

Gurdial Singh Fijji

Vs

State of Punjab and Others

Civil Appeal No. 503 of 1978

(CJI Y. V. Chandrachud, V. D. Tulzapurkar JJ)

09.03.1979

JUDGMENT

CHANDRACHUD, C.J. –

1. The appellant, Gurdial Singh Fijji, was selected for the Punjab Civil Service (Executive Branch) in 1953 and was appointed as an Executive Magistrate on June 8, 1954. Respondents 8 to 15 are also members of the same service, namely, the P.C.S., but they were selected and appointed to that service after the appellant. They are all governed, in the matter of conditions of their service, by the Punjab Civil Service (Executive Branch) Rules, 1930, as amended from time to time by the competent authority. The appellant was confirmed in the cadre on May 8, 1958 while respondents 8 to 15 were confirmed on diverse dates thereafter. In the gradation list circulated by the Government from time to time, respondents 8 to 15 were shown as junior to the appellant.

2. In the year 1966, as a result of the reorganisation of the erstwhile State of Punjab, the appellant and respondents 8 to 16 were allocated to the State of Punjab. In 1966-67 an adverse entry was made in the confidential record of the appellant while he was working under one Shri Sewa Singh, District and Sessions Judge, Amritsar. That entry was communicated to the appellant whereupon, he made a representation against it but that has still not been disposed of, for one reason or another. The State Government forwarded the representation to Shri Sewa Singh, who declined to express his views upon it unless asked by the High Court to do so. Nothing further has been done in the matter and no decision has yet been taken on the question whether the adverse entry was justified and whether the various contentions raised by the appellant in his representation are well-founded.

3. The appellant worked in various capacities after 1966-67, earning good reports all along. He was permitted to cross the first efficiency bar under an order of the State Government dated June 14, 1966 and the second efficiency bar on July 20, 1971.

4. By an order dated July 3, 1971 published in the Punjab Government Gazette on July 23, the Government promoted respondents 8 to 12 to the selection grade of the Punjab Civil Service cadre. Respondent 15 was similarly promoted on December 19, 1970, respondent 16 on January 1, 1971 and respondents 13 and 14 on July 27, 1971. On March 14, 1972, the appellant was also promoted to the selection grade with effect from January 15, 1972. He made a representation to the Government against the orders promoting respondents to the selection grade prior to him but it was rejected by an order dated June 20, 1973.

5. A Committee consisting of respondents 2 to 7 was constituted under Regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, for selecting persons from

the Punjab Civil Service cadre for the purpose of bringing them on the Select List of the Indian Administrative Service. The Committee held its meeting at Chandigarh on May 11, 1973 after which it prepared a list under Regulation 5 selecting respondent 9 for being brought on the select list for the purpose of promotion to the Indian Administrative Service. It would appear that the appellant's name was not put on the select list since respondent 2, the Chief Secretary to the Government of Punjab, had refused to give an 'integrity certificate' to him. Appellant made a representation against his non-inclusion in the select list and that representation having been rejected, he filed a Writ Petition (No. 3315 of 1973) in the High Court of Punjab and Haryana, challenging the promotion of respondents to the selection grade, the refusal of the Chief Secretary to issue an 'integrity certificate' to him and his non-inclusion in the Select List of the Indian Administrative Service.

6. The appellant's Writ Petition was allowed partly by a learned Single Judge of the High Court by his judgment dated August 19, 1974 whereby the order dated July 27, 1971 of the State Government granting seniority to two junior officers over the appellant in the selection grade was quashed. The learned Judge directed the State Government to reconsider the case of the appellant along with that of the other officers regarding the grant of selection grade with effect from June 25, 1971.

7. The appellant filed a Letters Patent Appeal (No. 484 of 1974) against the decision of the learned Single Judge which was disposed of by the High Court on November 19, 1976. It was held in appeal that the requirement of Resolution 1.1 as regards the production of the 'integrity certificate' was in the nature of a mere executive instruction, that it went beyond the scope of the statutory regulations, that the provision requiring the production of the 'integrity certificate' was unguided and was likely to lead to arbitrariness and unreasonableness and that therefore, Resolution 1.1 was ultra vires Regulations 4 and 5. The entire record of the Selection Committee was placed by the State Government before the High Court in the Letters Patent Appeal, from a perusal of which the High Court came to the conclusion that the decision of the Committee not to include the appellant's name in the Select List was not based solely on the ground that he was unable to produce the integrity certificate and that the Committee had given another cogent reasons for its decision viz., that the appellant was not suitable for being placed on the Select List otherwise also. Since inclusion in the select list for the purposes of promotion to the Indian Administrative Service was to be made on the basis of merit-cum-seniority, the Committee, according to the High Court, was justified in not including the name of the appellant in that list if, in its opinion, he was not otherwise suitable. The Letter Patent Appeal was accordingly dismissed by the High Court, against which the appellant has filed this appeal by special leave.

