

(1965) 12 SC CK 0050
In the Supreme Court Of India
Case No : ?Appeal (civil) 975 of 1965

Divisional Personnel Officer, Southern Railway	APPELLANT
Vs	
S. Raghavendrachar	RESPONDENT

Date of Decision : 16-12-1965

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Government of India Act, 1935 — Section 240(3)

Citation : AIR 1966 SC 1529 : (1968) 16 FLR 74 : (1967) 1 LLJ 401 : (1966) 3 SCR 106

Hon'ble Judges : P.B. Gajendragadkar, C.J;V. Ramaswami, J;P. Satyanarayana Raju, J;M. Hidayatullah, J;K. N. Wanchoo, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Satyanarayana Raju, J.—This appeal, by special leave, raises a somewhat important question of all, which is whether the reversion of a Government servant from an officiating post to his substantive post, while his junior is officiating in the higher post, does not, by itself, constitute a reduction in rank within the meaning of art. 311(2) of the Constitution.

2. For the purpose of deciding the point raised in the appeal, it would be necessary to state the material facts. The Southern Railway has two grades of Train Examiners, one in the scale of Rs. 100-5-125-6-185 and the other in the scale of Rs. 150-225. The respondent was employed in the lower scale as a Train Examiner. By an order dated April 7, 1959, the respondent was promoted to officiate in the higher scale with a starting salary of Rs. 150 per month. That order read as follows :

"2 Sri S. Raghavendrachar, TXR-YPR in scale Rs. 100-185 is promoted to officiate as TXR in scale Rs. 150-225 on Rs. 150 per month and retained YPR as TXR-IC.

3. Sir James Blazey TXR-MYS in scale Rs. 100-185 is promoted to officiate as

TXR in scale Rs. 150-225 on Rs. 150 per month and transferred to SBC-BG vide item I above.

Sanction endorsed by D.S. for promotion of items 2 and 3."

3. There is a note appended to the order which is important :

"Note : 1. The promotion of items 2 and 3 are purely provisional subject to revision when Divisional Seniority lists are drawn up."

4. By an order dated November 27, 1959, the respondent was reverted. That order was as follows :

"Sri S. Raghavendrachar, TXR/YPR (officiating) in scale Rs. 150-225 is reverted to scale Rs. 100-185 on Rs. 130 per month and transferred to SBC/MG."

5. On receipt of this order, the respondent made representations to the appellant. The appellant sent to the respondent communication dated May 25, 1960 :

"As per the existing instructions an officiating employee with less than 18 months of service in the higher grade may be reverted to lower scale without assigning any reason for such reversion by a competent authority. Since the period of your officiating in scale Rs. 150-225 was less than 18 months and since your reversion from scale Rs. 150-225 to Rs. 100-185 has been ordered by a competent authority, no reasons need be assigned as requested in your representation dated 8th/9th December 1959.

As regards the confirmation of TXRs in scale Rs. 150-225, who were your juniors while you were officiating in scale Rs. 150-225, I have to advise you that consequent on your reversion to scale Rs. 100-185, all your juniors, in scale Rs. 150-225, have become seniors and their confirmations in preference to you are in order.

Regarding your re-promotion to scale Rs. 150-225, it will be considered in the normal course according to your seniority and suitability to hold the post in scale Rs. 150-225."

6. The respondent made a further appeal to the Divisional Superintendent, Mysore, on July 2, 1960 and sent him two reminders. Not having got any response, he filed an appeal on January 31, 1961, to the General Manager, Southern Railway. The respondent sent a reminder to the latter on March 31, 1961. In reply, the Divisional Personnel Officer wrote to the respondent as follows by letter dated April 30, 1961 :

"Your reversion from an officiating post on scale Rs. 150-225 (PS) was not a penalty as presumed by you, in your above representations. The vacancy thus released by you in scale Rs. 150-225 (PS) and the vacancies which existed on the date of your reversion were filled up on 14th February 1960. You are therefore eligible to be considered for promotion against a vacancy which

occurred after the date of your reversion and not against the vacancies which existed on the date of your reversion and also vacancy caused by your reversion. No regular vacancy (other than short term leave vacancy) in scale Rs. 150-225 has occurred from the date of your reversion till date. You will therefore be considered for promotion against the next vacancy, subject to the condition of seniority-cum-suitability, on the basis of which only promotions to non-selection posts are to be ordered.

2. As regards seniority, all those hitherto promoted to scale Rs. 150-225 (PS) will automatically rank seniors to you and your seniority if promoted will be reckoned only from the date of your promotion in future vacancy.

