

*** THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22.11.2011
% Pronounced on: 07.03.2012

+ WP(C) NO. 4745 OF 2011

UOI & ORS. ... PETITIONERS
Through: Mr. R.V. Sinha, Mr. A.S. Singh,
Advocates

VERSUS

DHARAM VIR SINGH ... RESPONDENT
Through: Ms. Pragnya Routray, Advocate

+ WP(C) NO. 5962 OF 2011

UOI & ORS. ... PETITIONERS
Through: Mr. R.V. Sinha, Mr. A.S. Singh,
Advocates

VERSUS

A.K. SHARMA & ORS. ... RESPONDENTS
Through: Mr. B.K. Berera, Adv.

+ WP(C) NO. 5825 OF 2011

UOI & ORS. ... PETITIONERS
Through: Mr. R.V. Sinha, Mr. A.S. Singh,
Advocates

VERSUS

HARISH KUMAR & ORS. ... RESPONDENTS
Through: Ms. Pragnya Routray, Advocate

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE

1. In all these writ petitions filed by Union of India, subject matter is identical though separate orders of the Central Administrative Tribunal (hereinafter referred to as the tribunal) passed are impugned in these writ petitions. However, the outcome of the three proceedings before the tribunal, out of which present petitions arise, is also identical. Therefore, our purpose would be served in taking note of the facts of W.P.(C) No.4745/2011.

2. The genesis of the dispute is in the selection process which was carried out by the Government of India Press, Aligarh for recruitment to various posts. The respondent - Dharam Vir Singh applied for the post of Assistant Binder. He qualified the written test and thereafter appeared in the interview and as per the result declared, he got selected. His name appeared in the select list prepared for this purpose. This process was carried out in the years 2007-08. All those persons who appeared in the select list were informed about their selection and were asked to complete the formalities like the medical test, police verification, etc. On the basis of the merit in the select list, certain persons were even allowed to join.

3. A complaint was received by the petitioner alleging large scale irregularities in the recruitment process. On 3.4.2008, decision was taken at the level of Ministry to stall the process of acceptance of joining reports by the selected candidates, till the investigation was complete.

Except those who had already joined, others were not allowed to join. This decision was conveyed vide letter dated 4.4.2008 to the concerned office stating that the process of recruitment/filling up of the vacant posts was suspended forthwith.

4. The respondent waited for sometime but when nothing happened, he approached the tribunal by filing O.A. No.377/2010. This O.A. was disposed of vide order dated 3.2.2010 directing the petitioners to take decision in the matter in terms of the earlier orders dated 7.12.2009 passed in O.A. No.1194/2009. The petitioners thereafter passed orders dated 14.7.2010 stating that it had decided not to appoint the respondent to the post. Though the respondent first filed contempt petition which was disposed of giving liberty to the respondent to assail orders dated 14.7.2010 by filing appropriate application under Section 19 of the Administrative Tribunals Act, 1985. In these circumstances, respondent approached the tribunal and filed O.A. No.3264/2010 challenging the aforesaid orders dated 14.7.2010 vide which he was denied the appointment. This O.A. has been allowed by the tribunal and tribunal has directed the petitioners to give appointment to the respondent herein.

5. We may point out that similar directions were given in respect of the respondents in other two original applications. The main reason given by the tribunal in granting the relief was that since many others are allowed to join and they are working, fate of the respondents would be the same as those persons and they would sink or swim with them. They cannot be left in the lurch and singled out for discriminatory treatment by not allowing them to join the post on the ground of irregularity in the

process of selection, while others have been allowed to join in similar circumstances. The tribunal in coming to this conclusion has also been influenced by the reason that though the complaint was received in April, 2008 and much time has lapsed, no final action was taken on the selection process so far.

6. We may note that the petitioners herein had argued that inquiry into the matter had already been completed and report was submitted by the inquiring authority, namely, Chief Vigilance Officer of the Ministry of Urban Development. Order dated 13.12.2010 was shown to the tribunal, which was issued following the report of the inquiry. In the inquiry, following irregularities in the selection were found:

- (i) Directorate of Printing had authorized/approved only 67 posts to be filled as Direct Recruitment vacancies/essential vacancies. Out of this, 14 posts were not advertised. Against the remaining 53 (67-14) posts, the Press advertised/notified 179 posts. The overall excess of posts advertised is 136 (179-53).
- (ii) Approval of competent authority for advertisement of 136 excess vacancies as compared to 67 approved in relaxation of ban orders on direct recruitment has not been made available by the GIP, Aligarh/Directorate of Printing during the course of investigation.
- (iii) In total the Recruitment Board recommended 133 candidates for various posts out of which appointments were made in respect of only 58.
- (iv) 49 recruitments were made against 17 approved posts in Assistant Binder category. In addition 9 recruitments were made in the category of Carpenter, Assistant Plate Maker, M/C Attendant Officer and M/C Assistant Offset even though no

posts existed in these categories. As a result, the total number of recruitment against unapproved posts was 41 (Asstt. Binder – 32, Carpenter – 1, Asstt. Palte Maker – 2, M/C Attendant Offset – 5 and M/C Assistant – 1).

