

(1980) 05 CAL CK 0013
In the Calcutta High Court
Case No : Matter No. 949 of 1979

Arun Kumar Deb and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-05-1980

Acts Referred:

All India Services Act, 1951 — Section 3(1)
Constitution of India, 1950 — Article 226

Citation : 84 CWN 894

Hon'ble Judges : B.C. Basak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.C. Basak, J.—In this application under Article 226 of the Constitution of India the petitioners are challenging the Government of India Notification dated October 19, 1971 and the Government of West Berrgal Notification dated May 17, 1972 asking for a writ in the nature of Mandamus directing the respondents to make fresh recruitment to the Indian Forest Service upon considering the petitioners' cases strictly in accordance with the Indian Forest Service (Initial Recruitment) Regulations, 1966. The question involved is the initial recruitment to t"-e Indian Forest Service which was included in All India Services. There after on the question of initial recruitment the first Selection was struck down by the Supreme Court in Kraipak's case reported in AIR 1970 SC 150. Thereafter a fresh selection was made in 1971, so far as West Bengal Cadre is concerned. This Rule is directed against such initial recruitment. The case of the petitioners is that the petitioners and the proforma respondent No. 49 were appointed as Forest Rangers and then promoted in the State Forest Service, the particulars of which are given in the petition. The proforma respondent No. 49 has retired from service on 24th August, 1975. Prior to 1935 there were two Gazetted Forest Services in West Bengal, i.e. (a) Imperial Forest Service and (b) Provincial Forest Service. Under the Government of India Act, 1935 a new Provincial Forest Service was constituted in Bengal in 1940 in place of Provincial Forest Service

(old) and this new Service was called as Bengal Forest Service (New). It is stated that during the period from 1940 to 1951 the Bengal Forest Service was predestinated, firstly as Bengal Senior Forest Service and after Independence as West Bengal Senior Forest Service. In 1951 a new service called the West Bengal Junior Forest Service was created only by promotion from Forest Ranger. Promotion from West Bengal Junior Forest Service to West Bengal Senior Forest Service was not allowed. In 1966 by virtue of section 3(1) of the All India Services Act, 1951 the Indian Forest Service was introduced. Under Rule 3 of the Indian Forest Service Recruitment Rules it has been provided that the Indian Forest Service shall consist of the following persons:-

- (a) Members of the-- State Forest Service recruited to the Service at its initial constitution in accordance with the provisions of Rule 4(1) and
- (b) Persons recruited to the Service in accordance with the provision of sub-rule (2) to (4) of Rule 4.

2. Rule 4(1) of the Union Forest Service (Recruitment) Rules, 1966 provides as follows :

4. Method of recruitment to the service. As soon as may be after the commencement of these rules, the Central Government may recruit to the service any person from amongst the members of the State Forest Service adjudged suitable in accordance with such regulations as the Central Government may make in consultation with the State Government and the Commissioner.

Under the provisions of Rule 4(1) of the Indian Forest Service (Recruitment) Rules, 1966, the Indian Forest Service (Initial Recruitment) Regulations, 1966 was made, which came into force with effect from 1st July, 1966. Rule 4(1) of the said Indian Forest Service (Initial Recruitment) Regulations, 1966 provides as follows :

2. Definition--In these regulations, unless the context otherwise requires.

(a) "Board" means the Special Selection Board constituted under regulation 3.

"3. Constitution of Special Selection Board. (1) For the purpose of making selection to the service the Central Government shall constitute a Special Selection Board consisting of Chairman of the Commission or his nominee and (a) for selection to the State Cadres--

(i) the Inspector General of Forests of the Government of India or such other officer as may be nominated by the Central Government in this behalf :

(ii) an officer of the Government of India not below the rank of Joint Secretary :

(iii) the Chief Secretary to the State Government concerned or a Secretary to that State Government nominated by him;

(iv) the Secretary to that State Government concerned dealing with forests or

the Chief Conservator of Forests of that State Government. "Provided that for purposes of selection under sub-rule (1) read with sub-rule (2A) of rule 4 of the Indian Forest Service (Recruitment) Rules, 1966, to the Cadre for the State of Punjab as it existed immediately before the 1st November, 1966, that is to say, before the reorganisation of that State under the Punjab Reorganization Act, 1966 (3) of 1966, the Special Selection Board shall consist of the following :--

