

Union of India

Vs

H. P. Chothia and Others

Civil Appeal Nos. 1329-1330 of 1977

(Jaswant Singh, Syed M. Fazal Ali JJ)

07.04.1978

JUDGMENT

FAZAL ALI, J. -

1. These appeals by special leave are directed against the judgment of the Division Bench of the Gujarat High Court dated March 18, 1977 by which writ petition filed by the Respondent 1 was allowed and the impugned selection made by the Selection Board was quashed as also the notification dated January 7, 1972.
2. The facts have been detailed in the judgment of the High Court and it is not necessary to repeat the same all over again. Suffice it to say that Respondent 1 was selected for Superior Forest Service of the Government of Saurashtra in the year 1951. On April 9, 1958, he was appointed as Assistant Conservator of Forests, Class III. Sometimes in August, 1959, Respondent 1 was appointed as Deputy Conservator of Forests consequent upon the merger of Saurashtra with Greater Bombay. On May 1, 1960, there was amendment in the All India Services Act by which a new service called the Indian Forest Service was established and Indian Forest Service Rules were made in 1966. Respondent 1 was one of the candidates to be considered for initial recruitment to the Indian Forest Service (Initial Recruitment) Regulation of 1966. Respondent 1 was Indian Forests Service (Initial Recruitment) Regulation of 1966. Respondent 1 was of the candidates to be considered for initial recruitment to the Indian Forest from the State Cadre. It appears that the Selection Board did not recommend the selection of Respondent 1 and other respondents were selected. Respondent 1, therefore, filed writ petition in the High Court of Gujarat for quashing the selection made by the Selection Board.
3. The sole point that was urged before the High Court was that the mandatory provisions of Regulation 5 dated September 1, 1966 as amended up-to-date had been violated and, therefore, the selection made by the Board was illegal. The High Court accepted the plea taken by Respondent 1 and allowed the writ petition as indicated above. The Union of India obtained special leave of this Court and hence this appeal before us.
4. The short point which for determination in this case is as to whether or not the provision of the Regulation 5(2)(b) of the Indian Forest Service (Initial Recruitment) Regulations, 1966 (hereinafter referred to as the Regulations) are mandatory in character. The High Court held that Regulation 5(2)(b) is mandatory and as the Selection Board did not give reasons as enjoined by this provision, the selection made by the Board was illegal. Appearing in support of the appeal, Mr. Bhatt submitted in the first place that the Regulation does not contain any mandatory requirement for giving reasons by the Board when it submits its recommendations to the Commission. Secondly, it

was submitted that the Selection Board on perusal of the confidential rolls of Respondent 1 was satisfied that he was not a suitable person to be recruited to the service and he was, therefore, ignored. The Board, therefore, did not commit any error of law in not electing Respondent 1.

Reliance has been placed by the Counsel for the appellant on an unreported decision of the Kerala High Court which has been annexed to the paper book. In our opinion, the interpretation of Regulation 5(2)(b) does not present any difficulty at all. Relevant portion of Regulation 5 may be extracted thus :

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 service.

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

(a) the records of all officers of 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 non-inclusion in the list.

5. A perusal of Regulation 5 manifestly shows that provision requires three essential conditions to be complied with :

(i) that the Board shall prepare in order of preference a list of officers of the State Forest Service in accordance with Regulation 4;

(ii) that the Board must adjudge persons whom it thinks suitable for the appointment to the posts;

(iii) that the Board shall send the records of eligible officers of the State who are not adjudged as suitable together with reasons recorded by the Board.

6. 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 governs not only clause (a) but also 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. 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.

7. Lastly, Mr. Bhatt submitted that in view of the reply-affidavit filed by Mr. Bhardwaj, Deputy Secretary to the Government of India, it would appear that the reasons were given by the Board which were that the service record of the respondent did not justify the inclusion of his name in the select list. In the first place, the affidavit appears to have been given by a person who was not a member of the Selection Board and as the recommendation was by a non-speaking order he would not at all be conversant with the manner in which the recommendation was made ignoring Respondent 1. Nor had he any knowledge of the way in which the mind of the Board was working at that time. The deponent, therefore, was not at all competent to certify as to what was the reason given by the Board as required by Regulation 5(2)(b) nor could the affidavit supply an omission made by the Selection Board in not complying with the mandate contained in Regulation 5(2)(b). Secondly, the affidavit is obscure because according to the Deputy Secretary, there was no obligation placed on the Selection Board to give reasons for the supersession of the said Forest Services Officers. This view, as we have pointed out, is absolutely incorrect and is not borne out by the language of the provision of Regulation 5. Apart from this, the High Court has pointed out in its judgment at page 31 of the brief that the Court had given an opportunity to the appellant to produce the record before it so as to find out if the confidential records of Respondent 1 did not justify the selection. The appellant did not choose to avail of the opportunity given to it by the High Court which clearly indicates that the position was somewhat obscure.

8. For these reasons, we find ourselves in complete agreement with the judgment of the High Court and endorse the same. We are clearly of the opinion that the provisions of Regulation 5(2)(b) are mandatory in character and whenever the Board sends the records to the Commission, it must give its reasons as required by Section 5(2)(b) of the Regulation. The result is that the appeals fail and are dismissed with costs to Respondent 1 only in Civil Appeals 1329 of 1977.

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