

(2014) 11 CAL CK 0120
In the Calcutta High Court
Case No : WPCT No. 008 of 2014

The Union of India

APPELLANT

Vs

K. Manmad Rao

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Police Act, 1861 — Section 12, 7

Citation : (2015) LabIC 559

Hon'ble Judges : Indira Banerjee, J;Dr. Sambuddha Chakrabarti, J

Bench : Division Bench

Advocate : S.K. Mandal and S.C. Mishra, Advocate for the Appellant; Anjili Nag, Advocate for the Respondent

Judgement

Indira Banerjee, J.—This writ application has been filed by Union of India along with the Lt. Governor, Andaman & Nicobar Islands, the Director General of Police, Andaman & Nicobar Police and others challenging the judgement and order dated 21st November, 2013 passed by the learned Central Administrative Tribunal, Calcutta Bench, on Circuit at Port Blair in an application being O.A. No. 11/AN/2013 with M.A. No. 12/AN/2013 filed by the respondents, whereby the learned Tribunal directed the petitioners to refer the matter of extension of the validity of the Merit List of candidates for promotion from the post of Constable to Head Constable published vide Order No. 351 dated 18/1/2011, to the Union of India for necessary orders, in view the fact that an earlier panel of 170 candidates prepared in 2001 had been extended till 2006 till its complete exhaustion.

2. A circular No. DGP/Estt./4-4/PC to HC/2010/7415 dated 29th September, 2010 was issued notifying the selection test for filling up 178 vacant posts of Head Constables (Executive), by promotion, in accordance with the standing Order No. 5543 dated 9th September, 2008.

3. In terms of the said Standing Order, 66-2/3% were to be filled up on the basis of merit by conducting a selection test and 33-1/3% posts were to be filled up on

the basis of seniority-cum-fitness, from amongst Constables above the age of 40 years with minimum 5 years of regular service.

4. According to the petitioners, 501 candidates including the respondents had applied pursuant to the said circular dated 29th September, 2010 for being considered for the said 178 vacant posts of Head Constables (Executive).

5. 442 candidates participated in the selection test held from 13th December, 2010 to 9th January, 2011. 63 candidates did not, however, appear in the selection test.

6. After completion of the selection process, a merit list was published vide an order No. 351 dated 18th January, 2011. According to the petitioners, the merit list inadvertently contained the names of candidates who had not appeared for the selection test and had been shown as absent in the list prepared by the selection committee.

7. On the recommendations of the Departmental Promotion Committee which met on 24th January, 2011, all the 178 posts of Head Constables were filled up. 111 General candidates and 8 Scheduled Tribe candidates were selected as per their position in the merit list and 56 General candidates and 3 Scheduled Tribe candidates were selected on the basis of seniority-cum-fitness in terms of the standing orders.

8. The merit list which was published on 18th January, 2011 was valid initially for one year. By an order dated 4th June, 2012 the validity of the panel was extended, with retrospective effect from 18th January, 2011, for a period of six months from that date, i.e., up to 17th July, 2012. After the panel was extended 20 vacancies in the post of Head Constable (Executive), which had arisen in the meanwhile, were filled up.

9. The respondents filed Original Application being O.A. No. 11/AN/2013 (Shri Manmad Rao & Ors. Vs. Union of India & Ors.) challenging the order dated 4th June, 2012, whereby the validity of the merit list had been extended by six months, contending inter alia that the merit list should be kept alive till promotion of all the candidates in the merit list, as had been done in the case of the merit list prepared in 2001. The respondents also filed Misc. Application being M.A. No. 12/AN/2013 seeking stay of operation of the standing order No. 637 dated 13th January, 2013 stipulating the procedure for filling up fresh vacancies in the posts of Head Constable (Executive).

10. By the judgement and order impugned in this writ application the learned Tribunal directed:-

"We leave it to the wisdom of the authorities who may refer the matter to the respondent No. 1 for suitable orders keeping in view the fact that earlier a panel of 170 persons prepared in 2001 was extended upto 2006 and it took the Administration 5 years to completely exhaust the panel. The authorities shall also consider other factors such as the population, number of Constable/Head

Constables employed, the crime propensity of the Islands, administrative requirement and the like, and pass appropriate orders within 2 months."

