2025:PHHC:006928

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

229 **CWP-5397-2021 (O&M)**
Date of Decision: 16.01.2025

KHIDMAT RAI AND ANOTHER

... Petitioners

VERSUS

UNION OF INDIA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Vivek K. Thakur, Advocate
for the petitioners.

Ms. Anita Balyan, Sr. Panel Counsel
for the respondents.

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VINOD S. BHARDWAJ, J. (ORAL)

CM-18532-CWP-2023

The instant application had been filed for seeking preponement of the date of hearing in the main case, which was then fixed for 10.04.2024.

Disposed of as having been rendered infructuous.

MAIN CASE

Seeking setting aside of the order dated 18.11.2019 (Annexure P-9), whereby the selection proceedings have been cancelled by the respondents, without assigning any reason, after a period of two years of issuance of provisional selection letters to the petitioners, the petitioners have approached this Court.

Learned counsel for the petitioners contends that the respondents had invited applications from eligible Indian nationals for filling up 15

vacancies of Fireman, 04 vacancies of Fire Engine Driver and 01 vacancy of Fire Fitter through an advertisement in the Employment News 7-13 January, 2017. The petitioners being eligible and qualified for the post of Fireman, applied against the said post. After qualifying the screening-cum-selection test for the post of Fireman conducted at 182 PET PL ASC on 17th June, 2017, the names of the petitioners figured at Sr. No.6 and 9 respectively in the list of selected candidates (Fireman) against the 15 advertised posts vide letter dated 21.08.2017. On the basis of said select list, the respondent No.3-Officer Commanding issued separate provisional selection letters to the petitioners on the same day i.e. 21.08.2017, and they were also called upon to get themselves medically examined from the District Civil Hospital and to submit the medical certificates for issuance of appointment letter. The petitioners accordingly appeared before the Civil Hospital and after getting medically examined, they were found fit for the field of service. The medical certificates issued by the Civil Hospital were submitted by the petitioners to the respondents and verification of the character and antecedents of the petitioners was also got done from the concerned District Magistrate. The Educational Qualification Certificates were received by the respondents and were purportedly sent for verification. Owing to the pendency of verification of the Diploma as well as Educational Qualification Certificates, the petitioners were not allowed to join service. Accordingly, an application was preferred by the petitioners on 24.04.2019 to the respondents for seeking information as regards the status of their pending employment. To their shock, they were served with the reply dated 18.11.2019 conveying that the provisional selection letters to the

candidates as recommended by the Selection Committee stand cancelled. Challenging the same, the petitioners have approached this Court.

On issuance of notice, reply was filed by the respondents, wherein the entire sequence of document verification was set out. It was specifically averred that an RTI application dated 14.11.2017 was filed by one Mahesh Saini with respect to the result of written examination conducted on 17.06.2017. On scrutiny of the answer sheets, few anomalies were found, hence, re-evaluation of the answer sheets, board proceedings and application were carried out by a fresh Board of Officers on 11.12.2017 whereupon, a large number of anomalies were found in the conduct of the recruitment process. A fresh merit list was thereafter prepared by the Board of Officers, which resulted in few changes in the merit list. Sequence of events before the Board of Officers is tabulated as under: -

Ser No.	***Date***	***Event***	**Remarks**
(i)	*24 March 2018*	*Fresh board proceedings duly rectifying all anomalies were forwarded to Headquarters 14 Corps (ST) duly recommended by General Officer Commanding 8 Mountain Division for decision of Quartermaster General (QMG)*	
(ii)	*31 December 2018*	*Headquarters 14 Corps forwarded the fresh BOO to Headquarters Northern Command for decision of Quartermaster General (QMG)*	
(iii)	*31 July 2019*	*Headquarters Northern Command*	

		forwarded the fresh BOO proceedings duly recommended to Directorate Geneal of Supply and Transport (DGST) (ST-12), Integrated Headquarters Ministry of Defence (Army)	
(iv)	*03 September 2019*	*DGST (ST-1), QMG had given the direction "appropriate action on the matter may be taken by the Officer Commanding of the unit on whom the delegation of appointing authority has been made by the QMG in terms of Rule 9(i) of CCS (CCA) Rules 1965."*	
(v)	*30 October 2019*	*Headquarters Northern Command (ST) directed Headquarters 14 Corps (ST) to set aside the entire board proceedings and the recruitment process to be initiated afresh. Also directing for the investigation of the case to ascertain the accountability on the part of the delinquent individual for the lapses in the recruitment process.*	
(vi)	*02 November 2019*	*Headquarters 14 Corps (ST) vide its letter directed 182 Petroleum Platoon Army Service Corps to cancel the board proceedings under the above-mentioned authority of Headquarters Northern Command (ST).*	

(vii)	*18 November 2019*	*Accordingly, 182 Petroleum Platoon Army Service Corps under the authority or Para (ae) and (t) of Recruitment Notice No. 01/2016 published in the Employment News Paper on 07 January 2017 cancelled the issue of provisional selection letter issued to the earlier selected candidates.*	

