

(1995) 10 PAT CK 0004
In the Patna High Court
Case No : CWJC No. 7285 of 1990

Sunil Kumar Dwivedi

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-10-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (1996) 1 PLJR 460

Hon'ble Judges : S.K. Homchaudhuri, J

Bench : Single Bench

Advocate : S.N. Jha, Arvind Kumar Singh "Saroj" and Shanti Pratap, for the Appellant; S.N. Pathak, for the Respondent

Final Decision : Allowed

Judgement

S.K. Homchaudhuri, J.—In this petition under Articles 226 and 227 of the Constitution of India, the Petitioner has approached this Court for quashing the order dated 30.4.1990 (Annexure-1) passed by Respondent No. 3, the Commandant, Central Industrial Security Force, and further for issuing appropriate writ or direction commanding the Respondents to allow the Petitioner to join his duties to the post of constable as per the letter of appointment dated 20.3.1990 (Annexure-2).

2. The Petitioner's case is that in response to the advertisement inviting applications for recruitment of some constables under the establishment of Respondent-Central Industrial Security Force, Visakhapatnam (hereinafter mentioned as "the C.I.S.F."), the Petitioner offered his candidature. The Petitioner was asked to appear at the selection test on 19.3.1990 for selection and appointment to the vacant post of constable in C.I.S.F. In the selection process, physical test, written test and medical test were conducted under the chairmanship of Respondent No. 3 and, a panel of merit list was prepared. Respondent No. 3, thereafter, by the appointment letter dated 20.3.1990, intimated the Petitioner that he had been selected for appointment to the post of

constable in the C.I.S.F. and directed him to report before the Assistant Commandant, C.I.S.F. Unit, I.S.R.C. Bangalore (Karnataka) on 25.5.1990 at 08.00 hours. A copy of the said letter is annexed as Annexure 2 to the petition, the relevant parts whereof are as follows:

....

2. You have been provisionally selected for the post of constable in C.I.S.F. You are directed to report to the Assistant Commandant C.I.S.F. Unit, I.S.R.O. Bangalore (Karnataka) on 25.5.90 at 08.00 hrs, if you are willing to accept this offer of appointment.

3. You are also informed that if you are found fit after a re-check of measurement at concentration centre only then you will be finally selected and sent for training to Training Centre.

Before the Petitioner joined, in response to the aforesaid letter of appointment, by the impugned order dated 30.4.1990, Respondent No. 3 intimated the Petitioner that his appointment by order dated 20.3.1990 was treated as cancelled and advised him not to report at concentration centre as intimated by the earlier letter dated 20.3.1990 (Annexure-2). A copy of the said order dated 30.4.1990 is annexed as Annexure "1" to this petition, which reads as follows:

SUB: RECRUITMENT OF CONSTABLE IN C.I.S.F.: REG

Reference your provisional selection as Constable in C.I.S.F. at Dharwad (Karnataka) vide this office letter No. E-32030/30 Adm. 111/90/dated 20.3.90.

2. The total vacancy in the General Category has been reduced, hence a fresh list of selected candidates in all respects has been prepared according to merit. As such appointment letter issued to you is treated as canceled and you are advised not to report at concentration centre. Inconvenience is regretted, bear with us.

3. The Petitioner's further case is that altogether 28 posts of constables were to be recruited and out of which 4 posts were reserved for the members of scheduled Tribe and 20 vacancies were, therefore, to be filled up from the candidates of General Category. The Petitioner was selected as a candidate of General Category and had secured fifteenth position in order of merit. In paragraph 17 of the writ petition, the Petitioner has stated that the candidates, who secured 16th and 17th positions, in the merit list, were allowed to join and were ultimately absorbed; but the Petitioner, even though secured 15th position in the merit list has not been allowed to join.

4. The Petitioner has also contended that his elder brother is a constable posted in the C.I.S.F. Unit, D.I.O.M., Dominalai in the State of Karnataka. His elder brother, Shri R.N. Sharma, made a representation on 25.5.1990 before the Deputy Inspector General, C.I.S.F., South Zone, Madras (Respondent No. 2) stating that the Petitioner was selected for appointment to the post of constable and was offered appointment by letter dated 20.3.1990, but Respondent No. 3,

by order dated 30.4.1990 cancelled the appointment of the Petitioner on the ground that the post of General Category has been reduced, and prayed for reconsideration of the case of the Petitioner and issue a favourable order so that he could join as constable" as per the appointment letter dated 20.3.1990. The Petitioner, thereafter, received a telegram on 18.8.1990 asking him to appear before the Selection Board for recruitment¹ of constable to be held at Marcarra, district Coorg on 20.8.1990 at 08.00 hrs. The Petitioner made a representation that he received the intimation on 18.8.1990 and it was not possible for him to appear before the Selection Board on 20.8.1990 and he renewed his request to Respondent No. 3 to allow him to join the post as per the appointment letter dated 20.3.1990. Thereafter, the Petitioner received a letter dated 25.10.1990 (Annexure-6) from the office of Respondent No. 2, asking the Petitioner to appear before the Selection Board for fresh selection", which was scheduled to be held on 19.11.1990 at the District Police Parade Ground, Tumkur (Karnataka) at 08.00 hours. The Petitioner did not appear in view of the fact that he had already been selected and appointed by the appointment letter dated 20.3.1990 (Annexure-2).

