

(1985) 03 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 607 of 1982

Sardar Baljit Singh Johar and another	APPELLANT
Vs	
Union of India and others	RESPONDENT

Date of Decision : 12-03-1985

Acts Referred:

All India Services Act, 1951 — Section 2A, 3
Land Acquisition Act, 1894 — Section 12, 18
Income Tax Act, 1961 — Section 132(1)
Indian Forest Service (Initial Recruitment) Regulations, 1966 — Regulation 3, 4, 5, 5(2), 5(2)(b), 66

Citation : (1986) J LJ 60 : (1985) MPLJ 650

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Advocate : V.S. Kokje, for the Appellant; B.G. Nema and S.R. Phadnis, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J.

By this petition under Article 226 of the Constitution of India, the petitioners, who are members of the Indian Forest Service, presently posted at Indore, seek a direction about their initial recruitment to the Indian Forest Service, keeping in view the Indian Forest Service (Recruitment) Rules, 1966, the Indian Forest Service (Appointment by Promotions) Regulations, 1966, and the Indian Forest Service (Initial Recruitment) Regulations, 1966.

The respondent No. 1, the Union of India, admits that the petitioners were eligible on 1-7-1966 for consideration, and inclusion of their names at the initial recruitment stage, in view of the Initial Recruitment Regulations, 1966. The Union of India also admits that in order to make selections from amongst the eligible State--Forest Service--officers, special selection Board was constituted by the Central Government under Regulation 3 of the Initial Recruitment

Regulations. On approval of the Selection Board's recommendations by the Union Service Commission, as required under Regulation 5 of the Initial Recruitment Regulations, the officers were appointed with effect from 1st October, 1966, subject to the availability of vacancies in the State Cadre concerned.

Indian Forest Service was constituted with effect from 1st July, 1966, in pursuance to section 2A of the All India Services Act, 1951. The Indian Forest Service (Recruitment) Rules, 1966, The Indian Forest Service (Initial Recruitment) Regulations, 1966, Indian Forest Service (Appointment by Promotion) Regulations, 1966, were initially framed and later on in 1968, Indian Forest Service (Regulation of Seniority) Rules, 1968, regulating the recruitment and other conditions of service of the members of the Indian Forest Service were made by the Central Government in consultation with the State Government and the Union Public Service Commission in exercise of its powers conferred by section 3 of the All India Services Act, 1951. Apart from the rules, referred to above, there have been numerous notifications and amendments to the rules. It appears from the record, that much chaos and confusion prevailed in the matter of implementation of these rules, leading to number of writ petitions before different State High Courts and even before the Supreme Court. The judgments delivered therein again necessitated fresh preparation of lists of eligible candidates, amendment in rules, and issuance of notifications to meet exigencies. It is not merely the petitioners' grievance, but also a grim reality emerging from the return of the Union of India, as is evidenced by paras 4, 5 and 6 of the return, filed by the Union of India.

Some of the State Forest Service Officers of Jammu and Kashmir, who were not adjudged suitable for appointment to the State Cadre of the Indian Forest Service at its initial constitution, filed writ petitions in the Supreme Court challenging inter alia the vires of certain rules and Regulations and the initial appointments made to the Jammu and Kashmir cadre of the Service. The Hon'ble Supreme Court allowed the writ petitions by its orders dated the 29th April, 1969, and quashed the initial appointments made to the Jammu and Kashmir cadre of the Service-- A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , mainly on the ground that the Chief Conservator of Forests of Jammu and Kashmir, who was himself a candidate for selection, could not be a member of the Special Selection Board. The Supreme Court held inter alia that the procedure followed for selection from amongst the eligible State Forest Officers was against the principles of natural justice. The initial appointments made to the Madhya Pradesh Cadre of the Indian Forest Service at initial recruitment in 1967 were regarded as having become invalid as a consequence of the Supreme Court's judgment dated 29th April, 1969, in Writ Petitions Nos. 173-175 of 1967 and subsequent orders of the Supreme Court in SLPs Nos. 766/70 and 1574 to 1578 of 1970, filed by the Government against the judgment of the High Courts of Assam and Nagaland and Mysore. Accordingly notification to this effect was issued, vide Notification No. 3/14/71-AIS(IV) D/-

27-4-1971.

