

(2002) 04 AHC CK 0052
In the Allahabad High Court
Case No : C.M.W.P. No. 795 of 2000

Gyan Prakash Singh

APPELLANT

Vs

Central Administrative Tribunal, Allahabad Bench and Others

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Citation : (2002) 3 AWC 2024 : (2002) 3 UPLBEC 2163

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : Rajesh Kumar Srivastava, Santosh Kumar Singh and Bhagwati Prasad, for the Appellant; Subodh Kumar and Subhashis Banerjee, S.C., for the Respondent

Judgement

Rakesh Tiwari, J.—This writ petition has been filed challenging the validity of the impugned Judgment and order dated 7.12.1999 passed by the Central Administrative Tribunal, Allahabad.

2. The brief facts of the case are that on 31.12.1995 the office of the Central Excise and Customs, Allahabad advertised two vacancies of Inspector, one of Upper Division Clerk and two posts of Lower Division Clerk for appointment of meritorious sportsmen in the Newspaper "Danik Jagran". The petitioner applied for the post of Inspector on pursuance of the Advertisement dated 31.12.1995. In paragraph Nos. 6 to 9, the petitioner has averred that he being an athlete participated in several tournaments. It is stated that he also participated in East Zone Inter University Athletics Meet commencing from 23rd to 25th January, 1993. He also participated In Atheletic Hammer Throw Championship 1991 and Inter University and Inter degree colleges championship in the year 1990-91, 1991-92, 1992-93 and 1993-94.

3. By letter dated 14/15.2.1996, the petitioner was directed to appear on 23.2.1996/26.2.1996 in the Mayo Hall Sports Complex/Madan Mohan Malviya Stadium, Allahabad at 10.00 a.m. for the ground test.

4. According to the conditions contained in the advertisement dated 31.12.1995, the last date for submission of the form was 15.1.1996 and If the application was not received by 15.1.1996, the form was to be out-rightly rejected.

5. The petitioner and 39 other persons who had applied against the said vacancies of Inspector appeared at the Madan Mohan Malviya Stadium on 26.2.1996 for the ground test to be conducted by the respondent Nos. 3 and 4, i.e., the Deputy Commissioner, Central Excise and Customs, Allahabad and the Commissioner, Central Excise and Customs, Allahabad. The Selection Board consisting of five- persons conducted the ground test and the petitioner was allegedly the only candidate who qualified in the ground test for the post of Inspector. Three other candidates also qualified for the post of U.D.C. and L.D.C. The selection list prepared on the basis of ground test was duly approved by the members of the Selection Board. However, respondent No. 5 who did not appear in the ground test conducted by respondents was given appointment on the post of Inspector.

6. It is this action of the respondents which has been challenged by the petitioner as according to him, the respondents committed gross mistake in calling the candidates for the written test examination; who had not even appeared in the ground test and according to the learned counsel for the petitioner, this action of the respondents is against the mandatory provision of the Government order dated 1.3.1991 and against the general scheme of the office memorandum dated 4.8.1980.

7. It is contended by the learned counsel for the petitioner that the aforesaid method had been adopted by the respondents in order to give undue advantage and extra benefit to respondent No. 5 against the post of Inspector behind the back. It is also contended that there is no provision for written test in the department except the ground test for making appointment of meritorious sportsman to groups C and D posts as is clear from the memorandum made in the department.

8. The petitioner being aggrieved against the aforesaid action of the respondents filed an Original Application No. 715 of 1996 before the Central Administrative Tribunal, Allahabad. The original application was dismissed by the C.A.T. on the ground that the petitioner did not pass written examination though it was admitted that the respondent No. 5 was considered by the respondents without any basis or reason. It is further stated that the criteria for the appointment and selection of the meritorious sportsman in the Central Government is the empanelment based on total marks obtained in the field trial and interview as contained in the office memorandum dated 21.3.1991. It is also stated that vide circular dated 9.3.1987, the current performance should be considered for appointment and selection for the post of Inspector in sports quota. This circular has been filed as Annexure-14 to the writ petition. The learned counsel for petitioner has assailed the judgment of the Tribunal on the ground that respondent No. 5 had not made any application in response to the advertisement

dated 31.12.1995 and he did not appear in the ground test, yet on the basis of fake certificate of Tennis, he was called for the written test for appointment against sports quota. The petitioner's counsel has also assailed the findings of the Tribunal on the ground that respondent No. 5 had made an application on 9.9.1995 and 18.12.1995, i.e., before the date of advertisement dated 31.12.1995. It is admitted by the respondents that these applications are not available in their record. In spite of these Irregularities the respondent Nos. 3 and 4 have permitted the respondent No. 5 to appear for the written examination.

