

SATISH RAWAT
v.
UNION OF INDIA

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AUGUST 26, 2002

[S. RAJENDRA BABU AND P. VENKATARAMA REDDI, JJ.]

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Service Law:

Appointment under sports quota—Challenge of—Tribunal, quashing appointment, issued a direction to Department to select candidates on merit—Accordingly, another candidate appointed—Review and fresh Petitions by affected candidates dismissed—Writ Petition also dismissed by High Court—On appeal, held, since complete record not placed before the Tribunal, it could not draw appropriate conclusion—Under the circumstances, the earlier appointee, whose services were terminated in compliance with the directions of Tribunal, shall be reinstated with due protection of pay, if need be by creating a supernumerary post—Also appointment of another candidate made pursuant to Tribunal's directions should not be disturbed.

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Customs Department made appointment of Inspectors under sports quota after conducting written test, interview and field trial. One candidate was appointed under “football” category. Respondent alleged before the Tribunal that appellant had failed in the field test, and yet he was appointed; and the respondent, though qualified in the field test, was not selected. Tribunal quashed the appointment of the appellant and issued direction to the Department to make selection on merit and the appellant need not be considered as he had failed in the field test. Accordingly, Department selected another candidate, Respondent No.3. Aggrieved, appellant filed a Review Petition on the ground that the Department had not furnished relevant records before the Tribunal and therefore an adverse inference was drawn against him. Tribunal dismissed the Review Petition as well as a fresh Petition filed by the appellant. Writ Petition filed before the High Court was also dismissed. Hence this appeal.

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Allowing the appeal, the Court

HELD: 1.1. The documents filed by the State before the Tribunal

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A mentioned the merit list of the candidates upto the field test. Later on, a report on the performance in the field test was submitted by the Official team in association with the Coach. The appointing authority selected the appellant and Respondent No.3. In the meanwhile, Tribunal passed the order and Respondent No.3 displaced the appellant. The Tribunal held that on the basis of the records before it, Respondent No.3 was entitled to be considered to the exclusion of the appellant. Had complete record been placed before the Tribunal appropriate conclusion could have been drawn by it. For the mess that arose in this matter, the Department is entirely blameworthy. [674-B-D; 675-A]

C 1.2. Pursuant to the selection made by the Department earlier, the appellant had worked for nearly 8 years and 7-1/2 months except for a break for certain period. Appellant is now over-aged for selection for any post under sports quota. On the basis of the records that were made available at the time when the Tribunal passed the order, the appellant was excluded from consideration by the Department and on their own showing the difference between the appellant and Respondent No.3 in securing marks is not much inasmuch as both had secured almost identical marks in the written examination with a difference of one mark and in the interview there was a big margin. So far as the field test is concerned, the results thereof were not very categorical as to the competence of the candidates because the appellant and Respondent No.3 fell in two different categories in the game of football for which the Department wanted to recruit players. In view of the above, the appellant's appointment is justifiable. [674-E-G]

F 2. In the circumstances of the case the appointment of Respondent No.3, as directed by the Tribunal, should not be disturbed, and it would be proper for the Department to provide a post to the appellant and such post, if not available, shall be created on supernumerary basis to be absorbed when a regular vacancy arises. However, the appellant shall not be entitled to any monetary benefits for the period he had not worked. He be appointed in the post on the basis he had been originally appointed and due benefits of increments be given to him and his pay-scale should be appropriately fixed on the basis of last pay drawn at the time of his discharge from service. [675-B, C]

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 133 of 2001.

From the Judgment and Order dated 21.11.2000 of the Punjab and Haryana High Court in C.W.P. Nos. 15858 of 2000. A

K.V. Vishwanathan, R.K. Maheshwari, Ms. Ritu Rastogi and Rishi Maheshwari, for the Appellants.

Raju Ramachandran and P.P. Malhotra, Braj Kishore Mishra, Ms. Aparna Jha, K.N. Nagpal, Rajiv Nanda and B.K. Prasad, for the Respondent. B

