

(1999) 09 AHC CK 0188

In the Allahabad High Court

Case No : Special Appeal No's. 278-83 of 1997

Union of India and others

APPELLANT

Vs

Akchhay Kumar Singh and others

RESPONDENT

Date of Decision : 24-09-1999

Acts Referred:

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

Citation : (1999) 4 AWC 3564 : (1999) AWC 3564 : (1999) 3 UPLBEC 2368

Hon'ble Judges : N.K. Mitra, C.J.;S.R. Singh, J

Bench : Division Bench

Advocate : U.N. Sharma and Lalji Sinha, for the Appellant; V.B. Singh, for the Respondent

Final Decision : Allowed

Judgement

N.K. Mitra, C.J.—These are the six special appeals arising out of the judgment and order dated April 8, 1997 whereby the learned single Judge allowed Writ Petition No. 39772 of 1996 and five other connected writ petitions, quashed the order dated 21.10.1996 and advertisement dated 26.10.1996 impugned in the writ petitions and directed the appellants herein to declare the result of the selection held for recruitment of Constables in Railway Protection Force over Eastern Railway pursuant to advertisement No. SC 30/65/5-E (Rect.)-1995 dated 23.4.1995 within a period of two months from the date of judgment.

2. By impugned order dated 21.10.1996 impugned in the writ petitions, the Chief Security Commissioner. Railway Protection Force, Eastern Railway. Calcutta, had cancelled the selection process held in pursuant to advertisement dated 23.11.1995. The impugned advertisement was issued on 26.10.1996 for holding recruitment afresh. The order dated 21.10.1996 and advertisement dated 26.10.1996 were sought to be quashed, inter alia, on the grounds that the process of selection was cancelled on extraneous considerations and in colourable exercise of power. The order of cancellation, it was submitted by the petitioners, was passed without holding any enquiry whatsoever to ascertain the truth of the

allegations made in the complaint and sans any material to substantiate the alleged complaints regarding the selection being vitiated on the grounds of corruption and nepotism. As regards the consequential advertisement dated 26.10.1996, it was submitted on behalf of the writ petitioners before the learned single Judge that state-wise reservations made therein and the requirements mentioned therein that the candidates must have passed their matriculation from the three States of Uttar Pradesh, Bihar and West Bengal and that they must also be domicile of these States were violative of Articles 14 and 16 of the Constitution of India. The earlier advertisement, it was submitted by the writ petitioners, did not limit the field of eligibility to the above three States. Though several points were urged before the learned single Judge but the writ petitions came to be allowed only on the ground that the order of cancellation dated 26.10.1996 was passed without any basis in that there was no iota of evidence on record to show that the competent authority had ever investigated the truth of the complaints made against the recruitment process.

3. We have heard Sri U.N. Sharma, learned counsel appearing for the appellants and Sri V.B. Singh, learned counsel representing the respondents. We have also perused the affidavits filed in the writ petition as well as original record produced by Shri U. N. Sharma.

4. Shri U.N. Sharma, submitted that the Director General, Railway Protection Force, Railway Board, New Delhi, was satisfied on the basis of personal enquiries from various sources that the selection was not fair and was rather vitiated due to serious irregularities and malpractices and the learned single Judge erred in interfering with the subjective opinion so formed by the Director General, Railway Protection Force, New Delhi. Sri V.B. Singh submitted in support of the judgment under challenge, that there was no material on record to enable the Director General to form an opinion on that malpractice or corrupt means were adopted at the written test or at any stage of the selection process and the opinion formed by the Director General was unsustainable.