- (v) Out of 133 candidates recommended for appointment, 27 were against approved posts and 106 against unapproved posts.
- (vi) The candidates appeared for interviews in respect of 'Labourers' category in two spells, first on 22, 23 & 24 February and second on 28th and 30th March, 2008. Neither a marking sheet nor signed recommendations by members of the DPC which conducted the interviews from 22nd to 24th February, 2008 were available. Subsequently composition of the Committee was changed by replacing two members which later conducted the interviews on 28th and 30th March, 2008. However, the final list of the selected candidates was prepared after the conclusion of the interviews in the second spell without marking sheet or signed recommendations by the Committee which conducted the interviews in the first spell. It is not clear on what basis the members of the Recruitment Board who have put their signatures on the final list of selected candidates have done so. The allegation of manipulation in the selection of candidates is, therefore, established on the basis of documentary evidence available on record. The members of the Recruitment Board who have put their signatures on the final list of selected candidates should be held responsible.
- (vii) On the basis of the documentary evidence, it can be concluded that the allegation that Sh. Ravinder Singh appointed on the post of Labourer is son of Sh. Lal Singh, who represented as Member SC in the Recruitment Board constituted for Labourer category, is true. Sh. Lal Singh did not furnish the certificate to the effect that none of his family members was a candidate for the post of Labourer

which is a mandatory condition for all the members of the Recruitment Board.

- (viii) In view of the documentary evidence available on record, the allegation of irregular appointments in the inter-change category e.g. applicant applied for Labourer post selected for the post of Safaiwala etc. is established in four cases.
- (ix) The allegation that irregular appointment of Sh. Yashpal Singh as Offset Machine Attendant has been made without requisite experience certificate is sustainable on the basis of documentary evidence on record.
- (x) Based on the papers received, it is established that the application of Sh. Manjeet Sharma was considered for which the documents were received subsequent to the last date.
- (xi) On the basis of facts available on records, the allegation of irregular appointment is Sh. Rajveer son of Sh. Nand Kishore as Carpenter is established.
- (xii) On scrutiny of the details of candidates who were recommended for various posts by the Recruitment Board, it has been observed that in respect of 24 candidates in Labourer category, letters for appointment were issued that were not as per the merit list and the selection was random. The remaining 15 candidates out of 39 were not issued the offers of appointment.
- (xiii) The verification of character and antecedents of the selected candidates in respect of Asstt. Binder (49), Asstt. Plate Maker (2), M/C Asstt. Offset (1), M/C Attendant Offset (5) and Carpenter (1) was done after their joining in the Press.
- (xiv) Prima facie the allegation of favouritism/nepotism appears to be sustainable. However, based on the documents and evidence available, it is not possible to ascertain who are the agents of the Manager, GIP, Aligarh responsible for manipulating these selections.”

7. The petitioners herein had also cited certain judgments of the Supreme Court to the effect that if there are large scale irregularities in the selection process, the entire selection process would be vitiated and further that mere selection would not give any person an indefeasible right for appointment. The tribunal was not convinced with the same for the following reasons:

“5. We put it to the learned counsel for the Respondents as to what action had been taken against the persons who were selected in the tests and allowed to join. He admitted that no action had so far been taken against those candidates.

6. In view of the discussion above, it is clear that the Applicant has been discriminated against inasmuch as 48 out of 58 candidates selected have been allowed to join and he has not been permitted to join on the ground that there were irregularities in the selection process. This is clearly in violation of Article 14 of the Constitution.

7. The OA, therefore, succeeds. We direct the Respondents to allow the Applicant to join in the post of Assistant Binder within 15 days from the date of receipt of a certified copy of this order. He would suffer the same fate as would be meted out to the rest of the candidates who had been allowed to join the post, in case action is taken against them. There will be no orders as to costs.”

