
(1994) 04 AHC CK 0077

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2373 of 1993

Kamla Prasad Rai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-04-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 51A

Citation : (1994) 3 AWC 1321

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : Dileep Kumar and Mangala Prasad Rai, for the Appellant;

Final Decision : Allowed

Judgement

B.L. Yadav, J.—Whether the sealed cover procedure followed by the Departmental Selection Committee was justified under the circumstances of the case, and whether the observations and findings recorded by High Court in respect of suitability-cum-merit of the Petitioner could be ignored by the Departmental Selection Committee are the short questions that fall for consideration in the present petition filed by the Petitioner, sub-Inspector in Civil Police, seeking the relief for the issuance of a writ of certiorari quashing the order/recommendation of the Departmental Selection Committee dated 31st October, 1971 (Annexure 7-A to the petition), and to issue a writ of mandamus directing the Respondents to select and promote the Petitioner on the post of Inspector In the batch of 1988.

2. The portrayal of the essential facts of the case are that the Petitioner was appointed as Sub Inspector in Civil Police In 1969. No case pertaining to misconduct was registered against him. His integrity was above board and he has obtained 100 rewards for the meritorious services rendered as sub-Inspector and Station Officer Incharge. As required by G.O. No. 6012/Aath-I-I-85/85 dated 22-10-1983 and the G.O. No. 5969/Aath-1-85/85 dated 8th October, 1985, after

completing 10 years service, he became entitled to the promotion as Inspector in Civil Police. There being no adverse entry, he was working as Station Officer since 1976. The Departmental Selection Committee held the Interview in December, 1988. Apart from two other candidates, Respondents 3 to 9 shown in Writ Petition No. 2071 of 1989 decided on 21st November, 1990 (Annexure-5 to the writ petition) were selected even though they were Junior to the Petitioner and had some adverse entries in their character rolls. The Petitioner had to file the aforesaid writ petition, which was allowed on 21st November, 1990 and the Selection Committee was directed to consider the case of the Petitioner for promotion at Inspector of Police and accordingly the Petitioner and two other candidates were to be promoted. The Petitioner in that petition and two other candidates, however, were not to claim seniority against the candidates selected from 1988 batch. Against that judgment a review petition was filed which was allowed partly by this Court by the judgment dated 27th September, 1991 (Annexure-6 to the writ petition) by which the operative portion In the earlier judgment was modified to the extent that the Selection Committee was to be constituted within one month from the date of filing a certified copy of the order and It was to reconsider the case of the Petitioner for promotion as Inspector of Police according to the Government Order applicable to the said promotion, and if promoted the seniority was to be fixed according to law without disturbing, however, the seniority of the candidates shown as Respondents 3 to 9.

3. The Selection Committee thereafter met on 31st October, 1991 and scrutinised the service record of the Petitioner and came to the conclusion that at the time of the interview there were two departmental proceedings pending against the Petitioner. Consequently, the earlier result of the Selection Committee was not to be modified even after the decision of the High Court, rather the result of the Petitioner was kept in the sealed cover and was to be opened only after the completion of the departmental proceedings. This order has been challenged in the present petition and the aforesaid reliefs have been claimed.

4. Shri N. K. Chaturvedi, learned Counsel for the Petitioner, effectively urged that, the procedure of sealed cover, adopted by the Departmental Selection Committee under the circumstances of the case, was not justified and that the observation of this Court in Writ Petition No. 2171 of 1989-Udai Narain and others v. State of U.P. and Ors allowing the petition on 21st November, 1990 and the Ors. dated 27th September, 1991 in the review petition modifying slightly the operative portion of the judgment, but agreeing with the observations pertaining to the merits and suitability of the Petitioner for promotion to the post of Inspector of Police having become final, was binding on the Respondents, particularly on the Home Secretary and the Director General of Police/Chairman of the Selection Committee and the Deputy Inspector General of Police (Karmik) as they were parties to the earlier petition and doctrine of *Stare Decisis* was applicable. Hence, those observations could not be ignored by the Selection Committee. It was further urged that keeping the result of the Petitioner in the sealed cover, on the basis of the pendency of two fresh departmental

proceedings, as indicated in the order of the Selection Committee dated 31st October, 1991 (Annexure 7-A to the writ petition) till the disposal of those two departmental proceedings, when in fact the Petitioner was exonerated in those proceedings vide order dated 13th December, 1991 passed by Shri Ram Sunder Tiwari, Dy. Superintendent of Police, Basti and the order dated 19th October, 1991, passed by Shri V.K. Tiwari, Superintendent of Police, Basti (Annexures RA-1 and RA-2), as mentioned in paragraph 12 of the rejoinder affidavit, which remained uncontroverted, was unwarranted and unjustified. Learned Counsel for the Petitioner leaned heavily on the decisions in Union of India Vs. K.V. Jankiraman, etc. etc., and Union of India Vs. Kewal Kumar, .