The Recruitment Rules were amended empowering the Central Government to make fresh selection from amongst the eligible State Forest Service Officers and to give effect to such appointments to the Service from the same date on which the appointments which became invalid had been given effect to. The relevant sub-rule (3A) of Rule 4 of the Recruitment Rules inserted vide Ministry of Home Affairs Notification No. 3/30/70(i)- AIS(IV) dated the 1st March, 1971, is reproduced below:

(3A). --Notwithstanding anything contained in this Rule, where appointments to the Service in pursuance of the recruitment under sub-rule (1) have become invalid by reason of any judgment or order of any Court, the Central Government may make fresh recruitment under that sub-rule and may give effect to the appointment to the Service in pursuance of such fresh recruitment from the same date on which the appointments which have become invalid as aforesaid had been given effect to.

The Hon'ble Supreme Court of India upheld the validity of this sub-rule in its order dated the 16th October, 1974, in writ petition of Parvez Quadir v. Union of India A I R 1975 S C 445.

The Union of India also admits in its return para. No. 7 that the Special Selection Board, which met for making selection for the initial recruitment for the Madhya Pradesh cadre met on the 21st, 22nd, 23rd February, 1967 and 23rd January, 1968 and considered the service records of 218 eligible State Forest Service Officers. This selection was, however, treated as ab initio void following the judgment of the Supreme Court, as stated above. The Special Selection Board met for the second round of selection for the Madhya Pradesh Cadre of the Indian Forest Service for initial recruitment on the 5th and 6th May, 1971. The Board considered service records of 224 Officers who were found eligible as on 1-7-1966. The Union of India also admit that there is no provision in the Rules for communicating the reasons for non-selection for appointment as initial recruits, to the officers who were not found suitable.

The Union of India also admitted that a Special Leave Petition, preferred by some affected officers and not the Union of India against the judgment of the Bombay High Court, referred to by the petitioners, is still pending before the Hon'ble the Supreme Court (para 8 of the return).

So far as the return filed by the State of Madhya Pradesh (respondents 2 and 3), it is virtually on the same lines as that of the Union of India.

It is in such factual background, where uncertainties of rules prevail, confusion in implementation of these rules, the ensuing litigation in High Courts and Supreme Court, amendments to the rules in light of the judgments delivered by the Supreme Court, that the preliminary objection about delay and laches, raised by the respondents requires to be considered. Delay is not always fatal to a petition,

each case has to be considered and decided on its own facts. In view of peculiar factual position, the question of delay loses much of its significance, more so, in view of the admitted facts that the petitioners were eligible for recruitment to Indian Forest Service on 1-7-1966 (see return para 8) and the contention that in absence of rules for communication the reasons for non-selection for appointment as initial recruits, the objection regarding delay cannot be raised by the respondents, much less entertained by the Court in such circumstances.

Taking all the relevant considerations of the case into consideration and especially in view of the Supreme Court judgment in Union of India (UOI) Vs. H.P. Chothia and Others, and keeping in view the fact that the petitioners' eligibility for initial recruitment to the Indian Forest Service has not been disputed, the petition cannot be dismissed on the technical ground of delay or laches. It has been contended by the respondents that a decision of the Court does not confer any right or give rise to a cause of action. There could be no quarrel with this proposition. However, what has been contended by the petitioners is that in view of the confusion that prevailed in implementation of the rules and the various decisions of the High Courts, ultimately culminating in the decision of the Supreme Court in the case of H.P. Chotia (supra), it cannot be said that the petitioners are guilty of deliberate delay on their part in coming to this Court for relief.

There is yet another aspect of the matter why the petition can and should not be dismissed on the technical ground of delay. The respondent-State has come out with a claim that "there is no provision in the Rules for communicating the reasons for non-selection for appointment as initial recruits to the officers who were not found suitable" (see para 8 of the respondent-State's return). Apart from the validity of this contention, so far as the question of delay is concerned, suffice it to say that when the person concerned is not informed of the reasons, as the rules do not provide for it, at least it does not lie in the mouth of the respondents to seek dismissal of the petition on a technical plea of delay or laches in face of such a contention raised by them in the return. It could well have been said had the petitioners been informed in time that despite intimation to them they failed to come before the Court within a reasonable time. But that is not the respondents' case nor the contention. On the other hand, what is contended is that rules do not provide for any communication. The validity of this contention will be considered later.

