
(1994) 02 GUJ CK 0001
In the Gujarat High Court

Gujarat Public Service Commission

APPELLANT

Vs

Songar Baldevsinh s. and Others

RESPONDENT

Date of Decision : 22-02-1994

Acts Referred:

Gujarat Civil Services (Reservation of Vacancies for Ex-servicemen in Class III and Class IV Posts and Services) Rules, 1975 — Rule 6A

Citation : (1994) 2 GLR 1561

Hon'ble Judges : B.N. Kirpal, C.J.; Sharad D. Dave, J

Bench : Division Bench

Judgement

B.N. Kirpal, C.J.—The short question involved in this case relates to the interpretation of Rule 6A of the Gujarat Civil Services (Reservation of Vacancies for Ex-servicemen in Class III and Class IV Posts and Services) Rules, 1975.

2. The respondents herein are Ex-servicemen, who had applied for recruitment for the post of Police Sub-Inspector pursuant to the advertisement issued by the Gujarat Public Service Commission. Written test was taken of the respondents, but they were not called for interview. It is, thereafter, that the writ petition was filed.

3. The stand of the respondents was that the candidates had to take two types of tests, viz., written test as well as physical endurance test. These tests were prescribed by the Examination Rules. Appendix "A" of the said Rules provided for the syllabus of the written test as well as indicated as to what were the physical endurance test, which would be taken. According to the said Examination Rules, a candidate, who had qualified in the written test, was required to undertake the physical test, which consisted of running 100 metres, high jump, long jump, putting the shot and running 800 metres. For each of these events, minimum qualifying standard was prescribed. Respondent No. 1 was required to jump a minimum height of 1.22 metres, but he could jump only 1.12 metres. Respondent No. 2 was required to run 100 metres in 15 seconds, but he ran this distance in 15.56 seconds. Therefore, both the respondents were not called for

interview.

4. The learned single Judge held that Rule 6A provided for relaxation in standard in selection. After taking note of the fact that the respondents had cleared four out of 5 items of the physical endurance test, and also keeping in view that out of 9 reserved posts for Ex-servicemen only about 4 to 5 had been filled, he directed that the relaxation under Rule 6A should have been granted and issued a writ of mandamus, directing the Commission to interview the two respondents for the said post.

5. While challenging the aforesaid decision, Mr. Dave informs us that both the respondents were called for interview, but they did not qualify and, therefore, they have not been selected. He, however, submits that the appellants are keen on having the interpretation of Rule 6A decided authoritatively, which would be a guidance for the future and that is why the appellants have filed the present Appeal.

6A. Lower standard for selection: In the case of direct recruitment, if sufficient number of candidates belonging to the Ex-servicemen is not available on the basis of general standard to fill all the vacancies for them, candidates belonging to the category of Ex-servicemen may be selected under a relaxed standard of selection to make up the deficiency in the reserved quota subject to the condition that such relaxation will not affect the level of performance by such candidates.

The said Rule comes into operation only if sufficient number of candidates belonging to Ex-servicemen category are not available. Secondly, the said Rule uses the word "may" and not "shall" and there is no reason to interpret the said word "may" as being mandatory. A right is given to relax the standard of selection to make up the deficiency in the reserved quota, but the right is to be exercised in such a manner that it will not affect the level of performance of the candidate.

6. As already noticed, the candidates had to undertake a written test, a physical test and a viva voce test. According to the affidavit-in-reply, it has been stated that relaxation was valid qua the written test. But, the Examination Rules prescribe the minimum standard with regard to the physical endurance test and, therefore, it is not possible to give any further relaxation.

7. The respondents were candidates for the post of Sub-Inspectors in the Police. It would stand to reason that they must be physically fit in order to discharge their duties. Whether any standard should be relaxed or not and to what extent the relaxation should take place, is not for the Court to decide and the appropriate Authority to take a decision in this behalf can only be the Department, for which the recruitment is being made. This is for the simple reason that it is only that Department, which will be able to come to a conclusion as to what is the extent of relaxation which should be granted so that the level of performance of the candidates is not adversely affected.

8. Whenever there is deficiency in the reserved quota, and that is required to be made out, the provisions of Rule 6A would, undoubtedly, be attracted. But, it will be for the appointing authority to decide as to what is the extent of relaxation, which can be permitted and unless and until it is shown that any such decision which is taken is wholly arbitrary or mala fide, there should be no occasion for the Court to substitute its own decision in place of the decision of the appointing authority. On the facts of this case, we are satisfied that when minimum standards are prescribed with relation to the physical endurance test, it means that if the candidates do not come up to the required standards, the level of performance would be adversely affected. The Examination Rules do not seem to provide for minimum marks, which must be obtained in the written test and, therefore, the appellants were in a position to relax the said standard and allow the respondents to take physical endurance test. We are unable to agree with the learned single Judge that the Court should direct that the benefit of Rule 6A should be extended.

9. As we have already observed, the decision in this regard has to be of the appointing authority or the Gujarat Public Service Commission and even if, in a particular case, the Court comes to the conclusion that Rule 6A is applicable, it is not for the Court to grant the benefit in regard thereto and, at best, the Court can only direct the appointing authority to examine whether Rule 6A can be applied or not. In other words, with regard to relaxation of the standards, the ultimate decision should be of the appointing authority, provided such decision is not arbitrary or mala fide.

10. This Appeal is accordingly allowed and the judgment of the learned single Judge is set aside. As far as the respondents are concerned, they will in no way be affected by the outcome of this decision, because they have not qualified in the viva voce test. There will be no order as to costs.