

(1995) 01 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Appeal No's. 1593 of 1991 and 3302 of 1992

Suresh Harmilapi

APPELLANT

Vs

Sports Authority of India and Others

RESPONDENT

Date of Decision : 10-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 1 AD 678 : (1995) 57 DLT 441

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : M.S. Ganesh, S. Janani and Shishir Sharma, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present judgment disposes of two writ petitions bearing Nos. Cw 3302 of 1992 and Cw 1593 of 1991.

(2) The writ petition bearing No. 3302 of 1992 has been filed for issuance of a writ of mandamus for direction to respondents to fill up the vacancy by appointing the petitioner to the post of Deputy Director.

(3) The brief facts as incorporated in the petition are that the petitioner is holding a Ba Degree as well as diploma in Coaching awarded by the National Institute of Sports (NIS), Patiala and worked as a Badminton Coach in the said institute. He was then attached with the Haryana Sports Department as Senior Badminton Coach from 28.12.198 1/04/1986. In June/July, 1986, Sports Authority of India, respondent No. 1 (for short SAI) advertised for appointment to the post of Deputy Director in the pay scale of Rs. 1100-1600. The petitioner possessed the requisite qualifications and applied for the said post. He received a call for interview on 4/ 5/12/1985. The petitioner along with two other persons Shri M.P. Ganesh and Shri Prem Chand Kashyap appeared for the interview on 16/12/1985 at New Delhi. The respondent however, denies this averment in reply to paragraph 11 of the petition in the counter affidavit to the extent that four

persons were interviewed which included the petitioner, Mr. M.P.Ganesh, Mr. Prem Chand Kashyap and one Shri S.S. Mann. On the basis of the interview held on 16/12/1985 and 17/12/1985, a select panel was prepared and the following persons were placed in the said panel and they ranked as follows:

(L) Shri M.P. Ganesh (2) Shri Prem Chand Kashyap (3) Shri Suresh Harmilapi - petitioner herein

This fact is also not denied in the counter affidavit filed by the respondents. Shri M.T. Ganesh was appointed as Deputy Director in early petitioner was appointed as Coach Grade II in Sa I and was posted at Madras where he worked till 19/01/1988 in the pay scale of Rs. 2200-4000. He was subsequently given the post of Coach Grade I in the pay scale of Rs. 3,000-4500.00 The petitioner further avers in the petition that the posts in the cadre of Deputy Director carry the same scale of pay which is also Rs. 3000-4500.00 and the same qualification as that of Coach Grade 1. Mr. M.P. Ganesh subsequently resigned in August, 1986 and, therefore a vacancy in the post of Dy Director fell vacant and the said vacancy was filled up by Shri Prem Chand Kashyap who figured at Serial No.2 in the select panel. It is stated that before Shri Prem Chand Kashyap was actually drawn from the select panel, the appointing authority inducted one Mr. S.K.Saggar, respondent 3 to the post of Dy Director on deputation. He was an employee of Tisco and the petitioner has contended that the post on deputation was filled up merely to deprive him of his claim as he was entitled to be selected on the basis of the performance in the interview and his ultimate placement in the panel. Mr.S.K. Saggar, respondent 3 is shown as having been selected on 4/12/1986 although he was initially appointed for a period of 6 months w.e.f. 1.1.1987.

(4) The petitioner was posted in Madras from where he was transferred in January, 1988, when he came to know that he had been excluded for appointment as Deputy Director despite the fact that his name figured in the select panel and respondent 3 was brought in on deputation merely to deprive him of his claim to the said post. The petitioner made oral representations to the appointing authority that he may be considered for appointment to the post of Dy Director and he received a verbal assurance from the Appointing Authority that he would be considered. Nothing, however, materialised and the petitioner has stated in paragraphs 29,30 and 31 of the writ petition that he addressed the communication to one Mr. Krishnan, Dy Director (Admn.) on 2/03/1990 followed by a reminder dated 13/04/1990 seeking to know full facts regarding the failure of the Administration to appoint him as a Dy Director. The copies of these representations have been filed along with petition. The Krishnan in his letter dated 29th May, 1990 himself invited further discussions on "this subject and the petitioner wrote a further detailed representation dated 20/06/1990. The petitioner subsequently sent reminders dated 20/06/1990, 6/0 filing. CWP 7/1990, 29th July, 1990 addressed to Shri Krishnan but nothing as a consequence materialised. The petitioner submitted further representation to Director General,

Sai vide letter and reminders dated 17/12/1990, 14/01/1991, and 22nd February, 1991 respectively. Therefore, the petitioner exhausted all the remedies available to him and having failed to secure any response from respondent 1 he moved this court by filing CWP No of 1991 in which notice to show cause was issued interim order was made to the effect that the promotions, if any, will be made subject to the outcome of the petition. Rule was issued on 19/12/1991 and it was further directed vide order dated 20/02/1992 that in case the post of Dy Director has to be filled up by the respondents in future, and the petitioner is in the field of choice, he will be considered along with others. The petitioner was not considered despite the orders passed by this court in the said writ petition and respondents 4 to 6 were selected to the post of Dy Director which necessitated the filing of the present writ petition No-3302/92.

