

Dilip Kumar Tripathy and Others

Vs

State of Orissa and Others

Civil Appeals Nos. 11763-67 of 1996

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

10.09.1996

JUDGMENT

PATTANAİK, J. –

1. Leave granted.

2. These appeals by special leave are directed against the order of the Orissa Administrative Tribunal dated 21-9-1995 in Original Application No. 2252 of 1993 and batch.

3. The appellants filed applications before the Tribunal alleging therein that though they were empanelled in the list prepared for appointment to the post of Sepoy in the 6th Battalion on 9-2-1993 (hereinafter referred to as "the Second List") and even though vacancies existed but only 16 candidates out of the said list were provisionally appointed on 30-3-1993, no further appointment was made. It was the case of the appellants that the list in question having been duly made and vacancies in rank of Sepoys being there the decision of the authority to provisionally appoint only 16 persons and not others is arbitrary and there has been a hostile discrimination between those who have been favoured with provisional appointment and the appellants. Be it stated that even prior to the preparation of the Second List an advertisement had been issued sometimes in March 1992 inviting applications for recruitment to the post of Sepoy in the 6th Battalion and in accordance with Police Order No. 286 of 1989 the Selection Committee prepared a list of 225 candidates on 31-10-1992 (hereinafter referred to as "the First List"). The said list was exhausted and excepting six candidates belonging to the reserved category the rest were duly appointed. Immediately after the First List got exhausted, the Commandant of the Battalion informed the Deputy Inspector General of Police, Special Armed Police, Orissa, Cuttack by letter dated 7-1-1993 that action should be taken to prepare a fresh list and fill up the existing vacancies in the cadre of Sepoy. The D.I.G. of Police by his letter dated 15-1-1993 directed the Commandant to prepare a further list of approximately 200 candidates from amongst the persons who had earlier appeared in the recruitment test, so that, vacancies could be filled up. Pursuant to this direction a fresh list was prepared on 9-2-1993. The Inspector General of Police directed the Commandant by letter dated 12-2-1993 to fill up the vacancies from the Second List but notwithstanding the said direction the Commandant only issued provisional appointment to 16 persons from the Second List and no action was taken to recruit others including the appellants. The appellants, therefore, approached the Tribunal by different application as already stated. The Tribunal discussed the procedure relating to the appointment of Sepoys and came to hold that even the First List which was prepared was vitiated since the selection committee in question had not been duly constituted. The Tribunal also came to

the conclusion that there was no necessity to prepare a Second List unless the Sepoys from the 6th Battalion were transferred out and it further held that the Inspector General of Armed Police had intimated that the Second List has been irregularly prepared and has no validity and nobody should be appointed therefrom. Ultimately, the Tribunal did not quash the appointments made pursuant to the First List as well as the appointments already made pursuant to the Second List and further directed that taking into account the vacancies which were available on 30-3-1993 the rest of the candidates from the Second List be appointed. The aforesaid direction of the Tribunal is being impugned in these appeals.

4. At the outset, Mr K. Madhava Reddy, the learned Senior Counsel appearing for the appellants, urged that the present is a glaring example of an employment racket where the authorities concerned without following the prescribed procedure prepared lists after lists for appointment to the post of Sepoy and then giving appointments to some no further appointment letter was issued and such a racket should be discouraged by issuance of appropriate direction by this Court. Mr Madhava Reddy also urged that both the lists should be scrapped and the appropriate authorities should be directed for filling up the vacancies in accordance with the prescribed procedure under law and appointment be made strictly according to the merit. Mr Jayant Das, the learned Senior Counsel Appearing for the respondent-State, on the other hand submitted that there was no infirmity with the preparation of the First List and the Tribunal erroneously came to the conclusion about the illegality in the constitution of the committee not having taken note of the addendum issued by the Director General of Police, and therefore, the appointments made pursuant to the First List do not require any interference by this Court. So far as the preparation of the Second List and appointment made thereunder is concerned, Mr Das, however, submitted that there has been certain irregularity in the preparation of the Second List and this Court could issue appropriate direction in this regard. He, however, submitted that appointments already made need not be interfered with since people have already served the State for quite some time.

