

(1990) 10 AHC CK 0033
In the Allahabad High Court
Case No : Writ Petition No. 4363 of 1990

Jang Bahadur Pandey

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 08-10-1990

Acts Referred:

Citation : (1990) 10 AHC CK 0033

Hon'ble Judges : S.N.Sahay, J

Final Decision : Allowed

Judgement

S.N. Sahay, J.—This is a petition for issuing a writ of mandamus directing the opposite parties to promote the petitioner on the basis of the selection made by the Departmental Promotion Committee, on the post of Superintendent, Central Jail.

2. The case of petitioner Jang Bahadur Pandey is that he is a confirmed Superintendent in Class II since 1983. A meeting of the Departmental Promotion Committee was held under the Chairmanship of the Chief Secretary to U.P. Government on December 19, 1989 for the selection of persons for appointment to the post of Superintendent, Central Jail. The said post is filled by promotion from amongst the Superintendents in Class II. The Departmental Promotion Committee prepared a panel of Sarva/Sri Shesh Mani Tripathi, Devi Dutt Misra and Jang Bahadur Pandey, petitioner for appointment to the said post. The recommendations of the Committee were given effect in the case of Sri Devi Dutt Misra, who has been promoted, but not in the case of the petitioner. The petitioner has stated that another meeting of the Departmental Promotion Committee was held on April 26, 1990, in which the name of Sri Satya Pal Singh, who is opposite party No. 3, was recommended for promotion as Superintendent Central Jail. It is alleged that the recommendation made in favour of opposite party No. 3, who is the real brother of Sri Virendra Singh, I.A.S., is malafide. The opposite party No. 3 has been promoted also. The petitioner, feeling aggrieved from the promotion of the opposite party No. 3, has approached this court for

implementation of the recommendations made by the aforesaid Committee on December 19, 1989.

3. In the counter affidavit, which has been filed on behalf of the opposite parties, it is stated that the name of the petitioner was included at serial No. 3 in the select list prepared by the Departmental Promotion Committee in its meeting held on December 19, 1989. The names of Sri Shesh Mani Tripathi and Sri Devi Dutt Misra were at serial nos. 1 and 2. It came to the notice of the State Government that departmental proceedings were pending against the petitioner in connection with the escaping of a convict from District Jail, Varanasi. In view of this fact no promotion order was passed in favour of the petitioner. Similarly Sri Shesh Mani Tripathi was also not promoted on account of financial irregularities and promotion was given to Sri Devi Dutt Misra alone on the basis of the recommendations of the Departmental Promotion Committee. It is further stated that in the cadre of Superintendent, Central Jail, there are 8 posts out of which 3 posts are reserved for candidates belonging to scheduled castes. Sri Satya Pal Singh, opposite party No. 3 was appointed against one of these reserved posts for which the selection was held by the Departmental Promotion Committee on April 26, 1990. It has been denied that the selection and promotion of opposite party No. 3 are mala fide.

4. It is urged on behalf of petitioner that he should be promoted to the post of Superintendent, Central Jail on the basis of the recommendations of the Departmental Promotion Committee. The recruitments and conditions of service of persons appointed to the U.P. Jail (Group A and B) service are governed by the Uttar Pradesh Jail (Group A and B) Service Rules, 1985. The post of Superintendent, Central Jail is included in Group A. According to rules the recruitment is made to the aforesaid posts by promotion on the basis of seniority subject to rejection of the unfit through Selection Committee constituted in accordance with the provisions of rule (1). It is provided in subrule (4) that the Selection Committee shall prepare a list of selected candidates arranged in order of seniority and forward the same to the appointing authority. Rule 19, sub rule (1) provides that subject to the provisions of sub rule (2) the appointing authority shall make appointment by taking the names of candidates in the order in which they stand in the list prepared under rule 17. Sub rule (2) says that where in any year of recruitment appointments are to be made both by direct recruitment and by promotion, regular appointments shall not be made unless selections are made from both the sources and a combined list is prepared in accordance with rule 18. It is clear from these provisions that appointment to the said post is to be made from the persons whose names find place in the list of selected candidates prepared by the Selection Committee.