9. By order of this Court dated 22.5.2001, fresh notice was issued to respondent No. 5 returnable at an early date through the Commissioner, Central Excise concerned. Notice was issued to respondent No. 5 by R.P.A.D. fixing 17.7.2001. On 13.12.2001, the petitioner was directed to serve respondent No. 5 personally within three weeks and he may file counter-affidavit within three weeks thereafter. Again on 22.12.2001, Dasti summons was issued to respondent No. 5 fixing 21.1.2002. When the case was listed on 30.1.2002, it was stated at the Bar that respondent No. 5 was not available in the office. It was not clear whether service was effected on respondent No. 5 or not. Hence the petitioner was again directed to serve respondent No. 5 and file an affidavit of service in pursuance of the order dated 30.1.2002. When the case was taken up on 13.2.2002, the learned counsel for the petitioner stated that respondent No. 5 had been served but none appeared on his behalf. Hence this Court directed the learned counsel for the Central Government to ensure proper service of the notice of this petition on respondent No. 5 through the concerned Commissioner of Customs and Central Excise under whom respondent No. 5 is at present working. The case was directed to be listed after three weeks. On 15.3.2002 when the case was taken up, learned counsel for the department was allowed ten days for filing supplementary counter-affidavit annexing therewith all the alleged certificates and another document of respondent No. 5 relating to his claim for appointment against the sports quota. On 3.4.2002, supplementary counter-affidavit was filed and time was allowed for filing supplementary rejoinder-affidavit. On 10.4.2002 when the case was taken up, none appeared for the respondent No. 5 although affidavit of service was filed by the department as well as by the petitioner. We deem service on respondent No. 5 to be sufficient.

10. Annexure-SCA-1 filed to the supplementary counter-affidavit shows that the application dated 28.11.1995 along with photograph of respondent No. 5 was filed. This application was not on the record before the Tribunal and its authenticity has very seriously been disputed by the petitioner on the ground that it is a manufactured document. This application too is before the date of advertisement for the post. It is also strange to note that the department has filed the sports certificate in Tennis on behalf of the respondent No. 5 and the application dated 28.11.1995 alleged to have been filed by respondent No. 5 but the sports certificates which have been filed as Annexures-5 to 8 along with the supplementary counter-affidavit as S.C.A. 5 to 8 have been attested on 5.1.1996. The learned counsel for the petitioner has alleged that the application

dated 28.11.1995 along with photograph which has been filed before this Court is only to cover the misdeeds by the department and back respondent No. 5 inasmuch as according to the advertisement dated 31.12.1995, the application along with the photograph was invited by the department for the post of Inspector. Hence only with a view to cover the misdeeds of the authorities, the department filed an application dated 28.11.1995 on behalf of the respondent No. 5 along with photograph and the fake certificates. It is alleged that the application before the Tribunal is undated and the same has been filed by the department as Annexure-4 along with the supplementary counter-affidavit and that application is without photograph and only in the said application, the reference was made that the respondent No. 5 has submitted applications dated 9.9.1995 and 18.12.1995 but the said applications are not available in the department. Hence, the same were not filed before the Tribunal. A perusal of Annexure-6 would show that the application filed before the Tribunal as Annexure-6 did not contain any date nor place was , mentioned on the basis of which respondent No. 5 was called for written examination. All these facts alleged before the Tribunal were admitted by the respondents.

11. Learned counsel for the petitioner has argued that inspite of clear notice given by the Tribunal, respondent No. 5 neither appeared before the Tribunal nor filed counter-affidavit. The department alone filed counter-affidavit and is contesting and defending the respondent No. 5.

12. The department has contested the writ petition on the ground that the ground test is not mandatory as per circular No. A. 12034 (sports)/86 Ad III-D, Government of India, Central Board of Excise and Customs, New Delhi dated 9.3.1987, which has been filed as Annexure-14 to the writ petition. The respondents have supported the judgment of the Tribunal and have averred that the findings arrived at by the Tribunal in its judgment was that only written examination was mandatory. The respondent No. 5 has passed the written examination and in view of the fact that his record in sports was good, he was given appointment. It is further submitted that though respondent No. 5 filed applications dated 9.9.1995 and 18.12.1995 which are misplaced by the department but he was allowed to appear in the written examination on the basis of the representation made by him. It is hence alleged that there is no illegality in the judgment passed by the Tribunal.

13. A perusal of the circular No. A. 12034 (sports) 86 Ad III-D dated 9.3.1987 would show that guidelines have been provided for recruitment of meritorious sportsmen against groups-C and D posts and the procedure laid down is as under :

"(i) The vacancies available for recruitment against the sports quota should be determined in various groups "C" and "D" cadres, having regard to the percentage laid down in the scheme for recruitment of meritorious sportsmen and also to other general instructions issued in this regard ;

(ii) The requirement of sportsman in various sports/games should be identified, also keeping in view the need for building up teams in group events ;

(iii) Having identified the disciplines in which sportsmen are required in the respective collect orates, application should be called for from eligible candidates by circulating/advertising the posts as per the normal practice. The eligibility criteria should be in conformity with the provisions of the Recruitment Rules. The instructions issued by the Board and the Directorate of Personnel and Training on the subject ;

(iv) While determining the proficiency in sports, the levels at which the candidates have participated in the respective disciplines and their correct form should also be taken into account. For this purpose they could also be subjected to practical/field test to be conducted by the expert in the respective discipline. Having regard to the requirements of the collectorate and the proficiency of the candidates to their respective sports discipline, a list of the candidates in the order of their ranking should be drawn up;

(v) All the listed candidates should be subjected to a written test which should be a purely qualifying one. The pattern for the written test should be on the lines of the recruitment test conducted by the Staff Selection Commission for identical posts. A panel, after omitting the names of candidates who fail in the recruitment test, should be drawn up and appointments made accordingly.

