

(1958) 04 CAL CK 0032
In the Calcutta High Court
Case No : Civil Revn. No. 1780 of 1954

Dhadjadhari Dutta

APPELLANT

Vs

Union of India (UOI), (Home Police Department) New Delhi
and Others

RESPONDENT

Date of Decision : 03-04-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : AIR 1958 Cal 546 : (1958) 1 CALLT 143 : 62 CWN 546 : (1958) 2 LLJ 392

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Anil Kumar Das Gupta, for the Appellant; S.M. Bose, General, S.K. Rai Chaudhury, (for Nos. 2 and 4) and Amiya Kumar Mukherjee, (for No. 1), for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows : In 1925, the petitioner was appointed as a Sub-inspector of Police under the then Government of Bengal. In the year 1942, he was promoted to be an Inspector of Police. In 1946, he was promoted to the post of a Deputy Superintendent of Police in which post he was confirmed in 1947. It is stated that from 26th March, 1948 the petitioner came to officiate as Superintendent of Police in the Indian Police Service (Senior Scale). In 1951, he was acting as Additional Superintendent of Police, Howrah. While he was acting as Additional Superintendent of Police,, he was called by the Inspector General of police and was informed that adverse comments had been received against him in confidential reports. He thereafter asked for a copy of the adverse report and finally on the 26th March, 1951 he was supplied with a gist of the adverse remarks which runs as follows :

"In 1948 he was found to have displayed no activities showing any signs of imagination. In 1949 he was reported to be rather inactive due to old age and was considered only suitable for desk work. In 1950 he was found to be leaving a lot of reserve work to the Reserve Officer and depending too much on him. At

the end of 1950 he was also reported to be not quite fit for active duties due to his old age and for acquiring the bad habit of sleeping almost every day after lunch when he was expected to attend office. His attendance in office was also very irregular and inadequate. He had also failed to come to Calcutta to consult the D.I.G., I.B., who had ordered that all S. Ps. should pay periodical visit to the I.B. with their D. I. O's for discussions and instructions."

2. On the 22nd June, 1951 the Assistant Inspector General of Police, West Bengal, wrote to the petitioner that Government had approved of his reversion to his substantive rank and to post him at Midnapore as Deputy Superintendent of Police. It was stated that a formal order will follow in due course. On the 25th June, 1951 a notification was issued by Government appointing the petitioner as Deputy Superintendent of Police, Midnapore. Thus the petitioner who was acting as Additional Superintendent of Police was reverted to the rank of Deputy Superintendent of Police. The petitioner thereupon made representation to Government but this was rejected. A further representation was made to the Central Government which also was rejected in March, 1954. The petitioner thereupon has come to this Court and this Rule has been issued calling upon the opposite parties to show cause why a Writ in the nature of Certiorari should not be issued quashing the order of reversion and reduction in rank of the petitioner as mentioned in the petition and the orders referred to in annexures "B", "C", "D" and "F" to the petition and/or why a Writ in the nature of Mandamus should not issue commanding the respondents to promote or to appoint the petitioner to such post in the rank of Additional Superintendent of Police as may be available as if the order of reversion had not been made, and for other reliefs.

3. I might at once state that in the meanwhile the petitioner has retired from service, so that the prayer for re-instatement in any post is no longer possible. The only order challenged therefore is the order of reversion. Here again there cannot be any question of setting aside the order of reversion with a view to re-instate the petitioner in any service. It will merely affect his arrears of pay and possibly his pension. Before I state the points taken by Mr. Anil Kumar Das Gupta on behalf of the petitioner, another tact has to be stated. I have already stated that in 1948 the petitioner was appointed to officiate as Superintendent of Police in the Indian Police Service (Senior Scale). Such appointments prior to January, 1950 appear to have been governed by a certain set of rules made by the Secretary of State for India, known as The Reserved Posts (Indian Police) Rules 1938. Under these Rules, certain posts specified therein were known as "Reserved Posts". The post of District Superintendent of Police was a reserved post. Under Rule 4, the Governor was given the power to appoint a police officer in the civil service of the Crown in India but not being a member of the Indian Police, to any reserved post, other than certain reserved posts mentioned therein, which however does not include the post of a District Superintendent of Police. Every such appointment shall be provisional, and if the person so appointed was intended to hold the appointment for a period exceeding three months, he had to be reported to the Secretary of State and no employment for

