

Sant Ram Sharma

Vs

State of Rajasthan & Anr

Writ Petition No. 182 of 1966

(R. S. Bachawat, V. Ramaswami- I , J. M. Shelat, K. S. Hegde JJ)

07.08.1967

JUDGMENT

RAMASWAMI. J. –

The petitioner, Sri Sant Ram Sharma has obtained a rule from this Court calling upon the respondents to show cause why a writ under Art. 32 of the Constitution should not be granted for quashing two orders of the State of Rajasthan, one dated March 22, 1966 whereby Sri Hanuman Sharma, respondent No. 3 was promoted as Inspector General of Police, Rajasthan superseding the petitioner, and the other dated April 28, 1966 promoting Sri Sultan Singh, respondent No. 4 as Additional Inspector General of Police superseding the petitioner. The petitioner has also prayed for a writ in the nature of mandamus commanding respondents 1 & 2 to consider the petitioner's claim as the senior-most officer in Rajasthan to be promoted to the post of Inspector General of Police. Cause has been shown by Mr. C. B. Agarwala on behalf of the State of Rajasthan and the other respondents to whom notice of the rule was ordered to be given.

The petitioner, Sri Sant Ram Sharma was appointed to the Indian Police Service on June 10, 1952. On September 8, 1954 by a notification of the Ministry of Home Affairs, Government of India, the Indian Police Service (Regulation of Seniority) Rules, 1954 came into force. Rule 6 of the said Rules required that a Gradation List of all Police Officers in the State should be maintained to ascertain their respective seniority. Accordingly, a Gradation List was prepared by the State of Rajasthan in August, 1955. In this Gradation List, the position of the petitioner was 5th. Sri Hanuman Sharma was shown as occupying the 7th position. Sri Sultan Singh stood 14th and the position of Sri Ganesh Singh was 17th. Rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954 required that every officer shall be assigned a year the allotment in accordance with the provisions contained in that rule. According to this rule the year of allotment of the petitioner was 1942, that of respondent No. 3, Sri Hanuman Sharma 1943, and that of respondent No. 4, Sri Sultan Singh 1945. In April 1955 the question of confirmation of the petitioner and of the three other officers, namely, Sri Hanuman Sharma, Sri Sultan Singh and Sri Ganesh Singh to the rank of Deputy Inspector General of Police was taken up. It was decided by the State of Rajasthan that the petitioner should be superseded and the three officers, Sri Hanuman Sharma, Sri Sultan Singh and Sri Ganesh Singh should be confirmed in the rank of Deputy Inspector General of Police, The case of the petitioner is that in June, 1959 Sri Hanuman Sharma was promoted as Special Inspector-General of Police and on June 2, 1961 the post was encadred and Sri Hanuman Sharma was confirmed in that post. It appears that on March 22, 1966, Sri Hanuman Sharma was promoted as Inspector General of Police, Rajasthan and on April 28, 1966 Sri Sultan Singh was promoted as Additional Inspector General of Police superseding the petitioner. The notifications of the State of Rajasthan dated March 22, 1966 and April 28, 1966 are annexures 'G' and 'H' to the writ petition.

The contention of the petitioner is that he was entitled, as a matter of right, to be appointed as Deputy Inspector General of Police in 1955 and as Inspector General of Police in 1966 as he was shown as the senior-most officer in the Gradation List and the orders of the State of Rajasthan in annexures 'G' and 'H' are in violation of the provisions of Rule 6 of the Indian Police Service (Regulation of Seniority) Rules, 1954. It was also contended for the petitioner that his claim was not considered in 1955 at the time of confirmation of respondents 3 and 4 as Deputy Inspector General of Police or in 1966 at the time of promotion of respondents 3 and 4 to the posts of Inspector General of Police and Additional Inspector General of Police respectively. It was therefore said that the fundamental rights of the petitioner under Arts. 14 and 16 have been violated and the orders of the State of Rajasthan dated March 22, 1966 and April 28, 1966 should be quashed by the grant of a writ in the nature of certiorari with a direction to the 1st respondent to consider the petitioner's claim afresh for being promoted to the post of Inspector General of Police.

