

(1981) 01 DEL CK 0002

In the Delhi High Court

Case No : Letter Patent Appeal No. 100 of 1973

K.M. Bindra

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 15-01-1981

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1981) 19 DLT 384

Hon'ble Judges : Prakash Narain, J;Gian Chand Jain, J

Bench : Division Bench

Advocate : M.S. Moan, M.A. Krishnamurthy and D.P. Wadhawa, for the Appellant;

Judgement

G.C. Jain, J.

(1) This appeal, under Clause I of the Letters Patent, is directed against the judgment of the learned Single Judge, dated February 26, 1973.

(2) On the basis of an interview before the Selection Board, the appellant, Shri K.M. Bindra, was selected for appointment as temporary Clerk Grade III. This post was offered to him vide letter of the Secretary, Establishment Department, High Commission of India in London, dated March 26, 1958. In pursuance of this offer, he joined the said-post on March 28, 1958. The appointment was liable to be terminated on one week's notice on either side. He was also to be on probation for a period of three months. The appellant was promoted to a higher post of temporary Clerk Grade II on March 2, 1959. Admittedly, he was never made permanent.

(3) At the time when the appellant joined service all the employees; of the High Commission, including the appellant, were governed by local civil service conditions called "Estacode" terms. These terms were almost the same which were applicable to the civil service employees of the British Government. For some time past the Government of India was contemplating to alter the service

conditions of the employees of the High Commission. This intention was expressed in the letter dated March 31, 1956 of the Deputy High Commissioner which was given the widest publicity among local members of the staff. Ultimately, on December 27, 1962 the President of India was pleased to promulgate a scheme for the formation of a local cadre in the High Commission of India in London. This scheme was to take effect from January 1, 1961. All the members of the staff of the High Commission who were in the service before August 15, 1947 were given the option of continuing on their then present scales of pay with such revisions as the Government of United Kingdom might give in future to the equivalent staff or of exercising their option for terms applicable to the new cadre. Separate orders were to issue as regards grant of option to the temporary employees recruited between August 15, 1947 and March 31, 1953. The right of option was extended to persons who had by 1963 put in at least 10 years service in the High Commission. In 1963 it was further extended to those who had completed seven years service by 1963.

(4) The employees of the High Commission were not satisfied with this extension and demanded that the right to opt should be extended to all the employees who had joined service before December 27, 1962, mainly on the plea that they were not aware of the notice circulated on March 31, 1956. Whitley Council meetings were held to hear the grievances of the employees. In the meeting held on November 20, 1970 at India House, the staff side was informed that the Government was not prepared to extend the option to choose Estacode terms to the staff who had joined after April 1, 1956, as they should have been aware of the notice circulated on March 31, 1956 regarding impending changes in conditions of service.

(5) The services of the appellant were terminated vide letter dated September 25, 1972 by giving one month's notice.

(6) Feeling aggrieved, the appellant filed a writ petition challenging the validity of the notice dated September 25, 1972 terminating his services. He prayed for quashing the said notice ; declaring that he was entitled to right of opting for Estacode terms and directing the respondent to allow him to exercise that right and further declaring that he had been confirmed in 1967 or in the alternative directing the respondents to consider his case for confirmation and declaring him permanent if found fit. In the alternative the appellant prayed for directions to the respondents to give him all the terminal benefits.

(7) All these reliefs were claimed mainly on the allegations that the service conditions of the appellant could not be unilaterally and forcibly altered and he could not be put under "Rupee cadre" without his consent. The act of the respondents in giving option to some of the employees to choose "Estacode" terms was alleged to be arbitrary and discriminatory being not based on any intelligible differentia which might have a reasonable nexus with the object sought to be achieved. The appellant was appointed as temporary Clerk Grade Iii and had been put on probation for a period of three months. He had completed

the said period of three months satisfactorily and was, Therefore, entitled to be confirmed. Even under the "Rupee cadre" rules, candidates appointed by selection through competitive examination or by promotion were to be on probation for a period of two years and on completion of the period of probation the candidates were, if considered fit for promotion, to be confirmed in their appointments subject to availability of substantive vacancies for the permanent posts. The Government, of course, had a right to extend the period of probation or grant extension thereof. In the case of the appellant his period of probation was never extended. Even if the appellant was treated on probation for a period of two years on the introduction of Rupee cadre, his period of probation was completed in 1965. In 1967 many posts were made permanent and the appellant was put against a permanent post, but still he was not made permanent. The last ground passed into service was that the respondents did not follow the principle of last come, first go" inasmuch as many employees junior to him had been retained in service.

