

concerned. However, the FIR is not quashed and the respondent should take a decision within two months from today as to whether they should file challan in the court or not. Therefore, it goes without saying that if the challan is not presented against the petitioners within the said period of two months, the FIR shall stand quashed. Order Dasti to AAG, Punjab.

R.N.R.

Before Jawahar Lal Gupta, J.

MOHAN LAL MONGIA.—*Petitioner.*

versus

F.C.I. AND OTHERS.—*Respondents.*

C.W.P. 16609 of 1995.

27th November, 1996.

Constitution of India, 1950—Arts. 226/227—Selected candidate—Whether such a candidate has vested right to post—Order predominantly administrative—Such order also subject to judicial review.

Held, that mere selection does not give an indefeasible right to a person to be appointed to a post.

(Para 6)

Further held, that in the totality of circumstances, it cannot be said that the action of the respondents in taking the view that the petitioner was not suitable for appointment was arbitrary or unfair so as to call for interference under Article 226 of the Constitution. The order is predominantly administrative in character. Even when it is subjected to judicial review, the Court can interfere only when it is found that the authority had acted arbitrarily. Such is not the situation in the present case. The view taken by the authority is a possible one.

(Para 9)

Malkeet Singh, Advocate, for the petitioner.

Nemo, for the respondents.

JUDGMENT

Jawahar Lal Gupta, J. (Oral)

(1) The petitioner who claims to be a member of the Scheduled Tribe prays for the issue of a writ in the nature of mandamus directing the Food Corporation of India to appoint him as Deputy Manager (Legal). A few facts may be noticed.

(2) On August 28, 1992, an advertisement was issued inviting applications for three posts of Deputy Manager (Legal). One of the posts was reserved for persons belonging to the category of Scheduled Tribes. The remaining two posts were reserved for members of Scheduled Castes. The petitioner applied for the post reserved for members of Scheduled Tribes. He was interviewed on October 27, 1993. *Vide* letter dated February 11, 1994, a copy of an "attestation form" was forwarded to the petitioner. He was asked to furnish his particulars and return the form after doing the needful within seven days. The petitioner alleges that he had submitted the form on February 22, 1994. However, he did not hear anything in the matter. Consequently, he submitted a representation dated September 30, 1994. *Vide* letter dated November 11, 1994, the petitioner was informed that the attestation form submitted by him had been forwarded to the Deputy Commissioner, Ropar "for character verification but the same has not been received so far. However, in response to our various reminders, it has been revealed by the office of District Magistrate, Ropar that attestation form has been returned by them". In this situation, the petitioner was asked to fill up another attestation form. The petitioner alleges that on receipt of the letter dated November 11, 1994 from the office of respondent No. 3, he approached the Deputy Commissioner with an application dated November 22, 1994. He requested for the return of the attestation form after necessary report. This application was returned by the District Magistrate with the information that the necessary report had already been forwarded,—*vide* letter dated November 24, 1994. The petitioner submitted various representations thereafter. However, the letter of appointment was not issued. Consequently, he has filed the present writ petition alleging that the action of the respondents in not appointing him is arbitrary and illegal.

(3) The respondents controvert the petitioner's claim. In a *nut shell*, it has been pointed out that a report about the character and antecedents of the petitioner was received from the Senior

Superintendent of Police, Ropar on November 30, 1984. Thereafter, "the matter was considered by the competent authority of the Food Corporation of India.....an FIR No. 52 dated 4th May, 1987 under sections 188, 341, 148, 149 IPC, Police Station, Roopnagar was registered against the petitioner wherein he was discharged by the court on 3rd August, 1987. The competent authority observed that though the candidate was finally acquitted, offences mentioned in the Police report are coting armed with deadly weapons, member of unlawful assembly, guilty of offence committed in prosecution of common object, disobedience of order duly promulgated by the public servants etc.....his involvement indicates the character which may not be in the interest of the organisation....." Consequently, the competent authority took the view that the petitioner was not fit for appointment in the Food Corporation of India. On the basis of these averments, the respondents pray that the writ petition be dismissed.

(4) Mr. Malkiat Singh, learned counsel for the petitioner has contended that in FIR No. 52 only allegation constituting an offence under Section 188 IPC had been levelled. The petitioner was duly discharged,—*vide* order dated August 3, 1987. Consequently, there was nothing against the petitioner on the basis of which his claim for appointment to the post of Deputy Manager (Legal) could be rejected. He also submits that a Civil Misc. application has been filed by the petitioner with which he has produced a copy of the order dated August 3, 1987 passed by the Chief Judicial Magistrate, Ropar, by which the petitioner and six other co-accused had been ordered to be discharged.