8. Law is clear on the subject. It is held by the Supreme Court in *Shankarsan Dash v. Union of India*, AIR 1991 SC 1612 that mere selection does not confer upon any person an indefeasible right for appointment. Therefore, merely because a person is selected would not mean that he has to be given appointment and the appointment can be

stalled for justifiable reasons. It is also trite law that if large scale irregularities are found in the selection process, selection stands vitiated and such selection process does not give vested right of appointment. In ***Union of India v. O. Chakradhar*, (2002) 3 SCC 146**, this very principle was enunciated in the following manner by the Apex Court:

“7. Before we proceed further, it will be appropriate to peruse the decisions relied upon by the parties. In the case of Krishna Yadav (supra), the allegations of favouritism and arbitrariness in holding the selection for the post of Taxation Inspectors by Subordinate Selection Board were made. Those candidates whose performance was excellent were not selected. An inquiry was ordered by the Supreme Court to be held by the CBI. The report revealed acts of favouritism selection without interview even on the basis of fake or ghost interview, tempering with the records and fabrication of documents etc. In such circumstances it was held that entire selection was vitiated even in respect of those who had already been appointed and had been working for a past few years. It was further observed individual cases of innocence have no relevance in such circumstances. So far the respondent is concerned, reliance has been placed on a decision reported in (1986) II LLJ 468 SC : (1986)II LLJ 468 SC Kashi Nath Dikshita v. Union of India and Ors. on the proposition that a case where reasonable opportunity of hearing is denied to a delinquent, it vitiates the inquiry and renders the order of punishment invalid. There cannot be any doubt about the proposition of law as propounded in the above noted case. Reasonable and adequate opportunity of hearing has always to be provided to a delinquent officer against whom disciplinary proceedings have been initiated by the Department. The case however, pertains to an inquiry against an individual officer based on allegations of misconduct on his part. Another case to which our attention has been drawn is reported in (1991)1SCC662 : (1991) 1 SCC 662 Mohinder Sain Garg v. State of Punjab and Ors. In this case 1200 candidates were called for the

interview, for filling up 54 posts. It was not though a proper course but held that it would not vitiate the selection, more particularly when it could not be said to be tainted with mala fide or ill motive. It was also held that allocation of 25% of total marks for viva voce test was excessive and the selection was found to have been vitiated but it was found that whole selection was not necessary to be cancelled as those who had joined long before in pursuance to such a selection had not been impleaded as parties before the High Court and also in view of the fact that unsuccessful candidates who had chances of being selected if the marks allocated for the viva voce test had been reduced, were directed to be appointed to the posts which were kept vacant for them by means of interim orders of the Court.

8. In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will 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 no widespread and all pervasive, affecting the result, so as to make it difficult to pick out the person 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 selected. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.”

9. However, what weighed with the tribunal was that non-appointment of these persons, when large number of persons had already been appointed, would amount to hostile discrimination. This aspect is to be examined having regard to the fact that the persons who had already been given appointment were allowed to join before the complaint was received. When the complaint was received, going by the serious

allegations, the Government took the decision not to make further appointments. At the time when the orders were passed by the tribunal, the Central Vigilance Officer had already completed the inquiry and submitted his report. This fact was informed to the tribunal. In his report submitted in the year 2010, the CVO has found the following irregularities:

- “(a) Posts advertised were in excess of the number of posts essentially required to be filled up.
- (b) Appointments by direct recruitment were made in excess of the approved post.
- (c) Approval of the competent authority for relaxation of orders of band on filing up of vacant posts was not obtained.
- (d) Appointment to the post of Artist Retoucher was made without obtaining approval of the competent authority.
- (e) Large number of interviews for various posts were held in extremely short time which is not amenable to fair assessment.
- (f) Number of appointments made were of relatives of existing employees of Press which could not be on merit alone and nepotism and favouritism cannot be ruled out.
- (g) Appointments were made without any verification of character and antecedents.”

10. After submission of this report, decision dated 13.12.2010 was taken that the list of selected candidates cannot be acted upon and those candidates who were selected and offered appointment but were not allowed to join duties after April, 2008 would not be appointed. This

decision was also produced before the tribunal. Notwithstanding the same, the tribunal treated the action of the petitioners as discriminatory. It is difficult to comprehend this approach of the tribunal. No doubt, once the report is submitted by the CVO, it becomes the bounden duty of the Government to take final view on the said report and if the process is to be annulled, such action should be taken immediately so that those who are already appointed by the reason of vitiated selection process should also be made to go. However, that would not mean that once by the CVO it is found that there are serious irregularities, direction should be given to appoint others as well on the pretext that it would otherwise entail discrimination.