- (i) the Chairman of the Commission or his nominee :
- (ii) the Inspector General of Forests of the Government of India or such other officer as may be nominated by the Central Government in this behalf :
- (iii) an officer of the Government of India not below the rank of Joint Secretary :
- (iv) the Chief Secretary to the Government of Punjab or a Secretary to that State Government nominated by him :
- (v) the Secretary to the Government of Punjab dealing with Forests or the Chief Conservator of Forests, Punjab :
- (vi) the Chief Secretary to the Government of Haryana or a Secretary to that State Government nominated by him :
- (vii) the Secretary to the Government of Haryana dealing with Forests or the Chief Conservator of Forests, Haryana;
- (viii) the Chief Secretary to the Government of Himachal Pradesh or a Secretary to that State Government nominated by him; and
- (ix) the Secretary to the Government of Himachal Pradesh dealing with Forests or the Chief Conservator of Forest, Himachal Pradesh (b) for selection to the Cadre of Union Territories-- (i) the Inspector General of Forest of the Government of India or such other officer as may be nominated by the Central Government in this behalf :

- (ii) an officer of the Government of India not below the rank of joint Secretary :
- (iii) an officer of the status of Joint Secretary to the Government of India in the Ministry of Home Affairs who deals with the Administration of Union Territories :
- (iv) the Chief Secretary, Himachal Pradesh Chief Secretary, Goa, Daman and Diu Administrator, Andaman and Nicobar Islands Administrator. Manipur Administrator, Tripura the Chief Conservator of Forests, Himachal Pradesh the Chief Conservator of Forests, Andaman and Nicobar Islands :

Provided that if for any reason it is not possible for representative of any Union Territory to attend the meeting of the Special Selection Board the officer at (iii) above shall represent that Union Territory.

(2) The Chairman of the Commission or his nominee shall preside at all meetings of the Board.

(3) The absence of a Member, other than the Chairman of the Commission or as the case may be, the person nominated by him, shall not invalidate the proceedings of the Board if more than half the members of the Board (including the Chairman, or, as the case may be the person nominated by him) had attended its meetings.

3. Conditions of eligibility.--(1) Every officer of the State Forest Service who, on the date of constitution of the Service :

(a) is holding cadre post substantively or holds a lien on such post or

(b) (i) holds substantively a post in the State Forest Service.

(ii) who has completed not less than eight years of continuous service (whether officiating or substantive) in that Service, and

(iii) who has completed not less than three years continuous service in an officiating capacity in a cadre post or in any other post declared equivalent thereto by the State Government concerned, shall be eligible for selection to the Service in the senior scale.

(2) Every officer of the State Forest Service who has completed 4 years of continuous service on the date of constitution of the Service shall be eligible for selection to the Service in the junior scale.

Explanation.--In completing the period of continuous service for the purpose of sub-regulation (1) (b) or sub-regulation (2), there shall be included any period during which an officer has undertaken :

(a) training in a diploma course in the Forest Research Institute and Collects. Dehra Dun; or

(b) such other training as may be approved by the Central Government in consultation with the Commission in any other institution.

4. Preparation of list of suitable officers :

(1) The Board shall prepare in the order of preference, a list of such officers of State Forest Service who satisfy the conditions specified in regulation 4 and who are adjudged by the Board suitable for appointment to posts in the senior and junior scales of the Service.

(2) The list prepared in accordance with sub-regulation (1) shall then be referred to the Commission for advice, by the Central Government along with :

(a) the records of all officers of State Forest Service included in the list :

(b) the records of all other eligible officers of the State Forest Service who are not adjudged suitable for inclusion in the list, together with the reasons as recorded by the Board for their non-inclusion in the list, and

(c) the observation, if any, of the Central Government on the recommendations

of the Board.

(3) On receipt of the list, along with the other documents received from the Central Government, the Commission shall forward its recommendations to that Government

4. The grievance of the petitioners in the present case is that their names were not included in the list of officers of suitable for appointment to the All India, post in Senior and Junior scales of service. Their grievance is that in the case of such non-inclusion, it is imperative that the records of these persons together with the reasons as recorded by the Board for their non-inclusion in the list, be referred to the Commission for advice by the Central Government. However according to the petitioners, this was not done in the present case and accordingly the recruitment made in 1971 in favour of the private respondents must be set aside. In this connection, a reference has been made to the decision of the Supreme Court in the case of Union of India (UOI) Vs. H.P. Chothia and Others, .