11. The short question involved in this writ application is whether the Court and/or the Tribunal can, in exercise of its power of judicial review direct the respondent authorities to even consider extending a panel beyond the period of its validity only because an earlier panel had been so kept alive till its exhaustion.

12. Mr. S.K. Mandal, learned senior advocate appearing on behalf of the writ petitioners argued that the learned Tribunal had erred in law in directing Union of India to consider extension of the validity of the panel beyond 11/2 years.

13. Mr. Mandal referred to Rule 17.13.1 of the Rules of Seniority and Promotion in Central Government Service as contained in Swamy's Compilation, which is set out hereinbelow for convenience:-

"17.13.1 The panel for promotion drawn up by DPC for "selection" posts would normally be valid for one year. It should cease to be in force on the expiry of a period of one year and six-months or when a fresh panel is prepared, whichever is earlier."

14. Mr. Mandal argued that in terms of Rule 17.13.1 of the said Rules of Seniority and Promotion, the validity of the panel prepared by the Departmental Promotion Committee would ordinarily be for one year from the date of its publication, and would cease to be in force on the expiry of one year and six months or when a fresh panel was prepared, whichever was earlier.

15. Mr. Mandal submitted that in terms of Rule 17.13.1 the maximum period of validity of a panel could be one year and six months. The panel in this case had been extended for six months from 18th January, 2012 as that was the maximum period for which the panel could have been extended.

16. Mr. Mandal cited the judgement of the Supreme Court in Union of India (UOI) and Others Vs. B. Valluvan and Others, where the Supreme Court held:-

"12. Life of a panel, as is well known, must be for a limited period. It is governed by the statutory rules. From the circular letter dated 26.6.1992 it is evident that ordinarily the life of the panel should be for one year. What had been indicated therein was that the panel prepared for recruitment should not be unduly inflated. Vacancies should ordinarily be notified keeping in view the immediate future need. It has categorically been stated that only upto a maximum of 10 additional persons were kept in a panel against the existing vacancies which were likely to occur in future. The said circular letter was meant to be applied in a case where, thus, more than 10 vacancies were notified. It did not have any universal application. By reason of the said circular letter, the ordinary life of the panel was not to be extended. Thereby no new practice or rule was brought into force.

17. The life of a panel ordinarily is one year. The same can be extended only by

the State and that too if the statutory rule permits it to do it. The High Court ordinarily would not extend the life of a panel. Once a panel stands exhausted upon filling up of all the posts, the question of enforcing a future panel would not arise. It was for the State to accept the said recommendations of the Selection Committee or reject the same. As has been noticed hereinbefore, all notified vacancies as also the vacancy which arose in 2000 had also been filled up. As the future vacancy had already been filled up in the year 2000, the question of referring back to the panel prepared in the year 1999 did not arise. The impugned judgment, therefore, cannot be sustained."

17. Mr. Mandal next cited State of Bihar and others Versus Amrendra Kumar Mishra reported in (2006)12 Supreme Court Cases 561 where the Supreme Court held:-

"13. The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period."

18. Relying on the judgement of the Supreme Court in State of Rajasthan and others Versus Jagdish Chopra reported in (2007) 8 Supreme Court Cases 161 Mr. Mandal argued that even where the rules were silent with regard to the period of validity of a merit list, or there was no specific rule the ordinary period of validity of select list should be one year.

19. Ms. Anjili Nag, appearing on behalf of the respondents argued that the appointment and conditions of service of policemen in the Andaman & Nicobar Islands have been governed by Rules framed under Sections 7 and 12 of the Police Act, 1861 and published in the Andaman & Nicobar Police Manual, 1963 which came into force with effect from 1st June, 1963.

20. Ms. Nag referred to Rule 5.8 of the Rules embodied in the Police Manual set out hereinbelow:-

"5.8. Every year after all annual confidential reports are received all promotion lists will be reviewed and orders will be passed regarding the retention, exclusion or admission of names in such lists."

21. Ms. Nag tried to advance the argument that, in terms of Rule 5,8 of the Rules embodied in the Police Manual, promotion lists were to remain valid till exhaustion and reviewed every year after confidential reports are received. Ms. Nag argued that the panel of selected candidates prepared in 2001 had been kept valid till the said panel was exhausted.

