
(2012) 02 UK CK 0055

In the Uttarakhand High Court

Case No : Writ Petition No. 1840 (S/S) of 2011

Satender Nath Rai and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 1 UC 499

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : V.K. Singh, assisted by Mr. Chetan Joshi, for the Appellant; V.B.S. Negi, Asstt. S.G., for the Respondent

Judgement

Tarun Agarwala, J.—In this batch of writ petitions, the petitioners are seeking the quashing of the 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 by which the promotion of the petitioners to the post of Head Constable/General Duty (G.D.) have been cancelled. The facts leading to the filing of the writ petition is, that the petitioners were selected as Constables/G.D. and were posted in the various parts of the country where the offices of the Indo-Tibetan Border Police Force were located. The petitioners, right from the initial date of their appointment, performed their duties to the satisfaction of their superior. It is alleged that no adverse entries were ever recorded against the petitioners in their annual records.

2. On 9th November, 2010, the respondents issued an advertisement inviting departmental candidates for promotion to the post of Head Constable/Combatised Ministerial (C.M.). The advertisement indicated that the candidate should have their regular service as a departmental Constable. The educational qualification was Senior Secondary Certificate or equivalent qualification from a

recognized board. The candidate should have a typing speed of 30 w.p.m. in English and 25 w.p.m. in Hindi. The advertisement also indicated that preference would be given to those candidates who have knowledge of computer or had a higher educational qualification. Typing test was also required to be given on the computer. It was also provided that physical efficiency test, medical test, written examination test would be required to be given by the candidates.

3. The petitioners contend that they had the requisite qualifications and, consequently, applied for the post of Head Constable pursuant to the aforesaid advertisement and underwent the physical test, medical test, written test, computer test and lastly the interview. On 3rd February, 2011, the result of the selection was declared by the D.I.G. (Administration), Headquarter Northern Frontier declaring 84 candidates to be successful for promotion to the post of Head Constable. The petitioners were included in the select list pursuant to the declaration of the result. Consequential posting orders/letters of offer of appointment was issued in favour of the petitioners. The appointment letter indicated that the appointment was purely adhoc and that the petitioners would be kept on probation and that the Indo-Tibetan Border Police Force Act, 1992 and the Rules framed therein of 1994 would be applicable. The petitioners accepted the offer of appointment on the post of Head Constable and joined the place of posting given in their appointment letters. In paragraph 28 of the writ petition, the petitioners have indicated the various places, in different parts of the country, where they have been posted, pursuant to the order of promotion. The petitioners contend that they joined the respective place of posting and started working as Head Constable.

4. After a lapse of ten months, the Director General of Indo-Tibetan Border Police Force (Karmik) issued a two line order dated 02.12.2010 cancelling the appointment of the petitioners. Based on the said order, consequential order was issued by the Deputy Inspector General (Administration), Northern Frontier, Dehradun, Uttarakhand cancelling the promotion of the petitioners with immediate effect and directed the petitioners to be reverted to their previous posts. The petitioners, being aggrieved by the said orders, have filed the present writ petition.

5. In paragraph 30 of the writ petition, it was alleged that the impugned orders cancelling the promotion of the petitioners was based on a decision being taken by the respondents cancelling the entire selection process. From paragraph 33 to 37, the petitioners have categorically stated that no notice or opportunity of hearing was provided to them before issuing the impugned orders. It was further stated that the order cancelling their promotion entails civil consequences and was in violation of the principle of natural justice. In paragraph 38 of the writ petition, it has been alleged that the petitioners have come to know that their promotion have been cancelled on the ground that some complaints were made against the selection process on which basis the promotion orders of the petitioners has been cancelled.

6. The respondents have filed a counter affidavit. Paragraph 4 of the counter affidavit reveals that pursuant to the exercise made for the promotion to the post of Head Constable, certain complaints regarding malpractices which took place while taking the test was investigated and the C.B.I. registered a case and are investigating the matter.

7. It is alleged that the C.B.I. conducted raids at various offices and residence of the suspected officers and seized a large number of incriminating material and arrested a number of persons which led to the suspension of one D.I.G. who was the Presiding Officer of the selection process. In view of this investigation and arrest of the D.I.G., the competent authority took a decision to cancel the selection process and, accordingly, decided to revert the selected candidates and cancelled the registration process vide order dated 2nd December, 2011 and 5th December, 2011. The respondents in paragraph 19, 20, 21 of the counter affidavit admit that since the selection process was conducted through malpractices, the selection process was cancelled and that no opportunity of hearing or notice to the petitioners was required to be given.

8. In the light of the stand taken by the parties, the Court has heard Shri V.K. Singh, the learned counsel assisted by Shri Chetan Joshi, the learned counsel for the petitioners and Shri V.B.S. Negi, the learned Asstt. S.G. appearing for the respondents.

