

Ramesh Chandra Singh and ors. Vs. Amar Nath Singh and ors.

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Court : Allahabad

Decided On : May-24-2002

Reported in : 2002(3)AWC2215; (2002)3UPLBEC2091

Judge : S.K. Sen, C.J. and ;R.K. Agrawal, J.

Acts : [Constitution of India](#) - Articles 14 and 16

Appeal No. : Special Appeal Nos. 47, 80 and 81 of 1998

Appellant : Ramesh Chandra Singh and ors.

Respondent : Amar Nath Singh and ors.

Advocate for Def. : B.D. Mandhyan, ;Khurshed Alam, ;Satish Mandhyan, ;Vijai Sinha, ;M.I. Jafri and ;Lalji Sinha, Advs.

Advocate for Pet/Ap. : U.N. Sharma, ;Tarun Verma, ;Anil Bhushan, ;R.C. Srivastava, ;Manoj Srivastava and ;M.M. Lal Srivastava, Advs.

Disposition : Appeals allowed

Judgement :

R.K. Agrawal, J.

1. The Special Appeal No. 47 of 1998 has been filed by Ramesh Chandra Singh and 20 others against the common judgment and order dated 19.12.1997 passed

by the learned single Judge in Civil Misc. Writ Petition No. 38406 of 1996. Amar Nath Singh v. Union of India and 4 others, connected with Civil Misc. Writ Petition No. 36605 of 1997. Jagmohan and 6 Ors. v. Union of India and 4 Ors., after obtaining leave to appeal.

2. The Union of India and 3 others who were the respondents in the aforesaid two writ petitions which have been decided by the learned single Judge vide common judgment and order dated 19.12.1987, have filed two separate Special Appeals being Special Appeal Nos. 80 and 81 of 1998. Since all these three Special Appeals arise out of a common judgment dated 19.12.1997, hence they are being heard and decided together.

3. The facts giving rise to the present case, in brief, are that North Eastern Railway published an employment notice No. 2 of 1994 on 2.6.1995 for filling up 485 vacancies of constables in Railway Protection Force (hereinafter referred to as R.P.F.) in the pay scale of Rs. 825-1200. In all 1,10,669 candidates applied for the said post, out of which only 90,000 candidates' forms were found in order. After scrutiny of the form, the Railway authorities sent call letters to 78,000 candidates. In the test held between 6.5.1995 to 6.8.1995, only 24,563 candidates appeared. In the 3 member recruitment committee, constituted by the Railway Board, the following persons were nominated :

(1) Shri Mewa Lal, the then Divisional Security Commissioner/ R.P.F., Northern Railway, Lucknow (Chairman) ;

(2) Shri Sekey Ram, Retired Commandant ; and

(3) Shri S. A. Hussain, Divisional Security

Commissioner/R.P.F., Crime Wing, Western Railway, Bombay.

4. The recruitment committee submitted the result to the Director General, R.P.F., Railway Board on 5.1.1996. The papers connected with the result of the recruitment were sent for scrutiny to the Chief Security Commissioner, N.E.R., Gorakhpur, who in turn, appointed a three member-scrutiny committee. The scrutiny committee found that there were certain serious irregularities, infirmities

and shortcomings in the recruitment which were categorised in the following heads :

(i) Excess recruitment to the extent of 99 candidates has been empanelled as against the notified vacancies.

(ii) Certain S.C. candidates who had secured more marks were not brought on merit list whereas other S.C. candidates who had secured less mark have been brought on panel.

(iii) Violation of extant rules/ circulars in formation of the panel.

(iv) Procedure followed by the Recruitment Committee has not been elaborated in that at no point of time the original application forms were scrutinised/compared and as such the possibility of impersonation by affixing different photographs in the call letter at various stages cannot be ruled out.

5. The above mentioned irregularities were brought to the notice of the Chairman of the recruitment committee, and he was asked to remove and rectify the irregularities and mistakes in the result. The Chairman, recruitment committee refused to rectify and correct the mistake/irregularities. The Director General, Railway Protection Force, taking into consideration the various irregularities and shortcomings and also on the ground that there was serious complaint of corruption, cancelled the whole process of recruitment as well as the result. Consequently, a news item was published on 4.9.1996 to the effect that the recruitment held pursuant to the employment notice No. 2 of 1994 had been cancelled and rescinded. Another employment notice No. 1 of 1996 was issued and published in local daily on 1.11.1996 inviting applications for recruitment of 800 posts of constables in Railway Protection Force limiting the applicants from the provinces of Uttar Pradesh and Bihar.

