

Shaik Mohd. Jaffar Husain and Others Vs C.R.P.F. and Others

Court: Andhra Pradesh High Court

Date of Decision: April 25, 2000

Acts Referred: Constitution of India, 1950 " Article 14, 16

Hon'ble Judges: S.R. Nayak, J

Bench: Single Bench

Advocate: Nooty Ramamohana Rao, for the Appellant; Akhter Ahmed Jabri, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.R. Nayak, J.

In these writ petitions, the petitioners, 34 in all, have assailed the validity of the action of the respondents, particularly, the

proceedings of the Inspector General of Police, Southern Sector, CRPF, Hyderabad dated 14-08-1999 canceling the selection of the petitioners

for appointment to the post of Constable (General Duty) in Central Reserve Police Force (for short "CRPF). The background facts that led to the

filing of these writ petitions be stated briefly as under: the respondents have issued employment notification calling for application from suitable male

candidates for filling up the posts of Constable (General Duty) in CRPF, belonging to the States of Tamilnadu, Anhra Pradesh, Karnataka and

Union Territories of Pondicherry and Laxadweep . This notification was published in the employment news dated 29-05-1999 to 04-06-1999.

The advertisement specified that the respondents contemplated to fill up 208 + 22 (for general, SC, ST and OBC and ex-Army personnel etc.). In

so far as the State of Andhra Pradesh is concerned, the total number of vacancies sought to be filled up were shown as 90 + 10. In the notification

eligibility criteria were also stated. The last date fixed for sending the filled in applications was 10-06-1999. It required that persons in Andhra

Pradesh were to forward their applications to the Additional Deputy Inspector General of Police, Group Centre, CRPF, Hyderabad, 2nd

respondent herein. The petitioners applied for the post of Constable (General Duty) in pursuance of the employment notification. The petitioners

were subjected to selection process and they were ultimately selected for the posts. According to the petitioners, they were issued with

appointment orders dated 19-07-1999, and in pursuance of those appointment orders they joined duty on 09-08-1999 in the second

respondent's office, and when they were undergoing basic training, physical training (PT), the respondents closed the mess and the petitioners

were orally asked to vacate the premises on 16-08-1999 without disclosing any valid reason. Under those circumstances, the petitioners presented

the writ petitions praying for a writ in the nature of writ of Mandamus or any order or direction declaring the action of the respondents in restraining

the petitioners from performing their duties and also not sending them up for training along with the candidates selected in pursuance of the

employment notification dated 29-05-1999 to 04-06-1999 as illegal, unjust and unsustainable and for a consequential direction to the respondents

to permit the petitioners to discharge their duties as Constables (General Duty) in the CRPF and to pass such other or further order or orders as

are deemed fit and proper in the facts and circumstances of the case.

During the pendency of the writ petition, Sri S.Ramalingam, Commandant Staff Officer to DIGP, CRPF,

2. Bangalore was impleaded as respondent No.3 as directed by the Court in its order dated 29-09-1999. Further, the Court by its interim

direction dated 11-11-1999 directed the Director General, CRPF, New Delhi, first respondent herein to file his affidavit after necessary

investigation into the alleged irregularities in the selection process culminating in the selection of the writ petitioners as Constables (General Duty).

Accordingly, Sri Mahendranath Sabharwal, IPS Director General, CRPF, New Delhi has filed affidavit on behalf of the first respondent. From the

pleadings of the parties and the documents appended to the pleadings, the following facts surface, over which there is no and cannot be any

controversy. They are: the recruitment board headed by Sri S.Ramalingam, Commandant Staff Officer to DIGP, Bangalore as per ADIGP, GS,

CRPF, Hyderabad office order No.R-II-14/99-GCH-Estt-3 (1st H/Y) dated 02-07-1999 conducted the recruitment for the State of Andhra

