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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jun-05-2002

Reported in : (2003)(1)SLJ144CAT

Judge : A Vedavalli, S T Govindan

Appellant : Swarn Singh and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Shri. Vijay Pandita

Advocate for Pet/Ap. : Mr. Sachin Chauhan

Judgement :

1. The challenge in this OA filed by nine applicants, is directed against their non-selection as Constable (Ex.) in Delhi Police in spite of their having qualified both in the written test as well as in the interview.
2. This OA has been heard along with OAs No. 2606/2000, 2701/2000 and 60/2001, as all of them are directed against the same selection and have a few common points. However, separate order is being passed in respect of each OA, on account of specific facts relating to the applicant(s) concerned in each OA.
3. Heard Mr. Sachin Chauhan, learned Counsel for the applicant who has present along with Mr. Sant Lal, while Mr. Vijay Pandita, learned Counsel along with Ms. Shabana appeared for the respondents.

5. Shri Swarn Singh (roll number 237877) and eight others are among those who seek appointment to Delhi Police as Constables (Executive), on the basis of the recruitment test conducted. All of them had filed their applications in response to Notification issued by the Delhi Police under 2nd phase of recruitment to the posts of Constable (Ex.).

After having cleared the written examination their roll numbers appeared in the list of those who had qualified for the interview. They also appeared in the interview and were declared as having cleared the same for being medically examined, as a prelude to their ultimate appointment. However, to their acute disappointment, the applicants found that none of them has been called for the medical examination in spite of their having cleared the written test and the interview. While a number of others were called. No reasons were adduced for the above.

On 6.10.2000, an article appeared in the Hindi Newspaper 'Dainik Jagran' indicating that certain interpolation has taken place in the list prepared by Delhi Police for selecting candidates for appointment as Constables (Ex.), that as many as 54 discrepancies have come to light and that a number of failed candidates have been declared as passed and vice-versa. This news item read along with the fact that they had not been called for medical examination, inspite of their having cleared the test convinced the applicants that something was amiss with the selection. Some of the applicants filed representations with the Delhi Police authorities, complaining against their non-selection but the same have not been responded to. It was also learnt by them that after completing medical examination, orders are being issued to the concerned candidates, directing them to join the training course this has come in the way of the applicants, who apprehend that in spite of their having been selected in the test, they were being denied the appointment, to favour certain individuals who have exercised their influence to secure appointment at their expense.

Hence this OA. (a) failure of the respondents in not calling the applicants for medical examination was illegal, arbitrary, malafide and unjustified; (b) when it is admitted that all the applicants have cleared both the written test and the interview successfully there was no reason that they could not be called for medical

examination; (c) report appeared in 'Dainik Jagran' and information gathered from reliable sources indicated that certain dubious methods were being followed by the respondents to recruit their own persons.

(d) though a number of applicants had filed representations against the inaction of the respondents, no reply has been given by them, thereby pointing to violations of the principles of natural justice; (e) it was highly illogical that after the selection has been gone through all the stages, the respondents could come with the lame excuse that there were mistakes in the selection, which called for rectification and the same also casts doubts on the bonafides of the respondents.

In the above circumstances, the applicants feel that they have been denied the legitimate selection and only the immediate intervention by the Tribunal can render them justice.

7. In the reply filed on behalf of the respondents, through Dy.

Commissioner of Police (Hq.), it is shown that OA was not maintainable, being an abuse of the process of law. It is pointed out that during 1998 (phase-II) an advertisement to fill up 1643 vacancies (General 442, SC 80, ST 700, OBC441, including 10% in all categories for Ex-servicemen) of Constables (Exe.), was issued by the Delhi Police in all the leading News Papers of 19.9.1998 and Employment News dated 26.9.1998/2.10.1998. In response to the above advertisement, 89441 application forms were received. After scrutiny of the forms, 72611 candidates were asked to the present both for physical measurements/endurance test, from whom 41890 candidates were declared as qualified for the written test. The written test was held on 27.2.2000 and 2.4.2000 and 3446 candidates were declared as passed.

These persons along with 342 ex-serviceman, who were exempted from the written test, appeared for interview between 25.5.2000 and 2.6.2000.

