

Vinod Krishna Kaul

Vs

Union of India and Others

Civil Appeal No. 3860 of 1984

(N. M. Kasliwal, Smt. M. S. Fathima Beevi JJ)

12.09.1990

JUDGMENT

N. M. KASLIWAL, J. –

1. This appeal by special leave is directed against the order of Delhi High Court dated January 13, 1983 in Civil Writ No. 1297 of 1980.
2. The petitioner was selected for the Indian Police Service in the open competitive examination held in 1955. He was given Rajasthan Cadre. He joined government service on October 25, 1956 and his All India seniority in the combined list of 1956 IPS batch is at No. 3. After initial service in the Rajasthan State Police and Delhi Police, the petitioner was inducted into the Intelligence Bureau, Ministry of Home Affairs, Government of India, New Delhi in 1960. He continued to serve in the Intelligence Bureau on posts outside and within Delhi. He got the Selection Grade of the IPS on June 24, 1972. On January 23, 1973, the petitioner got the grade of Jt. Dy. Director/Dy. Director, Intelligence Bureau (equivalent to Deputy Inspector General of Police - a selection post). According to the petitioner his service record has always been extremely bright and there is no adverse remark against him in his service record. In the year 1977, the petitioner was selected for the prestigious National Defence College, New Delhi and he successfully obtained the graduateship from the aforesaid college. According to the petitioner he was given another prestigious assignment in 1979 details of which he is not free to disclose.
3. The case of the petitioner is that there were 336 posts of Joint Secretaries under the Government of India as on June 1, 1980. These posts are in the pay scale of Rs 2500-125/2-2750. The posts of Joint Secretaries are ex-cadre posts and appointments to the posts of Joint Secretaries are made from different sources, out of a panel of officers belonging to the Indian Administrative Service, Indian Police Service, and other central services. According to the petitioner two posts of Joint Secretaries were to be filled in by the Police Commission in 1980. The petitioner was empanelled in 1978 for appointment to the posts of Joint Secretaries. Respondent 4, Shri Ved Prakash Marwah member of IPS and respondent 5 Shri Kailash Prakash member of Indian Postal Service were also put in the above panel. According to the petitioner both these officers were junior to the petitioner. It has been alleged that the above two posts of Joint Secretaries in the Police Commission were given to respondents 4 and 5 totally ignoring the claim of the petitioner. It has been alleged that the petitioner who was placed higher in merit and seniority throughout in comparison to respondents 4 and 5, was discriminated and was not considered for a higher post of Joint Secretary and appointments to such post was given to respondents 4 and 5 in violation of Articles 14 and 16 of the Constitution. It has thus been contended by the petitioner that he was put to financial loss as well as in rank and status in comparison to respondents 4 and 5 who were junior to him.

4. The petitioner challenged the above action of the respondents by filing a writ petition under Article 226 of the Constitution before the Delhi High Court. The respondents submitted counter-affidavits. In an affidavit sworn by Shri D.B. Ailawadi, Under Secretary to the Government of India in the Ministry of Home Affairs on April 10, 1981, it was stated inter alia that the contention of the petitioner that respondent 4 was appointed to the Joint Secretary level post by passing the claim of the petitioner was wrong and denied. The empanelment of an officer as Joint Secretary does not give him any absolute legal right for appointment as a Joint Secretary as has been assumed by the petitioner. Joint Secretary's panel is only an eligibility list of such suitable officers who could be considered for appointment to the posts of Joint Secretary to the Government of India and this list is clearly not an entitlement list nor does it give any legal right to the petitioner or to the other officers concerned for the actual appointment as Joint Secretary. The selection for the posts of Joint Secretary has to be made by the concerned Administrative Ministry/department from amongst the names of suitable officers suggested by the Establishment Officer. The appointments to these posts have to be made on the basis of relative suitability of eligible officers as well as keeping in view the job requirements of the post and such senior posts, like this could not be filled up only on the basis of the individual seniority of the officers alone. The High Court apart from the above affidavit also called for the record and then observed as under :

"We are satisfied both on the basis of the record shown to us and on a reading of the pleadings that unfortunately for the petitioner his assignment was such at the relevant point of time that he was not available for being considered for the post of a Joint Secretary. In other words, in the exigencies of public service he could not be spared. The averments in Shri Ailawadi's affidavit are correct. If that is the position we fail to understand how the petitioner can put forward any claim of hostile discrimination or arbitrariness. Since he was not available to be considered and the posts to which respondents 4 and 5 were appointed were ex-cadre posts, to which petitioner as such did not have a right, he can have no cause for complaint."

