

(2003) 11 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : LPA No's. 224 and 225 of 2003

Owais Ahmad

APPELLANT

Vs

Rajan Gupta, Jugal Kishore Anand and Others

RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2004) 2 JKJ 313

Hon'ble Judges : V.K. Jhanji, Acting C.J.; Bashir-Ud-Din, J

Bench : Division Bench

Advocate : D.C. Raina, for the Appellant; S.S. Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, Acting C.J.

1. These two appeals are directed against judgment dated 15th September, 2003 passed by the learned Single Judge in two writ petitions, being

SWP No. 1363/2000 and 1235/2000 whereby the appointment of the appellant as Assistant Tourist Officer has been quashed, being in

contravention of mandate of Articles 14 and 16 of the Constitution of India. The learned Single Judge has further directed that the vacancy caused

due to quashing of the appointment of the appellant shall be advertised and filled up in accordance with the procedure prescribed by providing

opportunity to all eligible candidates.

2. Some facts may be noticed. Under the Jammu and Kashmir Tourism (Subordinate) Service Recruitment Rules, 1990, the posts of Assistant

Tourist Officers to the extent of 50% have to be filled in by direct recruitment and 50% by promotion from class II on the basis of merit-cum-

seniority with five years experience as such. The minimum qualification for direct recruitment provided under the Rules is Graduation from a

recognized University having adequate knowledge of History, Geography of the State with knowledge of one foreign language or having undergone

training in any line of Tourism/ Travel from a Recognized Institute. It is not in dispute that the post against which the appellant was appointed was

neither advertised nor a fair, just and reasonable criterion was adopted by considering the claim of any other eligible candidate. The record

produced by the learned counsel for the State relating to the appointment of the appellant reveals that, somewhere in June, 1998, the appellant filed

an updated application before the Minister for Tourism, J&K, Srinagar, for a suitable job in the Tourism Department. In his application he stated

that he had passed B.A. Part-I and militancy caused a description in his education as a result he could not complete his graduation. In the same

breath he stated therein that he hoped to do it in next two years. The appellant in his application enlisted some important events in which, according

to him, he had earned distinction. These events are related to Inter School Athletic Meet, School Games, Cycle Race and Inter-School Races held

somewhere around the years 1987 to 1989. The application appears to have been put up before the Minister who put a note thereon written on a

removable self-stick note slip directing some authority, most probably, the Chief Secretary ""C(sick) To spk. To ""CM"". There is another note

contained in this removable self-stick note slip indicating that the Chief Secretary was asked to ""discuss"". The matter finally appears to have been

placed before the Commissioner / Secretary to Government, General Administration Department. The record further reveals that Deputy

Secretary, GAD, on 26.10.1998 wrote a note on a file. Paragraphs 3 and 5 of the note are quoted hereunder:

3. The case was discussed with the Director General Tourism. He was requested to indicate whether any suitable post is available against which

Shri Owais Ahmad can be considered for appointment. He informed that no post of Assistant Tourist Officer is vacant. However some posts of

Senior Receptionists are available. Some of these have been referred to the SSRB. He mentioned that Shri Owais Ahmad can be considered for

appointment against one of the posts of Senior Receptionist carrying a pay scale of Rs. 5000-8000 at Bombay.

5. Shri Owais Ahmad does not possess above essential and desirable qualification for the post of Assistant Tourist Officer. The post of Senior

Receptionist can be upgraded to the level of Assistant Tourist Officer, if the Government so chooses, for the appointment of the applicant in relaxation of rules.

Then there is a note dated 28.10.1998 to the following effect :

C.M. has approved the appointment of Shri Owais Ahmad as Asstt. Tourist Officer in relaxation of rules. The post of Sr. Receptionist may be upgraded as ATO in the same grade.

3. Consequent upon the above, Government issued order No. 1421-GAD of 1998 dated 29.10.1998 according sanction to the upgradation of

the post of Senior Receptionist, Tourism Department Bombay, and appointment of the appellant as Assistant Tourist Officer, Bombay against the

above post, in relaxation of rules. This order came to be challenged by respondent, Rajan Gupta, in SWP No. 1363/2000, who claimed to be a

Post Graduate with Diploma in Management and Post Graduate in Marketing Management and having knowledge of German language. Another

writ petition, SWP No. 1235/2000 was filed by one Jugal Kishore Anand, who claimed to be B.Sc., L.L.B., Master in Business Administration

(MBA), P.G. Diploma in Tourism Administration with 18 months Post Graduation course in Advance Computer applications and one year's

