

Laxman Rout and Five ors., Vs. Director General of Police and anr.

Laxman Rout and Five ors., Vs. Director General of Police and anr.

SooperKanoon Citation : sooperkanoon.com/536487

Court : Orissa

Decided On : Jun-19-2003

Reported in : 2003(II)OLR206

Judge : R.K. Patra and ;Pradip Mohanty, JJ.

Acts : Police Manual Rules - Rule 660; [Police Act, 1861](#) - Sections 12

Appeal No. : W.P. (C) Nos. 1858, 1859, 1860 and 1861 of 2002

Appellant : Laxman Rout and Five ors., ;ganesh Chandra Tripathy and Four ors.,
;basanta Kumar Harichandan and Fo

Respondent : Director General of Police and anr.

Advocate for Def. : R.N. Acharya, Addl. Government Adv.

Advocate for Pet/Ap. : J.K. Rath, ;S.N. Rath, ;P.K. Rout, ;C.K. Rajguru, ;D.N. Rath and ;S. Mishra

Disposition : Petition allowed

Judgement :

R.K. Patra, J.

1. The common dated 11.6.2002 at Annexure- 2 made by the Member (Judicial), Orissa Administrative Tribunal, Cuttack Bench, Cuttack the subject-matter of

challenge in the above four writ petitions. By the impugned common order the Tribunal has dismissed five original application (O.A. Nos. 790 (C)/2001, 791(0/2001, 1036(0/2001, 870(0/2002 and 871(0/2002) which were filed on behalf of the present writ petitioners. The Tribunal in the impugned order has held that the Inspector General of Police has not committed any illegality by enhancing the minimum pass marks from 30% to 50% in the examination to select constables for nomination to the Course of A.S.I, training.

2. The petitioners' case is that they are serving as constables in the Police department for more than a decade. Rule 660 of the Police Manual prescribes a written test to select constables for nomination to the A.S.I.'s course of training. Although in the year 1983/84 a test was held for the purpose, thereafter no test was conducted till the last selection which was held on 18.6.2000 result of which was declared on 11.3.2001. As the name of none of the petitioners found place in the select list, they filed the aforesaid original applications before the Tribunal.

3. The petitioners' common grievance is that in the previous examination the pass mark assigned was 30% but in the impugned test the pass mark was raised to 50% as a result of which they though have secured more than 30% marks have not been selected for being nominated to the course of A.S.I. training. The departure from the usual practice by raising the pass mark was without any notice. Although the Superintendent of Police of different districts were asked to inform the candidates about the examination, no indication was given that pass mark in the examination would be 50%. According to the petitioners, they were thus caught unaware. Had they been intimated earlier about the raising of pass marks from 30% to 50%, they could have studied more rigorously. Petitioners' further case is that without amending Rule 660, the authorities cannot enhance the pass mark from 30% to 50%

4. Case of the opposite parties before the Tribunal was that on account of intervention of the Tribunal in O.A No. 292 of 1989. no test could be conducted earlier because it was the direction of the Tribunal that unless the list of 1983- 84 is exhausted, no recruitment test would be held for general candidates. Accordingly recruitment tests were held only for reserved candidates in between

1991 and 2000 on different occasions. Their further case is that in the last test for the reserved candidates pass mark was enhanced to 50%. Rule 660(c) of the Police Manual provides that the marks for each subject and the time to be allowed for each will be prescribed by the D.G. of Police. As the number of candidates was very large, process of short-listing was adopted by enhancing the pass mark from 30% to 50% as per the orders of the D.G. of Police.

5. Shri Rath, learned counsel for the petitioners, contended that the enhancement of pass mark from 30% to 50% should be struck down as it was done without notice to the examinees. The petitioners were caught unaware because in the previous examination the pass mark was only 30% and the petitioners appeared at the examination with clear understanding that the pass marks would be 30%. The sudden decision raising the percentage caused prejudice to them as it was done without any notice. Learned Additional Government Advocate on the other hand contended that as the number of candidates were very large, it was necessary to short-list them and, therefore, the pass mark for the general candidates was raised to 50%.

6. Rule 660 of Orissa Police Manual so far as relevant is extracted hereunder :

'660 (a). Appointment of Assistant Sub-Inspectors-Assistant Sub-Inspectors will be appointed ordinarily in the following manner :

(i) Matriculate constables who have passed the Writer Constables' course of training or the Constable's Course of training and have had at least 7 years service after the period spent under training will be eligible for deputation to the ASI' s course of Training for a period of six months commencing from January and July every year or any other date fixed by the I.G. of Police.

(ii).

(b)

(c) The selection of both Matric and non-matric Constables eligible under the conditions laid down in Clause (i) and (ii) of sub-rule (a) will be made by means of a written test which will ordinarily' consist of law and rules and some passages of

re-translation from English into Oriya from Major Act or Police Manual. A translation passage from Oriya to English relating to the affairs of the Police may be given.

