

(2015) 06 GAU CK 0040

Gauhati High Court

Case No: WP(C) No. 3452 of 2011

Hiteswar Kardong and
Others

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: June 17, 2015

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2015) 06 GAU CK 0040

Hon'ble Judges: Ujjal Bhuyan, J

Bench: Single Bench

Advocate: P. Chakraborty, G. Deka, A. Das and K. Khan, for the Appellant; G.N. Sahewalla, Sr. Adv., N. Anix Singh, N.K. Devi and H. Terangpi, Advocates for the Respondent

Final Decision: Allowed

Judgement

Ujjal Bhuyan, J

Heard Ms. P. Chakraborty, learned counsel for the petitioners and Mr. G.N. Sahewalla, learned Senior Counsel assisted by Mr. Anix Singh, learned counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioners seek a direction to the respondents to appoint them in the post of Junior Fire Supervisor following their selection.

3. Case of the petitioners is that Oil and Natural Gas Corporation Limited (ONGC), Assam Asset, Nazira, had issued an advertisement in the early part of 2010, being Advertisement No. R & P - 03/2010 for recruitment to regular Class-III and Class-IV posts. Amongst various posts applications were invited for 4 (four) vacancies in the post of Junior Fire Supervisor, 3 (three) for Unreserved (UR) category and 1 (one) for Scheduled Tribe (ST) category. Qualification prescribed was Intermediate pass having 6

(six) months experience in fire services with driving license for heavy vehicles being essential. It was also stated that physical efficiency test would apply. Age required for UR category was 30, whereas for ST, it was 35. It was, however, provided that there would be age relaxation to the extent of service rendered in ONGC in respect of departmental candidates. Minimum physical standards were prescribed.

4. Petitioners being eligible applied for the post of Junior Fire Supervisor. Petitioner No. 1 belongs to ST category, whereas petitioner Nos. 2, 3 and 4 belong to UR category. Petitioners are external candidates, i.e., not departmental candidates.

5. Written test was held on 10.10.2010 in which petitioners participated. Result of the written test was published on 02.12.2010. Petitioners qualified in the written test. A total of 13 (thirteen) candidates qualified in the written test.

6. Qualified candidates were thereafter called to appear in the oral interview, which was held from 08.12.2010 to 14.12.2010. Accordingly, petitioners appeared in the oral interview.

7. Result of the recruitment process was published on 08.02.2011. All the four petitioners were finally selected against the 4 (four) notified vacancies, petitioner No. 1 against the ST vacancy and the other petitioners against the UR vacancies.

8. According to the petitioners, a total of 158 candidates were selected against the notified vacancies in various posts. Appointment letters were issued to all the selected candidates except the petitioners.

9. Petitioners submitted joint representation on 13.06.2011 before the respondent No. 5 for their appointment but no decision was taken there on. Petitioners could come to know later on that because of extraneous pulls and pressure, appointment letters which were issued to the petitioners were withdrawn and that decision was taken to cancel the selection of the petitioners and to go for fresh advertisement.

10. Aggrieved, the present writ petition has been filed.

11. This Court by order dated 12.07.2011 while issuing notice, directed that status quo with regard to the 4 (four) advertised posts of Junior Fire Supervisor should be maintained as on 12.07.2011.

12. Respondent Nos. 2 to 7 have filed a common affidavit. Stand taken in the affidavit is that appointment letters were issued to all the selected candidates relating to other posts except the 4 (four) posts of Junior Fire Supervisor. One Musfiquddin Ahmed had filed a writ petition before this Court being WP(C) No. 16 of 2011 against rejection of his candidature for the post of Junior Fire Supervisor on the ground that he did not have continuous 6 (six) months experience in fire service. On 05.01.2011, this Court had issued notice. Since the matter was pending before the Court and to avoid multiplicity of

