
(1995) 05 RAJ CK 0049

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4139 of 1992

Hajari Singh Rajpurohit

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-05-1995

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1996) 2 RLW 544 : (1996) 1 WLC 205 : (1995) 2 WLN 281

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.P. Naolekar, J.—The petitioner was a Sergeant in the Indian Air Force. At the end of his tenure, he was finally discharged from the services of the Air Force and is an Ex-Serviceman. It is the case of the petitioner that he possesses diploma in Mechanical Engineering which was awarded by the Indian Air Force. On 14th April, 1988, an advertisement was issued inviting applications for the posts of Junior Engineer Mechanical (Diploma). The petitioner applied and was called for interview. It is alleged in the petition that he successfully appeared in the interview but was not appointed to the post of Junior Engineer in the Public Health Engineering Department.

2. This Court directed the state to produce the record of selection and, in compliance thereof, relevant record of the selection-proceedings was produced before this Court. It appears from the record of the selection-proceedings that on 24.05.90 merit-lists for the posts of Junior Engineer Mechanical (Diploma) of general, scheduled-caste, scheduled-tribe, ex-servicemen and handicapped candidates were sent to the Chief Engineer by the interview-board. Marks were given by the Board under different heads viz, interview, academical qualification and experience. In the category of ex-servicemen no marks were given as the interview-board felt that it is necessary to ascertain as to whether the certificates of experience/training issued by the Indian Air Force is equivalent to Diploma in

Mechanical Engineering and is recognized as such by the Government of Rajasthan or not. On the basis of the recommendations made by the interview-board a composite appointment-order was issued on 19.08.91 for appointment of the selected candidates to the posts of Junior Engineer Mechanical (Diploma) in the pay-scale of Rs. 1400-2600 from all the categories except the ex-servicemen category.

3. Sushil Kumar Kalara and Ravindra Singhal from the General category, Haripal Singh from the scheduled-Tribe category, and Dayanand Swarnkar from the Handicapped category are shown at S.No. 11,35,47 and 1 in their respective merit-list and were appointed to the posts of Junior Engineer Mechanical although they secured zero mark in the interview.

4. Later on, it was informed by letter dated 27th April, 1992 that the certificate held by the petitioner is equivalent to Diploma in Mechanical Engineering as declared by the Government of Rajasthan as long back as on 01.12.78. The selection-board again met for consideration of the cases of ex-servicemen for appointment to the posts of Junior Engineer Mechanical (Diploma) reserved as per the roster-system and on 23.06.92 recommended the names of seven candidates in the category of Ex-serviceman, giving marks under different heads. The petitioner's name appeared at Section No. 4 and he secured total 56.4 marks, The petitioner was given zero mark in the interview.

5. According to the selection-board, six posts for Ex-Servicemen under the roster-system were available. The petitioner was not given appointment although his name appeared in the select-list at Section No. 4 and therefore, he sent a notice demanding justice. But, no appointment was given to the petitioner and he has filed the present writ petition seeking the relief of appointment to the post of Junior Engineer Mechanical (Diploma) in the Ex-Servicemen quota.

6. The case of the respondents is, that the petitioner was not found suitable by the selection-committee for being appointed to the post of Junior Engineer and, therefore, he was not appointed to the said post. Mere eligibility does not confer a right on a person to claim the right to appointment. The eligible person has to qualify in the interview and if he succeeds then only he can be appointed to the post. Since in the present case, the petitioner has not been able to qualify in the interview, therefore, he was not given appointment. But, the respondents have admitted that for the posts of Junior Engineer a candidate should be diploma-holder and the petitioner was eligible to apply for the post. Thus it is the case of the respondents that as the petitioner secured zero mark in the interview he was not given appointment under the Ex-Servicemen quota.

7. Admittedly, the rules applicable to the Department are the Rajasthan Engineering Subordinate Service (Public Health Branch) Rules, 1967 and as per the Schedule appended to the Rules, the educational qualification required for appointment to the post of Junior Engineer is Diploma. Nothing has been brought to the notice of the Court to show that the candidate was required to secure

particular number of marks in the interview as a condition precedent to his being eligible to be appointed to the post or that he should be successful in the interview. From perusal of the record of the selection-proceedings it is apparent that Sushil Kumar Kalara (in the General-category), Ravindra Singhal (in the General -category), Haripal Singh (in the category of Scheduled Tribes) and Dayanand Swarnkar (in the Handicapped-category) have been given appointment although they secured zero mark in the interview. In the absence of any rule, regulation or order prescribing certain passing-marks in the interview of prescribing a condition that a candidate must, be successful in the interview to be eligible for appointment, the petitioner's case is required to be treated at par with that of the persons who have been appointed in the other categories.

