

(2014) 08 UK CK 0047

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 879 of 2014

Mukesh Prasad

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 311

Citation : (2014) LabIC 4224

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Suman Doval, Amir Kukshal, D.C.S. Rawat, Sandeep Tiwari and Karan Anand, Advocate for the Appellant; Rakesh Thapliyal, Asst. Solicitor General, B.P. Mer and H.S. Rawal, Advocate for the Respondent

Judgement

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Sudhanshu Dhulia, J.—All these writ petitions pertain to similar issue, hence are being disposed of by this common judgment. The petitioners before this Court were initially appointed as Constables in Indo Tibetan Border Police (hereinafter referred to as "ITBP"). A promotional exercise was conducted by ITBP for the promotion of Constables to the post of Head Constables in which the present petitioners participated. The promotions were to be made on a total number of 120 posts. The examination was held in the months of January and February 2011 at Dehradun. In the said selection process 2 Constables were found medically unfit and 82 Constables were selected for promotion. Subsequently, they were given appointment letters.

2. Thereafter there was some complaint regarding the entire selection process such as favoritism, nepotism and bribery etc. in the examination. On the basis of the said complaint, the respondents conducted preliminary departmental enquiry and thereafter Central Bureau of Investigation (in short "C.B.I.") also conducted an enquiry in the matter and on the basis of the reports, the respondents came to the conclusion that the appointments of the petitioners were wrong and now

they were cancelled vide order dated 05.12.2011. In fact the entire selection was cancelled. All the Constables, who are thereby reduced in rank, filed writ petitions before this Court. Apart from them, the other groups of petitioners have filed writ petitions before Delhi High Court, Orissa High Court and Madhya Pradesh High Court as well. In the writ petition (WPSS No. 1840 of 2011) filed before this Court, the same was allowed vide order dated 28.02.2012 (reported in 2012 Lab IC 3016 (Utr)) by the learned single Judge of this Court. This Court has been informed that the special appeal has been filed against the said order, which is still pending before this Court. The operative portion of the order dated 28.02.2012 reads as under:--

"In the light of the aforesaid, the court is of the opinion that the impugned order is clearly violative of the principles of natural justice. Valuable rights had accrued upon the petitioners and such valuable rights cannot be denied without complying with the principle of natural justice. The impugned orders, in the light of the judgments of the Supreme Court as stated aforesaid, is clearly violative of Article 14 of the Constitution of India and cannot be sustained.

In the result, the writ petitions are allowed. The impugned orders dated 2nd December, 2011 and 5th December, 2011 passed by the Directorate Indo-Tibetan Border Police Force, Ministry of Home, Government of India and Deputy Inspector General (Administration) Headquarter Northern Frontier, Dehradun, Uttarakhand respondent Nos. 2 and 5 respectively are quashed. The writ petitions are allowed. It is open to the respondents to proceed in accordance with law."

3. On similar footing, a writ petition was also allowed by the Delhi High Court vide order dated 10.10.2012 (in W.P.(C) No. 8646 of 2011). The observation of the Delhi High Court reads as under:--

"15. At the same time, the right of the respondents to proceed in accordance with law and to take action against all persons whose culpability has been fixed by the Central Bureau of Investigation or otherwise found involved in the illegalities in the Limited Departmental Examination cannot be curtailed. Given the charge-sheet filed by the Central Bureau of Investigation and the nature of violations, a considered view is required to be taken by the respondents who may even reiterate the previous decision to cancel the entire examination. However, all action and decisions would require to abide by law so far as the petitioners are concerned and place them in a position similar to those of the writ petitioners who filed the writ petitions in Madras High Court and Orissa High Court.

16. In view of the above, it is directed as follows:--

(i). The orders dated 2nd December, 2011 and 5th December, 2011 are hereby set aside and quashed.

(ii). The respondents shall issue appropriate formal orders with regard to the

service of the petitioners placing them identically to those persons who filed the writ petitions in the High Court of Uttarakhand.

(iii). It is made clear that the respondents shall be at liberty to proceed in the matter in accordance with law and take such actions as deemed fit and proper with regard to the petitioners.

(iv). We also make it clear that it shall be open to the respondents to proceed in accordance with law so far as the remaining eleven persons who took the same examination and have been similarly dealt with as the petitioners as well in order to minimize the litigation."

4. Consequent to the observations of Uttarakhand High Court and Delhi High Court, the respondents in case wanted to proceed against the petitioners, should be proceeded in accordance with law, as required under the law.

5. According to the petitioners, after ten months some of them received show-cause notices by the appointing authority as to why they should not be reverted to which they replied. Meanwhile, however, the order dated 17.06.2014 (which is impugned in the present writ petitions) has been passed by which they have been reverted to Constables.

6. In fact what has happened is that out of 82 selected candidates, it has been found in a C.B.I., enquiry that 18 candidates were genuinely promoted. For the rest different degree of violations is alleged, such as the more time given in the typing test and written examination. There being alteration or modification in making and in some cases candidates having failed in typing and written test and in another case it has been found that four persons had given bribe to the concerned Officer in order to procure promotion.

7. Be that as it may, for those category of cases they have been reverted and are presently are before this Court. The petitioners claim to be non combatant service in the paramilitary force, hence they claimed to be civil servants, and therefore, protection of Article 311 of the Constitution of India is necessary in their case.

8. Learned counsel for the petitioners Mr. Doval and Mr. Sandeep Tiwari submits that before any major penalty of dismissal, removal or reduction can be imposed on a civil servant, he may be given an opportunity of hearing, which has to be done in an "enquiry". In other words they claim protection in view of Clause (2) of Article 311 of the Constitution of India which reads as under:--

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State:

(1)

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of

those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply:

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry."

9. The "enquiry" referred above in Article 311 has to be a departmental enquiry, in fact, the departmental enquiry has technically not even commenced as yet, as admittedly no charge-sheet has been given to any of the petitioners. The enquiry on which the reliance has been placed by the respondents while reducing the rank of the petitioners, if the Enquiry Officer of C.B.I., which has been done by the C.B.I., in the criminal matter which is against some of the Officers and also some of the petitioners. Clause (2) of Article 311 of the Constitution of India an "enquiry" would mean "a departmental enquiry". This has not been done as yet.

10. It is true that Clause (2) of Article 311 of the Constitution of India does permit the respondents to dispense with the enquiry and straightway terminated the service or reduce them in rank, but this can be done in only three conditions.

(a) where the conduct of the Civil Servant is such which has led to his conviction on a criminal charge or

(b) where the authority empowered to dismiss or reduce Civil Servant in rank is satisfied that "for some reason, to be recorded by that authority in writing" it is not reasonably practicable to hold such an inquiry.

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such an enquiry.

11. In case the respondents have come to a conclusion that for some plausible reason which they must show in writing such an enquiry is not practicable, they must assign reason and this they have clearly not done. In fact what has happened is that the petitioners have been reduced in rank without due enquiry or even dispensation of such an enquiry in accordance with law. The impugned order is, therefore, clearly violative of Article 311 of the Constitution of India.

12. In view thereof, the writ petitions are allowed. The impugned order dated 17.06.2014 is hereby quashed.

13. Having made the above determination, the respondents always at liberty to proceed in accordance with law against the petitioners in letter and spirit of Article 311 of the Constitution of India. In case the respondents finally decided to proceed against the petitioners in accordance with law, they must expedite the proceedings as considerable delay has already been caused in the matter.