(5) The learned Counsel for the petitioner has contended in paragraph 13 of the writ petition that a select panel was prepared and the same was duly approved by the Appointing Authority. The said paragraph may be reproduced as follows: On the basis of the aforesaid interviews held on 16.12.1985 a select panel was prepared and the same was duly approved by the Appointing Authority. The three applicants interviewed were all placed in the select panel and they were ranked as follows:

(1) Shri M.P. Ganesh (2) Shri Prem Chand Kashyap and (3) Shri Suresh Harmilapi

(6) It was further stated that as on the date of approval of the said select panel, at least two clear vacancies, possibly more vacancies existed in the posts of Dy Director. However, in early 1986 only one vacancy was filled up by appointing Mr. M.P. Ganesh as Dy Director who subsequently resigned in August, 1986. Then, Shri Prem Chand Kashyap who figured at Serial No. 2 in the panel was appointed and the next vacancy of Dy Director was given to respondent 3 who was appointed on deputation from Tisco where he was working at that relevant time. On that basis it is contended that the post was filled up on deputation merely to deprive the petitioner who was at Serial No. 3 as he would have been an automatic choice to be appointed as Dy Director after the appointment of Mr. Prem Chand Kashyap.

(7) The validity of the panel for a period of one year which is the usual case in all such cases is not disputed in the counter affidavit filed on behalf of respondent I. Reference may be made to the relevant portion of paragraph 15 which reads as under: The validity of the panel as per rules was for a period of one year. Subsequently after Shri. M.P. Ganesh, left in August, 1986 the post was offered to Shri Prem Chand Kashyap who was No. 2 on the panel. Shri Premchand Kashyap continued in the said post till May 1987 whereas the panel ceased on 17.12.86. It is submitted that Shri S.K. Sagar was appointed as Dy Director (Gen.) on deputation "Therefore, there is no dispute that the select panel prepared by respondent I continued till 17/12/1986 i.e. for a period of one year from the date of framing the panel. There is no doubt that the employer is at liberty to fill up the posts on deputation but the same cannot be filled up in a

manner to deprive the persons on the panel of the right to be appointed as and when the vacancies arise during the validity of the panel. The Supreme Court in *Shankarsan Dash Vs. Union of India*, clearly held that a candidate included in the merit list has no indefeasible right to appointment even if a vacancy exists but the State while filling up the vacancy is to act bonafide and not arbitrarily. Paragraph 7 at pages 50-51 may be reproduced as follows:

"IT is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting" in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha*, *Neelima Shangla v. State of Haryana* or *Jatendra Kumar v. State of Punjab*."

To similar effect is the judgment of the Supreme Court in *Union of India & Ors. v. Ishwar Singh Khatri* 6- Ors. 1992 Supp (3) Scc 84. Paragraph 4 reads as follows:

"MR. Subha Rao for the appellant urged that the candidates included in the panels prepared by the Selection Board as far back in June 1984 cannot be held to have the right to appointment against vacancies arising subsequent to preparation of the panels. According to counsel, if that right is conceded it would be arbitrary and contrary to Article 16(1) of the Constitution which guarantees opportunity for all citizens in matters of employment or appointment to any office under the State. There is little doubt about this proposition. The selected candidates ordinarily will have a right to appointment against vacancies notified or available till the select list is prepared. They in any event cannot have a right against future vacancies."

The learned counsel has then cited the judgment of the Supreme Court as reported in *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, . The said judgment reiterates the proposition of law as laid down in the case of *Shankarsan Dash v. Union of India* (supra) and reference is made to paragraph 8 of this judgment as follows:

"IT is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (*State of Haryana v. Subhash Chander Marwaha*, *Mani Subrat Jain v. State of Haryana*, *State of Kerala v. A. Lakshmikutty*) but that is only one aspect of the matter. The

other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the commission to select a particular number of candidates for a particular category, - in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government - the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this court in *Shankarsan Dash v. Union of India* where the earlier decisions of this court are also noted."

(8) Faced with this settled position and admitted facts on record, the learned Counsel for respondent 1 has contended that the panel which was framed in the year 1985 in which the name of the petitioner has figured was only for the appointment to the post of Dy Director (coaching) whereas respondent No.3 Mr.S.K. Sagar was inducted on deputation as Dy Director (General). It has been argued that the petitioner is already working as Coach Gr I in the pay scale of Rs.300-4500 and he is even eligible to be appointed as Director provided he faces the selection for that post. The record of the selection has, however, not been produced before me despite the fact that an opportunity was granted in this regard. The facts are not in dispute that the panel was framed in the year 1985 and its validity continued till 17.12.1986 and during the intervening period respondent 3 was inducted on deputation on 4.12.1986. Mr. Prem Chand Kashyap who was placed at Serial No.2 was also appointed on 6.12.1986. There is no doubt as has been held by the Supreme Court in *Shankarsan Dash v. Union of India* (supra) that the candidate has no indefeasible right to be appointed even if a vacancy exists, the State, however, shall act bonafide and not in an arbitrary manner in filling up the vacancies during the existence of the select panel and the State is bound to respect the comparative merit of the candidates. The petitioner in the present case was duly selected and placed on the panel and during the pendency of the panel respondent 3 was inducted which obviously deprived the petitioner of his right to appointment as deputy Director. There is no cogent Explanation which has been offered by respondent 1 for non-appointment of the petitioner as deputy Director. the said respondent has also not placed before this court any material to indicate that the posts were segregated in different categories such as Dy Director (Coaching) and Dy Director (Geni). The posts are interchangeable and the plea taken in this regard is based on no material. The seniority list also does not talk about this distinction and this contention is rejected.

(9) For the aforesaid reasons this petition is allowed. Rule is made absolute. Respondent I shall appoint the petitioner to the post of deputy Director on the basis of his selection in the interview held and his ultimate placement in the select panel on 17.12.1985. It is needless to state that the petitioner when appointed pursuant to this order will get his seniority as per his ranking in the

select panel over the persons appointed in the interregnum. There will be no order as to costs.