

R. L. Gupta and Another

Vs

Union of India and Others

Writ Petition (Civil) No. 619 of 1987

(E.S. Venkataramiah, K.N. Singh JJ)

16.03.1988

JUDGMENT

VENKATARAMIAH, J. -

1. The above petition was originally filed by two members of the Delhi Higher Judicial Service, by name S/Shri R. L. Gupta and S. M. Aggarwal. Since the court was of the view that the petition of Shri S. M. Aggarwal should be considered independently, he was asked to file a separate petition. The present petition was, therefore, confined to Shri R. L. Gupta, who is hereafter referred to as 'the petitioner'.

2. Shri R. L. Gupta, the petitioner joined the Judicial Service of Punjab on January 23, 1962 and became a member of the Delhi Judicial Service on its initial constitution on August 2, 1971. He was confirmed in the said service as a Sub-Judge on August 6, 1971. He was sent on deputation as the first District and Sessions Judge, Sikkim at Gangtok on August 19, 1976. While he was on such deputation he was promoted as Additional District and Sessions Judge in the Delhi Higher Judicial Service under Rule 16 of the Delhi Higher Judicial Service Rules, 1970. At the end of his period of deputation the petitioner came back to Delhi and joined as an Additional District and Sessions Judge. In June 1979 the petitioner was sent on deputation as Registrar, Special Courts, New Delhi and he remained on deputation until March, 1980. Between March 1980 and June 1981 the petitioner again worked as an Additional District and Sessions Judge, Delhi. On June 14, 1981 on the establishment of the Delhi Legal Aid and Advice Board the petitioner was sent on deputation as the first Member-Secretary of that Board. When he was still working as the Member-Secretary of the Delhi Legal Aid and Advice Board, on April 26, 1985 the Government of India appointed a Commission of Inquiry presided over by Shri Justice Ranganath Misra, Judge, Supreme Court of India under the provisions of Section 3 of the Commissions of Inquiry Act, 1952 for the purpose of making enquiries into a matter of public importance, namely, the allegations in regard to the incidents of organised violence in Delhi following the assassination of Smt. Indira Gandhi, the late Prime Minister of India. On May 27, 1985 the Central Government addressed a letter to the Registrar of the Delhi High Court requesting the High Court to spare the services of the petitioner for being appointed as the Secretary of the Commission, referred to above. The said letter reads thus :

Confidential/Most Immediate D.O. No. II. 14013/28/84-IS (US : D.V.)
Government of India Ministry of Home Affairs North Block New Delhi - 110 001
May 27, 1985.Dr. B. K. Pachauri Director (IS-II)##

Dear Miss Mehra,

The Central Government vide Notification dated April 26, 1985, has appointed a Commission of Inquiry under the Chairmanship of Shri Ranganath Misra, a sitting Judge of the Supreme Court of India for the purposes of making an enquiry into the allegations in regard to the incidents of organised violence which took place in Delhi following the assassination of the former Prime Minister (copy enclosed). One of the posts sanctioned for the functioning of this Commission is Secretary to the Commission in the scale of Rs 2500-2750. With the approval of Shri Justice Ranganath Misra, it has been proposed to appoint Shri Rameshwar Lal Gupta, Additional District and Sessions Judge and Member-Secretary of the Delhi Legal Aid and Advice Board as Secretary of the Commission. The post of Secretary has been created from the date it is filled in and up to October 26, 1985 for the present but likely to continue.

We shall be grateful if you could kindly spare the service of Shri Rameshwar Lal Gupta to act as Secretary of the Commission for the aforesaid period. This may be treated as Urgent.