8. Article 14 of the Constitution of India strikes at arbitrary and discriminatory treatment. The differential treatment given to a person can be justified only if it is based on reasonable classification. The unequals cannot be treated as equals. But, it is the mandate of Article 14 that equals must be treated as equals. The differential treatment must be founded on an intelligible differentia which distinguishes a class from the other and has a rationale-relation with the object sought to be achieved. The object sought to be achieved is to appoint eligible and meritorious persons, who are diploma-holders, to the posts of Junior Engineer Mechanical. Won-securing of marks in interview by persons belonging to different categories must lead to the same result. When a person is appointed in one category although he has not secured marks in interview then another person in the same position in other category cannot be denied appointment on that court.

9. The petitioner has no legal or indefeasible right to appointment on the basis of mere inclusion of his name in the select-list. Reference may be made to *The State of Haryana Vs. Subash Chander Marwaha and Others*, , *Mani Subrat Jain and Others Vs. State of Haryana and Others*, and *Laxmi Kuttu v. State of Kerala* 1986 (4) S.C.C. 632 . The Government is also not under any legal obligation to fill up any existing vacancies in a particular time-period or to fill up all or any of them. But, it would be misleading to extend such power to be an absolute power. Such power can be invoked on a justiciable ground and the Government is bound to record reasons and produce before the Court such of them as to justify its action when so challenged. In *Shankarsan Dash Vs. Union of India*, . it has been held by the apex Court asunder:

It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, It does not mean that the State has the licence of acting in an arbitrary manner. The

decision not to fill up the vacancies has to be taken bonafide for appointment for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.

Therefore, the government is required to take the decision. The decision not to fill up the vacancies from the Ex. Serviceman category has to be taken bona fide for appropriate reasons which does not amount to arbitrary act. There is an obligation on the government to act fairly. Advertisement was issued for the posts of Junior Engineer Mechanical (Diploma) and the interview-board was constituted for interviewing and selecting the suitable candidates. The interview board conducted interviews from 16.10.89 to 30.03.90 and prepared the select-list which was communicated to the Government. A part of the select-list was operated and appointments were given to persons in the general-category, Scheduled Castes-category, Scheduled Tribes-category and Handicapped-category but appointments were not given to the persons in the Ex-Servicemen-category. The reason given for not giving appointment is that because the candidates in the Ex-Servicemen-category failed to secure any marks in the interview. However, the record of selection-proceedings indicates that persons who have not secured any marks in the interview have been given appointment to the posts in other categories. The Government is under an obligation to give good and valid "reasons to nullify the complete exercise of the selection and to tell the candidates that they have no legal right to appointment. No distinction can be made between the other categories of candidates and the Ex-Servicemen candidates as all the candidates have been assigned marks under the same heads viz, interview, academic qualification and experience. The reason assigned by the respondents is not a good or valid reason nullifying the select-list of the Ex-Servicemen.

10. In *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, it has been held by the Supreme Court that the Government cannot nullify the whole exercise without good or valid reasons and without telling the candidates, when they complain, that they have no legal right to appointment. It is not open to the Government to take such stand without any good or reasonable basis. The reasons given by the respondents in the present case for not giving appointment to the petitioner are not sustainable. As such the petitioner is entitled to be appointed to the post of Junior Engineer Mechanical (Diploma) being at Section No. 4 in the merit-list of the Ex-Servicemen quota. The writ petition deserves to be allowed.

11. Accordingly, the writ petition is allowed. It is directed to the respondents to give appointment to the petitioner to the post of Junior Engineer Mechanical (Diploma) within a period of three months from today. The petitioner shall be entitled to his seniority in the cadre of Junior Engineers Mechanical (Diploma) from the date the other candidates were appointed i.e., 19th August, 1991. However, the petitioner shall not be entitled any salary for the period from

19.08.91 to the date he actually joins the service though all other consequential service-benefits shall stand accrued to him reckoning his date of appointment to be 19.08.91. There shall be no order as to costs.