

(2004) 04 RAJ CK 0071

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4590 of 2003

All India Equality Forum and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Constitution of India, 1950 — Article 16(4A), 226
Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 9
Police Service (Recruitment) Rules, 1954 — Rule 9

Citation : (2004) 4 RLW 2455 : (2004) 3 WLC 38

Hon'ble Judges : Shiv Kumar Sharma, J; Shashi Kant Sharma, J

Bench : Division Bench

Advocate : Rajendra Soni, Sahjay Pareek, for the Appellant; Mahendra Singh and Virendra Lodha for Mahendra Kumar Govil and Prahlad Rai Jewaria, B.P. Agarwal, General, Parinitoo Jain, C.K. Garg G.K. Garg and B.K. Sharma for Private Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—Since all these writ petitions involve common questions of law and facts, they have been analogously heard and are taken up for disposal together.

2. The All India Equality Forum (for short "AIEF") in writ petition No. 4590/2003 seeks to quash the Notification dated December 28, 2002 that pertains to determination of seniority of persons holding the posts in different services in the State of Rajasthan. The AIEF also prays that benefit of consequential seniority may be declared to be available only in respect of posts/services where persons belonging to SC/ST category are not adequately represented and the selections made by Departmental Promotion Committees in respect of services including RAS/RPS be reviewed, re- called, quashed and set aside. In the alternative AIEF prays to declare that the benefit of consequential seniority pursuant to 85th amendment of the Constitution may not be given in respect of promotions made prior to June 17, 1995 when the said amendment was brought into force.

3. In writ petition No. 7833/2003, the order dated December 10, 2003 of the Central Administrative Tribunal (for short "CAT") passed in O.A. No. 576/2003 has been called in question whereby the CAT directed to maintain status quo in the matter of promotion to Indian Police Service (for short "IPS").

4. In writ petition No. 32/2004 the order dated December 18, 2003 of the CAT passed in O.A. No. 523/2003 has been assailed whereby the direction was issued by the CAT to consider the case of Mehtab Singh and keep the result in sealed cover.

5. In writ petition No. 7909/2003 the order dated December 23, 2003 passed by CAT in O.A. No. 608/2002 has been assailed whereby the direction was issued by the CAT to consider the candidature of Ranjit Singh for promotion to the post of I.P.S. on the basis of seniority list dated July 19, 2000.

WRIT PETITION NO. 4590/2003:

6. Concededly 85th Constitutional Amendment has been challenged by the petitioner AIEF in the Hon"ble Supreme Court by filing Writ petition civil No. 234/2002 and their Lordships of the Supreme Court on November 11, 2002 were pleased to issue interim directions thus:-

"..... These writ petitions involve the constitutionality of Article 16(4A). The Court, by an interim order has directed not to revert any of the petitioners from their existing placement nor affect their standing in the seniority list, but at the same time the provisions of Article 16(4A) can be implemented and by virtue of that provision if some of the reserve category candidates are entitled to promotion they shall be promoted. The obvious idea being the Court should not stay the operation of a constitutional provision. The State finds difficulty in implementing the order on the ground that there does not exist sufficient vacancy of posts in a particular cadre to give effect to the provisions contained in Article 16(4A). This being an interim arrangement, we direct that they should apply to the number of vacancies available in a cadre to give effect to the promotional policy and undoubtedly, such a promotion can be granted only when the State makes a provision for reservation in terms of Article 16(4A)....."

7. Pursuant to the aforesaid direction the State of Rajasthan made amendments in various Service Rules giving effect to the provision of Article 16(4A) of the Constitution vide Notification dated December 28, 2002. The notification reads thus:-

"In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan hereby makes the following amendment in the various Service Rules as specified in the Schedule appended hereto, namely.

AMENDMENT

The existing proviso to rule as mentioned in column number 3 against each of

Service Rules as mentioned in column number 2 shall be deemed to have been deleted w.e.f. 1-4-1997 and the following new proviso shall be deemed to have been inserted as the last proviso to the respective rule as mentioned in column No. 3 w.e.f. the date of issue of this notification.