The result of the interview, which was declared on 3.6.2000, showed that 1573 candidates (Genl. 422, SC 80, ST 360 and OBC 441) had qualified for medical examination. The cut-off marks (minimum qualifying marks) for selection were

shown as below:- 8. After the declaration of the result of the interview, it had come to notice that there were certain errors/omissions in the interview sheets, on account of which the Chairman of the Recruitment Board decided to have all the interview sheets rechecked to get the errors/omissions rectified. After the above rectification, the cut-off marks were changed as under:- 9. In the above process of rectification, 52 candidates, including all the applicants, were changed from the category of 'qualified to disqualified' and 52 candidates were changed from 'disqualified to qualified'. They have also been suitably informed. According to the respondents, 52 candidates including the applicants were originally placed in the 'qualified' list only on account of certain errors/omissions which have crept in the interview sheet. After the rectification of the same a number of those who were in the earlier list of qualified candidates failed to make the grade and therefore, could not be called for medical examination. The applicants as they had failed to make the grade in the interview, could not have been called for medical examination, as the first step towards the appointment. In the above circumstances, the applicants have no right whatsoever to agitate as they had been considered and found as not having made the grade in the selection. The respondents had acted correctly, properly and legally and therefore, the applicants cannot seek any further relief in this matter, through the Tribunal, according to the respondents.

10. With specific reference to the applicants in this OA the respondents indicate the following as the reasons for their disqualification:- He belongs to OBC category but treated as S.T. candidate. Upon correction he failed to make grade in the merit.

He belongs to general category but treated under ST category. Upon correction he failed to make grade in the merit list.

He belongs to SC category but was treated under ST category and also there was a calculation error. Upon correction, he failed to make grade in merit.

11. From the above, it would be clear that the respondents had acted correctly and the applicants had to lose out in the selection only because they did not make the grade in the interview. Having participated in the written test but having failed to clear the same, the applicants did not have any right to question the mode of

selection or the selection process. The OA should, therefore, fail, is the pleadings by the respondents.

12. In their rejoinder, the applicants vehemently contest the points raised by the respondents. It is stated that no mistake or mischief of any sort was committed by any of the applicants and mistake, if any, had happened only at the respondents' end. And the same appeared to have been manipulated by the respondents to meet their own ends and to support their chosen favourites. The grounds taken by the respondents, like the change of category of the candidates and/or of their younger age etc. do not properly explain, the new process of selection or the modalities adopted by the respondents, after the first selection, has been gone through. During the oral submissions Shri Sachin Chauhan, learned Counsel along with Shri Sant Lal, strongly reiterated the points raised in the written pleadings. Without establishing by any evidence that any of the applicants was guilty of any mistake or mis-representation of facts, the respondents could not have unilaterally held that 52 persons already qualified have to be taken out of the list of qualified candidates to make way for another set of 52, whom the respondents have chosen to bring in. This was clearly illegal, arbitrary and violative of the provisions of the Articles 14, 16 and 21 of the Constitution of India. This showed total malafide on the part of the respondents and called for intervention of the Tribunal.

13. Shri Sachin Chauhan, learned Counsel also referred to the decision of the Hon'ble Supreme Court in the case of S. Govindaraju v.K.S.R.T.C, and Anr., ATR 1986(2) SC 362=1986(3) SLJ 98 (SC) and prayed that if any rectification of mistake was called for, all the affected persons should have been put to notice. Not having done so, the entire action of the respondents was vitiated and liable to be quashed and set aside. On the other hand, Shri Vijay Pandita, learned Counsel for the respondents states that the persons who have not made the grade in the revised selection process have no reason at all to complain. Even when a person is placed in the selected panel, appointment thereafter was not automatic, as brought out in the decision of the Hon'ble Supreme Court in the case of Rani Laxmibai Kshetriya GraminBank v.. Chand Behari Kapoor and Ors., 1998(7) SCC 469= 1999(2) SLJ 287 (SC). Shri Vijay Pandita also brought to our attention one or two other judgments of the Principal Bench in certain OAs assailing the above

selection process which, the Tribunal had declined to interfere with. The facts and circumstances being the same, the Tribunal should not interfere in this OA also pleads Shri Pandita.