5. Shri R.V. Singh, learned standing counsel for the Respondents, has filed a counter affidavit and urged that the sealed cover procedure was correctly adopted by the Selection Committee in the present case and the Selection Committee was not bound by the observations made in the judgment of this Court or the opinion expressed in the first judgment allowing the petition and the second judgment modifying the operative portion of the judgment. Subsequent development or the fresh departmental proceedings initiated would not indicate that the members constituting the Selection Committee were biased. The initiation of contempt proceedings against the senior officers of the department had no impact at all on the members constituting the Selection Committee and keeping the result of the Petitioner in the sealed cover. Reliance was placed on a decision in State of Madhya Pradesh v. Sri Kant Chaphekar (1992) 2 UP LB EC 1380.

6. The learned Counsel for both sides agreed that petition be decided on merits. Having scrutinised the submissions of the learned Counsel for the parties, the points that fall for determination are as to whether the ratio of the decision of this Court in Writ Petition No. 2071 of 1989 between the parties, Udai Narain Rai and Ors. v. State of U.P. and Ors. decided on 21st November, 1990 Annexure to the writ petition) and the ratio of the decision dated 27th September, 1991 (Annexure-6 to the writ petition) would be binding on the Respondents and whether the procedure of sealed cover was justified under the circumstances of the case.

7. As regards the first point, suffice it to say that the ratio of the decision in the aforesaid petition was that the persons similarly situated, were recommended for interview and were selected. These facts were stated in the petition but just evasive reply was given in the counter affidavit. In fact, the Petitioner has 100 rewards to his credit and similarly situate other persons arrayed as Respondents 3 to 9, in the earlier writ petition, were not possessed with such meritorious service as the Petitioner, nor they were senior to him, nevertheless they have been selected whereas the Petitioner with meritorious service and having a number of rewards and good entries has not been selected Consequently, the order of the first Selection Committee was quashed in the earlier petition and the Selection Committee was to be constituted again within a month, with the

modification that the Petitioner would not claim seniority over the Respondents 3 to 9, who were selected. This ratio was maintained in the order dated 27th September, 1991 passed by Hon''ble A. Singh, J. and the review petition was partly allowed. Only the operative portion was substituted to the effect that the petition succeeds and the Respondents 1 and 2 were directed to constitute a fresh Selection Committee and they were to consider the case of the Petitioner for promotion as Inspector of Police according to the Government Order and in case he was selected seniority was to be fixed according to law. The observations of this Court about the suitability and merit of the Petitioner having so many awards to his credit were maintained. Consequently the ratio and commendation about the suitability and meritorious service of the Petitioner became final. The matter was not taken to the Apex Court so that any modification could have been made. Consequently, if such observation about the suitability and merit of a particular candidate in the Police Service was made and same was commended, could it be said to be justified on the part of the Selection Committee meeting on 31st October, 1991 or on some earlier date to ignore the observations of this Court.

8. As the meritorious services of the Petitioner were appreciated and opinion was expressed by this Court, may be that the Departmental Selection Committee or the Selection Committee has its own sphere of working nevertheless if an opinion is expressed or a finding is recorded in a judgment dated 21-11-1990 (Annexure-5) about the suitability of a particular candidate, that could not be ignored when the Selection Committee for more than one reason particularly when Respondents were parties to the writ petition in such matters. The doctrine of *Stare Decisis Et Non Quiete MOVERE*, connotes to stand by decisions and not to disturb which is settled. It was put by Lord Coke in his classic English version as those things which have been so often adjudged ought to rest in peace. See *Waman Rao and Others Vs. Union of India (UOI) and Others*, . This doctrine is also regarded as a rule of policy which promotes certainty, predictability and uniformity. The Respondents being parties and otherwise also, were bound by the findings, and opinion expressed by this Court in favour of the Petitioner.

9. In the present case, the Departmental Selection Committee made a lame excuse that two fresh departmental proceedings had been initiated against the Petitioner as given in the impugned order. Consequently the Petitioner could not be selected and the result was kept in the sealed cover. This appears that as the Petitioner initiated contempt proceedings against the Respondents as the earlier order of this Court was not complied with, rather the same was alleged to be willfully disobeyed, hence the contempt proceedings, even though dismissed, appear to have influenced the mind of the members of the Selection Committee.