5. The Respondents have filed a counter-affidavit contesting the case of the Petitioner; but the same has not been sworn by the deponent stating as to which paragraphs thereof are true to his knowledge and which are true to his information based on records. In the so called counter-affidavit, the Respondents have contended that the selection process, in which the Petitioner's name figured at SI. No. 15, was not approved by the competent authorities as the selection process was not in conformity with the instructions on reservation for SC/ST candidates. According to the Respondents, the prescribed minimum standard for chest was 81 cms. normal with an expansion of 5 cms, but the chest of the Petitioner being 79 cms., he was not eligible for appointment in the C.I.S.F. unless relaxation was given for such appointment by the competent authority and the Petitioner was appointed provisionally subject to relaxation of the aforesaid physical deficiency and that unless the relaxation granted by the competent authority, he could not claim any relief on the basis of provisional appointment order. The Respondents have further contended that since the order of provisional appointment dated 20.3.1990 was cancelled due to administrative reasons, the prayer of the Petitioner was considered favourably and he was directed to appear before the Recruitment Board at District Police Parade Ground, Tumkur (Karnataka) on 19.11.1990 by letter dated 25.11.1990; but the Petitioner failed to attend the selection test. In paragraph 11 of the so-called counter-affidavit, the Respondents have contended that there were altogether 30 vacancies, available for recruitment, out of which 18 post were for General Category, five for the members of Scheduled Caste and seven for the members of Scheduled Tribe and that the statement of the Petitioners made in paragraph 15 of the writ petition was far from truth. In the earlier selection process, the Petitioner's name figured at serial No. 15 on the assumption of the grant of relaxation by the competent authority.

6. I have heard learned Counsel for the Petitioner and learned Additional Central Government Standing Counsel for the Respondents.

7. Learned Additional Central Government Standing Counsel raised a preliminary objection about the maintainability of the petition on the ground that neither the cause of action nor any part thereof arose within the jurisdiction of the Patna High Court; in as much as, admittedly, the selection was made in Karnataka and all the Respondents are of Karnataka. In support of his contention, learned Additional Central Government Standing Counsel has placed reliance on the decision of this Court in the case of Nand Kishore Singh v. Union of India reported in 1983 P.L.J.R. 54.

Learned Counsel for the Petitioner, on the other hand, submitted that undisputedly the Petitioner is a resident in the State of Bihar and the appointment letter dated 20.3.90 and also the letter dated 30.4.90 cancelling his appointment were communicated at the Petitioner's residence in the State of Bihar within the jurisdiction of this Court and that the C.I.S.F. has its establishments all over India, including in the State of Bihar and, as such a part of cause of action arose within the territorial jurisdiction of this Court.

In the case of Nand Kishore (Supra), the Petitioner was employed in the C.I.S.F. at Faraka Barrage Project Unit (West Bengal). He has transferred to Naya Nangal Unit in the State of Punjab. While working at Naya Nangal Unit in the State of Punjab, he was dismissed from service. The chargesheet and the order dismissing him from service were passed and served on him at Naya Nagal and that after dismissal, he came to his village home in Bihar and he preferred an appeal before the departmental appellate authority and the appeal was dismissed. On these facts and circumstances of that case, this Court held that the writ petition was not maintainable as no part of the cause of action arose within the slate of Bihar.

Upon hearing learned Counsel for the Petitioner and the learned Additional Central Government Standing Counsel for the Respondents and considering the facts and circumstances of the case, I find force In the submission of the learned Counsel for the Petitioner that a part of cause of action arose within the jurisdiction of this Court. The decision of this Court in the case of Nand Kishore Singh (Supra) has no application to the facts of the present case.

8. It is apparent from the impugned order that the Petitioner's appointment was cancelled on the ground that total number of posts to be filled up from the candidates of General Category was reduced and a fresh list of selected candidates in all respects was prepared according to merit. As per the statement of the Respondents made in the so-called counter-affidavit, 18 posts were to be filled up from the candidates of the General Category, and admittedly, the Petitioner secured 15th position in the select list. It is not denied or controverted that the incumbents of General Category, securing 16th and 17th positions were allowed to join and were absorbed in service. Although the Petitioner was

appointed provisionally, it did not mean that he should not be allowed to join while other candidates having secured lower positions, were allowed to join in pursuance of provisional appointment and were ultimately absorbed. The stand of the Respondents taken in the so-called counter-affidavits, is inconsistent with the reasons and grounds stated in the impugned order dated 30.4.1990. However, in paragraph 3 of the appointment letter, it was stipulated that if the Petitioner was found fit after a re-check of measurement at concentration centre, he would be finally selected and sent for training to the Training Centre. Be that as it may, the impugned order has been passed on the ground that the vacancy of general category has been reduced and a fresh list of selected candidates in all respects had been prepared according to merit. As observed already, undisputedly 18 vacant post were to be filled for general category and the Petitioner's position was fifteenth in the select list and the candidates securing 16th and 17th position were allowed to join and ultimately absorbed. As such, denial of opportunity to the Petitioner to join in response to the appointment order is arbitrary and violative of Petitioner's fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. The impugned order, therefore, cannot be sustained.

9. For the reasons stated above, this petition is allowed and the impugned order (Annexure-1) is set aside. Respondent No. 3, the Commandant, Central Industrial Security Force (Ministry of Home Affairs), Visakhapatnam, Is directed to allow the Petitioner to join his duties pursuant to the order of provisional appointment dated 20.3.1990 (Annexure 2). I make no order as to cost.