Pradesh at Group Centre, CRPF, Hyderabad and submitted the board proceedings to Addl.DIGP, Group Centre, CRPF, Hyderabad vide his

letter No.O-II-1/99-SR dated 17-07-1999. The Additional DIGP, Group Centre, CRPF, Hyderabad forwarded the board proceedings to

DIGP. CRPF, Hyderabad vide his letter No.R-II-14/99-Estt-3-GCH dated 19-07-1999. The DIGP, CRPF, Hyderabad scrutinized the board

proceedings and found that the proceedings had not been in accordance with the instructions, and he forwarded his observations vide letter No.R-

II-3/99-Estt-V(1st H/Y) dated 23-07-1999. Two major flaws were pointed out and, they were: (i) a number of candidates who had actually failed

had been declared passed/fit, and that (ii) the merit list has not been prepared in accordance with reservation rules as number of SC/OBC

candidates who got higher marks than the general candidates and had not been availed any relaxation has not been adjusted against the general

quota as should have been done. At this stage, the Group Centre, CRPF, Hyderabad recast the entire merit list by altering marks and produced a

new merit list in such a way that preserved the selection of candidates shown to have been selected in the merit list-I. The IGP, Southern Sector,

CRPF, Hyderabad noticed that there were two sets of merit lists consisting of same individuals, and he also found the above noted two major

flaws in the selection process and that prompted him to pass the impugned order on 14-08-1999 cancelling the selections.

3. Sri Nooty Rama Mohana Rao, learned Counsel for the petitioners assailing the impugned action firstly contended that the petitioners at no stage

of the selection process played any fraud and the petitioners were not at all responsible or accountable for the commission of the flaws noticed by

the IGP, Southern Sector, CRPF, Hyderabad and, therefore, the respondents are totally unjustified and acted irrationally in cancelling the

selections. The learned Counsel also contended that the impugned action is vitiated on account of violation of principles of natural justice inasmuch

as before the IGP, Southern Sector, CRPF, Hyderabad passed the proceedings dated 14-08-1999 cancelling the selections, petitioners were not

served with any notice to have their say in the matter. The learned Counsel for the petitioners cited the decisions of the Supreme Court in BENNY

T.D. v. REGISTRAR, CO-OP.SOCIETIES 1, PRITPAL SINGH v. STATE OF HARYANA 2 and BASUDEO TIWARY v. SIDO KANHU

UNIVERSITY 3 in support of his contentions. On the other hand, the learned Counsel for the respondents contended that the plea of the

petitioners that they were appointed to the post of Constable (General Duty) is factually incorrect and the letters given to the petitioners on 19-07-

1999 were only offers of appointment and not appointment orders and, therefore, issuing notice to the petitioners by the IGP, Southern Sector,

CRPF, Hyderabad before he passes the impugned order dated 14-08-1999 did not arise. The learned Counsel for the respondents would also

contend that the two flaws now found in the selection process go to the root of the matter vitiating the entire selection process.

4. Let me consider the second contention of the learned Counsel for the petitioners first. The letters issued to the petitioners on 19-07-1999 state

that they are provisionally selected for the post of Constable (General Duty) in CRPF and directed the petitioners to report to the Addl. DIGP,

Group Centre, CRPF, Hyderabad on 09-08-1999 along with certain documents specified in the letters for verification. Those letters also state that

the selection of the petitioners for the post of Constable (General Duty) is purely on temporary basis and selection can be terminated at any time

without assigning any reasons thereto. The said letters also incorporate certain other conditions, and reference to them is not necessary for the

purpose of deciding these writ petitions. The letters issued to the petitioners on 19-07-1999, therefore, cannot be considered to be appointment

orders. They were only offers of appointment in the form of letters after provisional selection of the petitioners. Should it be noted that the

principles of natural justice are handmaids to promote justice and they are not meant to thwart justice. Here is a case where the whole selection

process is vitiated on account of atleast two major substantial flaws which go to the root of the matter. The first flaw is that the combined merit list

has not been drawn in accordance with the instructions laid down by the Directorate of CRPF vide its letter No.R.II.15/96-Estt-II dated 12-12-