#Regards, Yours sincerely, Sd/- (Dr. S. K. Pachauri)Miss Usha Mehra,Registrar,Delhi High Court,New Delhi.##

Encl : As above

3. On receipt of the said letter the petitioner was asked by the High Court whether he was willing to work as the Secretary of the Commission. The petitioner expressed his willingness to do so by his letter dated May 30, 1985. On May 31, 1985/June 1, 1985 the Registrar addressed a letter to the petitioner which reads thus :

Usha Mehra

D.O. No. 279/Gaz. Dated : May 31, 1985/June 1, 1985##

Dear Shri R. L. Gupta,

In pursuance to the requisition of the Central Government contained in the Ministry of Home Affairs demi-official letter No. II-14013/28/84- IS (US.D.V.) dated May 27, 1985 and as desired by you and agreed to by the High Court, you are hereby permitted to go on deputation as Secretary to the Commission of Inquiry headed by Hon'ble Mr. Justice Ranganath Misra, a Judge of the Supreme Court of India with effect from June 1, 1985 at your own risk. Deputation will be up to October 26, 1985 or till the date of your recall, whichever is earlier.

Yours sincerely, Sd/- (Usha Mehra)Shri R. L. Gupta,Member-Secretary,Delhi Legal Aid and Advice Board,New Delhi.##

4. Accordingly, the petitioner got himself relieved from the Delhi Legal Aid and Advice Board and joined as Secretary of the Commission of Inquiry. Within three months from the date on which the petitioner joined the Commission, the Chief Justice of the Delhi High Court wrote a letter to Shri Justice Ranganath Misra stating that it had been decided by the High Court to place the petitioner on probation on the Delhi Higher Judicial Service as his turn had come for the same and, therefore, he might be relieved from his post of the Secretary of the Commission to enable him to report to the High Court as soon as possible but in any case not later than ten days from the receipt of the said communication. On receipt of the said letter Shri Justice Ranganath Misra wrote to the Chief Justice of the Delhi High Court stating that the petitioner had got himself acquainted with the working of the Commission and at that juncture it was difficult to relieve him in the public interest.

Accordingly, he was not relieved by the Commission to revert to the Judicial Service. The letter of Shri Justice Ranganath Misra was considered by the Full Court of the High Court at its meeting held on November 22, 1985 and the following resolution was passed :

Shri R. L. Gupta had been on deputation with Delhi Legal Aid and Advice Board. Vide this Court's demi-official letter No. 293/Gaz./VI. E. 10 dated August 23, 1984 and D.O. No. 269/Gaz./VI.E. 10 dated May 18, 1985 he was asked to revert back to his parent cadre for being considered to be placed on probation. Mr. R. L. Gupta instead of reverting back, went on second deputation as Secretary to R. N. Misra Commission of Enquiry at his own request and risk. Shri R. L. Gupta was asked vide this Court's endt. No. 457 dated August 26, 1985 to come back to parent cadre within 10 days otherwise the next person shall be placed on probation. Mr. R. L. Gupta refused to come back and got it intimated through Justice R. N. Misra vide demi-official letter dated August 19, 1985 that he had come on deputation at his own risk. Hence the case of Shri R. L. Gupta for being placed on probation was considered and as he was declined to be available to be placed on probation at his own risk, the same has been rejected. Then the officers next to him were considered and the following officers were selected for being placed on probation against regular vacancies :

- (1) Shri Jaspal Singh
- (2) Shri S. C. Jain
- (3) Shri R. K. Sain
- (4) Shri Mohd. Shamim
- (5) Shri P. K. Jain.

5. By the above resolution S/Shri Jaspal Singh, S. C. Jain, R. K. Sain, Mohd. Shamim and P. K. Jain were allowed to supersede the petitioner. During the period of his deputation as Secretary to the Commission of Inquiry twelve more officers were placed on probation by August 22, 1986. Thus in all seventeen Judicial Officers were allowed to supersede the petitioner. On the completion of the work of the Commission of Inquiry on October 31, 1986 the petitioner was posted again as Additional District and Sessions Judge and was placed on probation for a period of two years with effect from April 4, 1987. Aggrieved by the aforesaid supersession the petitioner filed the above petition before this Court questioning the validity of the supersession on several grounds, some of them being common to the petitioner and Shri S. M. Aggarwal who had been impleaded as petitioner 2. Since the case of the petitioner can be disposed of on a short ground we do not propose to express our opinion on the grounds which are common to the petitioner, S. M. Aggarwal and other Judicial Officers working in the Delhi Higher Judicial Service. The contentions of the parties on those grounds are left open.

