
(2006) 08 GAU CK 0086
In the Gauhati High Court
Case No : Writ Appeal No. 37 of 2005

State of Tripura and Others	Vs	APPELLANT
Sahid Ali and Others		RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 4 GLT 295

Hon'ble Judges : I.A. Ansari, J;A.B. Pal, J

Bench : Division Bench

Advocate : T.D. Majumder, for the Appellant; P. Roy Barman, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Pal, J.—This appeal is directed against the judgment dated 24.6.2005 passed by a learned Single Judge of this Court in W.P. (C) No. 436 of 2002 allowing the writ petition of the four Petitioners (Respondents herein). By the said judgment the order dated 18.9.2002 cancelling the offer of appointments made to the Petitioners for the posts of Male Constables issued by Superintendent of Police (North Tripura) has been quashed with a direction to the State Appellants to appoint the said Petitioners (Respondents herein) as male constables within a period of two months from the date of receipt of the judgment.

2. We have heard Mr. T.D. Majumder, learned Additional Government Advocate for the State Appellants and Mr. P. Roy Barman, learned Counsel for the Respondents.

3. The material facts giving rise to the present appeal may be briefly noticed at the outset.

(i) The four Respondents herein have been serving as Home Guards of general category under the Police Department of the Appellants herein for a long period. With a view to fill up certain vacant posts of Police Constables under the Tripura

Police Department, the State Government constituted a Recruitment Board for selection of candidates. The number of vacancies for Constable (Male) was initially 518 of which 35% was to be reserved for working Home Guards of the department. Later, more vacancies having arisen the said Recruitment Board was informed by the State Appellants that the vacancies for male constables had been increased to 848 with instruction to select and recommend 848 candidates. The break up of the said vacancies in different categories is as follows:

Unreserved - 450 Scheduled Castes - 136 Scheduled Tribes - 262
----- Total - 848

As 35% of the said vacancies was decided to be reserved for working Home Guards of the Public Department, the vacancies allotted to that category came to be 290 (approx.). The working Home Guards available against different categories of vacancies were as follows:

								Availability		
-----								H.Gs.		
Vacancies	-----									
UR	240	153	H.Gs.	S.C	27	47	H.Gs.	S.T.	54	90

(ii) The Recruitment Board prepared a select list of 848 candidates on the basis of merit, which included 153 general category working Home Guards, 27 Scheduled Castes working Home Guards and 54 Scheduled Tribes working Home Guards making 234 candidates of these categories out of 290 earmarked for them. There was thus shortage of 56 working Home Guards of SC and ST category, which vacancies were sought to be filled up by the Recruitment Board from the open market. In the merit list of 153 Unreserved working Home Guards, the names of the four Respondents herein, namely, Md. Sahid Ali, Gopendra Nath, Md. Abdul Kadir and Gourmani Nath figured at serial Nos. 85, 104, 105 and 116. In the common merit list of all the 848 candidates, their names figured at serial Nos. 348, 367, 368 and 379 respectively. After completion of the recruitment process the merit list of 848 candidates including 153 working Home Guards of unreserved category was sent to the Home Department for approval. But the said department directed the Police Headquarter to resubmit the State wise merit list of 848 selected candidates showing them against their respective Sub-Divisions which they hail from. Accordingly, the same was done. But on 23.5.2002, the Home Department conveyed approval of the State Government for appointment of only 468 candidates inclusive of women candidates (442 male + 26 female) against the available vacancies of 848 on ostensible grounds of financial constraints. Of the 442 vacancies for male Constables, so approved, only 82 vacancies were allotted for the serving Home Guards of general category which inevitably excluded the four Respondents herein being at Sl. No. 85, 104, 105 and 116 from the list. In the Sub-Division-wise approved list, the names of the four Respondents herein being in the UR category, however, found place against their respective Sub-Divisions though they were placed at serial Nos. 85, 104, 105 and 116 respectively of the list of UR serving male Home Guards. In

