

Shitla Sahai Srivastava

Vs

General Manager, North Eastern Railway

Civil Appeal No. 766 of 1964

(CJI P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, V. Ramaswami-I, R. Satyanarayan Raju JJ)

14.12.1965

JUDGMENT

SATYANARAYANA RAJU, J. -

This appeal, by special leave, is against the judgment of a Division Bench of the Allahabad High Court which affirmed the judgment of a single Judge of that Court. The facts giving rise to this appeal may be shortly stated as follows.

The appellant had been in the service of North-Eastern Railway holding the substantive post of Travelling Ticket Examiner. The post of Travelling Ticket Inspector, which is the next higher post, is a selection post. Selection is made by a Selection Board in accordance with the Promotion and Selection Rules (Non-Gazetted) framed under Para 158 of the Indian Railway Establishment Code, Volume. I (hereinafter referred to as the rules). Every year, an assessment of the number of vacancies that are likely to occur during that year is made. The Chief Commercial Superintendent is the appointing authority for the posts of Ticket Inspectors. In accordance with r. 8(7), eligible staff, up to four times the number of anticipated vacancies, shall be called up for written and viva voce tests. After the examination and the interview, the Board prepares a panel and promotions are made from the said panel.

In the year 1959, a Selection Board for preparing a panel for the ex-Muzaffarpur region was constituted. There were, during that year, eight existing vacancies which were to be filled up immediately. In addition, a panel of six was required to be drawn up. It was also expected that there would be nine more vacancies on account of upgrading of posts but this did not actually materialise. But, due to an incorrect assessment of the anticipated number of vacancies, 92 persons were called up for examination, whereas 56 persons should have been called up for written and viva voce tests.

There was a written examination on February 22, 1959 and March 31, 1959, and thereafter the Selection Board interviewed the candidates. As a result of the examination and the viva voce test, the Selection Board prepared a panel of fourteen persons and the appellant was given the twelfth rank in the panel. He was posted as officiating Travelling Ticket Inspector on or about July 28, 1960. The final list of persons brought on the panel was published in the Railway Gazette on January 1, 1961 and the appellant was shown at serial no. 13 in that panel. But a note was appended to the notification stating that the selection of the appellant and five others was provisional.

By a letter, dated September 29, 1961, the Chief Commercial Superintendent, North-Eastern Railway, Gorakhpur, under the orders of the General Manager, the prescribed authority, deleted the

name of the appellant and five others who were shown at serial numbers 9 to 14 in the panel.

On November 28, 1961, the appellant filed a petition under Art. 226 of the Constitution for the issue of a writ of certiorari, impugning the validity of the order dated September 29, 1961 in and by which his name had been removed from the panel. He contended that the deletion of his name from the panel indefinitely postponed his right of promotion and therefore amounted to a reduction in rank.

The respondents contested the petition. They averred that the name of the appellant was deleted from the panel in accordance with rules, that he had no subsisting right to the post merely by reason of the fact that his name was included in the panel, that the appellant and five other persons were called up for examination on an incorrect assessment of the number of vacancies. It was also contended for the respondents that the provisions of art. 311 were not attracted.

By judgment, dated March 14, 1963, the learned Single Judge dismissed the writ petition filed by the appellant. He held that the deletion of the appellant's name from the panel did not amount to reduction in rank under art. 311 and that therefore he was not entitled to the notice prescribed by that article. The learned Judge also held that the appellant had not established that the decision of the respondent amounted to a violation of any constitutional provision of statutory rule.

The appellant preferred an appeal which was summarily dismissed by a Division Bench. An application for leave to appeal to this Court was also rejected. Thereupon, the appellant obtained special leave from this Court.

In support of the appeal, it is contended for the appellant by Sri. S. P. Sinha, that the deletion of the appellant's name from the panel amounted to a reduction in rank and that the order was bad in law for the reason that the appellant was not given an opportunity to explain or defend himself before his name was deleted from the panel. Now, as has been explained by this Court in *Parshotam Lal Dhingra v. The Union of India*, ((1958) S.C.R. 828.) the expressions "dismissal", 'removal' or 'reduction in rank' are technical words taken from the service rules where they are used to denote the three major categories of punishments.

The question for determination is whether the deletion of the appellant's name from the panel amounts to a reduction in rank within the meaning of art. 311. Mention has already been made of the fact that the panel was prepared under the rules. Rule 8 lays down the procedure to be followed by the Selection Board. Sub-rule (7) of that rule reads :

"Eligible staff up to 4 times the number of anticipated vacancies as defined below shall be called up for written and/or viva voce test..."

Under the above rule, eligible staff up to four times the number of anticipated vacancies should be called for written and viva voce test. The vacancies to be filled up were 8 and in addition a panel of 6 was required to be drawn up; thus for the 14 persons to be included in the panel, 56 eligible staff were to be called. On account of an incorrect assessment of the anticipated vacancies, 92 persons were called to take the promotion examination. The appellant's number in the eligible staff was after 56 and, but for the mistake, he would not have been called for the examination.

Rule 11 provides that panels for selection posts framed by a duly constituted Selection Board and approved by the competent authority shall not be cancelled or amended without reference to an authority next above the one that approved of the panel. Now, the panel was-prepared by the Chief

Commercial Superintendent, Gorakhpur, who was subordinate to the General Manager, North-Eastern Railway. The panel, as originally drawn, was subsequently amended by the Chief Commercial Superintendent under instructions from the General Manager. This was in accordance with rule 11.

