

Union Public Service Commission

Vs

Hiranyalal Dev and Others

State of Assam and Others

Vs

Union of India and Others

Civil Appeals No. 3016 and 3017 of 1987

(M.P. Thakkar, N.D. Ojha JJ)

22.03.1988

JUDGMENT

OJHA, J. -

1. These appeals by special leave have been preferred against the judgment dated February 17, 1987 of the Central Administrative Tribunal, Guwahati Bench, Guwahati, in Guwahati Case No. 225 of 1986 arising out of a petition filed by Shri Hiranyalal Dev, a member of the Assam Police Service. Civil Appeal No. 3016 of 1987 has been preferred by the Union Public Service Commission and Shri Hiranyalal Dev is respondent 1 in this appeal. Civil Appeal No. 3017 of 1987 on the other hand has been preferred by State of Assam and two others and Shri Hiranyalal Dev has been arrayed as respondent 7 in this appeal. For the sake of convenience, however, Shri Hiranyalal Dev shall hereinafter be referred to as respondent 1.

2. Brief facts necessary for appreciating the submissions made by learned counsel for the parties are that a meeting of the Selection Committee for preparing a select list for promotion to the joint IPS Cadre of Assam, Meghalaya as contemplated by the Indian Police Service (Appointment by Promotion) Regulations, 1955 was held on December 27, 1983. Even though two officers junior to respondent 1 were selected and included in the select list, the name of respondent 1 was not included in the said list. Aggrieved respondent 1 filed a Civil Rule in the Guwahati High Court which stood transferred to the Central Administrative Tribunal (for short the Tribunal) under Section 29 of the Administrative Tribunals Act, 1985.

3. The Tribunal came to the conclusion that certain adverse remarks in the Confidential Character Rolls (C. C. Rolls) of respondent 1 had not been communicated to him till the date of meeting and on their being communicated respondent 1 made a representation to the State Government which was allowed, with the result that even the adverse remarks subsequently expunged were taken into consideration by the Selection Committee. According to the Tribunal the non-selection of respondent 1 was in this view of the matter bad in law. On this view, the Tribunal held that respondent 1 should be deemed to have been included in the impugned select list, at least, in the place in the order of his seniority and appointed to Indian Police Service on the date on which his immediate junior, namely, Shri Sardar Pradeep Kar was appointed. After taking this view, the

Tribunal went a step further and directed respondent 1 to be appointed to the Indian Police Service with effect from the date on which Shri Sardar Pradeep Kar had been appointed and allowed all the benefits on that basis.

4. In these appeals against the order passed by the Tribunal, the main question which has been posed for consideration is as to whether the Tribunal could have lawfully passed the operative order which it has on reaching the conclusion that the Selection Committee had committed an error in taking into account the adverse remarks made against respondent 1 during a particular period, which remarks had not been communicated to him till the date of selection and which adverse remarks were subsequently set aside by the State Government upon a representation made by respondent 1 against the adverse remarks in question. The selection in question was as seen above for appointment to the Indian Police Service from amongst the officials of the Assam Police Service.

5. It cannot be gainsaid that the Selection Committee could not have taken into consideration the adverse remarks entered in the records which had not been communicated to respondent 1, and in any case could not have taken into consideration these remarks which were subsequently set aside by the State Government. The legal effect of the setting aside of the adverse remarks would be that the remarks must be treated as non-existent in the eye of law. The Selection Committee had, therefore, fallen in error in taking into account these adverse remarks which in the eye of law did not exist and which could not have been lawfully taken into consideration. However, the fact that the Selection Committee erred in this behalf does not necessarily mean that respondent 1 should have been categorized or considered as "very good" vis-a-vis others who were also in the field of choice. How to categorize in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. The Tribunal could not make a conjecture as to what the Selection Committee would have done or to resort to conjecture as to the norms to be applied for this purpose. The proper order for the Tribunal to pass under the circumstances was to direct the Selection Committee to reconsider the merits of respondent 1 vis-a-vis the official who was junior to him and whose name was Shri Sardar Pradeep Kar. Instead of doing so, the Tribunal has held that respondent 1 should be deemed to have been included in the impugned select list prepared in 1983, at least in the place in the order of his seniority on the basis of the assessment of his C. C. Rolls, and has issued a direction to appoint respondent 1 with effect from the date on which Shri Kar was appointed. The jurisdiction to make the selection vested in the Selection Committee. The Selection Committee had to make the selection by applying the same yardstick and norm as regards the rating to be given to the officials, who were in the field of choice by categorizing the concerned officials, who were in the field of choice by categorizing the concerned officials as "outstanding", "very good", "good", etc. This function had also to be discharged by the Selection Committee by applying the same norm and tests and the selection was also to be made by the Selection Committee as per the relevant rules. The powers to make selection were vested unto the Selection Committee under the relevant rules and the Tribunal could not have played the role which the Selection Committee had to play. The Tribunal could not have substituted itself in place of the Selection Committee and made the selection as if the Tribunal itself was exercising the powers of the Selection Committee, as has been done which is evident from the passage extracted from paragraph 16 of the judgment :

