

Commissioner Of Police vs Umesh Kumar on 7 October, 2020

Equivalent citations: AIR 2020 SUPREME COURT 4786, AIR ONLINE 2020 SC 760

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Bench: D.Y. Chandrachud, Indu Malhotra, Indira Banerjee

Report

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 3334 of 2020
(Arising out of Special Leave Petition (C) No. 3335 of 2019)

Commissioner of Police and Anr

Vs.

...Appellants

Umesh Kumar

...Respondent

And With Civil Appeal No. 3335 of 2020 (Arising out of Special Leave Petition (C) No. 5545 of 2019) JUDGMENT Dr Dhananjaya Y Chandrachud, J 1 On 27 January 2013, a notice was published in the newspapers for filling up 523 vacancies for the post of 'Constable (Executive) – Male' in the Delhi Police. The break-up of vacancies indicated 262 to be unreserved, 142 for OBC candidates, 79 for Scheduled Caste candidates and 40 for those belonging to the Scheduled Tribes. The candidates appeared for a physical endurance and measurement test on 4 October 2013. Upon qualifying at the test, the candidates were allotted roll numbers for appearing in the written examination. Of a total of 50,422 candidates, 39,597 appeared in the written examination which was held on 8 March 2014. This examination was cancelled by the Delhi Police, and a fresh written examination was held on 25 May 2014, which was cancelled as well. Finally, a written examination was conducted on 16 November 2014, consisting of one objective - type multiple choice question paper of 100 marks. After an evaluation of the OMR sheets, a list of 514 provisionally selected candidates was declared on 13 July 2015. Nine vacancies could not be filled up due to the unavailability of suitable candidates in the ex-servicemen category. The respondents were declared to be selected under the OBC category. During the course of scrutiny, it was found that a bonus mark had not been allocated to candidates whose height was measured at 178 centimetres or above at the time of the physical endurance and measurement test. Candidates were entitled to an extra bonus mark under the provisions of Point No. 4 (II) of the then Standing Order 212 of 2011, according to which:

“A candidate whose height is 178 cms or more shall be given 01 bonus mark, to be added in the total marks while determining the merit list.”

Accordingly, the result was recompiled after allocating one bonus mark to all the candidates with a height of at least 178 centimetres and a final revised result was declared on 17 July 2015. 512 candidates were selected while the remaining 11 vacancies were not filled up due to the unavailability of candidates from the ex- servicemen category. In the result which was declared on 17 July 2015, 32 new candidates came within the selection zone and 34 candidates were ousted. 2 The respondents to the present Civil Appeals were declared as selected from the OBC category in the revised result as well. The minimum qualifying marks for the OBC category were 71.29004295. Umesh Kumar, the respondent in the first of the two appeals secured 74.16991306 marks. Satyendra Singh, the respondent in the companion appeal secured 71.49891738 marks. In the note attached to the final list declared on 17 July 2015, all candidates were directed to report to the DCP – Recruitment Cell, New Police Lines, Kingsway Camp, Delhi for further “codal formalities” between 27 July 2015 and 31 July 2015. Candidates were distributed on these dates in accordance with their roll numbers:

3 All the selected candidates were issued the prescribed forms so as to expedite the process of recruitment. The object appears to have been that during the commencement of batches for basic training, the candidates should have all documents complete, to facilitate the issuance of offers of appointment. The documents which were issued to candidates were:

“a. Attestation Form for Police Verification (F-36). b. Medical Form (F-37) for medical examination. c. Agreement Form (F-81) i.e. regarding depositing of capitation charges in case he / she left service before 5 years after joining Delhi Police.

d. Certificate of Character (F-82).

e. Undertaking (F-83).”

4 All candidates were directed to submit the attestation form (F-36) for police verification and a medical form (F-37) for conducting a medical examination in accordance with Rules 24 and 25 of the Delhi Police (Appointment and Recruitment) Rules, 1980. On receipt of a satisfactory police verification and medical report, candidates were to be issued a communication directing them to report at the Recruitment Cell- NPL, together with original documents. The following forms had to be submitted before the issuance of an offer of appointment:

“a. Agreement Form (F-81) i.e. regarding depositing of capitation charges in case he/ she left service before 5 years after joining Delhi Police.

b. Certificate of Character (F-82).

c. Undertaking (F-83).”

