(1964) 01 CAL CK 0006

In the Calcutta High Court

Case No : Matter No. 200 of 1962

Bimal Das Gupta APPELLANT

Vs

Collector of Customs and Others RESPONDENT

Date of Decision : 03-01-1964

Acts Referred:

Citation : 68 CWN 843

Hon'ble Judges : A.N. Ray, J

Bench : Single Bench

Advocate : A.P. Chatterjee, for the Appellant;G.P. Kar, with A.K. Banerjee, for the Respondent

Judgement

A.N. Ray, J.—The Judgment of the Court was as follows: --

The petitioner obtained this Rule calling upon the respondents to show cause why a writ in the nature of mandamus should not be issued directing the respondents to rescind and to forbear from giving effect to Memo. No. 521-479/59 Estt. dated November 3, 1960 and to extend the benefit of Memo. No. F/49/13/60 dated December 5, 1961 as mentioned in the petition by including the name of the petitioner. The petitioner also obtained Rule as to why a Writ in the nature of prohibition should not be issued commanding the respondents not to act arbitrarily and in abuse of power vested in them by adversely and prejudicially affecting the interest of the petitioner.

The petitioner was working as a Preventing Officer Grade II. The petitioner was appointed as sub-inspector in the Central Excise Department some time in the year 1950. The petitioner passed the departmental examination in the Central Excise Department and was promoted as Inspector in the said department with effect from February 11, 1956. Whilst working as Inspector in the Central Excise the petitioner was selected for an appointment in the Calcutta Customs House as a Preventive Officer Grade II on terms and conditions mentioned in the Memo dated February 28, 1957 being Annexure ''A'' to the petition.

2. The petitioner alleges that some time in the year 1959 the petitioner was asked to appear at a departmental examination for promotion. The petitioner made representation against the same. The petitioner filed an appeal to the respondent, Collector of Customs for exempting the petitioner from appearing at the departmental examination.

3. The petitioner alleges that some time in the month of November 1960 the petitioner was served with Memo dated November 3, 1960 whereby the petitioner''s increment was stopped on the plea that the petitioner had not passed the departmental promotional examination. The petitioner made representations against the said order.

4. By an order dated December 5, 1961 being Annexure ''G'' to the petition some officers were promoted from Grade II to Grade I. The petitioner''s allegation is that he was superseded. The petitioner made representation against the said order dated December 5, 1961.

5. In the month of January 1962 the petitioner made representation to the Central Board of Revenue.

6. The petitioner obtained the Rule on two grounds being sub-paragraphs (c) and (d) of paragraph 15 of the petition, Those two grounds are that Memo dated December 5, 1961 has been issued in contravention of the service condition and in violation of rules and secondly that the respondents are estopped from stopping increment of the petitioner on the plea of not passing the departmental promotional examination inasmuch as on transfer from Central Excise to Customs, the petitioner''s initial salary was fixed at Rs. 128/- in Preventive Officers Grade II, time scale after efficiency bar. Counsel appearing for the petitioner contended that inasmuch as the petitioner had crossed the efficiency bar, the petitioner was entitled to reach the maximum and the respondents had no right to withhold any increment and secondly, that the respondents had no right to require the petitioner to submit to any departmental test. It was also emphasised on behalf of the petitioner that there was no rule by virtue of which the respondents could require the petitioner to submit to any examination.

7. Reliance was placed on r. 24 of the Fundamental Rules. R. 24 is as follows:--

F.R. 24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by a local Government, or by any authority to whom the local Government may delegate this power under r. 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.

8. The contention based on r. 24 was that withholding of increment can be only on the grounds mentioned in the said rule viz., that the conduct has not been good or that his work has not been satisfactory. It was truly contended that the

respondent had no right whatever to withhold increment on any other ground. It will appear from Annexure A that the petitioner was selected for an appointment and the petitioner''s seniority was to be counted from the date of joining the Custom House. I am unable to hold that the order dated February 27, 1957 can be construed to mean that because the petitioner had once passed a departmental examination in the Excise Department he was entitled as of right to be free from any other test or condition to be regulated by the respondents in the matter of promotion. The order dated October 3, 1960 which is Annexure E to the petition by which increment was withheld is not challenged as one of the grounds on which the petitioner obtained Rule. Counsel for the petitioner conceded that it was not expressly stated as one of the grounds but his contention was that it would come within sub-paragraph (d) of paragraph 15 of the petition. Sub-paragraph (d) deals with the question of selection but it does not in my opinion amount to impeach any order or decision on the ground that the petitioner will be entitled to promotion as of right. Counsel for the respondent in my view rightly contended that promotion could not be demanded as of right or as a matter of law or as a legal right. Promotion is an administrative selection and a decision resting en administrative principles. The holding of a departmental examination is in my opinion one of the tests for regulating the selection and promotion of officers. If objective satisfaction and test is to be adhered to, an examination is a natural test. The petitioner in the present case was given several opportunities to appear at the examination but the petitioner did not avail of the same.

9. As to the order dated December 5, 1961, counsel for the petitioner contended that several other persons were promoted and the petitioner''s name was not there and in the second place it was contended that four persons viz., D.R. Banerjee, O.T. Mintz, Inderjit Singh and Sitesh Chandra Chakraverty were directed to note that they would have to pass the prescribed departmental examination within two years of their appointments as their appointments were against direct recruit quota and that the name of the petitioner was not mentioned with the implied result that the petitioner was not to be subjected to examination. I am unable to accept that contention. The four persons referred to were placed on the footing of direct recruit quota. The petitioner is not at all mentioned in the order dated December 5, 1961 because it relates to promotion of persons who had submitted to tests held for promotion.

10. Counsel for the petitioner relied on unreported decision of the Supreme Court in the case of P.C. Wadhwa v. The Union of India & anr. dated August 27, 1963 since reported in P.C. Wadhwa Vs. Union of India (UOI) and Another, in support of the proposition that promotion should be as a matter of right. In that case the appellant joined the Indian Police Service; His contention was that under the relevant rules a member of the Indian Police Service is entitled as of right to be appointed to a post in the senior scale as and when a vacancy arose and no one senior to him was available for that post. It was held dealing with the contention that the appellant was not reverted for an administrative reason like non-

availability of post but for a different reason and the action taken against him was by way of penalty or punishment and that could only be done by holding a departmental enquiry. The several rules which were considered in Wadhwa''s case also lend support to the view that in the question of promotion or seniority if any procedure is laid down by way of administrative convenience that is to be followed. In the present case I am of opinion that an examination is natural and legitimate manner of promoting persons and such a selection is in my opinion valid and justified in the facts and circumstances of the case. For these reasons I am of opinion that there is no substance in the contentions advanced. The Rule is discharged. As to costs, counsel for the petitioner submits that each party should pay and bear its own costs. I make an order accordingly.