We have also gone through the C. C. Roll, of the two junior officers, respondents 11 and 12 for the same period of five years including 1982-83. We are of the definite view that there is absolutely no reason after expunction of the adverse remarks to hold that the applicant deserved a lower classification than these two respondents, who were junior to him.

The proper course to adopt was the course which was indicated by this Court in *Gurdial Singh Fijji v. State of Punjab* ((1979) 3 SCR 518, 530 : (1979) 2 SCC 368, 377-78, para 20 : 1979 SCC (L&S) 197 : AIR 1979 SC 1622), wherein this Court directed that the case of the appellant be considered afresh by the Selection Committee indicating the broad framework within which the Committee should act and the preliminary steps the government should take in order to facilitate the Committee's task. In *State of Mysore v. Syed Mahmood* ((1968) 3 SCR 363 : AIR 1968 SC 1113 : (1970) 1 LLJ 370) a dispute about promotion of certain officers had been raised. In writ petitions filed by the aggrieved officers the High Court passed orders directing the State Government to promote them from the respective dates on which respondents junior to them were promoted. The orders passed by the High Court were set aside by this Court and a direction was issued to the State Government to consider whether the said officers should have been promoted on the relevant dates. It was held :

The promotions were irregularly made and they were, therefore, entitled to ask the State Government to reconsider their case. In the circumstances, the High Court could issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to their seniority and fitness they should have been promoted on the relevant dates when officers junior to them were promoted. Instead of issuing such a writ, the High Court wrongly issued writs directing the State Government to promote them with retrospective effect. The High Court ought not to have issued such writs without giving the State Government an opportunity in the first instance to consider their fitness for promotion in 1959.

6. Learned counsel for respondent 1 in this connection, however, placed reliance on a decision of this Court in *State of Gujarat v. S. Tripathy* ((1986) 2 SCC 373 : 1986 SCC (L&S) 273) and pointed out that in that case even this Court instead of directing the Government of Gujarat to consider afresh the claim of Shri Tripathy, the respondent in that case, for promotion to the selection grade and the super-time scale declared that Shri Tripathy should have been given selection grade and super-time scale with effect from the dates mentioned therein and directed the Government of Gujarat to give the consequential monetary benefits. So far as this submission is concerned, it may, at the first instance, be pointed out that extent of jurisdiction exercised by this Court cannot be equated with the jurisdiction of the Central Administrative Tribunal. Secondly, as is apparent from the opening part of the judgment the appeals in that case had been filed by the State of Gujarat more to vindicate Mr. H. K. L. Capoor, who was previously Chief Secretary to the Government of Gujarat and against whom certain caustic observations had been made by the High Court of Gujarat, rather than for a decision on the merits of the case. The High Court had held that Shri Tripathy was wrongly passed over and it is in this background that the aforesaid order was passed by this Court. This in our opinion could not authorise the Tribunal to assume the role of the Selection Committee in making the selection or that of the State Government in making appointment by promotion. We are accordingly of the opinion that the Tribunal should have directed that the Selection Committee should reconsider the matter on the footing that there were no adverse remarks against respondent 1 and make a proper categorization on the basis of the records by ignoring the adverse remarks but by applying the same standard and test adopted by it and make the categorization "Outstanding", "Very Good", "Good" etc. as deemed appropriate in the light of the norms devised by it and to decide as to whether on doing so respondent 1 would have been selected. The Tribunal has also assumed that on the basis of the rating made on the C. C. Rolls the petitioner was entitled to be categorized as "Very Good". This was a matter which had to be determined by the Selection Committee by applying the same test as was applied in the case of others by taking into consideration the rating made in the C. C. Rolls by applying the same criteria devised by the Selection Committee. The Tribunal has made

recourse to conjectures in undertaking this function as discussed in the passage extracted from paragraph 16, which it should not have undertaken at all :