more than twelve months could be made without his sanction. On the 23rd January, 1950 came into operation a body of rules called "The Indian Police Cadre Rules, 1950". These Rules were promulgated by the Government of India, in the Ministry of Home Affairs, in exercise of the powers conferred by Sub-section (2) of Section 241 and Section 247 of the Government of India Act 1935, and the Agreement dated the 21st October, 1946 between the Government of India and the Governments of the Provinces. The Rules are six in number but there is an annexure which is stated to be a "Memorandum regarding the constitution of an Indian Police Service to provide officers for the Central Government and the Governments of Assam, Bihar, Bombay. and West Bengal." It was inter alia stated that the Central Government, and the Province of West Bengal had agreed to constitute a service called "The Indian Police Service" in accordance with the provisions set out in the annexure. The Rules and the annexure, in short, lay down that there was to be a service known as the "Indian Police Service" in which the recruitment would be either direct or by promotion from the provincial police service. Certain posts were agreed to be filled up by members of the Indian Police Service, but so far as the provinces were concerned, they could only be filled by cadre officers, that is to say, by members of the Indian Police or of the Indian Police Service. In West Bengal there were to be 13 Superintendents of Police in charge of districts and these were to be filled by members of the Indian Police Service in accordance with the provisions of the Indian Police Cadre Rules 1950. There are provisions regarding appointment of persons other than a cadre officer, but we are not concerned with that in this application. So far as the petitioner was concerned, he was holding the post of a Superintendent of Police, and that by promotion. According to the Indian Police Cadre Rules 1950, either there could be a permanent appointment or appointment on probation and in case of probation, upon a successful completion of the term of probation, persons must be confirmed in the Indian Police Service. There is no provision for an officiating appointment for an extended term. Clauses 7 and 8 of the annexure run as follows :

7. "In order to ensure that the conditions of service applicable to officers of the Indian Police Service are as uniform as possible, rules regulating pay and other conditions of services will be framed by the Central Government to such extent as may be considered necessary. Provincial Governments will, however, (sic) consulted before the rules are framed, and before they are amended in any manner. In respect of matters not covered by the said rules, an officer of the Indian Police Service will be governed by such rules as may be framed by the Government under which he is for the time being serving and, if no such rules are framed, by the rules applicable to the Central Service/ Provincial Police Service Class I, as the case may be."

8. "The Central Government may frame, in consultation with Provincial Governments, rules to regulate the conduct of members of the Indian Police Service".

4. In the present case what has happened is as follows ; On the 23rd January, 1950 the Government of India published a notification No. 40/49 A.I.S. containing rules called "The Indian Police Cadre Rules, 1950". As stated above, the Cadre Rules 1950 provide in the annexure thereof that rules regulating conditions of service were to be promulgated both by the Central Government as well as by the Provincial Governments. No rules have been framed by the Government of West Bengal. The Government of India sent a draft of certain rules for the above purpose but neither have they been framed, nor approved of by the Government of West Bengal. In the counter-affidavit filed by Subodh Nath Kundu, the Assistant Secretary, Home Department, General Administration Branch, of the Government of West Bengal, it has been stated as follows :

"No rules were framed by the Government of West Bengal. The Government of India sent a draft of the rules for the above purpose. Pending framing of such rules, the Government of West Bengal adopted the said draft rules ad hoc and have been substantially following the procedure laid down in such rules for promotion of Provincial Police Service Officers to Indian Police Service. Accordingly a selection committee consisting of the Chairman or a Member of the Union Public Service Commission, the Chief Secretary, the Inspector General of Police and the Deputy Inspector General of Police meet every year and the said committee after considering the records of the State Police Service Officers have been making their recommendations for inclusion of the officers considered fit to be promoted to the Indian Police Service in a list called "fit list". The records of the officers and the confidential recommendations of the Selection Committee are forwarded to the Union Public Service Commission for its approval. After its approval the names of the officers would be included in a list called the "approved list" and the officiating appointments to the Indian Police Service posts are made in order of merit in that list and such officiating appointments are subsequently confirmed in a similar manner in order of merit."