In the final list of the personnel included in the panel, the names of Sahai and Ramanand were included. The name of the first of them was included by reason of the fact that his marks were not correctly totalled up and the second was included by reason of the fact that he belonged to the Scheduled Caste. The complaint made by the appellant is that by reason of the inclusion of the said two persons in the final panel of Travelling Ticket Inspectors there was no post in which he could be kept and he was therefore reverted till another vacancy occurred, that by reason of the deletion of his name from the panel it would be necessary for him to appear before another Selection Board and until his name was again brought into the panel he would have no chance of being promoted to the post of Travelling Ticket Inspector.

It is to be noted that in the panel prepared by the Selection Board the word 'provisional' was specifically noted against the name of the appellant which clearly shows that he did not acquire a right to the post. The deletion of his name from the panel therefore does not attract the provisions of art. 311. If a civil servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment : vide *Dhingta's Case* ((1958) S.C.R. 828.) It is no doubt true that in the said case it has been held that when reversion entails penal consequences, it would be reduction in rank, but the instant case is not one in which penal consequences have been visited on the appellant.

Learned counsel for the appellant has relied upon the decision of a Single Judge of the High Court of Calcutta as supporting his contention that the deletion of the appellant's name from the panel would amount to a reduction in rank. That decision is reported as *Dineshwar v. Chief Commercial Superintendent, Eastern Railway* (A.J.R.1960 Cal. 209.).

At p. 211, the learned Judge observed :

"The question is whether the striking of the petitioner's name from the panel, has affected his future right of promotion. In my opinion, the inescapable conclusion is that it has so affected the petitioner. As I have mentioned above, promotion from Class III post to a Class II post is to be done according to the recommendations made by Selection Boards. Where there is such a list or a panel, then a person not in the list cannot hope to be promoted... It is implied, that in order to have a chance of promotion, the petitioner would have to be in the selection list, that is to say, in the panel... But with regard to the second contention, viz., that the striking out of his name from the panel affected his chances of future promotion, it is a point of substance and must be upheld. What the authorities should have done before striking out the name of the petitioner from the panel was to give him an opportunity of showing cause as to why his name should not be struck off from the panel and the order could only be made after giving the petitioner an opportunity of being heard."

We are of opinion that this is not a correct statement of the law, in view of the decision of this Court in High Court, *Calcutta v. Amal Kumar Roy* ((1963) 1 S.C.R. 437.). There the facts were these. The

respondent was a Munsif in the West Bengal Civil Service (Judicial). When the cases of several Munsifs came up for consideration before the High Court for inclusion of names in the panel of officers to officiate as Subordinate Judges, the respondent's name was excluded. He was told by the Registrar of the Court, on a representation made by him, that the Court had decided to consider his case after a year. As the result of such exclusion, the respondent, who was then the seniormost in the list of Munsifs, lost eight places in the cadre of Subordinate Judges before he was actually appointed to act as an Additional Subordinate Judge. He filed a suit praying that a declaration might be made that he occupied the same position in respect of seniority in the cadre of Subordinate Judges as he would have done if no supersession had taken place. His case, in substance, was that as a result of the High Court's order he was reduced by eight places in the list of Subordinate Judges, and that in law amounted to reduction in rank within the meaning of art. 311(2) of the Constitution. This Court held at p. 453 as follows :

"In our opinion, there is no substance in this contention because losing places in the same cadre, namely, of Subordinate Judges, does not amount to reduction in rank, within the meaning of art. 311(2). The plaintiff sought to argue that 'rank', in accordance with dictionary meaning, signifies 'relative position or status or place', According to Oxford English Dictionary, the word 'rank' can be and has been used in different senses in different contexts. The expression 'rank' in art 311(2) has reference to a person's classification and not his particular place in the same cadre in the hierarchy of the service to which he belongs. Hence, in the context of the Judicial Service of West Bengal, 'reduction in rank' would imply that a person who is already holding the post of a Subordinate Judge has been reduced to the position of a Munsif, the rank of a Subordinate Judge being higher than that of a Munsif. But Subordinate Judges in the same cadre hold the same rank, though they have to be listed in order of seniority in the Civil List. Therefore, losing some places in the seniority list is not tantamount to reduction in rank. Hence, it must be held that the provisions of Art. 311(2) of the Constitution are not attracted to this case."

This decision has established the following principle, viz., the expression 'rank' in art. 311(2) has reference to a person's classification and not his particular place in the same cadre in the hierarchy of the service to which he belongs and therefore losing some places in the seniority list is not tantamount to reduction in rank within the meaning of art. 311(2) of the Constitution.

It is perhaps true that the hopes of the appellant were raised by reason of the inclusion of his name in the panel. It is also true that the respondent made an incorrect assessment of the anticipated number of vacancies, but the fact remains that his inclusion in the panel was expressly stated to be provisional. The appellant cannot therefore complain of any infraction of the guarantee given by the Constitution of Government servants.

The appeal fails and is dismissed. In all the circumstances of the case, there will be no order as to costs.

Appeal dismissed.

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