6. The short question which arises for consideration in this case is whether the supersession of the petitioner made by the High Court by placing seventeen officers, who were junior to him, on probation before he was placed on probation is valid or not. While the petitioner's contention is that no officer who is sent on deputation can be made to suffer from any evil consequences and that on his return to his parent department he should be placed in the same position in seniority which he would have occupied had he not gone on deputation, the submission made on behalf of the High

Court is that the petitioner having gone on deputation at his own risk, he could not be placed on probation as an Additional District and Sessions Judge till April 4, 1987 and he was bound to lose his seniority. It was further urged on behalf of the High Court that those Judicial Officers who were junior to him in the seniority list but who had been placed on probation as Additional District and Sessions Judge before April 4, 1987 were entitled to be treated as his seniors.

7. At the hearing of this case we asked the learned counsel appearing for both the parties to show whether there were any rules governing the deputation of an officer working in the judicial department. No such rules were produced before us. This case has, therefore, to be determined on the principles of justice, equity and relevant judicial precedents.

8. In *State of Mysore v. M. H. Bellary* ((1964) 7 SCR 471 : AIR 1965 SC 868) the facts of the case were these. The respondent in that case, M. H. Bellary, was a government servant in one of the departments of the Bombay Government. He was sent on deputation to another department and after serving there for a long period and getting a number of promotions he was reverted back to his parent department and ordered to be posted at a considerably lower grade, while another government servant who was below his rank had been promoted as Assistant Secretary. Thereupon the respondent therein filed a petition before the High Court of Mysore (Karnataka) under Article 226 of the Constitution of India challenging the order of his posting. There was a rule, Rule 50(b) in the Bombay Civil Services Rules which read as follows :

50(b) Service in another post, other than a post carrying less pay referred to in clause (a) of Rule 22 whether in a substantive or officiating capacity, service on deputation and leave other than extraordinary leave count for increments in the time scale applicable to the post on which the government servant holds a lien as well as in time scale applicable to the post or posts, if any, on which he would hold a lien had his lien not been suspended :

Provided that government may, in any case in which they are satisfied that the leave was taken on account of illness or for any other cause beyond the government servant's control, direct that extraordinary leave shall be counted for increment under this clause.

9. That rule referred to the right of the government servant who goes on deputation to earn increments in the pay scale applicable to the post on which he held a lien on his return to the parent department from the department to which he had been deputed. One of the questions which arose for consideration in that also was whether the respondent who had gone on deputation was entitled to claim the promotion which he would have got in his parent department had he not been sent on deputation. The High Court accepted the case of the respondent therein who had filed the writ petition and granted him the relief sought by him. Aggrieved by the decision of the High Court the appellant, State of Mysore, filed an appeal before this Court. In that appeal this Court observed thus :

The other submission of learned counsel was that a government servant though he had a right to increments in a time scale applicable to the post that he held on the date of his transfer on deputation and on which he had a lien, had no legal right to be promoted to a higher post and that the construction adopted by the High Court virtually conceded or guaranteed to officers on deputation a right to an automatic promotion which they would not have had if they had not been posted on deputation.

We see no force in this contention either. Learned counsel is right only insofar as the promotion involved relates to a selection post. But where it is based on seniority-cum-merit, those considerations are not relevant. The service of an officer on deputation in another department is treated by the rule as equivalent to service in the parent department and it is this equation between the services in the two departments that forms the basis of Rule 50(b). So long therefore as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent department also so as to entitle him to promotions, which are often on seniority-cum-merit basis. What is indicated here is precisely what is termed in official language the "next below rule" under which an officer on deputation is given a paper- promotion and shown as holding a higher post in the parent department if the officer next below him there is being promoted. If there are adverse remarks against him in the new department or punishments inflicted on him there, different considerations would arise and these adverse remarks etc. would and could certainly be taken into account in the parent department also, but that is not the position here. In view of the facts of the case it is not necessary to discuss this aspect in any detail or any further.