11. In *State of Bihar v. Upendra Narayan Singh*, (2009) 5 SCC 65, a situation akin to the present had arisen. In that case, the Court found that many persons were given appointment to Class III and Class IV posts by the appointing authorities misusing and abusing their powers by violating the rules and instructions and by indulging in favouritism and nepotism with impunity. When this aspect came to light, services of such persons were terminated. The High Court granted them relief holding that otherwise it would be violative of equality clause contained in Article 14 and 16 of the Constitution. Overturning the decision of the High Court and holding that no question of discrimination arises in such cases, the Supreme Court made the following pertinent observation:

“67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been

committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong order Chandigarh Administration and Anr. v. Jagjit Singh and Anr. [1995] 1 SCR 126; Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and Ors., (1997) 1 SCC 35; Union of India (Railway Board) and Ors. v. Subhaiah and Ors., AIR 1996 SC 2890; Gursharan Singh v. New Delhi Municipal Committee, [1996] 1 SCR 1154; State of Haryana v. Ram Kumar Mann, (1997) 1 SCC 35; Faridabad CT Scan Centre v. D.G. Health Services and Ors., 1997 ECR 801 (SC); Style (Dress Land) v. Union Territory, Chandigarh and Anr., AIR 1999 SC 3678 and State of Bihar and Ors. v. Kameshwar Prasad Singh and Anr. AIR 2000 SC 2306; Union of India and Anr. v. International Trading Co. and Anr. AIR 2003 SC 3983 and Directorate of Film Festivals and Ors. v. Gaurav Ashwin Jain and Ors., AIR 2007 SC 1640 .

68. The facts of Jagjit Singh's case were that the respondents who had given the highest bid for 338 square yards plot in Sector 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on 18-3-1991.

69. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court which was allowed only on the ground that in another case pertaining to Smt. Prakash Rani, Administrator had restored the plot even after her writ petition was dismissed by the High Court. While reversing the order of the High Court, this Court observed: (Jagjit Singh case, SCC pp.750-51, para 8)

“Generally speaking, the mere fact that the respondent Authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent Authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent Authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a

basis for its repetition. By refusing to direct the respondent Authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the case (sic court) and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the court nor is his case. In our considered opinion, such a course - barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles.”

77. In Directorate of Film Festivals and Ors. v. Gaurav Ashwin Jain and Ors. (supra), a two-Judge Bench, after making a reference to the judgments in Jagjit Singh's case and Gursharan Singh's case, observed:

“When a grievance of discrimination is made, the High Court cannot just examine whether someone similarly situated has been granted a relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. The High Court has to first examine whether the petitioner who has approached the court has established a right, entitling him to the relief sought on the facts and circumstances of the case. In the context of such examination, the fact that some others, who are similarly situated, have been granted relief which the petitioner is seeking, may be of some relevance. But where in law, a writ petitioner has not established a right or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing a negative equality by perpetuation of an illegality which is impermissible in law.”

12. There is no question of discrimination in the present case as well. No doubt, the petitioners had shown laxity in not taking proper decision in the matter, however, in such circumstances, direction should have been to take final view on the basis of CVO report within a time bound manner and in case the Government comes to the conclusion that the selection is to be saved and no action is to be taken against the persons already appointed, in that eventuality, these respondents could also be directed to be appointed. On the other hand, if the Government takes action within specified time which would have been allowed by the tribunal, then the tribunal could have directed taking action against those already appointed because of irregular procedure.

13. We had summoned the record and we find that after the CVO had submitted the report, the same has been discussed at various levels. The opinion of the Ministry of Law is also taken. There is a note dated 18.11.2011 by an official citing the opinion of the Ministry of Law and proposing, namely, accepting the findings of the report of investigation of complaint; setting aside the process of recruitment in all the Presses; discharging of the appointed candidates on the basis of said vitiated selection process; identifying officers involved in irregularities and initiating disciplinary action against them and the manner in which such vacancies should be filled up in future to avoid recurrence of such malpractices. Having regard to the aforesaid position in law and the factual position emerging from the records, we are of the view that directions given by the tribunal are unsustainable. We, thus, set aside the impugned orders directing appointment of the respondents in these writ petitions allowing these writ petitions. At the same time, we substitute the order of the tribunal with the following directions:

“Final view in the matter shall be taken within one month from the date of this order. If the proposal, as mentioned above, namely, report of the CVO is accepted, the necessary action would be taken qua the persons already appointed as well. However, if for some reason it is decided not to accept the proposal and to continue with the existing appointments then the respondents herein shall also be appointed.”

14. We may make it clear that we have not touched upon the question as to whether findings of the CVO that the selection process is vitiated because of irregularities stated therein is correct or not. It is not even

necessary to do so as all those who are appointed are not before us and we cannot take any view in the matter in their absence. Therefore, needless to mention, in case the petitioners decide to scrap the selection process and the services of those appointed are terminated, they shall be within their right to challenge the action of the Government on its own merits and as per law.

15. The writ petitions are disposed of in the aforesaid terms. There shall be no order as to costs.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

MARCH 07, 2012
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