Rohitash Kumar

v.

Om Prakash Sharma

(Supreme Court Of India)

HON'BLE DR. JUSTICE B.S. CHAUHAN HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

Civil Appeal No. 2133-2134 Of 2004 | 06-11-2012

Dr. B.S. CHAUHAN, J.

1. These appeals have been preferred against the impugned judgment and order dated 22.7.2001, passed by the High Court of Jammu & Kashmir at Jammu in SWP No. 1393 of 1999, and judgment and order dated 1.8.2002 passed in LPA No. 275 of 2002.

2. The facts and circumstances giving rise to these appeals are mentioned as under :

A. The appellants and contestant respondents are Assistant Commandants in the Border Security Force (hereinafter referred to as, `BSF'). The appellants and respondent nos. 4 and 5 are direct recruits, while respondent no.1 has been promoted against the quota of 10 per cent posts, that are reserved for Ministerial Cadre posts.

B. The Union of India – respondent no.2, issued a seniority list dated 18.7.1995, placing respondent no. 1 at Serial No. 1863, below all the officers of Batch No.17 and thereafter, a final seniority list of Assistant Commandants was published on 5.7.1996.

C. Respondent no.1 challenged the said seniority list in which he was ranked below the officers of Batch No. 17, by filing Writ Petition No. 1393 of 1999, on

the ground that with effect from 15.3.1993, he stood promoted as Assistant Commandant, and that he had also completed all requisite training for the same at the B.S.F. Academy, Tekanpur, which had commenced on 1.2.1993. There was another batch that undertook training on 2.7.1993. However, the said officers of the second batch, who had joined such training on 2.7.1993, could not be ranked higher than him, in the seniority list.

D. The said writ petition filed by respondent no.1, was contested by the Union of India. The learned single judge allowed the writ petition vide impugned judgment and order dated 27.7.2001, wherein it was held that respondent no.1/petitioner therein, was, in fact, entitled to be ranked in seniority above the officers of Batch No.17, and below the officers of Batch No.16.

E. The Union of India challenged the aforementioned impugned judgment and order dated 27.7.2001, by filing a Letters Patent Appeal which was dismissed vide impugned judgment and order dated 1.8.2002.

F. The appellants, though had not been impleaded as parties before the High Court, sought permission to file special leave petitions with respect to the said matter, and the same was granted by this Court.

Hence, these appeals.

3. Shri R. Venkataramani, learned senior counsel appearing on behalf of the appellants, has submitted that officers that are selected in response to a single advertisement, and through the same selection process, if have been given training in two separate batches, for administrative reasons i.e. police verification, medical examination etc., cannot be accorded different seniority by bifurcating them into two or more separate batches. The High Court therefore, committed an error by allowing the claim of respondent no.1, which opposed the seniority of the officers, for the reason that, if Batch Nos. 16 and 17 are taken together, the officers who, in terms of seniority, were placed at Serial No.5, would be moved to Serial No. 60, if treated separately. For instance, the person placed at Serial No. 8 had moved to Serial No. 62, and the one placed at Serial No. 11 had moved to Serial No. 64. Thus, such an act has materially

adversely affected the seniority of officers even though they were duly selected in the same batch. The provisions of Rule 3 of the Border Security Force (Seniority, Promotion and Superannuation of Officers) Rules, 1978 (hereinafter referred to as the, `Rules 1978'), have been wrongly interpreted. The Statutory authorities have previously, always fixed seniority without taking note of the fact that training of officers was conducted in different batches. Thus, appeals deserve to be allowed.

4. Per contra, Shri P.P. Malhotra, learned ASG and Dr. Rajeev Dhavan, learned senior counsel appearing on behalf of respondent nos. 4 and 5, have vehemently opposed the appeals, contending that the said Rule is not ambiguous in any manner and thus, the same must be given a literal interpretation and that if, as a result of this, any hardship is caused to anyone, the same cannot be a valid ground for interpreting the statutory rule in a different manner. The said rules are not under challenge. The rule of contemporanea expositio does not apply in contravention of statutory provisions. The proviso to Rule 3 provides for the bifurcation of officers of the same batch in the event of a contingency which is exactly what has taken place in the instant case. The High Court has only applied the said provisions. Thus, no interference is called for and the present appeals are liable to be rejected.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. The relevant Rule 3 of the Rules, 1978, reads as under:

"(3) Subject to the provisions of Sub-Rule (2) inter - se seniority amongst officers holding the same rank shall be as follows namely:

(i) Seniority of Officers promoted on the same day shall be determined in the order in which they are selected for promotion to that rank.