3. Your contention that, when you were promoted to officiate for 2 months against the leave vacancy of Shri Venkataraman, as per this office order No. M. 542/PI of 14th November 1960, you should have been continued even after the expiry of the leave vacancy, and that Shri Varghese should have been reverted, is not correct, for the reasons stated in paragraph 2 above.

4. Your representation of 30th January 1961 to GM(P) Madras is therefore withheld."

7. Aggrieved by the order dated November 27, 1959, the respondent moved the Mysore High Court, on the failure of his representations to the hierarchy of Departmental Heads, for a writ of certiorari to quash the impugned order made by the appellant. By judgment dated December 12, 1962, a Division Bench of the High Court quashed the order of reversion. The High Court observed that it was not necessary to express any opinion on the question whether the reversion of the respondent on the ground that his work was unsatisfactory amounted to a reduction in rank within the meaning of that expression occurring in art. 311(2) of the Constitution. But the High Court held that the reversion of the respondent amounted to a reduction in rank because he was reverted from the higher post to the lower post notwithstanding the fact that his juniors were still retained in the higher posts. In reaching this conclusion the High Court purported to follow the decision of this Court in Shri Madhav Laxman Vaikunthe Vs. The State of Mysore, .

8. The Divisional Personnel Officer, Southern Railway, Mysore, obtained special leave from this Court against the order of the High Court.

9. It is contended by Mr. Bishan Narain, learned counsel for the appellant, that the High Court misunderstood the ratio of the judgment of this Court in Shri Madhav Laxman Vaikunthe Vs. The State of Mysore, , that there is no right in a Government servant to promotion as of right, that the mere reversion of a Government servant from an officiating post to his substantive post, notwithstanding that his juniors are retained in the higher posts, does not amount to a reduction in rank and the provisions of art. 311(2) are not attracted. On the other hand, it is contended by Mr. S. K. Venkataranga Iyengar, learned counsel for the respondent, that the circumstances of the case clearly indicated

that the reversion of the respondent amounted to a reduction in rank and since the procedure prescribed by art. 311(2) was not complied with, the order of reversion was bad in law.

10. It may be taken to be settled by the decisions of this Court that since art. 311 makes no distinction between permanent and temporary posts, its protection must be held to extend to all government servants holding permanent or temporary posts or officiating in any of them, but that protection is limited to the imposition of three major penalties contemplated by the Service Rules, viz., dismissal, or removal or reduction in rank.

11. The first of the cases which may be considered is the decision in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , commonly known as Dhingra's case. In this case, Das C. J., who spoke for the majority, considered comprehensively the scope and effect of the relevant constitutional provisions, service rules and their impact on the question as to whether reversion of Dhingra offended against the provisions of art. 311(2). Dhingra was appointed as a Signaller in 1924 and promoted to the post of Chief Controller in 1950. Both these posts were in Class III Service. In 1951, he was appointed to officiate in Class II Service as Assistant Superintendent, Railway Telegraphs. On certain adverse remarks having been made against him, he was reverted as a subordinate till he made good his short comings. Then, Dhingra made a representation. Subsequently, the General Manager gave him notice reverting him to Class III appointment. It was this order which was challenged by Dhingra by a writ petition, in the High Court and, eventually, in this Court. The question for decision was whether the order of the General Manager amounted to reduction in rank within the meaning of art. 311(2) of the Constitution, and Dhingra was entitled to a reasonable opportunity to show cause against the order. This Court held that the reversion of an officiating officer to his substantive post did not attract the provisions of art. 311(2) and that Dhingra was not entitled to the protection of that article.

12. It is however true that even an officiating government servant may be reverted to his original rank by way of punishment. It was therefore observed in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, :

"Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty."

13. One test for determining whether the termination of service was by way of punishment or otherwise is to ascertain whether under the Service Rules, but for such termination, the servant has the right to hold the post. It was held in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, that he was holding an

officiating post and had no right under the rules of the Railway Code to continue in it, that under the general law such appointment was terminable at any time on reasonable notice and the reduction could not operate as a forfeiture of any right, that the order of the General Manager visited him with no evil consequences and that the order therefore did not amount to a reduction in rank.

14. Shri Madhav Laxman Vaikunthe Vs. The State of Mysore, was relied upon by the High Court in support of its conclusion that the reversion of the respondent amounted to a reduction in rank. It is therefore necessary to scrutinize the facts of that case.

