

Piare Lal

Vs

Union of India and Others

Civil Appeal No. 1 of 1968

(K. K. Mathew, P. N. Bhagwati, N. L. Untwalia JJ)

04.02.1975

JUDGMENT

BHAGWATI, J. -

1. This appeal, on a certificate of fitness granted under Article 133(1)(c) of the Constitution, is directed against a judgment of the High Court of Punjab and Haryana Dismissing a petition filed by the appellant under Article 226 of the Constitution. The question which arises for consideration in this appeal is a narrow one, but in order to decide it, it is necessary to state a few facts giving rise to the appeal.

2. The appellant was an officer in the State Police Service in the erstwhile State of Patiala and East Punjab States Union and he was appointed to the Indian Police Service with effect from December 8, 1952. He was promoted to the senior time scale of the Indian Police Service with effect from March 6, 1955 and subsequently confirmed in that time scale with effect from March 8, 1956. He was thus a confirmed officer in the senior time scale of the Indian Police Service on November 1, 1956 when, by reason of the provisions of the States Reorganisation Act, 1956, the State of Patiala and East Punjab States Union merged in the new State of Punjab to form a larger State. On the formation of the new State of Punjab, a combined gradation list of officers in the senior time scale of the Indian Police Service was prepared and published by the Government of India. It appears that prior to 1960 certain officers, who were junior to the appellant according to this gradation list, were promoted to selection grade posts in preference to the appellant. The appellant made representations to the state Government against his supersession by junior officers and presumably in view of these representations, the appellant was promoted to the post of Deputy Inspector General of Police in May 1960. This was, however, an officiating promotion and on September 11, 1960 the appellant was reverted as no vacancy in the post of Deputy Inspector General of Police was available in which he could be continued.

3. Thereafter various orders were made by the State Government from time to time promoting officers junior to the appellant to the selection grade posts as also to the posts of Deputy Inspector General of Police in supersession of the appellant. These orders of promotion were made on different dates between December 1, 1962 and October 18, 1965. The principle which was followed by the State Government in making these promotions was that set out in the circular dated May 16, 1957 addressed by the Ministry of Home Affairs, Government of India to the State Governments. That principle was that for the purpose of making selection to the selection grade posts and the selection posts, officers, who are eligible, should be classified into three categories, namely, 'outstanding', 'very good' and 'good', on the basis of merit and their names should be placed in a selection list in the order of these three categories without disturbing their inter se seniority within

each category and promotion should be made according to the order of merit in the selection list. The result of adopting this principle was that seniority was completely ignored as a relevant principle and promotions were made on the basis of merit alone. The appellant and other superseded officers alleged that this principle for making selections was wholly inapplicable but it was deliberately adopted at the instance of Pratap Singh Kairon, the then Chief Minister with a view to giving undue preference to one Ranjit Singh, who was a brother-in-law of Surender Singh, son of Pratap Singh Kairon and wreaking vengeance against some of the superseded officers who were not prepared to oblige Pratap Singh Kairon. There were also other allegations of nepotism and favoritism against Pratap Singh Kairon in the matter of promotions and supersessions. Therefore, when the regime of Pratap Singh Kairon came to an end on July 5, 1964, the State Government constituted an Establishment Board on August 12, 1964 for the purpose of looking into cases of undeserved promotions, supersessions and victimisation amongst the employees of the State Government during the regime of Pratap Singh Kairon from July 5, 1959 to July 5, 1964. The appellant made a representation against his supersession by his junior officers on August 10, 1964 and on the constitution of the Establishment Board this representation was forwarded to it for its consideration. The appellant also submitted a supplementary representation dated August 29, 1964 directly to the Establishment Board. In the meantime, however, as already pointed out above, further promotions continued to be made to the selection grade posts as also to the posts of Deputy Inspector General of Police and in these promotions too the appellant was superseded by officers junior to him. The appellant, therefore, filed a petition in the High Court of Punjab and Haryana on November 29, 1965 under Article 226 of the Constitution challenging the validity of the various orders passed by the State Government promoting officers junior to the appellant to the selection grade posts and to the posts of Deputy Inspector General of Police from and after December 1, 1962.