"Provided that a candidate who has got the benefit of proviso inserted vide Notification No. F7(I) DOP/A-II/96 dated 1-1-1997 on promotion to an immediate higher post shall not be reverted and his seniority shall remain unaffected. This proviso is subject to final decision of the Hon'ble Supreme Court of India in Writ Petition Civil No. 234/2002 All India Equality Forum v. Union of India and Others."

8. Contention of Mr. Rajendra Soni, learned counsel for the petitioner AIEF is that the State of Rajasthan has wrongly interpreted Article 16(4A) and thus violated the fundamental rights of general category government servants working in the State of Rajasthan. Learned Counsel urged that Article 16(4A) was incorporated as enabling provision giving powers to the State Government subject to limitation of adequate representation of reserve category persons. Learned Counsel persuaded us to interpret Article 16(4A) and set aside the aforequoted notification issued by the State of Rajasthan. In Ground "B" of the writ petition (page 21 of W.P.) the petitioner AIEF pleaded as under:-

"... by amendment of Article 16(4A) of the Constitution of India by 85th amendment Act of the Constitution of India the only relaxation given is this that if the persons belonging to SC/ST category are not adequately represented in the promotional posts then only the government can pass orders of giving consequential seniority to them and therefore Article 16(4A) was incorporated as enabling provision giving powers to the State Government subject to limitation....."

9. Since various writ petitions involving the validity of Article 16(4A) are subjudice before their Lordships of the Supreme Court and notification dated December 28, 2002 has been issued by the State of Rajasthan subject to final decision of the Writ Petition bearing civil No. 234/2002 titled AIEF v. Union of India and Others. We are of the view that the instant writ petition which involves the question sprouted from Article 16(4A) is not maintainable.

WRIT PETITIONS No. 7833/2003, 32/2004 AND 7909/2003:

10. That takes us to the other petitions filed by petitioners Mahendra Kumar Govil and another. The CAT as earlier noticed, passed an interim order on December 10, 2003 directed to maintain status quo in the matter of promotion to IPS. The said interim order was passed in O.A. No. 576/2003 filed by Ram Ballabh Mukul (Respondent in writ petition No. 7833/2003). Petitioners Mahendra Kumar Govil and another seek to quash this interim order in writ petition 7833/2003. In O.A. No. 523/2003, preferred by Mehtab Singh (Respondent in W.P. 32/2004), the CAT issued interim direction on December 18, 2003 to consider the case of Mehtab Singh and keep the result in sealed cover. Petitioner

Mahendra Kumar Govil in W.P. 32/2004 prays to set aside the said interim direction. In O.A. No. 608/2002 filed by Ranjit Singh (Respondent in W.P. 7909/2003), the CAT issued interim direction on December 23, 2003 to consider the candidature of Ranjit Singh (Respondent in W.P. 7909/2003) for promotion to the post of IPS on the basis of seniority list dated July 19, 2000. Petitioner Mahendra Kumar Govil and another have assailed the said interim order in W.P. 7909/2003. The CAT in O.A. No. 576/2003 issued another interim direction on December 24, 2003 to consider the case of Ram Ballabh Mukul for promotion to IPS and keep the result in sealed cover. Petitioners Mahendra Kumar Govil and another moved second stay application in W.P. 7833/2003. Operation of all the aforequoted interim orders/directions were stayed by this court. The Ministry of Home Affairs, Government of India vide notification dated February 23, 2004 promoted twelve persons to the post of IPS. All these twelve persons have been impleaded as parties in the writ petitions.

11. Mr. C.K. Garg, learned Senior Advocate canvassed that this court passed interim orders staying the orders of the CAT in view of submissions advanced on behalf of the petitioners that seniority list was going to expire on December 31, 2003. Since the facts incorporated by the petitioners are based on misrepresentation, the writ petitions would ultimately dismiss and the interim orders stand nullified automatically. Learned counsel further urged that the maxim "*Actus Curie neminem gravabit*" shall be applicable in such a case which means that the act of court shall prejudice no-one. In such a situation the court is under an obligation to undo the wrong done by a party by the act of the Court. Thus any undeserved or unfair advantage gained by the petitioners invoking the jurisdiction of the court must be neutralised and this court should repair the damage caused to the respondents by the interim orders. Reliance is placed on *Grindledge Bank Ltd. v. I.T.O.* (1), *Ram Kumar Verma v. State of U.P.* (2), *State of M.P. v. M.M. Vyavasya* (3), and *South Eastern Coalfields Ltd. v. State of M.P.* (4).