Learned counsel for the petitioners has contended that the initial selection has been totally vitiated in view of the violation of the mandatory provisions of Regulation 5 (2) of the Indian Forest Service (Initial Recruitment) Regulations, 1966, which is reproduced hereinunder:

R. 5.--Preparation of list of suitable officers:

(1) The Board shall prepare in the order of preference, a list of such officers of State Forest Service, who satisfy the conditions specified in regulation 4 and who

are adjudged by the Board suitable for appointment to posts in the senior and junior scales of the Service.

(2) The list prepared in accordance with sub-regulation (1) shall then be referred to the Commission for advice, the Central Government along with --

(a) the records of all officers of the State Forest Service included in the list;

(b) the records of all other eligible officers of the State Forest Service who are not adjudged suitable for inclusion in the list, together with the reasons as recorded by the Board for their noninclusion in the list; and

(c) the observations, if any, of the Central Government on the recommendations of the Board.

(3) On receipt of the list, along with the other documents received from the Central Government, the Commission shall forward its recommendations to that Government.

It is contended by the learned counsel that as a result of non-compliance of this mandatory provision, the list prepared consequently becomes invalid. Learned counsel has contended that it was the bounden duty of the Selection Board to have prepared the list of eligible officers and the Central Government should have forwarded such list to the Union Public Service Commission for its advice. His emphasis is on Regulation 5 (2)(b) of the Regulations. No doubt the respondents have come out with a return that the cases of the petitioners were duly considered by the Special Selection Board and that they were not found suitable for the Indian Forest Service initial recruitment (see para 11 of the return). A perusal of the record, which has been placed for inspection today, goes to show that all that has been said in paragraph 6 of the proceedings of the Special Selection Board is that "the Board considered that the service records of the officers whose names are given below were not such as to justify the inclusion of their names in the above list of officers, adjudged suitable for appointment to the Indian Forest Service at its initial constitution", and in this very paragraph a long list of 17 officers in the senior scale and 75 officers in the junior scale have been given. No reason as such is assigned as to why a particular officer though found eligible was not adjudged suitable. At this stage learned counsel for the respondent Union of India, placing reliance on a decision of the Calcutta High Court in *Arun Kumar Deb v. Union of India* Matter No. 249 of 1979, decided on 9-5-1980, submitted that the fact that the endorsement records that "on consideration of the service records the officers were not adjudged suitable for appointment in the initial constitution of Indian Forest Service", this amounts to reasons. With respect to the learned Judge, this contention cannot be accepted. In fact "the service record not found satisfactory" is the conclusion of the Board and not the reasons for noninclusion in the list at the initial stage of recruitment to the Indian Forest Service. The respondents also do not dispute that the Regulation requires that the Board is duty bound to record the reasons for non-inclusion of an eligible officer in the list

and such reasons are required to be forwarded to the Union Public Service Commission. When there are no reasons recorded as such, the question of forwarding the same does not arise. Learned counsel while seeking support from the Calcutta decision in case of Arun kumar Deb (supra), overlooked the fact that a similar view of the Kerala High Court did not find favour with the Supreme Court, as can be gathered from H.P. Chotia's case (supra). Paragraph 6 in H.P. Chotia's case (supra) is material for the purpose and is reproduced hereinunder:

