

UNION OF INDIA AND ORS.

A

v.

RAJESH P.U. PUTHUVALNIKATHU AND ANR.

JULY 30, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

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Service Law:

Selection of candidate for the post of Constable—Complaint—Enquiry by committee—Order of cancellation of recruitment process in view of discrepancies in valuation of answer book—Writ petition—High Court directing authority to correct mistake in selection—On appeal held, cancellation of selection not justified on account of discrepancies found since there was no infirmity in selection of other successful candidates than certain candidates identified by the committee—Thus cancellation of entire selection not warranted.

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Central Bureau of Investigation (CBI) conducted selection process for the appointment to the post of Constables and prepared a list of selected candidates which included names of the respondent and other candidates. Some of the unsuccessful candidates challenged the selections. Director, CBI constituted a Committee to enquire into the complaints relating to selection. On the basis of the report it ordered cancellation of the recruitment process. Respondent filed an application challenging the cancellation which was dismissed. Respondent then filed writ petition. High Court allowed writ petition and directed CBI to correct the mistakes in the selections by rearranging the selection list and completing the selection as per the re-evaluation found to be necessary by the Committee. Hence the present appeal.

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Appellant-Union of India contended that the cancellation of the selection was justified on account of the discrepancies found out by the Committee in valuation of the answer papers, certain lapses in the matter of dictating the questions in English and Hindi, non-uniformity of answer sheets and absence of official seals, therefore, there was no justification for the High Court to interfere in the matter; Respondents contended that there were no lapses in announcing questions in English and Hindi and for every 10 candidates there was an invigilator to supervise the test.

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A Dismissing the appeal, the Court

B HELD: 1. In the light of the materials brought on record, including the Report submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates, there appears to be no scope for any legitimate grievance against the decision rendered by the High Court. Therefore, the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, which is wholly unwarranted and unnecessary even on the factual situation and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational. Hence, there is no infirmity in the judgment of the High Court which adopted a practical, pragmatic, rational and realistic solution to the problem.

[888-B, C; 889-B-D]

D 2.1. There seems to be no serious grievance of any malpractices as such in the process of the written examination - either by the candidates or by those who actually conducted them. If the Board itself decided to dictate the questions in loud speaker in English and Hindi and none of the participants had any grievance in understanding them or answering them, there is no justification to surmise at a later stage that the time lapse in dictating them in different languages left any room or scope for the candidates to discuss among them the possible answers. The posting of invigilators for every ten candidates would belie any such assumptions. Even that apart, the Special Committee constituted does not appear to have condemned that part of the selection process relating to conduct of written examination itself, except noticing only certain infirmities only in the matter of valuation of answer sheets with reference to correct answers and allotment of marks to answers of some of the questions.

F [888-C-E]

G 2.2. It appears the Special Committee has extensively scrutinized and reviewed situation by re-evaluating the answer sheets of all the successful as well as unsuccessful candidates and ultimately found that except few candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment. There was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee. In the absence of any specific or categorical finding supported by any concrete and relevant material than widespread infirmities of all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it

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was impossible to weed out the beneficiaries of one or other of irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or other reasons. [888-F-H; 889-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5321 of 2003.

From the Judgment and Order dated 20.12.2001 of the Kerala High Court in O.P. No. 13548 of 2001 (S).

Altaf Ahmad, Additional Solicitor General, Ashok K. Srivastava and P. Parmeswaran for the Appellants.

Mathai M. Paikeday, Robsoo Paul, Ram Niwas Buri and V.K. Sidharthana for the Respondents.

The Judgment of the Court was delivered by

RAJU, J. Leave granted.

The Central Bureau of Investigation (for short 'CBI') invited applications on 29.3.2000 for filling up 134 posts of Constables-Male/Female (Executive) and 5 Male Constables (Motor Transport) in various branches of its office all over India, indicating the qualifications to be fulfilled by the incumbents for selection stipulating for the holding of a written examination and interview for the purpose at Hyderabad, fixing the date of recruitment as 24.4.2000. Several persons including the private respondent applied and the candidates were called for undergoing written test on 24.4.2000 and interview on 30.4.2000 at Hyderabad. After passing the same, the contesting respondent was served with a Communication dated 25.5.2000 that he was selected for appointment to the post of Constable (Group C post) in the CBI in the pay scale of Rs. 3050-75-3590-80-4590. The Chief Medical Officer - Civil Hospital, Cherthala, was also subsequently asked to examine him to find out and certify the candidate's medical fitness and forward the same in the prescribed form by 7.6.2000, indicating some of the details to be furnished therein in clear and specific terms, asking the candidate to report before the other Medical Officer for the purpose.

The said test regarding medical fitness also was undergone successfully and the respondent was found to satisfy all those requirements.

While the candidates, including the respondent, were anxiously waiting

A for orders of appointment, the respondent and other selected candidates were informed by a Communication dated 8.1.2001 that though they were selected for appointment and were asked to undergo medical test - the selection process for appointment already conducted and the list of selected candidates has been cancelled by the Competent Authority of CBI. It appears that, in the meantime, some of the unsuccessful candidates, who appeared for selection

B in Hyderabad, filed an application (OA No.1034 of 2000) before the Central Administrative Tribunal (for short 'CAT'), Principal Bench at New Delhi, challenging the selections making allegations of favouritism and nepotism on the part of officers in conducting Physical Efficiency Test. The CBI seems to have opposed the same refuting such allegations asserting that the impugned

C process of selection was conducted under the overall supervision of the Chairman, Recruitment Board and that the Physical Efficiency Test was also conducted under the supervision of a Superintendent of Police. As for the challenge made to the written test, it was asserted by the CBI that sufficient steps were taken for proper conduct of the test though held in the CRPF

D Ground on an evening and no favouritism whatsoever was shown to select anyone, out of the way. The selection was, therefore, said to have been strictly in accordance with the governing instructions. It further transpired that the Director, CBI, on receipt of complaints relating to the selections made, constituted a Committee under the Chairmanship of a Joint Director with two Deputy Inspector Generals of Police, CBI, as Members to enquire into the same and on submission of their Report and considering the same, ordered

E cancellation of the recruitment process held at Hyderabad. Placing such information before the CAT at New Delhi, dismissal of the OA, as having become infructuous, seems to have been sought and the Tribunal also dismissed the same as having been rendered infructuous in the light of the subsequent turn of events.

