

Union Territory Of Chandigarh vs Dilbagh Singh And Ors on 3 November, 1992

Equivalent citations: AIR 1993 SUPREME COURT 796, 1993 (1) SCC 154, 1992 AIR SCW 3263, 1992 LAB. I. C. 2548, 1992 () JT (SUPP) 712, 1993 (1) ALL CJ 566, (1993) 1 APLJ 50, (1993) IJR 50 (SC), 1993 SCC (L&S) 144, (1993) 2 SCT 276, (1993) 2 LBLJ 1043, (1993) 1 LAB LN 248, (1993) 1 SCJ 88, (1993) 1 SERVL R 451, (1993) 23 ATC 431, (1993) 1 CURLR 517

Bench: J.S. Verma, Yogeshwar Dayal, N. Venkatachala

PETITIONER:

UNION TERRITORY OF CHANDIGARH

Vs.

RESPONDENT:

DILBAGH SINGH AND ORS.

DATE OF JUDGMENT 03/11/1992

BENCH:

[J.S. VERMA, YOGESHWAR DAYAL AND N. VENKATACHALA, JJ.]

ACT:

Civil Services;

Chandigarh Transport Undertaking-Conductors-Selection for appointment-Constitution of Selection Board-Select list prepared-Criticism of favouritism and nepotism in awarding marks at Interview-Confirmed on examination by Administration though corruption charges not established-however selection unfair and injudicious-Administration ordering cancellation of select list and constituting new Selection Board-Validity of-Non affording of opportunity to Members of Selection Board and selected candidates-Effect of.

HEADNOTE:

For filling up the posts of 32 vacancies of conductors in the Transport Undertaking under it, the appellant requested the Employment Exchange to sponsor names of eligible candidates and constituted a Selection board to prepare a Select list. The Selection Board interviewed 446 candidates sponsored by the Employment Exchange and prepared

a Select List of 32 candidates on the basis of marks awardable for educational qualifications and performance at the interview. There was criticism that the select list was an amalgum of favouritism, nepotism and even corruption resorted to by members of the Selection board. The appellant got the select list examined which revealed that the select list was not prepared by the members of the Selection board fairly and judiciously, in that, the members had taken undue advantage of awarding marks in the interview to favour candidates of their choice although there was no evidence of corruption. Hence the appellant decided to constitute a new Selection Board to prepare fresh select list on the basis of only 15 per cent marks awardable to candidates or pull down merited candidates. Accordingly, the appellant cancelled the select list of candidates constituted a new Selection Board to prepare a fresh select list from out of candidates including those who had been interviewed by the earlier Selection Board and the criteria to be followed was that 85% marks would be awardable for educational qualifications and 15% marks for performance in interview.

When the newly constituted Selection Board was about to interview the candidates, the respondents whose names found place in the cancelled select list approached the Central Administrative Tribunal seeking the setting aside of the order cancelling the select list and constituting a new Board. The Tribunal, on the ground of non-affording of opportunity to the members of the Selection Board before cancelling the select list, set aside the order issued by the appellant and directed the appellant to appoint in the available vacancies the candidates from the cancelled select list in preference to candidates from the select list prepared by the newly constituted Selection Board.

Being aggrieved by the Tribunal's order the appellant preferred the present appeal by special leave.

On behalf of the appellant it was contended that affording of an opportunity to the members of the Selection Board before cancelling the select list being neither a requirement of law nor a requirement of any of the principles of natural justice, it could not have been made the sole ground for setting aside the order issued by the appellant.

On behalf of the respondents, it was contended that the select list of candidates prepared by the earlier Selection Board has been cancelled by the appellant though there was no proof of corruption charges against the members of the Selection Board; and that an opportunity of hearing ought to have been given to the candidates in the select list before it was cancelled.

Allowing the appeal, this court,

HELD: 1. The order made by the appellant-Administration cancelling the select list cannot but be regarded as the right and just one. Such an order cannot be vitiated on the ground that it had been made without

affording an opportunity of hearing to the members of the Selection Board who had prepared it. Further, such an order cannot be vitiated either because no direct evidence was made available to prove corruption charges against the members of the Selection Board in the matter of award of interview marks by them so as to tilt the balance in favour of candidates with poor educational qualifications and against the candidates with high educational qualifications or because there was no opportunity of hearing afforded to the candidates in the select list to sustain it before its cancellation by the appellant-Administration. [318-c-f]