8. We will first deal with the question whether Resolution 1.1 is ultra vires Regulations 4 and 5 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. These regulations are framed by the Central Government in pursuance of sub-rule (1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 in consultation with the State Governments and the Union Public Service Commission. Regulations 3 to 7 provide for bringing members of the State Civil Service on the select list for promotion to the Indian Administrative Service. Regulation 3 deals with the constitution of the Committee for making selections. Regulation 4 which deals with conditions of eligibility for promotion provides that each committee shall meet at intervals, ordinarily not exceeding one year, and consider the cases of all substantive members of State Civil Service who on the first day of January of that year had completed not less than eight years of continuous service, whether officiating or substantive, in a post of Deputy Collector or any other post or posts declared equivalent thereto by the Government. By clause (2) of Regulation 4, the committee shall not ordinarily consider the cases of members of the State Civil

Service who have attained the age of 52 years on the first day of January of the year in which the meeting of the committee is held, provided that a member of the State Civil Service whose name appears in the select list in force immediately before the date of the meeting of the committee shall be considered for inclusion in the fresh list to be prepared by the committee, even if in the meanwhile he has attained the age of 52 years.

9. Regulation 5 reads thus :

5. Preparation of a list of suitable officers -

(1) The committee shall prepare a list of such members of the State Civil Service as satisfy the condition specified in Regulation 4 and as are held by the committee to be suitable for promotion to the service. The number of members of the State Civil Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of the preparation of the list, in the posts available for them under Rule 9 of the recruitment rules or 10 per cent of the senior duty posts borne on the cadre of the State or group of States whichever is greater :

Provided that in the year ending on December 31, 1969, the maximum limit, imposed by this sub-regulation, may be exceeded to such extent as may be determined by the Central Government in consultation with the State Government concerned.

(2) The selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority.

(3) The names of the officers included in the list shall be arranged in order of seniority in the State Civil Service :

Provided that any junior officer who in the opinion of the committee is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him.

(4) The list so prepared shall be reviewed and revised every year.

(5) If in the process of selection, review or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession.

10. The All India Services Manual, Part II, which is issued under the authority of the Government of India, Cabinet Secretariat, Department of Personnel and Administrative Reforms), sets out under appropriate regulations the "Government of India's Decisions" which are, for convenience, referred to by the High Court as "resolutions". Resolution 1.1 which incorporates a decision taken by the Government of India reads thus :

1.1 On the basis of the recommendations of the Committee on the Prevention of Corruption, it has been decided that the following certificate should be recorded by the Chief Secretary to the State Government who is the sponsoring authority in respect of all eligible officers whose cases are placed before the Selection Committee for consideration :

"The State Government certify the integrity of Shri ..... with reference to the entries in his annual confidential reports."

Resolution 1.2 which is on the same subject says :

1.2. The Selection Committee should also consider the question of suitability of the officers for selection with reference to their integrity and should specifically record in their proceedings that they were satisfied from the remarks in the confidential reports of the officers, selected by them for inclusion in the Select List, that there was nothing against their integrity.

11. The learned Single Judge of the High Court rejected the appellant's contention that Resolution 1.1 is ultra vires Regulations 4 and 5. The Letters Patent Bench of the High Court differed from him and quashed the resolution, observing :

Regulations 3 to 7 are self-contained regulations prescribing the whole procedure for the constitution of the selection committee, qualifications for the eligibility, preparation of list of suitable candidates, etc. It is evident from the plain reading of these regulations that integrity certificate is not the requirement for eligibility for promotion. Integrity certificate is the requirement of resolution 1.1 which is only an executive instruction. The regulations are quite detailed and the whole mode of selection is given and merit-cum-seniority is the main basis for bringing the persons on the select list. It is nowhere laid down in the regulations that integrity certificate is also required for eligibility for promotion. Hence this requirement under the executive instruction goes counter to the statutory regulations. It has put restrictions and limitations on the committee in its discretion. Moreover, it is nowhere laid down as to how the integrity certificate is to be issued. No criteria is mentioned in Resolution 1.1. No guideline is provided. Hence it can lead to arbitrariness and unreasonableness in certain cases . . . . I have, therefore, no hesitation in holding that Resolution 1.1 contravenes the regulations, which cannot legally be sustained and is struck down as ultra vires Regulations 4 and 5.

