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**(1983) 08 RAJ CK 0022**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 3286 of 1974**

Mahendra Kumar Taly

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision : 18-08-1983**

**Acts Referred:**

**Citation : (1983) WLN 440**

**Hon'ble Judges : Dwarka Prasad Gupta, J**

**Bench : Single Bench**

**Final Decision : Allowed**

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## **Judgement**

Dwarka Prasad Gupta, J.—The petitioner was temporarily appointed as Excise Inspector Grade II by the order of the Excise Commissioner, Rajasthan, Udaipur dated October 3, 1968. The petitioner continued to hold the said post until the Rajasthan Excise Subordinate Service (General Branch) Rules, 1974 (hereinafter referred to as "1974 Rules") came into force. Under Clause (iii) of the proviso to Rule 6 of the 1974 Rules, the petitioner was subjected to screening by a Committee for adjudgment of his suitability for the post of Excise Inspector Grade II, which post is included in the Schedule appended to the 1974 Rules and on which the petitioner was working in a temporary capacity from a date prior to January 1, 1972. The petitioner was not considered suitable by the Screening Committee and by the order passed by the District Excise Officer, Ajmer dated October 16, 1974 the service of the petitioner was terminated with immediate effect.

2. The petitioner has challenged in the present writ petition the termination of his service from the post of Excise Inspector Grade II. Two grounds were urged by the learned Counsel for the petitioner before me. In the first placet it was argued that the petitioner was recruited to the Rajasthan Excise Subordinate Service (General Branch) before the commencement of 1974 Rules and as such he should have been appointed on the post of Excise Inspector Grade II Under Rule 5(b) of the 1974 Rules. The second ground urged by the learned Counsel was

that the petitioner should have been given an opportunity of personal hearing by the Screening Committee before finding him unsuitable, on the basis of which petitioner's service was terminated.

3. So far as the first ground is concerned, learned Counsel for the petitioner argued that the petitioner was appointed on the post of Excise Inspector Grade II, after selection in accordance with the provisions contained in Rule 17 of the Rajasthan Subordinate Service (Recruitment and other Service Conditions) Rules, 1960 (hereinafter referred to as 1960 Rules") much before the 1974 Rules came into force and as such the petitioner should have been included in the initial constitution of the Rajasthan Excise Subordinate Service General Branch) on the post of Excise Inspector Grade II. Rule 17 of the 1960 Rules requires that applications for direct recruitment to a post included in the service should be invited by the Appointing Authority, by advertising the vacancies to be filled, in the official gazette or in such other manner as it may deem fit. More-over the Committee consisting of the Deputy Head of the department and an officer nominated by the State Government, was to be constituted Under Clause (iv) of Rule 17 for the purpose of interviewing such candidates, who had applied for the said post and who were eligible for appointment on such post under the Rules. The petitioner has merely averred in the writ petition that the Committee constituted by the Excise Commissioner, consisting of the Commissioner, Deputy Excise Commissioner and Administrative Officer Excise department interviewed the petitioner for the post of Excise Inspector Grade II and upon his selection by the said Committee, the petitioner was appointed temporarily as Excise Inspector Grade II, by the order passed by the Excise Commissioner on October 3, 1968. In the writ petition, the petitioner has not even alleged that any applications were invited in accordance with the provisions of Rule 17. Further, the respondents in their reply have stated that no Committee was constituted in accordance with Sub-clause (iv) of Rule 17 of 1960 Rules, nor any officer was nominated by the State Government as a member of the Screening Committee. As a matter of fact there is nothing on the record to show that the procedure prescribed for recruitment in Rule 17 of the 1960 Rules was followed at the time of appointment of the petitioner. As the recruitment was to be made by the procedure prescribed Under Rule 17, it was incumbent upon the appointing authority to invite applications from the open market, which is one of the essential conditions contained in Clause (1) of Rule 17, applicable to appointment by the procedure of direct recruitment. The averments made by the petitioner in the writ petition do not show that applications were invited by advertising the vacancies either in the official gazette or in a daily newspaper or in some other manner. Only a few persons, whose names Were received from the Employment Exchange appear to have been interviewed by a Committee constituted by the Excise Commissioner. In such circumstances it cannot be held that the selection made by such a Committee was in accordance with the regular method of direct recruitment, as required under Rule 17. The respondents have specifically denied that no recruitment under Rule 17 of the 1960 Rules took place. As the petitioner

has not been able to prove to the contrary, it is not possible to hold that the petitioner's temporary appointment made by the order of the Excise Commissioner dated October 3, 1968 was made after following the procedure of direct recruitment, so as to bring his case under Clause (b) of Rule 5 of 1974 Rules.