The High Court in these circumstances dismissed the petition filed by the petitioner,

5. It was contended by the learned counsel for the appellant before us that once the name of the petitioner was included in the panel for appointment to the post of Joint Secretary, it was incumbent upon the respondents to appoint the petitioner on such post of Joint Secretary prior to respondent 4 who was admittedly junior to the petitioner in the Indian Police Service. It was contended that the respondents cannot take the plea that the petitioner was not available for such post due to exigencies of public service. The respondents ought to have spared the petitioner for such appointment as it was within the competence of the government itself to post the petitioner in a place from where he could be spared. It was also contended that the scale of Joint Secretary goes up to Rs 2750 while the post of Dy. Inspector General went up to Rs 2250. It was thus submitted that the petitioner was not only put to financial loss but was also deprived of being considered and appointed for other higher posts of Additional Secretary and Secretary under the Central Government.

6. On the other hand a counter-affidavit on behalf of the respondents has been filed before this Court by Shri K.V. Sampath Kumar, Under Secretary in the Department of Personnel and Administrative Reforms. In the counter-affidavit it has been stated that the system of appointments to the posts in the Secretariat of the Government of India in general and to the posts of Joint Secretary in particular is done in the following manner.

7. At the outset, the Establishment Officer to the Government of India addresses a letter to the

Controlling Officers of the various cadres, eligible for consideration for appointments to the posts of Under Secretary and above, inviting names of officers in their respective cadres who, according to the controlling authority of the cadre are suitable for consideration for these posts. The suitability of officers eligible for the posts of Joint Secretary and equivalent posts is, thereafter, assessed by a Committee of Secretaries, specially constituted for the purpose in accordance with the prescribed guidelines. The assessments of this Committee are then considered by the Senior Selection Board and such of them as are finally considered suitable for appointments in the posts of Joint Secretaries or equivalent posts are included in a list called the 'Joint Secretaries Suitability List'. The officers in the 'Joint Secretaries Suitability List' are not necessarily arranged in the order of seniority or in order or merit. At the beginning of each calendar year, the various cadre authorities of the feeder services are addressed by the Establishment Officer to find out the names of the officers of the respective services who would be available during that calendar year for being considered for posts under the Senior Staffing Scheme. The list of such officers is inter alia known as the 'Offer List' and the officers are 'said to be available' during that calendar year. Although no limit on the number of such officers has been prescribed in respect of any service, the respective cadre authorities are expected to offer only such officers who could be released during that calendar year with due regard to the cadre position viz. the total sanctioned strength of the various grades, deputation reserve and the extent to which it is utilised etc. It has been further stated in the counter-affidavit that when any vacancy in the post of Joint Secretary or equivalent post is invited by a Ministry/department, the Establishment Officer, acting on behalf of the Senior Selection Board, considers the claims, merits and availability of all officers within the field of choice and recommends to the Ministry/department a panel of names, keeping in view educational qualifications, service, experience and special training required for effective performance of the job. It is then for the Ministry or department to accept or not to accept any officer from the said panel after considering the suitability of each officer for the particular job. It has thus been alleged that the procedure which is set out above clearly indicated that an officer borne on the 'Joint Secretaries Suitability List' has no absolute legal right to be appointed to the post of a Joint Secretary or to any equivalent post. The list merely contains the names of officers who are considered generally suitable for appointment to the posts of Joint Secretaries, and equivalent posts and is not an entitlement list. For specific vacancies only such of the officers in the general suitability list are considered who are comparatively more suitable than others in the list, keeping in view the job requirements of the vacancy in question. Availability of the officer from his parent cadre is also taken into account. It was further stated in the counter-affidavit that at the time when respondents 4 and 5 were appointed to the posts in the National Police Commission, the petitioner was not available for consideration for such post. According to the respondents, the crucial point at issue revolved around availability of the petitioner for being considered for appointment to the posts to which respondents 4 and 5 were appointed. It was conclusively proved to the satisfaction of the High Court that the petitioner was not available for appointment to the post at the relevant time.

8. The petitioner filed a rejoinder affidavit in which inter alia it was stated that the factum of empanelment of the officer concerned denotes his availability unless and until the same is negated by a subsequent specific withdrawal in the case of such officer. Mere omission to submit his name from year to year does not ipso facto affect his availability. The petitioner fulfilled all the requirements on merits, seniority, suitability etc. to the hilt and yet he was not considered for the post of Joint Secretary. It has been stated that the purported non-inclusion of the petitioner in the list of officers sent by the Ministry of Home Affairs as available for appointment to the post of Joint Secretary during that year is arbitrary and illegal and had offended Articles 14 and 16 of the Constitution.

9. This Court on July 23, 1984 gave a further direction that the reply of the State respondents on the specific point about the non-availability of the petitioner for being considered for appointment to the post of Joint Secretary to which respondents 4 and 5 were appointed may be further clarified with specific reference to whether such conclusion was arrived at by the State respondent with due regard to all facts and after applying its mind to all relevant factors. In pursuance of the above direction further affidavit of K.V. Sampath Kumar abovenamed was filed by the respondents. In this affidavit it was again reiterated that the petitioner was not available for consideration for appointment as Joint Secretary, since the Ministry of Home Affairs which is the cadre authority in respect of the IPS to which the petitioner belongs, were unable to spare his services during the relevant year for good and valid administrative consideration and in public interest, which are amplified as under.

