



CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO.062/00083/2018
 (Order reserved on: 24.02.2020)
 Pronounced on: 09.07.2020

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. NAINA JAYASEELAN, MEMBER (A)

Abdul Wahid Bhat,

age 26 years,

S/o Nazir Ahmad Bhat

R/o Gudasthoo,

District Budgam.

Applicant

(BY: MR. D.R. SHARMA, ADVOCATE)

Versus

1. Union of India through Defence Secretary, New Delhi.
2. Air Officer Commanding, Air Force Station, Srinagar.
3. Flight Lieutenant, Officer in Charge Civil Administration, Air Force Station, Srinagar.

(BY: MR. ARVIND MOUDGIL, ADVOCATE)

Respondents



O R D E R
[HON'BLE SANJEEV KAUSHIK, MEMBER (J)]

1. The applicant had initially filed SWP no.2709/2017 in the High Court of Jammu & Kashmir, Srinagar, which on transfer to this Tribunal has been registered as O.A.No.062/00083/2018, claiming issuance of a writ of certiorari quashing the order dated 26.12.2017 (Annexure H), taking a decision to hold fresh selection for the post of Steno Grade-II, against which the applicant stood selected and for issuance of a writ of mandamus commanding the respondents to issue him appointment order for the indicated post.

2. Before dealing with the respective submissions made by both the sides, let us recalculate the facts in the first instance. The respondents issued an advertisement dated 23.5.2015 (Annexure A), for appointment against the post of Steno Grade-II, in the PB Rs.5200-20200 with GP Rs.1900, with qualification of 12th class pass; skill test norms on computer, dictation 10 minutes @ 80 WPM in short hand either in Hindi or English and a speed of 40 WPM in typing. The age criterion was between 18 to 27 years. The applicant was one of the candidate and appeared in



the written test held 18.11.2015 and interview held on 19.11.2015 and stood selected in the test. He was asked to undergo medical test as per letter dated 21.11.2015 and he was found fit for appointment. His Police Verification was also got done. However, the respondents did not issue him appointment order, which forced him to file SWP no.161/2016 in Hon'ble High Court of J&K, Srinagar, which was disposed of on 3.2.2016 (Annexure-E), directing the respondents to take appropriate decision qua appointment of the applicant. Ultimately, vide order dated 26.12.2017, respondents have decided to re-conduct the selection in question, hence the O.A.

3. The respondents submit that after selection was matured, a complaint dated 5.1.2016 was received from father of wait list candidate against the irregularities in the same and as such an investigation was carried out and it was found therein that indeed irregularities and illegalities had taken place and as such it was decided to cancel the selection in question, hence they support the impugned order.

4. We have heard the learned counsel for the parties at length and examined the material on file.



5. The learned counsel for the applicant argued that once the selection had been matured and finalized, there was no occasion with the respondents to restart it once again as only an appointment order was to be issued in favour of the applicant whereas the learned counsel for respondents argued that if irregularities or illegalities are found in a selection process, it can be cancelled and selected candidate has no right, whatsoever, to seek appointment on the basis of a vitiated selection process. The applicant has filed a rejoinder reiterating the submissions made in the Original Applications.

6. We have considered the submissions of both the sides carefully.

7. The material available on record including original record summoned from the respondents, leaves no manner of doubt, at all that in the selection process, 150 applications were received by the competent quarters. Out of these, 130 applications had been rejected for want of typing / short hand / computer course certificates, which was not the requirement, as per the advertisement or the recruitment rules. This process reduced the consideration zone to 21



candidates only and thus the doubt was raised about fairness of selection process.

8. During the investigation, it was found by the authorities that applicant was brother-in-law of UDC Irshad Ahmad Bhat, who was IC Civil Admin Selection at 1 Wg, Air Force. The Screening Committee had rejected 130 candidates (out of 150), for selection on the ground that these were not accompanied with Dictation Certificate/Computer Certificate, though such requirement was not there in advertisement or the recruitment rules. During short test, the dictation was noted in shorthand and was then transcribed by candidates in their hand writing. However, the hand written transcripts were not annexed as part of proceedings of DPC. Only printed transcript were attached, which too were not even signed by the candidates. There were many irregularities in the conduct of selection and findings of Investigation were substantiated by the statement of the candidates. Thus, in this view of the matter the respondents have not committed any illegality in cancellation of the selection in question.



9. It has been claimed by learned counsel for the applicant that once having been selected, the applicant had a right to be appointed to the post which is apparently not tenable. In the case of **MANOJ MANU V. UNION OF INDIA**, (2013) 12 SCC 171, it was held that merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the Government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies.”.

