

Ganga Ram and Others

Vs

The Union of India and Others

Writ petition No. 124 of 1967

(CJI M. Hidayatullah, A. N. Grover, A. N. Ray, I. D. Dua, J. C. Shah, K. S. Hegde JJ)

02.02.1970

JUDGMENT

DUA, J. -

1. Out of the five petitioner in this petition under Article 32 of the Constitution Kashmiri Lal, petitioner No. 5 having since retired, is no longer interested in the result of these proceedings. The claim of only four petitioners thus survives for consideration. They are officiating clerks, Grade I, in the office of Deputy Chief Accounts Officer (Traffic Accounts Branch) Northern Railway. They were promoted from Grade II after passing the departmental qualifying examination described as Appendix 2 examination. They claim that their seniority should be determined as from the date of their appointment as officiating clerks Grade I and not on the basis of their position in the gradation list of clerks, Grade II. Their grievance is that they were appointed as officiating clerks, Grade I, after passing the Appendix 2 examination long before Respondents 4 to 6 and 11 but these four respondents are shown as senior to the petitioners on the ground of their seniority in Grade II. The petitioner seek to support their claim by relying on Articles 14 and 16 of the Constitution. The seniority of the direct recruits to Grade I, the petitioners complain, is determined on the basis of their appointment, where as the seniority in Grade II. It is emphasised that both the direct recruits and the promotees, like the petitioners, have to pass the Appendix 2 examination. But their seniority is determined by different methods. It is further complained that Grade II clerks who pass the qualifying Appendix 2 examination are not promoted immediately. They have to wait till a vacancy occurs and even at the time of filing the vacancy the senior most qualified clerk is selected of promotion without giving any preference to those who have qualified earlier in point of time. Again, when a permanent post falls vacant all the eligible clerks in Grade II are considered at par without giving any credit or preference to those who have already officiated as Clerks, Grade I. A junior clerk, Grade II, qualifying earlier, according to the petitioners' grievance, continues to remain junior for the purpose of promotion and confirmation in the permanent post in Grade I and a senior clerk, Grade II, qualifying later retains his seniority for this purpose. Similarly, in filing leave vacancies it is complained that if a clerk is appointed to officiate in short term leave vacancy, then on the return of the incumbent of the post, instead of reverting the clerk so appointed to officiate, the junior most according to the gradation list in Grade II, officiating in Grade I, is reverted even though he may have qualified earlier than the former and may also have officiated for some time against a regular post in Grade I. The petitioner's right of equality before the law and equality of opportunity in matters of public, employment is stated thus to have been violated.

2. The right of equality is guaranteed by Articles 14 to 16 of our Constitution. The petitioners rely on Articles 14 and 16(1). Article 14 is an injunction to both the legislative and the executive organs of the State and other subordinate authorities not to deny to any person equality before the law or

the equal protection of the laws. Article 16 is only an instance of the general rule of equality laid in Article 14. Sub-article (1) of Article 16 guarantees to every citizen equality of opportunity in matters of public employment thereby serving to give effect to the equality before the law guaranteed by Article 14. The equality of opportunity in the matter of services undoubtedly takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable rules for selection and promotion, applicable to all member of a classified group. Mere production of inequality is not enough to attract the constitutional inhibition because every classification is likely in some degree to produce some inequality. The State is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not be scientifically perfect or logically complete. In applying the wide language of Articles 14 and 16 to concrete cases a doctrinaire approach should be avoided the matter considered in a practical way, of course, without whittling down the equality clauses. The classification, in order to be outside the vice of inequality, must however, be founded on an intelligible differential which on rational grounds distinguishes persons grouped together from those left out. The differences which warrant a classification must be real and substantial and must bear a just and reasonable relation to the object sought to be achieved. If this test is satisfied then the classification cannot be hit by the vice of inequality. It is in the background of this broad principle that the petitioner's grievance is to be considered.

3. The relevant provisions in the Indian Railways Establishment Manual directly applicable to the petitioner's case may now be seen. They are contained in Paras 48 and 49, Chapter I, Section B and Paras 17 to 19 and 21 of Chapter II in support of the argument that Para 20(b) is discriminatory it is desirable to reproduce all these paragraphs.

