

S. K. Bhate and Others

Vs

Union of India and Others

Writ Petition No. 469 of 1971

(M. H. Geg, R. S. Sarkaria, P. N. Shinghal JJ)

20.11.1975

JUDGMENT

BEG, J. -

1. Twenty-two petitioners, under Article 32 of the Constitution, have come to this Court with the following assertions :

(1) They are employed as civilian non-gazetted officers holding posts of Chargemen Grade-II (Chemists) in High Explosives' Factory, Kirkee, which is one of the 28 ordnance factories, located all over India, controlled by opposite party No. 2, the Director General of Ordnance Factories, with his Head Office at Calcutta.

(2) The factory has four cadres of officers : (i) gazetted officers; (ii) non-gazetted officers; (iii) non-industrial employees; (iv) industrial employees. The petitioners belong to the second cadre which has four grades : (a) Foremen; (b) Assistant Foremen; (c) Chargemen Grade I; (d) Chargemen Grade II. The third cadre of non-industrial employees has two grades : (i) Supervisor 'A' grade; and (ii) Supervisor 'B' grade. The employees of the third cadre are classified as Class III employees in the general scheme of classification of government servants who are governed by Indian Ordnance Factories (Recruitment and Conditions of Service of Class III Personnel) Rules.

(3) The seniority rules of gazetted and non-gazetted officers of the ordnance factories are laid down in office memorandum dated January 4, 1956, amended in 1961 (Annexure 'B').

(4) The Director General of Ordnance Factories, respondent No. 2, issued an advertisement dated November 14, 1962, for direct recruitment to the grade of Foremen, Assistant Foremen, Chargemen Grade I and Chargemen Grade II. At the time of this advertisement all the petitioners, except petitioner No. 12, were already serving as officiating Supervisors of 'A' grade of Class III employees. In answer to the advertisement for appointment to temporary posts with prospects of being "considered for permanent appointment in due course", the petitioners, who possessed the minimum qualifications prescribed, applied for direct recruitment which was open to them also. The petitioners were called for interviews by a letter issued by the General Manager, High Explosives Factory, Kirkee, on February 7, 1963, but, after the interviews, no letters of appointment were received by the

petitioners other than petitioner No. 12.

(5) They were promoted between April, 1963, and November, 1963, from their substantive grade of Supervisor 'A' to Chargemen Grade II by the General Manager of their factory, on short term basis, by virtue of powers delegated to him. Petitioner No. 12, who was not in service at all before, was appointed a temporary Chargemen, Grade II, in April, 1963, as a result of his selection after interview. Respondents No. 5 to 16, however, entered the grade of Chargemen Grade II between December 1, 1963, and February 4, 1965, and were also shown as temporary Chargemen Grade II, but, they were not holding any post in the grade of Supervisors. The respondents were apprentices before entering into the Grade II Of Chargemen.

(6) The promotions of the petitioners were given retrospective effect, by an order dated June 11, 1965, passed by the Director General Ordnance Factories. In December, 1967, however, the petitioners were superseded by others who were alleged to be their juniors. The petitioners made representations and sent reminders which were not replied to. Respondent Nos. 5 to 16 were promoted from Chargemen Grade II to the grade of Assistant Foremen by an order of the respondent No. 2, Director General, Ordnance Factories dated September 17, 1971. This order according to the petitioners amounted to another supersession of the petitioners who were shown as holding permanent posts only as Supervisors of 'A' Grade in 1971. The petitioners, therefore, came to this Court on December 14, 1971, against the order dated September 17, 1971, which amounted to their supersession.

2. The petitioners also allege that, as no orders were communicated to them showing that they were considered direct recruits by the Ordnance Depot by the Ministry of Defence Production in the Government of India or anyone on its behalf, they came to know, for the first time, as a result of the replies filed by the respondents to the writ petition that they were being treated as direct recruits so that they could only be confirmed when their turn came in the 20% quota of direct recruits and not in the 80% quota of the promotees. The petitioners, therefore, applied for the amendment of the petition and were permitted by this Court, under an order dated November 16, 1973, to do so. They alleged, by means of this amendment, that their classification as direct recruits instead of as promotees was "entirely fanciful, arbitrary, and even capricious". They also alleged that the seniority list filed in reply to their petition had been kept concealed from them and that it was prepared in utter disregard to statutory Rules 10(1) to 10(4) contained in S. R. O. 4. The Rule 10(1) says :

10. (1) the Director General will prepare a seniority list of all the officers in their own categories according to the following procedure :

(i) As between two officers holding a particular class of appointment, in a substantive capacity, seniority in that class of appointment as well as in the officiating appointments held by them in the same rank of different ranks shall be determined with reference to the date of the substantive appointment.

(ii) Subject to the provisions of clause (iii), an officer holding an appointment in a particular class in a substantive capacity will be normally senior to an officer holding an appointment in the same class in a non-substantive capacity.

(iii) Seniority of persons holding temporary appointments which are made on agreement or on probationary basis and which are expected to be continued after the expiry of the initial period, will be reckoned vis-a-vis others holding permanent appointments in the same grade in the Ordnance Factories from the date from which the officers concerned have been holding appointment of the same grade continuously. The seniority so assigned to such persons shall not be disturbed on their confirmation at a later stage.