4. There were in the main two grounds on which the validity of the orders of promotion was challenged on behalf of the appellant. The first ground was that according to the All India Services Act, 1951 and the various Rules made under it, which governed the conditions of service of the appellant and other officers in the Indian Police Service, the appellant was entitled to promotion to the selection grades post and to the post of the Deputy Inspector General of Police as a matter of right on the basis of seniority and the withholding of such promotion was tantamount to imposition of penalty which could not be done without following the procedure laid down in the All India Services (Discipline and Appeal) Rules, 1955. That was admittedly not done in the present case and the orders of promotion were, therefore, invalid. The second ground taken by the appellant was that in any event the principle laid down in the circular of the Ministry of Home Affairs, Government of India dated May 16, 1957 was wholly inapplicable and the State Government was in error in adopting it for the purpose of making selections to the selection grade posts and the posts of Deputy Inspector General of Police and the selections made were, therefore, based on extraneous and irrelevant considerations and that vitiated the orders of promotion.

5. Both the Union of India and the state of Punjab filed their respective returns contesting the validity of these grounds. Their contention was that the selection grade posts as also the posts of Deputy Inspector General of Police were selection posts and promotion to these posts did not go by seniority but was based on selection on merits and it was competent to the State Government to adopt any relevant criterion it thought fit for the purpose of making selection to these posts and there was, therefore, nothing wrong or improper in the State Government making selections on the basis of the principle laid down in the circular of the Ministry of Home Affairs, Government of India dated May 16, 1957. No officer in the senior time scale was entitled to be promoted to the selection grade post or to the post of Deputy Inspector General of Police merely on the basis of

seniority in the Gradation List. The case of the appellant was considered for promotion on every occasion, but he was not selected and officers junior to him were preferred on the basis of merit. This action, according to the Union of India and the State of Punjab, did not amount to withholding of promotion by way of punishment requiring adoption of the procedure laid down in the All India Services (Discipline and Appeal) Rules, 1955.

6. Whilst the petition was pending, the Establishment Board, to which the case of promotions to the selection grade posts as well as to the posts of Deputy Inspector General of Police from and after December 1, 1962 were referred, found that the principle laid down in the circular of the Ministry of Home Affairs, Government of India dated May 16, 1957 had been wrongly applied by the State Government in making selections for the purpose of these promotions since that principle had a limited application only in Central Secretariat Services and it had not been adopted by the State Government as an applicable principle either in the Indian Administrative Service or in any service in the State of Punjab. The Establishment Board took the view that a fair and proper principle for making selection for the selection grade posts and the posts of Deputy Inspector General of Police, would be, to quote the words from the Note of the Chief Secretary annexed as Annexure RA to the affidavit of H. S. Sekhon, Assistant Inspector General of Police.

that there should be suitable seniority, so that in such important posts Government gets the benefit of proper experience from the officers concerned; and the record of the officer concerned should, on the whole, be good although it may not necessarily be outstanding. This method, in our opinion, combines very well the consideration of seniority-cum-merit. We further feel that over a number of years, if an officer of such a senior service, on the whole, comes up to an assessment of a good record (it has to be remembered that for getting into the service also, an officer has from the very beginning to be of a pretty good calibre), he should be worth the selection grade with his seniority, even though somebody a little junior to him may happen to possess a little better or outstanding record.

Applying this principle, the Establishment Board made its recommendations to the President as to which officers were wrongly promoted to these posts and which officers ought to have been so promoted and, on the basis of these recommendations, the President passed two orders dated October 28, 1966. The first order dated October 28, 1966 was passed in supersession of the earlier orders dated December 17, 1962, July 2, 1963 and October 3, 1964 by which various junior officers were promoted to the selection grade posts and by this order, the President made certain promotions to the selection grade posts with effect from anterior dates mentioned in the order. The second order dated October 28, 1966 related to the promotions made by the State Government to the posts of Deputy Inspector General of Police and the President by this order superseded the earlier orders of promotion and directed that certain officers be promoted to the posts of Deputy Inspector General of Police with effect from the dates shown against their names. The name of the appellant did not figure in either of these two orders dated October 28, 1966 and even on an application of the new principle of seniority-cum-merit evolved by the Establishment Board, the appellant was not promoted to the post of Deputy Inspector General of Police or even to the selection grade post.