(ii) Seniority of direct entrants shall be determined in accordance with the aggregate marks obtained by them before the Selection Board and at the passing out examination conducted at the Border Security Force Academy.

(iii) Seniority of temporary officers subject to the provisions of clauses (i) and (ii) shall be determined on the basis of the order of merit at the time of their selection and officers selected on an earlier batch will be senior to officers selected in subsequent batches.

(iv) Seniority of officers subject to the provisions of clauses (i) (ii) and (iii) shall be determined according to the date of their continuous appointment in that rank.

Provided that in case of direct entrants the date of appointment shall be the date of commencement of their training course at the Border Security Force Academy."

(Emphasis added)

Rule of Contemporanea Expositio:

7. This Court applied the rule of contemporanea expositio, as the Court found that the same is a well established rule of the interpretation of a statute, with reference to the exposition that it has received from contemporary authorities. However, while doing so, the Court added words of caution to the effect that such a rule must give way, where the language of the statute is plain and unambiguous., This Court applied the said rule of interpretation by holding that contemporanea expositio as expounded by administrative authorities, is a very useful and relevant guide to the interpretation of the expressions used in a statutory instrument. The words used in a statutory provision must be understood in the same way, in which they are usually understood, in ordinary common parlance with respect to the area in which, the said law is in force or, by the people who ordinarily deal with them. (Vide: K.P. Varghese v. Income-

tax Officer, Ernakulam & Anr., AIR 1981 SC 1922; Indian Metals and Ferro Alloys Ltd., Cuttack v. Collector of Central Excise, Bhubaneshwar, AIR 1991 SC 1028; and Y.P. Chawla & Ors. v. M.P. Tiwari & Anr., AIR 1992 SC 1360).

8. In N. Suresh Nathan & Anr. v. Union of India & Ors., 1992 Supp (1) SCC 584; and M.B. Joshi & Ors. v. Satish Kumar Pandey & Ors., 1993 Supp (2) SCC 419, this Court observed that such construction, which is in consonance with long-standing practice prevailing in the concerned department in relation to which the law has been made, should be preferred.

9. In Senior Electric Inspector & Ors. v. Laxminarayan Chopra & Anr., AIR 1962 SC 159; and M/s. J.K. Cotton Spinning & Weaving Mills Ltd. & Anr. v. Union of India & Ors., AIR 1988 SC 191, it was held that while a maxim was applicable with respect to construing an ancient statute, the same could not be used to interpret Acts which are comparatively modern, and in relation to such Acts, interpretation should be given to the words used therein, in the context of new facts and the present situation, if the said words are in fact, capable of comprehending them.

10. In Desh Bandhu Gupta and Co. & Ors. v. Delhi Stock Exchange Association Ltd., AIR 1979 SC 1049, this Court observed that the principle of contemporenea expositio, i.e. interpreting a document with reference to the exposition that it has received from the Competent Authority, can be invoked though the same will not always be decisive with respect to questions of construction. Administrative construction, i.e., contemporaneous construction that is provided by administrative or executive officers who are responsible for the execution of the Act/Rules etc., should generally be clearly erroneous, before the same is over-turned. Such a construction, commonly referred to as practical construction although not controlling, is nevertheless entitled to be given considerable weightage and is also, highly persuasive. It may however, be disregarded for certain cogent reasons. In a clear case of error, the Court should, without hesitation, refuse to follow such a construction for the reason that, "wrong practice does not make the law." (Vide : Municipal Corporation for City of Pune & Anr. v. Bharat Forge Co. Ltd. & Ors., AIR 1996 SC 2856). (See also: State of Rajasthan & Ors. v. Dev Ganga Enterprises, (2010) 1 SCC 505; and Shiba Shankar Mohapatra v. State of Orissa & Ors., (2010) 12 SCC 471).

In D. Stephen Joseph v. Union of India & Ors., (1997) 4 SCC 753, the Court held that, "past practice should not be upset provided such practice conforms to the rules" but must be ignored if it is found to be de hors the rules.

11. However, in Laxminarayan R. Bhattad & Ors. v. State of Maharashtra & Anr., AIR 2003 SC 3502, this Court held that, "the manner in which a statutory authority understands the application of a statute, would not confer any legal right upon a party unless the same finds favour with the Court of law, dealing with the matter".