Accountancy Training from Northern Zonal Accountancy Training Institute, J&K Government. Both the writ -petitioners claimed to be highly

qualified and suitable for the post of Assistant Tourist Officer whereas the appellant did not even possess the desirable qualifications, not to speak

of essential qualifications. According to the writ- petitioners, the only better qualification the appellant possessed was that his father at the relevant

time was a Cabinet Minister. The learned Single Judge found that the appointment of respondent No. 4 was made in violation of Articles 14 and

16 of the Constitution of India, in as much as the post against which the appellant was appointed, was never advertised to afford an opportunity to

all the eligible candidates, including the writ-petitioners, who were better qualified, to compete for the post. The learned Single Judge also

observed that it was nowhere stated in the reply that the appellant had stayed in his village and had no benefit of better education in the twin capital

cities of the State. The learned Single Judge also found that, in fact, there was no order granting relaxation in the requisite eligibility qualifications by

the competent authority and, in any case, the appointment was violative of the mandate of Articles 14 and 16 of the Constitution. This submission

made on behalf of the appellant before the learned Single Judge that appointment of the appellant was made in relaxation of rules to alleviate his

miseries also did not cut any ice with the learned Single Judge. The learned Single Judge was of the view that the Rules could be relaxed to meet

any emergent situation where injustice might have been caused or is likely to be caused to any individual employee or class of employees or where

the working of the Rule might have become impossible. The learned Single Judge, accordingly, quashed the order of appointment of the appellant.

Hence, this appeal.

4. We have heard learned counsel for the parties and have carefully gone through the record of this case.

5. The only submission made by learned counsel for the appellant is that the appellant happened to be the son of a State Cabinet Minister and

there was serious threat to his life as well as to his family and because of this, the appellant could not complete his education learned counsel further

submitted that the militants kidnapped brother of the petitioner and he remained in their custody for a long time and that too was a reason that the

appellant could not complete his studies. The precise submission of the learned counsel for the appellant is that after having considered the

circumstances in which the appellant had been placed, the Chief Minister thought it expedient, just and proper and also to alleviate the miseries of

the appellant that he was inducted in the Government service in relaxation of the rules. He submitted that the circumstances justified humanitarian

approach and, therefore, the order appointing the appellant cannot be said to be illegal.

6. We, however, find no merit in the submission of learned counsel for the appellant. There is no dispute with the proposition of law that the

Government has power to dispense with or to relax the requirement of any of the rules to the extent and with such condition as it may consider

necessary for dealing with the case in a just and equitable manner. The object and purpose of conferring the power on the Government to relax the

rule is to mitigate undue hardship in any particular case and to deal with a case in a just and equitable manner. If any Rule causes undue hardship or operates in an inequitable manner only in that event the State Government has the power to dispense with or relax the requirement of any such Rule.

The case in hand is not the one in which any Rule was causing any hardship, muchless undue, or was operating inequitably against the appellant.

The appellant did not possess any essential or desirable qualification. There was no post of Assistant Tourist Officer available in the Tourist

Department. The post was not referred to the Recruitment Board. The contention that the education of the appellant was hit by militancy and,

therefore, to alleviate his miseries, he was appointed has been aptly dealt with by the learned Single Judge. The appellant has been living in the twin

capital cities and, as per the certificates, has been studying in leading Missionary Schools of the State. In any case, the ground urged is not

sustainable. The only SRO the State has issued for compassionate appointment of a person who suffers on account of militancy is SRO 43 of

1994. SRO 43 clearly specifies the person who can claim compassionate appointment on the ground of militancy related incidents or actions. The

appellant is not covered by the terms and criteria laid down in the said SRO.

7. As is seen, by relaxing the relevant Rules and by not putting the post to other eligible candidates, desirous of taking the job, like the writ-

petitioners, prejudice has been caused to such persons who may have been standing in queue for the job with much superior qualifications and

fulfilling the conditions for recruitment. Therefore, we are in full agreement with the learned counsel for the respondents that the only qualification

which the appellant possessed and, probably, which weighed with the Government was that he was the son of a Cabinet Minister. The Constitution

guarantees equality of opportunity to all the citizens. Every person fulfilling the qualification for a post has a right to be considered. A person must

get a chance to compete. Whatever be the nature of appointment the guarantee of equality of opportunity has to be ensured the fairest method and

employer, especially the State Government is expected to adopt is that the posts are advertised. Every eligible candidate has a right to be given a

reasonable chance to apply and compete for the post and is impartially and

objectively considered by the competent authority by adopting a fair, just and reasonable criterion. This is the scope and mandate of Articles 14 and 16 of the Constitution of India. In the present case, this mandate of the Constitutional provisions has been given a complete go-bye to the detriment of the writ-petitioners.

8. In view of the above, there being no merit in this appeal, the same is dismissed.

There shall no order as to costs.