

Ram Sharan Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Sep-11-1997

Reported in : (1998)1UPLBEC738

Judge : D.K. Seth, J.

Acts : Recruitment of Excise Inspector Rules - Rule 13

Appeal No. : Civil Misc. Writ Petition No. 28356 of 1996

Appellant : Ram Sharan

Respondent : State of U.P. and ors.

Advocate for Def. : S.C. and ;V.M. Sahai, Adv.

Advocate for Pet/Ap. : N.D. Kesari, Adv.

Judgement :

D.K. Seth, J.

1. The petitioner was successful in the examination conducted for selection to the post of Excise Inspector and was also called on for interview, but ultimately the appointment was refused to him on the ground that he was not physically fit.

2. Mr. N.D. Kesari, learned Counsel for the petitioner, contends that physical unfitness will not stand in the way of petitioner's discharging his duties in the post

of Excise Inspector. According to the learned Counsel, the defect is not a defect which could affect efficient performance of duties by the petitioner, therefore, the petitioner should have been given appointment on the said post.

3. Mr. Kesari secondly contends that the petitioner is also eligible for such appointment by reason of Government Order dated 18.7.1972 intending to create 2% reservation in all services under the Government for physically handicapped persons. By a Government Order dated 20th May, 1978 the Government of Uttar Pradesh while affirming the reservation of 2% posts for the appointment of disabled persons in all the services under the Government defined who, a physically handicapped person, was and added he allowing instructions :

'That in this context, I have to make it clear that the physical disability should not be of the nature which may cause interference in discharge of duties and obligations attached to the concerned service. Accordingly, if the service is as such that it require continuous use of eye, then in such case reservation cannot be given to the blind persons. In the same manner if some services specifically involves the hearing faculty, then no reservation can be given to the deaf persons in such services and in a service where the use of a particular organ of the body is to be used then the person disabled of that particular organ cannot be given reservation in that service. On the basis of the principle every department will issue necessary orders regarding reservation for the post under their subordination.'

4. According to the learned Counsel for petitioner, by reason of the decision in the case of Daya Ram Tripathi v. State of U.P. and Ors., rendered by the Apex Court reported in (1987) 1 UPLBEC 165 (SC) :1987 Allahabad Civil Journal 459, the respondents are bound to give appointment to the petitioner despite he being physically handicapped on the basis of ratio decided in the said case. The learned Counsel also relies on the advertisement contained in Annexure-1-A to the writ petition, by which applications were invited for the post of Excise Inspector and points out the clause whereby it has been provided that reservation in terms of different Government Orders for all the classes in respect of the posts so advertised Including that of Excise Inspector, would be applicable. It is submitted

that by reason of the Government Order dated 18.7.1972 reservation of handicapped persons is also applicable even for the post of Excise Inspector, and therefore, the petitioner could not have been refused appointment.

5. Mr. D.R. Choudhery, learned Addl. Chief Standing Counsel, on the other hand, contends that duties attached to the post of Excise Inspector, are almost similar to that of Sub-Inspector of Police, which requires working in the field, sometimes even handling of weapons and dealing with criminals engaged in such illegal & illicit business attracting the provisions of Excise Act. Therefore, Rule 13 of the Rules applicable for recruitment to the post of Excise Inspector, prescribes that unless a person is physically fit and he is so certified in terms of Rule 10, Chapter III of the Financial Hand-book, Volume II, Part III, one cannot be appointed as Excise Inspector.

6. After hearing learned Counsel for the parties, it appears Rule 13 is relevant for the purposes of this case which reads as under :-

'Physical Fitness-(1) No candidate shall be appointed to a post in the service unless he be in a good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of his duties. Before a candidate is finally approved for appointment he shall be required to produce a medical certificate of fitness in accordance with the rules framed under Fundamental Rule 10 as contained in Chapter III of the Financial Handbook, Volume II, Part III.

7. From the perusal of Rule 13, it appears that such physical defect which is not likely to interfere with the efficient performance of duties, can be overlooked, but before the appointment is finally approved, the incumbent is required to produce a certificate of fitness in accordance with Rule 10 in Chapter III of the Financial Handbook, Volume II, Part HI. Thus, the post requires certain kind of fitness. No order has been produced or shown that whether the question of reservation is also applicable to such kind of posts where extreme kind of good mental and bodily health free from any physical defect likely to interfere with the efficient performance of the duties, is necessary. Nothing has been brought on record or shown so as to come to the conclusion that the reservation is applicable to such posts also. In the decision in the case of Daya Ram Tripathi (supra), the question

raised was as to whether a person selected for Provincial Civil Services (Executive Branch) having certain efficiency could be allowed appointment. There it was held that since the Government had decided to apply reservation in every department under the Government, exception to Provincial Civil Services (Executive Branch) was not justified, and therefore, a direction was issued to accommodate the petitioner to such a branch of State Civil Services (Executive Branch) where his physical deficiency will not stand in the way of efficient discharge of duties. In the said case, physical defect that was found in the petitioner therein, was orthopaedic problem. He suffered from a permanent impediment of the left leg, the result of an old compound fracture. This impediment did not prevent him from good academic performance. It was observed that such deformity would not stand in the way of his discharging duties in the executive branch which may not require such physical fitness when he was found mentally extreme alert.

8. In the facts and circumstances of the case, where physical fitness is one of the requisite criteria together with certificate of fitness, it is very difficult to accept the contention that even for such posts 2% reservation for handicapped persons would be applicable. In the absence of any Government Order in this regard, it is not possible to decide this question conclusively.

9. Therefore, the matter requires to be remitted to the respondents for a decision as to whether the 2% reservation of handicapped persons applies to the case of recruitment in the post of Excise Inspector on the face of Rule 13 aforesaid. Accordingly, it would be open to the respondents to decide the said question when considering the petitioner's case. In case it is found to be applicable, the petitioner's case can only be considered in the light of Rule 13 referred to above.

10. Rule 13 requires physical fitness without any bodily defect so as not to impair the discharge of his duties. The duty of Excise Inspector definitely requires equal physical fitness as is necessary for a Sub-Inspector of Police. The question is dependent on the objectivity of the efficiency required for the performance of the duty. Whether deformity of the kind at hand may or may not impair the efficient discharge of duty, is to be considered by the respondents. The Court cannot impose its opinion in the matter on account of its being unconcerned with the

administration of the department. Then again the appointment is subject to final approval after the requisite certificate under Rule 10 of the Financial Handbook, Chapter III, Volume II, Part III is obtained.

Therefore, the petitioner cannot claim appointment as of right even if he is selected for appointment. Such selection is subject to the condition prescribed in Rule 13 of the Rules.

11. In that view of the matter, it would also be open to the respondents independent of the preceding paragraph to consider the case of the petitioner in the light of Rule 13 referred to above after the petitioner obtains requisite certificate in terms of Rule 10, Chapter III of the Financial Handbook, Volume II, Part III. Such consideration is to be effected by the respondents as early as possible preferably within a period of four months from the date of presentation of a certified copy of this order.

12. With the above observations, this petition stands finally disposed of. No order as to costs.