10. The above decision was followed by this Court in the State of Mysore v. P. N. Nanjundiah (1969 SLR 346 : (1969) 3 SCC 633). In that case this Court observed thus : (SCC pp. 636-37, para 3)

So long as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that the satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent department also so as to entitle him to promotion which are open on seniority-cum-merit basis.

11. It is not disputed in this case that the petitioner would have been placed on probation as a matter of course on November 22, 1985 if he had been serving as an Additional District and Sessions Judge and would have continued to be senior to Shri Jaspal Singh who was placed on probation on that date. In regard to the quality of the work rendered by the petitioner in the capacity of the Secretary to the Commission to Inquiry headed by Shri Justice Ranganath Misra, we may quote the certificate issued by Shri Justice Ranganath Misra on November 29, 1985. It reads thus :

Shri R. L. Gupta, a Member of the Delhi Superior Judicial Service, worked as the Secretary of the Commission of Inquiry set up under my chairmanship to inquire into the atrocities in Delhi, Kanpur and Bokaro following the assassination of the late Prime Minister Mrs. Indira Gandhi. He worked in the Commission in that capacity from the beginning of June 1985 till October 1986.

Shri Gupta handled his job with ability and efficiency. He impressed me as a brilliant judicial officer. I found him to be well versed in law. He exhibited character, courage and sagacity. I was impressed by his sense of social vision, legal acumen and capacity to comprehend human problems.

12. On his return to the Delhi Judicial Service from the Commission of Inquiry the High Court placed him on probation with effect from April 4, 1987. The question for consideration, therefore, is whether it is just and reasonable to deprive the petitioner of his seniority only because he was not

working in the Delhi Higher Judicial Service during the period when his juniors were allowed to supersede him.

13. We are not impressed by the submission made on behalf of the High Court that the petitioner having been informed by the High Court that he was going on deputation at his own risk he could not retain his seniority over his juniors who were placed on probation during the period of deputation. It is well known that many officers have to be sent on deputation in the public interest to other departments in order to meet the exigencies of public service and that before sending them on deputation their consent is invariably taken. Merely because they have given their consent to go on deputation they should not be allowed to suffer unless there is a specific rule to the contrary or other good reason for it. That is the ratio of the decision in *State of Mysore v. M. H. Bellary* ((1964) 7 SCR 471 : AIR 1965 SC 868) and of the decision in *State of Mysore v. P. N. Nanjundiah* (1969 SLR 346 : (1969) 3 SCC 633). These decisions declare that an officer on deputation is entitled to get increments in the pay scale attached to the post in their parent department and also to get promotion when it is based on seniority-cum-merit as and when his junior in the parent department is promoted by the application of the 'next below rule'. When increments and promotion can be earned, there is no reason why he should not be treated as being on probation also in the post held by him in parent department even while he is on deputation. In this case the petitioner was not even sent on deputation to a department where his services could be absorbed permanently. He was sent on deputation as Secretary to a Commission which was asked to enquire into a certain matter of public importance which was to be over in a short time. The Commission itself was to become *functus officio* on the submission of its report. The Commission was presided over by a Judge of the Supreme Court of India and it was not possible for him to give up his post as Secretary of the Commission without the permission of the Chairman of the Commission and to return to the Delhi Judicial Service. He continued in the post of the Secretary to the Commission of Inquiry as the Chairman of the Commission found it difficult to relieve him in the midst of the inquiry. The object of placing an officer on probation is only to assess whether he is suitable for the post to which he is appointed. It is not necessary that such assessment should always be made by the appointing authority unless there is any legal impediment. Such assessment can also be made by the authority under whom the officer is required to work on deputation. In the instant case the authority under whom the petitioner was asked to work while on deputation was a Judge of the Supreme Court of India who had approved the service of the petitioner as can be seen from the certificate issued on November 29, 1986 which is extracted above. It may also be seen from the decision of this Court in *O. P. Singla v. Union of India* ((1985) 1 SCR 351 : (1984) 4 SCC 450 : 1984 SCC (L&S) 657 : AIR 1984 SC 1595) that the High Court had placed some of the officers of the Delhi Higher Judicial Service on probation for the purpose of confirming them in the Delhi Higher Judicial Service while they were on deputation in other departments. Shri D. C. Aggarwal was placed on probation while he was working as a Member of the Sales Tax Tribunal, Shri Mahesh Chandra was placed on probation while he was a Member of the Central Government Industrial Tribunal and Ms Santosh Duggal had been placed on probation during her tenure as Member, Customs, Excise and Gold Control Appellate Tribunal. It is stated that the High Court declined to place the petitioner on probation when he was working as the Secretary of the Commission on account of the observation made by Justice Mukharji in *O. P. Singla* case ((1985) 1 SCR 351 : (1984) 4 SCC 450 : 1984 SCC (L&S) 657 : AIR 1984 SC 1595) at page 396 of the Reports (SCC p. 495) that such probations while the officers were on deputation were meaningless formalities. But the High Court overlooked that the same learned Judge had observed little lower down in the said judgment that : (SCC p. 485 86)