The allegations of the petitioner have been controverted by the State of Rajasthan in its counter affidavit. It was said that the posts of Inspector General of Police, Additional Inspector General of Police and Deputy Inspector General of Police are selection-posts which carry pay above the time-scale of pay and for appointment to these selection-posts an officer is chosen not merely on the basis of his rank in the Gradation List but on the record of his merit and past experience in the Police Department. The petitioner was appointed to the Indian Police Service on June 10, 1952 but even before that date Sri Hanuman Sharma, Sri Sultan Singh and Sri Ganesh Singh were appointed to the Indian Police Service in 1951 and they were already officiating as Deputy Inspector General of Police. Sri Hanuman Sharma and Sri Sultan Singh were officiating since April 22, 1952 and Sri Ganesh Singh since May 17, 1952. The petitioner was confirmed in the Senior Scale of Indian Police Service on June 10, 1954 but the other three officers were confirmed in the Senior Scale of the Indian Police Service on March 24, 1953 i.e. more than a year before the confirmation of the petitioner. When the question of confirmation of the officers to the post of Deputy Inspector General of Police arose in 1955, the State of Rajasthan considered the comparative merit of all the officers concerned including that of the petitioner and it was decided to confirm respondents 3 & 4 and Sri Ganesh Singh as Deputy Inspector General of Police in preference to the petitioner in view of their outstanding record and merit and experience in the Police Department. As regards the promotion of respondent No. 3 to the post of Inspector General of Police and of respondent No. 4 to the post of Additional Inspector General of Police, it was stated that the petitioner had no right to the selection posts carrying pay above the time-scale of pay and that the appointment to those posts was at the discretion of the State of Rajasthan which decided the question after taking into consideration the merit of all the officers concerned. It was further stated that the power of appointment was not exercised arbitrarily but was exercised in the interest of efficiency and good administration and that the promotion to selection posts was on the basis of merit alone and it was only in a case where the merit of the two officers was equal that the seniority of one officer in the Gradation List might tilt the case in his favour. It was denied by the respondent that there was any violation of the Indian Police Service (Regulation of Seniority) Rules, 1954.

The question for determination in this case is whether the petitioner was entitled, as of right, to be promoted as Deputy Inspector General of Police in 1955 or as Inspector General of Police in 1966 merely on the ground that his name stood first in the Gradation List prepared under Rule 6 of the Indian Police Service (Regulation of Seniority) Rules, 1954.

Sub-section (1) of s. 3 of the All India Services Act, 1951(LXI of 1951) empowers the Central Government to make rules for the regulation of recruitment and conditions of service of persons appointed to an All-India Service. In exercise of this

power the Central Government framed the Indian Police Service (Regulation of Seniority) Rules 1954, Rule 2(a) provides that "Cadre" means "an Indian Police Service Cadre constituted in accordance with rule 3 of the Indian Police Service (Cadre) Rules, 1954". Rule 2(d) defines "gradation list" to mean "a gradation list prepared under rule 6". Rule 2(g) defines a "senior post" to mean "a post included under item 1 of each Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 or any post declared equivalent thereto by the State Government concerned". Rule 3 deals with the assignment of year of allotment and reads as follows :-

"(1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in this rule.

(2) The year of allotment of an officer in service at the commencement of these rules shall be the same as has been assigned to him or may be assigned to him by the Central Government in accordance with the orders and instructions in force immediately before the commencement of these rules :

(3) The year of allotment of an officer appointed to the Service after the commencement of these rules, shall be -

(a) where the officer is appointed to the Service on the results of a competitive examination, the year following the year in which such examination was held;

(b) where the officer is appointed to the Service by promotion in accordance with rule 9 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 of those Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former :

Provided that the year of allotment of an officer appointed to the Service in accordance with rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the Service, in accordance with rule 7 of those Rules, so started officiating shall be determined ad hoc by the Central Government in consultation with the State Government concerned;

Rule 4 relates to seniority of officers and reads as follow :-

"4. (2) The seniority of officers in service at the commencement of these rules shall be as has been determined or may be determined by the Central Government in accordance with the orders and instructions in force immediately before the commencement of these rules :

Provided that where the seniority of an officer appointed in accordance with rule 9 of the Recruitment Rules has not been determined before the commencement of these rules, his seniority shall be determined in accordance with the provision in sub-rule (3).

Rule 5 deals with seniority of officers placed in List II and List III by the Special Recruitment Board and Rule 5-A deals with seniority of officers appointed under the Indian Police Service (Special Recruitment) Regulations, 1957. Rule 6 states :

"6. Gradation List. - There shall be prepared every year for each State Cadre and Joint Cadre a gradation list consisting of the names of all officers borne on that Cadre arranged in order of seniority in accordance with the provisions of rules 4, 5, 5-A and 7".