22. Ms. Nag submitted that the judgements in Union of India and Ors. v. B. Valluvan & Ors. (Supra), State of Bihar and others Versus Amrendra Kumar Mishra (Supra) and State of Rajasthan and others Versus Jagdish Chopra (Supra) are distinguishable as the said judgements were rendered in the particular facts of the cases before the Supreme Court, where the panels were valid for a limited

period as per the applicable Rules.

23. It is well settled that empanelment of a candidate in the select list confers no right on the candidates to claim appointment. A candidate does not acquire any absolute right to be appointed merely because the candidate has been selected and kept in the waiting list as held by the Supreme Court in *K. Jayamohan Vs. State of Kerala* and another, .

24. The inclusion of the name of a candidate in the select list does not tantamount to selection of the candidate for the post. Empanelment at best makes the candidate eligible for appointment. Even after selection of candidates and preparation of a merit list, it is open to the authorities not to fill up the posts for which the merit list is prepared.

25. In the instant case, the service rules governing the respondents do not contain any specific provision requiring that all empanelled candidates whose names are published in the merit list should be given promotion. In any case empanelment in the merit list does not give any right to the empanelled candidates to be considered for appointment, when posts do not exist or when there is a policy decision of the Government not to fill up a post. In this case, after the 178 posts were filled up, the empanelled candidates lost their right, if any, to be considered for appointment.

26. As per the Rules of seniority and promotion in Central Government Service as contained in *Swamy's Compilation*, on which reliance was placed, the panel for promotion is normally to be valid for one year. It should cease to be in force upon expiry of a period of one year and six months, or when a fresh panel is prepared, whichever is earlier.

27. Even assuming, as argued by Ms. Nag, that the said Rules have no application to promotion of Constables to the post of Head Constable and in any case do not override the Rules as contained in the Manual, the Court has to proceed on the principle that a select list once made does not exist for ever. In the absence of any provision in the Rules as to the period for which a select list shall remain valid or alive, a reasonable period has to be adopted as the criteria, as held by the Supreme Court in *State of U.P. Vs. Rafiquddin and Others*, . The adoption of the Rules of Seniority and Promotion in Central Government service as contained in *Swamy's Compilation* is, in our view, reasonable.

28. There can be no dispute that those persons who have been given promotion from the merit list, all ranked above the respondents in order of merit. There has not been any discrimination against the respondents.

29. Even assuming that the order dated 4th June, 2012 extending the panel was bad in law, the position would be that the panel stood expired on 18th January, 2012. The empanelled candidates cannot claim appointment by reason of such extension.

30. We are unable to agree that Rule 5.8 of the Rules embodied in the Police

Manual casts any obligation to keep the panel alive indefinitely, till its exhaustion, as contended by Ms. Nag. Rule 5.8 casts an obligation on the authorities to review panels that are valid, on receipt of Annual Confidential Reports every year and to pass appropriate orders regarding retention or exclusion of names in such lists.

31. When a list is prepared inter alia on the basis of performance in a selection test, there can be no question of addition to the list on the basis of Annual Confidential Report alone. Rule 5.8, in our view, enables the respondent authorities to exclude a name from the merit list in the event of adverse remarks in the Annual Confidential Report.

32. Since the respondents have no right to be appointed, as discussed above, the learned Tribunal fell in error in passing an order in their obligation directing the Union of India to consider the question of extension of the panel keeping in view the fact that an earlier panel had been kept valid for five years and till its exhaustion. The mere fact that a panel had earlier been kept alive till its exhaustion does not cast any duty on the authorities to keep subsequent panels alive beyond the normal period of validity thereof.

33. Moreover, the issues in the application were almost identical to the issues involved in the earlier application relating to Police Constables under Fire Service being OA 141/AN/2009 which was dismissed by a Bench of the Tribunal of coordinate strength by a long and reasoned judgement and order dated 25th August, 2012. Judicial discipline and propriety demanded that the said judgement and order be followed.

34. For the reasons discussed above, the writ petition is allowed and the impugned judgement and order of the learned Tribunal is set aside and quashed.

Dr. Sambuddha Chakrabarti, J.

I agree.