15. The appellant Vaikunthe, who held the rank of a Mamlatdar in the first grade, and was officiating as District Deputy Collector, was alleged to have wrongly charged travelling allowance for 59 miles instead of 51 and was, as the result of a Departmental enquiry, reverted to his substantive rank for three years and directed to refund the excess he had charged. He made a representation to the Government which was of no avail although the Accountant General was of the opinion that the appellant had not over-charged and committed no fraud. Ultimately, the appellant was promoted to the Selection Grade but the order of reversion remained effective and affected his position in the Selection Grade. After retirement he brought a suit for a declaration that the order of reversion was void and for recovery of a certain sum as arrears of salary and allowances. The trial Court held that there was no compliance with the provisions of s. 240(3) of the Government of India Act, 1935, granted the declaration but refused the arrears claimed. Vaikunthe filed an appeal and the State a cross-objection. The High Court dismissed the appeal and allowed the cross-objection, holding that the order of reversion was not a punishment within the meaning of s. 240(3) of the 1935 Act.

16. This Court held that the matter was covered by the observations in Parshotam Lal Dhingra Vs. Union of India (UOI), and the tests of punishment laid down by this Court viz., (1) whether the servant had a right to the rank or (2) whether he had been visited with evil consequences of the kind specified therein, and that the second test certainly applied. This Court concluded that Vaikunthe might or might not have the right to hold the higher post, but there could be no doubt that he was visited with evil consequences as a result of the order of reversion. It was there held :

"Mere deprivation of higher emoluments, however, in consequence of an order of reversion could not by itself satisfy that test which must include such other consequences as forfeiture of substantive pay and loss of seniority."

17. Since the requirement of s. 240(3) of the 1935 Act, which corresponds to art. 311(2) of the Constitution, had not been found to have been fully complied with, the order of reversion was held to be void.

18. There was an important aspect of this decision which was lost sight of by the High Court. The impugned order there ran as follows :

"After careful consideration Government have decided to revert you to Mamlatdar for a period of three years"

19. It was pointed out in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, that if the order of reversion entailed or provided for the forfeiture of the pay or allowances of the Government servant or loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance might indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government had terminated the employment as and by way of penalty. At p. 891, Sinha, C.J., who spoke for the Court, pointed out :

".... he would have continued as a Deputy Collector but for the Order of the Government, dated August 11, 1948, impugned in this case, as a result of the enquiry held against him, and that his reversion was not as a matter of course or for administrative convenience. The Order, in terms, held him back for three years. (*Italics ours*). Thus his emoluments, present as well as future, were adversely affected by the Order aforesaid of the Government. In the ordinary course, he would have continued as a Deputy Collector with all the emoluments of the post and would have been entitled to further promotion but for the set back in his service as a result of the adverse finding against him, which finding was ultimately declared by the Accountant General to have been under a misapprehension of the true facts. It is true that he was promoted as a result of the Government Order dated March 26, 1951, with effect from August 1, 1950. But that promotion did not entirely cover the ground lost by him as a result of the Government Order impugned in this case."

20. Again, at p. 893, the learned Chief Justice pointed out :

"If the loss of the emoluments attaching to the higher rank in which he was officiating was the only consequence of his reversion as a result of the enquiry against him, the appellant would have no cause of action. But it is clear that as a result of the Order dated August 11, 1948 (Ex. 35), the appellant lost his seniority as Mamlatdar, which was his substantive post. That being so, it was not a simple case of reversion with no evil consequences; it had such consequences as would come within the test of punishment as laid down in *Dhingra's case*."

21. Finally, it was pointed out :

"If the reversion had not been for a period of three years, it could not be said that the appellant had been punished within the meaning of the rule laid down in *Dhingra's Case*. It cannot be asserted that his reversion to a substantive post for a period of three years was not by way of punishment. From the facts of this case it is clear that the appellant was on the upward move in the cadre of his service and but for this aberration in his progress to a higher post, he would have, in ordinary course, been promoted as he actually was some time later

when the authorities realised perhaps that he had not been justly treated...."

22. The real ground on which Vaikunthe's reversion to his original post of Mamlatdar was held to be a violation of his Constitutional guarantee was that his chances of promotion were irrevocably barred for a period of three years. If this aspect of Shri Madhav Laxman Vaikunthe Vs. The State of Mysore, is borne in mind, it will be found that there is no basic inconsistency between the decisions which have a bearing on the question as to in what cases reversion would amount to a reduction in rank.

23. Even so, it is contended by learned counsel for the respondent that the real reason which operated on the mind of the appellant was that the respondent's work in his officiating capacity was unsatisfactory. Assuming that to be so, the question is whether his reversion to his original post, because he was found unsuitable for the higher rank to which he had been given the officiating chance, is valid.