5. The nature and effect of the selections made by the Public Service Commission was considered by their Lordships of the Supreme court in *Jitendra Kumar v. State of Punjab* (1985) 1 SCC 122. It was held as follows:

?The selection by the Commission is only a recommendation of the Commission

and the final authority for appointment is the Government. The Government may accept the recommendations and may decline to accept the same... The appellants cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons e.g., bad conduct or character. The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus.?

6. The matter was considered from a different stand point in *S. Govind Raju v. Karnatak S.R.T.C.* (1986) 3 SCC, 273. In that case the appellant was selected for appointment as Conductor and his name was placed on select list prepared by the Selection Committee. But he was not given regular appointment. He was appointed to work in temporary vacancy. He worked for more than 8 months. While working as Conductor, his services were terminated on the ground of being found unsuitable for the post and his name was deleted from the select list. However, no opportunity was given to him to show cause before his services were terminated. The order of termination was set aside and the law was enunciated in the following terms:

?Once a candidate is selected and his name is included in the select list for appointment in accordance with the regulations, he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequence entail as he forfeits his rights to employments in future. In such a situation even though the regulation do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted though no elaborate enquiry would be necessary. Giving an opportunity of explanation would meet the bare minimum requirement of natural justice. Before the services of an employee are terminated resulting in forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned.?

7. In view of the aforesaid principles, it must be held that the petitioner in the present case has a right to be considered for appointment, although he cannot claim as of right that the appointing authority must accept the recommendations made by the Departmental Promotion Committee. On the other hand, once the recommendations of the Selection Committee are accepted by the appointing authority, it is bound to make appointment by strictly adhering to the order of merit as recommended by the Selection Committee and it cannot disturb the order of merit according to its sweet will except for good reasons such as bad conduct or character. This is also supported by the language of rule 19(1) which provides that the appointing authority shall make appointment by taking the

names of candidates to the order in which they stand in the list of selected candidates. The use of the word 'shall' prima facie indicates that the provision is mandatory. In case it is proposed that no appointment should be given to such person on account of bad conduct or character or some such thing, the principles of natural justice would require that he should be given an opportunity to explain and his explanation should be duly considered before a final decision is taken that he should not be appointed. It is significant that the appointing authority has not disagreed with the recommendations of the Committee in respect of the petitioner on merits and it has not been asserted that the petitioner is unfit or unsuitable for promotion and appointment as Superintendent, Central Jail. The petitioner has not been promoted on the ground that departmental proceedings are pending against him in connection with the fact that a convict has escaped from the District Jail, Varanasi. It has not been shown that the petitioner has been found to be guilty in the departmental proceedings. It is also remarkable that there is no provision in the service Rules referred to above that the list of selected candidates prepared by the Selection Committee will remain valid for a specified period only or will exhaust on the happening of a certain contingency, on making appointments of some persons out of the list. The existence of vacancies is also not in dispute and, therefore, if the petitioner is exonerated in the departmental proceedings, he will have to be promoted on the basis of the selections made by the Departmental Promotion Committee. In case, any opportunity of explanation is to be given to the petitioner at this stage, consistently with the principles enunciated above, it will cover the same ground and may even prejudicially affect the departmental proceedings which are pending against the petitioner. Under the circumstances, it will be unfair not to promote the petitioner merely on the ground that departmental proceedings are pending against him. Denial of promotion on suspicions or possibility of misconduct being established against the employee will be arbitrary.

8. For the above reasons the writ petition is allowed and it is directed that subject to the result of the disciplinary proceedings pending against the petitioner, the opposite parties shall take appropriate steps in accordance with law to promote the petitioner on the post of Superintendent, Central Jail on the basis of the recommendations of the Departmental Promotion Committee made on December 19, 1989. In other words, the appointment shall be liable to be cancelled and the petitioner shall be reverted to his original post if in the departmental proceedings the petitioner is found to be guilty of the charges levelled against him and the punishment of reversion is inflicted. Parties shall bear their own costs.