(8) The respondents controverted these contentions. They also raised the plea that this court had no jurisdiction to entertain the writ petition and that there was inordinate delay on the part of the appellant in challenging the new service conditions.

(9) The learned Single Judge held that this court had jurisdiction to entertain the writ petition. He, however, found that the appellant had failed to explain the delay in filing the writ petition, so far as his claim that the change of conditions of service made by the Government by Memorandum dated December 27, 1962 was illegal, was concerned. On merits it was held that the Government had the power to change the conditions of service of its employees by administrative instructions when such conditions were originally based also on administrative instructions and when the said instructions did not contravene any statutory rule or law. The decision of the Government to give option to choose "Estacode" terms of service only to employees who had put in seven years of service prior to April 1, 1963 was neither arbitrary nor discriminatory. The appellant was not entitled to be confirmed in view of the policy decision of the Government and that there was justification for retaining the juniors to the appellant in service and the order of termination was not illegal on that score. With these findings the writ petition was dismissed. As regards the terminal benefits, the same were denied because the main relief was denied and also because all the facts regarding the service benefits were not before the Court. It was, however, observed that the Government, undoubtedly, shall give such of the benefits to the appellant as he was entitled to, expeditiously .

(10) Learned counsel for the appellant at the outset contended that the Government could not alter the service conditions of the appellant to his detriment either prospectively or retrospectively by administrative instructions. Reliance was placed on a decision of the Supreme Court in *Ex-Major N.C. Singhal v. Director General, Armed Forces Medical Services, New Delhi* and another AIR

S.C. 628.

(11) We have carefully examined this contention, but we do not find any merit in the same. It is now settled law that the rules regulating recruitment and the conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State, can be amended or varied. While examining the nature of the Government service, the Supreme Court in *Roshan Lal Tandon Vs. Union of India (UOI)*, , observed at page 195 as under :-

"IT is true that the origin of Government service is contractual .There it an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government."

From the above authority it is clear that the service conditions of a Government servant could be altered unilaterally by the Government.

(12) The decision of the Supreme Court in the case of *Ex-Major N.C. Singhal (supra)* is of no help to the appellant. What was held in the said Case was that the Government had no power to alter or modify the conditions of service of a Government servant with retrospective effect to the prejudice of the Government servant. There is no dispute so far as the principle enunciated in the said case it concerned. It is also admitted that that scheme promulgated by the President of India on December 27, 1962 was to take effect from January 1, 1961. However, it has not been shown that the appellant had been prejudiced in any way by giving the scheme retrospective effect. The appellant, in our view, has not at all been affected by giving the scheme retrospective effect and, Therefore, he can have no grievance on that account.

(13) Article 309 of the Constitution provides that the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. Proviso to Article 309 lays down that until provision in that behalf is made by or under an Act of the appropriate Legislature the President or the Governor may make rules regulating the recruitment, and the conditions of service of persons appointed, to Union or State services and posts respectively. We have no doubt that if any appropriate Legislature enacts an Act regulating the recruitment, and condition of service of persons appointed, to public services et.: or rules for recruitment or conditions of service are made by the President or the Governor then such service conditions can be altered by amending the Act or the Rules as the case may be. These service conditions cannot be altered or varied by administrative instructions. However, when the service conditions are based on executive/administrative instructions, then such service conditions can be altered by executive instructions. In the case of the appellant the service conditions prevalent when he joined service, namely. Local Civil Services

Conditions) called "Estacode" terms, were not created by any Act of Parliament or by statutory rules under Article 309 of the Constitution. These service conditions were contained in administrative or executive directions. So, in our view, these conditions could be altered by administrative directions. It may be added that it is not obligatory under the proviso to Article 309 to make rules of recruitment, etc., before a service can be constituted. The appropriate Government has executive power to make recruitment. It follows from this that the Government will have executive powers in respect of laying down service conditions also.

