

Union of India

Vs

Vasant Jayaram Karnik and Others

Civil Appeal No. 1585 of 1969

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

07.09.1970

JUDGMENT

SHAH, J. -

1. Vasant Jayaram Karnik - hereinafter called 'Karnik' - moved before the High Court of Gujarat a petition praying for an order quashing the "list of seniority" of Assistant Commissioners of Income-tax framed by the Government of India "as of August 1, 1965" in which he was placed below twenty-nine named officers (who will hereinafter be referred to collectively as respondents 6 to 34). He claimed that thereby he was denied the guarantee of equality of employment or employment to an office under the Union under Article 16(1) of the Constitution. The High Court of Gujarat upheld his contention and issued a direction requiring the Union of India to determine the seniority of Karnik and other officers in the cadre of Assistant Commissioners of Income-tax in accordance with the law.

2. A public servant placed in the list of seniority in a cadre or grade where selection for promotion to the next higher grade is on the "basis of seniority-cum-merit" is entitled, on the plea that the list is contrary to the rules governing seniority, to claim relief on the footing that he is denied equality of opportunity in matters relating to employment.

3. Prior to September, 1944, officers of the Income-tax Department were placed in two classes. In Class I were placed Commissioners of Income-tax and Assistant Commissioners of Income-tax, in Class I were placed Income-tax Officers Grade I, Grade II and Grade III. In September, 1944, the service was re-organised and the Commissioners of Income-tax, Assistant Commissioner of Income-tax and Income-tax Officers, Grade I and II were placed in a new Class I and the Income-tax officers, Grade III, were placed in a new Class II. On re-organisation of the service some Income-tax Officers of the former Class II service were promoted to the new Class I. Those promotions were not strict based on seniority, but on their performance in the former Class II service.

4. This primarily concerns four sets of officers, they are -

(1) B. S. Nadkarni (hereinafter called Nadkarni), who was on re-organisation of the service promoted on August 1, 1946, as Income-tax Officer, Grade II, Class I and was confirmed in that grade with effect from August 15, 1947. He was promoted as Income-tax Officer, Grade I, Class I, on January 4, 1950 and was confirmed in that grade from that date.

(2) V. J. Karnik (hereinafter called Karnik), who was on June 1, 1947, promoted as

Income-tax officer, Grade II, Class I and was confirmed in that Class on August 1, 1948. He was promoted as Income-tax Officer, grade I, Class I, on January 4, 1950 and was confirmed in that Grade with effect from the same date.

(3) Respondents 6 to 34. Out of these respondents 6 to 21 were directly recruited as Income-tax officers. Respondents 29 to 34 were promoted as Income-tax Officers from Class II. All these officers were promoted to Class I, Grade I, after Nadkarni and Karnik were promoted.

(4) Hansraj Chopra, Sham Singh and B. D. Kapoor. These offices were promoted as Income-tax Officers, Grade I, Class I, after Karnik, Nadkarni and respondent 6 to 34 were promoted.

5. In the "seniority list" of Income-tax Officers, Class I, Grade I, prepared "as of August 1, 1953", Nadkarni was placed at 11, No. 55; Karnik at 11, No. 69; respondents 6 to 21 were placed at 11, Nos. 82, 83, 84, 87, 89, 90, 85, 88 and 93 to 100 respectively (some other officers who are not before us occupying intervening places); respondents 22 to 34 were placed at 11, Nos. 106 to 118; and Hansraj Chopra Sham Singh and B. D. Kapoor at 11, Nos. 119, 120 and 121 respectively.

6. Under the rules framed by the Central Board of Revenue promotion of Income-tax Officer, grade I, Class I, to the grade of Assistant Commissioners of Income-tax was to be made on the recommendation of a Committee called the Departmental Promotion Committee. Selection for promotion was to be made on merit, i.e. "giving greatest weightage to outstanding qualifications, record of work and ability rather than to mere seniority". The Committee after considering the cases of the Income-tax Officers, Grade I, Class I, eligible for promotion made recommendations to the Central Government and the Central Government promoted officers recommended as Assistant Commissioners of Income-tax.