"48. The classes included in this group and the normal channel of their promotion are as under :

#

Clerks, Grade II (Rs. 110-180)

Clerks, Grade I (Rs. 130-300)

|-----|

|Sub-Heads (Rs.210-380) Stock Verifiers (Rs. 210-380)



||Junior Accountants Jr. Inspectors Jr. Inspectors of of Station Accounts Store Accounts (Rs. 270-435) (Rs. 270-435) (Rs. 270-435) ||

|Sr. Accountants Jr. Inspectors of Sr. Inspectors of Station Accounts Stores Accounts(Rs. 435-575) (Rs. 435-575) (Rs. 435-575)Recruitment - Initially in the grade of Clerks, Grade II. Directrecruitment for 20% vacancies in the grade of Clerks, Grade I.Qualifications -(a) Age (i) For clerks, Grade II 18-21. (ii) For clerks, Grade I 18-25.(b) Education For clerks, Grade II, Matriculation, till replaced by Higher Secondary. For clerks, Grade I, University Degree, preference being given to persons with I and II Division Honours and Master's Degree.##

Directly recruited Clerks, Grade I, will be on probation for one year and will be eligible for confirmation only after passing the prescribed departmental examination in Appendix 2. Necessary facilities will be given to them to enable them to acquire a working knowledge of the rules and procedure.

49. Such of the Clerks, Grade II, as qualify in the departmental examination as prescribed in Appendix 2 or those who may have been permanently exempted from passing the said examination will be eligible for promotion as Clerks, Grade I, and sub-heads. They will be eligible for a minimum starting pay of Rs. 150 per month or will be granted four advance increments on promotion to Grade I after their pay has been fixed under the ordinary rules. Promotion to the grade of Sub-Heads will be by seniority-cum-suitability."

Chapter II

"17. subject to what is stated in Paragraphs 18 and 19 below, where the passing of a departmental examination or trade test has been prescribed as a condition precedent to the promotion to a particular non-selection post, the relative seniority of the railway servants passing the examination/test in their due turn and on the same date or different dates which are treated as one continuous examination, as the case may be, shall be determined with reference to their substantive or basic seniority.

18. A railway servant who, for reasons beyond his control is unable to appear in the examination/test in his turn along with others, shall be given the examination/test immediately he is available and if he passes the same, he shall be entitled for promotion to the post as if he had passed the examination/test in his turn.

19. Seniority for promotion as Junior Accounts, Junior Inspectors of Station or Stores Accounts. - Seniority for promotion to the rank of junior accountant or junior inspector of Station or Stores Accounts should count entirely according to the date of passing the examination qualifying for promotion to those ranks. Candidates who pass the examination in a year are ipso facto senior to those who qualify in subsequent. In the case of staff of ex-Company Railways, who are exempted from passing the examination, the date on which they are declared fit for promotion to the rank of Account or Inspector should be considered as the date of their passing. On receipt of the result of the above examination each railway administration should immediately hold a selection test of the candidates declared successful along with any eligible ex-Company or ex-State Railway Staff, who may be asked to appear before the selection board from time to time. While the selection board will determine in the case of the ex-Company or ex-State Railway staff, their suitability for promotion as Accountant/ Inspector before placing them on the penal, no candidate who has qualified in the said examination will be declared ineligible for promotion as a junior Accountant/Inspector, the selection board only assigning a suitable place to each such candidate in order of merit. The staff placed on the penal in any year will rank senior to those empenalled in subsequent years.

20. Date of passing the departmental examination/test to regulate seniority. - (a) Except as provided for in sub-paragraph (b) below, seniority of two or more railway servants, who pass the departmental examination/test on different dates, not treated as one continuous examination, will be regulated entirely by the date of passing the examination or test.

(b) The seniority of Accounts Clerks, Grade I and Stock Verifiers is to be determined with reference to their substantive or basic seniority in Grade II irrespective of the dates they qualify for promotion

as Clerks Grade I by passing the examination prescribed for the purpose.