1996. As per the above instructions, SC/ST/OBC candidates selected on their own merit without availing any relaxation will not be adjusted

against reserved vacancies and should be adjusted against General vacancies, whereas, in the instant case SC/OBC candidates who got higher

marks than the General candidates and have not availed any relaxations, have not been adjusted against General quota. It is unfortunate that in the

instant case, the recruitment board headed by Sri S.Ramalingam, Commandant Staff Officer to DIGP, Bangalore did not conduct tests commonly

to all the applicants for the posts. It grouped the applicants under the open category and other reserved categories and conducted tests separately

and exclusively for open category candidates and each reserved category of candidates. This particular procedure adopted by the recruitment

board is ex-facie not only in violation of the instructions laid down by the Directorate of CRPF vide its letter dated 12-12-1996 but also in utter

violation of Articles 14 and 16 of the Constitution of India. The right guaranteed to the members belonging to SC/ST/OBC under Articles 14 and

16 of the Constitution to compete for the posts available to the open category candidates is totally denied to them by the startling procedure

adopted by the recruitment board. Further, it is seen that a number of candidates who had actually failed had been declared passed/fit. As per para

(iv) of Appendix "G" of Recruitment Manual, a candidate, who secures 10 marks out of 20 marks in interview, is to be declared fit/passed,

whereas a large number of candidates, who secured less than 10 marks, have been declared passed/fit. This flaw is also a substantial flaw vitiating

selection process. Sri Nooty Rama Mohan Rao, quite fairly did not have any argument questioning the finding of the respondents that the selection

process was vitiated on account of the above noted two flaws. In other words, the above finding of the respondents remains unchallenged and is

justified and correct. Ofcourse, the respondents have placed necessary materials before the Court to satisfy that the selection process adopted by

the recruitment board was vitiated on account of the above two flaws. If that is the factual position, the question is whether this Court should

interfere with the impugned proceedings of the IGP, Southern Sector, CRPF, Hyderabad dated 14-08-1999 cancelling the selection solely on the

ground that such action was taken without issuing individual notices to the petitioners? As pointed supra, the principles of natural justice are

essentially meant to advance and promote justice and undo injustice and they are undoubtedly not meant to thwart justice or to perpetuate

injustice. The selection procedure adopted by the recruitment board headed by Sri S.Ramalingam, Commandant Staff Officer to DIGP,CRPF,

Bangalore was ex-facie unconstitutional and totally against the interests of the candidates in whose favour protective discrimination is guaranteed by

the Constitution. Added to this, it is not a case where any of the vested rights of the writ petitioners was violated by the impugned action. The

provisional selection of the petitioners to the post of Constable (General Duty) as reflected in the letters dated 19-07-1999 does not vest any

enforceable right in the petitioners that they should be appointed to the post of Constable (General Duty) as a matter of course, and their

entitlement to the post of Constable (General Duty) was subjected to their fulfilling or satisfying the terms and conditions set out in those letters and

the petitioners agreeing for the terms and conditions proposed by the CRPF. Looking from that angle also issuance of notice to the petitioners

before the impugned action was taken was not a must. The petitioners do not dispute the correctness of the finding of the respondents that

selection process was vitiated by the above noted two major flaws. The petitioners have had sufficient and fair opportunity before this Court to

meet the case of the respondents, and in fact they do not contest the correctness of the above finding of the respondents. The petitioners were

provided with post-decisional fair hearing before this Court.