7. At a meeting held in August, 1949, the Committee resolved that "in the interest of efficiency of administration the cadre of Assistant Commissioners should be manned by officers who were mature and experienced" and recommended that no officer should be promoted as Assistant Commissioner until he had worked for not less than ten years as Income-tax Officer. The Central Government agreed with that recommendation and in consultation with the Federal Public Service Commission declared that no Income-tax Officer should ordinarily be considered for promotion as Assistant Commissioner unless he had completed at least ten years as Income-tax Officer. It was, however, found that an adequate number of officers with standing for ten years' were not available for selection. By letter, dated July 21, 1950, the Committee decided that all Income-tax Officers with more than Gazetted service for nine years may be considered for selection. At a meeting of the Committee held in November, 1951, the cases of officers who had completed Gazetted service for nine years as Income-tax Officers were considered and the Committee selected for promotion fifteen out of those officers as "fit for promotion" to the cadre of Assistant Commissioners. There were several vacancies likely to arise in the near future and to meet that emergency the Committee decided to consider for promotion officers who had not yet completed nine years' service as Income-tax Officer but had completed eight years service on or before December 31, 1951. Nadkarni and Karnik who fell in this category were accordingly considered with other officers. Respondents 6 to 34 were not then considered as they had not completed the qualifying period of eight years. The Committee found that Nadkarni and Karnik were "not yet fit". Among the officers promoted as Assistant Commissioner on the recommendations made by the Committee at the meeting were Chopra, Sham Singh and Kapoor. At the next meeting of the Committee held in September, 1952,

Nadkarni was found fit for promotion, but Karnik was again found "not yet fit". It is not clear from the record whether at that meeting the rule relating to minimum service of nine years as Income-tax Officer was relaxed. It is however not disputed that respondents 6 to 34 were not then considered for promotion. Pursuant to the recommendation of the Committee. Nadkarni was posted as Assistant Commissioner in December, 1952 and was confirmed as such with effect from December 18, 1955.

8. At the meeting of the Committee held in November, 1953, Karnik was found fit and was selected for promotion. At this meeting against the rule requiring minimum service as Income-tax Officer for nine years was relaxed and Income-tax Officer who had completed service for eight years as Income-tax Officers were considered for promotion. Karnik was promoted on February 22, 1954 and was confirmed in that post with effect from May 4, 1956. Respondents 6 to 34 were promoted on recommendations made in meetings of the Committee held in June, 1954 and subsequent thereto.

9. Accordingly Nadkarni was promoted as Assistant Commissioner of Income-tax on December 22, 1952; Karnik was promoted on February 22, 1954; respondent 6 to 34 were promoted in and after 1955. Chopra, Sham Singh and Kapoor do not figure in this contest. It is said that they have long ago been superannuated.

10. All the officers who were promoted from the grade of Income-tax Officers on the recommendations of the Committee were posted initially as officiating Assistant Commissioners; they were considered for confirmation only after they had put in service for two years as Assistant Commissioners. The first to be confirmed was Nadkarni on December 18, 1955, Karnik was next confirmed on May 4, 1956. Respondent 6 to 34 were confirmed later. At a meeting held some time in September, 1959, three posts of Assistant Commissioners of Income-tax which were previously reserved for officers of "the Finance and Commerce Pool" were released with retrospective effect and those posts became available from May 1, 1956, for utilisation for confirmation. Respondents 6, 7 and 8 were confirmed in those three posts with effect from May 1, 1956. But in the seniority list of Assistant Commissioners "as of August 1, 1954", published by the central Board of Revenue, Karnik was shown below Chopra, Sham Singh and Kapoor. In the next list fixing seniority in the cadre of Assistant Commissioners "as of January 1, 1958", Nadkarni and Karnik were placed below Chopra, Sham Singh and Kapoor and also below respondents 6 to 34.

11. Representations made by Karnik to the Central Board of Revenue and the Central Government protesting against the determining of his seniority in the list as of January 1, 1958, were unsuccessful. A memorial submitted to the President was also unsuccessful. A fresh seniority list was thereafter issued by the Board of Direct Taxes (which had replaced the Central Board of Revenue), determining seniority "as of August 1, 1965". In that list Nadkarni, and Karnik were placed below respondents 6 to 34. Representations made by Nadkarni in March, 1966, requesting the Board of Direct Taxes to revise the seniority list were rejected.