On behalf of the petitioner Mr. N. C. Chatterjee put forward the argument that Rule 6 required that a gradation list should be prepared strictly in order of seniority in accordance with the provisions of Rules 4, 5, 5-A and 7 and it is not open to the State of Rajasthan to disregard the claim of the petitioner who stood first in the Gradation List and to promote respondents 3 & 4 to the rank of Deputy Inspector General of Police. We are unable to accept the argument put forward on behalf of the petitioner as correct. It is apparent from a perusal of Rules 3 and 8 of the Indian Police Service (Pay) Rules, 1954 read with Part B of Sch. III of those Rules that the posts of Deputy Inspector General of Police, Additional Inspector General of Police and Inspector General of Police in Rajasthan State are selection posts and outside the junior and senior time-scales of pay. Rule 2(a) provides that "Cadre" and "Cadre Post" shall have the meanings respectively assigned to them in the Indian Police Service (Cadre) Rules, 1954. Rule 3 prescribes the time-scales of pay admissible to members of the Service and reads as follows :

"3. Time-scales of pay - The time-scales of pay admissible to a member of the Service shall be as follow :-

Junior Scale - Rs. 350 - 350 - 380 - 380 - 30 - 590 - E.B. - 30 - 770 - 40 - 850 (19 years).

Senior Scale. - Rs. 600 (6th year under) - 40 - 1,000 - 1,000 - 1,050 - 1,050 - 1,100 - 1,100 - 1,150 (22) years.

Selection Grade - Rs. 1,250.

Provided that a member of the Service holding a post in the senior time-scale may be appointed to a post in the selection grade and where he is so appointed, he shall be entitled to draw pay of the post in the selection grade;

Provided further that a member of the Service to whom any other time-scale of pay was admissible under any order in force immediately before the commencement of these rules shall continue to draw pay in that scale".

The rule prescribes two scale of pay - Junior Scale and Senior Scale - in addition to the Selection Grade which is Rs. 1,250. Rule 8 deals with pay of officers holding posts enumerated in Schedule III and states as follow :-

"Any member of the Service appointed to hold a post specified in Schedule III, shall, for so long as he holds that post, be entitled to draw the pay indicated for that post in the said Schedule :

Provided that no member of the Service shall at any time draw pay less than that which he is entitled to draw under rule 4 and rule 5;

Provided further that a member of the Service to whom any other special pay or pay above the time-scale was admissible under any order in force immediately before the commencement of these rules for holding posts specified in Schedule III shall, for so long as he holds the post, continue to draw

the same pay".

The posts in the Schedule are (a) posts carrying pay above the time-scale pay of the Indian Police Service under the State Governments, specified in Section A, (b) posts carrying pay in the senior time-scale of the Indian Police Service under the State Governments including posts carrying special pay (in addition to pay in the time-scale) specified in Section B and (c) posts carrying pay above the time-scale or special pay in addition to pay in the time-scale, under the Central Government held by members of the Service, specified in Section C. In category (a) so far as the State of Rajasthan is concerned the posts of Inspector General of Police, Additional Inspector General of Police and Deputy Inspector General of Police are shown as Selection Grade posts carrying pay above the time-scales of pay. It is manifest therefore, on a perusal of Rules 3 and 8 read with Part B of Sch. III, that the three posts of Inspector General of Police, Additional Inspector General of Police and Deputy Inspector General of Police in Rajasthan are Selection posts and outside the junior and senior time-scales of pay mentioned in Rule 3. This conclusion is also supported by para I of Part B of Sch. III which states that "the number of posts in the selection grade in a State Cadre shall be equal to twenty per centime of the total number of senior posts borne on that cadre reduced by the number of posts carrying pay above the time-scale". In support of his contention, Mr. N. C. Chatterjee referred to the decision of this Court in *P. C. Wadhwa v. Union of India*. But the ratio of that case has no bearing on the question presented for determination in the present case. The question involved in that case was whether under the relevant rules governing the Indian Police Service, a member thereof was entitled as of right to be promoted to a post in the senior scale as and when a vacancy (except a vacancy in the promotion quota) arose therein and no one senior to him was available for that post. It was held by the majority of the learned Judges that a consideration of the various rules would make it clear beyond doubt that a person in the junior time-scale of the service is as much a cadre officer as one holding a post in the senior time-scale or a post above the time-scale and the whole scheme of the rules indicated that a person in the junior scale of pay had a right to hold a post on the senior scale of pay subject to the availability of a post in the senior scale of pay and his seniority in the junior scale of pay. At page 627 of the Report Mudholkar, J. in the course of his judgment expressly observed - "We should not be understood as saying that this right extends to the appointment to a post carrying pay above time-scale of pay or a post carrying a special pay, and the rules governing appointment to such posts were not placed before us". The decision of this Court in *P. C. Wadhwa v. Union of India* ([1964] 4 S.C.R. 598) is therefore of no assistance to the petitioner and for the reasons we have already given, we are of the opinion that the three posts of Inspector General of Police, Additional Inspector General of Police and Deputy Inspector General of Police in Rajasthan State are selection posts and outside the junior or senior time-scales of pay. If these three posts are selection posts it is manifest that the State of Rajasthan is not bound to promote the petitioner merely because he stood first in the Gradation List. The circumstance that these posts are classed as "Selection Grade Posts" itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation List but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or position in the Gradation List does not confer any right on the petitioner to be promoted to selection posts and that it is a well- established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is therefore available. The administrative practice with regard to selection posts is laid down in a letter of the Government of India dated July 31/August 3, 1954 as follow :-

