

Union Of India vs Chothia (H.P.) And Ors. Etc. Etc on 7 April, 1978

Equivalent citations: 1978 AIR 1214, 1978 SCR (3) 652, AIR 1978 SUPREME COURT 1214, 1978 2 SCC 586, 1978 LAB. I. C. 1093, 1978 U J (SC) 471, 19 GUJLR 888

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, Jaswant Singh

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
CHOTHIA (H.P.) AND ORS. ETC. ETC.

DATE OF JUDGMENT 07/04/1978

BENCH:
FAZALALI, SYED MURTAZA
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SINGH, JASWANT

CITATION:
1978 AIR 1214 1978 SCR (3) 652
1978 SCC (2) 586
CITATOR INFO :
E D 1987 SC 593 (10,26,27)
RF 1988 SC 535 (1,11,15,16,37)

ACT:
Indian Forest Service (Initial Recruitment) Regulation of 1966, Regulation 5, interpretation of-Whether or not the provisions of Regulation 5(2)(b) mandatory in character-Affidavit in support of a contention must be by a person competent to certify.

HEADNOTE:
Respondent No. 1 was selected for Superior Forest Service of the Government of Saurashtra in the year 1951. On 9-4-1958, he was appointed as Assistant Conservator of Forests, Class 111. Sometime in August 1959, Respondent No. 1 was

appointed as Deputy Conservator of Forests, consequent upon the merger of Saurashtra with Greater Bombay. On 1st May, 1956, he was allotted to the newly created State of Gujarat and appointed as Deputy Conservator of Forests. A new service called the Indian Forests Service was established in 1966 and Indian Forests Service Rules were made in 1966. Respondent No. I was one of the candidates to be considered for initial recruitment to the Indian Forests Service from the State cadre. The Selection Board did not recommend the selection of Respondent No. 1 and other respondents were selected. Respondent No. 1, filed a writ petition in the High Court of Gujarat. The High Court held that Regulation 5(2) (b) of the Indian Forests Service (Initial Recruitment) Regulations, 1966 is mandatory and as the Selection Board did not give reasons as enjoined by this provision, the selection made by the Board was illegal. The selection as well as the Notification dated January 7, 1972 were quashed accordingly.

Dismissing the appeals, by special leave the Court

HELD : 1. The provisions of Regulation 5(2)(b) of the Indian Forests Service (Initial Recruitment) Regulations 1966. are mandatory in character and whenever the Board sends the records to the Commission it must give its reasons as required by S. 5(2)(b) of the Regulation. [65G-H]

2. (a) Regulation 5 manifestly shows that the provision required three essential conditions to be complied with -

(i) that the Board shall prepare in order of preference a list of officers of the State Forest Service in accordance with Regulation 4;

(ii) that the Board must adjudge persons whom it thinks suitable for the appointment to the posts;

(iii) that the Board shall send the records of eligible officers of the State who are not adjudged as suitable together with reasons recorded by the Board. [655 A-C]

(b) The words "shall than be referred to the Commission for advice by the Central Government along with" are of a mandatory character and govern not only clause (a) but all the other clauses viz. (b) and (c). The requirement mentioned in clauses (a), (b) and (c). must be complied with before the recommendation is sent to the Commission. [655C-D]

(c) Clause (b) of Regulation 5(2) is in public interest and has been made with a view to avoid arbitrary or capricious exercise of discretion by the Board and also to prevent any hostile discrimination. Clause (b) clearly states that where eligible officers of the State Forest Service are not found suitable, reasons must be given by the Board for their non-inclusion in the select list. [655D]

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K. G. Vasudevan v. State of Kerala (Unreported case No. O.P. 2910/72 dated 1-10-1975) of the Kerala High Court); over-ruled.

(d) The word "adjudge" is a very strong term and indicates that the Board must be satisfied that a person is not suitable and the requirement for giving reasons has been enjoined for the purpose of proving that the Board was not, only satisfied but has given grounds of its satisfaction so as to exclude possibility of any oblique or extraneous considerations. The Commission would also, be in a position to know the views of the Selection Board and the reasons given by it for excluding a particular candidate so that it may verify the correctness, of the reasons given by the Board with the record forwarded by the Board. Perusal by the Board of the confidential rolls of officers and forwarding the, record to the commission is not substantial compliance with the provisions of Regulation 5(2)(b). Regulation 5(2)(b) is not an idle formality. [655 C-F]

3. In the instant case, the deponent in the affidavit, not being a member of the Selection Board, was not at all competent to certify as to what was the reason given by the Board, as required by Regulation 5(2) (b), nor could the affidavit supply an omission made by the selection Board is not complying with the mandate contained in Regulation 5(2)(b). [656 D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1329-1330 of 1977.