2. Affording of an opportunity of hearing by an Administration to the members of a Selection Board constituted by it, before cancelling a dubious select list of candidates for appointment to civil posts prepared by such Selection Board is not and cannot be a requirement of either law or any principle of natural justice. It is so for the reason that no member of a Selection Board. Besides, there is no personal right or interest of any member of a Selection Board which could be adversely affected by the Administration cancelling a select list of candidates prepared by the Selection Board when it is found to have been prepared by the Selection Board, in unfair and injudicious manner. [318-G; H 319-A]

3. The select list, which was cancelled by the appellant-Administration was found by it to have been prepared in unfair and injudicious manner, in that the interview marks purported to have been awarded by the members of the Selection Board for the performance of candidates at their interview were either inflated to push up the candidates who had got poor marks for their educational qualifications or deflated to pull down the candidates who had got high marks for their educational qualifications. That select list was also found to have been prepared without adopting common eligibility criteria for all candidates. When the said reasons formed the basis for the appellant-Administration to cancel the select list, the fact that charges of corruption levelled against the members of the Selection Board in the preparation of that select list had not been established by direct evidence produced in that regard, can make no difference. [319-E-H]

4. Since it is accepted that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific Rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if he has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is

cancelled for bona fide and valid reasons and not arbitrarily. [321-B,C]
Shankarasan Dash v. Union of India, JT (1991) 2 SC 380, relied on.

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4649 of 1992.

From the Judgment and Order dated 27.5.1991 of the Central Administrative Tribunal, Chandigarh in Regn. No. OA- 139-CH of 1990.

Raj Birbal for the appellant.

S.S. Nijjar, Bhal Singh Malik and Vishal Malik for the Respondents.

The judgment of the Court was delivered by VENKATACHALA, J. Leave granted.

The short question arising for our decision in this Appeal is, whether the Order by which the Chandigarh Administration cancelled the select list of candidates for appointment as Conductors in the Chandigarh Transport Undertaking (CTU) prepared by a Selection Board constituted therefor, because of its view of that select list not having been prepared in a fair and judicious manner, was liable to be interfered with by the Central Administrative Tribunal (CAT) on the ground of that Order having not been made after affording an opportunity of hearing thereon to the members of the concerned Selection Board.

The facts giving rise to the said question lie in a narrow compass. In the year 1989, there arose 32 vacancies of conductors in CTU of Chandigarh was required to sponsor the names of eligible candidates while a three-member Selection Board constituted by the Chandigarh Administration was required to prepare a select list of 32 candidates out of such candidates. That selection Board interviewed as many as 446 candidates so sponsored by the Regional Employment Exchange and prepared a select list of 32 candidates on the basis of marks awardable for their educational qualifications plus the marks awarded for their performance at the interview, a criteria which was said to have been followed by a Selection board constituted for a similar purpose in the Year 1953. That criteria, although required the award of marks for the educational qualification possessed by a candidate upto 110, enabled every member of the Selection Committee to award marks for such candidate's performance at the interview upto 20. The select list of 32 candidates meant to fill the 32 vacancies of conductors in CTU, when was announced on September 11, 1989, it invited severe criticism from the members of both the public and the Press as to the role of the members of the Selection Board in the matter of its preparation. The select list, according to the criticism, was the amalgum of favouritism, nepotism and even corruption resorted to by the members of the Selection Board. The Chandigarh Administration which could not ignore such criticism, got examined the select list with reference to the marks awardable to the candidates for their educational qualification and the marks awarded by the members of the Selection Board to the candidates for their

performance at the interview had brought into select list the least qualified candidates who had been awarded least marks for marks for their educational qualifications. Such examination also revealed that uniform standards had not been applied to app candidates by the Selection Board in their selection. These revelations, compelled the Chandigarh Administration to conclude that the select list of candidates for appointment as conductors in CTU had not been prepared by the members of the Selection Board fairly and judiciously in that those members had taken undue advantage of the marks awardable by them at the interview to favour the candidates of their choice although there was no clinching evidence of corruption attributable to the members. This situation made the Chandigarh Administration to think of cancellation of the dubious select list prepared by the Selection Board and of the constitution of a new Selection Board to prepare a fresh select list on the basis of only 15 per cent interview marks awardable to candidates as against 30 per cent interview marks awardable earlier, lest the power of the Selection Board to award interview marks may be utilised either to pull up unmerited candidates or pull down the merited candidates. Consequently, the Chandigarh Administration made an order of cancelling the select list of candidates for appointment as conductors prepared by the Selection Board and published on September 11, 1989, and constituted a new Selection Board to prepare a fresh select list of candidates including those who had been interviewed by the earlier Selection Board, according to the fresh selection criteria with 85 per cent marks awardable for educational qualifications of candidates and 15 per cent marks awardable for their performance at interview.

