

Bakhshish Singh

Vs

Union of India and Others

Civil Appeals Nos. 1158-1159 of 1973.

(R. S. Pathak, O. Chinnappa Reddy, R. B. Misra JJ)

23.04.1985

JUDGMENT

CHINNAPPA REDDY, J. -

1. Bakhshish Singh, the appellant, was appointed as Assistant in the Public Civil Secretariat on December 7, 1948 and was confirmed on September 1, 1956. Manohar Singh, Sardar Singh, D. Justin and Prithipal Singh Chawala, respondents 3 to 6 were also Assistants in the Punjab Civil Secretariat, but were junior to the appellant. All of them were working as Assistants on November 1, 1956 when consequent on the States Reorganisation Act, the former States of Punjab and PEPSU were merged into one State. On merger the conditions of service of those employed by the former States of Punjab and PEPSU were protected as provided by Sections 115(7) and 117 of the States Reorganisation Act. The rules in force at that time, which governed them, were the Punjab Civil Secretariat (State Service Class III) Rules, 1952. Rule 6(I) (b) provided that posts of Superintendents, Records in the service were to be filled by selection among Assistants. Rule 6(I) (c) provided that posts of Assistants-in-charge were to be filled (i) by promotion of Assistants; or (ii) by transfer of deputation of an official already in Government service. Rule 6(1) (d) provided that the post of Superintendent, Military Secretary to Governor's Office was to be filled by selection amongst Assistants. In October 1963, the posts of Superintendents, were made Class II posts and came to be governed by the Punjab Civil Secretariat (State Service Class II) Rules. Rule 8(I) (a) provided that posts of Superintendents other than the Superintendent in the Press Branch were to be made (i) by promotion from amongst Deputy Superintendents, Assistants-in-charge and Assistants, who are members of the Punjab Civil Secretariat (State Service Class III) with minimum experience of one year as Deputy Superintendent or a total experience of 10 years as an Assistant; or (ii) by direct recruitment or by transfer or deputation of an official already in Government service holding a ministerial post. We are not concerned with the proviso to Rule 8(I) (a). Rule 8(I) (b) dealt with the post of Superintendent, Press Branch with which also we are concerned. While this was so, as an experimental measure some posts of Assistant Section Officers were created which were not posts which belonged either to the Punjab Civil Secretariat (State Service Class III) or Punjab Civil Secretariat (State Service Class II). Appointment to these posts were to be made from Assistants belonging to the Punjab Civil Secretariat (State Service Class III) on the basis of an examination to be held by the Public Service Commission. Respondents 3 to 6 were selected and appointed as Assistant Section Officers as they were successful in the examination. The appellant either did not appear at the examination or was not successful at the examination. Therefore, he continued as Assistant in the Punjab Civil Secretariat (State Service Class III). By an order dated March 14, 1961, the Government expressly provided that the seniority of those appointed as Assistant Section Officers in their normal lines as Assistants will remain unchanged and that their promotion as Deputy Superintendents/Superintendents will be governed by their seniority as Assistants. Even so

some Assistant Section Officers were promoted as Superintendents without reference to their seniority as Assistants. The promotions were quashed by the Punjab High Court in Roshan Lal Sharma case [1966 Current LJ 848]. The State of Punjab thereupon thought it fit to amend the Punjab Civil Secretariat (State Service Class II) by introducing a new Rule 8(I) (a) (i) in the place of the old Rule 8(I) (a) (i) which was as follows :

(i) By promotion from amongst Assistant Section Officers and such Deputy Superintendents, Assistants-in-charge and Assistants as are members of the Punjab Civil Secretariat (State Service Class III) with minimum experience of one year as a Deputy Superintendent or a total experience of ten years as an Assistant.

Two explanations were added and Explanation II provided that the number of posts of Superintendents and Section Officers available for promotion from amongst Assistant Section Officers shall bear the same proportion to the total number of such posts as the branch manned by Assistant Section Officers and Section Officers bear to the number of branches manned by Assistants and Superintendents, the method of promotion to vacancies available in such proportion being that persons, other than the Assistant Section Officers shall be promoted first and the Assistant Section Officers shall be promoted thereafter and so on. The Government of Punjab thought it advisable to obtain the approval of the Central Government as the High Court in Roshan Lal Sharma case had said that the promotion of Assistant Section Officers was violative of the guarantees given by the States Reorganisation Act. After seeking some clarification from the State Government, the Government of India wrote to the State Government as follows :

No. 17/57/66-SR(S)

Government of India/Ministry of Home Affairs,

To

The Chief Secretary to Government of Punjab, Secretariat Administration, Chandigarh.

New Delhi-1, May 20, 1967.

Sub : Integration of Services in Punjab Rules for promotion to the post of Superintendent - Provision for promotion of Assistant Section Officers - Approval of the Central Government under the S. R. Act, 1956.