proceedings, competent authority of ONGC took a decision on 09.02.2011 to keep in abeyance the appointments to the post of Junior Fire Supervisor till final order was received from the Court. It was also stated that complaint was received from the ONGC Purbanchal Employees Association, Sivasagar, on 09.02.2011, alleging irregularity in the selection procedure because of which none out of the 8 (eight) departmental candidates were selected. Competent authority of ONGC thereafter decided to carry out an independent enquiry into the selection held for the post of Junior Fire Supervisor. Pursuant to the enquiry conducted, Chairman and Managing Director of ONGC decided to scrap the entire selection process in respect of the post of Junior Fire Supervisor and to hold fresh selection. However, because of the interim order passed by the Court on 12.07.2011 further steps in this regard have not been taken. It is stated that in terms of the Recruitment and Promotion Regulations, 1980, as amended, followed by ONGC, in case of vacancies to be filled up by direct recruitment, departmental candidates fulfilling the requisite qualification are to be given first consideration and only in case of lack or absence of suitable departmental candidates, the unfilled vacancies can be notified for recruitment by external candidates, but in this case, departmental candidates were not recommended. The 4 (four) selected candidates are external candidates. Finally, it is contended that petitioners though are selected candidates, they have no right to claim appointment or to challenge the decision of the appointing authority to scrap the selection process.

13. Thereafter, petitioners have filed rejoinder affidavit followed by further affidavit of respondent Nos. 2 to 7 and affidavits by petitioners, the contents of which will be referred to at a subsequent stage.

14. Ms. P. Chakraborty, learned counsel for the petitioners submits that there is no justification to deny appointment to the petitioners. It is not the case of the respondents that petitioners lacked eligibility or that there were illegalities in the selection which resulted in the selection of the petitioners. Grounds taken by the respondents to deny appointment to the petitioners are wholly untenable. In the selection held, the eligible departmental candidates had participated but they failed to get the qualifying marks and thus, they were not selected. Enquiry conducted by the ONGC did not reveal any illegality in the selection. Rather, the enquiry report held that consideration of the departmental candidates together with the external candidates was a procedure followed consistently in the ONGC and even if it is construed to be a departure from the guidelines it was a minor aberration, which would not justify scrapping of the selection process in its entirety.

15. Per contra, Mr. Sahewalla, learned Senior Counsel for the respondents submits that as per the Recruitment and Promotion Regulations of ONGC, for any vacancy to be filled up by direct recruitment the first consideration must go to the eligible departmental candidates. Only if eligible departmental candidates are not available, then external candidates can be considered. In this case, there were eligible departmental candidates. In spite of their presence, the selection committee erroneously considered the candidature of external candidates. Serious objection was raised by the Employees"

Association, which was given due consideration by the competent authority of ONGC. Thereafter, a conscious decision was taken to cancel the selection process and to hold selection afresh. Referring to the marks secured by the candidates as can be seen from the master chart annexed to the rejoinder affidavit of respondent Nos. 2 to 7, many of the departmental candidates though had secured very high marks yet, they were not empanelled. In fact, 2 (two) of the departmental candidates, namely, Chittrajit Boruah and Anupal Bharali had secured more marks than petitioner No. 2, Sri Rituraj Kakoty. However, Rituraj Kakoty was empanelled and the 2 (two) departmental candidates were not empanelled. In order to maintain industrial peace and harmony within the organization, competent authority of ONGC decided to cancel the selection and to go for fresh selection.

16. Submissions made by learned counsel for the parties have received the due consideration of the Court.

17. From the affidavit filed by ONGC, it is seen that on 2 (two) grounds the selection process was initially kept in abeyance and thereafter, cancelled. First ground was filing of WP(C) No. 16 of 2011 by one Musfiquddin Ahmed, whose candidature for the post of Junior Fire Supervisor was rejected. Second ground was filing of complaint by ONGC Purbanchal Employees Association, Sivasagar, alleging that departmental candidates were not recommended despite provision in the Recruitment and Promotion Regulation that when vacancies are to be filled up by direct recruitment, departmental candidates are required to be considered first; only in the absence of eligible departmental candidates, candidature of external candidates can be considered.