We also notice from the C. C. Rolls taken together that the categorization done by the State Government are (a) outstanding (to be awarded in very rare case), (b) above average, (c) average and (d) below average. Thus, the categorization "above average" is taken as equivalent to the grading of "very good " as referred to in Regulation 5(4) of the Promotion Regulation. This also follows on an examination of the C. C. Roll of the applicant, which is produced before us contains entries from the year 1973-74 onwards. In all these years from 1973-74 to October 1979 he was on each occasion graded "above average" which is equivalent to "very good". The general description of his performance during these years also confirm that he was held to be very good. In the report for the period October 17, 1979 to March 31, 1980 he has been graded "average" but after the expunction of the adverse remarks, therefore, the performance as depicted in the report for the period is to be granted as "very good". Same is the case with the two other reports containing the adverse remarks....

This the Tribunal should not have done.

7. Turning now to the next point, while the Tribunal has not rested its decision on the ground that the Selection Committee had not given reasons for not selecting respondent 1 the Tribunal has made a declaration of law to this effect that it was obligatory on the part the Selection Committee to have recorded the reasons for superseding those who were senior. In the first place, the Tribunal was in error in taking the view that it constituted supersession. The Selection Committee was making a selection and when someone was selected in preference to the other, it could not be said that it amounted to supersession of a junior by a senior. The concept of supersession is relevant in the context of promotion and not in the context of selection. Besides, the Tribunal has also committed an error in taking the view that the law enjoined the Selection Committee to record the reasons and failure to do so would vitiate the selection. It appears that the Tribunal did not properly realise the effect of the relevant provision having been amended at the time when the Selection Committee made its selections and that so far as the amended provision is concerned, the question is concluded by the decision of this Court in *R. S. Dass v. Union of India* (1986 Supp SCC 617) wherein this Court, while dealing with the provisions of Indian Administrative Service (Appointment by Promotion) Regulations, 1955 which are in pari materia with Indian Police Service (Appointment by Promotion) Regulations, 1955 applicable in the instant case, has taken the view that it is not necessary to record the reasons for not selecting a person who is in the arena.

8. In the result these appeals succeed and are allowed. The order passed by the Tribunal is set aside to the aforesaid extent. So also the order passed by the Tribunal reflected in the passage quoted hereunder is set aside :

Accordingly, we hold that the applicant should be deemed to have included in the impugned select list prepared in 1983, at least, in the place in the order of his seniority and appointed to Indian Police Service on the date on which his immediate junior, namely, respondent 1 1 Shri Sardar Pradeep Kar was appointed. Accordingly, we direct that the applicant be appointed to the Indian Police Service with effect from the date on which respondent 1 1 Shri Sardar Pradeep Kar was appointed to the Indian Police Service and allowed all the benefits on that basis.

9. In place of the order quoted hereinabove we substitute an order in the following terms viz. :

The Selection Committee shall reconsider the impugned select list prepared in 1983 as if it was deciding the matter on the date of the selection on the footing that the adverse remarks made against respondent 1 which were subsequently set aside did not exist in the records and consider the question as to whether he would have been appointed or respondent 1 : 1 Shri Sardar Pradeep Kar would have been appointed on the basis of the categorization to which each of them was entitled having regard to the C. C. Rolls (ignoring the adverse remarks against respondent 1 which were subsequently quashed) and pass appropriate orders in the light of the decision taken on this point. If respondent 1's claim is accepted upon reconsideration in the light of the aforesaid exercise, the order of appointment should provide for his appointment with effect from the date on which he would have been appointed if he was selected when the original selection was made in 1983 and he should be given all the benefits. The Selection Committee shall complete its exercise within two months from the date of this order. There will be no order regarding costs.

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