

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

Decided on: 28.07.2014

+ W.P.(C) 4664/2014, C.M. NO.9307/2014 & 9308/2014

AJAY KUMAR & ORS. Petitioners
Through : Ms. Jyoti Singh, Sr. Advocate with Sh.
Amandeep Joshi and Sh. Sameer, Advocates.

Versus

UNION OF INDIA & ORS. Respondents
Through : Sh. Saqib, Advocate, for Resp. Nos. 1 to
3.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The present petition has been preferred against an order of the Central Administrative Tribunal (CAT) dated 19.03.2014 in O.A. No.2825/2012. The CAT rejected the application of the writ petitioners claiming that they should be appointed to one of the Group-C/D posts in the Government of India Press.

2. The facts necessary for deciding this case are that some time in November 2007, the third respondent issued an advertisement in the newspaper inviting applications for filling-up Group-C/D posts. Pursuant to this, the selection process was undertaken which included *inter alia* an interview. On 30.03.2008, the respondents published a

list of selected candidates. The list contained names of the petitioners who were also allotted the respective categories among Group-D posts. This was subsequently followed by appointment letters dated 01.04.2008. Close on the heels of the appointment letters came one further letter dated 03.04.2008 of the respondents suspending the recruitment process, which was notified to all subsequently. The petitioners in these circumstances had approached the CAT for appropriate directions, arguing that in view of their selection and subsequent notification in the selected list, they had a right to be appointed to the posts. This led to the direction dated 03.03.2010, requiring the respondents to pass orders within two months. On 30.07.2010, the respondents issued an order stating no recruitment would be made to Group-D posts and that all the applicants in the O.A. cannot be appointed to the Group-D posts. This order was challenged by filing O.A. 2880/2010 before the CAT which allowed it on 18.04.2011. That decision of the CAT was questioned before this Court in W.P.(C) 5962/2011 and connected cases. In the course of the proceedings, this Court noticed that the respondents in the present case, i.e. the Central Government and the recruiting department had urged the existence of serious irregularities that had been gone into by its Vigilance Cell. The report of the Chief Vigilance Officer (CVO) of the respondents was also produced and taken note of. By that time, a few selected candidates had been appointed – before the suspension of the selected list on 03.04.2008. Taking note of these aspects, the Court, by its order and judgment dated 07.03.2012, required the respondents to pass appropriate orders and intimate the same to the

concerned parties. The Court set-aside the directions of the CAT to appoint the present petitioners. It was in these circumstances that on 03.05.2012 the respondents issued the following order:

*“File No.7/17/2010-A.I.(Vol.II)
Government of India
Ministry of Urban Development
DIRECTORATE OF PRINTING
'B' Wing, Nirman Bhavan, New Delhi 110108*

OFFICE MEMORANDUM

Subject: Implementation of High Court of Delhi Order dated 07.03.2012 in W.P.(C) No.4745/2011, W.P.(C) 5962/2011 and W.P.(C) 5825/2011 filed against CAT Principal Bench, New Delhi's order dated 18.04.2011 in various OA's filed by Shri Dharam Vir Singh, A.K. Sharama & Ors. And Harish Kumar & Ors.

In compliance of the orders of Hon'ble High Court of Delhi on the subject mentioned above, the competent authority has decided to cancel/terminate the appointment in respect of all candidate including those who have already joined service in respect of Government of India as per procedure and submit a compliance report to Hon'ble High Court of Delhi through the Government counsel. The subject recruitment process in the above mentioned cases thus stands cancelled.