4. As regards the second contention advanced by learned Counsel, it may be observed that in the case of *Yaswant Kumar v. The State of Rajasthan* 1980 WLN (UC) 114 Agrawal, J. has held, in respect of the very same selection made under Clause (iii) of the first proviso to Rule 6 of the Rules, that the Screening Committee should have afforded an opportunity to the concerned employee to explain the adverse material contained in the service record and the denial of such an opportunity vitiated the recommendations of the Screening Committee with regard to the suitability of the employee for appointment to the Rajasthan Excise Subordinate Service (General Branch). Yaswant Kumar, petitioner in that case was also an Excise Inspector Grade II like the petitioner in the present writ petition and he was also found unsuitable by the Screening Committee while making recommendations under Clause (ii) of the first proviso to Rule 6. In pursuance of the recommendation of the Screening Committee, Yaswant Kumar was reverted from the post of Excise Inspector Grade II to the post of Lower Division Clerk. The learned Single Judge set aside the selection. An appeal was preferred by the State of Rajasthan in Yaswant Kumar's case but a Division Bench of this Court dismissed the appeal and affirmed the judgment passed by Agrawal, J. on September 8, 1980. Consequently, the Excise Commissioner also passed an order in favour of Yaswant Kumar on December 11, 1980.

5. In a similar matter arising out of a writ petition filed by Narain Swaroop Mathur, another Excise Inspector Grade II, another Division Bench of this Court in D.B. Special Appeal No. 750 of 1974 by its order dated March 21, 1983 held that the decision in the *Yashwant Kumar Vs. The State of Rajasthan*, provided an additional reason for giving relief to the petitioner in that case.

6. Thus, the selections made by the Screening Committee under Clause (iii) of the first proviso to Rule 6, at which the petitioner was not considered to be suitable for the post of Excise Inspector Grade II, has already been held to be vitiated in *Yashwant Kumar Vs. The State of Rajasthan*, on the ground that the employee concerned was not given an opportunity to explain the adverse material contained in his service record. The judgment of the learned Single Judge in that case has been upheld by a Division Bench of this Court and the same view appears to have been taken by another Division Bench of this Court in *Narain Swaroop Mathur's* case. When the recommendation of the Screening Committee in respect of the very same selection has already been held to be vitiated by this Court, there can be no occasion for taking a different view. However, I do not want to express any considered opinion in this case on the general question as to whether at each and every selection for promotion or otherwise, the employee concerned ought to be given an opportunity to explain

the adverse entries made in his service record. Be that as it may, in the case of Excise Inspectors Grade II working from before January 1, 1972 this Court had held in Yaswant Kumar and Narain Swaroop Mathur's cases that the Screening Committee's recommendation was vitiated. The Excise Commissioner had earlier accepted the recommendation of the Screening Committee and terminated the service of the petitioner by his order dated October 14, 1974 on the ground that the Screening Committee did not adjudge him suitable for appointment on the post of Excise Inspector Grade II. As the recommendations made by the Screening Committee were vitiated, the adjudgment of suitability or unsuitability of the petitioner by the Screening Committee is of no value and thus the order terminating the service of the petitioner, which is solely based upon the recommendation of the Screening Committee, deserves to be set aside.

7. In the result, I accept the writ petition and set aside the order passed by the Excise Commissioner Rajasthan, Udaipur dated October 14, 1974 terminating the service of the petitioner. The petitioner shall be reinstated on his post of Excise Inspector Grade II with all consequential benefits. The recommendations of the Screening Committee have already been declared to be vitiated and void and as such no direction is required to be given in respect thereof. However, the State Government and the Excise Commissioner are directed to re-constitute a Committee for adjudging the suitability of the petitioner under Clause (iii) of the first proviso to Rule 6 of the 1974 Rules, without any avoidable delay.

8. The parties are left to bear their own costs of these proceedings.