An appointment on probation is not a jurisprudential *sine qua non* for absorption into

the services, though normally and generally various rules of different services make such provisions as Rule 12(2) here. But as has been noted in the working out the practice of Delhi Judicial Service placement of promotees on probation has not been very strictly followed. The promotees cannot suffer for this.

Even though it had been stated that the petitioner was sent on deputation at his own risk to the Commission of Inquiry it would be unjust to hold that the High Court could have on the facts and circumstances of this case passed orders which would have the effect of superseding the petitioner. We also fail to appreciate the implication of the observation made in the course of the resolution of the High Court that the petitioner had 'refused to come back and got it intimated through Justice R. N. Misra vide demi-official letter dated August 19, 1985 that he had come on deputation at his own risk'. It was not truly a case of refusal on the part of the petitioner to go back to the Delhi Higher Judicial Service nor can it be said that he was responsible for what Shri Justice R. N. Misra had written. Shri Justice R. N. Misra found it difficult to relieve the petitioner in the midst of the inquiry for obvious reasons and that could not be used against the petitioner for depriving him of his seniority. The stand taken by the High Court in this case cannot, therefore, be upheld. We may, however, state at this stage that Shri B. Datta, Additional Solicitor General of India appearing on behalf of the Union of India has very fairly supported the case of the petitioner.

14. At this stage we have to observe that no innocent officer should be exposed to the grave risk to which the petitioner has been exposed in this case. In the instant case, the petitioner was promoted as an Additional District and Sessions Judge under Rule 16 of the Delhi Higher Judicial Service Rules in 1976. The post to which he was promoted was called a temporary post although truly it was not a temporary post. Neither the High Court nor the Delhi Administration ever believed that the post to which the petitioner was promoted would ever cease to exist. There was no chance of its abolition at all. Yet it was called temporary because it was in excess of the strength of the posts in the Delhi Higher Judicial Service which had been fixed at 16 by Rule 4 read with the Schedule attached to the Delhi Higher Judicial Service Rules in the year 1970. If the Schedule had been amended from time to time by increasing the number of posts keeping pace with the reality of the situation perhaps the strength should have been increased to 50 by now. Rule 12(2) of the said Rules states that all candidates, other than those appointed at the initial constitution of the Service on appointment to the Service shall be on probation for a period of two years. In the circumstance by appointing the Judicial Officers of the Higher Judicial Service to temporary posts instead of appointing them to permanent posts the Delhi Administration has virtually made a mockery of the rules of recruitment. To place a Judicial Officer, promoted to the Delhi Higher Judicial Service, on probation nearly 9 years after his promotion as in this case is a mere farce. Ordinarily an officer should be on probation from the date of his appointment and if he is found unsuitable within the period of probation he should be weeded out of service. We are told that the reason for not placing a judicial officer on probation on his appointment is that the strength of the cadre is fixed at 16. Is it just and reasonable to place an officer on probation nearly 9 years after his appointment and then turn him out of service if his services are found to be not satisfactory during the period of probation which would fall in the 10th and 11th year of his service in that cadre ?