2. *The Government Counsel be requested to prepare a draft of the compliance report to be filed in the Court and be faxed to this Directorate urgently to avoid any further delay in the matter.*

3. *This issues with the approval of the Competent authority.*

Sd/-
(SURENDRA SINGH)
Dy. Director (Admn.II)
Telx Fax: (011) 2306 1186

To,
The Manager,
Government of India Press,
Alighar-202001”

3. The above was questioned by the present petitioners in their O.As. The CAT, by the order impugned in these proceedings considered the three aspects, i.e. the existence or otherwise of vacancies; the existence of some individuals who are related to the incumbents, officials and employees working in the department and members of the selection board, and the short span of time in interviewing candidates. The CAT, on the basis of above analysis of facts held as follows:

“We are inclined to agree with the applicants counsel in this regard. It is true that CVO had found certain discrepancies in the number of posts available for filling up, number of posts advertised and number of posts actually filled up. He had also found that orders of competent authority for relaxation of ban on filling up of the posts had not been obtained. However, these were all administrative lapses and the applicants cannot be penalised for the wrong doings of the respondents. If there were any discrepancies in the number of posts advertised and filled, it was for the

respondents to correct those by taking post facto sanction of the competent authority. We, therefore, agree with the applicants that this alone cannot be a ground for scrapping of the selection.

The CVO also found that a number of appointments made were of relatives of existing employees of the Press. He opined that this could not be on merit alone and therefore the selection process smacked nepotism and favouritism. However, in our opinion such cases can easily be identified and separated from those who were innocent. This cannot be a reason for scrapping the selection process as that should be done only as a last resort.

However, it is the next irregularity noticed that has engaged our attention. The CVO found that a very large number of candidates had been interviewed in a very short span of time making mockery of the whole process of interview. This finding of the CVO has not been disputed by the applicants either. Since it is not disputed that the process of selection for all posts involved interview it follows that every candidate selected must have passed through this process which by itself was farcical. If this be so, it will not be possible to separate the meritorious candidates from those who were tainted as all have come through the same interview process. In our opinion this irregularity by itself is sufficient to warrant scrapping of the examination.....”

4. The CAT also considered the law declared by the Supreme Court in its various judgments on the issue and was of the opinion that since the entire selection process was tainted, there is no indefeasible right in favour of a selected candidate; so long as there are valid reasons for doing away with the selection or not proceeding further with it, the Court would desist from interfering with the decision of

the administrative agency or department under Article 226. The CAT finally concluded as follows:

“10. On the basis of the above analysis, we are of the opinion that there is no infirmity in the action of the respondents. The entire selection process was vitiated on account of interviews conducted in a farcical manner. Therefore, the respondents were left with no option but to withhold the appointment letters of those who were awaiting their appointment after their selection. They were also right in terminating those who had been appointed and had been serving for different periods after such appointment. This action of the respondents was also as per the directions of the Hon’ble High Court given in Writ Petition Nos. 4745/2011, 5962/2011 and 5825/2011 wherein they had ordered that those appointed and those who were yet to be appointed were to be treated in a similar manner after the respondents take a view on the report of the CVO.

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5. Ms. Jyoti Singh, learned senior counsel for the petitioners urges that this Court, in the previous round of litigation, was alive to the circumstance that several selected candidates had been appointed and, therefore, desisted from arriving at any conclusions. She emphasized upon this Court’s determination that the respondents were to take a final decision having regard to all these circumstances. Learned senior counsel further underlined the fact that the CAT, in its impugned order, has not concurred with the respondents on the more serious charges of recruiting a number of candidates in excess of the number of vacancies as well as on the further charge of nepotism. In the latter case, the CAT directed a different approach, keeping in line with the decision of the Supreme Court in *UOI and Ors. v. O. Chakradhar*

2002 (3) SCC 146. Learned senior counsel submitted that a relatively vague finding by the CVO, that a very limited period of time was spent by the interview panel to apprise the selected candidates was used by the CAT to direct the scrapping of the entire selection process. It was contended that the CAT was inconsistent in its approach. As regards the first two aspects, the CAT quite correctly stated that no fault could be found against any of the petitioners, and that such of those who were beneficiaries of undue favour, such as nepotism, were correctly dealt with, by way of segregating and cancelling their appointments. However, the same approach did not enure in favour of the petitioners in respect of last alleged irregularity. This, contended the learned senior counsel, betrayed an approach which was both arbitrary and whimsical on part of the respondents which require condemnation as it violated Article 14 of the Constitution. It was next contended that for all practical reasons, there is no difference between those candidates selected and appointed and those – like the petitioners – who unfortunately missed the bus, because their appointment letters were kept in abeyance after being issued. Contending that the entire selection process had to be viewed as an integrated whole, learned senior counsel submitted that the previous decision of this Court had taken note of this aspect and, therefore, did not upset any appointments that had been made, pursuant to which the selected candidates had reported for duty. It was, therefore, submitted that the present petitioners ought to be extended the same benefit.