The words "shall then be referred to the Commission for advice, by the Central Government along with" appear to be of a mandatory character and govern not only clause (a) but all the other clauses, viz. (b) and (c). Thus, a plain interpretation of Regulation 5 would show that the requirement mentioned in clauses (a), (b) and (c) must be complied with before the recommendation is sent to the Commission. Clause (b) clearly States that where eligible officers of the State Forest Service are not found suitable, reasons must be given by the Board for their non-inclusion in the select list. This provision, in our opinion, is in public interest and has been made with a view to avoid arbitrary or capricious exercise of discretion by the Board, and also to prevent any hostile discrimination. The word "adjudge" is a very strong term and indicates that the Board must be satisfied that a person is not suitable and the requirement for giving reasons has been enjoined for the purpose of proving that the Board was not only satisfied but has given grounds of its satisfaction so as to exclude possibility of any oblique or extraneous consideration. In these circumstances, therefore, we are unable to agree with the counsel for the appellant that the requirement of giving reasons as contained in Regulation 5 (2)(b) is merely an idle formality and it is a substantial compliance with the said clause if the Board peruses the confidential rolls of officers and forwards the record to the Commission. Another purpose served by this provision is that the Commission would be in a position to know the views of the Selection Board and the reasons given by it for excluding a particular candidate so that it may verify the correctness of the reasons given by the Board with the record forwarded by the Board. In these circumstances, we are satisfied that the provisions for giving reasons by Regulation 5(2)(b) are mandatory and must be complied with. It is not disputed in the present case that the Board had not complied with this part of the provision of Regulation 5 and this was sufficient to vitiate the selection made by the Board. Mr. Bhatt relied on an unreported decision of the Kerala High Court where, in a very summary fashion, the said High Court has held that there was no requirement in the Regulation that reasons should be given. In this connection, the High Court of Kerala observed as follows:

"It is to be observed that there is no such requirement in the Rules with which we are concerned in the instant case. Being so, it would be inappropriate to import any requirement of recording of reasons for selection in this case."

The High Court does not appear to have applied its mind to the language used in section 5 (2)(b) of the Regulation, nor has it considered the avowed purpose of

this provision which is undoubtedly in public interest. In these circumstances, therefore, we find ourselves unable to agree with the view taken by the Kerala High Court on this point and we overrule the same.

This decision fully supports the contention advanced by the petitioners. The onus lies on the Government to make out a case that reasons were in fact given by the Board for selecting a certain number of officers and for non-inclusion of others who were adjudged as not fit for inclusion. In case of those not included, though eligible, reasons have got to be recorded by the Board and except for the endorsement quoted above, there is no reason whatsoever to arrive at the conclusion that reasons had in fact been assigned for non-inclusion of the petitioners in the initial recruitment list. To hold that whatever is endorsed should be treated or considered as reasons for non-inclusion, is nothing short of offending the term "reason" itself. The Supreme Court has laid down in H.P. Chotia's case (supra) that whenever eligible officers are not found suitable for inclusion in the list, reasons must be given for their such non-inclusion in the select list. The purpose is evident. In order to avoid arbitrariness or capricious exercise of discretion or hostile discrimination, it should appear from the record and the reasons, "if any", that the adjudication arrived at by the Board is fair and impartial. The Supreme Court has further considered the term "adjudged" in the aforesaid case and in this context put up a short paragraph, by way of an endorsement, would be no substitute for giving reasons. The Supreme Court has observed in H.P. Chothia's case (supra):

The word "adjudge" is a very strong term and indicates that the Board must be satisfied that a person is not suitable and the requirement for giving reasons has been enjoined for the purpose of proving that the Board was not only satisfied but has given grounds of its satisfaction so as to exclude possibility of any oblique or extraneous consideration. In these circumstances, therefore, we are unable to agree with the counsel for the appellant that the requirement of giving reasons as contained in Regulation 5 (2)(b) is merely an idle formality and it is a substantial compliance with the said clause if the Board peruses the confidential rolls of officers and forwards the record to the Commission. Another purpose served by this provision is that the Commission would be in a position to know the views of the Selection Board and the reasons given by it for excluding a particular candidate so that it may verify the correctness of the reasons given by the Board with the record forwarded by the Board.