5. A perusal of the original record produced by Shri U.N. Sharma during the course of hearing would show that the main allegations made in the complaints including the complaint contained in letter dated 1.3.1996 of one Shri Syed Matloob Hashmi, Member, Z.R.U.C.C., Eastern Railway addressed to the Prime Minister of India and Railway Minister are four-folds : (A) collection of money ranging from Rs. 50,000 to Rs. 70,000 from candidates through R.P.F. personnel allegedly working as brokers and sub-brokers with the consent of the Chairman/ Members of the recruitment committee, on behalf of the then Chief Security Commissioner, Eastern Railway, with an assurance to secure them job, (B) distribution of similar ball pens amongst all such candidates who had paid money and appeared in the written test at Dhanbad (Bihar) with instructions not to answer objective type question so as to enable the examiner to answer these objective questions by making appropriate tick mark afterwards ; (C) some candidates who were to appear in the test at Lilaugh Centre were declared unfit

due to their failure to pay the requisite amount ; and (D) extra facilities/ privileges were given to the candidates belonging to the community of Chief Security Commissioner as per the instructions of the latter.

6. The record further reveals, vide office note dated 8.2.1996 as made on Security (E) File No. 93-Sec. (E)/RC-3/68/ER, that S/Sri Ratan Roy. Hemant Mandal. Prasante Halder, Sanu Sen and Sures Pal had complained to the President of India that the recruitment committee headed by Sri P.S. Rawal constituted for recruitment of Constables, Railway Protection Force for Eastern Railway, was adopting illegal procedure for rejecting the genuine candidates and the candidates were being charged Rs. 35,000 to 50,000 for recruitment. The note also refers to the complaint of Shri A.K. Seth of Hirapur, Dhanbad that the recruitment committee had engaged touts to collect Rs. 50,000 to 60,000 per candidate for recruitment and it was in this perspective that the Inspector General/Hqr, had remarked that "we may ask comments of C.S.C./E. Railway, with an advise to check any malpractice during recruitment" and the complaints were accordingly sent to Chief Security Commissioner, Eastern Railway for his comments. All the complaints, it appears, were submitted to the Director General with a suggestion "to refer the case to Adv. (Vig.) for in-depth enquiry and to unearth truth".

7. Thereafter Shri R.K. Sharma, the then Director General passed a detailed order, the relevant portion of which reads as under :

"A perusal on these complaints indicate that some of the complaints are anonymous/pseudonymous and make general allegations. One specific point which has come in more than one complaint was use of pens with earmarked colour. This could be secretly verified by vigilance after going through answer sheets of candidates at random. The vigilance officer conducting enquiry could also get in touch with all the complaints to find out whether any of the complaints are pseudonymous and look into the specific facts which could be verified and complete the enquiry within a specific time frame say in a month or so and put up the report through Advisor (Vig.). In the meantime we may not approve the proceedings of the recruitment committee. The proceedings with all the relevant papers may be kept in the office of D.G./R.P.F. and shown to officer earmarked by Adv. (Vig.) for security if and when required during the enquiry.

Since the career of a large number of candidates who have had this examination is at stake, there is a need for early enquiry and report by vigilance in these complaints so that a final decision on the result could be taken at an early date. If approved, Adv. (Vig.) may be requested to get the enquiry completed within a month .

For approval and orders please."

8. On the basis of the aforesaid order made by the Director General, R.P.F.. the matter was considered by Shri A.S. Khan DV (P) who submitted a note dated 23.5.1996 to Adv. (Vig) as under:

"D.G./R.P.F. vide his note above has asked the Vigilance Directorate to enquire into complaints relating to the recruitment of R.P.F. constables on the Eastern Railway. Complaints in this regard may be seen at Sl. Nos. 14, 15, 20, 21 and 22.

Besides these there is another complaint at Sl. No. 24 against Shri T.A. Khan. C.S.C.. Eastern Railway which has also been marked to us for enquiry.

In this regard it may be mentioned that the matter was informally discussed with the then acting D.G./R.P.F. (Shri R.K. Sharma. I.G.P.) on 10.4.1996. During discussion it transpired that the matter with regard to the recruitment of Constables was already under enquiry by the Zonal Vigilance and under these circumstances it would be a duplication of effort making similar enquiries through the Board Vigilance. The then D.G./R.P.F. had spoken to the Chief Vigilance Officer, Eastern Railway, Shri Parthasarathy and I had also met the officer on his visit to Delhi last month. On both the occasions, C.V.O./E.R. had confirmed that a vigilance enquiry was underway.