"If a person, though senior in the gradation list, is appointed to the selection post

later than his junior, this is presumably because he is superseded as a matter of selection. If this is so, it would certainly not be unjustified to regard the officer so selected earlier, though junior in the gradation list, as senior to other officer, as far as the selection posts are concerned".

Another communication dated June 1, 1955 states :

"All super-time scale posts are selection posts and appointment thereto need not follow the order of seniority".

In another letter No. 7/6/56-AIS(1) dated October 5, 1956 the Government of India has reiterated the principle of promotion to selection grade posts as follows :

"I am directed to say that the Government of India have recently had occasion to consider the question of the principles to be followed in the matter of promotion of I.P.S. Officers to the selection Grade when some of the officers juniors in service were approved and given officiating chances in such selection grades earlier than their seniors. It is, of course, a well established principle that promotions to the Selection Grade or a selection post is to be based primarily on merit and not seniority in the service....."

We proceed to consider the next contention of Mr. N. C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

In *B. N. Nagarajan v. State of Mysore*, ([1966] 3 S.C.R. 682) it was pointed out by this Court that it is not obligatory under the proviso to Art. 309 of the Constitution to make rules of recruitment, etc., before a service can be constituted or a post created or filled, and, secondly, the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws. It follows from this that the State Government will have executive power in respect of Sch. 7. List II, Entry 41, State Public Service, and there is nothing in the terms of Art. 309 of the Constitution which abridges the power of the executive to act under Art. 162 of the Constitution without a law. A similar view was taken by this Court in *T. Cajee v. U. Jormanik Siem* ([1961] 1 S.C.R. 750) where Wanchoo, J., as he then was, who delivered judgment on behalf of the majority, observed as follows at pp. 762 - 764 of the Report :

"The High Court has taken the view that the appointment and succession of a Siem was not an administrative function of the District Council and that the District Council could only act by making a law with the assent of the Governor so far as the appointment and removal of a Siem was concerned. In this connection, the High Court relied on para. 3(1)(g) of the Schedule, which lays down that the District

Council shall have the power to make laws with respect to the appointment and succession of Chiefs and Headmen. The High Court seems to be of the view that until such a law is made there could be no power of appointment of a Chief or Siem like the respondent and in consequence there would be no power of removal either. With respect, it seems to us that the High Court has read far more into para. 3(1)(g) than is justified by its language. Paragraph 3(1) is in fact something like a legislative list and enumerates the subjects on which the District Council is competent to make laws. Under para. 3(1)(g) it has power to make laws with respect to the appointment or succession of Chiefs or Headmen and this would naturally include the power to remove them. But it does not follow from this that the appointment or removal of a Chief is a legislative act or that no appointment or removal can be made without there being first a law to that effect.

Further once the power of appointment falls within the power of administration of the district the power of removal of officers and others so appointed would necessarily follow as a corollary. The Constitution could not have intended that all administration in the autonomous districts should come to a stop till the Governor made regulations under para. 19(1)(b) or till the District Council passed laws under para. 3(1)(g). The Governor in the first instance and the District Councils thereafter were vested with the power to carry on the administration and that in our opinion included the power to appoint and remove the personal for carrying on the administration. Doubtless when regulations are made under para. 19(1)(b) or laws are passed under para. 3(1) with respect to the appointment or removal of the personal of the administration, the administrative authorities would be bound to follow the regulations so made or the laws so passed. But from this it does not follow that till the regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities concerned would at all relevant times have the power to appoint or remove administrative personal under the general power of administration vested in them by the Sixth Schedule. The view therefore taken by the High Court that these could be no appointment or removal by the District Council without a law having been first passed in that behalf under para. 3(1)(g) cannot be sustained."