12. This principle has also been applied in judicial decisions, as it has been held consistently, that long standing settled practice of the Competent Authority should not normally be disturbed, unless the same is found to be manifestly wrong, 'unfair'. (Vide: Thamma Venkata Subbamma (dead) by LR. v. Thamma Rattamma & Ors., AIR 1987 SC 1775; Assistant District Registrar, Co-operative Housing Society Ltd. v. Vikrambhai Ratilal Dalal & Ors., 1987 (Supp) SCC 27; Ajitsinh C. Gaekwad & Ors. v. Dileepsinh D. Gaekwad & Ors., 1987 (Supp) SCC 439; Collector of Central Excise, Madras v. M/s. Standard Motor Products etc., AIR 1989 SC 1298; Kattite Valappil Pathumma & Ors. v. Taluk Land Board & Ors., AIR 1997 SC 1115; and Hemalatha Gargya v. Commissioner of Income-tax, A.P. & Anr., (2003) 9 SCC 510).

13. The rules of administrative interpretation/executive construction, may be applied, either where a representation is made by the maker of a legislation, at the time of the introduction of the Bill itself, or if construction thereupon, is provided for by the executive, upon its coming into force, then also, the same carries great weightage. (Vide : Mahalakshmi Sugar Mills Co. Ltd. & Anr. v. Union of India & Ors., AIR 2009 SC 792).

14. In view of the above, one may reach the conclusion that administrative interpretation may often provide the guidelines for interpreting a particular Rule or executive instruction, and the same may be accepted unless, of course, it is found to be in violation of the Rule itself.

Interpretation of the proviso:

15. The normal function of a proviso is generally, to provide for an exception i.e. exception of something that is outside the ambit of the usual intention of the enactment, or to qualify something enacted therein, which, but for the proviso would be within the purview of such enactment. Thus, its purpose is to exclude something which would otherwise fall squarely within the general language of the main enactment. Usually, a proviso cannot be interpreted as a general rule that has been provided for. Nor it can be interpreted in a manner that would nullify the enactment, or take away in entirety, a right that has been conferred by the statute. In case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude by implication, what clearly falls within its expressed terms. If, upon plain and fair construction, the main provision is clear, a proviso cannot expand or limit its ambit and scope. (Vide: CIT, Mysore etc. v. Indo Mercantile Bank Ltd., AIR 1959 SC 713; Kush Sahgal & Ors. v. M.C. Mitter & Ors., AIR 2000 SC 1390; Haryana State Cooperative Land Development Bank Ltd. v. Haryana State Cooperative Land Development Bank Employees Union & Anr., (2004) 1 SCC 574; Nagar Palika Nigam v. Krishi Upaj Mandi Samiti & Ors., AIR 2009 SC 187; and State of Kerala & Anr. v B. Six Holiday Resorts Private Limited & Ors., (2010) 5 SCC 186).

16. The proviso to a particular provision of a statute, only embraces the field which is covered by the main provision, by carving out an exception to the said main provision. (Vide: Ram Narain Sons Ltd. & Ors. v. Assistant Commissioner of Sales Tax & Ors., AIR 1955 SC 765; and A.N. Sehgal & Ors. v. Rajeram Sheoram & Ors., AIR 1991 SC 1406).

17. In a normal course, proviso can be extinguished from an exception for the reason that exception is intended to restrain the enacting clause to a particular class of cases while the proviso is used to remove special cases from the general enactment provided for them specially.

Hardship of an individual:

18. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court

has no choice but to enforce it in full rigor. It is a well settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the Statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice. (Vide: Commissioner of Agricultural Income Tax, West Bengal v. Keshab Chandra Mandal, AIR 1950 SC 265; and D. D. Joshi & Ors. v. Union of India & Ors., AIR 1983 SC 420).

19. In Bengal Immunity Co. Ltd. v. State of Bihar & Ors., AIR 1955 SC 661 it was observed by a Constitution Bench of this Court that, if there is any hardship, it is for the legislature to amend the law, and that the Court cannot be called upon, to discard the cardinal rule of interpretation for the purpose of mitigating such hardship. If the language of an Act is sufficiently clear, the Court has to give effect to it, however, inequitable or unjust the result may be. The words, 'dura lex sed lex' which mean "the law is hard but it is the law." may be used to sum up the situation. Therefore, even if a statutory provision causes hardship to some people, it is not for the Court to amend the law. A legal enactment must be interpreted in its plain and literal sense, as that is the first principle of interpretation.

20. In Mysore State Electricity Board v. Bangalore Woolen, Cotton & Silk Mills Ltd. & Ors., AIR 1963 SC 1128 a Constitution Bench of this Court held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

21. In Martin Burn Ltd. v. The Corporation of Calcutta, AIR 1966 SC 529, this Court, while dealing with the same issue observed as under:–

"A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not."

(See also: The Commissioner of Income Tax, West Bengal I, Calcutta v. M/s Vegetables Products Ltd., AIR 1973 SC 927; and Tata Power Company Ltd. v. Reliance Energy Limited & Ors., (2009) 16 SCC 659).