In respect of the complaint mentioned at para 7 of D.G./R.P.F.'s note on pre-page Sl. No. 24, the concerned officer namely, Inspector M.M. Lall of Narkul Danga was summoned on 12.4.1996 in the office of the undersigned for recording his statement with reference to the said complaint. However, on seeing the complaint at Sl. No. 24, he disowned the same stating that he never made any such complaint nor he has any knowledge whatsoever in this regard. His statement may kindly be seen at Sl. No. 26 placed below.

Meanwhile, another complainant, Shri Syed Masood Hashmi (Sl. No. 20) had also come to my office and desired to give in writing that he wanted to withdraw his complaint, a request which I did not entertain.

Further, with regard to the allegations contained in the note of D.G./R.P.F. at para 6 at page 21/N, regarding the use of ball pens with earmarked colours, this aspect was discussed with him at length. This allegation happens to be common to all the complaints listed in para 1 above. The possibility of verifying and arriving at any definite conclusion with regard to the use of these ball pens seems very remote and the then D.G./R.P.F. was apprised that nothing substantial would come out of this as there would be no evidence to corroborate the allegations made in the complaint, a point to which he also agreed.

In the light of what has been mentioned above, Adv. Vig, may kindly see for favour of kind information."

9. The note aforesaid was perused by the Adv. Vig, and the case file was "sent back to D.G./R.P.F. as desired by him". Shri Joginder Singh who had in the meantime taken over as Director General. R.P.F., on perusal of the entire recruitment file along with the complete broad sheet and personal list of selected candidates sent to him for approval is said to have observed as under :

"There can be no smoke without fire. With the kind of allegations which had been made, I cannot allow the name of R.P.F. to be sullied and reduced to mud. I am

satisfied that the recruitment done has not been transparent. Anybody who pays money to get a job will sure try to realise his original investment. It is totally unacceptable in the case of R.P.F., who are supposed to guard the Railway and public properties worth crores. Hence I order that recruitment done in question, hereby cancelled."

10. Consequently, in view of the numerous complaints making serious allegations of malpractices the recruitment proceedings were scrapped by the Director General, R.P.F., vide order dated 21.6.1996. The decision to scrap the recruitment was communicated to Chief Security Commissioner. R.P.F., Eastern Railway, Calcutta, vide communication dated 21.6.1996 which reads as under :

"The selection proceedings of constables/R.P.F. of Eastern Railway, conducted by the Recruitment Committee consisting of Sh. B.S. Rawal, Sh. A.K. Singh and Sh. S.A. Shah has been examined by D.G./R.P.F. A large number of complaints have been received in this office alleging malpractices in the recruitment process. After taking into account the allegations of malpractices in the recruitment process. D.G./R.P.F. has ordered that the recruitment proceedings referred to above is scrapped. Instructions for fresh recruitments will follow."

11. The original record produced before us contains a post decisional report dated 3.12.1998 of Chief Security Commissioner. R.P.F., Eastern Railway, goes to show investigation is underway in respect of "the assets of the suspicious officers" since very large amount is alleged to have passed hands.

12. The report further reveals as under :

"Confidential enquiry was conducted and it was almost an "open secret" that the distribution of pens was actually done by certain officers close to the recruitment committee who has collected money on behalf of the Recruitment Committee."