12. A petitioner was then filed by Karnik in the High Court of Gujarat challenging "the legality and propriety of the list of seniority". Karnik prayed for a writ quashing the lists determining seniority of Assistant Commissioners as of August 1, 1965. Nadkarni who was impleaded as a party to the petition supported the case set up by Karnik. In the view of the High Court, on a true interpretation of the appropriate rules, Nadkarni and Karnik were entitled to be ranked above respondents 6 to 34 and the interpretation on which the union of India proceeded to give seniority to respondents 6 to 34 in the cadre of Assistant Commissioners was violative of the guarantee under Article 16 of the Constitution. The High Court accordingly declared that respondents 6 to 34 could not be placed

above Nadkarni and Karnik in the grade of Assistant Commissioner and directed that the "impugned seniority list as of August 1, 1965, must be quashed and set aside"; that the earlier confirmation of respondents 6, 7 and 8 with effect from May 1, 1956, be set aside and that the Union Government do fix the seniority of Karnik, respondents 6 to 34 and Nadkarni in accordance with law. With certificate granted by the High Court this appeal has been preferred.

13. The relevant rules which governed seniority in the cadre of Assistant Commissioners may now be set out with modifications made from time to time. On January 16, 1950, the rules for determination of seniority of Assistant Commissioners were first made by the Government of the India in consultation with the Federal Public Service Commission. The rules were :

"(i) Confirmed Assistant Commissioners should take seniority according to the date of their confirmation in the grade.

(ii) Officiating Assistant Commissioners should take seniority according to the length of continuous service in the grade of Assistant Commissioners, subject to the condition

(iii) The seniority of officers promoted to the grade of Assistant Commissioner after the date of publication of the final seniority list of Income-tax Officers should be fixed according to the date of promotion to a regular vacancy (not being a promotion as a matter of purely local arrangement) in the grade of Assistant Commissioner, subject, however, to the condition that where two or more officers have been simultaneously selected for promotion to the grade, their relative seniority will be based on their seniority as Income-tax Officers, Class I, Grade I

By letter, dated September 9, 1952, the Government of India in consultation with the Union Public Service Commission modified rule (iii). The modified rules read as follows :

"The seniority of officers promoted to the grade of Assistant Commissioner after the date of publication of the final seniority list of Income-tax Officer should be fixed according to the date of promotion to a regular vacancy (not being a promotion as a matter of purely local arrangement) in the grade of Assistant Commissioner, provided, however, that -

(a) Where two or more officers have been simultaneously selected for promotion to the grade, their relative seniority will be based on their seniority as Income-tax Officers, Class I, Grade I and that;

(b) Officers whose promotion to the grade of Assistant Commissioner was deferred on the sole ground of their not having completed a specified minimum length of Gazetted service will, on their subsequent promotion to that grade, have their seniority in the grade of Assistant Commissioner fixed as if they had been promoted in accordance with the seniority in the grade of Income-tax Officer, Class I, Grade I, unless any such officer had been passed over for promotion to the Assistant Commissioner's Grade on grounds of merits."

Another modification was made by amendment of proviso (b) to rule (iii) on August 31, 1957. The amended proviso (b), read as follows :

"Officers whose promotion to the grade of Assistant Commissioner was deferred on the sole ground of their not having completed a specified minimum length of Gazetted service will, on their subsequent promotion to and confirmation in that grade, have their seniority in the grade of Assistant Commissioner of Income-tax fixed as if they had been promoted in accordance with the seniority in the Grade of Income-tax officer, Class I, Grade I, unless any such officer had been passed over for promotion to the Assistant Commissioner's Grade on grounds of merit".

Rule (i) applied to Assistant Commissioners confirmed before January 16, 1950 and rule (ii) applied to the cases of Assistant Commissioners who were officiating at that date and rule (iii) dealt with officers promoted after that date.