The marks for each subject and the time to be allowed for each will be prescribed by the I.G. of Police.

xx xx xx xxA constable who does not possess pass marks in written test shall not be promoted to the rank of A.S.I.....'

7. On our direction, the learned Additional Government Advocate, produced the relevant file from the office of the D.G. of Police. On perusal of the said file, we find that the Director General of Police on 7.12.1999 has prescribed 50% as pass mark. That was the file dealing with recruitment to undergo A.S.I, training by constables belonging to reserved category (S.T.). We may quote the relevant part of the file culminating in the above order of the Director General of Police.

'D.I.G. (Admn.)

Pages 385-383/C. for perusal please. D.I.G. of Police TR. and D and Dy. Director, SPA, Cuttack has given draft letters addressed to the question setter for perusal and requested for indicating the pass marks, in each paper. Last time pass mark was taken as 30% of the total mark in each subject.

For orders please.

Sd.

6.12.1999.

DGP may see P/385/C. of DIG (TRU). We are not giving any pass mark. We will prepare a select list as per vacancy and cut off mark will be accordingly fixed. Last time as large number of constables were declared fit, the list took 15 years to exhaust. Hence, we need not give any pass mark rather we will fix qualifying marks as per our requirement.

Sd.

DIG (Admn.)

Spl. IGP (A)

Method of conducting the examination and evaluation of answer papers by question setters stated by DCP may please be approved.

Sd.

7.12.1999

PGP

Pass marks -50%

Sd.

7.12.99'.

8. As per Rule 660 (c) of the Orissa Police Manual, the Inspector General of Police (now designated as D.G. of Police) is authorised to prescribe pass marks as well as time to be allowed for the written test. Apparently, the D.G. of Police in exercise of that power has prescribed 50% as pass mark in his order dated 7.12.1999.

9. The question that arises for consideration is what is the effect of that order made in the file. Section 12 of the [Police Act, 1861](#) empowers the Inspector General of Police to make rules from time to time subject to the approval of the State Government relating to the organisation, classification or distribution of police force etc. Law is now well settled that passing of an order in the file affecting some persons cannot be given effect to unless such order is published. The publication need not be in the official gazette because Section 12 of the [Police Act, 1861](#) does not insist for that but it has to be published in some recognised way so that all concerned may know what it is. In the absence of any such publication, the order cannot come into being by merely passing it in the official file. Natural justice requires that before a law can become operative, it must be promulgated or published. Nothing has been brought to our notice that the said order of the Director General of Police was published to make it known to the concerned

persons. Section 12 further requires that any rule made by the Inspector General of Police is subject to the approval of the State Government. It means that the power of the Inspector General of Police to make rules is hatched in the condition that it can be exercised subject to the approval of the State Government. There is nothing on record to suggest that, approval of the State Government in this regard was obtained.

For the reasons aforesaid, the order of the Director General of Police dated 7. 12.1999 cannot be given effect to.

10. Learned Additional Government Advocate submitted that with a view to short-list eligible candidates, the percentage of mark was increased to 50%. In support of this, he placed reliance on the judgment of the Supreme Court in *Majeet Singh v. Employees State Insurance Corporation*, AIR 1990 S.C. 1104. What happened in that case was that in the direct recruitment for the post of Insurance Inspector/Manager Grade-II, examination and interview were held. The advertisement did not prescribe any pass mark in the interview though for the written examination 40% mark was prescribed. Selection was however, made on the basis of 40 % in the interview test and those who did not secure 40 % in the interview were not selected. The Supreme Court held that, to require every candidate to pass the interview test there should be a basic limit provided and in absence of any prescription of qualifying marks for the interview test, prescription of 40% as applicable for the written examination was reasonable. The facts and circumstances in the case of *Majeet Singh* (supra) are quite different from the cases at hand. Therefore, its ratio cannot be applied to the cases at hand.

11. The petitioners appeared in the written test with an understanding that the pass mark in the written test was 30% because that was the mark made known to them in the past. As the prescription of 50% as pass mark is not supportable in law for the reasons mentioned above, the petitioners are entitled to the relief they claimed.

12. In the result, the impugned order of the Tribunal is hereby quashed. Petitioners' original applications before it stand allowed. The opposite parties are directed to consider the case of the petitioners for selection for nomination to the

A.S.I. training course on the basis of marks secured by them in the written test provided they have secured 30% of the marks. We may state that the benefit of this judgment would only be applicable to the petitioners and not those who have not approached the Tribunal or this Court.

The writ petitions are accordingly allowed. No costs.

Pradip Mohanty, J.

13. I agree

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com