5. It is stated in the said affidavit that the first meeting of such a Selection Committee was held in January, 1951 and was presided over by the Chairman of the Union Public Service Commission. The Selection Committee considered the records of the petitioner including the said confidential remarks and reports about his service at a meeting held in Calcutta on the 10th January, 1951. It is further stated that

"on proper consideration of all materials the petitioner was not considered fit to be promoted to the Indian Police Service. In the usual course the petitioner was reverted from his officiating appointment as Additional Superintendent of Police, How-rah to his substantive post of the Deputy Superintendent of Police and he was posted as such at Midnapore under Notification No. 1872 GA dated the 25th June, 1951."

6. The net position seems to be as follows : So far as cadre posts are concerned, the matter is governed by the Indian Police Cadre Rules 1950. Under it, rules have to be framed both by the Centre and the States to regulate the conduct of

the members of the Indian Police Service. So far as the State Government is concerned, it has failed to frame any such rules. What is said is that certain draft rules were framed by the Centre and were being followed by the State Government as ad hoc rules and that a committee was appointed which went into the merits of the various officers and decided as to whether they could be promoted or not. This appears to me to be wholly irregular, and not warranted by any law. The appointing authority is the State Government. When it comes to promotion or reversion, it must either be done in accordance with rules such as have been framed in accordance with law, or the existing rules applicable to the Central Services or the Provincial Police Service, as the case may be, should be followed. What is being followed is something entirely arbitrary. A committee is appointed, without there being any rules for the appointment of such a committee, and the said committee is framing lists which again are not warranted by any law or rule, and this is affecting the promotion, reversion etc. of members of the Indian Police force. In this particular case, the matter did not go up to the Public Service Commission, but this so-called Selection Committee considered the records of the petitioner including the confidential remarks and reports and the petitioner was declared not fit to be promoted to the Indian Police Service. Consequent upon this recommendation, by a body which has no legal existence, the petitioner was reverted from his officiating appointment. Firstly, as I have pointed above, this committee has no legal standing and has no power to make any recommendation. Government, in accepting such recommendation can be said to have been acting at the instance of a body which has no existence in the eye of law. Not only is this arbitrary committee functioning, but the Government of West Bengal is blindly accepting its recommendations, and the lists prepared by it. Assuming however that it was possible for this body to act and that it was legal for the Government to permit such a course of action, the next question that arises is as to whether the order of reversion was by way of punishment, in which case it would be bad because no opportunity was given to the petitioner of being heard in respect of the charges against him, leading to his reversion. It is argued that this is not a case of punishment at all. It is a pure case of reversion. The petitioner, it is said, was in an officiating post and was sent back to his substantive post because he was found inefficient. As has been stated in the counter-affidavit, the petitioner was not considered fit to be promoted to the Indian Police Service but was reverted, after looking into the records including the confidential remarks and reports about his service. The petitioner was given a gist of the confidential adverse remarks against him, which, it has been stated, was considered by the committee which disapproved of his promotion. Looking into the gist, it will be found that most of it is certainly a matter of inefficiency but there are remarks contained in it, which do not appertain merely to inefficiency but to a violation of departmental orders. A distinct charge was advanced that the petitioner had violated order of the D.I.B. in failing to go to Calcutta periodically to see that officer. This has nothing to do with efficiency, but is a charge of a distinct violation of orders passed by superior officers. These remarks were considered