the meantime, it was detected that 53 candidates belonging to Scheduled Tribes and Scheduled Castes selected from open market were inadvertently included in the approved select list against equal number of vacancies earmarked for serving Home Guards of the said reserved categories. The District Superintendents of Police were promptly instructed not to issue any offer of appointment till the matter was clarified by the Government. But after receiving the approval of the State Government by the above noted letter dated 23.5.2002 and before receipt of the later instruction, the Superintendent of Police, North Tripura issued offers of appointment in favour of the four Respondents while in other Districts the appointment process was kept in abeyance. Thereafter, on 10.9.2002 the Home Department by another letter to the Director General of Police cancelled its earlier approval and conveyed approval of the State-wise merit list for only 425 male candidates. Thus, going by the approved merit list prepared State-wise only 82 vacancies were available for serving Home Guards of general category and, therefore, the offer of appointments issued in favour of the four Respondents herein, whose position stood far below 82, had to be cancelled by the impugned order of cancellation which came to be challenged in the present writ petition. It may be noticed at this stage that in the subsequent letter of approval dated 10.9.2002, the total posts approved for appointment was only 425 against the earlier approved strength of 442 and even though there has been reduction of 17 posts, the vacancies allotted for the serving Home Guards of general category being 82 remained unaltered.

4. The grievance of the Respondents herein as canvassed in their writ petition is that the cancellation of their offer of appointment, which has been assailed herein suffered from the vice of arbitrariness as no reason was assigned for such cancellation. Argument was placed before the learned Single Judge that in the absence of any valid reason, the impugned order of cancellation is not sustainable in law even though the writ Petitioners, merely because of their inclusion in the select list, have no indefeasible right to appointment. Admittedly, there existed 848 vacancies out of which 153 unreserved vacancies were earmarked for the serving Home Guards of the department. Therefore, the position of the four Respondents in the merit list being at serial Nos. 85, 104, 105 and 116 they could be rightfully accommodated instead of cancelling the offers of appointment. It was, therefore, incumbent on the State Appellants to record valid reasons in support of the order of cancellation. Even though it is the prerogative of the State Appellants not to fill up all the vacancies notified for recruitment, but when after a recruitment process 848 candidates were selected and in case of the Respondents herein offers of appointment were also issued, the State Appellants while choosing not to fill up all the vacancies must act for bona fide reasons. Dehors the same the vacancies cannot be denotified. This position gains more strength for the reason that indisputably the selection process suffered from no illegality or irregularity.

5. The State Appellants contended before the learned Single Judge as well as before us that the reason for cancelling the offers of appointment in favour of the

Respondents herein was firstly a later detection that due to bona fide error 53 candidates of Scheduled Tribes and Scheduled Castes selected from the open market were inadvertently included in the select list against the vacancies earmarked for the serving Home Guards of Scheduled Tribes and Scheduled Castes and precisely because of that reason instructions were sent to all concerned not to issue offer of appointment before the entire matter was looked into and fresh approval was issued. It is then argued that in such a situation, it cannot be said that the cancellation of the offers of appointment was not bona fide or suffered from the vice of arbitrariness. As regards the justification for the decision to fill up only 425 posts of male Constables as against the available vacancies of 848, it was argued that the budgetary provision for the year 2002-03 did not permit the State Government to fill up all the vacancies in one go. No explanation was, however, offered why in subsequent years no attempt was made to fill up remaining vacancies, atleast those earmarked for the serving Home Guards, who had put in long years of service as Home Guards in the Police Department.

6. From the above controversy, the admitted positions that have emerged may be noticed thus:

(i) The Recruitment Board was asked to select candidates for 848 vacancies of Constables and accordingly, after completion of the selection process a merit list of 848 candidates was prepared and sent to the State Government in the Home Department;

(ii) Out of 848 vacancies, 153 were earmarked for the serving male Home Guards of general category. Writ Petitioners Nos. 1, 2, 3 and 4 being serving Home Guards were at serial Nos. 104, 85, 105 and 116 of the merit list;

(iii) The State Government directed the Police Head Quarter to reshuffle the merit list into Sub-Division-wise list for appointment, which was accordingly done and in the distribution so made for Sub-Divisional representation the Respondents herein were shown entitled to be appointed against their respective Sub-Divisions;

(iv) The State Government approved the Sub-Division-wise list for 468 selected candidates only for appointment and instructed all concerned to issue offers of appointment. Thus all the four Respondents herein, who belong to North Tripura District received offers of appointment as per the Sub-Divisional merit list;

(v) It was detected later that Sub-Division wise representation as approved by the State Government was contrary to the State wise merit list and candidates much below in the said merit list were shown in the approved Sub-Divisional list as entitled for appointment superseding candidates holding higher positions. This later revelation prompted the State Appellants to cancel the Sub-Divisional list with fresh direction to go by the State merit list only.

