

A

SATYAPAL SINGH

v.

THE HARYANA STATE SUBORDINATE
SELECTION BOARD AND ORS.

B

APRIL 7, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

C

Service law : Civil Services—Haryana State Subordinate Services—Regularisation—Disabled—Ex-serviceman persons—Held, there is no automatic right of regularisation for such persons appointed in ad hoc capacity—Adoption of merit criterion held justified and fair—Instructions of Government of Haryana dated 6th March 1972 and 21st May 1979—Resolution of Haryana State Subordinate Services Selection Board dated 1st September, 1991.

D

The Appellant, an ex-serviceman, was disabled to the extent of 40%. He was appointed as "Technical Tracer" on an *ad hoc* basis and his name was recommended by the Chairman, Rajya Sainik Board, Haryana for absorption as a regular candidate. The Subordinate Services Selection Board, however, did not recommend his name for regular appointment.

E

He filed a Writ Petition in the Punjab and Haryana High Court which was dismissed. He thereafter appealed to this Court by Special Leave.

F

The main contention of the Appellant was that under the instructions dated 6 March, 1972 issued by the Government of Haryana, once a name had been sponsored by the Sainik Board, an *ad hoc* appointment was made by the employer and when the name had been recommended to the Subordinate Services Selection Board for regularisation, he was entitled to regularisation as a matter of course and right, so long as a vacancy existed and a person with disability between 20% and 50% was available. The Respondent Board, however, contended that a merit criterion had been adopted for the purpose of regularisation and since the Appellant did not secure the minimum marks prescribed for the *viva voce* he could not be recommended.

G

Disposing of the appeal with directions, this Court

H

HELD : 1. The procedure adopted by the Board is well justified and

fair. The procedure adopted for awarding minimum marks is also a just and fair procedure for selecting the candidates and recommending them for regularisation. Since the appellant did not secure the minimum of the marks prescribed for the *viva voce* obviously the Board could not select him and recommend him for regular absorption. The contention that the regularisation should be automatic and as of right since there is no other candidate available from handicapped quota is untenable. [415-A, F, G]

2. Since the Court had, by an order dated January 3, 1994 stated that if there was any vacancy on which he had been working as represented by the appellant, it will be open to the Respondents to allow him to continue in the post (and he has in fact been continuing as such), till the regular selection for absorption is made, it is open to the Respondents to continue him till a regular candidate is available. At the time of regular recruitment to the post, the Respondents would sponsor his name also along with other candidates for being considered afresh. [415-G-H; 416-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3917 of 1994.

From the Judgment and Order dated 5.8.93 of the Punjab & Haryana High Court in C.W.P. No.15310 of 1993.

D.S. Bali, S. Srinivasan and Rajesh K Sharma for the Appellants.

Pardeep Gupta and K.K. Mohan for the Respondents.

Ms. Indu Malhotra and Dania Pradhan for State.

The following Order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the order of the Division Bench of the High Court of Punjab & Haryana in C.W.P. No. 15310/93 dated August 3, 1993 dismissing the writ petition *in limine*. The appellant is an ex-serviceman, served in the Army and was disabled to the extent of 40%. He was a "Technical Tracer". He was appointed on an *ad hoc* basis on November 8, 1991. His name was recommended by Chairman, Rajya Sainik Board, Haryana for absorption as a regular candidate. The Subordinate Service Selection Board for short the Board while considering his

A case along with the children of the deceased disabled person selected respondent Nos. 4 & 5 and the case of the appellant was not recommended. Calling in question of his non-selection, the appellant filed the writ petition, as said it came to be dismissed. The case of the appellant is based on the instructions issued by the Govt. of Haryana dated March 6, 1972 wherein it was stated that as and when vacancy reserved for ex-serviceman arises, intimation will be sent to the employment exchange which would indicate that a disabled ex-serviceman between 20% and 40% disability and the dependent of those killed/disabled beyond 50% in action would be recommended for the post. The name of the candidates who are available in the employment exchange and with the R.S. Board in their absence would be recommended to the Board, criteria 3 postulates as under :

"The appointment of disabled ex-serviceman (disability between 20% to 50%) and of the dependents of those killed in the first instance and later their cases will be referred to the Haryana Subordinate Services Selection Board for regular appointment".