F While so, on receipt of the Communication dated 8.1.2001, the respondent herein filed OA No.327 of 2001 before the CAT's Bench at Ernakulam, Kerala State, challenging the cancellation. By an Order dated 10.4.2001, the same appears to have been dismissed at the admission stage itself, observing that the action relating to cancellation having been taken *bona fide* and in public

G interest after due deliberation, does not call for interference and there was no legitimate cause of action. Aggrieved, the respondent moved the Kerala High Court in O.P. No.13548 of 2001(S). The Division Bench specifically noticed the nature of irregularities on the basis of which the selections came to be cancelled. It appears that the stand on behalf of CBI before the High Court

H was that though the allegations of nepotism and favouritism were found to

be baseless, in some cases of evaluation of answer sheets incorrect answers were found to have been awarded marks and in certain other cases even correct answers were assessed to be wrong and denied marks. In some cases, one or more of the answers seem to have been not evaluated for awarding marks and overlooked, while excess marks than allowed seemed to have been awarded in certain cases for one or other questions. It appears that the Committee constituted meticulously and thoroughly identified all such cases individually and specifically found that 31 candidates, who were otherwise ineligible, got in the process included in the select list and an equal number of eligible candidates, thus, were considered to have been denied of their legitimate claims. It is for this reason, ultimately, the entire selection was found to have been cancelled and not otherwise. The Division Bench seems to have directed the production of the Committee Report and on being satisfied about nature of irregularities that only were noticed by the Committee on an exhaustive review of the entire process and the answer papers of both the selected and unselected candidates, while categorically rejecting as baseless the allegation of nepotism/favouritism, came to the conclusion that there was no justification to cancel the entire selections when the impact of irregularities and lapses, which crept into evaluation on merits could be identified specifically and was found, on a reconsideration of the entire records, to have resulted in about 31 specific number of candidates being got selected undeservedly to the detriment of similar such number of candidates. Repelling the plea that a person in select list has no vested right to get appointed and finding the cancellation of the entire selection to be arbitrary and unreasonable, the Kerala High Court allowed Writ Petition and directed the CBI to correct the mistakes in the selections by rearranging the select list and completing the selection as per the re-evaluation found to be necessitated by the very Committee constituted for analyzing the position and in the light of its very report. Not satisfied, the appellants have filed this appeal.

Heard the learned Additional Solicitor General for the appellants and the learned Senior Counsel for the respondents. On behalf of the appellants, it was contended that the cancellation of the selection was justified on account of the discrepancies said to have been found out by the Committee in the matter of valuation of the answer papers and that, therefore, there was no justification for the High Court to interfere in the matter. It was also contended that there were certain lapses in the matter of dictating the questions in English and Hindi, resulting in some advantage being gained by some candidates and placing certain others in a disadvantageous position. Non-uniformity of answer sheets and absence of official seals was also said to

- A have undermined the fairness of the written examination. On behalf of the respondents, it was contended that there was no time gap in announcing questions in English and Hindi for discussion among candidates about possible answers; that, as a matter of fact, for every 10 candidates there was an Invigilator to supervise the test and that such stand now taken was never taken when counter affidavit was filed before the Tribunal in the OA and that,
- B therefore, the well considered decision of the Division Bench of the High Court does not call for any interference.

- On a careful consideration of the contentions on either side in the light of the materials brought on record, including the relevant portions of the
- C Report said to have been submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates, filed on our directions - which Report itself seems to have been also produced for the perusal of the High Court, there appears to be no scope for any legitimate grievance against the decision rendered by the High Court. There seems to be no serious grievance of any malpractices as such in the
- D process of written examination - either by the candidates or by those who actually conducted them. If the Board itself decided to dictate the questions in loud speaker in English and Hindi and none of the participants had any grievance in understanding them or answering them, there is no justification to surmise at a later stage that the time lapse in dictating them in different
- E languages left any room or scope for the candidates to discuss among them the possible answers. The posting of Invigilators for every ten candidates would belie any such assumptions. Even that apart, the Special Committee constituted does not appear to have condemned that part of the selection process relating to conduct of written examination itself, except noticing only certain infirmities only in the matter of valuation of answer sheets with
- F reference to correct answers and allotment of marks to answers of some of the questions. In addition thereto, it appears the Special Committee has extensively scrutinized and reviewed situation by re-evaluating the answer sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment. There was no infirmity whatsoever in the
- G selection of the other successful candidates than the 31 identified by the Special Committee. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of all pervasive nature, which could be really said to
- H have undermined the very process itself in its entirety or as a whole and it

was impossible to weed out the beneficiaries of one or other of irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or other reasons. Applying an unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go bye to contextual considerations throwing to winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. In short, the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.

For all the reasons stated above, we could not find any infirmity whatsoever in the judgment of the High Court which adopted a practical, pragmatic, rational and realistic solution to the problem. The appeal, therefore, fails and shall stand dismissed. The interim order earlier granted thus automatically stands revoked. The appointments shall be made within 60 days from this day, without any further delay. No costs.

N.J.

Appeal dismissed.