12. Mr. Garg, learned Senior Counsel took us through the Indian Police (Appointment by Promotion) Regulation 1955 (for short "Regulation 1955") and various other documents and contended that final seniority list of RPS Officers was published on July 19, 2000 and as per the provisions contained in Regulation 5(2) the Union Public Service Commission is mandatorily required to assess the Suitability of the officers in the order of seniority upto three times the number of the vacancies but for the purpose of promotions from RPS to IPS an arbitrary/manipulated seniority list was sent by the State Government lowering down the seniority of the respondents. It is further canvassed that the list of suitable officers as may have been prepared by the Committee under Regulation 5 has come to an end on December 31, 2003. Even if the select list having not been prepared as per Regulation 7 upto December 31, 2003 the list prepared under Regulation 5 of suitable officers has come to an end on December 31, 2003. Since mandate of Regulation 1955 has been flouted the promotion order dated February 23, 2004 which has its foundation on interim orders passed by this

court, deserve to be quashed.

13. Per contra, Mr. Mahendra Singh, learned counsel for the petitioner urged that consequent to and on the basis of amended notification dated December 28, 2002 selections have already been made for promotion from Rajasthan Police Service (RPS) to IPS and promotion order has been issued on Feb. 23, 2004. The said promotion order though challengeable before the CAT, has not been assailed by any process known to law. Besides Regulations 1955, selection for such promotions are purely merit based. It is further contended that the respondents Ram Ballabh Mukul, Mehtab Singh and Ranjit Singh have already filed O. As. before the CAT, wherein prayer has been made to set aside the Notification dated December 28, 2002. Since O. As. have pending in the CAT, this court should not overlook the jurisdiction of the CAT. Reliance is placed on L. Chandra Kumar v. Union of India (5).

14. Mr. B.P. Agarwal, Learned Advocate General and Mr. B.K. Sharma also addressed the court relevant record was placed for our perusal.

15. It is necessary at this juncture to notice the interim order passed on January 6, 2004 in writ petition No. 32/2004 and 7909/2003 by the Division Bench (headed by Hon"ble Mr. Justice Y.R. Meena). The operative part of the order reads as under-

"The question does arise that once the selection list is made on the basis of amendment in Article 16(4A) of the Constitution of India and that is subject to the approval of the UPSC and the Central Government, we see no justification to stay that process by the CAT. We have already made it clear that if any selection is made or appointment is made, that shall be subject to the final decision of this court and even when the original application is still pending before the CAT, we see no justification in such interim orders of CAT."

16. The Ministry of Home Affairs, Government of India thereafter issued notification on February 23, 2004 thus:-

"New Delhi, the 23 FEB. 2004

NOTIFICATION

In exercising of the powers conferred by sub-rule (1) of rule 9 of the Indian Police Service (Recruitment) Rules, 1954, read with sub-regulation (1) of regulation 9 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, the President is pleased to appoint the following members of Rajasthan Police Service to the Indian Police Service on probation and to allocate them to the cadre of Rajasthan under sub-rule (1) of the rule 5 of the Indian Police Service (Cadre) rules, 1954. The appointments will take effect from the date of issue of this notification.

