State Of Punjab vs Charanjit Singh on 20 April, 1993

Equivalent citations: 1994 SCC, SUPL. (2) 577, AIRONLINE 1993 SC 40, 1994 SCC (CRI) 1565 1994 SCC (SUPP) 2 577, 1994 SCC (SUPP) 2 577

Author: N.P Singh

Bench: N.P Singh

PETITIONER:
STATE OF PUNJAB

Vs.

RESPONDENT:
CHARANJIT SINGH

DATE OF JUDGMENT20/04/1993

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
SINGH N.P. (J)

CITATION:
1994 SCC Supl. (2) 577

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.This appeal is filed by the State of Punjab. The respondent was tried for offence punishable under Section 25 of the Arms Act read with Section 5 of the TADA Act. The prosecution case is that on April 28, 1988, the Head Constable, along with other police officials as a party, headed by the A.S.I. were moving about and there was an encounter during which it is alleged that the respondent was apprehended and on search the police recovered one AK-47 rifle and some cartridges. The designated court acquitted after examining the evidence on record. At one stage, the court pointed out that in a case of this nature, it would have been better if some independent witnesses would have

been examined. It is against that finding that the present appeal is filed.

2.It has been held in a number of cases that in a case of this nature, independent witnesses need not be there and even evidence of official witnesses can be relied upon provided it inspires confidence. In the instant case, the lower court has pointed out certain other circumstances also. The view taken by the court below cannot be said to be unreasonable. The criminal appeal is dismissed accordingly.

SATYPAL SINGH V. HARYANA STATE SUB. SERVICE SELECTION BOARD ORDER

1. Leave granted.

2. This appeal by special leave arises from the order of the Division Bench of the High Court of Punjab and Haryana in CWP No. 15310 of 1993 dated + From the Judgment and Order dated 5-8-1993 of the Punjab and Haryana High Court in C.W.P. No. 153 1 0 of 1993 3-8-1993 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 8-11-1991. 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 case along with the children of the deceased disabled persons selected Respondents 4 and 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 Government of Haryana dated 6-3-1972 wherein it was stated that as and when vacancy reserved for ex-servicemen arises, intimation will be sent to the Employment Exchange which would indicate that a disabled ex-serviceman between 20% and 40% disability and the dependents 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, criterion 3 postulates as under:

> "The appointment of disabled ex-servicemen (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 Government had adopted merit criteria in the instructions issued by the Government on 21-5-1979 that 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 were 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 voce, allocation of marks for each criterion i.e. qualifications, higher qualifications, experience, sports, special knowledge of the subject etc. and viva voce. The appellant did not secure the minimum of the 5 marks prescribed for the viva voce as a result he could not be recommended for regularisation. We find that the procedure adopted by the Board is well-justified and fair.

3.In the resolution passed by the Board on 15-9-1991 as stated earlier, they adopted criteria in two ways where there 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:

> "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- more than 5 marks out of 20 marks fixed for viva voce; 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; more than IO 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.

4.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 made and by an order dated 3-1-1994 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. Rule nisi is made absolute. No costs.