5 The respondents submitted Form F-36 for verification of character and antecedents, and Form F-37 for medical examination on 28 July 2015. Both of them were examined by the medical board and were declared to be medically fit. The verification of character and antecedents was also received. In the case of Umesh Kumar, the medical examination was conducted by the Medical Board at Rao Tula Ram Memorial Hospital, GNCT of Delhi on 20 August 2015, while the verification of character and antecedents was conducted by Haryana Police on 23 August 2015 and was received by the Recruitment Cell on 8 September 2015. In the case of Satyendra Singh, the medical examination was conducted on 27 August 2015 by the Medical Board at Guru Gobind Singh Government Hospital, Raghbir Nagar, New Delhi while the verification of character and antecedents was conducted by the SSP, Alwar, Rajasthan and was received by the Delhi Police through a letter dated 25 August 2015.

6 In the ordinary course, both the respondents would likely have been appointed as Constables in Delhi Police. However, on 29 September 2015, some other candidates approached the Central Administrative Tribunal 1 in O.A. No. 3657 of 2015 2 and O.A. No. 4258 of 2015³. The applicants before the Tribunal challenged the answer keys in the written examination and claimed that they had not obtained marks for correct answers for question Nos. 17, 55, 56, 71, 75, 79, 86 and 90 of question booklet series 'C' as well as for the same questions of booklet series 'A', 'B' and 'D' with different sequence numbers. The Competent Authority in Delhi Police appointed an Expert Committee to examine all the issues and to submit its report after making "a master answer compendium and resultant answer key". In the meantime, the recruitment process for the joining of selected candidates in pursuance of the result dated 17 July 2015 was kept in abeyance and no offers for appointment were issued. The Expert Committee which was constituted on 20 November 2015 submitted its report on 26 December 2015. The grievances which were raised in OAs were examined and it was found that there were typographical errors in the answer keys. The Tribunal disposed of the OAs by a judgment dated 8 January 2016, with the following directions:

"...in view of the statements made by the respondents that further action regarding the recruitment process will be taken as per the recommendations of the Expert Committee, and that till date no candidate has been given appointment for the post in question, and, considering the vagueness of the statements made by the respondents, we deem it just and proper to direct the respondents to ensure submission of the report by the said Expert Committee within one month from today, if such report has not yet been submitted by the Expert Committee, and to take further necessary action regarding the recruitment process within two months from today. Ordered accordingly." "the Tribunal" Ankit Kumar & others vs. Commissioner of Police, Delhi & others Anuj Kumar vs. Commissioner of Police, Delhi & others Upon receipt of the report of the Expert Committee, the following decisions were taken on 1 February 2016 by the recruitment authority:

" i. 14 questions declared "Null/Void" for the reasons like none of the given options being correct. Questions having more than one possible answers, mis-match in the meaning of English & Hindi versions etc. ii. In all the 21 questions (12 for General Knowledge section and 07 of Reasoning ability section and 02 of Numerical ability

section) including 7 questions (3 for General Knowledge section and 3 of Reasoning ability section and 1 of Numerical ability section), which were declared void earlier, full marks be given to all candidates in such a manner that all candidates were given marks as per scaling method for the respective number of Questions from each category. iii. The options of answer of Q. No.6 & 10 (Booklet Series 'A') may be changed/modified from (B) to (D) & from (A) to (B) respectively as well as options of the same questions of other Booklet Series (B, C & D) having different sequence number may also be changed accordingly.

iv. The option of answer of only Q.No.67 (Booklet Series- A) may be changed/modified from (B) to (D) as the option of answer of the same question of other Booklet Series (B), (C) and (D) is correct.”