It is averred that the cancellation of the provisional selection letters issued to the petitioners was in accordance with paragraph (ae) part (t) of the advertisement of 182 Petroleum Platoon (Army Service Corps) Recruitment Notice 01/2016, published in Employment News on 07.01.2017. It is further averred that all other candidates who participated in the process had deposited photocopies of the documents required for recruitment and the originals were returned to them after verification. However, in the case of the petitioners herein, due to an inadvertence, it was assumed that they have also submitted the photocopies of the documents, whereas those turned out to be the originals. There was thus a delay in return of the original documents, but the same was without any malicious intent. It is also averred that the employer has an unfettered right to cancel the entire process of recruitment at any point of time without assigning any reason(s) and the decision of the Appointing Authority has to be treated as final and no appeal against the same shall be entertained. In the present case, the decision of cancellation of the recruitment process was not taken arbitrarily or in isolation but the same was undertaken after carrying out due deliberations and upon noticing that the sanctity of the process of selection

had been breached. Once reasonable doubts were expressed with respect to the merit of the selection procedure and the list of selected candidates so prepared, the Competent Authority considered it appropriate not to implant the existing merit list for the recommendations as made by the Board of Officers, as the same would have been in violation of the existing conditions and principles of natural justice and would, in any case, render the selection process doubtful. In order to thwart any such apprehensions, a decision based upon objectivity was taken; and by following the principles of fairness and equity in the matters of public appointment, the selection process was scrapped.

Reliance is placed by the counsel for the petitioner on the Constitutional Bench Judgment in the matter of ***'Shankarsan Dash Versus Union of India', Civil Appeal No.8613 of 1983, decided on 30.04.1991.*** The operative part of the said judgment reads thus:

> *"7. 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. 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. However, 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. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in* ***State of***

Haryana v. Subhash Chander Marwaha and Others, [1974] 1 SCR 165; Miss Neelima Shangla v. State of Haryana and Others, [1986] 4 SCC 268 and Jitendra Kumar and Others v. State of Punjab and Others, [1985] 1 SCR 899.

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10. The main contention on behalf of the appellant has been, however, that the authorities in keeping the vacancies arising later unfilled, acted arbitrarily. Mr. Goswami referred to several documents annexed to the special leave petition and affidavits filed on behalf of the parties and contended that although appointments of many candidates in the other services were made in the later vacancies, the vacancy in the Indian Police Service which subsequently became available to the appellant was refused without any just cause, resulting in illegal discrimination. This was emphatically denied on behalf of the respondent. Since the matter did not appear to be free from ambiguity on the basis of the affidavits before us, we decided to examine the factual aspects more thoroughly by examining the other available materials on the records of the Union of India, and accordingly the learned counsel for the respondent got the relevant departmental files called. Two further affidavits were also filed along with photostat copies of a large number of documents, which we examined at some length with the aid of the learned advocates for both sides. From the materials produced before us it is fully established that there has not been any arbitrariness whatsover on the part of the respondent in filling up the vacancies in question or the other vacancies referred to by the learned counsel for the appellant. The process of final selection had to be closed at some stage as was actually done. A decision in this regard was accordingly taken and the process for further allotment to any vacancy arising later was closed. Mr. Goswami relied upon certain appointments actually made subsequent to this stage and urged that by those dates the further vacancies in the Indian Police Service had arisen to which the

> *appellant and the other successful candidates should have been adjusted. We do not find any merit in this contention. It is not material if in pursuance of a decision already taken before closing the process of final selection, the formal appointments were concluded later. What is relevant is to see as to when the process of final selection was closed. Mere completing the formalities cannot be of any help to the appellant. We do not consider it necessary to mention all the details in this connection available from the large number of documents which we closely examined during the hearing at considerable length and do not have any hesitation in rejecting the argument of the learned counsel in this regard based on the factual aspect."*

Learned counsel for the petitioners has vehemently argued that the respondents have acted in an arbitrary and whimsical manner by cancelling the process of selection and not allowing the petitioners to join merely on the basis of certain anomalies that were noticed, notwithstanding that the Board of Officers were duly constituted to look into the said anomalies and that they had redrawn the merit list after removal of the said anomalies. A recommendation was made by the Board of Officers for accepting the redrawn merit list. He contends that the names of the petitioners were even figured in the said redrawn merit list after removal of the anomalies. Hence, there was no further clouds upon the process of selection or the merit list so prepared and hence, there was no objective rationale in scrapping the entire process of selection.

Reliance is placed on the judgment in the matter of ***'Tej Prakash Pathak & Others Versus Rajasthan High Court & others' Civil Appeal No.2634 of 2013, decided on 07.11.2024.*** The operative part of the same reads thus:

"(F) APPOINTMENT MAY BE DENIED EVEN AFTER PLACEMENT IN SELECT LIST.