6. Learned counsel for the respondents submitted that the previous judgment and order of this Court took note of the detailed factual circumstance which had been found in the CVO's report. Looked at by itself, the irregularities were serious enough to warrant cancellation of the entire process. However, this Court merely substituted the direction of the CAT to appoint those who had approached it, with one to the respondents, to take a view after considering all the circumstances and pass a fresh order. It was in these circumstances that the order dated 03.05.2012 was issued. Learned counsel relied upon the judgment of the Supreme Court, which pointed out that the CAT has taken note of various judgments of the Supreme Court, each of which had upheld wholesale cancellation of the selection process. It was highlighted that the candidates at best had an expectation to be considered, but under no circumstances can it be termed as a crystallized right to claim a post. In the given and established circumstances of this case, the respondents acted within their rights to cancel their entire process of selection.

7. This Court has considered the submissions of both sides. The law is clear that when the illegality in the selection process is so all pervasive that the beneficiaries of the illegality cannot be segregated, the whole selection process must stand vitiated: Refer *Union of India and Ors.v. Chakradhar*, (2002) 3 SCC 146; *Krishna Yadav v. Union of India*, (1994) 4 SCC 165.

8. The CVO's Report discerned the following irregularities:

"(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/Director 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. Plate 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. Lai 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 interchange 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.”*

9. The Report of the CVO is clear in its conclusions that the selection process reeked of nepotism. The CAT also records this in paragraph 7.1 of the order. Likewise, the CVO Report also is clear on the existence of a discrepancy in the number of vacancies advertised, the number of vacancies that were available to be filled up, and the number of appointments that were finally made; the CAT also noted this in paragraph 7.1 of its order.

10. This Court is of the opinion that the selection process is, as a consequence, entirely vitiated. It is not possible to segregate the cases in which nepotism was at play in the decision-making process while

selecting candidates. There is no basis for the inference that the selection board duly applied its mind to the selection of those candidates who were not, in some way, related to the selection board members etc., and thus not beneficiaries of the nepotism. A selection board that makes decisions in a nepotistic manner in the case of some candidates could equally have appointed the remaining candidates in reckless disregard of relevant considerations and criteria like merit, etc. Moreover, the CVO's findings that there was a discrepancy in the number of actual vacancies (67) and the number of vacancies advertised (179), itself taints the selection process so completely as to make it untenable. Worse still, an overwhelmingly large number of appointments (106) was made against unapproved posts. These facts show not only that the recruitment was not in accordance with the advertisement but also that there was no application of mind by members of the selection board, to considerations that are relevant for making such appointments, since appointments were made in excess of the available vacancies and outside of the approved posts. Such appointments are clearly arbitrary. Consequently, none of the appointments made through this selection process can be allowed to stand.

11. The Government orders of 3.5.2012, 4.5.2012 and 21.5.2012, scrapping the selection process and terminating the appointments must, consequently, be upheld. These decisions effect a cancellation of all the appointments made. No indefeasible right can vest in the hands of those employees whose appointments were a consequence of a

selection process that is completely tainted. Refer *Chakradhar (supra)*. Therefore, the petitioners in this writ petition cannot be heard to claim equality of treatment with those appointees, on the ground that their appointments were kept in abeyance. The position of law is well-settled that no claim of equality can be made seeking the extension of an illegally attained benefit or advantage by persons who are similarly situated. Ref. *State of Bihar v. Kameshwar Prasad Singh* (2000) 9 SCC 94.

12. For the above reasons, this Court finds no merit in the petition. It is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**VIPIN SANGHI
(JUDGE)**

**JULY 28, 2014
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