
(1999) 11 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1615 of 1991

Rajinder Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 29-11-1999

Acts Referred:

Constitution of India, 1950 — Article 16, 46

Citation : (2000) 84 FLR 556

Hon'ble Judges : Mehtab S. Gill, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Mr. Rajiv Atma Ram, for the Appellant; Mr. Rupinder Khosla, D.A.G., for the Respondent

Judgement

G.S. Singhvi, J.—These appeals are directed against the order dated 12.11.1991 passed by the learned Single Judge vide which he allowed Civil Writ Petition No. 10980 of 1990 "Kuldip Singh Cheema v. The State of Punjab and others" and Civil Writ Petition No. 12575 of 1990 Baltej Singh v. The State of Punjab and others" and quashed the appointment of appellant-Rajinder Singh to the post of "A" Class Naib Tehsildar.

2. The facts relevant to the issue relating to the legality of appointment of appellant-Rajinder Singh as "A" Class Naib Tehsildar against the vacancy reserved for physically handicapped candidates are that he and non-official respondents applied for recruitment as "A" Class Naib Tehsildars in pursuance of advertisement, Annexure P4, issued by the Chairman, Departmental Selection Committee, Patiata. Appellant-Rajinder Singh claimed consideration of his candidature as a member of backward class.

3. On the basis of their performance in the written test, some of the candidates were called for interview for selection against one post reserved for physically handicapped persons. Appellant-Rajinder Singh was not among them although he produced documents to show that he is physically handicapped. He, therefore, filed Civil Writ Petition No. 2401 of 1990 for issuance of a direction to the official

respondents to consider his candidature for appointment as "A" Class Naib Tehsildar against the post reserved for physically handicapped. On February 26, 1990, a Division Bench issued notice of motion and directed the respondents to interview him along with other candidates. In compliance of that direction, appellant-Rajinder Singh was interviewed by the Selection Committee and on being recommended by it, he was appointed as "A" Class Naib Tehsildar on the post reserved for physically handicapped. Consequently, his writ petition was dismissed as infructuous.

4. The selection of appellant-Rajinder Singh was challenged by Surinder Singh Basra and respondents-Kuldip Singh Cheema and Baltej Singh, who filed Civil Writ Petition Nos. 8671 of 1990, 10980 of 1990 and 12525 of 1990. The common prayer made by them was that selection/appointment of Rajinder Singh should be quashed because he was not eligible to be appointed as "A" Class Naib Tehsildar against the vacancy reserved for physically handicapped candidates and his selection was manipulated by making interpolations in the record of the Selection Committee. The official respondents contested the writ petition by asserting that Rajinder Singh satisfied the conditions of eligibility and he had been adjudged meritorious by a duly constituted Selection Committee.

5. Notwithstanding the identical nature of the main prayer made in the petitions their fate turned out to be diametrically opposite inasmuch as the petition filed by Surinder Singh Basra was dismissed by a Division Bench but those filed by Kuldeep Singh Cheema and Baltej Singh were admitted and ultimately allowed by the learned Single Judge.

6. When the admitted petitions were taken up for hearing the learned Single Judge summoned the Chairman of the Selection Committee and subjected him to lengthy cross-examination and after considering the pleadings of the parties as well as the statement made by the Chairman of the Selection Committee, he quashed the appointment of appellant-Rajinder Singh on the following two grounds :-

(i) That he had manipulated an order from the His Court for his interview by the Departmental Selection Committee; and

(ii) That he was not adjudged meritorious by the Selection Committee.

Some of the observations made by the learned Single Judge in the order under challenge are extracted below :-

"From the pleadings of the parties it emerged that respondent No. 4 played a dubious game. The interim orders passed on various dates by this Court clearly indicate that respondent No. 4 manoeuvred to get an order from this Court that he be interviewed by the Departmental Selection Committee and the interview will be subject to the result of the writ petition."

"He was ineligible to be called for interview. He secured a march over the candidates in the category of physically handicapped persons by procuring an

order from this Court that he be interviewed at his own risk and responsibility subject to the final decision of the writ petition filed by him. This order was understood by the Departmental Selection Committee as if he (respondent No. 4) had to be selected in the category of physically handicapped persons. The order was misunderstood. The interim order dated July 30, 1990 indicates that the Departmental Selection Committee showed lack of understanding of the tenor of this Court's order dated February 26, 1990 and hastened to do what it was not required to do and let respondent No. 4 to accomplish what otherwise he had failed to do. The selection and thereafter appointment of respondent No. 4 cannot be upheld for the reason that the same is the result of fraud and evil mechanism and accordingly quash it."