13. The enquiry committee appears to have come to the conclusion that the candidates who had made prior payment were given one pen and were asked to answer the essay question in that ink and keep the objective type question totally blank so that examiner would fill it in the same ink later on at the time of evaluation of answer sheets. The enquiry committee had probed the answer sheets of certain candidates such as Virendra Singh (Roll No. 55512). Sanjeev Kumar (Roll No. 59713). Devi Shankar Yadav (Roll No. 1616). Shambhu Sharan Chauhan (Roll No. 3309). Manoj Kumar Dubey (Roll No. 11674). Vinod Kumar Singh (Roll No. 19714). Shyam Kumar Tewari (Roll No. 59421) and Uma Shankar Dubey (Roll No. 49544) and found that they have been awarded high marks looking to the standard of their cases and further that they have been awarded marks ranging from 85% to 100% in objective portion of the question paper. The committee, therefore, concluded as under :

"It is pertinent to mention that all these above candidates have moved the Hon'ble Court for declaration of their results as they seemed absolutely sure of making the grade. The scrutiny of their result sheets as well as naked-eye

perusal of the inks used and the uniform style of Licking of (v) very clearly point out that the allegations have substance. Scrutiny of the examination of records of the other suspected candidates also raises doubts about the fair procedure having been adopted (list attached). All these answer sheets need to be sent for further examination to Examiner of questioned documents at Simla to verify (i) whether the same type of pens were used in all these papers, (ii) whether the ticking of (v) was done by the same person on all the answer scripts."

And further :

"Since very large amount of money is alleged to have changed hands, assets of the suspicious officers have to be investigated. On enquiries conducted by the IVG Cell, Eastern Railway so far it is transparent that the selection was not fair and malpractices were resorted to for footproof, a clear case for C.B.I, enquiry is made out."

14. The learned single Judge on consideration of the material on record has held that :

"In the instant case, there is no finding recorded by any authority whatsoever as to whether there was any irregularity in the selection or money had really changed the hands. It is based only on the complaints and the alleged subjective satisfaction of the superior authority is based on no evidence. Apart from that not a single instance or circumstance has been brought to the notice of this Court from which, even indirectly, malpractice or corrupt practice in the examination or selection can be gathered."

And further that:

"The record further reveals that there had been only eleven complaints and most of them had been from State of Bihar which is a major beneficiary of new advertisement. There is no iota of evidence on record that any competent authority had investigated the said complaints. The competent authority had acted on its wisdom but the material on which such authority had acted upon has not been disclosed before the Court."

And further more that :

"Therefore, I am of the considered opinion that the impugned order dated 21.10.1996 cancelling the selection process suffers from the vice of arbitrariness and must be declared illegal and mala fide. As the petitions succeed only why on these grounds, the other issues do not require consideration."

15. The crucial questions that arise for consideration are : (i) whether the order cancelling the selection process suffered from the vice of "arbitrariness" and "mala fide" as held by the learned single Judge ; and (ii) whether the Director General, R.P.F., was justified in scrapping the recruitment process without objectively ascertaining the truth or otherwise of the complaints received at Head-quarters from various sources? It cannot be gainsaid that the Director

General, R.P.F., being the approving authority would be deemed to be possessed of the discretion to scrap the recruitment if he believes in "good faith" that the process of recruitment is tainted by malpractices of bribery, nepotism and favouritism etc.

16. In matters like the one before us, an honest exercise of power is to be sustained unless it is found to be grossly unreasonable. Exercise of power in a matter of this nature when challenged, should be tested more on the touchstone of "good faith" than "reasonableness". There is a subtle distinction between "good faith" and "reasonableness". It would be apt to quote de Smith's Judicial Review of Administrative Action by Evans (4th Edition) page 347, as under to bring home the point :

"A duty to act in good faith (which is undoubtedly a general principle of administrative law) is distinguishable from a duty to act reasonably. As Scrutton, L.J. observed, "some of the most honest people are the most unreasonable ; and some excesses may be sincerely believed in but yet quite beyond the limits of reasonableness". But conduct that is so unreasonable as to be arbitrary or capricious can well be mistaken for or assimilated to acts done in bad faith."

17. In this context, the following observation made by Lord Hailsman L.C. in *Re W. (an Infant)* (1971) AC 682 as well will illuminate the problem :

"Not every reasonable exercise of judgment is right, and not every mistaken exercise of Judgment is unreasonable. There is a band of decisions within which no Court should seek to replace the individual's Judgment with (its) own."

