection of the other successful candidates. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections is nothing but total disregard of relevancies, 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.

12. In the instant case also, as against the increased vacancies of 848 posts, select list was prepared by the Recruitment Board on the requisition of the respondents. Only 425 names in the select list came to be approved by the respondents for the simple reason that a mistake had crept in due to the inclusion of candidates belonging to Scheduled Castes and Scheduled Tribes from the open market. The number of those Scheduled Caste and Scheduled Tribe candidates are only 53. This was the reason, which apparently prompted the respondents to ignore the names of the candidates in the select list beyond 425. As noted earlier, this cannot be a valid ground for not giving appointment to the petitioners against whom there is not even a whisper of allegation concerning irregularities or illegalities in the selection process. It is the obligation of the Government to act fairly and not arbitrarily and not to nullify, without valid reason, the whole exercise of the selection process and tell the candidates when they complain that they have no legal rights to appointment. No Government in a State professing to be under the rule of law can adopt such course of action with justification. The irregularities or illegalities arising out of selection of 53 Scheduled Castes and Scheduled Tribes candidates cannot possibly set at naught the entire appointment process. This, without anything more, cannot be a ground for not filling up the entire vacancies requisitioned for recruitment by the Recruitment Board. Inevitably, I hold that the respondents have no justifiable ground for cancelling the selection of the petitioners.

13. The next point for consideration is whether there is a valid ground for not filling up the vacant post of 848. In this connection, the following observations of the Apex Court in *Shankarsan Dash Vs. Union of India*, are relevant:

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subash Chander Marwaha*, *Neelima Shangla v. State of Haryana* or *Jatinder Kumar v. State of Punjab*.

14. As noted earlier, in the instant case, in the advertisement, initially 518 posts of male constable were notified for recruitment, which subsequently got increased to 848 posts vide paragraph 7.2(iii) of the Affidavit in opposition. The Recruitment Board was duly requisitioned by the respondents to select 848 candidates on the basis of merit from the lists sent by different units. In the result, the share of the unreserved serving Home guards got increased to 153 posts. Since the petitioner Nos. 1, 2, 3 and 4 are in Sl. Nos. 104, 85, 105 and 116 respectively in the select/merit list prepared by the Recruitment Board, they can be accommodated within 153 posts earmarked for the unreserved serving Home guards. I have made a desperate attempt to find out the possible reason for reducing the number of posts to be filled up from 848 posts to 425 posts in respect of male constable. But no such reason, much less, valid reason, is discernible from the pleadings of the respondents. A last ditch attempt is made by the respondents in the additional affidavit filed on 18.2.2005, that too, on my query. In paragraph 3 of the said additional affidavit, it was vaguely suggested by the respondents that the Government examined the matter and decided that 442 vacant posts of male constables male and 26 woman constable at the relevant time would be filled up as the budget provisions during 2002-03 permitted filling up of only those vacancies. It is not the case of the respondents that the remaining vacancies beyond 442 vacant posts are not sanctioned posts. Under the circumstances, I failed to understand as to how absence of budgetary provisions can be a ground for not filling up the said posts. No doubt merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is also no doubt that the decision not to fill up the vacancies has to be taken bona fide and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review. See *Food Corporation of*

India v. Bhanu Lodh (2005) 3 SCC 629.

15. From the above, it is obvious that the decision to fill up or not to fill up a post is a policy decision, but at the same time, if the decision not to fill up the posts is found to be arbitrary and without any valid reason, this Court in exercise of its writ jurisdiction will not hesitate to interfere with such a decision. As noted earlier, since the respondents in the instant case cannot make out a valid reason for not filling up the vacancies beyond 425 posts, I am led to hold that the decision not to fill up those vacancies has not been taken bona fide, and the same is arbitrary and irrational. The action of the Government in not approving entire select list for 848 posts is, therefore, unsustainable. The Government itself had asked a list of 848 and the Recruitment Board had sent a select list of 848 candidates. It could not have been approved in part or rejected in part without valid justification.

16. For the reasons and conclusions stated in the foregoing, the impugned order dated 18.9.2002 cancelling the offers of appointment made to the petitioners for posts of male constable issued by the Respondent No. 4 is hereby quashed. Let a writ of mandamus issue directing the respondents to issue appointment orders in favour of the four petitioners herein subject to verification by C.A., etc., and of their fulfilling other usual formalities, within a period of two months from the date of receipt of this judgment. However, in view of the long lapse of time, since the commencement of the recruitment process and with a view to prevent a floodgate of litigation from other candidates, who have not filed any writ petition till now, this direction should not be treated as precedent. The writ petition stands allowed. No costs.