SELECT LIST-1999

S. No. Name (S/Shri) Date of Birth

1. P.R. Zevaria 05.10.1946
2. B.P. Verma 25.07.1945
3. Hariram Meena 01.05.1952
4. Goverdhan Lal Meena 07.05.1952

SELECT LIST - 2000

S. No. Name (S/Shri) Date of Birth

1. Ms. Badam Bairwa 05.09.1947
2. T.C. Damore 15.03.1955 3. M.K. Govil 25.09.1949

SELECT LIST-2001

S. No. Name (S/Shri) Date of Birth

1. C.B. Sharma 17.06.1950
2. Nathu Lal Morya 10.08.1952 3. Ashok Patni 19.08.1952

SELECT LIST - 2002

S. No. Name (S/Shri) Date of Birth

1. Janardan Sharma 11.11.1954
2. L.N. Meena 05.01.1955

The inclusion of above names in the Select Lists are made subject to the final decision of Hon"ble High Court of Rajasthan in DB Civil W.P. No. 32/2004 and DB CWP No. 7909/2003."

17. The question that springs up for consideration is whether the High Court during the pendency of Original Applications before the CAT can act as the Court of first instance in respect of the areas of law for which CAT has been constituted?

18. The question was answered by the Constitution Bench of Hon"ble Supreme Court in L. Chandra Kumar case (supra), wherein it was held that High Court can not act as the Court of first instance. Relevant portion of paras 93 and 99 are as under:-

"93... We may add that the Tribunals will, however, continue to act as the only court of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislations which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned."

"99.....The jurisdiction conferred upon the High Courts under Articles 226/227

and upon Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our constitution. While this jurisdiction can not be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article, 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provision and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunal will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned...."

19. In *Kendriya Vidyalaya Sangathan v. Subhas Sharma* (6), their Lordships of the Supreme Court placing reliance on the ratio indicated in *L. Chandra Kumar* case observed as under:- (Para 13)

"13. In view of the clear pronouncement of this court the High Court erred in law in directly entertaining the writ petition concerning service matters of the employees of Kendriya Vidyalaya as these matters come under the jurisdiction of the Administrative Tribunal. We, therefore, hold that the High Court committed an error by declaring to transfer the writ petition to the Central Administrative Tribunal. Consequently, we set aside the impugned orders and direct the High Court to transfer both the writ petitions to the Central Administrative Tribunal Chandigarh Bench which may, in its turn make over the case to the Circuit Bench in the State of Jammu and Kashmir for disposal in accordance with law."

20. It is thus evident that the powers conferred on the CAT have been preserved without affecting the judicial review power of the High Court and the Supreme Court inhering from Articles 226/227 and 32 respectively. In order to keep the mechanism of the CAT intact the Supreme Court deemed it appropriate to impose certain restraints on the entertainment of petitions under Article 226/227. The Supreme Court indicated that the CAT can still perform its supplementary role in relation to the service matters and it can even test the Constitutional Validity of the statutory provision or rule except the Act or the rule under which it was created. It was propounded that the CAT will continue to act as the Court of first instance in respect of matters falling within its jurisdiction and it was not open to the aggrieved person to directly approach the High Court by overlooking the jurisdiction of the CAT. In view of this settled legal position, we are of the opinion that the CAT as a court of first instance should decide all the issues raised by the affected respondents in writ petition 7833/2003, 32/2004 and 7909/2003 and in the original Applications No. 573/2003, 523/2003 and 608/2002. Since notification dated February 23, 2004 has been issued during the pendency of the writ petitions we can not render the affected

respondents remediless. Since the CAT has to decide the matters as a court of first instance, we, at this stage, refrain ourselves from expressing any opinion into merits and demerits of the issues involve in these writ petitions and the Original Applications.

21. As a consequence of the above discussion we dispose of the instant writ petitions in the following terms:-

- (i) Writ Petition No. 4590/2003 stands dismissed as not maintainable.
- (ii) All the issues raised by the affected respondents before us in writ petitions No. 7833/2003, 32/2004 and 7909/2003 stand remitted to CAT for disposal along with Original Applications No. 573/2003, 523/2003 and 608/2002. The CAT is also directed to adjudge the validity of notification dated February 23, 2004 and the said notification shall be subject to the final decision of the issues remitted to the CAT.
- (iii) We expect that the CAT would act in conjunction with what is real and substantial justice and forthwith proceed to decide the issues as expeditiously as possible preferably within two months from the date of receipt of this order.
- (iv) All the parties are directed to appear before the CAT on April 26, 2004 for seeking further instructions.
- (v) There shall be no order as to costs.