5. The decision of the Supreme Court in BASUDEO v. SIDO KANHU UNIVERSITY (3 supra) is not helpful to the petitioners. In that case the

Supreme Court was called upon to decide the question whether the appellant therein could have been given an opportunity of being heard before

terminating his services and in the absence of the same whether such termination was valid. In that case, the services of an individual employee

were terminated on the basis of a report of the sub-Committee of the University without supplying a copy of the same to the affected employee. In

that view of the matter, the Supreme Court held that termination of the services of the appellant therein was invalid. In the same decision, the

Supreme Court was pleased to observe that in the sphere of public employment, it is well settled that any action taken by the employer against an

employee must be fair, just and reasonable which are the components of fair treatment. In the instant case, therefore, the only question to be

considered is whether the impugned action taken by the IGP, Southern Sector, CRPF, Hyderabad is just and fair in the facts and circumstances of

the case. In my considered opinion, the interests of public justice warranted that IGP, Southern Sector, CRPF, Hyderabad should take the

impugned action to uphold the constitutionality of the public employment in CRPF. The Supreme Court in PRITPAL SINGH v. STATE OF

HARYANA (2 supra) while reviewing the selection made by the Haryana Subordinate Services Selection Board for appointment to the post of

Assistant Sub-Inspector opined that the matter which involved the public interest could not be treated as purely adversary.

6. Adverting to the first contention of the learned Counsel for the petitioners, suffice it to state that simply because the petitioners/selectees did not

play any fraud or abet the commission of two major flaws, pointed out above, by the recruitment board, that fact itself would not enure to the

benefit of the petitioners who are undoubtedly the beneficiaries of a totally illegal and unconstitutional procedure adopted by the recruitment board.

What the Court should see while reviewing the administrative action is whether the impugned administrative action suffers from any of the

recognized vice which vitiates the action, and if the Court finds that the impugned action is vitiated on any permissible ground, the Court would step

in and nullify the action in order to perform its constitutional obligation. In that view of the matter, whether the petitioners were innocent or guilty is

totally irrelevant consideration for the decision making in these writ petitions.

7. Sri Nooty Rama Mohan Rao, learned Counsel for the petitioners before concluding his argument strongly appealed to the Court to appreciate

the hardship that may be caused to the petitioners if the Court were to dismiss the writ petitions stating that some of the petitioners gave up their

earlier jobs and competed for the post of Constable (General Duty) and they will not be here and there. Here again, even assuming that some of

the petitioners would land in such a situation, that fact itself would not come in the way of this Court in enforcing and upholding constitutionality of

public employment. If the selection of the petitioners for the post of Constable (General Duty) is upheld, that would undoubtedly offend the

constitutional rights guaranteed to the candidates belonging to SC/ST/OBC. On the other hand, if the Court were to put its stamp of authority on

the impugned action taken by the IGP, Southern Sector, CRPF, Hyderabad vide his proceedings dated 14-08-1999, no constitutional or legal

rights of the writ petitioners would be infringed. There is no necessity for me to dilate this aspect further. Suffice it to state that it is settled position

in law that if in law a relief is to be given to a party, the consequences of such a relief should not be the concern of the court.

8. Lastly, Sri Nooty Rama Mohan Rao, contended that the petitioners were made scape-goats for illegalities committed by the recruitment board

and the CRPF administration did not take any action against the officers who are responsible for committing those irregularities. I do not wish to

express any opinion at this stage on the above allegation. In the affidavit filed by Sri Mahendranath Sabharwal, Director General, CRPF, New

Delhi, it is stated in para-5 that an enquiry was conducted against the Presiding Officer and other members of the recruitment board and the

enquiry report has been remanded back to the DIGP, CRPF, Hyderabad for compliance of certain aspects including the opportunity for cross-

examination to be given to the individuals whose role have come in for adverse notice in the testimony of certain witnesses and that responsibility of

coming into existence of the two merit lists would be fixed on due completion of enquiry. From this statement it is seen that the enquiry procedure

has been set in motion against the Presiding Officer and the members of the recruitment board. In the instant case, the Court is not called upon to

decide what kind of disciplinary action that may be taken by the CRPF administration against the erring officers who constituted the recruitment

board. Therefore, there is no need to issue any direction to the CRPF administration at this stage.

9. In the result, and for the foregoing reasons, Writ Petitions are dismissed with no order as to costs.