

PETITIONER:
JAGTAR SINGH

Vs.

RESPONDENT:
DIRECTOR, CENTRAL BUREAU OF INVESTIGATION AND ORS.

DATE OF JUDGMENT 13/04/1993

BENCH:
KULDIP SINGH (J)
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KULDIP SINGH (J)
YOGESHWAR DAYAL (J)

CITATION:
1993 SCR (3) 77 1993 SCC Supl. (3) 49
JT 1993 (2) 703 1993 SCALE (2) 553

ACT:
Service Law: Appointment-Verification of antecedents and character--Found undesirable-Denial of appointment to selected candidate--Conclusion based on a single incident-Whether justified.

HEADNOTE:

The appellant was selected by the Union Public Service Commission for appointment to the post of Senior Public Prosecutor, Central Bureau of Investigation. He was medically examined and found fit. Though the (other candidates selected along with the appellant were appointed, no appointment order in respect of the appellant was issued. After waiting for some time he submitted a representation to Respondent No. 1 and another representation to the Government of India. Since there was no response from either of the authorities, he filed an application before the Central Administrative Tribunal. Before the Tribunal the respondents contended that it was found that the appellant %, as not a suitable person for appointment to the post of Senior Public Prosecutor and filed documents containing reasons therefor in sealed cover. Privilege was also claimed. The Tribunal did not open the sealed cover and relying upon the averments made in the affidavit, dismissed the application of the appellant. The present appeal is against the judgment of the Tribunal.

Dismissing the appeal, this Court,

HELD: 1. 1. The appellant has been unjustifiably denied his right to be appointed to the post to which he was selected and recommended by the Union Public Service Commission. No reasonable person, on the basis of the material on record can come to the conclusion that the appellant's antecedents and character are such that he is unfit to be appointed to the post of Senior Public Prosecutor. There has been total lack of application of mind on the part of the respondents. Only on the basis of surmises and conjectures arising out of a single incident

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which happened in the year 1983 it has been concluded that the appellant is not a desirable person to be appointed to Government service (80-C-D).

1.2. Ordinarily this court would have directed the

respondents to appoint the appellant, but keeping in view the time lapse and the appellant has already entered 50th year of his age and has put in about 23 years of practice as an advocate, it would not be in the interest of justice to issue a direction to that effect (80-F).

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1732 of 1993.

From the Judgment and Order dated 19.1.1987 of the Central Administrative Tribunal in Registration O.A. No. 123/86.

V.C. Mahajan, Gauray Jain and Ms. Abha Jain for the Appellant.

N. N. Goswami, Tara Chand Sharma and C. V. Subba Rao for the Respondents.

The judgement of the Court was delivered by

KULDIP SINGH J. Special leave granted.

The appellant was selected by the Union Public Service Commission for appointment to the post of Senior Public Prosecutor, Central Bureau of Investigation, Ministry of Home Affairs, Government of India. By a letter dated July 16, 1984 he, along with two other candidates, was recommended for appointment to the said post. Ail intimation to this effect was also received by the appellant. He was medically examined on August 29, 1984 and was found fit. Other candidates selected along with the appellant were appointed but no appointment order in respect of the appellant was issued. After waiting for some time he submitted a representation to the Director, Central Bureau of Investigation on February 8, 1985 and another representation to the Government of India on May 13, 1985. No reply having been received from either of the authorities, he filed an application before

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the Central Administrative Tribunal, Allahabad on February 25, 1986 seeking mandamus directing the respondents to appoint him to the post of Senior Public Prosecutor. The respondents in their counter before the Tribunal stated that after the receipt of recommendation from the Union Public Service Commission other formalities were gone into and it was found that the appellant was not a suitable person for appointment to the post of Senior Public Prosecutor. The respondents filed the documents containing reasons for the unsuitability of the appellant, in sealed cover, before the Tribunal. An affidavit claiming privilege was also filed. The Tribunal did not open the sealed cover and relying upon the averments in the counter filed by the respondents dismissed the application of the appellant. This appeal by way of special leave is against the judgment of the Tribunal.

Before us an affidavit has been filed by Mr. Dandipani, Secretary to the Government of India in the Ministry of Personnel, Public Grievances and Pensions. Department of Personnel and Training, claiming privilege in respect of the documents which contain reasons to show that the appellant is not a suitable person for appointment to the post of Senior Public Prosecutor. The documents are in a sealed cover. In para 4 of the affidavit it is stated is under:

" However, I have no objection to the aforesaid records being produced for perusal by the Hon'ble Court for satisfying, itself about the bonafides and genuineness of the privilege."

Mr. D.P. Gupta, learned Solicitor General has filed copies of the documents for our consideration. It is not disputed that the District Magistrate, Nainital by his letter dated September 20, 1984 reported that there was no adverse entry against the appellant in the records of the Chowki Kathgodami which might affect his appointment as a Government servant. The District Magistrate's letter was based on the verification done by incharge Chowki Kathgodam. Police Station Haldwani, Senior Sub-Inspector Local Intelligence Unit Nainital and finally by the Senior Superintendent of Police, Nainital who appended the endorsement "character verified and found correct". Not satisfied with the initial verification in favour of the appellant further investigations were made regarding his character and antecedents and it was

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finally concluded that the appellant was not a suitable person to be appointed to the Government service. It is not necessary for us to go into the question as to whether the claim of privilege by the respondents is justified or not. We also do not wish to go into the details of the investigations made regarding the antecedents and character of the appellant. We have carefully examined the material on the basis of which the respondents have come to the conclusion that the appellant is not suitable for appointment to the post of Senior Public Prosecutor in the Central Bureau of Investigation and we are of the view that the respondents are not justified in reaching a conclusion adverse to the appellant. No reasonable person, on the basis of the material placed before us, can come to the conclusion that the appellant's antecedents and character are such that he is unfit to be appointed to the post of Senior Public Prosecutor. There has been total lack of application of mind on the part of the respondents. Only on the basis of surmises and Conjectures arising out of a single incident which happened in the year 1983 it has been concluded that the appellant is not a desirable person to be appointed to the Government service. We are of the view that the appellant has been unjustifiably denied his right to be appointed to the post to which he was selected and recommended by the Union Public Service Commission. Having found that the respondents were not justified in refusing to appoint the appellant, ordinarily, we would have directed (he respondents to appoint the appellant, but keeping in view the time lapse and further that the appellant has already entered 50th year of his age and has put in about 23 years of practice as in advocate, we are of the view that it would not be in the interest of justice to issue a direction to that effect. We, therefore, dismiss the appeal but under the circumstances we direct that the respondents shall pay the costs of the litigation to the appellant which we quantify as Rs. 10, 000.

G.N.

Appeal dismissed.

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