(vt) There has been instances in the post where some candidates had produced fake/ forged certificates to secure appointment under the sports quota. The certificates produced should be scrutinised very carefully and, if necessary cross-checked/ certified from the issuing authorities. Complaint should be lodged with the police if such instances are brought to light after having secured appointment."

14. By the impugned order, the Tribunal has held that "it is true that the respondent No, 4 had not made an application for selection in response to advertisement in the Newspaper published on 31.12.1995. It is also true that respondent No. 4 did "not appear in the ground test. Yet the respondents on the basis of his achievements in Tennis had called him for written test for appointment against sports quota. Such a selection was Irregular." The Tribunal has further held that since the respondents had decided to fill one post of Inspector in the discipline of Tennis, one of the two posts of Inspector advertised on 31.12.1995 having been filled up against sports quota by Meerut Commissionerate, therefore, the other vacancy of Inspector was not available as respondent No. 5 has been appointed by the department. It is clear from the facts narrated above that respondent No. 5 had neither applied in response to the advertisement dated 31.12.1995 nor had appeared to the ground test. It is clear from various circulars for appointment in sports quota as well as the Government order on the subject that the procedure to be followed while making such recruitment is given in the scheme mentioned in the circular of 9.3.1987.

Earlier, there was variation in the procedure being followed by the different collectorates. The Board examined this question and decided that the procedure as contained in circular dated 9.3.1987 should be adopted while making recruitment of meritorious sportsmen in future.

15. According to the procedure, the vacancies available for recruitment against the sports quota should be determined in various groups C and D cadres. The requirement of sportsmen in various sports/games should be identified and having identified the disciplines in which sportsmen are required in the respective collectorates, application should be called for from eligible candidates by circulating/ advertising the posts as per the normal practice. While determining the proficiency in sports, the levels at which the candidates have participated in the respective disciplines and their current form should also be taken into account. For this purpose, they could also be subjected to practical/field test to be conducted by the expert in the respective discipline. Having regard to the requirements of the collectorate and the proficiency of the candidates to their respective sports discipline, a list of the candidates in the order of their ranking should be drawn up. All the listed candidates should be subjected to a written test which should be a purely qualifying one.

16. Admittedly, the applications dated 9.9.1995 and 18.12.1995 alleged to have been filed by the petitioner are not on the record. These applications are prior to the date of advertisement for the post dated 31.12.1995. So is the case with the alleged application dated 28.11.1995 the authenticity of which is disputed by the petitioner. This application is also prior to the date of advertisement. None of these applications was considered by the department before the Tribunal. Respondent No. 5 could not be called for written test on the basis of these applications as he had not even applied in pursuance of the advertisement. It is clear that the respondent No. 5 was accommodated by the department by back door entry. Such appointment by back door entry is not permissible and is Illegal. The Tribunal has already held that the appointment of the respondent No. 5 was irregular.

17. From the perusal of the record of the writ petition and various counter and rejoinder-affidavits exchanged between the parties, we are of the view that the appointment of the respondent No. 5 against the sports quota cannot be said to be in accordance with law. The Tribunal has committed an error in holding that qualifying in the ground test was only a screening requirement in order to ascertain the level of proficiency and current form of the candidates. Admittedly, the respondent No. 5 had also not appeared in the ground test in order to ascertain the level of his proficiency and current form.

18. In so far as the petitioner is concerned, the Tribunal has given a finding of fact in para 7 of the judgment that his claim for appointment on the ground that he was the only sportsman to have qualified in the ground test for the post of Inspector cannot be acceded to. It has not been claimed by the applicant that he had qualified in the written examination thereafter. It was mandatory to have

qualified in the written examination. The petitioner had also not mentioned anywhere in the application whether he belonged to the discipline of Athletics or of Tennis, for which the posts of sports quota had been advertised. Since the petitioner had not mentioned the discipline and also whether he had finally qualified in the written examination, he has not established that he acquired any right to be appointed to the post of Inspector.

19. From the record and pleadings in this case, it appears that the sports quota is being misutilised by officials and other high-ups, and persons are being appointed in sports quota by Government departments for extraneous consideration or under political influence, even though they are not sportsmen of eminence. This tendency is required to be curbed, as such appointments are often "back door appointments without facing a regular selection".

20. For the reasons stated above, the appointment of respondent No. 5 cannot be sustained. The petitioner also is not entitled to any benefit as he had not qualified in the written examination. The writ petition is allowed. The impugned judgment dated 7.12.1999 passed by respondent No. 1 and the appointment of respondent No. 5 are quashed. No relief as prayed for in prayer clause (b) of the writ petition for appointment of the petitioner on the post of Inspector in pursuance of advertisement dated 31.12.1995 and to pay the petitioner regular salary month to month admissible for that post, can be granted. The petitioner also is not entitled to any relief prayed for in the writ petition.

21. The parties shall bear their own costs.