

(1998) 02 RAJ CK 0062
In the Rajasthan High Court
Case No : Civil Writ Petition No. 383 of 1994

Suja Ram Gurjar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-02-1998

Acts Referred:

Army Act, 1950 — Section 13
Constitution of India, 1950 — Article 226

Citation : (1998) 1 RLW 608 : (1998) 1 WLN 158

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Judgement

B.S. Chauhan, J.—The petitioner is aggrieved by the order dated 14.1.1994 contained in Annexure. Rule 2 passed by the respondent No. 2 declaring him ineligible for the post of Sainik General Duty.

2. The petitioner claims that he belongs to Gurjar community, for which some relaxation has been made for the post of Sainik General Duty. An applicant belonging to the said community, who has passed VIII Class, can apply for the said post if he is above sixteen years and below twenty years of age. The Date of Birth of the petitioner is 1.7.1973. Thus, according to the requirements contained in Annexure P. 6, he was eligible to apply for the said post upto 30.6.1993. The petitioner applied much prior to the said date and he was called for enrollment on 6.12.1992. However on that date he was told that the Transfer Certificate Submitted by the petitioner was not complete as it did not bear the signature of the District Education Officer and he was directed to complete the said formality and appear again on 7.6.1993. The petitioner got the transfer certificate signed by the said officer and appeared before the enrolling officer on 7.6.1993 but he was informed that the certificate issued by the Tehsilder did not bear the date of its issuance and it was incomplete and he was asked to get it completed. Petitioner got that formality completed and was allowed to appear in the physical test, which continued for two days, i.e., on 16th and 17th June, 1993, and he was found fit in physical proficiency. After the said test the petitioner was sent

for medical examination and was not approved. Thus, his case was referred to the Medical Specialist in the Military Hospital, Jodhpur, where he was examined on 6.1.1994 and was declared medically fit. On the basis of medical fitness when the petitioner went to appear in the written test, he was told by a letter dated 14.1.1994 that he was not eligible for the said post being over-aged. The test was to be conducted on 23.1.1994 and, thus, the petitioner approached this Court on 17.1.1994 and obtained the interim direction that he would be allowed to appear in the said written examination. He appeared in the said examination and qualified the same. Thus, the only issue is whether under these circumstances the petitioner is eligible for the said post?

2. It is settled law that a person must be eligible and must fulfill all the requirements on the last date of submission, of the application form and if a person possesses the requisite eligibility qualification subsequent to the last date for submission or the application form, he shall be considered ineligible as the earlier theory of result relating back to the date of examination has consistently been dis-approved by the Hon'ble Supreme Court. (Vide: U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, ; Harpal Kaur Chahal v. Director. Industries. Punjab 1995 Suppl. (4) SCC 706 ; Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, ; and AIR 1998 91 (SC))

3. However, in the instant case, this law is not applicable because there is no advertisement inviting applications for the said post. Mr. Vineet Mathur has pointed out that a Circular contained in Annexure Rule 6 was issued in the year 1986 which specifically provided that in case the relaxation of qualification etc. was granted, the applicant should not be more than twenty years of age on the date of enrollment. Chapter III of the Army Act, 1950, deals with appointment and enrollment. In the instant case, the term enrollment is involved. Relevant provisions of the Act reads as under:

13. Procedure before enrolling officer—Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrollment, and shall after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

14. Mode of enrollment—If, after complying with the provisions of Section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment, he shall sign and shall also cause such person to sign the enrollment paper, and such person shall thereupon be deemed to be enrolled.

15. Validity of enrollment—Every person who has the space of three months been

in receipt of pay as a person enrolled under this Act and been borne on the rolls of any corps or department shall be deemed have been duly enrolled, and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrollment or on any other ground whatsoever; and if any person, in receipt of such pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrollment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim, affect his position as an enrolled person under this Act or invalidate any proceeding, act or thing taken on done prior to his discharge.

