

(2010) 11 KAR CK 0127
In the Karnataka High Court
Case No : Writ Petitions No. 4539 of 2007

Srinivas and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Karnataka Civil Services (General Recruitment) Rules, 1977 — Rule 3 (2) (c), 6 (2), 7

Citation : (2010) 11 KAR CK 0127

Hon'ble Judges : K.L. Manjunath, J;B. Manohar, J

Bench : Division Bench

Advocate : T. Thares, Adv for R. 65, M.V. Revana Siddaiah, for R. 10, R. 15, R. 23, R. 56, R. 74 and R. 139, V. Rajendra Prasad Shetty, for R. 91, R. 115 and R. 134, J. Nagaraj, for R. 133, Vijaya Kumar Associates, for R. 96 and R. 111, T. Narayana Swamy, for R 5, R. 7, R. 9 R. 11, R. 14 and R. 16, R. 20-24, R. 25, 29, 33, 35.37, 42, 43, 46, 47-50, 54, 55, 64-68, 69, 70, 75-78, 80-84, 92, 93, 94-97, 101-104, 117-124, 126, 127, 129, 122, 128, 132, 135, 138, 140, 143, 146, 147, 148, 150, 153 and 154, for the Respondent

Final Decision : Dismissed

Judgement

1. The Petitioners are the applicants before the Karnataka Administrative Tribunal ("KAT for short), being aggrieved by the orders dated 31-1-2007, 11.2.2007, 27-3-2003 passed by the KAT, filed these writ petitions before this Hon"ble Court.

2. The common question of law and facts involved in these writ petitions, non-selection for the post of Police Sub-Inspectors has been questioned before the KAT. Hence all the matters are clubbed together and disposed of by this common judgment.

3. The applicants are working as Police Constables, Head Constables in various Police Stations. They had approached the KAT challenging their non-selection for the post of Sub-Inspector of Police. The Petitioners have contended that the 4th Respondent issued notification dated 28-11-2000 inviting applications for recruitment for the post of 150 Police Sub-Inspectors under the in-service

candidates as per Karnataka State Police Service (Recruitment of Police Sub-Inspectors) (Special) Rules, 2000 as a one time measure. The eligibility condition prescribed in the said notification reads as under:

Age and qualification: No person shall be eligible to appear for the competitive examination under these rules prescribed.

(a) unless he/she has worked for a period of not less than 10 years, as an in-service candidate as on the 11th Day of April, 2000;

(b) If he/she does not possess a degree or equivalent qualification as on the above date;

(c) Where notwithstanding anything contained in Sub-rule (2) of Rule 6 of the Karnataka Civil Service (General Recruitment) Rules 1977, he/she has attained the age of 45 years (including person belonging to the Geheduied Caste, Scheduled Tribe and other backward classes on the 11th day of April 2000.)

Further, procedure for selection of in-service candidates also mentioned in the said notification. The candidate must qualify the physical efficiency test thereafter written examination and viva-voce. The candidate, who had qualified in the physical efficiency test, will be called for the written test. Written test consisting of two papers. There is no minimum marks prescribed in the written test. Based on the merit in the written test, the candidate shall be required to appear before the Selection Committee for an interview carrying 20 marks in the ratio of 1:3 in each group, community, caste. As per the said notification, 150 posts were notified and 75 posts were reserved for general merit, 23 posts for SC, 5 posts for ST, 6 posts for category-I, 22 posts for category-II-A, 6 posts for category-II-B, 6 posts for category --III-A and 7 posts for category-III-B. The selection authority shall prepare the final list of the selected candidates on the basis of the percentage of marks secured in the test referred to in Rule 7 and taking into consideration the order in force relating to the reservation of posts for the Scheduled Caste, Scheduled Tribe and other Backward Classes in the order of merit. Further it was made clear that if the average percentage of the total marks obtained by two or more candidates are equal, the order of merit in respect of such candidates shall be fixed on the basis of their age. The Selection Committee shall prepare the list in the order of merit indicating the marks obtained by each of the candidates and list of the candidates eligible for appointment. The said list shall be forwarded to the appointing authority.