14. We have carefully considered the rival contentions and also examined the relevant documents including the minutes of the interview, relating to the applicants in this OA. The facts are not disputed. The nine applicants in this OA are among those who had cleared the physical test, written test and the interview conducted by the respondents, for the selection to the post of Constable (Ex.) in Delhi Police and should have, on account of the same, been selected and sent for medical test, followed by issue of orders of appointment. However, even after their clearing the interview and declaration of result to that effect, the respondents have not called them for medical examination, on the ground that the interview sheets prepared, did contain certain errors/omissions which had to be rectified and in the process some of the individuals originally selected, like the applicants because disqualified, as they had failed to make the grade on the basis of the changed criterion. While, according to the applicants they have been denied their rightful opportunity for selection and appointment, the respondents point out that what they have done was totally correct.

15. Perusal of the grounds/reasons for disqualification of the applicants, as brought out in the respondents' counter affidavit, provides an interesting reading. Shri Swarn Singh (1) is shown as having been wrongly treated as belonging to ST category while he infact came from OBC category, Dharmender Singh (5) is shown as having been wrongly treated as belonging to ST category while he came from Genl.

category and Raj Kumar (9) was wrongly shown as belonging to ST category while he belonged to SC category. Kulwant Dabas (2) and Pramod Kumar Rai (7) are shown to have been disqualified as being younger in age. Sunil Kumar (3) Ashok Kumar (4) Pawan Kumar Sharma (6) and Ashwini Sharma (8) are shown as not having made the grade on merits. As against this it is pointed out by the applicants in their rejoinder that Shri Swarn Singh though he belonged to OBC category had presented himself only as a Genl. candidate as he was the ward of a Policeman,

but has been treated by the respondents as an ST candidate in the beginning and subsequently penalized. Dharmendcr Singh and Raj Kumar had also shown themselves as belonging categories OBC and S.C.--they came from though the respondents have on their own categorised them as S.T. candidates and thereafter denied them the benefit of selection. Similar is the position in respect of the other five candidates as well. Evidently, therefore, the applicants have been penalised for no fault of theirs, but purely on the basis of mistakes committed by the respondents. And this has been done without even putting them on any notice. It is not at all the case of the respondents that any of these applicants have committed any mistake to obtain for themselves the selection by any wrong means. The mistakes, the attempted rectification, change in the criterion etc. are all creations of the respondents after the selection was over and the result has been declared. In fact, if any mistake had arisen and called for rectification, the proper course of action for the respondents was to have cancelled the entire selection process and ordered fresh selection instead of changing the criterion after the process has been completed and the results announced, just to bring about the rejection of 52 out of 1573 candidates as well as to facilitate selection of another batch of 52 candidates in their place.

It was all the more necessary as, according to the respondents own confidential note dated 9.8.2001 as many as 695 errors/omissions have been noticed in the selection of 1573 candidates out of 3784 who appeared for the interview. Applicants, in the circumstances cannot be faulted when they allege illegality or impropriety in this process. Our findings are fortified by the decision of the Hon'ble Supreme in the case of S. Govindaraju's (supra), the relevant portion of which is reproduced as below : "Once a candidate is selected and his name is included in the select list for appointment in accordance with the Regulations he gets a right to be considered for appointment as and when vacancy arises.

On the removal of his name from the select list serious consequences entail as he forfeits his right to employment in future. In such a situation even though the Regulations do not stipulate for affording any opportunity to the employee, the principle of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary.

Giving an opportunity of explanation would meet the bare minimal requirement of natural justice. Before the services of an employee are terminated, resulting into forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned. The appellant was not afforded any opportunity of explanation before the issue of the impugned order. Consequently the order is rendered null and void being inconsistent with the principles of natural justice".

16. It is also on record and came out during the oral submissions in response to a specific query from the Court that none of the applicants in this OA (as also those in OA 2606/2000, 2701/2000 and 60/2001) have been issued any notice about the cancellation of their selection. In fact even in respect of those who were informed what was addressed was not a notice but an intimation which was after the event. In addition to irregularity in changing the criterion after the selection is over clear violation of the principles of natural justice had also occurred in these cases.

17. The confidential note dated 9.8.2001 referred to in para 16, record as below "if the proper checking had been carried out at the appropriate time before declaring the result the mistake detected now could have been avoided but this could not happen as the result was declared in a hurried manner". Correction therefore, was called for but not as the respondents have chosen to do by the pick and choose method but by cancelling the result totally and initiating fresh selection.