The newly constituted Selection Board when was about to interview the eligible candidates for selection as conductor for CTU, the Respondents in this Appeal, whose names had found places in the cancelled select list of candidates, filed applications before CAT seeking the setting aside of t he aforesaid order made by the Chandigarh Administration by which it had cancelled the select list prepared by the earlier Selection Board and directed the newly constituted Selection Board to prepare a fresh select list of candidates on the basis of altered criteria of marks. CAT which entertained those applications, has by its Judgment dated May 27, 1991 not merely set aside that part of the impugned order of the Chandigarh Administration by which it had cancelled the earlier select list but also directed the Chandigarh Administration by which it had cancelled to earlier select list but also directed the Chardigarh Administration to appoint in the available vacancies of conductors in CTU the candidates from the cancelled select list in preference to candidates selected as conductors in the select list prepared by the fresh Selection Board. The Chandigarh Administration, which felt aggrieved by this Judgment of CAT has preferred this Appeal by special leave.

In its judgment under Appeal, the CAT has, no doubt, expressed its reactions to the views of the Chandigarh Administration as to t he charge of corruption levelled against the members of the earlier Selection Board in the matter of preparation of select list of candidates by it and the percentage of marks awardable to candidates for their performance at interview while examining the challenge directed against the order made by the Chandigarh Administration cancelling that select list and requiring the preparation of a fresh select list. Yet, those reactions are not made use of by the CAT as grounds for setting aside the order of Chandigarh Administration impugned before it. The sole ground, has been from the Judgment, which has weighed with the CAT for setting aside that part of the impugned order of Chandigarh Administration by which it had can called the select list of candidates prepared by the earlier Selection Board in the non-affording by the Chandigarh

Administration of an opportunity of hearing to the members of its Selection Board before cancelling the select list of candidates prepared by them.

It was contended on behalf of the Appellant - the Chandigarh Administration-that affording of an opportunity of hearing to the members of the earlier Selection Board before cancelling their dubious select list of candidates for appointment as conductors in CTU, being neither a requirement of law nor a requirement of any principle of natural Justice, the CAT could not have made it the sole ground for setting aside of the order by which the Appellant had cancelled such select list and hence the Judgment of CAT under appeal based on such untenable ground required to be set aside. The learned counsel for Respondents-Candidates in the select list cancelled by the Chandigarh Administration, however, did not choose to urge that the ground of non- affording of an opportunity by the Chandigarh Administration to the members of the selection Board before ordering cancellation of their select list, was a valid ground on which the CAT could have rested its Judgment under appeal. But, he contended, rather very strenuously, that the Judgment of CAT under appeal was required to be sustained for the reason that the cancellation of the select list of candidates prepared by the earlier Selection Board had been made by the Appellant (Chandigarh Administration) without proof of corruption charges levelled against the members of that Selection Board in that matter of selection of candidates and further without affording an opportunity of hearing to the candidates in the select list to sustain the same.

We shall now proceed to examine the sustainability or otherwise of the rival contentions. The Judgment of CAT itself refers to the enquiry got conducted by Chandigarh Administration about the select list of 32 candidates as prepared by its Selection Board. Such enquiry revealed that the members of the Selection Board. Such enquiry revealed that the members of the Selection Board had made use of the interview marks awardable by them for performance of candidates at interview to eliminate merited candidates from the list and to bring in unmerited candidates, is a matter adverted to in the said Judgment. No doubt, the Chandigarh Administration (Appellant) has found that there was no direct evidence of corruption produced against the members of the Selection Board for the favour they had shown in the matter of awarding high interview marks to unmerited candidates. Yet, having regard to the systematic manner of award by the Selection Board of high interview marks to candidates with low marks got for their educational qualifications and of low interview marks to candidates with high marks got for their educational qualifications, the Chandigarh Administration discerned the tilting of balance by the Selection Board in favour of candidates with poor qualifications and against candidates with high qualifications. Consequently, it concluded that the Selection Board had not prepared to select list of candidates for appointment as conductors in CTU, in a fair and judicious manner. When the select list prepared by the Selection Board was thus regarded by the Chandigarh Administration as a dubious select list, it cancelled that select list and constituted a new Selection Board to prepare a fresh select list of candidates out of the competing candidates including the candidates whose cases were considered by the earlier Selection Board, on a fresh selection criteria which provided for award of as large as 85 percent marks for educational qualifications of candidates and for award of as little as 15 percent for performance of candidates at interview, by making an order in that regard. The order so made by the Chandigarh Administration cannot but be regarded as the right and the just one. Such an order, as is held by CAT, cannot be vitiated on the ground that it had been made without affording an opportunity of

hearing to the members of the Selection Board who had prepared it. Further, such an order cannot be vitiated either because no direct evidence was made available to prove corruption charges against the members of the Selection Board in the matter of award of interview marks by them so as to tilt the balance in favour of candidates with poor educational qualifications and against the candidates with high educational qualifications or because there was no opportunity of hearing afforded to the candidates in the select list to sustain it before its cancellation by the Chandigarh Administration.