10. What needs emphasis is that Respondents 2 and 3 being Senior Officers in the Police Force, one of the protectors of the human liberty and human rights of citizens must not take note of trifling. The initiation of the contempt proceedings was just a reflection of desperate thoughts. What needs recalling is what Lord

Hand J., a great Judge of his time, used to remember very often the statement of Cromwell "I be-seech ye in the bowels of Christ, that ye may be mistaken". He used to say that every person entrusted with responsibility and every Judge must remember and it must be written over every office where some orders about rights of individuals are passed and over every Court room," "I be-seech ye in the bowels of Christ, think that we may be mistaken." See Yale's Law Journal Vol. 71, 1961 (November Part).

11. Long ago Part IV-A. a chapter dealing with the fundamental duties, was added by the Constitution (42nd Amendment) Act, 1976, in accordance with the recommendations of the Swam Singh Committee inserting Article 51A(j) to the effect that It shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.

12. This Article 51A(j) was inserted with a view that instead of caring for the fundamental rights, one should more concentrate to his fundamental duties. Every citizen of this country is therefore, expected to perform his duties in an excellent way so that the nation constantly rises to the higher level of achievement. In such situation, in my opinion, the fundamental duties must pervade the activities of all the citizen including the senior officers of the Police force, and they are expected, rather enjoined to perform their duties in such a dispassionate and excellent way so that the ordinary members of the Police force, including the Petitioner, are not deprived of their fundamental rights to be promoted to the higher post to which they are entitled, and his suitability has also been found to be correct in view of the observations of this Court in the judgment to which Respondents were parties, to which reference has already been made above. I am constrained to observe that the fundamental duties have to be taken to such an extent, where even there is an occasion to interpret equivocal statutes which admit of two constructions. In that event also, the Court is to look at the fundamental duties. I am reminded of what late Smt. Indira Gandhi has stated about the addition of Article SI A to the Constitution, in the Lok Sabha debate dated 28-10-1976. She stated that the fundamental duties were not to smother rights to establish a democratic balance between the fundamental rights and the fundamental duties so that people might be conscious of their duties equally as they are conscious of their rights. See R.L.E. Kendra v. State of U.P. AIR 1985 SC 653, Banwasi Ashram v. State of U.P. AIR 1987 SC 653 and Rural Litigation and Entitlement Kendra and Others Vs. State of Uttar Pradesh and Others, .

13. In such matter, an analogy may be drawn that when High Court remands an appeal in exercise of its jurisdiction u/s 100 of the CPC to the lower court with a direction to afford an opportunity to the Plaintiff to cross-examine the Defendant witnesses and to dispose of the appeal afresh and the lower court instead permits the parties to adduce additional evidence and decide the appeal, but when the second appeal was again preferred it was held that the lower court

exceeded its jurisdiction in not deciding; the appeal strictly in accordance with the order of remand similar analogy applies in this case. Thus, in my opinion, the Respondents are bound by the observations in the two judgments of this Court about the merit and suitability of the Petitioner and they have to perform their duties, rather fundamental duties as enumerated under Article 51A(j) of the Constitution so that the services of the Petitioner could be utilised for some better post of promotion.

14. Reverting to the next question about the decision and propriety of adopting the sealed cover procedure by the Departmental Selection Committee dated 31st October, 1991 (Annexure-7A to the petition), the fundamental principles in such matters have been enunciated by their Lordships of the Supreme Court (Three Judges decision) in *Union of India v. K.V. Jankiraman* (supra) wherein after interpreting the relevant provisions of the Government of India (Deptt. of Personnel & Training)--Office Memorandum No. 2011/1/79 Estta (A) dated 30-1-1982--Para 3 (d)(iii)--Fundamental Rules, it was held:

On the first question, viz. as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued.

15. It was further observed by the Apex Court that promotion cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge sheet has already been issued to the employee.

16. Applying the ratio decidendi in *Union of India v. K.V. Jankiraman* (supra) it is obvious that the Departmental Selection Committee in the impugned order has made reference to new departmental proceedings which were alleged to be pending. Consequently, the result of the Petitioner was kept in the sealed cover, but as stated above it was averred in para 13 of the rejoinder affidavit filed by the Petitioner (vide Annexes-RA 2) that the Petitioner was exonerated from those departmental proceedings. Hence, adopting the sealed cover procedure was totally incorrect. It appears that the members of the Selection Committee did not take into account the ratio of the decision in *Union of India v. K.V. Jankiraman* (supra) and other cases on the subject, inasmuch as just pendency of the disciplinary/criminal proceedings could not entitle them to keep the result of the Petitioner in a sealed cover. Unless the charge-sheet was submitted, it could not be said that the disciplinary proceedings were pending against the Petitioner. In any case, just it was indicated that two departmental proceedings were initiated against the Petitioner. Unless on preliminary investigation those allegations were found to be correct and the disciplinary authority decided to initiate disciplinary/

departmental proceedings against the Petitioner, it could not be said that any such proceeding was pending so as to adopt the sealed cover procedure.