9. The learned counsel for the petitioners submitted that the petitioners participated in the entire selection process, namely, physical test, written test, computer test and the interview and qualified. Pursuant to this, they were issued the appointment letter which they duly accepted and joined the place of posting. The learned counsel contended that the petitioners worked for almost ten months at the place of posting and that a valuable right had accrued to them pursuant to the order of appointment on the post of Head Constable. The petitioners cannot be reverted to their original post as Constable without giving them a notice or an opportunity of hearing. It was further contended that merely because the C.B.I. had registered a case and started investigation pursuant to which a D.I.G. has been suspended does not lead to an inference that the entire selection was ex facie illegal filled with malpractices which would entitle the respondents to cancel the selection process. The learned counsel contended that since valuable rights had accrued, the impugned orders cancelling the promotion entails civil consequences and was violative of Article 14 of the Constitution of India since no opportunity of hearing was provided to the petitioners. The learned counsel submitted that it was imperative and essential for the respondents to issue a show cause notice and give an opportunity of hearing before cancelling their order of promotion and that the respondents could not cancel the entire selection process merely on the strength of some complaint when no departmental inquiry was made nor conducted. The learned counsel further contended that even as on date the C.B.I. is only making an investigation and no final report or charge-sheet has been framed.

10. On the other hand, the only contention raised by the learned Assistant Solicitor General appearing for the Union of India was that on account of the registration of the case and the investigation conducted by the C.B.I. which led to the arrest of certain persons and suspension of the D.I.G., made the competent authority to take a decision of cancelling the entire selection process and, on that basis, the impugned orders were passed cancelling the appointment letters of the petitioners and reverting them to their original post. The learned counsel submitted that on account of the malpractices revealed so far, the decision for cancellation of the promotion of the petitioners was necessary and, consequently, the entire selection process was cancelled. He further submitted that it was not necessary to adhere to the principle of audi alteram partem envisaged under Article 14 of the Constitution of India. Where complaints are made, it is obligatory on the part of the department to inquire into the alleged complaint of malpractices and illegality committed in the selection process for sustaining purity of administration and further to ensure that there is transparency in the selection process.

11. In the present case, the Court finds that the respondents have not conducted any inquiry till date. They have only forwarded the complaint to the Government which, in turn, presumably forwarded it to the C.B.I. who registered a complaint and started the investigation. As per the counter affidavit, the investigation is still going on and no final report has been submitted nor any charge-sheet has been filed before the competent court. In a catena of decisions given by the Supreme Court, it was held that whether it is an administrative or a quasi judicial order, the Court have to proceed after applying the principle of natural justice. The Constitution Bench of the Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, held:-

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.-The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably.

If the purpose of the Rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries.

An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry.

12. Over the years, the principle of natural justice have been equated with fairness and action. In *D.K. Yadav Vs. J.M.A. Industries Ltd.*, , the Supreme Court held that the procedure adopted for arriving at a decision must be fair, reasonable and just.

13. In the light of the aforesaid, at the moment only an investigation is going on. No final report has been filed nor any charge-sheet has been filed before the competent court. The decision of the respondents in cancelling the promotion is neither fair nor justified in the existing circumstances. It may be said that the entire selection process was cancelled in public interest but such public interest has not been alleged by the respondents nor have the respondents justified it in their counter affidavit. Merely because the investigation has been set up does not justify the respondents to cancel the entire selection process. Much water has flown since the order of promotion was issued. The petitioners accepted the offer of appointment. The petitioners joined their place of posting in different parts of the country. The petitioners started working and, in fact, worked for ten months. A valuable right got vested in them and such right cannot be taken away from them without complying with the principles of natural justice. Merely because some investigation has started does not justify the decision of the respondents in cancelling the entire selection process.

14. In *Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others*, , the Supreme Court considered the question of violation of the principles of natural justice in terminating the services of 28 Executive Class I appointment and 63 Executive Class II appointment selected by the Punjab Public Service Commission. The facts in that case were that one Ravindrapal Singh Sidhu, Chairman of Punjab Public Service Commission maneuvered the recruitment and on extraneous consideration, including monetary consideration, got several persons appointed on different posts. Upon complaints being received, raids were conducted and approximately Rs. Sixteen crores was recovered. On the basis of the inquiry report of the Vigilance Bureau, the services of about 173 persons appointed on different posts were terminated. The termination was upheld by a Full Bench of the Punjab and Haryana High Court. Before the Supreme Court, the Government justified the termination of the appellants so made on the ground that corruption and manipulation had pervasively influenced the selection process and that the Courts should not sit in appeal and give a wide latitude with regard to adjudging the fairness of the selection process and that the Court should be slow in interfering in such decisions of the Government. It was urged that probity of public services could only be maintained through fair selection where merit is judged on the basis of the capability, whether in the written examination or in the interview and that it was a constitutional duty of the Commission of the State Govt. to ensure that selections were fair and free of corruption and manipulations. It was also urged before the Supreme Court that the decision to

cancel the selection, no stigma is attached to the candidates and that it was the selection process which was condemned and that the Government was required to establish beyond a reasonable doubt that there was no corruption and manipulation. It was also urged that it was not possible to separate the tainted candidates from the non tainted candidates. The stand of the Government was that whether the selection process was found to be vitiated pervasively, all appointments made on the basis of such selection would be treated as null and void. The Supreme Court, after considering the entire matter, held that the cancellation of the selection process and consequential cancellation of the appointment letter cannot be done and the same was violative of the principles of natural justice. The Supreme Court also held that an endeavour should be made to segregate the tainted from the non tainted candidates. The Supreme Court 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.