4. Pursuant to the said notification, the Petitioners made an application for the posts of Sub-Inspector of Police as in-service candidates. They have appeared for the physical efficiency test and thereafter written test. However, they are not selected for the said posts. The provisional list has been announced on 28-11-2001. The Petitioners being aggrieved by the non-selection for the post of Police Sub-Inspector, filed an application before the KAT challenging the provisional selection list dated 28-11-2001 on various grounds in number of application. The KAT by its order on different dates referred to above was

pleased to dismiss the said applications holding that there is no infirmity or irregularity in the provisional select list prepared by the Respondents and also there is no procedural irregularity in preparing the provisional select list and dismissed the applications.

5. The applicants before the KAT being aggrieved by the orders passed by the KAT, preferred these writ petitions.

6. Sri. Sreeshaila Turkani, learned Counsel appearing for the Petitioners contended that the orders passed by the KAT is contrary to law and the procedure adopted for selection of the Sub-Inspector of the Police is also contrary to the law laid by the Hon'ble Supreme Court in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., . The reservation has been made beyond more than 50%. Further, there cannot be any reservation among the in-service candidates. The candidates being in service, they should have been excluded from claiming reservation under any one of the categories for the reasons that they come under the category of Creamy layer within the reserved category They are drawing the salary in the range from Rs. 4150 - 7800; in respect of the Police Constable; Rs. 4575 - 8400 in respect of Head Constable and Rs. 5200 - 9580 in respect of Asst. Sub-Inspector. The entire procedure followed is contrary to law.

7. Further, as per the notification dated 28-11-2000, only 1:3 ratio in each group/ community/caste shall be called for the interview. However, only 40 candidates in general merit category, 58 candidates in SC. 38 candidates in ST, 33 candidates in category-1, 130 candidates in category - II A, 32 candidates in category - II B, 63 candidates in Category-IIIA and 63 candidates in category-III-B, were called for the interview, which ran contrary to the Rules 3(2)(c) of the said notification.

8. The Petitioners further contended that they have not challenged the rule or the notification dated 28-11-2000, however, they have challenged the procedure adopted in selecting the 150 in service candidates. Hence, the reasoning of the Tribunal that once the Petitioners participate in the selection proceedings they cannot challenge the select list runs contrary to the contention of the Petitioners. Even though, they have not challenged the provisional select list, if the procedure adopted is contrary to the Rules or Notification, still they can challenge the selection process.

9. Further, selection to the post of the Constables, Head Constables or the Assistant Sub-Inspectors by reservation of the posts, there cannot be one more reservation of the vacancies for the selection of posts of Police Sub-Inspectors. The intendment of the rules is to select the meritorious candidates. In the instant case, overlooking the intendment of the rules or the notification, reservation of seats was made to the SC and ST and other backward classes. Since, those candidates are under the Creamy Layer policy their cases ought not to have been considered under the reservation category.

10. Further, as against 75 seats reserved for the General Merit category, only General Merit candidates numbering 225 should have been called for the

interview. Contrary to this, 225 candidates in the top of the list had been called. In that only 40 general merit candidates were selected and other 35 seats have been filled up from the reserved categories. That apart, they have been selected under the reserved category amounting to reservation, which is more than 85% and is contrary to the law laid by the Hon''ble Supreme Court. The finding of the KAT is that the selection has been made solely in accordance with the notification and reservation policy of the State Government is also not correct.

11. Further finding of the KAT that Petitioners having participated in the selection process, having not selected, they cannot challenge the process of selection is contrary to the Rules. On these above grounds, the Petitioners have sought for setting aside the order passed by the KAT and to quash the select list.