15. The Administrators should know that the work in courts has increased by two or three times in almost every court during the last decade. The population has increased by 20 crores during this period. Laws have multiplied, transactions have increased and people are becoming more and more conscious of their rights. But the number of judges has remained constant. This has led to frustration amongst litigants, lawyers and judges. This frustration given rise to different kinds of tensions including the tension which is now prevailing in the city of Delhi. We are told that the Delhi High

Court has been pressing for the appointment of more number of judges. The High Court addressed a letter to the Delhi Administration requesting it to sanction 169 additional posts in the Delhi Judicial Service on January 16, 1983. The Delhi Administration sought some clarifications. In reply the High Court has again by its letter dated January 7/11, 1988 urged for the sanctioning of 169 posts. This letter shows that as on September 1, 1987 in the courts manned by the officers of the Delhi judicial Service (who on promotion will be members of the Delhi Higher Judicial Service) there were 51,173 Regular Suits, 1210 Small Cause Suits, 974 Civil Appeals, 10,592 Rent cases, pending before courts dealing with such cases. There were 97,943 cases pending before the courts of Chief and Additional Chief Metropolitan Magistrates and 2,35,033 cases pending before other Magistrates as on September 1, 1987. The Delhi Administration appears to have not taken any serious notice of the appalling situation prevailing in the Delhi courts. The Administrators should not look at the recommendation as one which is intended to provide some jobs to lawyers. They should look at the recommendation of the High Court as one intended to give relief to the suffering litigants who waste their valuable time near courts for years waiting for justice. This is a problem which should be solved on a war footing. The Delhi Administration should straightway increase the strength of the Delhi Judicial Service at least by 150, increase the number of posts in the Delhi Higher Judicial Service at least by 40, establish court premises in different parts of the Union territory of Delhi and see that the pending cases which are in the order of lakhs, many of which are lingering for the last ten years and more, are disposed of within two years. If the total strength is increased at all levels, this farce of placing the Judicial Officers on probation after nearly 10 years will also end. We must also observe that the government should not consider finance as a constraint because by not appointing sufficient number of judges the government is suffering more financially. The government itself being a big litigant is subjected to several orders of stay, prohibitory orders, injunctions etc. leading to delay in completion of several projects and works. The indirect effect of frustration amongst the people lead to a greater financial drain. We may add here that if by any chance the arrears of cases come down, then the vacancies in judicial posts may not be filled up. The expenditure on judicial department will thus automatically come down. We hope that the Union of India and Delhi Administration will sanction at least 150 more posts in the Delhi Judicial Service and about 40 posts in the Delhi Higher Judicial Service and also take immediate steps to establish additional courts. We also suggest that the expenditure on judicial administration should not be subjected to the constraints of non-plan expenditure. The judicial department is not an unproductive department. Peace and tranquillity that will result from quick disposal of cases is much more valuable than the economic goods produced by factories. Delay in disposal of cases affects the gross national product adversely. In fact peace and tranquillity will help in greater production of economic goods. Quick disposal of cases will also save millions of man-hours which are now being wasted near the courts in India. There must be a change of attitude on the part of the governments and the administrators at the secretariats. It is imperative that every State should increase the strength of Judicial Officers at least by 30 per cent. immediately. Otherwise there would be a catastrophe in about a year or two. It is hoped that this warning will not go unheeded.

16. We are of the view that the petitioner in this case should have been placed on probation on November 22, 1985 even though he was on deputation on that date and on his confirmation he is entitled to maintain his seniority above Shri Jaspal Singh. We, therefore, direct that the petitioner shall be deemed to have been on probation from November 22, 1985 and his services shall be regulated accordingly. The petitioner shall also be deemed to be above Shri Jaspal Singh in the seniority list of officers in the Delhi Higher Judicial Service.

17. In making this order, as already stated, we have not considered the other contentions raised in the petition including the contention that the petitioner should be deemed to have been on probation

from the date of his promotion to the cadre of Additional District Judge or any other date prior to November 22, 1985. All those contentions are left open. The writ petition is allowed accordingly. There is no order as to costs.

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