12. We find it impossible to sustain this conclusion and are of the opinion that the learned Single Judge of the High Court was right in upholding the validity of Resolution 1.1 on the ground that it is not inconsistent with any of the regulations. Clause (2) of Regulation 5 provides that selection for inclusion in the Select List shall be based on merit and suitability in all respects, with due regard to seniority. In other words, the test for inclusion in the Select List is merit-cum-seniority. Neither the Indian Administrative Service (Recruitment) Rules, 1954 under which the regulations are framed nor indeed the provisions of All India Services Act, 61 of 1951, under which the Rules are made, furnish any guidelines for assessing merit or suitability of a candidate for inclusion in the Select List or provide for the consideration of any particular data before a candidate can be brought on the Select List. Every executive authority is charged with the obligation of organising its services so as to ensure maximum efficiency. The ideal of maximum efficiency cannot be achieved unless persons who are selected for public offices possess integrity in as high a measure as ability. Integrity is indeed the sine qua non of merit and suitability : no person can be considered as possessing merit and suitability if he lacks in character and integrity. If, as provided by Regulation 5, selection for inclusion in the Select List has to be based on merit and suitability in all respects, and the rules and regulations do not furnish guidelines for a proper assessment of these requirements, the Government would have the power to prescribe the criteria for determining whether the requirements are fulfilled by any particular candidate. The prescription of the regulation for inclusion in the Select List is

merit-cum-seniority. The executive decision which is contained in Resolutions 1.1 and 1.2 effectuates the purpose of that prescription. Undoubtedly the Government in the exercise of its executive authority cannot supersede a statutory rule or regulation but it can certainly effectuate the purpose of a rule or regulation by supplementing it. Resolution 1.2 provides that the Selection Committee should consider the question of suitability of officers with reference to their integrity and should specifically record in its proceedings, that it is satisfied from the remarks in the confidential reports of the officers selected by it for inclusion in the Select List, that there was nothing against their integrity. Resolution 1.1 requires the Chief Secretary of the concerned State Government, who is the sponsoring authority, to record a certificate in respect of all eligible officers, whose cases are placed before the Selection Committee for consideration, that the State Government certifies the integrity of the officers with reference to the entries in their annual confidential reports. These resolutions of the Government of India do not transgress the requirement of the regulations but are in furtherance thereof. The circumstance that the Chief Secretary has to record a certificate does not confer upon him unguided or unfettered discretion to assess the integrity of the officers by granting or refusing the integrity certificate at his sweet will. The State Government has to certify the integrity of the eligible candidate "with reference to the entries in his annual confidential reports". We are, therefore, quite clear that the Letters Patent Bench of the High Court was in error in striking down Resolution 1.1 as being ultra vires of Regulation 5. Both the Resolutions 1.1 and 1.2, are in our opinion within the scope of the regulations and are valid.

13. Though the High Court was of the opinion that Resolution 1.1 is ultra vires of Regulation 5, it did not quash the decision of the Selection Committee because, having perused the record and proceedings of the Selection Committee (which were made available to it during the hearing of the Letters Patent Appeal), it found that the non-selection of the appellant was not based solely on the ground that the Chief Secretary had not issued an integrity certificate in his favour. The proceedings of the Selection Committee, according to the High Court, disclosed that the appellant was not selected for the reason also that he was "not found suitable otherwise".

14. The course adopted by the High Court has caused to the appellant an amount of injustice which has to be rectified. It is clear that the Chief Secretary, Punjab, did not grant integrity certificate in favour of the appellant because of the adverse report in his confidential roll for the year 1966-67. One of the reasons which evidently weighed with the Selection Committee in not putting the appellant's name on the Selection List was that the Chief Secretary had not issued the integrity certificate in his favour. Thus, the non-inclusion of appellant's name in the Select List and the non-issuance of the integrity certificate are closely linked, whether or not there was another reason also for which the Selection Committee kept him out from the Select List.

15. In so far as the non-issuance of the integrity certificate is concerned, it is undisputed that its only justification is the adverse report in the confidential roll of the appellant for the year 1966-67. The circumstances surrounding the adverse entry may therefore bear examination for seeing whether such preponderating importance could, on the facts to which we will immediately advert, be given to the particular entry.