6. The respondent-writ petitioners challenged the action of the Railway authorities in cancelling the earlier selection and recruitment and issuing fresh advertisement as wholly illegal, arbitrary and contrary to the principle of natural justice as also violative of the provisions of fundamental rights guaranteed to them under Article

16(1) of the [Constitution of India](#). Apart from legal ground, the respondent-writ petitioners had also challenged the cancellation of the recruitment on the ground of political pressure being exerted by the Ministry of Railway on account of change in Ministry.

7. In the counter-affidavit filed by Sri R. K. Mishra, the then Security Commissioner, North Eastern Railway, Varanasi, it has been stated that the recruitment was rightly cancelled in view of serious and glaring irregularities, infirmities and shortcoming which the Chairman, recruitment committee refused to remove as also on the complaint of corruption.

8. A plea was taken that the respondent-writ petitioners had no right to challenge the order of cancellation of the recruitment process which was necessitated on account of the above shortcomings, particularly when it has been notified that all the applicants who participated in the previous recruitment may also appear in the subsequent recruitment test and they have no legal right for appointment on the posts of Constable R.P.F., even though they have been successful in the test or their names find place in the select list.

9. The Chairman of the recruitment committee has also filed counter-affidavit denying the allegation of corruption or irregularities, infirmities pointed out by the Scrutiny Committee. In effect, he supported the case of the writ petitioners.

10. The learned single Judge after hearing the learned counsel for the parties came to the conclusion that the action of the Railway authorities in cancelling the recruitment was unreasonable and in irrational manner, having done in light vein without realising the implications and quashed, the order of scrapping of the recruitment process.

11. While allowing both the writ petitions, the learned single Judge also quashed the employment notice No. 1 of 1996 and directed the respondents Railway authorities to declare the result of the recruitment made pursuant to the notice/ notification No. 2 of 1994.

12. Feeling aggrieved by the judgment and order of the learned single Judge, the Railway authorities have preferred Special Appeals Nos. 80 and 81 of 1998 whereas the Special Appeal No. 47 of 1998 has been filed by some of the candidates who had been selected pursuant to the recruitment notice No. 1 of 1996 and their appointment letters have been issued and orders for joining the training have been issued.

13. We have heard Sri U. N. Sharma, Shri Tarun Verma and Shri Anil Bhushan, learned counsel for the appellants and Shri B. D. Madhyan learned counsel for the respondent-writ petitioners.

14. The learned counsel for the appellants submitted that the respondent-writ petitioners' name was only included in the select list and no appointment letter had been Issued to them and, therefore, in view of the decision of Hon'ble Supreme Court in the case of Shankarsan Dash v. Union of India, AIR 1991 SC 1612, the respondent-writ petitioners did not get an indefeasible right to be appointed. It was also submitted that the decision of this Court in CivilMisc. Writ Petition No. 39772 of 1996 decided on 8.4.1997 and Ramdas Rai v. State of U.P. and Ors., 1995 (2) UPLBEC 985, which have been relied upon by the learned single Judge do not lay down the correct law and in fact the decision in the case of Sri Niwas Singh and Ors. v. Union of India and Ors., had been reversed in special appeal by the Division Bench, which has been in 1999 (3) UPLBEC 2368 and against which Special Leave Petition has also been dismissed by the Hon'ble Supreme Court on 10.1.2001.

15. The learned counsel further submitted that admittedly in the present case, large scale irregularities have been found and there was also allegations of corruption and in such circumstances the question of giving opportunity of hearing to the selected candidates did not arise and. therefore, the selection had rightly been cancelled. Reliance was placed upon a decision of the Hon'ble Supreme Court in the case of Union of India and Ors. v. O. Chakradhar, 2002 (2) AWC 1264 (SC) : JT 2002 (2) SC 191.

