

Sandeep Kumar Sharma

Vs

State of Punjab and Others

Civil Appeal No. 1586 of 1997

(M. M. Punchhi, K. T. Thomas JJ)

24.02.1997

JUDGMENT

THOMAS J.

1. Leave granted.

2. The appellant was one of the candidates before the Punjab Public Service Commission for selection to the cadre of Deputy Superintendent of Police. He was found fit in all respects except the height factor for which he was found deficient by 1.20 cms. However, he was selected as the Government of Punjab relaxed the requirement of physical fitness as for him in special consideration of the meritorious service rendered by his brother (one Satish Kumar Sharma, IPS) during the time when the State Government was involved in a massive exercise for containing terrorism in Punjab. The third respondent challenged the said selection as he could secure only a post of Deputy Superintendent of Jail. A Division Bench of the Punjab and Haryana High Court quashed the selection of the appellant as Deputy Superintendent of Police and directed the Government to make appointment in the consequential vacancy from among the candidates who have been included in the merit list if the petitioner had not been selected. The said judgment is now under challenge before us.

3. Some more facts are necessary to decide the question raised before us. The Punjab Public Service Commission published an advertisement on 12-6-1993, as follow-up of a requisition made by the Government of Punjab, inviting applications for 20 posts of Deputy Superintendent of Police and 6 posts of Deputy Superintendent of Jail/District Probation Officer. The appellant and the third respondent were among the various candidates who submitted applications for the aforesaid posts. In the written test conducted on 25-2-1994 the appellant came out successful, but in the physical measurement (fitness) test conducted on 6-5-1994, the appellant was found short in height by 1.20 cms. In the meanwhile, the Government formulated a policy on 6-5-1994 to show special consideration towards "relatives of those who have either suffered due to terrorism or have faced terrorism boldly and have contributed towards overcoming it". It appears that the Government felt that "on account of their background and circumstances such individuals are bound to be more dedicated and committed". When the appellant was found deficient to fit in with the requirements very marginally he moved the Government for relaxation of the specification regarding height in his case. The Government passed an order on 14-5-1994, the operative part of which reads thus :

"In this view of the matter it has been considered to give minor relaxation in physical standard, provided such persons possess prescribed qualifications and qualify in the written test conducted by the Punjab Public Service Commission and are suitable in

all other respects. The latest request dated 13-5-1994 of Shri Sandeep Kumar Sharma (younger brother of Shri Satish Kumar Sharma, IPS) who is presently posted as SSP, Ferozepur and who has rendered useful service in tackling terrorism and bringing normalcy for giving relaxation in height by 1.20 cms for recruitment to the post of Deputy Superintendent of Police has been considered and acceded to."

4. Thereupon, the appellant was called for viva voce and he was included in the list of selected candidates and was later appointed as Deputy Superintendent of Police on 10-8-1994. The third respondent was selected with first rank in the list for the post of Deputy Superintendents, Jail/District Probation Officers and he was appointed as Deputy Superintendent, Jail on 8-9-1994.

5. The third respondent and another person challenged the selection and appointment of the appellant before the High Court mainly on the ground that the appellant did not fulfil the requirement enumerated in the advertisement issued by the Punjab Public Service Commission and that the Government have no power to relax without specifically indicating in the advertisement itself that specifications are liable to be relaxed. Another ground taken up was that power of relaxation contained in Rule 14 of the Punjab Police Service Rules, 1959 ("Service Rules" for short) cannot be invoked in the case of one individual.

6. The Division Bench of the High Court examined the file relating to the impugned selection and found that relaxation was granted by the Government only in the case of the appellant and that the policy was evolved by the Government solely to help the appellant which is nothing but an act of sheer favouritism. The learned Judges of the High Court observed that Rule 7 and Rule 14 of the Service Rules cannot be regarded as empowering the Government to grant relaxation in physical standard as a measure of favouritism. On the above premises the Division Bench quashed the selection of the appellant and directed the State Government to fill up the vacancy within thirty days.

7. Before we proceed to consider the merits of the case, we may point out that none of the parties before us disputed about the worthiness in formulating a policy by the Government of Punjab for showing recognition to the services rendered by those police personnel who bravely faced the dastardly acts unleashed by the terrorists. If so, there is nothing improper in giving special consideration to the kith and kin of such policemen and those who suffered on account of terrorists' activities. We may also point out that before the High Court neither the Government nor the third respondent disputed the factual position that Satish Kumar Sharma, (appellant's brother) had rendered efficient and useful service as a police officer in tackling terrorists' menace : (Of course, a faint attempt was made by the third respondent before us to dispute that fact, but as he did not raise any dispute on that aspect before the High Court, we are not inclined to countenance the said contention now.)

8. Rule 7 of the Service Rules stipulates the qualifications necessary for direct recruitment to the service. Sub-clause (iii) of clause (i) of Rule 7 requires that the candidate should have "a minimum height of 5' 7" (167.5 cms) and normal chest measurement of 33", with expansion of 1 1/2". The second proviso to clause (i) is important and it is extracted :

"Provided further that the physical standard prescribed in sub-clause (iii) shall not be relaxed without special sanction of the Government."