Based thereon, contention has been raised by the learned Advocate for the appellant that once the name has been sponsored by the Sainik Board and the employer made an *ad hoc* employment and recommended to the Board for regularisation, so long as there exists a vacancy and a person who suffers disability between 20% to 50% is available, he is entitled to be regularised as of course and right. The Board in its counter stated that the Govt. had adopted merit criteria in the instructions issued by the Govt. on May 21, 1979 that for Class I and Class II posts for the ex-servicemen would be reserved at 5% and for Class III and Class IV posts 25% were to be reserved for the candidates who are found to be suitable for recruitment. In the first instance, the disabled ex-servicemen would be considered for recruitment on merit and in the absence of their availability, the children of the disabled ex-servicemen would be considered. The Board prescribed two modes i.e. written test and *viva voce* or *viva voce* alone and the claims of all the persons would be considered according to the above procedure. The procedure prescribed by the second category, namely, that if the selection is only by *viva voce*, 20% of the marks was prescribed for the *viva voce* and a candidate is required to get minimum marks for selection. In another resolution the Board had adopted, for considering the claims for selection of the candidates only by *viva vice*, allocation of marks for each criteria i.e. qualifications, higher qualifications, experience, sports,

special knowledge of the subject etc. and *viva vice*. The appellant did not secure the minimum of the 5 marks prescribed for the *viva voce* as result he could not be recommended for regularisation. We find that the procedure adopted by the Board is well justified and fair. A

In the resolution passed by the Board on September 15, 1991 as stated earlier, they adopted criteria in two ways: where is a written examination followed by *viva voce*, they prescribed 12-1/2% of the total marks for interview; where the selection is only by *viva voce*, they prescribed various marks for qualifications, etc. enumerated hereinbefore and with regard to the *viva voce* marks the candidate is required to secure minimum as stated under : B

"In case of second method of selection, i.e. selection by holding interviews only, the Board resolves that the candidates of E.S.M. category who obtain : C

More than 5 marks out of 20 marks fixed for *viva voce*; D

More than 6 marks out of 21-30 marks fixed for *viva voce*;

More than 7 marks out of 31-40 marks fixed for *viva voce*;

More than 8 marks out of 41-50 marks fixed for *viva voce*; E

More than 10 marks out of 51-60 marks fixed for *viva voce*;

will become suitable for the purpose of recommendation."

Thus the procedure adopted for minimum marks is also just and fair procedure in selecting the candidates and for recommending the candidates for regularisation. Since the appellant did not secure minimum of the marks prescribed for *viva voce* obviously the Board could not select him and recommend him for regular absorption. The contention, therefore, that the regularisation should be automatic, and as of right since there is no other candidate available from handicapped quota of first category, is untenable. F G

It is stated by the learned counsel for the appellant that there is one post still vacant, unfilled and that he has been working in the post. When the matter had come up for admission such a representation was in fact H

- A made and by an order dated January 3, 1994 this Court stated that if there is any such vacancy it will be open to the respondents to allow the appellant to continue in the post. It is stated that he has been continuing as such. Under these circumstances till the regular selection for absorption is made, it is open to the respondents to continue the petitioner till the regular candidate is available. If the petitioner is again sent for at the time of the regular recruitment to the post, has to be made, it is needless to mention, that the respondent would sponsor the name of the petitioner also along with other candidates for being considered afresh. The appeal is accordingly allowed only to the above extent and a direction is issued.
- B

Rule nisi is made absolute. No costs.

R.R.

Appeal disposed of.