Note : This clause applies only to persons recruited through the Union Public Service Commission and to those recruited directly, otherwise than through the Union Public Service Commission prior to 1st April, 1947.

(iv) Temporary seniority in a given grade will be reckoned from the date from which the officer concerned has been occupying it continuously, irrespective of whether he has substantive appointment in some lower grade.

3. The reply of the respondents is that the so called promotion orders, of which the petitioners want to take advantage, were really the result of a mistake or misunderstanding in not realising the actual legal position of the petitioners as direct recruits. It was pointed out that, in the letters issued calling them for interviews as direct recruits, it was made clear to them that their appointments did not carry with them any decision about their fitness for the post applied for and that they could be considered for any lower post to which they might be so entitled. In other words, this clearly meant that they were on trial. It was also pointed out that promotions are only made under Rule 8 of the Indian Ordnance Factories (Recruitment and Conditions of Service of Class III Personnel) Rules, 1956, as amended in 1961 to Chargemen Grade II, on the basis of "a selection list prepared by the appropriate Departmental Promotion Committee". It was asserted that, in the minutes of the Departmental Promotions' Committee held in the month of April, 1963, prior to the appointment of petitioners as Chargemen Grade II, the committee had prescribed a normal minimum qualification of three years' service in the post of Grade 'A' for portion barring exceptional cases of ex-apprentices. It was asserted that, as the petitioners had not satisfied this condition, they could not be considered for promotion to the posts of Chargemen Grade II. They did not belong to the class which had any exceptional qualifications. Hence, their names did not appear in the list of persons to be promoted prepared by the Departmental Promotions' Committee for the post of Chargemen Grade II.

4. It was asserted that they were being treated as direct recruits and not promotees despite their wrong description and even wrong orders conveying the impression that they were promotees. The condition precedent to promotion not having been satisfied they could only be considered as direct recruits and get the appointments reserved for the class of direct recruits as and when their turns arrived in this quota. It was conceded on behalf of the respondents that much larger number of appointments had been made in the class of direct recruits than the vacancies available. It was, however, explained that this was due to the sudden and exceptional demands for these appointments as a result of the pressure on our ordnance factories due to the war with China and other defence requirements. It was urged that the petitioners could not take advantage of erroneous orders made by the manager of their ordnance factory even if the error had been repeated by the Director General, Ordnance Factories. If the petitioners had not satisfied the condition precedent to promotion, they could not get the appointments reserved for the 80% quota of promotees whose work was watched by the Promotions' Committee so that they could be declared fit for promotion. The promotions were on the basis of a selection on merit, the tests of which had not been satisfied by the petitioners.

In fact, the petitioners were considered, with others, and were not selected. It was not necessary to give them opportunities of being heard on comparative merits, as they claimed, just as candidates at an examination are not entitled to any such opportunities as these are not disciplinary proceedings.

5. Counsel for the petitioners was, in our opinion, not able to meet the objections put forward to petitioners' claims as promotees. He could not show that they satisfied the conditions precedent to promotion. Hence, the so called orders of promotion could not cure the defect. It was immaterial that the petitioners were wrongly shown as promotees in their service records or that they had not received intimations of their appointments as direct recruits. There was a justifiable ground for a distinction between them and the class to which the respondents belonged. There was no challenge to the fairness of the 20% quota reserved for direct recruits as against that of promotees. Hence, we do not think that the petitioners can complain of violation of any fundamental rights under Article 16 of the Constitution.

6. Petitioners cannot also claim any benefit resulting from being treated as persons belonging to the same class as respondents Nos. 5 to 16 whose places on the seniority list are questioned by them as amounting to illegal supersessions of the petitioners. We must mention here that Mr. Sanghi, Counsel appearing for the Union of India, respondent No. 1, and the Director General, Ordnance Factory, respondent No. 2, and other officials, has fairly conceded that so far as the case of petitioner No. 11 is concerned, it stands on a special footing and that his clients are considering it on that footing. Counsel for the petitioners has also conceded that so far as three of the petitioners are concerned, they have been rightly treated as direct recruits. We find no error in treating the others also as direct recruits.

7. It may also be mentioned there that Mr. Sanghi, Counsel for the Union of India and its officials, has stated to the Court that none of the petitioners will be reverted to his substantive post merely on the ground that he was treated as a direct recruit. The question of inter se seniority is a different matter. The petitioners have been unable to establish that they have been denied their seniority in violation of any right under Article 16 of the Constitution.

8. It may be mentioned here that, in *Amrit Lal Berry v. Collector of Central Excise, Central Revenue* ((1975) 4 SCC 714 : 1975 SCC (L & S) 412 : AIR 1975 SC 538, 546), this Court laid down (at p. 546) : [SCC p. 726 : SCC (L & S) p. 424, para 15]

It was for the petitioner to satisfy the Court that he was not given the senior grade although he satisfied all the required conditions of it and that others, who were promoted into it, were given unjustifiable preference over him.

9. As we are not satisfied that the seniority list has been prepared in violation of any rule or principle of justice, we are unable to accept the petition before us.

10. We therefore, dismiss this petition. The parties will bear their own costs.

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