17. Union of India v. Kewal Kumar (supra) relied upon by the learned Counsel for the Petitioner was a case where the principles were indicated about adopting the sealed cover procedure, it was indicated by the Apex Court in that case that in Jankiraman's case the "procedure about the sealed cover was specified and it was to the effect that either the employee must have been placed under suspension or a disciplinary proceedings are taken against him or a decision has been taken to initiate proceedings or criminal proceedings are launched or sanction for such prosecution has been issued or decision to accord such sanction is taken and it was further observed that the sealed cover procedure is attracted only when the decision has been taken to initiate disciplinary proceedings and in that case it was indicated that the Central Bureau of Investigation had lodged an FIR and the decision had been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the Respondent prior to the meeting of the Departmental Promotion Committee, Consequently, relying upon the principles in Jankiraman's case, it was held that the resort to the procedure of sealed cover in the case of Kewal Kumar was justified.

18. Their Lordships of the Supreme Court in Union of India v. Kewal Kumar (supra) made a reference to the dictum laid down in Civil Appeal No. 1249 of 1993, Delhi Development Authority v. H.C. Khurana decided on April 7, 1993 reported in (1993) 2 UP LB EC 1421 (SC), but the principles in Kewal Kumar's case do supply to the present case, inasmuch as just two departmental proceedings were indicated to be pending against the Petitioner while on investigation the Petitioner was exonerated vide Annexure RA-1 and RA-2 to the rejoinder affidavit. Consequently, there appears no justification for the Departmental Selection Committee to "adopt procedure of sealed cover, as neither any charge sheet was submitted "against the Petitioner nor it was decided by the disciplinary authority to proceed against him.

19. The case of State of Madhya Pradesh v. Srikant Chaphekar (supra) relied upon by the standing counsel was a two Judges Division Bench case of the Apex Court. It was observed in that case that the Administrative Tribunal had no jurisdiction to interfere with the Departmental Promotion Committee's conclusion, inasmuch as it was for the Departmental Promotion Committee to consider the suitability by examining the merits of remarks of confidential reports. In that case the Administrative Tribunal went into the merits of the service record and recorded a finding that he could not be superseded for promotion. In that connection, It was held that the Tribunal could not substitute itself for the Departmental Promotion Committee. That case is distinguishable as based on different facts and is of no assistance to decide the present controversy.

20. In the present case, this Court is not substituting itself for the Departmental Selection Committee rather it has expressed its opinion about the conduct of the Petitioner, but by appreciation of over all facts and circumstances, a final decision

is to be taken by the Departmental Selection Committee. Under the circumstances of the case, the sealed cover procedure adopted by the Departmental Selection Committee in the impugned order making reference to the two departmental proceedings or complaint pending against the Petitioner, particularly when neither the charge-sheet was submitted against the Petitioner nor on investigation the allegations levelled against the Petitioner were found to be correct rather when the investigation was made in respect of those proceedings, the Petitioner was exonerated vide Annexure-RA 1 and RA 2 to the rejoinder affidavit (para 12 of the rejoinder affidavit). As the charge-memo was not submitted nor any decision was taken to initiate departmental proceedings rather cases cited in the impugned order were found to be incorrect, hence by no stretch of Imagination the sealed cover procedure adopted in the present case cannot be said to be justified.

21. In the view of the aforesaid premises and applying the prioral and posterorai reasonings, the present petition succeeds and the same is allowed. The impugned order dated 31st October, 1991 (Annexure-7A to the writ petition) adopting the sealed cover procedure is quashed. The Home Secretary, U.P. Shashan, Lucknow and the Director General of Police/Chairman of Selection Committee, Police Headquarters, Dalibagh, Lucknow, the Respondents 2 and 3 are directed to constitute another Selection Committee to consider the candidature of the Petitioner for promotion to the post of Inspector of Civil Police within two months from the date of production of a certified copy of this order. The Selection Committee so constituted would consider the case of the Petitioner for promotion to the post of Inspector in view of the observations made hereinbefore in this judgment and the relevant G.O. applicable to the said promotion and keeping in view that the two departmental proceedings indicated in the impugned order have already been found incorrect and the Petitioner has been exonerated vide Annexures-RA 1 and RA-2 to the rejoinder affidavit, and the averments in para 12 of the rejoinder affidavit. It is, however, made clear that the seniority of the Petitioner would be fixed according to law but without disturbing the seniority of Respondents 3 to 9 arrayed in the earlier Writ Petition No. 2071 of 1989 Udai Narain Rai and Ors. v. State of U.P. and Ors. decided on 21st November, 1990 (Annexures-5) to the writ petition. There shall be no order as to costs.