Appeal by Special Leave from the Judgment and Order dated 18-3-1977 and 29-4-1977 of the Gujarat High Court in Special Civil Appeal Nos. 1080/72 and L.P.A. No. 106/77. R. P. Bhatt and Girish Chandra for the Appellant. R. S. Gae, P. H. Parekh, (Mrs.) Manju Sharma and C. B. Singh for Respondent No. 1 in C.A. No. 1329/77. The Judgment of the Court was delivered by FAZAL ALI, J.-These appeals by Special leave are directed against the Judgment of the division Bench of the Gujarat High Court dated- 18th March, 1977 by which writ petition filed by respondent No. I was allowed and the impugned selection made by the Selection Board was quashed as also the notification dated January 7, 1972.

The facts have been detailed in the Judgment of the High Court and it is not necessary to repeat the same all over again. Suffice it to say that Respondent No. I was selected for Superior Forest Service of the Government of Saurashtra in the year 1951. On 9-4-1958, he was appointed as Assistant Conservator of Forests, Class III. Sometimes in August, 1959, Respondent No. 1 was appointed as Deputy Conservator of Forests consequent upon the merger of Saurashtra with Greater Bombay. On 1st May, 1960 the State of Gujarat was created and Respondent No. 1 was allotted to the Gujarat Cadre and appointed as Deputy Conservator of Forests. Sometimes after in the year 1966, there was amendment in the All India Service Act by which a new service called the Indian Forests Service was

established and Indian Forests Service Rules were made in 1966. In the instant case, we are only concerned with the interpretation of the Regulation 5 of the Indian Forest Service (Initial Recruitment) Regulation of 1966.

Respondent No. 1 was one of the candidates to be considered for initial recruitment to the Indian Forest Service from the State Cadre. It appears that the Selection Board did not recommend the selection of Respondent No. 1 and other respondents were selected. Respondent No. 1, therefore, filed writ petition in the High Court of Gujarat for quashing the selection made by the Selection Board. The sole point that was urged before the High Court was that the mandatory provisions of Regulation 5 dated 1st September, 1966 as amended upto date had been violated and, therefore, the selection made by the Board was illegal. The High Court accepted the plea taken by Respondent No. 1 and allowed the writ petition as indicated above. The Union of India obtained special leave of this Court and hence this appeal before us.

The short point which falls for determination in this case is as to whether or not the provisions of the Regulation 5 (2) (b) of the Indian Forests Service (Initial Recruitment) Regulations, 1966 (hereinafter referred to as the Regulations) are mandatory in character. The High Court held that Regulation 5(2) (b) is mandatory and as the Selection Board did not give reasons as enjoined by this provision, the selection made by the Board was illegal. Appearing in support of the appeal, Mr. Bhatt submitted in the first place that the Regulation does not contain mandatory requirements for giving reasons by the Board when it submits its recommendations to the Commission. Secondly, it was submitted that the Selection Board on perusal of the confidential rolls of the Respondent No. 1 was satisfied that he was not a suitable person to be recruited to the service and he was, therefore, ignored. The Board, therefore, did not commit any error of law in not selecting respondent no. 1. Reliance has been placed by the Counsel for the Appellant on an unreported decision of the Kerala High Court which has been annexed to the paper book. In our opinion, the interpretation of Regulation 5(2)(b) does not present any difficulty at all. Relevant portion of Regulation 5 may be extracted thus:-

"5. Preparation of list of suitable officers.

1. The Board shall prepare, in the order of preference, a list of such officers of State Forest Service who satisfy the conditions specified in Regulation 4 and who are adjudged by the Board suitable for appointment to posts in the senior and junior scales of service.

2. The Est prepared in accordance with sub- regulation (1) shall then be referred to the Commission for advice, by the Central Government alongwith

(a) the records of all officers of State Forest Servicer included in the list;

(b) the records of all other eligible officers of the State Forest Service who are not adjudged suitable for inclusion in the list, together with the-

reasons as recorded by the Board for their non-inclusion in the list"

(Emphasis ours) A perusal of Regulation 5 manifestly shows that the provision requires three essential conditions to be complied with :-

- (i) that the Board shall prepare in order of preference a list of officers. of the State Forest Service in accordance with Regulation 4;
- (ii) that the Board must adjudge persons whom it thinks suitable for the appointment to the posts;
- (iii) that the Board shall send the records of eligible officers of the State who are not adjudged as suitable together with reasons recorded by the Board.