This they had failed to do and for no justified reason.

18. Relevant papers produced for our perusal makes it clear that the applicants have lost out/been disqualified only on account of the change in the criterion adopted by the respondents as marks obtained by them have not changed though the cut off mark has been revised upward in the case of general and ST candidates. However, there is no explanation as to how in the same circumstances, these who were disqualified earlier have now entered the list of qualified candidates.

Obviously there are factors which more than meet the eyes.

19. The respondents could not have changed the criterion for selection, to the detriment of the applicants, who were successful candidates, two months after the selection process has been completed and results announced merely on their understanding feeling that certain errors and omissions had crept in the selection process unless and until it is proved that the applicants were in any way responsible for any of the mistakes or misrepresentation which alone have vitiated the selection process. As pointed out earlier it is not the case of the respondents that any of the applicants in this case had misrepresented facts to gain any undue advantage in the selection. That being the case the action of the respondents in denying them the call for medical examination was patently illegal and unjust. The Tribunal, therefore, has perforce to interfere in this matter and render justice.

20. Our decision is also fully fortified by the decision of the Hon'ble Supreme Court dated 31.10.2001 in the case of Maharashtra State Road Transport Corporation and Ors. v. Rajendra Bhimrao Mandve and Ors., 2002(1) ATI 54, wherein the Hon'ble Apex Court has observed as below: "It has been repeatedly held by this Court that the games of the rules meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced." 21. Our attention also have been drawn to one or two decisions of the Principal Bench of this Tribunal, assailing the same selection which the Tribunal had declined to interfere facts in those OAs, however, can be distinguished from the present OA. In OA 278/2001 filed by Surinder Singh and decided on 9.4.2001, the applicant had lost out primarily on account of working out of the vacancies for OBC category. Persons of the same category with higher marks had to be accommodated and the applicant with lower mark had to be deleted. In fact in the category of OBC the cut-off marks had remained the same both before and after the rectification process and the applicant's failure was only on account of getting lower marks. The same is not the case in the present OA. Similarly in OA 884/2001 decided on 22.1.2002 the applicant an (sic) candidate was disqualified as it was found that was not a graduate but he had been given extra marks treating him to be a graduate on the basis of a certificate produced by them, This case also is distinguishable from the OA presently before us. On the other hand, we have before us the decision of the Principal Bench of this Tribunal in OA 1445/1995, decided on 4.10.1999 where denial of promotion to

the applicant on the basis of mistake committed by the Departments, was set aside and benefit granted to the applicant. We are of the view that in the circumstances of the case the applicants in this OA should also gain.

22. We are also aware of the principle highlighted by the learned Counsel for the respondents that empanelment of a candidate per se does not give him a right for appointment, as pointed out by the Hon'ble Supreme Court in *Rani Laxmibai Kshetriya Gramin Bank v. Chandfiehari Kapoor and Ors.* (supra). The same is the finding of the Hon'ble Supreme Court in the case of *Shankarsan Dash v. UOI and Ors.*, 1991(3) SCC 47=1992(1) SLJ 7 (SC). However, the circumstances of the applicants in this OA are not the same as the parties concerned in the above two decisions. Here what is under challenge is not the non issue of appointment to those placed in the select panel but the same is directed against the action of the respondents in altering the criterion for selection after the selection process was complete, to shut out the applicants who have been selected earlier to bring in others. Therefore, the rationale in the above two decisions cannot hurt the cause of the applicants in this OA. 23. In the result, the OA succeeds and is accordingly allowed. The respondents are directed to treat the applicants as having cleared the recruitment test in full and send them for medical examination along with others. If found fit, the applicants should be considered for appointment to the post of Constable (Ex) as per the relevant Rules, Instructions and Judicial Pronouncements on the subject. This should be done at the earliest and in any event within two months from the date of receipt of a copy of this order. This would not call for any fresh notice being issued to anybody as while issuing notice on 14.12.2001 for admission itself, the Tribunal had directed that all the appointments to be made to the post of Constable (Ex.) in the second phase of recruitment shall be subject to the further orders being passed while disposing the OA. No costs.