10. In the case of **UNION TERRITORY, CHANDIGARH V. DILBAGH SINGH**, (1993)1 S.C.C. 154, the Supreme Court considered the issue involving cancellation of the selection made for appointment to the post of Conductors in Chandigarh Transport Undertaking. After the select list had been announced, the Chandigarh Administration got examined the same with reference to the marks awardable to the candidates for their educational qualifications and the



marks awarded by the members of the Selection Board. It was then revealed that in the garb of awarding marks to the candidates for their performance at the interview, the members of the Board had selected the least qualified candidates. Accordingly, the Administration concluded that the select list had not been prepared fairly and judiciously and cancelled the same, although there was no clinching evidence of corruption attributable to the members. Chandigarh Bench of the Central Administrative Tribunal quashed the decision of the Administration on the ground of violation of the rule of audi alteram partem. While reversing the order of the Tribunal, the Supreme Court held that action of the Administration was neither arbitrary nor lacked bona fides and there were valid reasons for cancelling such dubious select list. Their Lordships further held that the order of cancellation is not vitiated because no direct evidence was made available to prove corruption charges against the members of the Selection Board in the matter of award of interview marks or because there was no opportunity of hearing afforded to the candidates included in the select list.



11. In the case of **KRISHAN YADAV V. STATE OF HARYANA**, (1994)4 S.C. 165, the Supreme Court considered challenge to the selection made by Haryana Subordinate Services Selection Board for Taxation Inspectors in the Excise and Taxation Department. The High Court dismissed the writ petitions filed for questioning the legality of the selection on the ground of fraud and manipulations. During the pendency of the appeal before the Supreme Court, their Lordships ordered a CBI investigation. After going through the report of the CBI, the Supreme Court quashed the entire selection and also imposed costs of Rs. 10,000/- on each member of the Selection Board. The relevant extracts of that judgment are reproduced below;

"Public offices, both big and small, are sacred trusts. Such officers are meant for use and not abuse. In this case fraud has reached its crescendo. The acts were motivated by extraneous considerations. From a Minister to a menial everyone has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shock the Court's conscience to come across such a systematic fraud. The High Court was not justified taking the path of least resistance stating, in view of the destruction of records, that it was helpless. It should have helped itself. Law is not that powerless.

In the above circumstances the only proper course open is to set aside the entire selection. The plea that innocent candidates should not be penalized for the misdeeds of others it cannot be accepted. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "fraud unravels everything". The entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly, the selection of all Taxation Inspectors is set aside.



The effect of setting aside the selection would mean the appointments held by the candidates (including the respondents) will have no right to go to the office. Normally speaking the Court should require them to disgorge the benefit of these ill-gotten gains. That means they will have to repay the entire salary and perks which they have received from the said office. But here a streak of sympathy has to be shown. The proper lesson would be learned by them if their appointments are set aside teaching them that dishonesty can never pay."

12. In **UNION OF INDIA V. ANAND KUMAR**

PANDEY (1994)5 S.C.C. 663, the Supreme Court upheld the cancellation of the result of selection made by the Railway Recruitment Board, Patna for appointment to various posts of non-technical popular categories in Eastern Railway. While rejecting the argument based on the violation of the rules of natural justice, the Supreme Court observed;

"The rules of natural justice cannot be put in a strait-jacket. Applicability of these rules depends upon the facts and circumstances relating to each particulars given situation. The purpose of a competitive examination is to select the most suitable candidates for appointment to public services. It is entirely different from an examination held by college or university to award degrees to the candidates appearing at the examination. Even if a candidate is selected he may still be not appointed for a justifiable reason. In the present case, the railway authorities have rightly refused to make appointments on the basis of the writ examination wherein unfair means adopted by the candidates. No candidate had been debarred or disqualified from taking the examination. To make sure that the deserving candidates are selected, the respondents have been asked to go through the process of written examination once again. Hence there is no violation of the rules of natural justice in any manner in the facts and circumstances of this case."

13. In **PRITPAL SINGH V. STATE OF HARYANA**

(1994)5 S.C.C. 695., the Supreme Court confirmed the



orders passed by the High Court of Punjab and Haryana dismissing the writ petitions filed by the successful candidate questioning the legality of the decision taken by the State Government to cancel the selection made by Haryana Subordinate Service Selection Board for appointment of Assistant Sub Inspectors of Police. In paragraph 15 of the judgment, their Lordships referred to the record produced by the Solicitor General and held—" It is in the public interest that members of the police force should be selected objectively and fairly. The irregularities found in the instant case show that the selection made by the Board was not objective and fair. It is, therefore, in public interest that selections and appointments made consequent thereon be quashed forthwith". The Supreme Court also rejected the argument that some deserving candidates would suffer adversely on account of quashing of the entire selection and observed—" It may be that there are among those selected some who deserved selection and who will, consequently, suffer as a result of this order. There is, considering the state of selection records, no way in which such man can be identified. The public interest out weights their interest."



14. In **UNION OF INDIA V. O. CHAKRADHAR,** (2002)3 S.C. 146 the question considered by the Supreme Court was whether the selection made by the Railway Recruitment Board for appointment to the post of Junior Clerk-cum-Typist was vitiated due to manipulations and irregularities. Their Lordships took into consideration the report of the CBI and upheld the cancellation of selection by recording the following observations:

"The nature and extent of illegalities and irregularities committed in conducting a selection have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. 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, 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.

15. In view of the aforesaid discussion, this O.A. is found to be devoid of any merit as there are justified reasons with the respondents to cancel the selection in question. The O.A. is accordingly dismissed. No costs.

(NAINA JAYASEELAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Place: CHANDIGARH
Dated: 09.07.2020

HC*