16. The counter-affidavit filed on behalf of the Government of Punjab by Shri Phuman Singh, Under Secretary in the services department, shows that after the adverse remarks were communicated to the appellant, he submitted a representation requesting that the remarks be expunged. The representation was referred by the Government to Shri Sewa Singh, retired District and Sessions Judge, who has made the particular remarks. Shri Sewa Singh desired that the reference was made to him by the Government should be routed through the High Court. The

Government then made a reference to the High Court of Punjab and Haryana requesting it to obtain the comments of Shri Sewa Singh. The High Court replied that it was not its practice to call for comments of District and Sessions Judges on the representation of an officer against whom adverse remarks were made. The High Court was once again requested by the Government that the Chief Justice and the Judges may communicate their views to the Government on the representation made by the appellant. As the High Court did not express its view, the Government asked the appellant to submit a detailed representation along with documentary evidence in order to show that the adverse entry was made mala fide as alleged by him. The appellant submitted his representation again on December 19, 1971, as desired by the Government. After a detailed examination of that representation, it was decided by the Government that since the comments of the Reporting Officer of the High Court on the representation made by the appellant were not available, which was necessary for the proper disposal of the representation, a suitable note may be placed on the appellant's character roll along with the confidential report for the year 1966-67. An attested copy of that note is annexed to Shri Phuman Singh's affidavit as annexure 1. After setting out the facts and circumstances narrated above, that note says that in the absence of necessary comments of the authority concerned, it was not possible for the Government to take any decision on the merits of the representation made by the appellant.

17. The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the appellant. The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-issuance of an integrity certificate to him.

18. We may also indicate, since the High Court saw the file and discovered that the appellant was not brought on the Select List because he was "not found suitable otherwise", that Regulation 5 which deals with the preparation of a list of suitable officers provides by Clause 7 that "if in the process of selection, review or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession". While dealing with an identical provision in Clause 5 of Regulation 5 of the same regulations as they stood then, this Court observed in *Union of India v. Mohan Lal Capoor* ((1973) 2 SCC 836 : 1974 SCC (L&S) 5 : (1974) 1 SCR 797) that "rubber-stamp" reasons given for the supersession of each officer to the effect that the record of the officer concerned was not such as to justify his appointment "at this stage in preference to those selected", do not amount to "reasons for the proposed supersession" within the meaning of Clause 5. "Reasons", according to Beg, J. (with whom Mathew, J. concurred) "are the links between the materials on which certain conclusions are based and the actual conclusions". The Court accordingly held that the mandatory provisions of Regulation 5(5) were not complied with by the Selection Committee. That an officer was "not found suitable" is the conclusion and not a reason in support of the decision to supersede him. True, that it is not expected that the Section Committee should give anything approaching the judgment of a Court, but it must

at least state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the Select List. In the absence of any such reason, we are unable to agree with the High Court that the Selection Committee had another "reason" for not bringing the appellant on the Select List.

19. In matters of this nature, particularly when the Select Lists have to be prepared and reviewed from year to year, it becomes difficult to work out the logical consequences of holding that the case of any particular officer ought to be reconsidered. But, inevitably, for reasons mentioned above, the case of the appellant shall have to be considered afresh by the Section Committee. How best to do it has to be left to its wise discretion in the matter of details, but in order to eliminate, in so far as one may, chances of yet another litigation we ought to indicate the broad frame-work within which the Committee should act and the preliminary steps which the Government must take in order to facilitate the Committee's task.

20. In the first place, the state Government shall consider and dispose of within two months from today the representations made by the appellant on January 23, 1969 and December 19, 1971 in regard to the adverse report in his confidential roll, for the year 1966-67. We are hopeful that the High Court will co-operate with the Government in the disposal of the representations. The Selection Committee will, within three months thereafter, decide whether the appellant should be included in the Select List as of May 11, 1973. That question has to be decided in accordance with the relevant regulations by applying the test of merit and suitability-cum-seniority. For deciding the question of appellant's merit and suitability, the Selection Committee will take into consideration the Government's decision on his representations and his service record up-to-date. If the Committee decides that he is not suitable for inclusion in the Select List and, should therefore, be superseded, it shall record its reasons for the proposed supersession. If, on the other hand, the Committee decides to include his name in the Select List, he will be entitled to rank in that list in accordance with his seniority as of May 11, 1973 unless, in the opinion of the Committee, there is a junior officer of exceptional merit and suitability who may be assigned a higher place. The Selection Committee will review the list for 1973 in accordance with these directions. The Union Public Service Commission will thereafter be consulted in accordance with the regulations. The Select List as finally approved by the Commission will form the Select List of the members of the State Civil Service.

21. We may indicate that the Writ Petition filed by the appellant and his appeal to this Court cannot be considered to have become infructuous on the ground that the Union Public Service Commission has already approved of the Select List. The learned Single Judge of the High Court had stayed the final publication of the list by his order dated September 24, 1973 and had directed by his order dated February 11, 1974 in C.M. 994 of 1974 that the publication of the Select List will be subject to the result of the Writ Petition.

22. With these modifications, the appeal is allowed but there will be no order as to costs.

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