24. In *State of Bombay v. F. A. Abraham* (1962) Supp. 2 S.C.R. 92 the respondent held the substantive post of Inspector of Police and had been officiating as Deputy Superintendent of Police. He was reverted to his original rank without being given an opportunity of being heard in respect of the reversion. His request to furnish him with reasons for his reversion was refused. Later, a departmental enquiry was held behind his back in regard to certain allegations of misconduct made against him in a confidential communication from the District Superintendent of Police to the Deputy Inspector-General of Police, but these allegation were not proved at the enquiry. The Inspector-General of Police, however, thereafter wrote to the Government that the respondent's previous record was not satisfactory and that he had been promoted to officiate as Deputy Superintendent of Police in the expectation that he would turn a new leaf. The High Court held, following its earlier decision in *M. A. Waheed v. State of Madhya Pradesh* (1954) Nag. L.J.305. that if a person officiating in a higher post is reverted to his original post in the normal course, that is, on account of cessation of the vacancy or his failure to acquire the required qualification, the reversion did not amount to a reduction in rank but if he is reverted for unsatisfactory work, then the reversion would amount to a reduction in rank. This Court did not agree with the observations in Waheed's case (1954) Nag. L.J. 305 that when a person officiating in a post is reverted for unsatisfactory work, that reversion would amount to a reduction in rank. This Court took the view that the Government had a right to consider the suitability of the respondent to hold the position to which he had been appointed to officiate and that it was entitled for that purpose to make inquiries about his suitability and that was all what the Government had done in that case.

25. Two more cases cited at the Bar now require to be considered. In *The High Court, Calcutta Vs. Amal Kumar Roy*, this Court held that the word 'rank' in art. 311(2) referred to classification and not to a particular place in the same cadre in the hierarchy of service. The facts of the case were as follows. The respondent

was a Munsif in the West Bengal Civil Service (Judicial). When the cases of several Munsifs came up for consideration before the High Court for inclusion in the panel of officers to officiate as Subordinate Judges, the respondent's name was excluded. On a representation made by him, the respondent was told by the Registrar of the High Court that the Court had decided to consider his case after a year. As a result of such exclusion, the respondent, who was then the seniormost in the list of Munsifs, lost eight places in the cadre of Subordinate Judges before he was actually appointed to act as an Additional Subordinate Judge. His case mainly was that this exclusion by the High Court amounted in law to the penalty of 'withholding of promotion' without giving him an opportunity to show cause. He prayed that a declaration might be made that he occupied the same position in respect of seniority in the cadre of Subordinate Judges as he would have done if no supersession had taken place and claimed arrears of salary, in a suit filed by him. The trial Court decreed the suit. On behalf of the appellants a preliminary objection was taken in this Court that the controversy raised was not justiciable. This Court held that there was no cause of action for the suit and the appeal must succeed.

26. It was there contended on behalf of the respondent that even though there might not have been any disciplinary proceedings taken against him, the effect of the High Court's order was that he was reduced by eight places in the list of Subordinate Judges and that in law amounted to a reduction in rank within the meaning of art. 311(2) of the Constitution. At p. 453 it was pointed out as follows :

"In our opinion, there is no substance in this contention because losing places in the same cadre, namely, of Subordinate Judges does not amount to a reduction in rank within the meaning of art. 311(2). The plaintiff sought to argue that 'rank', in accordance with dictionary meaning, signifies 'relative position or status or place,' according to Oxford English Dictionary. The word 'rank' can be and has been used in different senses in different contexts. The expression 'rank' in art. 311(2) has reference to a person's classification and not his particular place in the same cadre in the hierarchy of the service to which he belongs. Hence, in the context of the Judicial Service of West Bengal, 'reduction in rank' would imply that a person who is already holding the post of a Subordinate Judge has been reduced to the position of a Munsif, the rank of a Subordinate Judge being higher than that of a Munsif. But Subordinate Judges in the same cadre hold the same rank though they have to be listed in order of seniority in the Civil List. Therefore, losing some places in the seniority list is not tantamount to reduction in rank. Hence, it must be held that the provisions of art. 311(2) of the Constitution are not attracted to this case."

27. This decision therefore is authority for the position that losing some places in the seniority list is not tantamount to reduction in rank.

28. The respondent relied upon the decision of this Court in P.C. Wadhwa Vs. Union of India (UOI) and Another, . There, the appellant, a member of the Indian

Police Service and holding the substantive rank of Assistant Superintendent of Police (a post in the junior time scale of pay) in the State of Punjab, was promoted to officiate as Superintendent of Police, which was a post carrying a higher salary in the senior time-scale, and posted as Additional Superintendent of Police. After he had earned one increment in that post, he was served with a charge-sheet and before the enquiry, which had been ordered, had started, he was reverted to his substantive rank of Assistant Superintendent of Police, the ground suggested for reversion being unsatisfactory conduct. No details of the unsatisfactory conduct were specified and the appellant was not asked for any explanation. At the time when the appellant was reverted, officers junior to him in the I.P.S. Cadre of the State were officiating in the senior scale. The order entailed loss of pay as well as loss of seniority and postponement of future chances of promotion.

