

(2017) 02 RAJ CK 0101
In the Rajasthan High Court
Case No : 9794 of 2016

Rajesh Kumar Gaur S/o Shri Badri Narayan Gaur, & Ors.	APPELLANT
Vs	
The State of Rajasthan, through the Secretary, & Ors.	RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

[Constitution of India](#), [Article 309](#) -
Recruitment and conditions of service of persons serving the Union or a State

Citation : (2017) 02 RAJ CK 0101

Hon'ble Judges : Nirmaljit Kaur

Bench : SINGLE BENCH

Advocate : S.P. Sharma, Rakesh Arora, Narpat Singh, Bharat Devasi, Madhu Lal Devra, Vineet R Dave, Tarun Joshi, Khet Singh

Final Decision : Dismissed

Judgement

1. All the abovementioned writ petitions shall stand decided by this common order as the issue involved is identical.
2. For convenience, the facts are being taken from SB Civil Writ Petition No. 8605/2016 (Pola Ram Vs. State of Rajasthan & anr.)
3. The petitioner has assailed the action of the respondent Commission terming it to be arbitrary in the matter of direct recruitment to the post of Rajasthan Administrative Services and various Subordinate Services in pursuance to the advertisement dated 24.06.2013. These writ petitions are filed by Ex-Servicemen.
4. As per the first argument, the Commission ought to have called three times the number of candidates for interview. All the petitioners are Ex-Servicemen. 72 posts were kept reserved for the Ex-Servicemen out of total posts advertised vide advertisement dated 24.06.2013. As per the ratio 1:3 and the criteria to be adopted for calling the candidates for interview, the RPSC should have declared 216 candidates qualified for the interview but the RPSC declared only 145

candidates as qualified for interview in RAS/RTS Posts by applying the ratio of 1:2. It was contended that the same is contrary to their own stand. As per the information provided under the Right to Information Act vide communication dated 19.03.2014 placed on record as Annexure 5, the candidates to be declared successful for the final selection have to be three times the vacancies available and required to be fulfilled.

5. The second argument raised by the learned counsel for the petitioner is that the relevant Rules require 12.5% of the seats out of the total posts advertised to be reserved for Ex-Servicemen. Out of 664 posts, 81 posts should have been kept reserved for Ex- Servicemen but the RPSC has only reserved 72 posts.

6. Thirdly, some of the candidates for instance namely Himmat Singh Rao, Inder Singh Chouhan have been allowed to participate in the interview under the Ex-Servicemen quota although they are not Ex-Servicemen under the Rules of 1998 inasmuch as they were not discharged before the last date of submitting their application forms and these people do not fulfill the definition of Ex-Servicemen under the Rajasthan Civil Services (Absorption of Ex-Servicemen) Rules, 1988.

7. Further, some of the Ex-Servicemen are not from the State of Rajasthan and, therefore, they should be disqualified.

8. Reply has been filed by the respondent No.2. As per the said reply, experience has shown that qualifying large number of candidates for personality and viva voce test becomes counterproductive inasmuch as respondent Commission is not able to devote adequate time to assess the ability of a candidate in the personality and viva voce test. In the circumstances, the respondent Commission made inquiries with regard to practice adopted by UPSC in calling the candidates for interview in Civil Service Examination. The respondent Commission also sought information from various State Service Commissions with regard to number of candidates called for interview by it. The respondent Commission came to know that Union Public Service Commission in Civil Services Examination called candidates in the ratio of two times the number of vacancies so that adequate time can be given to each candidate for assessing his/her ability. Hence, in the meeting of Full Commission, a decision was taken that now henceforth, the respondent Commission too shall call candidates for personality and viva voce test in the ratio of two times the number of vacancies, so that a proper assessment at the personality and viva voce test can be made by the respondent Commission for selecting the best. Rule 15 of the Rules of 1999 gives discretion to the Commission to call candidates for personality and viva voce test who have obtained the minimum qualifying/cut-off marks in the main examination as may be fixed by the Commission in its discretion. As the respondent Commission is a constitutional body entrusted with the task of holding recruitment to the civil posts in the State, it is required to discharge its constitutional obligation in a fair manner and being an expert body, the Commission in its discretion decided that candidates to be called for personality and viva voce test should be within manageable time limit.

9. Learned counsel for the parties were heard at length.

10. The State Government has enacted the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination) Rules, 1999 in exercise of its power conferred by the proviso to Article 309 of the Constitution of India. As per the scheme of examination, at first a common and combined pre written examination is required to be cleared by the candidate. Thereafter, a common and combined main written examination would have to be cleared by a candidate and thereafter a candidate has to face and clear interview also. On conclusion of this process, a common combined merit list is required to be prepared for all the administrative and subordinate posts and a successful candidate is offered appointment as per his/her merit position.