What is apparent from the record placed before this Court today is the conclusion or the view taken by the Board, but not the reasons for taking a particular view. Such a broad and all embarrassing observation, included--as many as 92 officers, not adjudged suitable for inclusion in the select-list of initial recruitment of Indian Forest Service. Now, the law is settled that even administrative actions must be informed with reason and fairness. Where the record placed is silent about the reasons when required to be assigned, it also affects the element of fairness involved in the process. Even if the Board is taken to have acted in its

administrative capacity, it was incumbent on the Board to assign reasons and not merely record its conclusions. The record should reveal the rational nexus between the facts (in the instant case the service records considered) and the conclusions derived from such facts. The proceedings as a whole above if very liberally construed and interpreted do not point to the rational nexus between the facts and the conclusions, which is so very essential for the process of reasoning. In this view of the matter, the resultant Selection list of initial recruitment cannot be allowed to stand.

Shri Phadnis, appearing for respondents 87, 89, 93, 9 and 104 has submitted that the petitioners have not made any case that the Selection Board while making the selection defined itself to the cadre strength. This point deliberately confines itself to the permissible cadre strength. This point, though not raised in the petition in so many words, yet the inference which can be deduced from the facts and the cadre strength, it cannot be said that the submission made by the petitioners that the Board confined itself to the cadre strength cannot be ruled out. Shri Phadnis also supported the learned counsel for the Union of India on the ground of delay or laches, with special reference to paragraph 12 of the petition and submitted that the case of H.P. Chothia (supra) has no application to the present petition. So far as the question of delay or laches is concerned, the same has been already dealt with and as regards the case of H.P. Chothia (supra), it is held that it applies on all fours to the facts of the present petition. The record placed by the respondents does not indicate reasons, as propounded by the Supreme Court in the case of H.P. Chothia (supra).

It has been contended by the respondent Union of India that reasons for non-inclusion of the petitioners at the time of initial recruitment were not required to be communicated under Regulation 66. This contention does not appear to be correct. In order to appreciate this contention it is necessary to bear in mind that the Board was constituted with a special purpose of selection and under clause (b) of section 5 (2) was required to adjudge the suitability of candidates. This process of adjudging has been explained by the Supreme Court in Chothia's case (supra) and has already been referred to above. The word "adjudge" is a very strong term and indicates that the Board must be satisfied that a person is not suitable and the requirement for giving reasons has been enjoined for the purpose of proving that the Board was not only satisfied but has given grounds of its satisfaction so as to exclude possibility of any oblique or extraneous consideration. It is obvious from the judgment of the Supreme Court that the Board was not expected to give only the findings or conclusions but was also required to give reasons for coming to that conclusion. If this was the purpose, non-communication of the reasons, as not provided in the Regulations, cannot be upheld, although it has been contended by the learned counsel for the Union of India that it was not incumbent on the respondents to communicate reasons of non-inclusion, of the petitioners. The Supreme Court has in a number of cases, notwithstanding want of provision in the law for communicating any decision or order, has propounded the necessity of such communication, as in the case of

Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, , where the matter related to land acquisition and the Court was considering the award made by the Land Acquisition Officer. There being no provision in the Land Acquisition Act for communicating the award to the owner of the land or person interested therein, yet the Supreme Court while dealing with sections 12 and 18 of the Land Acquisition Act, said that the necessary concomitant of making an award also involves communication thereof to the party concerned. Similarly, while considering the question of reasons recorded by the authorised officer or the income tax Officer on the basis of which approval is obtained for retention of account-books and documents of an Assessee seized during the course of a search conducted pursuant to an authorisation issued under sub-section (1) of section 132 of the income tax Act, 1961, and if such documents are retained beyond the period of 180 days from the date of seizure, the Supreme Court has held that "although sub-section (8) does not in terms provide that the Commissioner's approval or the recorded reasons on which it might be based should be communicated to the concerned person, but in their view, since the person concerned is bound to be materially prejudiced in the enforcement of his right to have such books and documents returned to him by being kept ignorant about the factum of fulfilment of either of the conditions, it was obligatory upon the Revenue to communicate the reasons to the person concerned and in absence of such communication the Commissioner's decision according his approval would not be effective". The question of effectiveness apart, necessity of communication of reasons and the ultimate decision prominently emerges out of these two decisions of the Supreme Court: Commissioner of Income Tax, West Bengal III and Others Vs. Oriental Rubber Works, . In this view of the matter, even this contention that communication was not necessary as not provided under the rules/Regulations, cannot be upheld, particularly when a ground of delay as stated above, is sought to be advanced to defeat the petitioners' claim.