(14) Before proceeding to the further contentions, it may be pointed out that the new service conditions were promulgated on December 27, 1962. The appellant filed Civil Writ petition assailing the applicability of those service conditions to him sometime in 1972, i.e. after a lapse of more than nine years. The appellant was thus guilty of inordinate delay" and laches. As observed by the learned Single Judge, this delay has not been explained satisfactorily. The only Explanation put forward before the learned Single Judge as well as before us was that the appellant and the other employees of the High Commission were pursuing this matter before Whitley Council all along. We have examined the minutes of meetings of the Whitley Council held on various dates. From a perusal of these minutes, it cannot be said that the appellant or any other employees at any time challenged the right of the Government to vary the service conditions. All the time they were requesting for extending the option to "Estacode" terms to the staff employed after 1.4.1956 as well. This was entirely a different matter. In such circum- stances this delay stands unexplained and for this reason also the appellant cannot be allowed to assail the new service conditions.

(15) It was then argued that the action of the Government in allowing the employees who joined service up to 1st March 1956 to choose "Estacode terms was arbitrary and discriminatory and was liable to be quashed for that reason. Article 14 of the Constitution of India lays down that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The principle of equality enacted in this Article) however, does not absolutely prevent the State from making differentia between persons or things. The State has the power of what is known as "classification" on the basis of rational distinctions relevant to the particular subject dealt with. However, in order to pass the test of permissible classification, two conditions must be fulfilled ,namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group; and (ii) that that differentia must have a rational relation to the objects sought to be achieved. In the present case both these conditions, in our opinion, have been fulfilled .The Government classified the local employees into two groups, namely, (a) those recruited prior to April 1, 1956 and (b) those recruited after April 1, 1956. This classification is founded on an intelligible differentia. The persons in the first group, are distinguishable from the persons in the second group. The basis of the classification is related to its

object which was to reduce the strength of the staff by giving permanency only to most-senior employees. It may be pointed out that on March 31, 1956 the Government gave due notice of its intention to alter the service conditions. The employees recruited subsequently were supposed to know this intention of the Government. In such circumstances it cannot be said that the date, March 31, 1956, was selected arbitrarily or without any basis.

(16) The next contention of the learned counsel was that the probationary period of the appellant expired after three" months of his appointment and he, Therefore, became entitled to be confirmed. This contention cannot be accepted. We may only refer to the decision of the Supreme Court in *State of Punjab Vs. Dharam Singh*, . The relevant observation read as under : -

"This court has consistently held that when a first appointment or promotion is made on probation for a specified period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only, in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. In such a case, an express order of confirmation is necessary to give the employee a "substantive right to the post, and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation it is not possible to hold that he should be deemed to have been confirmed."

Lastly it was argued that the Government had violated the principles of last come, first go" and, Therefore, the order of termination of services of the appellant was liable to be quashed. The usual principle is that when retrenchment takes place on account of exigencies of service, the junior-most persons are to be reverted in preference to senior persons. However, there can be exceptions to this general rule in special circumstances"

(17) In the present case it is admitted that some junior employees to the appellant were retained in service. It has, however, been explained that the High Commission of India kept in mind the question of interests of the service as a whole and the qualifications and performance of individual employee, while effecting reduction in the staff. In the reply it has been specifically mentioned as under :-

"Further certify that in selecting the temporary people for termination of service, the High Commission of India exercised a sense of responsibility (and weighed the relative merits of the temporary personnel), consulting the Heads of Departments concerned and obtaining the approval and decision of the Deputy High Commissioner and the High Commissioner himself for the notices of termination of service. I may add that it is not only the Petitioner, but some others who were, in fact, senior to the Petitioner, who have been given notices of termination at about the same time as the Petitioner himself".

(18) The Government having considered the comparative merits of its staff) no

objection could be taken for retention of some of the juniors, while terminating the services of some of the seniors. This contention also has no merit.

(19) We thus find no merit in the appeal and the same is hereby dismissed. The parties are, however, left to bear their own costs.