The words "shall then be referred to the Commission for advice, by the Central Government alongwith" appear to be of a mandatory character and govern not only cl. (a) but all the other clauses viz. (b) and (c). Thus, a plain interpretation of regulation 5 would show that the requirements mentioned in cls. (a), (b) and (c) must be complied with before the recommendation is sent to the Commission. Cl. (b) clearly states that where eligible officers of the State Forest Service are not found suitable, reasons must be given by the Board for their non-inclusion in the select list. This provision, in our opinion is in public interest and has been made with a view to avoid arbitrary or capricious exercise of discretion by the Board, and also to prevent any hostile discrimination. The word 'adjudge' is a very strong term and indicates that the Board must be satisfied that a person is not suitable and the requirement for giving reasons, has been enjoined for the purpose of proving that the Board was not only satisfied but has given grounds of its satisfaction so as to exclude possibility of any oblique or extraneous consideration. In these circumstances, therefore, we are unable to agree with the counsel for the appellant that the requirement of giving reasons as contained in Regulation 5(2)(b) is merely an idle formality and it is a substantial compliance with the said clause if the Board peruses the confidential rolls of officers and forwards the record to the Commission. Another purpose served by the provision is that the Commission would be in a position to know the views of the Selection Board and the reasons given by it for excluding a particular candidate so that it may verify the correctness of the reasons given by the Board with the record forwarded by the Board. In these circumstances we are satisfied that the provisions for giving reasons by Regulation 5 (2) (b) are mandatory and must be complied with. It is not disputed in the present case that the Board had not complied with this part of the provision of Regulation 5 and this was sufficient to vitiate the selection made by the Board'. Mr. Bhatt, relied on an unreported decision of the Kerala High Court where, in a very summary fashion, the said High Court has held that there was no requirement in the Regulation that reasons should be given. In this connection, the High Court of Kerala observed as follows :-

"It is to be observed that there is no such requirement in the Rules with which we are concerned in the instant case. Being so, it would be inappropriate to import any require- ment of recording of reasons-for selection in this case." (Vide K. G. Vasudevan vs. State of Kerala & Ors. o P 2910/72 dt. 1-10-75) The High Court does

not appear to have applied its mind to the language used in S. 5 (2) (b) of the Regulation, nor has it considered the avowed purpose of this provision which is undoubtedly in public interest. In these circumstances, therefore, we find ourself unable to agree with the view taken by the Kerala High Court on this point and we overrule the same.

Lastly, Mr. Bhatt submitted that in view of the reply- affidavit filed by Mr. Bhardwaj, Deputy Secretary to the Government of India, it would appear that the reasons were given by the Board which were that the service record of the respondent did not justify the inclusion of his name in the select list. In the first place, the affidavit appears to have been given by a person who was not a member of the Selection Board and as the recommendation was by a non- speaking order lie would not at all be conversant with the manner in which the recommendation was made ignoring the Respondent No. 1. Nor had he any knowledge of the way in which the mind of the Board was working at that time. The deponent, therefore, was not at all competent to certify as to what was the reason given by the Board as required by Regulation 5 (2) (b) nor could the affidavit supply an omission made by the Selection Board in not complying with the mandate contained in Regulation 5 (2) (b). Secondly, the affidavit is obtuse because according to the Deputy Secretary, there was no obligation placed on the Selection Board to give reasons for the supersession of the said Forest Service Officers. This view as we have pointed out, is absolutely incorrect and is not borne out by the language of the provision of Regulation 5. Apart from this, the High Court has pointed out in its judgment at page 31 of the brief that the Court had given an opportunity to the appellant to produce the records before it so as to find out if the confidential records of the Respondent No. I did not justify the selection. The appellant did not choose to avail of the opportunity given to it by the High Court which clearly indicates that the position was somewhat obscure. For these reasons, we find ourself in complete agreement with the judgment of the High Court and endorse the same. We are clearly of the opinion that the provisions of Regulation 5(2) (b) are mandatory in character and whether the Board sends the records to the Commission, it must give its reasons as required by s. 5 (2) (b) of the Regulation. The result is that the appeals fail and are dismissed with costs to Respondent No. I only in civil Appeal No. 1329/77.

S. R.

Appeal dismissed.