

(2010) 06 DEL CK 0010

In the Delhi High Court

Case No : Writ Petition (C) No. 3281 of 2003

Virender Singh Pan War

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 04-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 06 DEL CK 0010

Hon'ble Judges : Valmiki J Mehta, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Sunil K. Mittal, Sandeep Sharma and Kshitij Mittal, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—An advertisement was issued by the Staff Selection Commission ("SSC" for short) on 05.03.1994 for recruitment to the post of Sub Inspector (Executive). The scheme of examination required a candidate to qualify in the written examination to be followed by a personality test, physical test and physical measurements including vision test. The examination was held on 03.07.1994 and the petitioner participated in the same. The petitioner was successful in the written examination, result of which were declared on 19.07.1995. However, in the physical efficiency test, the petitioner failed and thus was not recruited.

2. The petitioner challenged the action of his non recruitment for failing the physical test by filing OA No. 1523/1995 and prayed for a second physical test. The CAT acceded to the said request and thus a second physical examination of the petitioner was carried out on 09.01.1997 in which he was declared successful. In the meantime, however, a batch of candidates recruited in pursuance to the examination of 1994 was sent for training on 19.11.1996. The petitioner was also interviewed on 17.1.1997 and the result of the petitioner was declared on 10.03.1997 informing him that he could not qualify due to his low

merit. The petitioner requested the SSC to supply him the detailed marks on 01.04.1997. Thereafter, the petitioner made a detailed representation on 26.08.1997 predicated on the decision of the Supreme Court in SLP No. 16356-16358/2006 Vijay Pal Singh and Ors. v. UOI and Ors. decided on 14.08.1997. It would be relevant to notice at this stage that some of the candidates who had been recruited had total marks less than that of the petitioner but despite this the petitioner was not recruited on account of the fact that he had failed to obtain the minimum marks in Paper III for Hindi. Respondents claimed to have fixed a minimum percentage of 40 per cent which required the petitioner to obtain at least 80 marks out of 200 marks, but the petitioner had only obtained 68 marks.

3. There were other candidates who had appeared for 1994 examination and were similarly situated as the petitioner inasmuch as they had failed to obtain the minimum marks in Hindi. These persons had approached CAT by filing OA Nos. 2226/2005, 1880/1995 and 1975/1995, but their challenge was negated vide order dated 26.07.1996, It is against this order that SLP Nos. 16356-16358/1996 and 24653/1996 were filed. To gauge the purport of the Supreme Court judgment, it is necessary to reproduce the order which is a short one:

We have heard Sh.R.K.Jain, the learned senior counsel appearing for the petitioners in SLP (civil) Nos. 16356-58/96 and Ms. Mana Chakraborty the learned Counsel appearing for the petitioner in S.L.P.(c) No. 24653 and Sh. V.C. Mahajan, the learned senior counsel for the respondents. The matter relates to selection for appointment on the post of Sub Inspector (Executive) in Delhi Police. Sh. Jain states that even after appointing the selected candidates, a number of vacancies are still available on which appointments can be made. Shri Jain has pointed out that though the petitioners had obtained the cut off marks prescribed for the purpose of personality test (interview), they were not selected for the reason that they failed to obtain the minimum qualifying marks that were prescribed for Hindi in paper III after the personality test had been conducted. It is submitted that in the merit list, as per the aggregate of marks obtained in all the papers, the petitioners are better placed than the candidate who were selected by the Staff Selection Commission. In the circumstances, It is directed that in case vacancies are available for appointment on the posts of Sub Inspectors (Executive) in Delhi Police for which the impugned selection was made, the respondents may consider for appointment against those vacancies the petitioners and other similarly situated candidates on the basis of merit as per the aggregate of the marks obtained by them in all the papers and if on the basis of such consideration it is found that the petitioners can be so appointed the respondents shall appoint them against the existing vacancies by relaxing the requirement of minimum qualifying marks prescribed for Hindi in paper III. The special leave petitions are disposed of accordingly.

4. A perusal of the aforesaid order would show that the same is predicated on a submission that there were existing vacancies available for appointment to the

post after the selection was made and in the said circumstances it was directed that the respondents may "consider" for appointment against "those vacancies" "the petitioners and other similarly situated candidates" on the basis of an aggregate of marks obtained by showing relaxation for the requirement of minimum qualifying marks prescribed for Hindi in paper III. Thus, the requirement stipulated of minimum marks for Hindi in paper III was not struck down, but on the other hand was upheld. The only concession shown was that in the selection process, if some seats are still left vacant, the same can be filled in on the basis of aggregate merit by relaxation of such minimum qualifying marks criteria. The expression used by the Supreme Court also shows that the petitioners in those petitions and other similarly situated candidates were placed at par but they had to be appointed against the vacancies in respect of the process of recruitment for 1994. The case of the petitioner is that he is similarly situated and thus is entitled to be recruited against the 1994 selection process.

