

SUPREME COURT OF INDIA

Union of India

Vs.

A. Gopalakrishna Nayak

C.A.No.2194 of 1968

(V. R. Krishna Iyer and A. C. Gupta, JJ.)

17.01.1977

JUDGEMENT

KRISHNA IYER, J.:-

1. This civil appeal is one of the survivals of service litigation arising from the States Reorganisation Act.

2. Respondent No. 1 was the writ petitioner before the High Court who challenged an integrated seniority list in the Transport Department of the then Mysore Government. He belonged to the then Madras Government and was allotted to the then Mysore State and claimed that he should have been equated with motor vehicles inspections instead of being assigned a rank as an assistant motor vehicles inspector. The provisional list prepared by the State Government, because it hurt him, was challenged by him by a represent action to the Central Government which, after due consideration, rejected his claim, Thus he enjoyed an opportunity to be heard by the Central Government against the provisional seniority list prepared by the Mysore Government. Afterwards, the Mysore Government (now Karnataka Government) finalised the inter-State seniority list Aggrieved by the

assignment of rank as Assistant Motor Vehicles Inspector in the final list, the first respondent filed the writ petition before the Karnataka High Court. The High Court, under the impression that its earlier decision in *G. M. Shankariah v. Union of India*, (1965) 2 Mys LJ 40 governed the case decided that the seniority list prepared by the Central Government was no more than a proposal in the context of which the petitioner was entitled to make a fresh representation which was to be heard and decided before the Central Government made a final list. On this footing a direction was given by the court, although it linked up its order with the final fate of Shankariah's case in the Supreme Court.

3. Actually Shankariah's case (1965) 2 Mys LJ 40 did arrive in the Supreme Court and was decided on the footing that the inter-State seniority list which was before the court was a provisional one and that in that view an opportunity to be heard against the equation which was the basis of the list was to be afforded to the petitioner (1st respondent herein).

4. There is a fundamental error in the assumption by the court as we now see. The learned Solicitor General has drawn our attention to the fact that in the present case the petitioner himself has alleged in his writ petition against the provisional list and the foundational equation made therein and he had made a representation to the Central Government which was rejected. The State Government thereafter prepared a final list. In paragraph 22 of the counter affidavit of the Central Government it has been pointed out that the Union of India "had determined the question finally after taking into consideration all the representations made by the concerned official and therefore, the petitioner cannot invite this Hon'ble Court to examine the matter as if in an appeal against the order passed by this respondent (Union of India)."

5. We see no force in this contention. Actually Shankariah's case (1965) 2 Mys LJ 40 depended on its own facts and proceeded on a concession. As has been pointed out later by this Court in *Union of India v. R. D. Nanjiah* (1976) 4 SCC 412 : (1977 Lab IC 7) speaking for the Court Beg, J. there pointed out:

"We think that the concession in Shankariah's case was confined to the facts of that particular case. There the list was provisional. The most that could be urged, in the light of decisions of this Court, is that a person whose seniority is to be determined under S. 115 of the Act must be given an opportunity to object to the proposed assignment of place to him in the seniority list. As already observed above, the petitioner had ample opportunity to do that. Hence, the principle recognised in Shankariah's case was not applicable to such a case.

6. It is thus plain that Shankariah's case (1965) 2 Mys LJ 40 cannot be of any assistance to the first respondent. Here we have a final list, not a provisional one. Here the party affected has been heard and the Central Government has decided and therefore there is no meaning in affording a second opportunity to be heard or to make representations. In this view we set aside the decision of the

Karnataka High Court and allow the appeal.

7. We are handicapped in the hearing of this appeal by the absence of the 1st respondent for reasons which we are unable to guess. But the learned Solicitor-General has fairly taken us through the facts, pro and con. Even so, we make it clear that this judgment shall not preclude the 1st respondent from challenging the final inter-State seniority list on any ground or infirmity that may appertain to the final list qua final list. With this observation we allow the appeal but leave the parties to bear their own costs.

Appeal allowed.