12. Learned Government Advocate appearing for the Respondents has contended that in order to select the in-service candidates for the post of Police Sub-inspector, the State Government by its notification dated 21-8-2000 brought into force, the Karnataka State Police Service (Recruitment of Sub-Inspector) (Special) Rules 2000 with an object and purpose of recruiting 150 police Sub-Inspector from in-service candidates. The last date for filing application was fixed as 15-12-2000. The Petitioners have made applications and appeared for the physical efficiency test after qualifying in the same, appeared for the written examinations and got minimum marks. For viva-voce examination as per Rule 3(2)(c) based on the merits in the written examination, the candidates are required to appear before the Selection Committee for viva-voce examination. For filling up 75 seats in general merit category, interview notice has been issued to 225 candidates in the merit list to appear for the Viva-voce test i.e. 1:3 ratio. In the selection of general Merit candidates, meritorious SC and ST and other backward category can also appear. In the process of selecting 75 general merit category candidates, only 40 candidates belonging to the general merit categories have been selected and other vacancies have been filled up by other meritorious candidates. The selection has been made in accordance with the Rules framed in 2000 and notification issued thereunder. As per the instructions in the notification, it is made known to the candidates that the selection authority shall prepare the final select list of candidates on the basis of the percentage of marks secured in the test referred to in Rule 7 and taking into consideration the order in force relating to the reservation of posts for SC and ST and other backward classes. The State Government by its notification made it clear that the Creamy layer policy does not apply to SC/ST and category-I of the backward classes and the candidates belonging to category-II-A, II-B, III-A, III-B are entitled to seek reservation in the manner specified in the new comprehensive Creamy Layer policy to the in-service candidates. Hence, the selection has been made in accordance with law and sought for dismissal of writ petition.

13. Sri. T. Narayanaswamy, Advocate appearing for some of the selected candidates contended that some of the grounds raised in these writ petitions have not been raised before the KAT and they cannot make out a new ground

before this Hon''ble Court. Further, the Petitioners have secured less mark in the written test. Hence, they are not selected for the said post. He also contended that the Petitioners have not filed any objections to the provisional list. Hence they cannot make allegations that some of the candidates are not suitable to hold the posts of Police Sub-Inspector. He also relied upon a judgment reported in AIR 2007 SC 100 in the case of Union of India and Ors. v. Vinodh Kumar and Ors. Further, he has contended that the selection has been made as per the Government Order dated 28th June 1995. While filling up the general merit category, the meritorious candidates have to be selected. Hence, there is no merit in any of the contentions raised in the writ petitions and sought for dismissal of the writ petitions.

14. We have carefully gone through the arguments addressed by the learned Counsel for the parties and perused the order passed by the KAT.

15. It is not in dispute that pursuant to the notification dated 28-11-2000, the Petitioners being eligible in-service candidates had made applications for selection for the post of Sub-Inspector of Police under the in-service category. They had appeared for the physical efficiency test and thereafter, they appeared for the written test. As per the notification there is no minimum marks prescribed in the written test. Those who have been qualified in the physical efficiency test are eligible to take the written test. For viva voce, on the basis of the merit in the written examination, they will be called for the interview. Interview carries 20 marks. For the selection of general merit candidates, 225 meritorious candidates in the list were called for the interview and selected 75 general merit category, thereafter the candidates belonging to the SC & ST, Category-I and other backward category were filled up as per the reservation policy of the State Government. The Hon''ble Supreme Court in a judgment reported in Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc., held that-

It is settled law that if a Dalith or Tribe candidate got selected for admission to a course or appointment to a post on the basis of merit as a general candidate, he should not be treated as reserved candidate. Only one who does not get admission or appointment by virtue of relaxation of eligibility criteria should be treated as a reserve candidate.

Further, in a judgment reported in Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others, clearly held that -

The candidates belonging to such Back Ward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for the respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for S Cs stood filled. The entire reservation quota will

be intact and available in addition to those selected under open competition category.

Further, the Hon''ble Supreme Court in a judgment reported in Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, has taken a view that-

In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specific number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.