5. The respondents in response to the representation, however, took the stand that on 24.11.1997 that there were no vacancies in respect of 1994 selection process. The petitioners in Vijay Pal Singh and Ors. v. UOI and Ors's case (supra) filed even a contempt petition being Contempt Petition No. 138-141/1998 which was however dismissed on 07.08.1998 with the observation that no case had been made out for taking action for contempt. The petitioner, however, claims that an affidavit was filed in those contempt proceedings to negate the plea of absence of vacancies and thus the petitioner made another representation on 01.05.1998. There is certain other correspondence placed on record between Delhi Police and SSC to establish the category-wise break up of vacancy position to show that the petitioner could have been so appointed. The petitioner, however, did not succeed in persuading the respondents and thus filed OA No. 1100/1999 before Central Administrative Tribunal ("CAT" for short) seeking a direction for his appointment with effect from 1994.

6. The OA was heard by CAT on 29.09.2000 and the petitioner claims that the order was dictated in the Open Court whereby the petitioner was successful. However, a copy of the order was not supplied but on the other hand the case was listed for presence of both the parties on 23.10.2000 on the premise of certain facts being noticed in the record. Ultimately, CAT dismissed the petition vide impugned order dated 18.12.2000, which is now sought to be assailed by filing the present writ petition under Article 226 of the Constitution of India.

7. The impugned order is predicated on the notice for recruitment published by SSC on which even learned Counsel for the petitioner placed reliance. It is not in dispute that inasmuch as the notice specifically did not stipulate the minimum marks to be obtained in the written test, but while dealing with paper III, which is a language test, the following notes were inserted:

(1) The commission have the discretion to fix the minimum qualifying standard and any or all the parts/ Sub-parts of each of the paper of the written examination separately for General, SC/ST & Ex- Serviceman candidates.

(3) Only those candidates who attain minimum qualifying standard in part-I of the examination viz. Written Examination separately for each of the two or three categories of posts, as may be fixed by the commission in their discretion, will be eligible to be called for the personality test for respective posts.

8. The process followed in the examination in question has been explained in para 3 and 4 of the impugned judgment, which reads as under:

3. As per examination notice the SSC had the discretion to fix the minimum qualifying standard in any of the parts sub parts of each paper the paper of the written examination and penalty for different categories of candidates. The notice also provided the paper 2nd and/ or paper 3rd would be evaluated only in respect of those candidates who obtained a minimum qualifying standard in paper 1st as may be fixed by SSC. The SSC accordingly after evaluating answer scripts of paper 1st fixed a certain qualifying standard for that paper for evaluation of paper 2nd/3rd. In all 13632 candidates qualified in paper 1st for evaluation of paper 2nd and 4448 candidates qualified in Paper 1 for evaluation of Paper 3rd . After getting the evaluation of Paper II/III done the SSC fixed certain cut off marks for different categories of candidates on the basis of aggregate marks in paper I and II for CBI and CPOs and in Paper II and II for Delhi Police candidates. No minimum qualifying standard was fixed at this stage for Paper II and III.

4. After completion of personality test/interview, the SSC taking an overall view of the performance of the various candidates in different tests, both severally and collectively, fixed a minimum qualifying /cut off standard in paper 2nd/3rd also (carrying 200 marks). No minimum standard was, however, fixed for the personality test/interview.

9. The CAT took notice of the order in Vijay Pal Singh and Ors. v. UOI and Ors's case (supra) passed by the Supreme Court on 14.08.1997 as also dismissal of the contempt petition on 07.08.1998. The plea of the petitioners that there were vacancies which arose subsequently which could be taken into consideration for being filled in was also noted. 23 candidates were alleged to have been declared unfit on account of police verification and medical examination, but the respondents explained that actually 7 candidates had left the Department in 1997 while one had expired and the other particulars were not correct. The vacancies which arose in 1997 were treated as vacancies for 1997 and not for 1994.

10. In terms of the impugned order it has been concluded that the petitioner could not appear in the select list because he failed to obtain the minimum marks and he was only claiming relaxation as directed by the Supreme Court in terms of the order dated 14.08.1997 being similarly situated. However, the order itself clearly stated that such consideration was contingent upon vacancies still being available after appointment of the selected candidates and in the contempt petition a stand was taken that no vacancies for the year 1994 was available

where after the contempt petition was dismissed. The respondents could not be compelled to appoint the petitioner to the post against subsequent vacancies as mere placement in the select list did not give the person a legally enforceable right to compel the respondents to appoint him. The select list had a duration of life and could not extend over six years to the year 2000.

11. Learned Counsel for the petitioner sought to contend before us that there was no occasion for the petitioner to be called for a physical test and interview if he did not fulfil the criteria for minimum marks in Paper III for Hindi and thus this plea was only an afterthought to somehow not appoint the petitioner. The counsel on being asked was initially hesitant to answer the court query as to whether the petitioner was basing his case on the judgment in Vijay Pal Singh and Ors. v. UOI and Ors.'s case (supra), but after much goading did acknowledge that apart from the aforesaid plea he actually based his plea on similarity with Vijay Pal Singh and Ors. v. UOI and Ors.'s case (supra) and the direction contained therein to treat similarly situated persons at par.

12. Learned Counsel also made a grievance that the respondents had been taking conflicting stands on vacancy position as also the manner of disposal of the OA where the first order was dictated in the court and then unilaterally reviewed subsequently and a different order passed after listing the matter for directions.