We pass on to consider the next contention of Mr. N. C. Chatterjee that if the executive Government is held to have power to make appointments and lay down conditions of service without making rules in that behalf under the proviso to Art. 309, there will be a violation of Arts. 14 and 16 because the appointments would be arbitrary and capricious. In our view, there is no substance in this contention of the petitioner. If the State of Rajasthan had considered the case of the petitioner along with the other eligible candidates before appointments to the selection posts there would be no breach of the provisions of Arts. 14 and 16 of the Constitution because everyone who was eligible in view of the conditions of service and was entitled to consideration was actually considered before promotion to those selection posts was actually made. It was said by Mr. C. B. Agarwala on behalf of the respondents that an objective evaluation of the merit of the officers is made each year and promotion is made on scrutiny of the record sheets dealing with the competence, efficiency and experience of the officers concerned. In the present case, there is no specific allegation by the petitioner in the writ petition that his case was not considered along with respondents 3 & 4 at the time of promotion to the posts of Deputy Inspector General or Police in 1955 or to the rank of Inspector General of Police or Additional Inspector General of Police in 1966. There was, however, a vague suggestion made by the petitioner in paragraph 68 of his rejoinder-petition dated July 17,

1967 that "the State Government could not have possibly considered my case, as they considered and even in this counter-affidavit consider Shri Hanuman Sharma and Sri Sultan Singh senior to me by the new type of seniority they have invented for their benefit". Even though there is no specific allegation by the petitioner that there was no consideration of his case, respondent No. 1 has definitely asserted in paragraph 23, 25, 40 and 44 of the counter-affidavit that at the time of promotion of respondents 3 & 4 to the selection posts of Deputy Inspector General of Police and of Inspector General of Police the case of the petitioner was considered. We are therefore of the opinion that the petitioner is unable to substantiate his argument that there was no consideration of his case at the time of promotion of respondents 3 & 4 to the selection posts. We must therefore proceed on the footing that respondent No. 1 had considered the case of the petitioner and taken into account the record, experience and merit of the petitioner at the time of the promotion of respondents 3 & 4 to the selection grade posts. It is therefore not possible to accept the argument of Mr. N. C. Chatterjee that there was any violation of the constitutional guarantee under Arts. 14 and 16 of the Constitution in the present case. Mr. N. C. Chatterjee argued that the introduction of the idea of merit into the procedure of promotion brings in an element of personal evaluation, and that personal evaluation opens the door to the abuses of nepotism and favouritism, and so, there was a violation of the constitutional guarantee under Arts. 14 and 16 of the Constitution. We are unable to accept this argument as well-founded. The question of a proper promotion policy depends on various conflicting factors. It is obvious that the only method in which absolute objectivity can be ensured is for all promotions to be made entirely on grounds of seniority. That means that if a post falls vacant it is filled by the person who has served longest in the post immediately below. But the trouble with the seniority system is that it is so objective that it fails to take any account of personal merit. As a system it is fair to every official except the best ones; an official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. But, though the system is fair to the officials concerned, it is a heavy burden on the public and a great strain on the efficient handling of public business. The problem therefore is how to ensure reasonable prospect of advancement to all officials and at the same time to protect the public interest in having posts filled by the most able men ? In other words, the question is how to find a correct balance between seniority and merit in a proper promotion-policy. In this connection Leonard D. White has stated as follows :-

"The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole organisation. The main interest to be served is the public interest, not the personal interest of members of the official group concerned. The public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to move as rapidly up the promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment.

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Employees often prefer the rule of seniority, by which the eligible longest in service is automatically awarded the promotion. Within limits, seniority is entitled to consideration as one criterion of selection. It tends to eliminate favouritism or the suspicion thereof; and experience is certainly a factor in the making of a successful employee. Seniority is given most weight in promotions from the lowest to other subordinate positions. As employees move up the ladder of responsibility, it is

entitled to less and less weight. When seniority is made the sole determining factor, at any level, it is a dangerous guide. It does not follow that the employee longest in service in a particular grade is best suited for promotion to a higher grade; the very opposite may be true".

(Introduction to the Study of Public Administration. 4th Edn. pp. 380, 383).

As a matter of long administrative practice promotion to selection grade posts in the Indian Police Service has been based on merit and seniority has been taken into consideration only when merit of the candidates is otherwise equal and we are unable to accept the argument of Mr. N. C. Chatterjee that this procedure violates, in any way, the guarantee under Arts. 14 and 16 of the Constitution

For the reason expressed we hold that the petitioner has been unable to make out a case for the grant of a writ under Art. 32 of the Constitution. The petitions accordingly fails and is dismissed. There will be no order as to costs in the circumstances of this case.

Petition dismissed.

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