

CASE NO.:
Appeal (civil) 133 of 2001

PETITIONER:
SATISH RAWAT

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 26/08/2002

BENCH:
S. RAJENDRA BABU & P. VENKATARAMA REDDI.

JUDGMENT:

RAJENDRA BABU, J. :

An advertisement was issued by the Customs Collectorate, Chandigarh, for recruitment of Inspectors under sports quota. Two posts were earmarked for football category. The participants had to take written test in English, Arithmetic and General Knowledge and after qualifying in the written test, the candidates had to face interview and also to undergo field trials. On 4.6.1992, 24 candidates out of total applications received reported for field test and it was intimated that the appellant before us also participated but had failed in the same. However, he was selected and appointed as Inspector, while respondent No. 3 who had qualified in the written test as well as in the field test and interview, was not selected. He filed an original application before the Central Administrative Tribunal, Chandigarh Bench [hereinafter referred to as 'the Tribunal']. By an order made on 6.6.2000 the Tribunal quashed the appointment of the appellant and the Department was directed to examine the records as to which of the candidates was more meritorious and inasmuch as the appellant had failed in the field test his name need not be considered. Thereafter, respondent No. 3 was selected and appointed as Inspector. A review petition was filed by the appellant before the Tribunal. In that petition it was stated that the Department had deliberately withheld the relevant records regarding selection of the appellant and inasmuch as the Department was not able to make available the relevant records, adverse inference was drawn against them and that respondent No. 3 had not participated in the proceedings till 1998. The ground raised before the Tribunal was that Shri Manjit Singh had been selected against the sports quota; that the Department had been justifying the selection of respondent No. 3 and had been withholding the results of the field trials on the basis that the same were not relevant. It was held by the Tribunal that since they were coming up with new grounds, the review was not permissible. Another application was filed to the similar effect, which was also dismissed. Thereafter a writ petition was filed before the High Court, which having been dismissed this appeal is filed before us by special leave.

In interview the appellant had secured 62 marks, while respondent No. 3 had secured 48 marks; in written examination the appellant had secured 79 marks, respondent No. 3 had secured 80 marks and in the field test the appellant had secured 203 marks, while respondent No. 3 had secured 212 marks. The case now sought to be put forth before us

is that the appellant is a Goal Keeper, while respondent No. 3 was a Deep Defender. It is stated that a merit list of the candidates appearing in the field test was prepared; that the documents filed by the State before the Tribunal mentioned the aforesaid merit list of the candidates upto the field test; that in the category of Goal Keeper the appellant was ranked at No. 7 and another candidate Sushil Kumar was given rank No. 10; that later on, a report on the performance in the field test was submitted by the official team in association with the Coach and top 6 candidates named were mentioned in the second list for the post of Inspector; that as per the requirement of the Department for the game of football, there was no Goal Keeper short listed in the second list; that however, both lists were submitted for the perusal of the Selection Committee. The appointing authority selected the appellant and Shri Manjit Singh. After the Tribunal passed the order as stated earlier, respondent No.3 displaced the appellant.

In the review application filed by the Department it was specifically averred that records of the selection of the appellant and other candidates who were selected against sports quota in 1992-93 were now traceable. Pursuant to the selection made by the Department the appellant had worked from 1.9.1992 to 7.6.2001 for nearly 8 years and 7 months except for a break from 1.12.2000 to 12.1.2001. Now he is over-aged for any selection for any post under sports quota. On the basis of the records that were made available at the time when the Tribunal passed the order, the appellant was excluded from consideration and on their own showing the difference between the appellant and respondent No. 3 in securing marks is not much inasmuch as both had secured almost identical marks in the written examination with a difference of one mark and in the interview there was a big margin. So far as the field test is concerned, the results thereof were not very categorical as to the competence of the candidates because the appellant and respondent No. 3 fell in two different categories, one as a Goal Keeper and the other as a Deep Defender. On this basis, the appellant's appointment is justifiable.

Respondent No. 3 could not have displaced the appellant but for the order made by the Tribunal. The Tribunal held that on the basis of the records before it, he was entitled to be considered to the exclusion of the appellant. Had complete records been placed before the Tribunal appropriate conclusion could have been drawn. For the mess that arose on appointment of the appellant and not supporting it properly and for appointment of respondent No. 3, the Department is entirely blameworthy. If now respondent No.3 is displaced by the appellant, he will be uprooted.

In the circumstances of the case we think that the appointment of respondent No. 3 as directed by the Tribunal should not be disturbed. However, in the peculiar facts of the case as arise now, it would be proper for the Department to provide a post to the appellant and such post if not available shall be created on supernumerary basis to be absorbed when a regular vacancy arises. However, the appellant shall not be entitled to any monetary benefits for the period he had not worked. He be appointed in the post on the basis he had been originally appointed in 1992 and due benefits of increments be given to him and his pay-scale should be appropriately fixed on the basis of last pay drawn at the time of his discharge from service.

Subject to these directions, the appellant be appointed within a period of three months from today. The appeal stands allowed accordingly. No costs.

JUDIS