7 Resultantly, the entire result was revised. The final result after re-evaluation of all OMR sheets was declared on 22 February 2016. 518 candidates were declared to be provisionally selected subject to “codal formalities”, such as the satisfactory verification of character and antecedents, medical examination and final verification of documents. Five vacancies could not be filled up due to the unavailability of suitable candidates from the ex-servicemen category. In the final result which was declared on 22 February 2016, 129 new candidates came into the selection zone and 123 candidates who had been declared selected earlier in the result of 17 July 2015 were ousted. The cut-off for the OBC category after re-evaluation of results was 79.49134163 marks. The marks which were secured by the two respondents in the revised results of 22 February 2016 were as follows:

Umesh Kumar : 77.51406888

Satyendra Singh : 77.27164463

8 The newly selected candidates from the result declared on 22 February 2016

were called for the completion of “codal formalities”. Police verification and medical fitness was carried out and the candidates who successfully completed this process were required to report to the recruitment cell at New Police Lines, Kingsway Camp, Delhi with original attested copies of documents to collect their offers of appointment. Except for candidates with an adverse background, all selected candidates were issued offers of appointment and joined the basic training programme for Constables in Delhi Police with effect from 4 April 2016.

9 After the declaration of the result on 22 February 2016, some candidates challenged the process before the Tribunal in O.A. No. 969 of 2016 4 and O.A. No. 1244 of 2016 5 in March 2016. The Tribunal dismissed the OAs on 5 May 2016, and the Review Petitions were subsequently dismissed on 1 June 2016. Following this, writ petitions under Article 226 of the Constitution – W.P. (C) No. 7411 of 2016 6 and Sandeep Kumar & Ors. vs C.P. Delhi & Anr.

Bijender Kumar & Ors. vs. C.P. Delhi & Anr.

Sandeep Kumar & Ors. vs. Delhi Police & Anr.

W.P. (C) No. 7624 of 20167 – challenging the judgments of the Tribunal were also dismissed as not pressed by the Delhi High Court on 7 September 2016. 10 On 21 March 2016, the respondents filed O.A. No. 1146 of 2016 challenging their non-selection in the revised result declared on 22 February 2016 before the Tribunal. The OA was dismissed on 15 September 2017. Umesh Kumar then filed a writ petition under Article 226 – Writ Petition (C) No.10143 of 2017 – in the Delhi High Court which was allowed by a judgment dated 6 December 2018. Following its decision in the case of Umesh Kumar, the Delhi High Court also allowed the writ petition instituted by Satyendra Singh – Writ Petition (C) No.13052 of 2018 – by its judgment dated 19 December 2018. The ultimate directions that have been issued by the Delhi High Court in the first of the two writ petitions are in the following terms:

“For the aforesaid reasons, we find no merits in the submissions of Mr. Satyakam, learned counsel for the respondents. The petition is accordingly allowed and we direct the respondents to appoint the petitioner to the post of Constable (Executive), Delhi Police. He shall be deemed to have been appointed from the date of appointment with his other batch mates and his seniority shall be determined accordingly, on notional basis. However, he shall not be entitled to any arrears of pay and allowances. Compliance be made within next four weeks.” The companion writ petition has been allowed in similar terms.

11 Ms Madhavi Divan, learned Additional Solicitor General has assailed the correctness of the judgment of the Delhi High Court. The learned ASG submitted that:

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(i) The process of re-evaluation of the first result was necessitated following the receipt of complaints and the filing of OAs before the Tribunal;

(ii) An Expert Committee was constituted by the competent authority of Delhi Police and upon due enquiry. The report established irregularities in the preparation of the answer key and the allocation of marks;

(iii) Following the report of the Expert Committee a fresh revised list was drawn up and both the respondents secured marks below the cut-off for the OBC category;

(iv) As many as 228 candidates are ranked higher than the respondent Umesh Kumar, while 265 candidates are ranked higher than the respondent Satyendra Singh;

(v) The mere fact that all candidates, including the respondents, who had been successful in the first result declared on 17 July 2015 have been furnished with requisite documents including the agreement form did not confer a vested right to appointment;