(vi) The State Government approved afresh only 425 of the merit list of which

only 82 posts were earmarked for serving general category Home Guards. The Respondents herein being at serial Nos. 104, 85, 105 and 116 in the merit list of unreserved Home Guards became thus disentitled to get offer of appointment.

7. From the admitted factual position noticed above, learned Single Judge proceeded to decide whether cancellation of the offer of appointment issued in favour of the Respondents herein was backed by valid grounds. It was contended before the learned Single Judge by the State Appellants herein that when it was detected that 53 candidates of SC and ST selected from open market inadvertently got into the list of 848 candidates though all the said 53 vacancies were earmarked for serving Home Guards of the reserved categories, instructions were issued to keep in abeyance the process of recruitment. The question that falls for consideration is whether inadvertent inclusion of 53 candidates of reserved category could be a valid ground for keeping at abeyance the entire select list and whether the status or rights of the other selectees could then be affected. Though in a line of decisions the Apex Court settled the legal position that a person on the select list has no vested right to be appointed to the post for which he has been selected, the appointing authority cannot at the same time ignore the select panel without any valid reason and jettison the selectees by merely saying that they have no vested right to be so appointed. The learned Single Judge after placing reliance on the decision of the Apex Court in *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, pointed out that though mere inclusion in the select list does not confer upon the candidates an indefeasible right to be appointed, at the same time it remains to be the obligation of the Government to act fairly and for good and justifiable reasons in not appointing the selectees, as otherwise the whole process of notification, written test, interviews and preparation of select list would be reduced to a farce. If the situation is such that 53 candidates selected from open market inadvertently entered into the select list of 848 candidates, the State Appellants were under obligation to suitably answer why excluding those 53 candidates the remaining part of the list could not be acted upon or why later a decision had to be taken to fill up only 425 posts. Thus, two conflicting submissions on the part of the State Appellants were advanced, the first being that due to inadvertent inclusion of 53 candidates from open market the entire select list could not be acted upon and had to be kept in abeyance, secondly, the said select list could later be acted upon only partially by approving only 425 candidates for appointment. When the competent authority decides to fill up lesser number of vacancies, the reason for the same can by no stretch of imagination be due to inadvertent entry of certain candidates from the open market for the reason that by simply excluding those 53 candidates the remaining candidates of the select list could be appointed. Placing reliance on the decision of the Supreme Court in *Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another*, where only 31 candidates of the select list were found not entitled for appointment and for that reason entire select list was cancelled, which was scuttled by the Supreme Court being a unreasonable

decision, the learned Single Judge applying the said ratio in the case on hand held that the decision of the State Appellants not to appoint candidates beyond 425 of the select list because of inadvertent inclusion of 53 SC and ST candidates from the open market is unreasonable and cannot stand the test of fairness and righteousness.

8. The other contention in support of deciding only to appoint 425 candidates of which 82 were earmarked for serving Home Guards of general category is that due to financial constraints during the year 2002-03 the unpleasant decision had to be taken, which is a policy decision falling within the exclusive domain of the executive. Learned Single Judge rejected this contention as nothing was discernible from records to establish that State Appellants herein acted bona fide for valid reasons. We have noticed that the argument that budgetary provision during the year 2002-03 did not permit the State Appellants to fill up all the 848 vacancies has not suitably answered how the question of budgetary provision could at all be a ground when admittedly all such vacancies had arisen from sanctioned posts only. Though there can be no manner of doubt that the State is not obliged to fill up all the vacancies only because the same have been notified, at the same time there should also be no doubt that the decision not to fill up such vacancies has to be taken bona fide and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Rule of law being the essence of a democracy, the Government can rule only according to law, not by whim or caprice. If a decision is taken not to fill certain vacancies, that can always be taken fairly, reasonably for justifiable grounds so that element of arbitrariness does not creep in. Thus the two pronged defences adopted by the State Appellants herein, the first being inadvertent inclusion of 53 candidates from open market into the merit list and the second being absence of budgetary provision for the year 2002-03 have been found to have failed the test of reasonableness as held by the learned Single Judge while quashing the impugned order dated 18.9.2002 cancelling the offers of appointment issued in favour of the Respondents herein.

