

Uma Shankar Sharma

Vs

Union of India and Others

Civil Appeal No. 2994 of 1979

(R. S. Pathak, R. S. Sarkaria JJ)

17.04.1980

JUDGMENT

PATHAK, J. –

1. This appeal by special leave is directed against an order of the Patna High Court dismissing the appellant's writ petition against the termination of his services.
2. The Collector of Central Excise and Customs, Patna, invited by an advertisement, dated July 30, 1975, applications for filling up some posts of Inspector of Central Excise. Among those eligible for selection were "sportsmen who have represented the universities in the Inter-University Tournament conducted by the Inter-University Sports Board". The appellant, who was studying in M.A. (Political Science) in the Mithila University was one of the applicants and he was directed to appear for a physical test and an interview. On December 12, 1975 the Collector of Central Excise and Customs issued a letter informing the appellant that he had been selected for appointment in a temporary vacancy of Inspector, and that he would be on probation for a period of two years. The appellant joined the post and continued therein. On April 30, 1976 he received a letter from the Assistant Collector (Headquarters) Central Excise pointing out that he had submitted attested copies only of the sports certificates along with his application for appointment and he was directed to submit the original certificates. The appellant forwarded the original certificates. Nothing happened for some time, and the appellant continued in the post without any objection. It was almost a year later that the Assistant Collector (Headquarters) wrote to the appellant to supply details of the tournament at which he had represented the university. On February 27, 1978 the appellant referred to the sports certificate dated July 28, 1975 issued by the Deputy Registrar of the L. N. Mithila University Darbhanga. The original certificated had been sent by him to the Collector, along with the other certificates on May 5, 1976. The appellant explained that he had qualified, and was selected to represent the Mithila University in the Inter-University Tournament to be held at Banaras Hindu University, Varansi, in the year 1972 but that a serious illness had intervened and prevented and prevented him from actually participating in the tournament. He pointed out that this had been made clear by him during the interview for selection before tea Appointments Committee and that as he had been discharging his duties to the satisfaction of his superior officers ever since December, 1975 and had, in fact, captained the sports team on behalf of the Excise Department at Calcutta for two years, he was astonished that the question should be raised now. Another fourteen months later, on June 16, 1979, the Assistant Collector (Headquarters) made an order purporting to be under the proviso to sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965, terminating the services of the appellant. The appellant then applied for relief under Article 226 of the Constitution to the High Court against the order, but the High Court has summarily dismissed the writ petition.

3. In this appeal, the appellant contends that he fulfilled the conditions of eligibility and that there was no justification for terminating his services.

4. The case of the respondents is that the appellant was appointed under a mistake inasmuch as the condition of eligibility required actual representation of a university in an Inter-University Tournaments conducted by the Inter-University Sports Board and that, therefore, the appellant was not entitled to any relief against termination or his services.

5. Having given the matter our careful consideration, it seems to us that the respondents have proceeded on a technical view of the matter wholly unjustified by the intent behind the condition of eligibility. The condition required that the appellant should have been a sportsman who had represented his university in an Inter-University Tournament conducted by the Inter-University Sports Board. There is no dispute before us that the appellant did qualify, and was selected, for representing the Mithila University in the Inter-University Tournament at the Banaras Hindu University in the year 1972. All that remained was that he should have participated in the tournament. Unfortunately for him, he fell ill and was unable to do so. The fact that he fell ill, and for that reason was unable to represent his university, is not disputed. There is nothing to show that but for that illness he would not have actually taken part in the tournament. It seems to us that on a reasonable view of the facts the appellant should be taken to have fulfilled the condition of eligibility. The terms and conditions of service are intended to be construed reasonably, and too technical a view can defeat the essential spirit and intent embodied in them. The intention was to appoint meritorious sportsmen to the posts, and that object is served if a person who had qualified and was selected for representing his university in an Inter-University Tournament conducted by the Inter-University Sports Board is appointed, notwithstanding that he was actually prevented from participating because of reasons beyond his control.

6. We have no doubt that on the interpretation which has found favour with us the appellant will be entitled to a certificate of eligibility, a requirement postulated by the terms of his appointment.

7. The appeal is allowed, the Order dated June 16, 1979 made by the Assistant Collector (Headquarters) is quashed and the respondents are directed to treat the appellant as continuing in service. The appellant is entitled to his costs throughout.

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