5. On behalf of the respondents a preliminary objection is taken. It is submitted " that this Court should not exercise its discretionary power in respect of the issue of a writ in favour of the petitioners because they have come after long nine years. It is submitted that this has become a stale matter. Various persons have been recruited initially. They have acquired a right. Some of them have already retired. Issue of a writ now would "not only effect such acquired rights of these newly recruited persons, but it would also affect them so far as their pensions and other post-retirement benefits are also concerned. Moreover on the basis of such initial recruitment, subsequently some promotees have also been made in Indian Forest Service.

This would include the petitioners and the others. Accordingly this Court should not interfere at this stage In support of this contention reliance has been placed on the following decisions : Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others, , Rabindranath Bose and Others Vs. The Union of India (UOI) and Others, Pratap Kumar Banerjee Vs. Union of India and Others, .

5. On the merits it was submitted on behalf of the respondents that in this particular case such reasons were in fact given as would appear from the report and/or recommendation of the Special Selection " Board itself. In this connection, the original reports were produced before me wherein in respect of the petitioners, that is, in respect of the persons who were not considered suitable for inclusion in the list, where from it appears that the Board considered that the service records of these persons were not such as would justify the inclusion of their names in such a list of officers who are suitable for appointment at initial constitution. It was submitted that this amounts to giving of reasons, the question of sufficiency not being within the purview of the power of scrutiny by this Court.

6. In answer to the same, on behalf of the petitioners it was first submitted that there cannot be any question of delay because the petitioners only came to know

from the decision of the Supreme Court that the stand taken by the Selection Board is that no reason need be given and accordingly from this their rights flow and this is the explanation for delay. It was submitted that from this judgement alone, which was delivered in 1978 that the petitioners came to know about non-compliance of the provisions by the statutory authority. On the merits it was submitted that such bare comments cannot and does not amount to any reason at all.

7. In my opinion, the preliminary objection raised by Mr. Roychowdhury must be accepted and this application must be dismissed on the ground of delay and laches on the part of the petitioners. It is now well settled that the power of the writ court is a discretionary one. The petitioner must not be guilty of laches and delay. His conduct must be such as to deserve him the extraordinary remedy granted by a Writ Court. Mere departmental representations which are not statutory in nature cannot be an explanation for a delay as sought to be made out in this case also. This aspect of the matter acquired much more importance in the case of service matters. If such selection or recruitment are disturbed with then the persons who are so recruited are affected by this order. By such recruitment they acquired a new right and if this recruitment is to be set aside, this right is to be interfered with. Therefore, it is necessary that specially in service matters, the petitioners must be more diligent than in other cases. In this particular case, I am unable to accept the contention that only from the Supreme Court judgment they came to know about their rights. The Supreme Court merely pointed out that the provisions for giving reasons were mandatory in nature. The Supreme Court merely declared what was the law. As it was done by the aggrieved persons in Gujrat Cadre, it was also open to the aggrieved persons in the West Bengal Cadre, to come to this Court soon after such recruitment but they did not choose to do so. It cannot be said that the Supreme Court has laid down a new or that the petitioners merely came to know about their rights from the judgment of the Supreme Court. For other reasons also this explanation is not acceptable. Special Selection Boards are different in respect of different State Cadres, as would appear from the Regulations. Altogether five persons consist of the Selection Board generally, that is Inspector General of Forests of the Government of India, an officer of the Government of India not below the rank of Joint Secretary, the Chief Secretary to the State Government concerned and the Secretary to the State Government concerned dealing with forests and the Chief Conservator of forests. Therefore, it is quite clear that the Special Selection Board in each State is different. Therefore, from the stand taken by the Special Selection Board in respect of a particular State, it cannot be said that the petitioners came to know about the stand taken by the Selection Board of this State. What had actually happened in this case is that the petitioners were not diligent about establishing their own rights but they are now merely trying to take advantage of a decision given by the Supreme Court in respect of certain persons belonging to some other State when had been diligent in that matter. In respect of 1971 Selection in the other State Cadre, the persons concerned have

taken very prompt action and got benefit of it. The petitioners in this State cannot be allowed to take advantage of the same. Many persons have been recruited pursuant to the same. They have performed their duties and collected their salaries and some of them have retired. If this recruitment is interfered with, this will have various repercussions and effect the interest of various persons. Under these circumstances, I am not inclined to exercise my discretion in favour of the petitioners. In the case of Rabindra nath Bose v. Union of India (Supra) the Supreme Court considered that no relief could be given to the petitioner who has come after inordinate delay without any reasonable explanation. That was also a service matter. In this connection it was; pointed out that there was a delay of 15 years. It was pointed out that to give relief to the petitioners, it would be unjust to deprive the officers of the rights which have accrued to them. It was pointed out that each person was entitled to sit back and consider that his appointment and promotion affected a long time ago would not be set aside after the lapse as a number of years. It was also pointed out that the fact that in this connection representations were being received by the Government all the time, was not sufficient to explain the delay.