Hence, it is clear that the selection for 75 posts in general merit category has been filled up among those who are on top of merit list. We find there is no infirmity or irregularity in the procedure followed by the Selection Committee.

16. The contention of the Petitioner that the candidate being in-service should not be extended reservation for the post of Police Sub-Inspector is also untenable. The State Government evolved a new comprehensive Creamy Layer policy on the basis of the Government Orders dated 17-9-1994 and 31-1-1995. As per the said comprehensive Creamy Layer Policy, it will not apply to direct recruitment to the post which insisted on a prescribed period of service in a lower post or experience in a post, profession or occupation as a qualification or eligibility. In other words, as per the Government Order, the Direct Recruitment to the post which insists on a prescribed period of service in a lower post or experience in a post, Profession or occupation the rule of Creamy Layer does not apply. When the rule of Creamy Layer does not apply, the Appointing Authority had no other go but to classify the vacancy in accordance with the reservation policy of the State Government as per the provisions contained in Karnataka Civil Service (General Recruitment) Rule 1997. The procedure adopted by the Selection Committee is not violative of the law laid down by the Hon''ble Supreme Court in *Indira Sawhney v. Union of India* referred to above. Selection to the post of Police Sub-Inspector has been made in accordance with the reservation policy of the State Government reserving 50% of the seats to the General Merit candidates and remaining 50% has been filled up by the reserved categories.

17. In the notification under which, the Petitioners have made applications and participated in the selection process, it is made known to the applicants that the selection would be made in accordance with Rule 7 of the Notification and final selection list shall be prepared on the basis of percentage of marks secured in the Test referred to in Rule 7 and taking into consideration the order in force relating to reservation of the post for Scheduled Caste, Schedule Tribes and other Backwards Classes in the order of merit. Knowing fully well, the Petitioners have participated in the proceedings. Hence, it is not open to the Petitioners to challenge the rules or procedure prescribed. The Hon''ble Supreme Court in a

judgment reported in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, clearly held that -

It is now well settled that if a candidate has taken a calculated chance and appeared for the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted.

Further in a judgment reported in Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, the Hon"ble Supreme Court held that -

When a candidate appear for the examination without protest and subsequently found to be not successful in the examination, question of entertaining the petition challenging the said examination does not arise ...

...

...

The Law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because of the result of interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.

Hence, the contention of the petition has to be failed.

18. The KAT has considered the contention of the Petitioners in detail and relying; upon the various judgments of this Hon"ble Court and Hon"ble Supreme Court dismissed the applications holding that the there is no infirmity or irregularity in the procedure adopted for selecting 150 Police Sub-Inspectors under in-service category. It is further observed that if any candidate suffers from any disability while issuing appointment order the Appointing Authority will consider the same and take remedial actions. Further, the selection candidates shall undergo training for 17 weeks in the Karnataka State Police Academy and shall pass the prescribed examination. If the candidate fails to pass the examination, he or she shall be reverted to his original cadre, which he belonged to.

19. Sri. Sreeshaila Turkani, learned Counsel for the Petitioners relying upon the judgment reported in AIR 2002 SCW 872 in the case of Union of India and Ors. v. O. Chakradhar contended that there is irregularity and illegality in the selection process and the entire selection has to be quashed and the selection process has to be recommenced from the stage of interview. On the other hand, Sri. Narayanaswamy, learned Counsel for the Respondents relying upon the judgment reported in Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, cited supra contended that the candidate who have taken part in the selection process knowing fully well the process laid down therein, they cannot question the same. There is no substance in the judgment relied upon by Sri. Shreeshail

Turkani, we find that there is no irregularity in the process of selection.

20. We examined the matter in detail and found that there is no infirmity or irregularity in the said order. The Petitioners have not made out any case to interfere with the order passed by the KAT. Further, on examination of the entire matter once again, we found that there is no merit in any one of the contentions urged by the Petitioners. Accordingly, we pass the following

ORDER

All the writ petitions are dismissed.