"A bare reading of the statement of Shri N.K. Arora in unmistakable terms suggests that no proper record was maintained regarding the written test, viva voce test and merit list of different categories. According to the witness, more than 10,000 candidates appeared in the written test. Registers Exhibits A-1 to A-4 contain the marks awarded to the candidates appearing in the written test and these registers contain the result of the written examination of less than 800 candidates. Thus, it is impossible to rely upon this record for the reason that these registers do not contain the award list of 10,000 candidates who allegedly appeared in the written test as deposed by the witness. It is painful how the Departmental Selection Committee dealing with the selection of public servants maintains the record of selection. To say the least, it was done in a most perfunctory manner. I do not want to comment further since the Chairman when appearing in the witness box was straight forward and he made a clean breast of everything. Respondent No. 4 did not qualify in the written test."

Shri Rajiv Atma Ram and Shri Rupinder Khosla argued that the impugned order should be set aside because the finding recorded by the learned Single Judge about the merit position assigned to appellant-Rajinder Singh by the Selection Committee is perverse. They further argued that the observations made by the learned Single Judge in respect of the orders passed by Division Bench in Civil Writ Petition No. 2401 of 1990 *Rajinder Singh v. The State of Punjab and others* are wholly unjustified and unwarranted. Shri Rajiv Atma Ram stated that appellant-Rajinder Singh who had joined service in 1990 is still holding the post of "A" Class Naib Tehsildar and, therefore, after one decade he should not be thrown out of job. He pointed out that although the Division Bench had not stayed the operation of the order passed by the learned Single Judge but, in SLP No. 18999 of 1999 titled *Rajinder Singh v. State of Punjab*, their Lordships of the Supreme Court stayed the operation of the order dated 12.11.1991 and this fact was noticed by the Division Bench while admitting the appeal on February 27, 1992. Learned counsel further pointed out that appellant-Rajinder Singh had secured 179 marks in the written test and 21.66 marks in Vive Voce making an aggregate of 200.66 marks and the next candidate had secured an aggregate of 220.33 marks and submitted that in view of the higher merit of appellant-Rajinder Singh, the learned Single Judge could not have nullified his selection

ignoring the fact that Writ Petitioner-Kuldip Singh Cheema had secured only 193 marks in aggregate.

7. In our opinion, the submissions of Shri Rajiv Atma Ram and Shri Rupinder Khosla merit acceptance. A careful scrutiny of order under appeal shows that the learned Single Judge has not assigned any reason for taking the view that appellant-Rajinder Singh was not eligible to be considered for selection against the vacancy reserved for physically handicapped candidates nor he has given any indication as to how any candidate other than appellant-Rajinder Singh could have been selected for appointment against the reserved vacancy in spite of the higher marks secured by the latter.

8. We are not unmindful of the fact that the advertisement issued by the Chairman, Departmental Selection Committee did not contain a clear stipulation regarding reservation of vacancy for physically handicapped person but, in our opinion, action taken by the Selection Committee to interview the candidates on the premise that one of the advertised posts was to be filled from among physically handicapped candidates cannot be termed as illegal or arbitrary. The instructions issued by the Government of Punjab for reservation of vacancies for physically handicapped persons are consistent with the mandate of Article 46 of the Constitution of India and, therefore, the Departmental Selection Committee was bound to act in accordance with those instructions while making selection for recruitment against the advertised posts. In any case, grievance on this score could have been made only by a person who did not get opportunity of consideration against the reserved vacancy.

9. The observations made by the learned Single Judge with regard to the orders passed by the Division Bench in Civil Writ Petition No. 2041 of 1991 to say the least are most uncharitable, unwarranted and unjustified. The basics of judicial discipline warranted that the learned Single judge should have refrained from casting unnecessary aspersion on the judges constituting Division Bench. However, in the larger interest of the institution, we refrain from making any further observations on this aspect of the matter.

10. For the reasons mentioned above, the appeals are allowed. The order passed by the learned Single Judge is set aside and the writ petitions filed by respondents Kuldip Singh Cheema and Baltej Singh are dismissed. We would have saddled the writ petitioners with costs but refrain from doing so because neither of them has appeared to contest the appeals.

11. Appeals allowed.