16. Shri Anil Bhushan learned counsel submitted that pursuant to the advertisement notice No. 1 of 1996 issued in November, 1996, the selection

process took place and the persons selected therein had also been issued appointment letters and orders for joining the training as such they were necessary parties in the writ petition and in their absence no relief could have been granted. He relied upon the decision in the case of Ram Janam Singh v. State of U.P. and Ors., AIR 1994 SC 1722.

17. Shri B. D. Mandhyan learned counsel appearing for the respondent-writ petitioners submitted that even though it is well-settled that mere inclusion in the select list does not at all confer on the candidates an indefeasible right to be appointed but that is one aspect of the matter. The other aspect of the matter is that the State should act fairly and whole exercise cannot be reduced to a farce. He relied upon the decision of Hon'ble Supreme Court in the case of Asha Kaul (Mrs) and Anr. v. State of Jammu and Kashmir and Ors., JT 1993 (2) 688, wherein it has been held that the Government has no absolute discretion in the matter. It must act fairly and it cannot pick and choose and approve part of it and reject other part and must record reasons for approval of one set of candidates and disapproval of other candidates. The Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. No Government can adopt such a stand with any justification today.

18. He further relied upon the decision of Hon'ble Supreme Court in the case of Maharashtra State Board of Secondary Education v. K. S. Gandhi and Ors., JT 1991 (2) SC 296, wherein it has been held that : 'If order cancelling examination came to be passed, the record should indicate reason though the order may not contain reasons, and the order has to conform the test of reasonableness and fairness. The order must be passed bona fide and on some concrete and tangible material'.

19. According to Shri Mandhyan, the irregularities pointed out by the Scrutiny Committee could have been rectified and there was no necessity of cancelling the examination particularly when the Scrutiny Committee did not find any money having changed hands. He relied upon the decision of Hon'ble Supreme Court in the case of Munna Roy v. Union of India and Ors., JT 2000 (9) SC 168. He further

submitted that the order has to be judged on the basis of reasons mentioned in the order and cannot be supplemented by fresh reasons or in the shape of affidavits or otherwise. He relied upon the decision of Hon'ble Supreme Court in the case of Mohinder Singh Gill and Anr. v. Chief Election Commissioner, New Delhi and Ors., AIR 1978 SC 851.

20. Having heard the submissions of the learned counsel for the parties, we find that large scale irregularities were committed by the recruitment committee while making selection pursuant to the advertisement No. 2 of 1994. The recruitment committee had given a complete go-bye to the rules and did not act fairly. It has also come on record by means of supplementary-affidavit of Jai Singh Chauhan, Security Commissioner, R.P.F., D.L.W., Varanasi, affirmed on 16.8.2000 which forms part of record of Special Appeal No. 80 of 1998 that a C.B.I. enquiry was instituted in respect of the recruitment/selection made by Shri Mewa Lal and Shri Sekey Ram the present Chairman and one of the members of the recruitment committee who had also done the recruitment of R.P.F. constables in Northern Railway and the C.B.I, had submitted the charge-sheet against the Chairman Mewa Lal and Sekey Ram. A criminal case under Sections 120B, 467, 468, 471. I.P.C. and Section 13(2) of the Prevention of Corruption Act, has been filed before the Special Judge, C.B.I., Lucknow and both these persons were arrested and remained in jail from 20.11.1996 to 7.1.1999 and 28.11.1998 to 14.1.1999 respectively.

21. In this background, the question is as to what is the legal right of the respondents-writ petitioners. They have merely been selected and put in panel of select list. No appointment letter has been issued to them. Can such a person claim any right to command writ of mandamus to the authorities to issue appointment letters?

22. In the case of Shankarsan Dash v. Union of India, AIR 1991 SC 1612, the Hon'ble Supreme Court has held that 'it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed, which cannot be legitimately denied.

23. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies.' Hon'ble Supreme Court has held that it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons.