9. As regards the first issue about inadvertent entry of 53 candidates from open market in the select list of 848 candidates we have noticed that the same was not the ground for taking the decision to appoint 425 candidates only out of 848 of the select list. As matter of fact from the select list of 848 the State Government approved appointment of 468 only as per Sub-Division wise merit list. Only thereafter the detection of inadvertent entry came to the fore, which prompted the authority to issue instruction to keep in abeyance the recruitment process till the whole hog was gone into. Then came the decision to revert to the State merit list for, however, 425 vacancies only. Thus, the decision to fill up lesser number of vacancies, be it 468 or 425, had nothing to do with the decision of temporary abeyance of the process following detection of inadvertent entry discussed above. The budgetary constraint for 2002-03 remains to be the only ground adumbrated and pleaded in support of which certain papers have been made available to us at our biddings by the learned Additional Govt. Advocate.

The papers are copies of certain notes prepared by a Special Secretary of the Home Department, which indicate that the original proposal from the Director General of Police was to fill up 893 vacancies of Constables. However, the Special Secretary proposed to fill up only 468 vacancies as the budget provision for the financial year 2002-03 would not cover the expenditure for all the vacancies, if filled up. Though the Chief Minister approved this note on 22.5.2002, the said decision was later modified on 9.9.2002. A perusal of the said papers would show that the Finance Department was not approached for making suitable budgetary provision for the said year though admittedly all the 848 vacancies had arisen from the sanctioned posts only. The normal rules of executive business which determines the budgetary allocation in every financial year is to submit proposal for allocation of funds on salary and allowances on the basis of the total sanctioned posts, not on the basis of the incumbents in position. The number of officials in position may fluctuate from time to time due to retirement, resignation and death and filling up of such vacancies is a regular and continuous process. It is, therefore, not correct to say that there was no budgetary provision for the sanctioned posts. There is no indication in the aforesaid papers whether a decision was taken at the highest level to reduce the sanctioned strength of the police constables. That apart, when a Selection Board was constituted for recruitment against 848 vacancies, a presumption inevitably arises that such a decision was taken consciously at the highest level after taking into account financial implication of the same. Budgetary allocation for any year is never inflexible as the same gets modified by revised or supplementary budget.

10. There is another aspect of the matter which incidentally calls for our observation. It is admitted fact that there existed 848 vacancies of Constables of which 153 vacancies were earmarked for serving Home Guards of the general category. There is no denying the fact that the Petitioners and other serving Home Guards had put in long years of service as Home Guards and therefore, they constitute a separate class in the Police Department itself. As there were 153 vacancies available for such category to accommodate 153 serving Home Guards which was exactly the recommendation of the Board, the State Govt. could appoint all of them even after deciding to reduce the total vacancies to be filled up from 848 to 425. It is not a legal requirement that when 848 vacancies really exist out of which 425 are to be filled up in 2002-03 for financial constraints, there has to be proportionate reduction of the vacancies earmarked for a particular category of employees, i.e. for the long serving Constables of the department who undoubtedly constituted a distinct and separate class. It is permissible to decide that other vacancies from open market or other source would be filled up later when financial position would improve.

11. At this stage, it has been submitted at the Bar that the State Government has recently advertised for recruitment of a large number of Police Constables from the open market without taking any decision about the fate of the selectees in the merit list of 848. This position being not disputed would definitely show that the decision not to fill up vacancies beyond 425 of the Select list was not

taken bona fide or that the plea of financial constraints was nothing but a ruse.

12. For the reasons and discussions aforementioned we do not find any merit in this appeal. The judgment impugned calls for no interference. Consequently, the appeal is dismissed leaving the parties to bear their own cost.