
(2002) 09 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3961 of 2000

Vinod Kumar Dwivedi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2002) 4 MPHT 394

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Sujoy Paul, for the Appellant; I. Nair and K. Menon, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.—This is a writ petition under Articles 226 and 227 of the Constitution of India for a direction to the respondents to permit the petitioner to continue and complete his training as a Constable in Central Industrial Security Force.

2. It is not in dispute that the petitioner was selected for the post of Constable "through eligibility test, physical efficiency test, written test and interview" held at Bhopal from 10-4-2000 to 11-4-2000. He was appointed as a Constable by order dated 10-6-2000 (Annexure P-2) by the respondent No. 3. The petitioner was asked to join at CISF Recruitment Training Centre, Badwaha, District Khargone on 18-6-2000 for training for 11 months. The petitioner submitted his joining report in the training centre on 18-6-2000. He was not permitted to continue his training from 28-6-2000. No written order was passed cancelling his appointment. The petitioner was not given anything in writing disclosing the reasons for discontinuance of his training.

3. The petitioner's case is that he was duly selected and he passed the Physical Efficiency Test (PET) at Bhopal. No notice was given to him at the Training Centre

at Badwaha that he is to be re-tested for PET. As his appointment order has not been cancelled he has a right to continue on the post on which he had been duly appointed.

3. The case of the respondents is that there were complaints of "manipulation and mal-practice" in the selection process held at Bhopal. Thereafter, the petitioner and other selected candidates were "re-tested" for PET. The petitioner could not pass this "re-test". He was orally informed that he would not be permitted to continue the training. It is stated that the petitioner failed in the "re-test of one mile race". According to the respondents, all the candidates "were informed orally in a common gathering about the nature of re-test well in advance before the re-test was carried out".

4. The point for decision is whether the action of the respondents in passing the aforesaid order orally is just, fair and reasonable.

5. It is an admitted fact that the appointment order dated 10-6-2000 was issued by the competent authority after a detailed selection process in which "eligibility test", "physical efficiency test", "written test", "interview" and "medical examination" were conducted. According to the respondents there were complaints of "manipulation and mal-practice" in this selection. But nothing has been brought on record to show how this selection process was tainted. It is difficult to comprehend how there could be an oral order terminating the services of the petitioner. In case the petitioner was not found fit on "re-test" the minimum that was expected of the officers of the Central Industrial Security Force was to pass a written order terminating the services of the petitioner. An oral order terminating the services after a written appointment order is unheard of. There cannot be "hire and fire" in public employment. The respondents have not passed any written order terminating the services of the petitioner. It was necessary to disclose the reasons to the petitioner for termination of his services by a written order. An oral order is of no legal value.

6. The grievance of the petitioner is that he had duly passed the physical efficiency test in the selection at Bhopal. He was never informed at Badwaha that he is to be re-tested in one mile race. According to him he was required to run in a routine manner as part of physical exercise and during such exercise his performance in physical efficiency test could not be tested. According to him, it was necessary to inform him that earlier physical efficiency test is said to be suffering from "manipulation and mal-practice" and therefore, he is to be re-tested. That would have given a warning to the petitioner to give his best performance in the re-test. This information is also said to have been given by the officers of the CISF orally. It was expected to notify through a notice on the notice board that for some reasons the candidates are required to be re-tested in the physical efficiency test. That was the requirement of fairness and reasonableness. There is no material on record to show that any such written notice was given to the candidates. The stand of the respondents that the candidates were informed orally about the re-test has been denied on affidavit by

the petitioner. There is no record showing that the candidates were put on notice that they are to be re-tested. The impugned action of discontinuance of the training of the petitioner suffers from basic defects firstly the candidates were not informed in writing that they are to be re-tested and secondly, there is no written order either cancelling or withdrawing the order of appointment of the petitioner passed by a competent authority. It is also not established that there was any "mal-practice or manipulation" in the physical efficiency test which was held at Bhopal. During the course of the arguments learned Counsel for the respondents submitted a copy of letter dated 27-6-2000 of the DIG, CISF, Unit Bhilai alongwith a chart showing the marks obtained by the petitioner in the selection process at Bhopal and also in the re-test at Badwaha. In the selection process at Bhopal, the petitioner had secured 63 marks but on re-test he has got 59 marks. The difference is not such on the basis of which the petitioner could be said to have obtained his appointment by any "manipulation or mal-practice". There is no such clear finding given by the authorities of the CISF in respect of the petitioner. Simply because the petitioner could not pass one mile race test especially when he was not put on notice that he is being re-tested for one mile race, the appointment order given to the petitioner could not be treated as of no value. This appointment order did confer a right upon the petitioner to join the training and continue on the post of Constable. The exercise of alleged re-test is not free from infirmity.

7. It is well settled that before cancellation of an appointment order, an opportunity of hearing should be given to the person who has been appointed. In *Shrawan Kumar Jha and others Vs. State of Bihar and others*, , it has been laid down that no order to the detriment of the appellants could be passed without complying with the rules of natural justice. Similarly, in *Basudeo Tiwary Vs. Sido Kanhu University and Others*, , it has been observed that if the appointment was irregular, an enquiry will have to be made and in holding such an enquiry the person whose appointment is under enquiry will have to be noticed. It has been observed that if notice has not been given to him then it is like playing Hemlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable. It is further observed in this decision that the law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14, for, natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are components of fair treatment. The conferment of absolute power to terminate the services of an employee is antithesis to fair, just and reasonable treatment.

8. It has been held by this Court recently in *Mahendra Kumar v. State of M.P.* 2002(3) MPLJ 112, that even in the case of invalid appointment or in case where

validity of order of appointment is questioned, it is necessary to give opportunity of hearing to person concerned before dispensing with his service. Again in Arvind Kumar Sahu Vs. State of M.P. and Others, it has been reiterated that cancellation of appointment order without following principles of natural justice is illegal.

9. Learned Counsel for the respondents has cited the decision of the Supreme Court in State of M.P. and Others Vs. Shyama Pardhi etc. etc., , in which it has been held that if a person not possessing the pre-requisite qualifications prescribed by statutory rules was wrongly selected, then termination of his services did not attract the principles of natural justice. The decision of the Supreme Court in Shrawan Kumar Jha and others Vs. State of Bihar and others, , was distinguished in this case because in that case appointment order suffered from the basic defect that the person who was appointed did not admittedly possess prescribed qualifications. In the present case the petitioner possesses all the prescribed qualifications and he was declared selected in the selection process and therefore, he could not be asked not to join his post orally without any inquiry and without disclosing any reason or passing termination order.

10. In the result, this petition is allowed. The respondents have not passed any written order and therefore, there is no question of quashing of such order. The appointment order dated 10-6-2000 (Annexure P-2) issued in favour of the petitioner will hold good. The respondents are directed to permit the petitioner to continue on the post of Constable. Relief of the salary and allowances claimed by the petitioner is rejected. Costs as incurred.