10. That the petitioner was appointed in April 1960 in the Intelligence Bureau, a Central Police Organisation to which the tenure position detailed in the preceding paragraphs apply, and had continued in the said organisation since then till he was repatriated to his State Cadre in 1983. In other words, the petitioner had already served 20 years in a Central Police Organisation which was much beyond the normal tenure of 5 years allowed and this exception was made in the petitioner's case, only because his services were continued to be required in the sensitive Central Police Organisation in which he was working at the relevant time. If his services could be spared by the Central Police Organisation for appointment elsewhere, there was no justification in making an exception in the petitioner's case in retaining him far beyond the prescribed tenure of 5 years in the Central Police Organisation.

11. That as long as the Ministry of Home Affairs was not in a position to offer the petitioner's name for deputation to the Central Secretariat at the relevant time on account of the considerations indicated above, he had to be considered as non-available by the Establishment Officer for appointment to tenure posts in the Central Secretariat, and that the statement/conclusion made in the averments of this respondent both before the Hon'ble High Court and in the counter-affidavit filed by this respondent in reply to the special leave petition were so made on sound and valid grounds and after applying his mind to all the facts and circumstances of the case.

12. Even so, a mention was made during the hearing of the writ petition in the High Court that, if the Hon'ble Court so directed, the petitioner's name would also be circulated. Although no such specific direction was given by the Hon'ble Court, it was decided to retain the petitioner's name 'on offer' during 1981 and sponsor his name against suitable vacancies of Joint Secretaries in the Central Secretariat. The petitioner was not, however, selected by any of the Ministries/department to whom his name had been sponsored.

13. The petitioner submitted a rejoinder affidavit to the abovementioned counter-affidavit of the respondents. The petitioner has further asserted that the contention of the State respondents indicating non-availability of the petitioner was totally misleading and incorrect. Respondents 4 and 5 were respectively promoted to the post of Joint Secretary in the National Police Commission on May 8, 1980 and December 4, 1979 (in this case retrospectively) in the grade of Rs. 2500-125/2-2750. On the other hand the petitioner was promoted as Joint Director, Intelligence Bureau on December 8, 1982 in the same grade i.e. after 3 years. Thus the two respondents were drawing Rs. 2750 per month as their basic salary, whereas the petitioner was drawing a mere Rs. 2500 per month. The respondents have also been drawing enhanced dearness allowance, travelling allowance etc. on the basis of their higher salaries, apart from enjoying various other perquisites of office. Respondents 4 and 5 were also entitled to higher death-cum-retirement benefits they are also eligible to be appointed as Additional Secretary to the Government. All this has been denied to the petitioner

as he was given current promotion belatedly in December 1982.

14. We have considered the arguments advanced by learned counsel for both the parties and have perused the entire record. We do not think it necessary or proper to go into the larger questions of the manner of preparation of 'select list' for the appointment of Joint Secretaries as it may have larger ramifications, because this case can be disposed of on the basis of its own facts. The name of the petitioner was included in the panel in the year 1978. The question of appointment on the post of Joint Secretary in the National Police Commission arose in the year 1980. The petitioner was continuing in the department of Intelligence Bureau at that time and according to his own saying he was assigned a prestigious appointment in 1979 which according to him cannot be disclosed. The respondents have come out with a categorical and consistent stand taken before the High Court as well as before us that at the relevant time the petitioner was not available due to exigencies of public service for being considered and appointed on the post of Joint Secretary in the National Police Commission. The High Court after examining the original record and the pleadings of the parties has also recorded a finding that the petitioner was not available at the relevant time for being considered for the post on which respondents 4 and 5 were appointed. We find no reason to take a different view in this regard. We are not prepared to accept the contention of the petitioner in this regard that the claim of the petitioner was ignored or he was not considered on account of any mala fide intention. Admittedly the post of Joint Secretary is outside the cadre and is not a promotion post of Indian Police Service to which the petitioner belongs. There is no question of consideration of any seniority of the petitioner qua respondent 5 Shri Kailash Prakash who admittedly belongs to Indian Postal Service and not Indian Police Service. So far as the claim of seniority of the petitioner qua respondent 4 Shri Ved Prakash Marwah is concerned, it would remain according to their position in the parent cadre in IPS and the same cannot be disturbed merely because respondent 4 worked as Joint Secretary in the National Police Commission for some period. In the circumstances mentioned above, there is no question of any violation of Articles 14 and 16 of the Constitution as contended on behalf of the petitioner.

15. In the result we find no force in this appeal and it is accordingly dismissed with no order as to costs.

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