(vi) The revision of result has taken place in accordance with due process by applying the same yardstick to all candidates. Admittedly, the respondents have thereafter failed to secure marks above the cut-off for the OBC category;

(vii) The judgement of the Delhi High Court is contrary to the law laid down by a two judge Bench of this Court in *Rajesh Kumar vs State of Bihar* 8;

and

(viii) A grievance of respondent Umesh Kumar that he had resigned from the Railway Protection Force 9 was no ground for the Delhi High Court to direct the appellants, by a writ of mandamus, to issue an appointment. The respondent, in terms of Rule 275 of the RPF Rules, 1987, could have sought re-instatement in service which he failed to do. 12 On the other hand Mr Salman Khurshid, learned Senior Counsel appearing on behalf of the respondents submitted that:

(i) Neither of the two candidates in question has been at fault;

(ii) Both the respondents participated in the selection process and were declared to have been successful in the first result declared on 17 July 2015;

(iii) Though, as a consequence of the revision of the result, the respondents stand ousted, grave prejudice has been caused to them;

(iv) By furnishing documents to the respondents including the agreement form, a representation was held out to them by the appellants of their eligibility to join Delhi Police and of their selection to the post; and (2013) 4 SCC 690 RFP

(v) There may be other candidates higher than the respondents in merit in the revised result, but none of them has approached this Court under Article 136 of the Constitution or the High Court under Article 226.

Hence, the ultimate direction that was issued by the High Court should not be disturbed.

13 This judgment has adverted to the course which the recruitment process followed since the publication of an advertisement for selection to the 2013 batch of Constables (Executive) – Male in Delhi Police. The narration of facts demonstrates that a result notifying a list of provisionally selected candidates was initially declared on 13 July 2015 but it was soon found that an error had crept in due to the failure to allocate a bonus mark to every candidate whose height was in excess of 178 centimetres. The allotment of bonus marks was provided in Standing Order No. 212 of 2011,

which necessitated a revision of the results. In the revised result, which was declared on 17 July 2015, certain candidates from the original list were ousted while new candidates came in. Both the respondents were part of the list of successful candidates. Yet, there can be no dispute about the factual position that the recruitment process was yet to be concluded. For one thing, the process of verification of character and antecedents and the ascertaining of medical fitness was yet to be carried out. But apart from this, a set of OAs came to be instituted by unsuccessful candidates before the Tribunal highlighting grievances in regard to the manner in which the answer key had been prepared. The authorities agreed before the Tribunal to appoint an Expert Committee. Following the submission of the report of the Expert Committee, the results were revised on 22 February 2016. After a decision was taken by the Competent Authority for revising the result, as many as 123 candidates who had been selected earlier were ousted and 129 new candidates came into the selected list. This process of revising the results was carried out when the recruitment process was yet to be completed for the candidates selected in the result declared on 17 July 2015. This process of the revision of the result was then unsuccessfully challenged in the first batch of OAs before the Tribunal, and subsequently the writ petitions under Article 226 before the High Court were also dismissed as not pressed. The flip-flops which took place were undoubtedly because of the failure of the authorities to notice initially the norm of allotting 1 bonus mark based on height and due to the failure to prepare a proper answer key. Such irregularities have become a bane of the public recruitment process at various levels resulting in litigation across the country before the Tribunals, the High Courts and ultimately this Court as well. Much of the litigation and delay in carrying out public recruitment would be obviated if those entrusted with the duty to do so carry it out with a sense of diligence and responsibility. 14 The real issue, however, is whether the respondents were entitled to a writ of mandamus. This would depend on whether they have a vested right of appointment. Clearly the answer to this must be in the negative. In *Punjab SEB vs. Malkiat Singh*¹⁰, this Court held that the mere inclusion of candidate in a selection list does not confer upon them a vested right to appointment. The Court held:

“4. ...the High Court committed an error in proceeding on the basis that the respondent had got a vested right for (2005) 9 SCC 22 appointment and that could not have been taken away by the subsequent change in the policy. It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in *Shankarsan Dash v. Union of India* [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 :

(1991) 17 ATC 95] which reads: (SCC pp. 50-51) “7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied.

Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The

decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 :

1973 SCC (L&S) 488 : (1974) 1 SCR 165] , *Neelima Shangla v. State of Haryana* [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or *Jatinder Kumar v. State of Punjab* [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899] .” (emphasis supplied)” In the present case, after the name of respondents appeared in the results declared on 17 July 2015, the process of recruitment was put in abeyance since the results were challenged before the Tribunal. The process of revising the results during the course of the recruitment was necessitated to align it in accordance with law. An Expert Committee was specifically appointed following the institution of proceedings before the Tribunal. The report of the Expert Committee established errors in the answer key, and thereafter a conscious decision was taken, after evaluating the report, to revise the results on 1 February 2016. In the fresh list which was drawn up, both the respondents have admittedly failed to fulfil the cut-off for the OBC category to which they belong. As the learned ASG submitted before the Court, as many as 228 candidates are ranked above Umesh Kumar on merit while 265 candidates stand above Satyendra Singh. The submission of Mr Khurshid that these are the only two candidates before this Court would not entitle them to a direction contrary to law since they had no vested right to appointment.

15 In regard to respondent Umesh Kumar, it is also brought to our attention that he resigned from the RPF on 16 August 2015 and his resignation was accepted on 25 August 2015. Evidently, the respondent tendered his resignation without any justification when the recruitment process had not been concluded and even before an offer of appointment was made to him. In any event, it would have been open to him seek re-enlistment in the RPF at the material time which he chose to not do. 16 In *Rajesh Kumar (supra)*, Justice TS Thakur, as the learned Chief Justice of India then was, dealt with a case where the model answer key, and hence the process of evaluation of answer scripts by the Bihar Staff Selection Commission, had been found to be flawed. The Court held:

“15. The writ petitioners, it is evident, on a plain reading of the writ petition questioned not only the process of evaluation of the answer scripts by the Commission but specifically averred that the “model answer key” which formed the basis for such evaluation was erroneous. One of the questions that, therefore, fell for consideration by the High Court directly was whether the “model answer key” was correct. The High Court had aptly referred that question to experts in the field who, as already noticed above, found the “model answer key” to be erroneous in regard to as many as 45 questions out of a total of 100 questions contained in ‘A’ series question paper. Other errors were also found to which we have referred earlier. If the key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the

High Court was, therefore, perfectly justified in holding that the result of the examination insofar as the same pertained to 'A' series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key." In *Rajesh Kumar (supra)*, the Court then refused to oust those individuals from service who did not make the grade after re-valuation of the result since they had been in service for nearly seven years. However, in the present case, as we have discussed above, the revised result was declared even before offers of appointment were made to the respondents since the entire process of recruitment had been put in abeyance.

17 For the above reasons, we are of the view that the judgements delivered by the Delhi High Court on 6 December 2018 in Writ Petition (C) No. 10143 of 2017 and on 19 December 2018 in Writ Petition (C) No. 13052 of 2018 do not comport with law. The High Court has been manifestly in error in issuing a mandamus to the appellants to appoint the respondents on the post of Constable (Executive) in Delhi Police. The direction was clearly contrary to law. The respondents have participated in the selection process and upon the declaration of the revised result, it has emerged before the Court that they have failed to obtain marks above the cut-off for the OBC category to which they belong. We accordingly allow the appeals and set aside the judgments of the High Court dated 6 December 2018 in Writ Petition (Civil) No.10143 of 2017 and 19 December 2018 in Writ Petition (Civil) No.13052 of 2018. Both the Writ Petitions shall stand dismissed. There shall, however, be no order as to costs. 18 Pending application(s), if any, shall stand dismissed.

.....J. [Dr. Dhyananjaya Y Chandrachud]
.....J. [Indira Banerjee] New Delhi;

October 07, 2020.