5. When the case was listed for admission on 26-2-1996, this Court being satisfied with the contention of Mr Madhava Reddy, the learned Senior Counsel for the appellants and being of the view that the authorities concerned have deliberately prepared a long list contrary to the procedure prescribed under law obviously by way of allurements to the hundreds of aspirants, issued notice to the respondents to indicate as to why stricture should not be passed against all those higher police officials who are misusing their posts for making appointment contrary to their own regulations. A counter-affidavit has been filed on behalf of Respondents 1 and 2 being sworn to by Sanjeev Marik, AIG of Police, Orissa State Police Headquarters, Cuttack, Orissa admitting therein that there has been gross irregularity in preparing the Second List and instruction had been issued from the State Police Headquarters and the Director General of Police not to make any appointment from the Second List in question. It has been further stated that the Director General of Police has already moved the State Government by his letter dated 14-2-1996 to initiate appropriate action against the then Inspector General of Police, Special Armed Force and DIG Special Armed Force for their irregular directions issued to the Commandant 6th Battalion and the State Government (Home Department) is in the process of taking departmental action against the defaulting officers. Notwithstanding the aforesaid affidavit filed by Respondents 1 and 2 and notwithstanding the proposal for initiation of appropriate disciplinary proceeding against the errant officers, we are in pain to find that such high-ranking police officers who claim to be members of the disciplined force, have taken recourse to gross irregularities in getting the list prepared for appointments to the post of Sepoys contrary to the prescribed norms and procedure even though there did not exist the vacancies. Such course has been taken obviously not in the public interest but for some extraneous consideration and as an allurements to hundreds of poor aspirants with some positive motive. Such

conduct of the errant officers must be deprecated and we hope and trust that the State of Orissa should take appropriate disciplinary measures against the defaulting officers. The Director General of Police would also curb all such irregularities in future, so that, hundreds of poor persons in the hope and expectation of getting a job will not ultimately suffer.

6. Though Mr K. Madhava Reddy, the learned Senior Counsel appearing for the appellants, contended that both the lists should be scrapped in view of the irregularities committed by the committee as observed by the Tribunal, but we find that the appellants had not challenged the legality of the preparation of the First List as well as the appointments made pursuant to the same list. Even in this Court the legality of the First List had not been challenged and the only ground of attack was that why the direction of the Tribunal to appoint people taking into account the vacancies existed as on 30-3-1993 should not be interfered with as the said date is an arbitrary date having no nexus with the ultimate direction. Since the First List was not under challenge before the Tribunal and has not been challenged in this Court also, we are unable to persuade ourselves to agree with the submissions of Mr K. Madhava Reddy, the learned Senior Counsel that both the lists be quashed notwithstanding the observations of the Tribunal with regard to the irregularity in the constitution of the committee. That apart the Tribunal also was not correct in its conclusion that the committee was required to consist of three members whereas the committee which really made the selection consisted of four members as the Tribunal did not notice the addendum issued by the Police Headquarters in this regard. It is, however, not necessary to further deal with the matter since the legality of the preparation of the First List and appointment pursuant thereto had not been assailed before the Tribunal itself.

7. But so far as the Second List is concerned though the controversy between the parties is whether the respondents be directed to fill up the vacancies as they existed on 30-3-1993 from out of the persons included in the Second List or it should be on the basis of the vacancies as they existed on the date of the judgment of the Tribunal but in view of the gross illegality in the preparation of the Second List itself as has been indicted in the counter-affidavit, it would be in the interest of justice to scrap the Second List altogether and to direct the authorities to make a fresh selection in accordance with the prescribed procedure and then appoint persons in accordance with the merit. It may be noted that appointments to any public post must be absolutely transparent and fair and must be in accordance with the prescribed procedure. This is the reason why this Court has been indicating that even ad hoc appointments should not be encouraged as far as possible and should be adhered to only when public exigencies require and appointment in accordance with the prescribed procedure would take a fairly long time and non-filling up of the posts would be against the public interest. In the facts and circumstances of the present case there was absolutely no necessity to prepare a Second List from amongst the candidates who had appeared at the tests earlier conducted, particularly when at that point of time there were no vacancies available. The arbitrary decision of the errant officers has brought the entire police administration in the State to disrepute. A list of candidates prepared contrary to the prescribed procedure has to be scrapped altogether and in fact as has been indicated in the counter-affidavit the Director General of Police has already issued such direction. In the aforesaid premises, the Second List of candidates for appointment to the post of Sepoys prepared by the Commandant O.S.A.P., 6th Battalion, Cuttack of 9-2-1993 is hereby quashed and any appointments made thereunder also stand quashed. The respondents are directed to issue advertisement indicating the number of vacancies available, and to adjudge the suitability of the applicants in accordance with the prescribed procedure and then take steps for filling up of the posts in question. By passage of time if any of the persons who were included in the Second List have been age-barred in the meantime and if they make application for the posts of Sepoy pursuant to fresh advertisement to be issued, then the competent authority may relax their age and consider

their case in accordance with law. These appeals are allowed with the aforesaid directions and observations. There will be no order as to costs. A copy of the order may be sent to the Chief Secretary to the Government of Orissa and to the Director General of Police, Orissa, Cuttack for necessary action and to report the result of the action taken to the Registry of this court.