13. Learned Counsel for the respondents on the other hand submits that in the absence of vacancies and the interim order passed in Vijay Pal Singh and Ors. v. UOI and Ors.'s case (supra) as also in the contempt petition, the petitioner could not raise a grievance.

14. On examination of the matter, we find the case of the petitioner meritless. It is no doubt true that the petitioner was initially sought to be denied recruitment on the basis of his having failed in the physical test. His prayer for a second chance in the physical test was accepted by the CAT and the petitioner was successful in the physical test. This does not amount to a waiver of fulfilling the other requirements which had to be so fulfilled.

15. The manner and sequence of conduct of examination and the persons being asked to come for interviews has already been explained in the impugned order as extracted aforesaid. It is not as if the petitioner has been singled out on the ground of his failure to qualify in the written examination for Hindi in paper III. There were other similarly situated persons who approached CAT unsuccessfully in Vijay Pal Singh and Ors. v. UOI and Ors.'s case (supra).

16. A further challenge laid before the Supreme Court was dealt with in the order dated 14.08.1997 which itself makes it clear that the criteria of minimum marks was not set aside but in view of the existing vacancies observations were made that the respondents may "consider" filling up all those posts by relaxing the criteria for minimum marks on the basis of aggregate marks obtained by the petitioners therein and other similarly situated candidates like the petitioner. The

petitioner, in fact, sought to take advantage of this direction and rightly so. However, the stand of the respondents of absence of vacancies for 1994 was accepted by the Supreme Court when the contempt petition was dismissed and nothing survived thereafter. The petitioner again claimed recruitment for vacancies if any arising subsequently even in respect of candidates who were originally recruited in 1994 when those vacancies had been included for purposes of recruitment for subsequent years. The select list cannot have an indefinite period of validity.

17. The challenge laid by the petitioner was thus on the basis of having been called for interview and thus minimum marks not applying on the basis of Vijay Pal Singh and Ors. v. UOI and Ors.'s case (supra) have no basis.

18. Insofar as the last plea about the OA being first allowed and then dismissed is concerned, all that is apparent from the record is that originally some order was sought to be passed but the matter was listed for directions where after the finally signed order had been made available and thus the same cannot be faulted.

19. In the end, there was one further plea raised by the petitioner though not contended in the pleadings, arising from a judgment by a Division Bench of this Court in W.P.(C) No. 7591/1999 Narendra Kumar and Ors. v. UOI and Anr. decided on 22.09.2008. The petitioners therein were identically situated as the petitioner herein and after the written test had taken the physical test, but were disqualified on the basis of lack of minimum marks in Hindi language test. In the said judgment, it has been pointed out that in the process of selection, out of 30 posts reserved for departmental candidates only 24 posts were filled up. Thereafter, Vijay Pal Singh and Ors. v. UOI and Ors.'s case (supra) has been discussed. The distinguishing fact mentioned in Narendra Kumar and Ors. v. UOI and Anr.'s case (supra) is that not only was the original OA filed by the petitioner admitted but interim directions had been passed that the posts to be filled in were subject to final orders that may be passed in the OAs pending before the Tribunal.

20. In terms of the judgment Vijay Pal Singh and Ors. v. UOI and Ors.'s case (supra), the petitioners were entitled to appointment as to availability of posts and those petitioners were declined appointment on the ground that posts were not available since all of them were filled up. It was, however, found that out of 30 posts reserved for departmental candidates, to be filled in by direct recruitment, only 24 posts were actually filled up and thus 6 posts in that category were available and there were 6 petitioners before the Court in that matter. The vital difference noted in that judgment is that unlike Vijay Pal Singh and Ors. v. UOI and Ors.'s case (supra), there was an interim direction in that case.

21. In our considered view, this judgment is of little assistance to the petitioner who is identically situated with petitioners in Vijay Pal Singh and Ors. v. UOI and

Ors."s case (supra) and not like the petitioners in Narendra Kumar and Ors. v. UOI and Anr."s case (supra). It is undisputed that there were no interim orders passed in the case of the petitioner before us while the Division Bench has noted this very fact as the distinguishing fact for issuance of directions for appointment as compared to Vijay Pal Singh and Ors. v. UOI and Ors."s case (supra). Since appointments were made subject to final outcome in Narendra Kumar and Ors. v. UOI and Anr."s case (supra), the relief was granted to 6 petitioners as there were 6 vacancies existing.

22. We are thus clearly of the view that not only does the judgment in Narendra Kumar and Ors. v. UOI and Anr."s case (supra) not support the case of the petitioner but goes against the case of the petitioner as it seeks to carve out a distinguishing feature from Vijay Pal Singh and Ors. v. UOI and Ors."s case (supra) which is not present in the case of the petitioner herein who is actually similarly situated as the petitioners in Vijay Pal Singh and Ors. v. UOI and Ors."s case (supra).

23. We are thus of the considered view that the petitioner is not entitled to be appointed against any vacancy of 1994 selection process as no such vacancy exists and thus dismiss the writ petition leaving the parties to bear their own costs.