9. Rule 14 contains the general power of Government to relax the rules. It reads thus :

"14. General power to relax rules. - Where the Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons."

10. It is clear that while Rule 14 permits relaxation for a class or a category of persons, Rule 7 preserves the Government's power to relax the physical standard in individual cases. In the present case Rule 7 is the appropriate rule and it was not necessary to embark on Rule 14 at all. But we have noticed that the Deputy Secretary of Home (Government of Punjab) who had sworn to the counter-affidavit before the High Court for the State Government has sought to justify the relaxation made by the Government by confining to Rule 14 of the Service Rules alone. Why did he adopt such a stand when there is a specific rule which empowered the Government to give relaxation of the physical standard, is something we cannot understand or appreciate. Why should the deponent have bypassed Rule 7 which is so explicit in the context ? Anyway since the appellant has referred to Rule 7 as the relevant rule we are not disposed to consider the amplitude of Rule 14 in the case.

11. The High Court seems to have taken the view that the only beneficiary of the aforesaid relaxation is the appellant and hence considered it an act of favouritism shown to him. According to the learned Judges "the so-called policy was formulated after the result of the written test was announced with the sole object of securing selection and appointment of the aforesaid candidate because without clearing the standard of physical fitness he could not have been interviewed by the Commission. This, in our opinion, is nothing but an act of sheer favouritism".

12. The appellant cannot be blamed for being the only candidate available at present seeking relaxation of physical standards. The same benefit could also have enured to anyone else situated in the same position as the appellant had there been any. Policy wise it is not possible to think that the appellant would have been the only kith and kin of those who suffered on account of the activities of the terrorists in Punjab or those who faced terrorism bravely. Perhaps, in this particular selection the appellant happened to be the only beneficiary of the policy. Nor can we find any mala fides merely because the Government evolved the policy on the occasion when the appellant approached for relaxation of the standard. The occasion would have provided to the Government an opportunity to recapitulate the events and thus to remind themselves of the plight of those families which suffered traumatic experiences when their kith and kin were relentlessly involved in continued operations fighting the terrorists who were possessed with highly lethal weapons and using hideouts to strike blitz against innocent people as well as the police force intermittently. A Government may have to act on some occasion for chalking out a particular policy. If any particular occasion has alerted the Government to the necessity for taking a policy decision it is hardly sufficient to attribute mala fide or favouritism to the Government.

13. In *Atlas Cycle Industries Ltd. v. Workmen* (1962 Supp (3) SCR 89 : AIR 1962 SC 1100 : (1962) 1 LLJ 250) a Constitution Bench of this Court considered the question whether a policy taken in the wake of an individual's case would offend Article 14 of the Constitution as the object then would have been to benefit a particular person. In that case the Government of Punjab raised the age of retirement of the Presiding Officers of Industrial Tribunals from 65 to 67 on 3-6-1957. One incumbent Shri A. N. Gujral would have attained the age of 65 on 4-6-1957. The Bench repelled the contention and observed thus :

"The occasion which inspired the enactment of the statute might be the impending retirement of Shri A. N. Gujral. But that is not a ground for holding that it is

discriminatory and contravenes Article 14, when it is, on its terms, of general application."

14. It is useful to refer to the interpretation given to a similar relaxation clause in service law by a Bench of three Judges of this Court that it must be liberally considered. (Vide *J. C. Yadav v. State of Haryana* ((1990) 2 SCC 189 : 1990 SCC (L&S) 218 : (1990) 12 ATC 745 : (1990) 1 SCR 470)) The power of relaxation even if generally included in the service rules could either be for the purpose of mitigating hardships or to meet special and deserving situations. Such rule must be construed liberally, according to the learned Judges. Of course arbitrary exercise of such power must be guarded against. But a narrow construction is likely to deny benefit to the really deserving cases. We too are of the view that the rule of relaxation must get a pragmatic construction so as to achieve effective implementation of a good policy of the Government.

15. The learned counsel for the third respondent has referred to the decisions of this Court in *District Collector and Chairman, Vizianagaram S. W. R. S. Society v. M. Tripura Sundari Devi* ((1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766 : JT (1990) 2 SC 169(II)) and *Hoshiar Singh v. State of Haryana* (1993 Supp (4) SCC 377 : 1994 SCC (L&S) 249 : (1994) 26 ATC 325 : JT (1993) 5 SC 63). The former is relied on by the Division Bench of the High Court in the impugned judgment and the same is referred to in the latter decision. Those decisions relate to cases where relaxation of the rule was made by the selection board. This Court observed that when advertisement was silent about relaxation of the standards prescribed therein for selection it was not permissible for the selection board to relax such standards. Those are not cases where relaxation was made by the Government in exercise of any statutory rule and hence the ratio in those two decisions is of no use to support the contention of the third respondent.

16. We have no doubt that if the Government had thought it fit to afford marginal relaxation in the case of the appellant in terms of Rule 7 in particular and Rule 14 in general by way of implementation of the policy evolved in recognising the services rendered by the police personnel during the frightful days, it warrants no interference from the judicial side. The High Court should not have upset the appointment made in marginal relaxation of the physical standards prescribed in the case of this appellant.

17. We, therefore, allow this appeal and set aside the judgment under challenge. No costs.