8. In the case of Amrit Lal Berry v. Collector of Central Excise, Central Revenue (Supra) there was a delay of 12 years. There was a challenge of promotion made in 1939. This challenge was made in a writ petition filed in 1971. The Supreme Court pointed out that a number of promotions having taken place, these who were so promoted and had been satisfactorily discharging, for a considerable period before the filing of the petition, their duties in a higher grade, would acquire new claims and qualifications, by lapse of time. So that they could not, unless relief had been sought speedily against their allegedly illegal confirmations and promotions, be equitably equated with the petitioner. It was pointed out that the inequality in the equitable balance brought into by a petitioner's own laches and acquiescence cannot be overlooked when considering a claim to enforce the fundamental right to equal treatment. It was pointed out that if a petitioner has been so remiss or negligent as to approach the Court for relief after inordinate and unexplained delay, he certainly jeopardises his claim as it may become inequitable, with circumstances altered by lapses of time other facts, to enforce a fundamental right to the detriment of similar claims of innocent persons.

9. In the case of Pratap Kumar Banerjee Vs. Union of India and Others, , after considering various decisions it was observed as follows :

12. The ratio of the, decisions appears to be that there is no inviolable rule that whenever there is delay even under the statutory period of new Limitation Act, the Court must necessarily refuse to entertain it. The rule which says that the Court should not interfere for the belated and stale claims is merely a rule of practice and all will depend on what the breach of the fundamental right and remedy claimed are and how the delay arose, there being no lower or upper limit. The Court, however, will refuse relief if for laches or delay in filing the application the rights of others have accrued which should not be allowed to be

disturbed unless there is reasonable explanation for delay. Even so utmost expedition is the sine qua non for such claim and the party must move at the earliest possible opportunity and explain all semblance of delay.

13. The above principles by and large apply to applications under Article 226 of the Constitution. In regard to recovery of money paid as taxes under a law subsequently declared to be void, the maximum period provided in law for a suit in Court is ordinarily taken as the standard for measurement of the delay in filing the application under Article 226. Even then as a party is required to move such application with utmost expedition, the Court may consider the delay unreasonable even if moved within the period of limitation. But if the delay is beyond the period of limitation it will be proper for the Court to hold that the delay is unreasonable.

14. In service matters where the order of dismissal is under challenge the Court has taken a harder line and accordingly has laid down further restrictions on the time limit for moving such application. As the utmost the High Court could do is to quash the order of dismissal of a public servant leaving the authorities free to take proceeding afresh against the public servant, as has been observed by the Supreme Court, he would get another long period in front of him to go on contesting the validity of the proceedings against him until he had gone past the age of retirement. Further, in public interest or public policy the State should not be called up to pay unnecessarily for the period for which the dismissed servant is not employed by it. Accordingly utmost expedition on the part of the public servant is essential for invoking the writ jurisdiction of this Court and there must be a reasonable explanation for the delay acceptable to Court.

15. It may further be noted that representations not based under the relevant rules made even after the final decision of the authority will not explain the delay or laches on the part of the public servant. Further, after such representations are rejected, further representations thereon or belated and unsuccessful attempts to raise an industrial dispute over the dismissal all such and kindred actions will not make the dismissal a live matter nor explain the laches or delay on the part of the aggrieved party in moving the application.

I respectfully agree with and follow the aforesaid decisions. If I try to add anything else, it would merely amount to repetition of what has been stated by the Supreme Court and the Division Bench of this Court. Accordingly this application must be treated as barred by delay and laches. In that View of the matter, it is strictly not necessary for me to go into the merits of the question. However, in the facts and circumstances of this case. I am satisfied that the relevant regulations have been complied with and reasons have been given in the report of the Special Selection Board. It has been stated that the Board has considered the service records of the Officers concerned (whose names were specified) and that the same did not justify inclusion of their names in the list of Officers who were suitable for appointment in the Indian Forest Service at its initial constitution. In my opinion, this amounts to a reasons. The reason is this

that in view of what appears from their service records they are not considered to be suitable persons. This is a case of selection on merits and these persons on the basis of their service records are not considered meritorious to deserve inclusion in such list. This Court cannot go into the question of sufficiency of any reason.

For the aforesaid reasons. I dismiss this application and discharge the Rule. All interim orders are vacated.

There will be no order as to costs.