(5) No one has appeared on behalf of the respondents.

(6) It is true that the petitioner had applied for the post of Deputy Manager (Legal). It also appears that he had been selected against the post reserved for the category of Scheduled tribes. However, mere selection does not give an indefeasible right to a person to be appointed to a post. Reference in this behalf may be made to the decisions of their Lordships of the Supreme Court in *State of Haryana v. Subhash Chander Marwaha and others* (1), and *M. S. Jain v. State of Haryana* (2). It is the prerogative of the employer to satisfy itself

(1) 1973 (2) S.L.R. 137.

(2) A.I.R. 1977 S.C. 276.

with regard to the suitability of a person for appointment to the particular post. In the present case, the post of Deputy Manager (Legal) is a fairly senior post. The written statement filed on behalf of the respondents indicates that the Superintendent of Police had conveyed that according to the police report, offences of rioting etc. had been committed. It also appears that the Chief Judicial Magistrate had ordered the discharge of various persons on the technical ground that the necessary sanction had not been accorded by the District Magistrate under Section 195 of the Code of Criminal Procedure.

(7) Mr. Malkiat Singh, however, submits that the averments made in the written statement on behalf of the respondents are incorrect. The only allegation against the accused persons including the petitioner was of an offence under Section 188 and that no allegations constituting offences under Sections 341, 148 or 149 had been made. This contention cannot be accepted.

(8) Firstly, the petitioner has not filed any rejoinder to the written statement filed on behalf of the respondents. Admittedly, a copy of the written statement had been served on the counsel for the petitioner on March 1, 1996. Till today, no replication controverting the categorical averments in the written statement has been filed. Secondly, even the copy of the F.I.R. has not been produced by the petitioner. In fact, it is admitted that the police had filed the challan in the court of Chief Judicial Magistrate Ropar. The documents had been furnished to the petitioner. He could have filed the requisite papers in this court. Curiously, the documents have been kept back. In fact, in the petition, there is not even a mention of the fact that F.I.R. No. 52 had been lodged against the petitioner.

(9) Taking the totality of circumstances into consideration, it cannot be said that the action of the respondents in taking the view that the petitioner was not suitable for appointment was arbitrary or unfair so as to call for interference under Article 226 of the Constitution. The order is predominantly administrative in character. Even when it is subjected to judicial review, the Court can interfere only when it is found that the authority had acted arbitrarily. Such is not the situation in the present case. The view taken by the competent authority is a possible one. It could have been taken by a reasonable person. The authority could have said to itself—"the man is of quarrelsome nature. He might create problems. I shall avoid giving him a chance." It cannot be said to have acted unfairly. It also deserves mention that there is not even a suggestion of any

bias or oblique motive against any officer. Consequently, it appears that the view taken by the authority was in the *bona-fide* exercise of its power.

(10) No other point has been urged.

(11) In view of the above, there is no merit in this writ petition. It is, consequently, dismissed. However in the circumstances of the case, there will be no order as to costs.

S.C.K.

Before Amarjeet Chaudhary & M. L. Singhal, JJ.

M/S PRITAM SINGH & SONS,—*Petitioner.*

versus

THE STATE OF PUNJAB & OTHERS,—*Respondents.*

C.W.P. No. 5510 of 1996.

3rd January, 1997.

Constitution of India, 1950—Arts. 226/227—B & R Manual of Orders, Chapter 7—Regulation 7.32 (iii)—Acceptance of tender—Lowest quotation ignored—Approval as envisaged under the rules not obtained—Lowest tender ignored without affording an opportunity of the Authority—Modified terms obtained without making offer to other similar tenderers—Effect of.

Held, that if a Government lays down a policy for doing a particular thing in a particular manner, that thing has to be done in that manner only and departure from that settled manner vitiates the decision particularly when there are no circumstances warranting the departure. Similarly, it is true that the Government may enter into contract with any person but in so doing the State or its instrumentalities cannot act arbitrarily. In the instant case, tenders were invited and the tender of the petitioner firm was lowest but it was ignored without following the proper procedure and without affording an opportunity of being heard to the petitioner while using the adverse reports against it.

(Para 11)

Further held, that the action of the respondents in obtaining the modified terms of offer of contract from one of the tenderers is not justified without affording similar offer to the other tenderers.

(Para 10)

Pawan Bansal, Advocate with R. S. Bains, Advocate, for the petitioner.

Randhir Singh, DAG (P).

P. S. Rana, Advocate, for the respondents.