24. Thus, the respondents-writ petitioners do not acquire an indefeasible right to be appointed merely because their names appeared in the select list. The only question which is to be seen as to whether the Railway authorities have acted in a fair manner in cancelling the recruitment or not, or it acted in arbitrary manner. The reasons for cancelling the recruitment as found by the scrutiny committee has already been mentioned above. From perusal of the said reasons, it leaves no manner of doubt that the recruitment committee had acted arbitrarily in making selection by giving a go-bye to all the Rules and procedure and when asked to rectify the irregularities, declined to do so. It has come on record that the entire recruitment process was a result of malpractice and corruption. A C.B.I. enquiry was ordered in respect of recruitment made by Shri Mewalal and Shri Sekey Ram of R.P.F. Constables in Northern Railway and the C.B.I. had filed charge sheet against them and both of them were arrested and remained in jail for a considerable period. This is a relevant factor to be taken into consideration. In this background, it cannot be said that the Railway authorities acted in any arbitrary manner in cancelling the result of recruitment pursuant to the advertisement No. 2 of 1994.

25. The Hon'ble Supreme Court in the case of Civil Appeal Nos. 430-35 of 2001, Union of India and Ors., v. Tarun K. Singh and Ors., decided on 10.1.2001, has held that the process of selection which stands vitiated by adoption of large scale malpractice to a public office, cannot be permitted to be sustained by the Court of law. That apart, an individual applicant for any particular post does not get a right to be enforced by a mandamus unless and until he is selected in the process of selection and gets the letter of appointment.

26. In view of the foregoing discussions, it is held that the respondent writ petitioners had no legal right for a mandamus to maintain present petition as their names had only appeared in the select list and appointment letters had not been issued to them.

27. The contention of Sri Anil Bhushan that the candidates who have been selected pursuant to the advertisement No. 1 of 1996 ought to have been impleaded and were necessary parties in the writ petition, in absence of which, no relief could have been granted also cannot be said to be without any merit. In the present case, the respondent-writ petitioners had challenged the issuance of fresh advertisement in pursuance of which selection had already taken place and orders for training had also been issued and, thus the selected candidate ought to have been made parties as they were proper and necessary parties, in the absence of which the petition itself was not maintainable. The principles laid down by the Hon'ble Supreme Court in the case of Ram Janam Singh is fully applicable in the present case.

28. So far as the decision of Munna Roy (supra), is concerned, the Hon'ble Supreme Court, in the said case has held that if the administrative authority takes a decision and the reasons for such decision are erroneous, then such a decision can be interfered with by court of law. In the said case, the successful candidates possessed Graduate Degree whereas the minimum qualification required was matriculation and the selection was cancelled on the ground of higher qualification and dubious method had been adopted for selection. The Hon'ble Supreme Court came to the conclusion that if a candidate possesses a qualification higher than the required qualification and the advertisement itself had prescribed the same, then how can the authority come to a conclusion that selection has been made by adopting a dubious method.

29. In the present case, the Scrutiny Committee had pointed out concrete materials to show that the irregularities in large scale has been committed by the recruitment committee which inspite of opportunity given to the recruitment committee, the Chairman of the said committee declined to remove for obvious reasons, thus leaving no option but to the authorities to cancel the entire selection.

30. In the case of Maharashtra State Board of Secondary Education, the Hon'ble Supreme Court has held that the order should record some reasons where the examination has been cancelled even though the order may not contain reasons. Admittedly in the present case, the authorities have recorded the reasons for cancelling the recruitment, which has already been mentioned herein above. They cannot be said to be irrelevant or arbitrary.

31. In the case of Asha Kaul (supra), the Hon'ble Supreme Court has held that it is not open to the State to approve a part of the list and disapprove the balance. No such thing has happened in the present case. The authorities have cancelled the entire select list. Thus, no benefit can be derived from the decision of the Hon'ble Supreme Court in the aforesaid case. The reasons which led to cancellation of the selection list has been examined by the Court and the Court is of the opinion that they are relevant and the authorities have not acted in any arbitrary manner.

32. So far as the question of giving opportunity of hearing to the writ petitioners, before cancelling the select list is concerned, it may be mentioned that they do not have any legal right and, therefore, the question of giving opportunity of hearing to them before cancelling the select list does not arise. In the case of Union of India v. Chakradhar Sharma (supra), the Hon'ble Supreme Court has held that 'If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.' The principles laid down by the Hon'ble Supreme Court is fully applicable in the present case. Thus, it is held that the writ petitioners were not at all entitled to any show cause notice or opportunity of hearing before the cancellation of the entire selection.

33. In view of the foregoing discussions, the impugned judgment and the order of the learned single Judge is set aside. All the three special appeals are allowed. However, the parties shall bear their own costs.