18. Before advertng to the minutes of the selection committee proceeding and the enquiry report which have been placed on record by the petitioners as annexures to their affidavit filed on 17.07.2012, it would be apposite to first attend to the 2 (two) grounds taken by the ONGC as noticed above.

19. ONGC has taken the stand that to avoid multiplicity of litigations in view of WP(C) No. 16 of 2011 they did not proceed with the selection process.

20. As already noticed above, WP(C) No. 16 of 2011 was filed by one Musfiquddin Ahmed, whose candidature for the post of Junior Fire Supervisor was rejected on the ground that he did not have the eligibility of continuous 6 (six) months" experience in fire service. No stay order was passed in that case. From the Court record, it could be seen that the said writ petition was dismissed by this Court vide judgment and order dated 16.06.2011 by holding that the decision of the respondents to reject his candidature was just and proper. View taken by the ONGC was held to be a rational view. Therefore, the first ground taken by the ONGC for cancellation of the selection process, no longer survives.

21. Coming to the second ground, i.e., objection raised by the Employees' Association, it is seen that the President of the Employees' Association is Sri Pranab Gogoi, then a Cabinet Minister of Assam. Certainly, he is not an employee of ONGC. How and in what manner he is the President of the Employees' Association is difficult to decipher. Be that as it may, without entering into that aspect of the matter, it appears that objection raised by the Employees' Association was based on the provision in the Recruitment and Promotion Regulations that in case of vacancies which are required to be filled up by direct recruitment, departmental candidates are required to be considered first. Only in the absence of departmental candidates, the vacancies can be filled up by external candidates. Since this provision is not under challenge, Court would restrain itself from expressing any opinion on the legality and correctness of such a stipulation. However, as can be seen from the materials on record, on receipt of the said complaint, the competent authority of ONGC decided to hold enquiry and for this purpose an enquiry committee was constituted on 10.03.2011 comprising of the following members-

- 1) Sri D.P. Singh, GM, (E & T),
- 2) Sri A.K. Choudhury, GM, (E & A), and
- 3) Sri R.P. Mallik, ACLA.

The enquiry committee conducted enquiry and thereafter, submitted its report on 24.05.2011. A perusal of the enquiry report shows that the grievance of the Employees Association was that for the 4 (four) vacancies in the post of Junior Fire Supervisor, 3 (three) for UR and 1 (one) for ST, there were 8 (eight) qualified and experienced departmental candidates, who despite qualifying in the written test were not given preference in the selection process in line with the existing policy of ONGC. While admitting that as per the policy of ONGC, appointment of departmental candidates fulfilling the requisite qualification is to be considered first and only thereafter, external candidates are to be considered, the enquiry report stated that in so far Assam Asset of ONGC is concerned, it has been the past practice that the recruitment process for both departmental and external candidates is carried out simultaneously but empanelment of both is done separately. This practice has been followed to ensure presence of a large pool of eligible candidates from amongst whom the most suitable candidates can make the selection. This also saves time as recruitment process can be conducted relatively faster. This practice has been followed in the Assam Asset since the beginning. In the present selection process also, the departmental candidates were given due consideration but the only deviation was that they were considered simultaneously with the external candidates. Ultimately, enquiry committee held that the practice of holding interview simultaneously for the departmental and external candidates was a minor departure from the requirement of the Regulations which is insignificant in the process of selection. However, it was suggested that in future, recruitment process for departmental and external candidates should be kept separate.