21. Seniority on promotion to non-selection posts. Promotion to non-selection posts shall be on basis of seniority-cum-suitability being judged by the authority competent to fill the post, by oral and/or written test or a departmental examination as considered necessary and the record of service. The only exception to this would be in cases where for administrative convenience, which should be recorded in writing, the competent authority considers it necessary to appoint a railway servant other than the senior most suitable railway servant to officiate in a short term vacancy not exceeding two months as a rule and 4 months in any case. This will, however, not give the railway servant any advantage not otherwise due to him."

Appendix 2, in addition to the syllabus for the examination, provides :

"3. The examination will be conducted by the Head of each office, who will also decide the intervals at which it should be held.

4. (a) Normally no railway servant will be permitted to take the Examination more than three; but the Financial Adviser and Chief Accounts Officer may in deserving cases permit a candidate to take the examination for a fourth time, and, in very exceptional cases, the General Manager may permit a candidate to take the examination for the fifth and the last time.

(b) No railway servant, who has less than six months' service in a Railway Accountants Office or who has not a reasonable chance of passing the examination will be allowed to appear in the examination prescribed in this Appendix.

In exceptional circumstances, the condition regarding six months' minimum service may be waived by the General Manager.

(c) Temporary railway servants may be permitted to sit for the examination but it should be clearly understood that the passing of this examination will not give them a claim for absorption in the permanent cadre.

(d) A candidate who fails in the examination but shows marked excellence by obtaining not less than 50% in any subject may be exempted from further examination in that subject in subsequent examination."

It is quite clear that Para 49 does not confer any right to immediate promotion on those Grade II clerks who pass the qualifying Appendix 2 examination. The only benefit which accrues to them is that one hurdle is removed from their way and they become eligible for being considered for promotion to Grade I. This promotion is governed by the test of seniority-cum-suitability. All those who qualify for promotion are treated at par of this purpose and they are grouped together as constituting one class. The fact that one person has qualified earlier in point of time does not by itself clothe him with a preferential claim to promotion as against those who qualify later. This examination is considered to be a continuous examination and as is clear from Para 17 success at this examination does not constitute the basis of seniority which continues to be dependent on the substantive or basic seniority in Grade II. The question which directly arises for determination is : does the procedure laid down in these instruction violate the petitioner's right as guaranteed by Articles 14 and 16 ? The State which encounters diverse problems arising from a variety of circumstances is entitled to lay down conditions of efficiency and other qualifications for securing

the best service for being eligible for promotion in its different departments. In the present case the object which is sought to be achieved by the provisions reproduced earlier is the requisite efficiency in the Accounts Department of the Railway establishment. The departmental authority is the proper judge of its requirements. The direct recruits and the promotees like the petitioners, in our opinion, clearly constitute different classes and this classification is sustainable on intelligible differentia which has a reasonable connection with the object of efficiency sought to be achieved. Promotion to Grade I is guided by the consideration of Seniority-cum-merit. It is, therefore, difficult to find fault with the provision which places in one group all those Grade II clerks who have qualified by passing the Appendix examination. The fact that the promotees from Grade II have officiated for some time are not given the credit of this period when a permanent vacancy arises also does not attract the prohibition contained in Articles 14 and 16. It does not constitute any hostile discrimination and is neither arbitrary nor unreasonable. It applies uniformly to all members of Grade II clerks who have qualified and become eligible. The onus in this case is on the petitioners to establish discrimination by showing that the classification does not rest upon any just and reasonable basis. The difference emphasised on behalf of the petitioners is too tenuous to form the basis of a serious argument. Their challenge, therefore, fails.

The decision in *Meruyn Coutindo v. Collector of Customs, Bombay* (1966) (3) SCR 600 on which reliance has been placed on behalf of the petitioners dealt with a different problem though the principle of law laid down there seems to go against the petitioners' submission. It was expressly observed there that there is no inherent vice in the principle of fixing seniority by rotation in a case when a service is composed in fixed proportion of direct recruits and promotees. The distinction between direct recruits and promotees as two sources of recruitment being a recognised difference, not obnoxious to the equality clauses, the provisions which concern us cannot be struck down on the ratio of this decision.

The petition accordingly fails and is dismissed but without costs.

</html