Affording of an opportunity of hearing by an Administration to the members of a Selection Board constituted by it, before cancelling a dubious select list of candidates for appointment to civil posts prepared by such Selection Board is not and cannot be requirement of either law or any principle of natural justice. It is so for the reason that no member of a selection Board acquires any vested right or interest in sustaining a select list prepared by the Selection Board. Besides, there is no personal right or interest of any member of a Selection Board which could be adversely effected, by the Administration cancelling a select list of candidates prepared by Selection Board when it is found to have been prepared by the selection Board in unfair and injudicious manner. Therefore, there can arise no need to any Administration to afford an opportunity of hearing to the members of the Selection Board before cancelling a dubious select list of candidates for appointment to civil posts prepared by it. Hence, we must hold that the CAT was wholly wrong in setting aside the Chandigarh Administration's order by which the dubious select list of candidates for appointment as conductors in CTU prepared by Selection Board constituted by it had been cancelled, on its erroneous view that non-affording of an opportunity of hearing to the members of the Selection Board before cancelling its select list had vitiated that Order. This would be our answer to the question adverted to at the outset.

Coming to the contentions of the learned counsel for Respondents (selectees in the cancelled select list) that the Chandigarh Administration when had found no direct evidence which could establish charges of corruption levelled against the members of the Selection Board in the matter of preparation of select list of conductors for appointments as conductors in its CTU, it should not have made an order cancelling the select list, all that could be said is, that failure on the part of complainants to establish charges of corruption levelled against the members of the Selection Board could not have saved the select list, if it was otherwise found to be dubious. The select list, which was cancelled by the Chandigarh Administration was found by it to have been prepared in unfair and injudicious manner, in that the interview marks purported to have been awarded by the members of the Selection Board for the performance of candidates at their interview were either inflated to push up the candidates who had got poor marks for their educational qualifications or deflated to pull down the candidates who had got high marks for their educational qualifications. That select list was also found to have been prepared without adopting common eligibility criteria, for all candidates. When the said reasons formed the basis for the Chandigarh Administration to cancel the select list of the Selection Board, the fact that charges of corruption levelled against the members to the Selection Board in the preparation of that select list had not been established by direct evidence produced in that regard, can make no difference.

What remains for our consideration is that contention of the learned counsel for Respondents that the Respondents who were the selectees in the select list should have been heard by the Chandigarh

Administration before it cancelled that list as a dubious one. According to learned counsel, non-affording of an opportunity of hearing to the Respondents- Selectees before the select list in which they had found places as selected candidates for appointment in the vacant civil posts of conductors in CTU should be regarded by us as a sufficient ground not to disturb the Judgment of the CAT under appeal, although the Judgment itself is not rendered on that basis. The contention of learned counsel on our view, misconceived and hence calls to be rejected.

In *Shankarasan Das v. Union of India*, reported in JT (1991) 2 SC 380, a Constitution Bench of this Court which had occasion to examine the question whether a candidate seeking appointment to a civil post can be regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name in the merit list (select list) of candidates for such post has answered the question in the negative by enunciating the correct legal position thus:

"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 appointment 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 the *State of Haryana v. Subbash Chander Marwaha and others*, [1974] 1 SCR 165; *Miss Neelima Shangla v. State of Haryana and others*, [1986] 4 SCC 268, or *Jitendra Kumar and others v. State of Punjab and others*:

[1985] 1 SCR 899."

If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific Rule entitling him for such appointment and he could be aggrieved by his non- appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily: In the instant case, when the Chandigarh Administration which received the complaints about the unfair and injudicious manner in which select list of candidates for appointment as conductors in CTU was prepared by the Selection Board constituted for the purpose, found those complaints to be well founded on an enquiry got made in that regard, we are unable to find that the Chandigarh Administration had acted either arbitrarily or without bona fide and valid reasons in cancelling such dubious select list.

Hence, the contentions of the learned counsel for the Respondents as to the sustainability of the Judgment of CAT under appeal on the ground of non-affording of an opportunity of hearing to the Respondents (candidates in the select list) is a misconceived one and is consequently rejected.

In the result, we allow this appeal, set aside the Judgment under appeal, and reject the applications made by Respondents before CAT, Chandigarh. However, in the facts and circumstances of this appeal, we make no order as to costs.

G.N.

Appeal allowed.