22. From the above it is evident that Assam Asset of ONGC has been conducting interviews of departmental and external candidates simultaneously right from the beginning which has been held to be a minor departure from the Recruitment and Promotion Regulations having insignificant consequences. Thus, reliance placed by the respondents on the enquiry report for cancelling the selection process in its entirety does not appear to be justified at all since the enquiry committee found only minor variance in the procedure adopted. Enquiry committee did not find any anomaly or illegality in the selection process or in the selection of the petitioners. In such circumstances, cancelling the selection process on the basis of the enquiry report does not stand to reason. Therefore, both the grounds put forward by the respondents to justify cancellation of the selection process are wholly untenable.

23. It is seen from the Master Chart of marks of the departmental candidates as well as of the external candidates, placed on record by the respondents as Annexure-2 to their affidavit filed on 01.02.2012 that the 3 (three) petitioners who belong to the UR category had secured 70.6, 77.4 and 74.4 marks in total. The lone ST candidate, i.e., petitioner No. 1 had secured 62.6 marks. On the other hand, 2 (two) of the departmental candidates who belong to the UR category, namely, Anupal Bharali and Chittrajit Boruah, had secured 72.6 and 70.8 marks in total, which are more than the marks secured by petitioner No. 2 Rituraj Kakoty. However, both the ST departmental candidates had secured lesser marks than petitioner No. 1, i.e. 58.2 and 56. It was this, which has been pointed out by Mr. Sahewalla to contend that despite having better merit than petitioner No. 2, 2 (two) of the eligible departmental candidates were not selected. It was in this context that the objection raised by the Employees Association was considered and a conscious decision was taken to cancel the selection process in its entirety.

24. To appreciate the aforesaid submission made by the learned Senior Counsel for the respondents, it would be useful to refer to the minutes of the selection committee meeting held on 14.12.2010, which has been placed on record as Annexure-V to the affidavit filed by the petitioners on 17.07.2012. A perusal of the minutes would show that the selection committee comprised of the following 5 (five) members, headed by:-

The selection committee adopted the following criteria for awarding of marks:

24.1. It was decided that in the written test 60% was the qualifying marks whereas in the interview as well as in the aggregate, for UR category qualifying percentage was 60% and for ST qualifying percentage was 40%. Based on the qualifying marks, it was found that none of the departmental candidates could qualify. It may be pointed out that Sri Anupal Bharali and Sri Chittrajit Boruah, the two departmental candidates who had secured more marks than petitioner No. 2, had secured 8 and 5 marks respectively in the interview, which was well below 60% qualifying marks in the interview. As already noticed above, the 2 (two) departmental ST candidates had secured much lesser marks than petitioner No. 1, who belongs to ST category. Since the departmental UR category candidates had failed to secure qualifying marks in the interview, they were found to be

not entitled for empanelment. Consequently, 6 (six) UR external candidates were empanelled in order of merit, the details of which are as follows:-

24.2. In so far ST candidates are concerned, petitioner No. 1, an external candidate, was the sole candidate empanelled.

25. On due consideration, Court is of the view that the procedure adopted by the selection committee did not suffer from any illegality or infirmity. The departmental candidates were considered but failed to qualify for the reasons discussed above. In such circumstances, competent authority of ONGC was not at all justified in interfering with the outcome of the selection conducted by its own agency comprising of high officials of ONGC. There was no justification to cancel the selection process in its entirety.

26. Annulment or cancellation of a selection process is a very drastic measure and should be resorted to by the authorities only when all other means of saving the selection are ruled out. There is some element of sanctity attached to a selection process and it is the duty of the departmental authorities to ensure that sanctity of the selection process is maintained. It should neither be a party nor facilitate any move to undermine a duly conducted selection process. In the present case, there was no illegality at all in the selection process to warrant any interference not to speak of scrapping of the entire selection process and to hold fresh selection.

27. For all the aforesaid reasons, this petition succeeds. Denial of appointment to the petitioners cannot be sustained. Accordingly, respondents are directed to issue consequential appointment order(s) in favour of the petitioners, which shall be done within a period of 60 days from the date of receipt of a certified copy of this order.

28. Writ petition is accordingly allowed but without any order as to cost(s).