7. Now, obviously after the making of the two orders dated October 28, 1966, the petition, as it stood, could not survive, because the order of promotion impugned in the petition were superseded by the two orders dated October 28, 1966. The appellant could have amended the petition so as to challenge the validity of the two orders dated October 28, 1966, but he did not do so. The Union of India and the State of Punjab also did not draw the attention of the High Court to the fact that the two orders dated October 29, 1966 had rendered the petition ineffectual and futile unless it was

amended to include a challenge to the validity of the two orders dated October 28, 1966. The result was that the petition was heard by the High Court as if the two orders dated October 28, 1966 had not been passed by the President and it was still necessary to examine the validity of the orders of promotion impugned in the petition. The appellant contended before the High Court that he was entitled as of Deputy Inspector General of Police on the basis of seniority and the withholding of his promotion amounted to imposition of penalty which could not be done without following the procedure laid down in the All India Services (Discipline and Appeal) Rules, 1955. The appellant also urged before the High Court that the relevant criterion for making selections to the selection grade posts and to the posts of Deputy Inspector General of Police was not followed and the promotions made to these posts were, therefore, invalid. These contentions did not find favour with the High Court and by a judgment dated August 9, 1967 the High Court dismissed the petition with costs. The appellant thereupon preferred the present appeal on certificate of fitness obtained from the High Court.

8. When the appeal came up for hearing before us, the State of Punjab filed an affidavit made by H. S. Sekhon, Assistant Inspector General of Police on January 2, 1975. The Note of the Chief Secretary to the Government of Punjab, to which we have referred above, was annexed as Annexure RA to this affidavit and it also carried the two orders dated October 28, 1966 as Annexures RB and RC. These two orders dated October 28, 1966 clearly showed that the orders of promotion impugned in the petition did not exist any more and the petition had become infructuous and futile. Faced with this situation, the appellant invited us to consider the validity of the two orders dated October 28, 1966 and contended that they were invalid, since they were based on selections made in accordance with the new principle evolved by the Establishment Board, which principle was different from the one really applicable in the present case. The appellant urged that by reason of Rule 2(b) of the All India Services (Condition of Service - Residuary Matters) Rules, 1960, the selections to the selection grade posts as also to the posts of Deputy Inspector General of Police were regulated by the principle contained in the circular of the State Government dated September 4/17, 1956 as clarified by the subsequent circulars of the State Government dated June 28, 1961 and September 8/11, 1961, Annexures RD, RE and RF to the affidavit of H. S. Sekhon, and since this principle had not been followed by the Establishment Board and the President in making the two orders dated October 28, 1966, these two orders were invalid. It was also contended on behalf of the appellant that he was entitled as of Deputy Inspector General of Police merely on the basis of seniority and the two orders dated October 28, 1966 promoting officers junior to him to these posts, therefore, amounted to withholding of promotion by way of penalty and that attracted the provisions of the All India Services (Discipline and Appeal) Rules, 1955. We do not think we can entertain these contentions urged on behalf of the appellant against the validity of the two orders dated October 28, 1966, since there is no challenge to these two orders in the petition. The appellant could have very well amended the petition and challenged the validity of the two orders dated October 28, 1966 before the petition was heard and disposed of by the High Court, but the appellant failed to do so. The appellant did not care to apply for amendment of the petition even after the appeal was preferred in this court, and though the appeal remained pending in this Court for about seven years, no application for amendment to the petition on behalf of the appellant. It was only after the hearing of the appeal was made was concluded and when it was pointed out by us that the entire basis of the petition was knocked out by the making of the two orders dated October 28, 1966 and no relief could be granted to the appellant unless those two orders were successfully impugned, that the appellant asked for time to move an application for amendment of the petition so as to include a challenge to the validity of those two orders. Obviously, we could not grant time for moving such an application for amendment at the stage at which it was sought to be moved. The two orders dated

October 28, 1966 could not be allowed to be challenged by an amendment of the petition more than eight years after the date when they were made. It is not possible to believe that the appellant was not aware of the making of these two orders and that he came to know of them for the first time when the affidavit dated January 2, 1975 was filed by H. S. Sekhon on behalf of the State Government. The appellant could have amended the petition earlier, at any rate during the long period of seven years when the appeal was pending in this Court, but the appellant was either lax or negligent. We cannot now, after the lapse of such a long time, and particularly after the hearing of the appeal is concluded, allow an amendment to the petition. It must follow a fortiori that, in the absence of challenge in the petition, we cannot examine the validity of the two order dated October 28, 1966 and strike them down. We must, therefore, hold the petition to have become infructuous by reason of the making of the two orders dated October 28, 1966 and confirm the dismissal of the petition by the High Court, though for different reasons.

9. The appeal, therefore, fails and is dismissed, but subject to the direction that the parties will bear their own costs throughout.

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