It is also not a case where all the relevant records have been destroyed. The Vigilance Bureau does not say so. Question papers, answer sheets and other documents are available. Reports made by the Bureau were prepared upon examination of the materials collected by it. The High Court itself has noticed that what is not available is the records relating to the procedure adopted in regard to the appointment of paper-setters. It may be true that such records could be destroyed only after a period of five years but it has not been pointed out by the State as to how by reason of the non-availability thereof, it became difficult for the authorities to arrive at the correct facts. We have not been informed that connecting materials were also destroyed. It has been noticed by the High Court that all relevant information was available and submitted to the court. It cannot, therefore, be said that a fair investigation into the whole affair was an impossible task or despite availability of all such records a thorough investigation had been made so as to arrive at a satisfaction that the entire selection process suffered from a large-scale fraud. It has also not been found that all appointments were made on extraneous considerations including monetary consideration.

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

The Supreme Court further held:-

The principal question which needs to be adjudicated is whether, in the facts and circumstances of these cases, the respondents were justified in cancelling the entire selection both of executive and judicial officers?

Undoubtedly, in the selection process, there have been manipulations and irregularities at the behest of R.S. Sidhu, the then Chairman, Punjab Public Service Commission. On careful scrutiny of the facts and circumstances of the case, in my considered opinion, the High Court ought to have made a serious endeavour to segregate the tainted from the non-tainted candidates. Though the task was certainly difficult, but by no stretch of imagination, it was not an impossible task.

The peculiar facts of this case which need to be highlighted are that some of the candidates have worked for about three years and their services were terminated only on the basis of criminal investigation which was at the initial stage. The termination of their services as a consequence of cancellation of selection would not only prejudice their interests seriously, but would ruin their entire future career.

It may be pertinent to mention that during the said period there has been no allegation regarding the integrity or efficiency of these officers.

The facts of this case reveal that the material supplied to the Committee having regard to the facts that majority of the officers named in the FIR belonged to 2001 batch, the respondents not only cancelled the entire selection of 2001 batch, but on the basis of the cancellation of selections of 2001 batch the entire process of 1999 and 2002 selections was also cancelled. It is also relevant to mention that the selection process for the year 1998 was not the subject matter nor any recommendation had been made by the Committee, even then the selections of this year were also vitiated. The High Court Committee without there being sufficient and adequate material on record recommended cancellation of selections of both the executive and judicial officers and the Full Bench erred in accepting the recommendation and terminating the services of all the officers.

A close scrutiny of the facts of this case clearly reveals that the judicial officers did not get a fair treatment by the High Court. They were not given copies of the Report and other material on which reliance was placed and they virtually had no chance of making effective representation before the Committee or any other forum where they could ventilate their grievances and present their point of view.

When the basis of termination is serious allegations of corruption, then it is imperative that the principles of natural justice must be fully complied with.

16. The Supreme Court held that the appointment made in violation of Article 14 of the Constitution of India would not be void nor could it be treated to be a nullity. The services of the appellants were terminated in view of the commission of malpractices involved in the selection process which cannot be done.

17. In Pawan Kumar Singh and Others Vs. State of U.P. and Others, , the appointments of a large number of persons on the post of Civil Police, P.A.C. and in Wireless Deptt. of Police were cancelled on the ground of unfair selection and

adoption of extraneous consideration. The learned Single Judge of the Allahabad High Court while placing reliance upon Inderpreet Singh Kahlon (Supra) quashed the decision of the State Govt. to cancel the selection process. The said judgment was affirmed by the Division Bench of the Allahabad High Court in State of V.P. Vs. Pawan Kumar and others, 2009 3 ADJ 166.

18. In *Girjesh Shrivastava and Others Vs. State of M.P. and Others*, , the appointments of contractual teacher was questioned on the ground of extraneous consideration being taken into consideration in the selection process. The Supreme Court 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.

19. In the light of the aforesaid, the Supreme Court held that the appointments made cannot be treated as void or a nullity in the eyes of law merely because the selection process was tainted. The services of the petitioners can only be terminated under the relevant Act or Rules relating to their service conditions and merely because the selection process was tainted with malpractices was not by itself sufficient to cancel the selection process qua the order of appointments. The respondents were required to hold an inquiry and take into consideration the foundational facts, namely, as to whether the petitioners had aided and abetted the malpractices and corruption leading to their appointments on the post of Constable. In the absence of such inquiry for the sake of probity in governance, any transparency or any public interest, the order of promotion cannot be cancelled. The Supreme Court further made it clear that the chaff has to be removed from the grain. The tainted has to be segregated from the non tainted. The counter affidavit does not reveal any such steps being taken by the respondents.

20. 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.