by the committee which recommended that the petitioner should not be promoted. It is as a result of this that he was reverted to his substantive post. As is implicit in *Rabindra Nath Das v. General Manager Eastern Railway* 59 CWN 859 (A), the question as to whether a particular reversion is by way of punishment depends on the facts of each case. Upon the facts it seems that the petitioner was inter alia charged with having violated an order of a superior officer and amongst other things this was considered as a reason for sending him back to his substantive post. In my opinion, this was by way of a punishment. The question as to whether an order of reversion operates as a punishment or not has now been exhaustively considered by Das, C. J., in a recent decision of the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, (B). The learned Chief Justice after an exhaustive delineation of the subject, summarised the position as follows :--

(1) Except in three cases, a Government servant has no right to his post, and the termination of service of a Government servant does not, except in these three cases, amount to a dismissal or a removal by way of punishment.

(2) The three cases are as follows : (a) Where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311(2).

(b) Where a person is appointed to a temporary post for a fixed term. In such a case, the service cannot be terminated before the expiry of this fixed period, unless there has been some misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311(2).

(c) Where a person has been appointed temporarily to a post and having been in continuous service for more than three years has been declared by the appointing authority as fit for employment in a quasi-permanent capacity. Such a person under Rule 3 of the 1949 Temporary Service Rules, is to be deemed to be in quasi-permanent service and the service can be terminated only in accordance with the provisions of such rules.

(3) Where a person is appointed to a permanent post on probation, the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment, because the Government servant has no right to continue to hold such a post. In such a case reversion or reduction in rank also does not matter.

I might add here that in some cases the service rules provide for a hearing to be given in case of such termination or reversion etc. on ground of inefficiency. In

such cases the rules must be observed.

(4) Where a person is appointed to officiate in a permanent post or to hold a temporary post other than one for a fixed term, whether substantively or on probation or on an officiating basis, the implied term of his employment is that his service may be terminated on reasonable notice and the termination of service will not amount to dismissal or removal from service.

(5) The following tests may be applied to find out whether the termination of service of a Government servant or his reduction to a lower post is by way of punishment or not:

(a) Has the servant got a right to the post? If he has not, then there can be no question of punishment.

(b) If the Government servant had been employed by a private employer, will he be entitled to maintain an action for wrongful dismissal or removal or reduction in rank? If not, it follows that he had no right to hold the post and therefore there would be no question of punishment.

(c) Was the dismissal, removal or reduction in rank in accordance with the conditions of service, express or implied? If it is, then it is not by way of punishment.

(d) Whether the reduction in rank visits the servant with any penal consequences, viz., forfeiture of pay or allowances, loss of seniority in his substantive rank, stoppage or postponement of his future chances of promotion? If the answer is in the affirmative, although in form the Government might purport to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of contract of employment or under the rules, in truth and reality the termination etc. is by way of punishment.

7. It now remains for me to apply these tests to the facts of the present case. Assuming that the petitioner was rightly holding an officiating post, namely, that of a Superintendent of Police, there can be no question that he would not pass the first test because he had no right to hold the officiating post. The next question is, has his reversion visited him with any penal consequences? There is of course no forfeiture of pay or allowance or loss of seniority in his substantive post. The only question that has been agitated by Mr. Das Gupta is as to whether on the facts and circumstances of this case, it could be said that there was stoppage or postponement of his future chances of promotion. Of course, when we talk about "future chance of promotion", a limit must be imposed. Every reversion or reduction in rank by way of reversion, does to a certain extent affect the chances of promotion. If a man is reverted to his substantive position because of inefficiency, it will necessarily be a factor to be considered in case of future promotion, or at least it is very likely that it would be so considered. Just as a person in an officiating post has no right to the post, similarly he has no right also to be promoted to that post. Promotion to a post is done either