11. The respondent No.2 issued an advertisement dated 24.06.2013 inviting applications for direct recruitment to the post of Rajasthan Administrative Services as well as various Subordinate Services mentioned in the advertisement. As per the said advertisement, 72 posts were kept reserved for Ex- Servicemen out of the total posts advertised. The petitioner being eligible applied for the same under the Category of Ex- Servicemen. He cleared the preliminary examination and as the ratio of 1:15, qualified for the RAS/RTS Combined Competitive Main Examination, 2013 under the Category of Ex-Servicemen. The result of the Main Examination was declared by the RPSC, however, the petitioner was shown as not qualified for interview as he fell short of cut-off marks in the Main Written Examination for the posts reserved for Ex-Servicemen candidates inasmuch as 145 candidates were called for interview against 72 reserved posts for this Category and all the petitioners herein got less marks than the last candidate called for the interview. Meaning thereby, the candidates called for the interview were twice the number of the vacancies instead of three times. The grievance of the petitioner is that in case thrice the number of vacancies were called for interview, he would have come in the select list for the interview.

12. This argument of the petitioner has no merit. A decision was taken by the Commission in the meeting of Full Commission that henceforth, the respondent Commission shall call candidates for personality and viva voce test in the ratio of two times the number of vacancies, so that a proper assessment is made. This is the last leg of the selection process i.e. after the Preliminary and the Main Examination. In the Main Examination, the ratio is 1:15. This being the third and final stage of interview, wherein each candidate has to be assessed separately, it was thought proper and the respondent Commission in its own discretion after seeking information from the various State Commissions with regard to number of candidates called for the interview including the Union Public Service Commission that the two times the number of vacancies was appropriate which would allow the Selection Committee adequate time for each candidate to assess his/her ability. The information as sought by the petitioner dated 12.07.2016 under the Right to Information Act that the Commission shall call three times the

vacancies as provided to the petitioner was with respect to the RAS Main Examination of the year 2012, whereas, the present Examination is of the subsequent year i.e. 2013 by which time the Commission had decided to restrict the candidates for interview to the ratio of 1:2. In fact, the learned Single Bench of this Court in Civil Writ (CW) No.7905/2016 (Santosh Kumari Kharadi Vs. Rajasthan Public Service Commission, Ajmer through its Secretary) while deciding with respect to the same selection process, dismissed the writ petition seeking a direction to call three times the number of candidates in the interview for the posts advertised by observing as under :

"It is a well settled principle that courts should not interfere in a policy decision taken until and unless, there is no rationale or the same is based on extraneous consideration. The court can interfere only if the policy decision is arbitrary, discriminatory or malafide. In the instant case, the rationale of inviting two times the number of candidates for interview does not suffer from any infirmity. 20028 candidates have to be interviewed and a reasonable time has to be spent on each candidate. The candidates have already faced a process of selection by appearing in a written examination and meritorious candidates have been called for interview. The petitioner without challenging the decision of the RPSC would have no locus as no basic right has been infringed.

In view of above, no interference is called for in the instant petition for writ. Consequently, the same is dismissed."

13. The said order was never challenged and is stated to have attained finality. This Court cannot adopt a different yardstick qua a different Category qua the same selection process with respect to the same issue regarding number of candidates to be called viza- viz. the available vacancies.

14. The Commission while exercising its discretion on sound and justifiable principles decided to call candidates for interview in the ratio of two times the number of vacancies and not more, so that the Commission may make proper assessment of the candidates by giving adequate time to each candidate called for personality and viva voce test and the said policy decision under no circumstances can be branded as arbitrary because the discretion exercised by the Commission is based on sound legal principles enunciated by the Hon'ble Supreme Court in the case of Ashok Kumar Yadav Vs. State of Haryana reported in 1985(4) SCC 417 as under:

"Where there is a composite test consisting of a written examination followed by a viva voce test, the number of candidates to be called for interview in order of the marks obtained in the written examination, should not exceed twice or at the highest, thrice the number of vacancies to be filled. If a viva voce test is to be carried out in a thorough and scientific manner as it must be in order to arrive at a fair and satisfactory evaluation of the personality of a candidate, the interview must take anything between 10-30 minutes. In the circumstances, it would be impossible to carry out a satisfactory viva voce test. If a large number of

unmanageable candidates are to be interviewed, the interviews would then to casual superficial and sloppy and the assessment made at such interview would not correctly reflect the true measure of the personality of the candidate. Moreover, such a course would widen the area of arbitrariness for even a candidate who is very much lower down in list on the basis of marks obtained in the written examination can come within the range of selection if he is awarded undue marks at the viva voce examination."