4. Army Rules, 1954 also throw sufficient light on this issue.

5. According to the statutory provisions and the Rules, an enrollment is in the nature of a contract signed by the enrolled person wherein the terms and conditions of his service are specified and by this contract the enrolled person undertakes to serve continuously for a specific period in a particular corps or department in which he is enrolled. In *Jamini Kanta Das Vs. Union of India (UOI)*, , a Division Bench of the Calcutta High Court considered this issue and observed as under:

Enrollment is an act...which is well defined under the Indian Army Act.... It is only after the enrolling officer is satisfied about certain particulars and a form is signed by the person desirous of being enrolled, that the enrolling officer also signs the form, and under...Army Act, "the person shall then be deemed to be enrolled.

6. Thus, in view of above, a person may be said to have been enrolled when he is found suitable for enrollment and the contract of service is signed by the candidate and the enrolling officer. In the instant case, the petitioner has not yet been enrolled and during the pendency of this prose, he has become over-aged. He cannot be enrolled dehors the statutory provisions and Rules. Thus, he is not entitled for any relief" under the extraordinary discretionary jurisdiction under Article 226 of the Constitution of India.

7. No doubt, the petitioner has suffered a lot for the non-action and apathy of the respondents as he has applied for enrollment while he was eligible to be considered for the said post and the respondents either ought to have rejected his application straight-way being not complete or have expedited the matter so that he could have been enrolled within time. Keeping the enrollment process itself pending for a period of one and half years cannot be approved. But at the same time, the Court has its own limitations and cannot grant relief in contravention of Recruitment Rules as no one is entitled to employment dehors the statutory rules. (Vide: *Smt. Ravindra Kaur v. State of Punjab* 1995 Suppl. SCC 138 ; *Harpal Kaur Chahal* (supra); *State of M.P. and Others Vs. Shyama Pardhi* etc. etc., : *M.P. Electricity Board Vs. S.S. Modh and Others*, *Patna University and Another Vs. Dr. Amita Tiwari (Mrs.)*, ; and *Hitendra Kumar Bhatt* (supra).

8. Mr. Malik has submitted that in view of the special facts and circumstances of the case, as the petitioner has become over-aged because of the non-action of the respondents and this court has entertained the petition and granted interim relief under which he has been permitted to appear in the written test, it would be equitable to allow the petition. The submission made by Mr. Malik seems to be very attractive but no relief on equity can be granted in contravention of the statutory provisions. In *Madamanchi Ramappa and Another Vs. Muthalur Bojjappa*, (he Supreme Court has held as under:

What is administered in Courts is justice according to law and consideration of fair play and equity however important they may be, must yield to clear and express provisions of the law.

9. Similarly, in *Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others*, it has been held by the Apex Court that in construing a statute equity will not relieve against a public statute of general policy in cases admitted to fall within the statute and it is the duty of the Court to give effect to the legislative intent.

10. Thus, equity can supplement to but cannot supplant the statutory provisions and if any room is given for equity or sympathy, the recruitment rules would become nugatory and field would be left open for nepotism. Thus, it is not permissible to bend the law for adjusting equity. (Vide *Ahmedabad Municipal Corporation v. Virendra Kumar Patel*, 1997 (7) SCC 650, *Dr. (Kumari) Tabassum Sultana Vs. State of U.P. and another*,

11. It is also settled law that the Court cannot pass an order contrary to law. (Vide: *Union of India and Another Vs. Kirloskar Pneumatic Company Limited*, and no sympathy is required to be shown in service matters as relaxing the prescribed requirements in the case of one individual may cause injustice to others. (*Hitendra Kumar Bhatt (supra)*).

12. Thus, in view of the above, the petition is devoid of any merit and it cannot be allowed. However, at this juncture Mr. V.K. Mathur, learned Counsel appearing for the respondents states that the petitioner is still eligible to be considered for the post of soldier Tradesman category and the respondents are willing to consider his case for said category strictly in accordance with law. If the petitioner is willing to apply in the said category, he may fill-up the form within a period of four weeks and if he does so, the respondents are directed to complete the formalities within eight weeks thereafter or upto 30th May, 1998 as otherwise the petitioner would become over-aged on 1st July, 1998.

13. With these observations, the writ petition is disposed of....