Sir,

With reference to the correspondence resting with your letter No. ASO(E)-3636-67/10360 dated April 5, 1967, on the subject noted above, I am directed to say that the Government of India are hardly concerned with the question of giving permission/sanction in the matter of promotion of individual Assistant Section Officers to the post of Superintendent, in the manner laid down in the rules now promulgated by the State Government. In view of the fact that under the States Reorganisation Act, 1956, retrospective approval cannot be accorded approval, which may now be given to the relevant rules of the State Government would not cure the infirmity, which is held by the High Court to have existed in the State Government's past decisions.

2. So far as the question of according approval prospectively to the proposal of the State Government to interpose an intermediate cadre - called the Assistant Section Officers' cadre

between the cadre of Assistants in the State Government's Secretariat is concerned, I am to point out that the proposal is within the competence of the State Government. There need be no objection from the point of view of the Central Government to this proposal, so long as every Assistant in the final seniority list, as approved by the Central Government, is given an opportunity, in order of his seniority, to compete for promotion to the post of Assistant Section Officer, and, to the extent prescribed by the State Government, for direct promotion to the post of Section Officer.

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Yours faithfully,

Sd. B. Shukla Deputy Secretary to the Government of India.

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2. Respondents 3-6 who were junior to the petitioners as Assistants, but who had been appointed as Assistant Section Officers were promoted as Superintendents. The appellant filed a writ petition challenging the promotion of respondents 3-6. The writ petition was allowed by a learned Single Judge, but on appeal, the judgment of the learned Single Judge was reversed by a Division Bench of the Punjab High Court. The appellant obtained special leave from this Court and that is how the matter has now come before us for final disposal.

3. Shri Hardev Singh, learned counsel for the appellant argued that the guarantee given to the appellant by Section 115(7) and 117 of the States Reorganisation Act had been violated in the case by the creation of the posts of Assistant Section Officers and by the provision for their promotion to the posts of Superintendents in the Punjab Civil Secretariat (State Service Class II). According to him, the so-called approval granted by the Central Government by its letter dated May 20, 1967 was in fact no approval at all and in any case, it could not operate to validate the promotions made pursuant to the amended rules, but before the Central Government granted its so-called approval. We see no force in the submission of Shri Hardev Singh. In fact, we are of the view that there has been no infringement of the guarantees afforded by the Sections 115(7) and 117 of the States Reorganisation Act. All that has happened is that some new posts outside the Civil Secretariat Class III service were created and persons holding those were also made eligible for promotion to the posts of Superintendents along with those who held the posts of Assistants belonging to Punjab Civil Secretariat (State Service Class III). Putting it at the best, it may be said that the creation of the new posts outside the Class III service and making persons holding those posts eligible for promotion as Superintendents reduced the chances of promotion of Assistants belonging to Punjab Civil Secretariat (State Service Class III). There is no contravention of Section 115(7) of the States Reorganisation Act. In *Mohammad Shujat Ali v. Union of India* [(1975) 1 SCR 449 : (1975) 3 SCC 76 : 1974 SCC (L&S) 464], it has been held : (SCC pp. 95-96, para 15)

"It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service." Now, here in the present case, all that happened as a result of the application of the Andhra Rules and the enactment of the Andhra Pradesh Rules was that the number of posts of Assistant Engineers available to non-graduate i Supervisors from the erstwhile Hyderabad State for promotion, was reduced : originally it was fifty per cent, then it became thirty-three and one-third per cent, the one in eighteen and ultimately one in twenty-four. The right to be considered for promotion were severely reduced. This did not constitute

variation in the condition of service applicable immediately prior to November 1, 1956 and the proviso to Section 115, sub-section (7) was not attracted. This view is completely supported by the decision of a Constitution Bench of this Court in Ramchandra Shankar Deodhar v. State of Maharashtra [(1974) 1 SCC 317 : 1974 SCC (L&S) 137].

4. Shri Hardev Singh invited our attention to Krishan Murari Lal Sehgal v. State of Punjab [AIR 1977 SCC 1233 : (1977) 2 SCC 587 : 1977 SCC (L&S) 312] in support of his submission. The case has no application whatever to the facts of the case before us. In that case, what was decided was that changes in conditions of service made prior to the general approval granted by the Central Government Memorandum of May 11, 1957 could not be considered to have been approved by the memorandum of general approval. Previous approval it was said was not the same thing as subsequent ratification. The question before us is whether any approval of the Central Government was at all necessary as there was in fact no change in any conditions of service. The Assistants belonging to the Punjab Secretariat Services (Punjab Service Class III) continued to be eligible for promotion to the posts of Superintendents as before but besides them Assistant Section Officers were also made eligible, thereby reducing their chances of promotion. Since that cannot be said to be a change of condition of service, no previous approval of the Central Government was necessary. It is not as if the appellant has suffered any prejudice. While it is true that respondents 3-6 were his juniors in the cadre of Assistants, he did not choose to avail himself of the opportunity afforded to him to qualify himself as an Assistant Section Officer by passing the prescribed examination. He cannot be now heard to complain that those who were junior to him as Assistant have stolen a march over him. They were promoted as Superintendents from the category of Assistant Section Officers and not from the category of Assistants belonging to the Punjab Civil Secretariat (State Service Class III). In the result the appeal is dismissed, but in the circumstances, with no order as to costs.

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