15. Learned counsel for the petitioner also submitted that like the petitioners, one Babu Ram belonging to the Ex-Servicemen Category, was also declared as not qualified by the RPSC. He, along with other candidates of Ex-Servicemen Category, approached the Apex Court by way of Writ Petition (Civil) No.140/2014 and the Apex Court by an interim order dated 11.05.2015 directed the RPSC to interview all the litigants who had approached the Hon"ble Apex Court with a direction not to publish the results without the leave of the Court and that the learned Single Bench of this Court after taking into consideration the same provisionally allowed the petitioners to participate in the interview, which they have done and the results are kept in sealed cover. Therefore, the respondents should have no problem in declaring the said results and thereby allowing them in case they are in merit. However, the reliance placed by the learned counsel for the petitioner on the interim order dated 11.05.2015 granted by the Apex Court in the case of Babu Ram Jakhar's case (supra) is not applicable to the facts of the present case. The prayer in the said writ petition was for lowering the cut-off marks for the Ex-Servicemen Category and the petitioners in that case case were aggrieved by the action of the RPSC in not fixing a separate cut-off for the Ex-Servicemen in the Rajasthan State and Sub- Ordinate Services Joint Competitive Exam, 2007, resulting in short listing of only about 5 Ex-Servicemen as against huge number of available vacancies. In fact, the petitioners in the present case were allowed to participate in the interview provisionally on the basis of the interim order passed by the Apex Court in the case of Babu Ram Jakhar as at that point of time, the copy of the Writ Petition (Civil) No. 140 of 2014 before the Apex Court could not be brought to the notice of this Court. In case the copy of the writ petition was brought to the notice of the Court at the time of passing of interim order, the learned Single Bench would have had the advantage of saying that the issue before the Supreme Court was totally different. Hence, the petitioner cannot be allowed to take advantage of the interim order by concealing the correct facts. A perusal of the said petition shows that the issue before the Apex Court is totally different.

16. The plea of the petitioners that the argument to call excess number of candidates is cumbersome and time bound appointment becomes a difficult process was no more available to the respondents as the petitioners had already participated in the interview in pursuance to the interim order and that the exercise of devoting adequate time to each candidate had already been done, has to be rejected in view of the fact that only 31 petitioners are before this Court and those who have been allowed to participate in the interview in

pursuance to the interim orders as over and above the 145 candidates. In case they are considered, there will be no justification for leaving out and depriving the remaining candidates who would otherwise have been called for interview in case ratio of 1:3 was to be applied and who knows they may be even more meritorious than the petitioners. Moreover, as noted above, the petitioners cannot take advantage of the interim order which was passed on account of interim order passed in Babu Ram Jakhar's case pending before the Supreme Court. The said case before the Supreme Court was totally different and on different issues. This has now been disclosed after perusal of the copy of the writ petition.

17. The next argument that only 72 posts have been reserved for Ex-Servicemen, whereas, it should have been 81 as per 12.5% reservation too is without merit. The reservation is admittedly department-wise. A perusal of the bifurcation of the posts shows that 12.5% reservation is indeed done department-wise. For instance, as evident from the said list, 133 posts are reserved for the Department of Rajasthan Sales Tax Subordinate Services. As per 12.5% only 16 posts are available for Ex-Serviceman. Similarly, 238 posts are of Social Justice and Empowerment Subordinate Services (Social Security Officer) and as per 12.5%, 28 posts are reserved for Ex-Servicemen and these posts are reserved by rounding off the bifurcation. In case, the round off is less than 0.5, it would be considered as zero and if it is more than 0.5, it became one and it is on account of this fact that out of 644 posts, only 72 posts fall in the Ex-servicemen Quota having been reserved department-wise in accordance with 12.5%. For convenience, the relevant extract of the bifurcation list of reserved seats department-wise is reproduced below: "VERNACULAR MATTER OMITTED"

18. Hence, only 72 vacancies fall in the quota of Ex-Servicemen and not 81 as stated.

19. The argument that some of the candidates who were selected do not belong to the State of Rajasthan too has no merit. No Rule, provision or law has been shown to this Court and neither is anything mentioned in the advertisement to show that only Ex-Servicemen of the State of Rajasthan were eligible.

20. The last submission that some candidates who do not fall under the Category of Ex-Servicemen have been included in the select list, is pre-mature. Learned counsel for the respondents has made a statement at the Bar that no candidate who does not fall under the definition of "Ex-Servicemen" shall be appointed.

21. When the arguments were almost over, learned counsel for the petitioners submitted that reply has been filed only in one case and no reply has been filed in other cases. Suffice it to say that the said argument was raised only after the arguments were almost over and the Court had clarified its stand that there is no merit in these petitions.

22. No other ground was raised.

23. In view of the above discussion, the writ petitions are dismissed being devoid of merits.