

WIJESURIYA
v.
NATIONAL SAVINGS BANK

SUPREME COURT.
FERNANDO, J.,
WADUGODAPITIYA, J. AND
WIJETUNGA, J.
S.C. 142/95
AUGUST 23, 1996.

Constitution – Article 12(1) – Promotions – Interview – Cancelled – Fresh interview with a changed scheme – Not notified.

The petitioner states that he is entitled to be appointed to one of the four posts of Regional Security Officers on the results of the first interview at which interview he was placed first, but that interview was cancelled and at a second interview for the purpose of which, the selection criteria/ scheme for awarding marks was changed without prior notice, the petitioner was left out. The petitioner complains of discrimination and that he had been denied the equal protection of the law.

Held: Per Wadugodapitiya, J.

"It has been held more than once, that it is imperative that candidates at interviews must be afforded equal opportunity of presenting their cases when facing Boards of Interview and that one of the ways of achieving this end is to make known in advance the criteria to be adopted and the scheme of marking especially when a significant change is made.

What was done in this case was against all canons of fair play, where not only was a Competent Board found fault with and the interview cancelled for no objectively, valid reasons, but a New Board was appointed to conduct an interview basing itself upon a changed scheme of marking which new scheme was not notified and was not within the knowledge of the petitioner."

The second interview was fatally flawed. The 7th respondent had misused his discretion and acted arbitrarily and unreasonably in cancelling it. While it is true that a Board of Interview generally lacks the authority to make appointments, yet its findings cannot be arbitrarily set aside.

Manohara R. de Silva for the petitioner.
Surath Piyasena, S.S.C. for 1st, 2nd, 6th and 7th respondents.
J. C. Boange for 3rd and 4th respondents
5th respondents absent and unrepresented
6th respondent present in person.

January 31, 1997.

WADUGODAPITIYA, J.

The petitioner was given leave to proceed with this application in respect of an alleged violation under Article 12(1) of the Constitution. His complaint is directed against the 1st, 2nd and 7th respondents, and is, briefly, that he was entitled to be appointed to one of the four posts of Regional Security Officer on the results of the first interview held on 24.2.95, at which interview he was placed first, having obtained 77 marks; but that this interview was cancelled, and, at a second interview held on 10.4.95 for the purpose of which, the said respondents had changed the selection criteria and/or the scheme for awarding marks without prior notice to the petitioner, the petitioner was left out and the 3rd respondent was appointed instead, together with the 4th, 5th and 6th respondents.

The petitioner states that he first joined the 1st respondent bank together with the 6th respondent on 1.8.80 in the capacity of Security Administrative Officer (P1) when the Security Division was first established in the 1st respondent Bank. The 3rd, 4th and 5th respondents who are also Security Officers, also joined at that time but are junior in service to the petitioner and the 6th respondent. He goes on to state that in January 1995, applications were called for, for four posts of Regional Security Officer (P2) in the Bank's service. Seventeen Security Officers of the 1st respondent bank including the petitioner and 3rd to 6th respondents applied. By letter dated 16.2.95 (P3), the petitioner was summoned by the 2nd respondent for an interview on 24.2.95. Similar letters were sent to others. The Board of Interview consisted of 2nd respondent (Chairman), S. H. Piyasiri, Assistant General Manager (Inspection), and R. C. Gunaratna, Security Manager, who was the head of the Security Division of the 1st respondent bank.

The petitioner states, that according to information he received, he was placed first with 76 marks, the 5th respondent, second with 62 marks, and the 4th and 6th respondents, third with 54 marks each. The 3rd respondent was not among the first four.

Replying to this particular averment, the respondent states in his affidavit, that petitioner obtained 77marks, whilst the 5th respondent obtained 67 marks, and the 4th and 6th respondents obtained 63

marks each. The 7th respondent admits that the 3rd respondent was not among the first four.

The petitioner goes on to state that although the marks were generally known, the results were not released officially, but what in fact happened was that by letter dated 31.3.95 (P4), all the applicants were called for a "further interview" fixed for 10.4.95. This letter P4, is also signed by 2nd respondent. A new Board of Interview was appointed for this 2nd interview and consisted of P. A. S. Prathiraja, Senior Assistant Secretary, Minister of Finance (Chairman), R. Navaratnarajah Deputy General Manager (Internal Audit), and Quintus Perera, Assistant General Manager (Inspection). This Board had been appointed by the 7th respondent. The petitioner states that he was surprised that the Head of the Security Division was not on the Board.

The petitioner complains that whereas at the 1st interview he was questioned for 15 to 20 minutes, especially on his duties and on matters pertaining to security management, problems and solutions regarding security at the Bank, at the 2nd interview held on 10.4.95, he was questioned only for about 3 to 4 minutes on what his present duties were. He states that when he started answering, he was interrupted by Mr. Navaratnarajah and not allowed to answer further. No other questions were asked regarding his area of work but he was asked whether he had played Cricket. The 7th respondent in his affidavit replies as follows:- "I deny that the petitioner was interviewed for 3 minutes (circa). Answering further, I state that the petitioner was interviewed for more than 15 minutes in the same that was devoted for other candidates." Since the 7th respondent was not on the Board of Interview, this is pure hearsay, and not acceptable evidence. There is no affidavit from any member of the Board of Interview.

The petitioner states that thereafter, on 19.4.95, on 7th respondent's instructions, the 2nd respondent informed the Security Manager that the 3rd to 6th respondents had been appointed to the 4 posts of Regional Security Officer (P5). He says that he got to know that the 1st interview had been cancelled on the directions of the 7th respondent. He feels that the facts that he was a member of the Jathika Sevaka Sangamaya and organizer of the said Trade Union in the Security Division of the 1st respondent bank, which Trade Union was affiliated to the United National Party, weighed against him. On

the other hand, he says that the 3rd to 6th respondents are members of the Ceylon Bank Employee's Union which is affiliated to the political parties which constitute the present Government. The petitioner's Union took up the matter and wrote to the 7th respondent about it and the 7th respondent replied by P6 that the 2nd interview was held not for the purpose of ousting members of the JSS Trade Union but because he felt that the 1st interview had not been held in a fair and impartial manner. He gave no reasons.

The petitioner complains that after the 2nd interview, the 4th, 5th and 6th respondents who were also successful at the 1st interview, were selected once again. He states that the only purpose for holding the 2nd interview was to exclude him from selection, and to replace him with the 3rd respondent.

The petitioner states that he has been discriminated against and denied the equal protection of the law.

The 7th respondent in his affidavit states by way of answer, that on a scrutiny of the report on the 1st interview, he formed the opinion that that interview had not been conducted in a just and impartial manner. He gives only two reasons: firstly, that the Interview Board had awarded the petitioner 20 out of 25 marks for performance as a security officer although there were three adverse reports against him for the year 1992, and, secondly that the Board had awarded the petitioner 10 out of 10 marks for efficiency shown in discharging his duties and a commendation therefore in June 1994, whilst for an identical commendation, candidate N. D. N. Q. Perera had been awarded only 5 out of 10 marks.

Although the Board of Interview which conducted the first interview had awarded 77 marks to the petitioner; 67 marks to the 5th respondent and 63 marks each to the 4th and 6th respondents, and had recommended their promotion as Regional Security Officers with effect from 1.3.95 (7R1), the 7th respondent states that, "I get the impression that the Board has been very subjective in marking Mr. Wijesuriya" (i.e. the petitioner), and called for the observations of the Chairman of the Board (7R1).

The Chairman of the board (2nd respondent) replied by 7R2. The relevant portions of his reply are quoted as follows: