

Hanuman Prasad and Others

Vs

Union of India and Another

SLP (C) No. 16904 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

06.09.1996

ORDER

1. This special leave petition arises against the order of the Central Administrative Tribunal, Allahabad Bench made on 15-7-1996 in Original Application No. 959 of 1995. The admitted position is that for the recruitment to Group 'C' posts, a notification was issued on 19-7-1994 inviting applications for selection of 48 Ticket Collectors in Lucknow Division in the pay scale of Rs 950-1500. Out of 800 candidates who appeared in the examination, 106 candidates got place in the select list which was subsequently cancelled on the ground that malpractice was committed in writing the examinations as the papers were leaked out earlier to the date of examination. The cancellation came to be challenged in the Tribunal. The Tribunal in the impugned order has upheld the cancellation. Thus, this special leave petition.

2. Shri Sanyal, the learned Senior Counsel appearing for the petitioners, raised threefold contention. Firstly, the Divisional Manager was not the competent authority to cancel the select list, the General Manager being the competent authority. We find no force in the said contention. The Divisional Manager can also be authorised by the General Manager to discharge the function of the General Manager. Therefore, he could be said to have discharged the function of cancellation of the select list. It is then contended that since the order does not indicate any reasons, it is bad in law. In support thereof, he placed strong reliance on the decision of this Court in *Mohinder Singh Gill v. Chief Election Commr.* [(1978) 1 SCC 405], in particular, para 8 of the judgment. It is true that when an order is passed, be it administrative or quasi-judicial in nature, necessarily it would contain grounds or reasons for invalidating the action taken. The authorities cannot subsequently explain their actions by way of affidavit or otherwise. Therefore, this Court insisted upon the public orders made in exercise of the statutory power, should contain reasons and the order should contain the kind of action taken by them. Therefore, they cannot be permitted to substitute their actions or contents of orders by reference to any affidavits or other actions which did not find place in the order. In this case, the authorities simply cancelled the selection list. In *Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi* [(1991) 2 SCC 716], this Court had held that if the order cancelling the examination came to be passed, the record should indicate the reason, though order may not contain the reasons as indicated in para 21 of the judgment. In that case, it was held that the order did not contain the reasons but the record indicated the same. The administrative order cancelling the examination in which mass copying was alleged, was sustained.

3. It is seen that after the allegations were made that malpractices were committed, the matter was referred to CBI for enquiry. The CBI has submitted its preliminary report which indicated that the malpractices have been committed in writing the examination. They need not await the final report

which would be to take further action against erring officers. Therefore, it is a case where the authorities have taken the decision on the basis of the report submitted by the investigating agency, containing proof in support of the allegations of malpractice committed in writing the examination. It cannot, therefore, be said that the order of cancellation does not contain any reasons.

4. It is then contended that though the selected candidates have no vested right, they had got a legitimate expectation for appointment when they were selected for being appointed. They should be given prior opportunity and also know the reasons for cancellation. In support of this contention, he placed reliance on para 8 of the judgment of this Court in *Asha Kaul v. State of J&K* [(1993) 2 SCC 573 : 1993 SCC (L&S) 637 : (1993) 24 ATC 576]. It is unexceptionable that when duly constituted selection committee makes recommendation for appointment of the selected candidates the candidates do not get any vested right or legitimate expectation until they are appointed according to the Rules; they have a chance to be appointed as they have been selected by the recruitment agency. In that case, the Government had cancelled the select list without any reasons. This Court has laid the above rule in that backdrop. The ration therein has no application for the reason that after the perusal of the report submitted by the investigating agency, the competent authority had cancelled the selection so that the regular and proper examination could be conducted giving opportunity to everyone in a fair manner. No prior opportunity need be given in the case of mass copying. It is not the case where a named candidate committed copying. Accordingly, we do not find any illegality in the order passed by the Tribunal.

5. The special leave petition is, therefore, dismissed.