29. It was held that the order of reversion made against the appellant was in effect a 'reduction in rank' within the meaning of art. 311(2) of the Constitution and inasmuch as he was given no opportunity of showing cause against the said order of reversion, there was violation of art. 311. On a consideration of the circumstances of the case, this Court reached the conclusion that the action of the Government reverting the appellant was mala fide. But that was not the sole ground on which the order of reversion was held to be bad.

30. After an examination of the legal position from the large body of rules to which reference was made, it was held that in so far as the Indian Police Service is concerned there was only one cadre, that appointment to posts borne on that cadre were to be made by direct recruitment except to the extent of 25 per cent. of the senior posts which may be filled by promotion from the State Police Service. A special feature of the All India Services like the Indian Police Service and the Indian Civil Service is that promotion is a matter of right. It was for this reason that this Court, by a majority pointed out at p. 622 that in the case of those services there was no rule which, specifically provided that an officer had to be freshly appointed to a post carrying a salary in the senior scale of pay.

31. At p. 627 it was said :

"In our opinion, the whole scheme of the rules indicates that a person borne on the junior scale of pay has a right to hold a post on the senior scale of pay depending upon the availability of a post and his seniority in the junior scale of pay..... If a person holding a post in the senior scale, though in an officiating capacity, is found to be unfit to hold that post, action will have to be taken against him as required by r. 5 of Discipline and Appeal Rules because his reversion to a post in the lower scale would amount to reduction in rank within the meaning of art. 311(2) of the Constitution."

32. On a consideration of the circumstances of that case, it is clear that the decision itself proceeded on the basic fact that for members of All India Services like the Indian Police Service, promotion was a matter of right and special

considerations would have to be applied to them.

33. Now, in the light of the principles established by the above decisions, we may consider the respondent's case. The Southern Railway has two grades of Train Examiners. The respondent and one James Blazey were promoted from the lower grade to officiate in the higher grade. The respondent was shown at item no. 2 and James Blazey at item no. 3 in the promotion list. A note was appended to the order that the promotion of the respondent and Blazey were 'purely provisional subject to revision when seniority lists drawn up for the Division.' By reason of the order dated November 27, 1959, the respondent was reverted to the lower grade while Blazey was retained in the higher grade. The case of the respondent is that Blazey was junior to him and that since he was reverted while Blazey was not, it would amount to a reduction in rank so far as he was concerned. It is plain that what he complains of is that he lost his seniority by reason of the retention of Blazey in the officiating higher post.

34. The respondent's rank in the substantive post i.e., in the lower grade, was in no way affected by this. In the substantive grade, the respondent retained his rank. It may also be added that he was visited with no penal consequences. It is no doubt true that it is not the form but the substance that matters, but once it is accepted that the respondent has no right to the post to which he was provisionally promoted, there can be no doubt that his reversion does not amount to a reduction in rank. None of the decisions considered above lends support to the contention for the respondent.

35. It was finally argued that the procedure prescribed by Rules 1609 to 1619 of the rules contained in the Indian Railway Establishment Code, Vol. I., were contravened. Rule 1609 reads :

"As a general rule, in no circumstances, should a gazetted railway servant be kept in ignorance for any length of time that his superiors, after sufficient experience of his work, are dissatisfied with him; where a warning might eradicate a particular fault, the advantages of prompt communication are obvious. On the other hand, the communication of any adverse remarks removed from their context is likely to give a misleading impression to the gazetted railway servant concerned. The procedure detailed in rule 1610 should therefore be followed."

36. Rules 1609 to 1618 apply only to gazetted railway servants. The respondent is not a gazetted railway servant and there is no question of his claiming that he is entitled to the right given under the above rules.

37. Rule 1619 refers to non-gazetted railway servants. That rule provides that in general conformity with the principles laid down in the preceding rules applicable to Gazetted Railway Servants, a General Manager may frame detailed rules for the preparation, submission and disposal of confidential reports on non-gazetted railway servants. Learned counsel for the respondent could not place before us those rules, if any.

38. The contentions raised by the respondent having been negatived, this appeal must succeed, and it is accordingly allowed, but, in the circumstances of the case, there will be no order as to costs.

39. Appeal allowed.