

(2014) 02 RAJ CK 0100
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6637/2013

Ram Niwas and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 02 RAJ CK 0100

Hon'ble Judges : Govind Mathur, J; Atul Kumar Jain, J

Bench : Division Bench

Advocate : J.K. Kaushik, Advocate for the Appellant; Kamal Dave, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. By the judgment dated 05.03.2013, the Central Administrative Tribunal, Jodhpur Bench, Jodhpur dismissed four Original Applications preferred by the petitioners to challenge the order dated 13.12.2011, passed by the Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur cancelling the written test conducted for selection to the posts of Goods Guard and also the notification dated 14.12.2011, initiating fresh process of selection for appointment to the posts aforesaid.

2. The factual matrix necessary to be noticed is that the Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur by a notification dated 01.09.2010 invited applications from the eligible candidates to fill up 29 posts of Goods Guard in the pay scale of Rs. 4500-7000. The posts advertised were relating to the quota meant for in-service candidates working in different categories. The petitioners in pursuance to the advertisement aforesaid submitted applications and faced the written test conducted by the respondents. The result of the written test was declared on 13.04.2011. By another order dated 13.12.2011, the result of the written test was cancelled assigning the reason of having grave irregularities in the test concerned. A notification dated

14.12.2011 then was issued for initiating fresh process of selection.

3. While giving challenge to the order dated 13.12.2011 and the notification dated 14.12.2011 by way of filing four different Original Applications before the Central Administrative Tribunal, Jodhpur Bench, Jodhpur, the petitioners contended that the cancellation of the examination is arbitrary and as such, in violation of the Articles 14 and 16 of the Constitution of India. It was asserted by the petitioners that no just reason was available with the respondents to cancel the entire process of selection. The respondents contested the Original Application with submission that the written examination including the process of evaluation was suffering from severe irregularities, therefore, the same was cancelled. Before cancellation of the examination, an enquiry was conducted by a competent vigilance team and that noticed gross irregularities in respect of the process of selection at large level. The report of the vigilance was also produced before the Tribunal for perusal.

4. Learned Tribunal after considering the arguments advanced and also the vigilance report made available by the counsel for the respondents arrived at the conclusion that the sanctity of the examination was totally eroded due to commission of large scale irregularities. The Tribunal, thus, dismissed the Original Applications and directed the respondents to conduct written test for 29 vacancies determined earlier and further for the vacancies came into being subsequently.

5. In this petition for writ, while challenging the judgment impugned, the argument advanced by learned counsel for the petitioners is that the Tribunal failed to appreciate that the process of selection, if was suffering from irregularities due to unfair means adopted by few of the participants, then there was no need to cancel the entire examination. To substantiate the contention, reliance is placed upon a judgment of Hon''ble Supreme Court in Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, .

6. While opposing the petition for writ, Mr. Kamal Dave, learned counsel for the respondents, submits that the instant one is not a case of extending some extra benefit or using of unfair means by some of the persons, but of the irregularities at large. He has made available the vigilance report submitted by the committee concerned for our perusal.

7. From perusal of the report, it reveals that the irregularities took place in entire process of selection at different levels. The marks too were awarded to undeserving persons. The instant one is not a case where few persons availed benefit due to some irregularity or some minor wrong took place in the process of selection.

8. So far as the judgment cited by learned counsel for the petitioners rendered by Hon''ble Supreme Court in Union of India & Ors. Vs. Rajesh P.U. Puthuvalnikathu & Anr. (supra) is concerned, that is not at all applicable in the present set of circumstances. In the case aforesaid, a process of selection was

conducted by the Central Bureau of Investigation for filling up 134 posts of Constables Male/Female (Executive) and 5 male Constables (Motor Transport) in various branches of its offices all over India. The entire process of selection was completed and a select list was declared. The persons selected were subjected to medical examination and at that stage, few non-selected persons approached the Central Administrative Tribunal with allegation that the process of selection was suffering from vice of nepotism, thus, deserves to be quashed. A reply to the Original Application preferred by the non-selected candidates was filed on behalf of the Central Bureau of Investigation with assertion that the entire selection was fair and was conducted in accordance with law. However, during the pendency of the Original Application, a committee was also constituted to verify the alleged irregularities. The committee found that 31 persons who were not deserving too were selected. Looking to the findings given by the committee, the Central Bureau of Investigation at its own cancelled the process of selection. As a consequence to the cancellation of the process of selection, the Original Applications preferred by the non-selected incumbents were dismissed by the Central Administrative Tribunal as becoming infructuous. The selected candidates then preferred Original Applications before the Central Administrative Tribunal challenging the decision of the Central Bureau of Investigation for cancellation of the process of selection. The Central Administrative Tribunal dismissed the Original Applications by holding that the decision was taken by the Central Bureau of Investigation after examining a report of the enquiry committee. The decision given by the Central Administrative Tribunal was subject matter of a petition for writ before Hon''ble High Court of Kerala that examined the entire record of the case including the report given by the enquiry committee. After examining the record, the High Court arrived at the conclusion that as a matter of fact, the process of selection in totality was not bad, but certain undeserving candidates were selected. Hon''ble High Court in this background considered it appropriate to cancel the examination of 31 candidates, who were not deserving and maintained the selection of remaining candidates. The judgment given by Hon''ble Kerala High Court came to be affirmed by the Hon''ble Apex Court.

9. In the instant matter, irregularities pointed out by the vigilance committee are not relating to few persons, but at various levels in the entire process. It is not a case where few persons have received benefit and those persons could have been identified. In the instant matter, the entire process of selection suffers from vice of mismanagement giving rise to a bad selection. In such circumstances, it is not possible to specify few persons to be excluded from the process and to give way to other selected incumbents.

10. We are of the view that looking to the grave irregularities noticed by the vigilance committee, the only right course available was to cancel the examination and that has rightly been done by the respondents. The decision of the respondents, as such, does not suffer from any wrong. Learned Central Administrative Tribunal after examination of the entire record rightly affirmed the decision of the respondents.

11. No interference, as such, is desirable with the order impugned. The writ petition is dismissed, accordingly.