according to seniority or efficiency. If a person has been sent down to his substantive post after officiating in a higher post for any length of time, he would in most cases lose some advantages of seniority because in the meantime persons junior to him in his substantive post might have been promoted to higher posts. But that, in my opinion, would be too remote and I do not think that the learned Chief Justice had such a contingency in his mind. Where however, it is a question of promotion as a result of efficiency, then the very fact that the petitioner has been sent down for inefficiency may be a strong factor affecting his promotion. But that again I do not think is a contingency contemplated by the learned Chief Justice. After all, a person might be found inefficient to discharge a particular post, but when he is sent back to his substantive post, he may prove his efficiency with regard to the substantive post of by his subsequent display of merit establish his efficiency entitling him to promotion. In other words, the future right of promotion that must be affected is something which must not be indirect or remote but must arise directly out of the order of reversion.

8. Coming to the facts of this case, we have to consider two things. Firstly, that a "fit list" is prepared by the so-called selection committee. This is a list which includes the names of officers fit to be promoted to the Indian Police Service, What happened in this case is that the selection committee was considering as to whether the name of the petitioner should be put in the "fit list" which would then have gone to the Union Public Service Commission, to be included in what is called the "approved list". It is admitted that appointments to the Indian Police Service are made in order of merit in that list. The second fact to be noticed is that the petitioner was not thought a fit person to be put in the "fit list". Thus, all his chances of going into the "approved list" had gone. The result may be summed up as follows. The petitioner was officiating in a higher post. The matter was considered as to whether he was a fit person to have been promoted to that post and whether he should have gone into the "fit list". It was found that he was not a fit person and therefore he was neither put in the "fit list", nor continued in his officiating post but reverted. Thus, two things have happened simultaneously. He is reverted to a lower post, and not put in the "fit list". These are not isolated actions. He has been reverted because he was not put in the "fit list", and he was not in the "fit list", because amongst other things, he did not obey the order of his superior officer. It may be that in future he may have proved himself to be so efficient as to get himself into the "fit list", but on the other hand, it cannot be denied that the direct and immediate result of his reversion was that his promotion for the time being was not possible. In the present case, there was no margin of time, and before much could happen, the petitioner had to retire, so that the result of having reverted him and having refused to put him in the "fit list" certainly affected his right of future promotion, because so far as he was concerned, the period during which he could earn the right of promotion, was very short. In my opinion, therefore, on the facts of the present case we must reach the conclusion that the reversion to his substantive post visited the

petitioner with penal consequences. At least this test is passed.

9. The net result is as follows : The petitioner was reverted to his substantive post, directly as a result of the action of a committee which has no existence in law. The appointing authority can certainly revert a person to his substantive rank, and apart from the question as to whether this is by way of punishment or not, it must be the action of the appointing authority. Here the action was really that of a committee which has no existence in law. Assuming however that the appointing authority could, under such circumstances, be said to have acted on its own initiative, the fact is that the petitioner was reverted back not merely because of inefficiency but also for having violated an order of his superior officer. Thus, it was by way of punishment. This conclusion is also reached in view of the fact that it was considered as to whether he should be put into the "fit list" or the "approved list" for promotion and upon the same grounds it was decided that he should not be so put, and therefore he was reverted to his substantive post. These factors did affect immediately and directly his right of future promotion, and therefore must be taken to have been effected by way of punishment. As the reversion was done by way of punishment, the petitioner ought to have been served with a charge-sheet and heard in defence. In any event, he should have been heard on the question as to why he should not be reverted, and the order of reversion should have been made after giving him an opportunity to be heard, or at least after hearing his explanation.

10. For the reasons aforesaid, it appears to me that the order of reversion of the petitioner to the substantive rank dated the 25th June, 1951 is bad and the Rule should be made absolute and a Writ in the nature of Certiorari is issued quashing the said order. There will also be a Writ in the nature of Mandamus directing the respondents not to give effect to the said order. There will be no order as to costs.

11. I must however make it dear that this does not mean that the petitioner should be reinstated in service, he having retired upon attaining the age of superannuation. It will only affect his arrears of pay and may affect his pension but those are not matters within the scope of this Rule and I am not called upon to deal with them.