*40. In Section (C) above, we have already noticed the Constitution Bench decision of this Court in **Shankarsan Das** (supra) where it was held:*

> *"Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."*

*41. Thus, in light of the decision in **Shankarsan Das** (supra), a candidate placed in the select list gets no indefeasible right to be appointed even if vacancies are available. Similar was the view taken by this Court in **Subash Chander Marwaha** (supra) where against 15 vacancies only top 7 from the select list were appointed. But there is a caveat. The State or its instrumentality cannot arbitrarily deny appointment to a selected candidate. Therefore, when a challenge is laid to State's action in respect of denying appointment to a selected candidate, the burden is on the State to justify its decision for not making appointment from the Select List."*

Learned counsel for the petitioners contends that once the Board of Officers had removed the anomalies and had redrawn the merit list, the action of the employer in cancelling the select list was arbitrary and thus deserves to be set aside. He contends that the burden is on the respondent-State to justify its decision for not making appointment from the select list once the suspicion qua

the said merit list already stood warded off on reconsideration of the factors that rendered the select list doubtful.

Learned counsel for the respondents, on the other hand, responds to the abovesaid arguments by contending that the judgment in the matter of ***Shankarsan Dash (supra)*** is squarely applicable to the facts of the present case and that there is no arbitrariness in the decision taken by the respondents to cancel the entire selection process. She contends that the anomalies in the process of selection were duly noticed and that a Board of Officers was constituted to examine and inquire into the same. The said Board of Officers also noticed the anomalies but suggested the rectification on the basis whereof they had redrawn the merit list. She contends that a mere redrawing of the merits list by the Board of Officers does not by itself ward off the apprehensions against fairness of the process of selection or to clear the same of all suspicions and doubts. She contends that in the matters of public appointment, the procedure has to be full proof so as to give a unflinching confidence to every participant that there is no probability of foul play in the process of selection. Once sanctity of the process of selection is lost, the appointing authority cannot be alleged to have acted arbitrarily in deciding to discard the final outcome of such tainted selection process. She contends that possibility of only a part of anomalies having been brought to light cannot be ruled out and in case the purity of the process is poisoned, the fruits born to the same deserve to be discarded. The argument of the petitioner that they got punished for no fault of their own cannot be accepted for the larger public good and for ensuring that the Constitutional guarantee made available to every citizen of the country under Articles 15 and 16 of the Constitution of India remains

protected. The principles of equality of opportunity and fairness in the process of selection is an impending constitutional duty which every recruiting agency as well as an appointing Authority owes to the citizens of the country.

Having heard learned counsel appearing on behalf of the parties and going through the judgments cited by them, I am of the opinion that the position in law is well settled that an appointing Authority is at liberty whether to accept the recommendation(s) made by the selection committee or not. However, such action or decision of the appointing Authority has to be based upon rationality and objective consideration of the material before it. Such rejection of a recommended selection list cannot be arbitrary. The Hon'ble Supreme Court has decided arbitrariness in the matter of ***E.P. Royappa v. State of T.N.*,** reported as ***(1974) 4 SCC 3***. The relevant extract thereof reads thus:

> *"85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and*

inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."

It is evident from the perusal of the above that for an action to be labeled as arbitrary, it should be devoid of rationality, objectivity and should

not default the touchstone of equality and rule of law. Hence, before a decision taken by the appointing authority to scrap the selection recommendation is to be interfered with, the prime test is whether such a decision is based on valid legal principles. If the above test is satisfied and the decision cannot be held to be marred by a legally unacceptable reason, such a decision shall ordinarily be accepted and upheld.

A Constitutional Court, sitting in judicial review over a decision taken by the Appointing Authority cannot supplant its own reasons. Sufficiency of reasons is not to be read as to be to the satisfaction of the Court but to the satisfaction of the employer and if such satisfaction w.r.t. sufficiency of reasons is rational and is not lacking in objectivity and is legally sustainable, such a decision would not ordinarily be interfered by the writ Court.

In the present set of circumstances, it is undisputed that certain anomalies in the selection process were duly noticed and that same were corroborated in the proceedings conducted by the Board of Officers as well. A mere redrawing of the merit list cannot be equated as clearing the selection procedure from reasonable doubt against the process of selection. It cannot thus be said that action of the respondent-Authorities in cancelling the selection list is based upon no legally tenable and tangible reasons or that the action in question is arbitrary. The paramountcy of satisfaction is that of the employer and not that of the candidate who has been figured in the recommended list, as right of a candidate is to be permitted participation in the selection process and to a fair and merit based selection process. It is the bounden duty of the appointing Authority that the stream of public appointment is not polluted. Any such aberration cast in the minds of the candidates that the process of selection

is defective or is unfair, the same is likely to impeach the faith of the candidates, which such faith is required to be maintained even at the cost of individual discomfort.

Besides, the position in law remains undisputedly settled to the effect that it is the prerogative of the employer whether to accept the recommendations made by the Selection Committee or not.

In the present set of circumstances, I do not find that the decision taken by the respondents in not accepting the recommendations made by the Board of Officers by redrawing the merit list can be said to be baseless, without any merit or suffering from arbitrariness or to be in violation of the principles of equity and natural justice. Hence, no ground is made out for interference in the decision taken by the respondent-Authorities cancelling the entire selection process.

The present writ petition is accordingly dismissed.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 16, 2025.
Rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No