Even at the cost of repetition, as delay and laches have been much emphasised by the respondents, it needs to be said that the bar of laches or delay cannot be availed of to defeat otherwise admitted just claims of the petitioners and the corresponding continuous duty imposed on the respondent-Union of India to implement the Initial Recruitment Regulations, 1966, as interpreted by the Supreme Court in H.P. Chothia's case (supra), in the absence of any special circumstance showing that it would be unjust or inequitable to grant the relief sought by the petitioners. In this case no such circumstance has been shown. In the peculiar circumstances of this case, wherein a confusion and chaos had been prevailing in the matter, numerous disputes brought before the different High Courts and the Supreme Court and adjudications thereon necessarily resulting in revision of the recruitment lists at the initial stage of recruitment and even amendment of rules, the petitioners cannot be said to be late in approaching this Court for their relief. As the recruitment to Indian Forest Service in accordance with the Indian Forest Service (Initial Recruitment) Regulations, 1966, is a

continuous duty imposed by these Regulations, which even the respondent-Union of India does not contest and more particularly after the judgment in H.P. Chothia's case (supra), wherein the Supreme Court did not merely decide the appeals but also laid down the "law" under Article 141 of the Constitution of India, than with what justification can it be contended by the respondent-Union of India that the initial recruitment to Indian Forest Service in accordance with Regulation 5(2)(b) of the Initial Recruitment Regulations, 1966, as interpreted and made imperative is not applicable to the instant case? How can its effect be avoided. In fact such a list, in accordance with the Supreme Court judgment, should have been voluntarily prepared without even waiting for a petition. Instead of doing so, when a petition is brought, the respondent-Union of India complains of delay without specifying any such circumstances so as to refuse relief. The initial recruitments made, had to be cancelled, rules were required to be amended, because of the judgment of the Supreme Court in A.K. Kraipak v. Union of India (supra) and still there appears to be a persistence in perpetuating a wrong even after the Supreme Court's pronouncement in yet another case relating to Indian Forest Service. How could the effect of the law laid down by the Supreme Court in H.P. Chothia's case (supra) be avoided? The respondents have admitted that the initial selection was treated as void ab initio following the judgment of the Supreme Court in A. K. Kraipak's case (supra) (para 7 of the return). It, therefore, does not stand to reason why the judgment in H.P. Chothia's case (supra) should not be given effect to and that too mainly on the ground of delay, as urged by the Union of India. All that the respondent-Union of India has stated in its return is that "the petition suffers from laches and delay and, therefore, deserves to be dismissed on this account alone",--(paragraph 18 of the return). This by no stretch of imagination can be said to be a special circumstance showing that it would be unjust or inevitable to grant the relief sought by the petitioners. It cannot be overlooked while considering this plea that the respondents admitted that the petitioners were eligible for initial recruitment. Unless by undue delay or laches, inconsistent legal or equitable considerations have arisen, which judicial conscience cannot with equanimity ignore, justice should not be denied, simply because the Court has not been moved soon after the alleged infringement or injury, and the delay has not been explained, In this case the petitioners have explained the delay, attributable to the confused state of affairs prevailing in the implementation of the Regulations itself. The rule, which says that the Court may not inquire into the belated claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain a petition. Where the petitioners' claim is itself admitted by the respondents, it would be unjust to deny the relief claimed. The eligibility of the petitioners for recruitment having been admitted and the reasons for non-inclusion not communicated and a number of litigations pending, amply justify interference by this Court.

In this view of the matter and for the foregoing reasons, this petition deserves to

be allowed and is accordingly allowed with costs. Counsel's fee Rs. 250, if certified. The initial recruitment list, Annexure-C, is liable to be quashed and is accordingly quashed. The respondents are directed to decide the initial recruitment to the Indian Forest Service afresh in accordance with the Indian Forest Service (Initial Recruitment) Regulations, 1966, considering the petitioners' claim for inclusion in accordance with the Rules and the Regulations. The amount of security deposit, after verification, be refunded to the petitioners.