Therefore, it is evident that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein, is unequivocal.

Addition and Subtraction of words:

22. The Court has to keep in mind the fact that, while interpreting the provisions of a Statute, it can neither add, nor subtract even a single word. The legal maxim "A Verbis Legis Non Est Recedendum" means, "From the words of law, there must be no departure". A section is to be interpreted by reading all of its parts together, and it is not permissible, to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, cannot add words to a Statute, or read words into it which are not part of it, especially when a literal reading of the same, produces an intelligible result. (Vide: Nalinakhya Bysack v. Shyam Sunder Haldar & Ors., AIR 1953 SC 148; Sri Ram Ram Narain Medhi v. State of Bombay, AIR 1959 SC 459; M. Pentiah & Ors. v. Muddala Veeramallappa & Ors., AIR 1961 SC 1107; The Balasinor Nagrik Co- operative Bank Ltd. v. Babubhai Shankerlal Pandya & Ors., AIR 1987 SC 849; and Dadi Jagannadham v. Jammulu Ramulu & Ors., (2001) 7 SCC 71).

23. The Statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The Courts have to administer the law as they find it, and it is not permissible for the Court to twist the clear language of the

enactment, in order to avoid any real, or imaginary hardship which such literal interpretation may cause.

24. In view of the above, it becomes crystal clear that, under the garb of interpreting the provision, the Court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation.

25. The matter requires to be considered in the light of the aforesaid settled legal propositions.

The Service Selection Board (CPOs) 91, selected 154 persons to be appointed as Assistant Commandant (Direct Entry), and they were then sent for training in two separate batches. Batch No.16 consisted of 67 officers who joined the training on 1.2.1993, while Batch No.17 consisted of 87 officers who joined the training on 2.7.1993. They could not be sent for training in one batch, even though they had been selected through the same competitive examination, due to administrative reasons i.e., character verification etc. Respondent no.1, who was promoted from the feeding cadre, joined his post on 15.3.1993. Thus, it is evident that he was placed in the promotional cadre, prior to the commencement of the training of Batch No.17 on 2.7.1993.

26. The learned Single Judge dealt with the statutory provisions contained in Rule 3 and held as under:

"A perusal of the above makes it apparent that in the case of the officers who have been promoted their seniority is to be determined on the basis of continuous appointment on a day in which they are selected for promoted to that rank. In case of direct entrants their inter–se seniority is to be determined on the basis of aggregate marks obtained by them. Inter-se seniority of the officers mentioned at serial No.(l) (ii) and (iii) is to be determined according to the date of their continuous appointment in the rank. Proviso to the rule is clear. It is specifically mentioned that in the case of direct entrants, the date of appointment shall be the date of commencement of their training course at the Border Security Force Academy."

In light of the above, relief had been granted to respondent no.1. The Division Bench concurred with the said interpretation.

27. If we apply the settled legal propositions referred to hereinabove, no other interpretation is permissible. The language of the said rule is crystal clear. There is no ambiguity with respect to it. The validity of the rule is not under challenge. In such a fact- situation, it is not permissible for the court to interpret the rule otherwise. The said proviso will have application only in a case where officers who have been selected in pursuance of the same selection process are split into separate batches. Interpreting the rule otherwise, would amount to adding words to the proviso, which the law does not permit.

28. If the contention of the appellants is accepted, it would amount to fixing their seniority from a date prior, to their birth in the cadre. Admittedly, the appellants (17th batch), joined training on 2.7.1993 and their claim is to fix their seniority from the Ist of February, 1993 i.e. the date on which, the 16th batch joined training.

Such a course is not permissible in law.

The facts and circumstances of the case neither require any interpretation, nor reading down of the rule.

29. Shri R. Venkataramani, learned Senior counsel for the appellants, has placed very heavy reliance upon the judgment of the Delhi High Court (Dinesh Kumar v. UOI & Ors.) dated 14.2.2011 wherein, certain relief was granted to the petitioner therein, in view of the fact that there was some delay in joining training, in relation to passing the fitness test set by the Review Medical Board. The court granted relief, in light of the facts and circumstances of the case, without interpreting Rule 3 of the Rules 1978. Thus, the said judgment, in fact, does not lay down any law. The case at hand is easily distinguishable from the above, as that was a case where seniority and promotion had been granted on a notional basis, with retrospective effect and it was held that the person to whom the same had been granted, was entitled to all consequential benefits.

30. Thus, in view of the above, the appeals lack merit and therefore, are accordingly dismissed.