The Judgment of the Court was delivered by

RAJENDRA BABU, J. An advertisement was issued by the Customs Collectorate, Chandigarh, for recruitment of Inspectors under sports quota. Two posts were earmarked for football category. The participants had to take written test in English, Arithmetic and General Knowledge and after qualifying in the written test, the candidates had to face interview and also to undergo field trials. On 4.6.1992, 24 candidates out of total applications received reported for field test and it was intimated that the appellant before us also participated but had failed in the same. However, he was selected and appointed as Inspector, while respondent No. 3 who had qualified in the written test as well as in the field test and interview, was not selected. He filed an original application before the Central Administrative Tribunal, Chandigarh Bench [hereinafter referred to as 'the Tribunal']. By an order made on 6.6.2000 the Tribunal quashed the appointment of the appellant and the Department was directed to examine the records as to which of the candidates was more meritorious and inasmuch as the appellant had failed in the field test his name need not be considered. Thereafter, respondent No. 3 was selected and appointed as Inspector. A review petition was filed by the appellant before the Tribunal. In that petition it was stated that the Department had deliberately withheld the relevant records regarding selection of the appellant and inasmuch as the Department was not able to make available the relevant records, adverse inference was drawn against them and that respondent No. 3 had not participated in the proceedings till 1998. The ground raised before the Tribunal was that Shri Manjit Singh had been selected against the sports quota; that the Department had been justifying the selection of respondent No. 3 and had been withholding the results of the field trials on the basis that the same were not relevant. It was held by the Tribunal that since they were coming up with new grounds, the review was not permissible. Another application was filed to the similar effect, which was also dismissed. Thereafter a writ petition was filed before the High Court, which having been dismissed this appeal is filed before us by special leave. C
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A In interview the appellant had secured 62 marks, while respondent No. 3 had secured 48 marks; in written examination the appellant had secured 79 marks, respondent No. 3 had secured 80 marks and in the field test the appellant had secured 203 marks, while respondent No. 3 had secured 212 marks. The case now sought to be put forth before us is that the appellant is a Goal Keeper, while respondent No. 3 was a Deep Defender. It is stated that

B a merit list of the candidates appearing in the field test was prepared; that the documents filed by the State before the Tribunal mentioned the aforesaid merit list of the candidates upto the field test; that in the category of Goal Keeper the appellant was ranked at No. 7 and another candidate Sushil Kumar was given rank No. 10; that later on, a report on the performance in the field

C test was submitted by the official team in association with the Coach and top 6 candidates named were mentioned in the second list for the post of Inspector; that as per the requirement of the Department for the game of football, there was no Goal Keeper short listed in the second list; that however, both lists were submitted for the perusal of the Selection Committee. The appointing authority selected the appellant and Shri Manjit Singh. After the Tribunal

D passed the order as stated earlier, respondent No.3 displaced the appellant.

In the review application filed by the Department it was specifically averred that records of the selection of the appellant and other candidates who were selected against sports quota in 1992-93 were now traceable.

E Pursuant to the selection made by the Department the appellant had worked from 1.9.1992 to 7.6.2001 for nearly 8 years and 7 months except for a break from 1.12.2000 to 12.1.2001. Now he is over-aged for any selection for any post under sports quota. On the basis of the records that were made available at the time when the Tribunal passed the order, the appellant was excluded from consideration and on their own showing the difference between the

F appellant and respondent No. 3 in securing marks is not much inasmuch as both had secured almost identical marks in the written examination with a difference of one mark and in the interview there was a big margin. So far as the field test is concerned, the results thereof were not very categorical as to the competence of the candidates because the appellant and respondent

G No. 3 fell in two different categories, one as a Goal Keeper and the other as a Deep Defender. On this basis, the appellant's appointment is justifiable.

Respondent No. 3 could not have displaced the appellant but for the order made by the Tribunal. The Tribunal held that on the basis of the records before it, he was entitled to be considered to the exclusion of the

H appellant. Had complete records been placed before the Tribunal appropriate

conclusion could have been drawn. For the mess that arose on appointment of the appellant and not supporting it properly and for appointment of respondent No. 3, the Department is entirely blameworthy. If now respondent No.3 is displaced by the appellant, he will be uprooted. **A**

In the circumstances of the case we think that the appointment of respondent No. 3 as directed by the Tribunal should not be disturbed. However, in the peculiar facts of the case as arise now, it would be proper for the Department to provide a post to the appellant and such post if not available shall be created on supernumerary basis to be absorbed when a regular vacancy arises. However, the appellant shall not be entitled to any monetary benefits for the period he had not worked. He be appointed in the post on the basis he had been originally appointed in 1992 and due benefits of increments be given to him and his pay-scale should be appropriately fixed on the basis of last pay drawn at the time of his discharge from service. **B** **C**

Subject to these directions, the appellant be appointed within a period of three months from today. The appeal stands allowed accordingly. No costs. **D**

S.K.S.

Appeal allowed.