14. The interpretation placed by the Government of India was plainly inconsistent with the true intent of the rule. The Government of India determined the seniority inter se of the four sets of officers in the following sequence : Respondents 6 to 34, Chopra, Sham Singh, Kapoor, Nadkarni and Karnik. In the opinion of the Government of India since Chopra, Sham Singh and Kapoor were selected for promotion at a meeting at which Nadkarni and Karnik were not found fit, the former were entitled to be placed in the list of seniority above Nadkarni and Karnik. No fault may be found with that view. They further held that when Chopra, Sham Singh, Kapoor, Nadkarni and Karnik were considered for promotion the latter "fell within the opening part of the proviso (b) to rule (iii)" and were entitled to be placed in the list of seniority above Chopra, Sham Singh and Kapoor and also above Nadkarni and Karnik and they must be fitted in the cadre of Assistant Commissioners above Nadkarni and Karnik. This resulted in demoting Nadkarni and Karnik below respondents 6 to 34 - a consequence which could never have been envisaged. In the list of Income-tax Officers, Respondents 6 to 34 were placed below Nadkarni and Karnik : they were promoted as Assistant Commissioner many years after Nadkarni and Karnik were promoted and confirmed. It could not however have been intended by the rules that because Nadkarni and Karnik could not claim seniority above Chopra, Sham Singh and Kapoor, they must in the list of Assistant Commissioners be placed below all Income-tax Officers who could not be considered at the meeting when Chopra, Sham Singh and Kapoor were promoted. In the seniority list of Income-tax Officers, Class I, Grade I, Nadkarni and Karnik were placed above respondents 6 to 34. If under the proviso (b) to rule (iii), respondents 6 to 34 could not be placed below Chopra, Sham Singh and Kapoor even though those three latter officers were promoted earlier. Nadkarni and Karnik who were graded as senior to respondents 6 to 34 in the list of Income-tax Officers could not be relegated to ranks in the cadre of Assistant Commissioners below respondents 6 to 34. It is clear that different standards have been applied in determining the seniority of respondents 6 to 34 in the cadre of Assistant Commissioners vis-a-vis Chopra, Sham Singh and Kapoor on the one hand and Nadkarni and Karnik on the other.

15. On a true interpretation of rule (iii), provision (b) in the cadre of Assistant Commissioner, seniority should have been fixed in the order of Chopra, Sham Singh, Kapoor, Nadkarni, Karnik and respondents 6 to 34. The expression "officers whose promotion to the Grade of Assistant Commissioners was deferred on the sole ground of their not having completed a specified minimum length of Gazetted service" used in provision (b) to rule (iii) refers to those Income-tax Officers who could not at a given meeting be considered for promotion, only because they did not satisfy the condition of minimum period of qualifying service for promotion. In our judgment, the following rules emerge. Between Income-tax Officers promoted at the same meeting, their seniority inter se will be reflected in the higher cadres where the senior officer was considered and not promoted and the junior officer was promoted at that meeting, the order of promotion will govern seniority in the higher grade, where a senior officer is promoted and confirmed and at a later meeting a junior

officer is promoted, the letter cannot claim to be placed above the senior officer in the higher cadre relying upon the circumstance that he could not be considered for promotion at the earlier meeting, because he had not to his credit the qualifying minimum service. The High Court was, in our Judgment right in observing that the proviso was intended to neutralise the effect of the minimum service rule in determining seniority in the Grade of Assistance Commissioners. Rule (iii) is not intended, contrary to all notions of Justice and fair play, to confer upon an officer, who was junior in the list of Income-tax Officers and who could not be considered for promotion on an earlier occasion, a right to be placed in the list of Assistant Commissioner above an officer senior to him in the list of Income-tax Officers and who was promoted before him.

16. If respondents 6 to 34 had been considered and selected for promotion when Nadkarni and Karnik were promoted after their officiating period was over, they could not have been placed in the list of Assistant Commissioners above Nadkarni and Karnik. The circumstance that respondents 6 to 34 were not considered because they had not completed the specified minimum period of Gazetted service and were considered and promoted later did not, when they were promoted, confer upon them the privilege of being placed in the list of Assistant Commissioners above Nadkarni and Karnik.

17. We accordingly agree with the High Court that the seniority list must be quashed.

18. Kalwant Rai respondent No. 36 in this appeal has claimed that he is entitled to the benefit of the interpretation placed by us. His case has apparently not been investigated by the High Court and we do not think that at this stage we would be justified in marking an order in his favour. We have set out the principles governing the seniority in the cadre of Assistant Commissioners. The central Government will, we have no doubt, re-adjust the seniority of all officers including Kalwant Rai in the cadre of Assistant Commissioners in the light of the principles explained by us.

19. The appeal fails and is dismissed with costs in favour of Karnik and Nadkarni.

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