18. The discretion is, however, not absolute. If it is found to have been exercised "mala fide" or in "bad faith", it would be hit by doctrine of ultra vires in that "bad faith" is often referred to as a ground of invalidity "sui generis". The concept of "bad faith" has been explained by de Smith's Judicial Review of Administrative Actions, by Evans Fourth Edn. pages 335-36 as under :

The concept of bad faith eludes precise definition, but in relation to the exercise of statutory powers it may be said to comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository tends to achieve an object other than that for which he believes the power to have been conferred.....A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise."

19. "A Court will, however, not in general entertain allegations of bad faith made against the repository of a power unless bad faith has been expressly pleaded and properly particularised." (See de Smith /supra) page 336)

20. In a matter like the one on hand, the competent authority, in our opinion, does not decide a lis between the complainant on one hand and candidates seeking appointment on the other so as to be obliged to hold an enquiry in consonance with the rules of natural justice. Its decision is not to be judged from judicial or even quasi-judicial standards and since exercise of power to scrap

recruitment is not regulated by objectively determinable factors, even "reasonable suspicion" as to the process of recruitment being vitiated by malpractices or corrupt means would suffice. Surrounding circumstances, e.g., the necessity to scrap the recruitment for preservation of public faith in the recruitment process will also do. The competent authority, in our opinion, is not required to hold a formal enquiry in tune with the principles of natural justice and ascertain the truth or otherwise of the complaints as to malpractice in the recruitment process as condition precedent to cancelling the recruitment process. All that is expected of the competent authority in such a situation is that it would act in "good faith" and take a bona fide decision whether to scrap or not to scrap the recruitment. The decision should not be influenced by any extraneous consideration and whenever its decision is found to have been influenced by "bad faith" or extraneous consideration, the Court will intervene, for no power is absolute and rather all powers are conferred subject to an implied duty that they be exercised reasonably and in good faith. An authority failing to comply with this obligation. It may be observed, acts unlawfully or ultra vires. The judicial scrutiny by the High Court under Article 226 of the Constitution of India, on a matter like the one on hand, is to be made on the anvil of "good faith", bona fide and absence of mala fide. The impugned decision to scrap the recruitment in our opinion, does not appear to be tainted with mala fide, "bad faith" or "extraneous consideration". Notings on the original file produced before us would show that the matter was examined and decision to scrap the recruitment was taken after due deliberation. Such decision, in our opinion is not open to challenge under Article 226 of the Constitution of India on the ground that there was no material to substantiate the allegations of malpractice. The complaints in themselves constituted valid material on consideration of which the recruitment could lawfully be scrapped. The Director General, R.P.F. in our opinion, was right in observing that anybody who pays money to get a Job would first realise his original investment. Members of the R.P.F. who are supposed to guard the railway and public property worth crores of rupees should not be allowed to enter into the force by illegal and corrupt means. The view taken by the learned single Judge that the decision to scrap the recruitment was arbitrary cannot be sustained. The report dated 3.12.1998 submitted by the Chief Security Commissioner. R.P.F., Eastern Railway, is no doubt a post-decisional report but since it supports the complaints to a large extent, the decision to scrap the recruitment as taken by the Director General, R.P.F., cannot be said to be vitiated by arbitrariness particularly when the exercise of discretion in this regard is not regulated by objectively determinable factors/norms. Learned single Judge, in our opinion, was not right in judging the impugned decision on the touchstone of the standards meant for judging judicial or quasi-judicial decision affecting vested rights of individuals. In the instant case, examinees acquired no indefeasible right to get the result of examination declared and, therefore, if the Director General, R.P.F., on consideration of the complaints decided to scrap the recruitment, no exception can be taken to such decision. The judgment under challenge is, therefore, unsustainable.

21. In the result, therefore, the appeals succeed and are allowed. The Judgment of the learned single Judge is set aside. The impugned advertisement is, however, quashed and appellants are directed to issue fresh advertisement in such a way that the applicants who had applied pursuant to the earlier advertisement are not disqualified on the ground of age-bar or on any other disqualification not comprehended in the original advertisement.