
(1975) 10 P&H CK 0008
In the Punjab And Haryana At Chandigarh

M.L. Trighatia

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-10-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311
Evidence Act, 1872 — Section 123

Citation : (1976) 2 LLJ 357

Hon'ble Judges : S.S. Sandhawalia, J;M.R. Sharma, J

Bench : Division Bench

Judgement

1. In this rather voluminous writ petition, ultimate analysis reveals that at least one issue is concluded in favour of the petitioner by the recent enunciation of the law in Union of India (UOI) Vs. Mohan Lal Capoor and Others, . As this writ petition must succeed on that narrow issue, we deem it wasteful to adjudicate upon a variety of points diffusely raised by the petitioner, in person, before us, in a rather longwinded argument. It suffices, therefore, to advert only to those facts which are directly relevant to what is now the primary question.

2. Mr. Muni Lal Trighatia, petitioner, had served a tenure of nearly two decades in the Punjab Civil Service Executive Branch) when by way of a mutual exchange of service (duly approved by the Central Government) with another officer Shri B.S. Malik, he was allocated to the State of Haryana in May, 1971. The petitioner at the material time was a permanent selection grade officer in the Punjab Civil Service. It is the common case that for the purpose of promotion to the Indian Administrative Service, the petitioner is governed by the Indian Administrative Service (Appointment by Promotion) Regulation, 1955 (hereinafter called the Regulation).

3. By virtue of Regulation 3, a Selection Committee is constituted to frame a select list from amongst the members of the State Civil Service for promotion to the Indian Administrative Service. This Committee consists of six senior Central and State civil servants. On 2nd December, 1971, a meeting of the above-said

Selection Committee was held at Chandigarh and the petitioner's name along with others was brought on the select list prepared under Regulation 7 for the purpose of subsequent appointment to the Indian Administrative Service. His name figured at serial No. 6 but during the whole of the year 1972, the petitioner's name was not recommended for appointment to the Indian Administrative Service (hereinafter referred to as the service) though the five persons above him in the list were duly promoted to the said service. It is the petitioner's grievance that a number of vacancies arose during this period and even though some of them remained unfilled, he was not recommended to be appointed against such posts.

4. The next meeting of the Selection Committee was then held on 25th December, 1972, and the petitioner's name was again retained on the select list. This time he figured at serial No. 2 of the list and one Shri Sukhdev Parshad was the only person above him. In the year 1973 also the petitioner's turn for promotion to the service again did not come and his name was not recommended under Regulation 9 though Shri Sukhdev Parshad was duly appointed and there remained unfilled vacancies in the service. During this period also the grouse of the petitioner appears to be identical with that in the preceding year.

5. Another meeting of the Selection Committee was then held in December, 1973. Though the petitioner's name stood at the top of the preceding year's list, this time the Selection Committee dropped his name altogether from the select list whilst bringing thereon a number of persons who were considerably junior in service to him. The Committee recorded the following cryptic reasons apparently under Regulation 5(7) for the supersession of the petitioner:

Sarvshri Muni Lal Trighatia, Ram Narain Singh, Girdhari Lal Nagpal, Bharat Ratan Nagpal, Shanti Lal Malhotra, V.K. Chib and Ram Parkash had attained the age of 52 years on 1-1-1973 Shri Muni Lal Trighatia, whose name also appears in the select list in force, was considered by the Committee as not fit for further continuance in the list.

6. It is the petitioner's allegation that so far as he was concerned, the consideration of age was totally extraneous and irrelevant to the issue of his selection because the proviso to Sub-clause (3) of Regulation 5 clearly lays down that a person whose name appeared on the select list already in force shall be considered for inclusion in the fresh list even if he has attained the age of 52 years. It is also his claim that the rubber stamp reasons recorded for superseding the petitioner are totally violative of Regulation 5(7) and it is incumbent on the Selection Committee to consider and show as to how the petitioner's record was in any way inferior to others who had been preferred to him for the purpose of bringing or retaining their names on the select list. It has been submitted that the recording of reasons should clearly reveal a rational nexus between the facts considered and the conclusions arrived at. It has then been positively alleged that the service record of the petitioner is in fact much better than many of the

respondents especially those of respondents Nos. 8, 10, 12, 13, 14 and 15 who have been brought on the select list in preference to him despite the fact that they rank junior to the petitioner. It has been further alleged that all the respondents Nos. 8 to 23, though junior to him in the seniority list of the Haryana Civil Service (Executive Branch) and also figured below him in the previous select list, had been retained thereon whilst the name of the petitioner had been illegally delisted. Reliance is placed on the relevant Regulations for the submission that the name of the petitioner having once been brought on the select list could not be removed therefrom unless there was a grave lapse in his conduct or a patent deterioration in the performance of his duties and it is his claim that neither of these conditions was satisfied in his case. The petitioner hence claimed that the action of the respondent - State and the Selection Committee, apart from being violative of the Relevant Regulations was also an infraction of the fundamental rights guaranteed to him under Article 16 of the Constitution of India.

7. A substantial part of the petitioner's case was sought to be rested on the ground of mala fides. It was broadly alleged that the adverse action against him had been taken at the bidding of respondent No. 24, Ch. Banshi Lal, the Chief Minister of the State of Haryana. In paragraph 9 of the petition specific instances were listed from which the petitioner sought the Court to infer that the impugned actions of the State of Haryana were motivated owing to the bias of respondent No. 24. As noticed at the outset, we deem it entirely unnecessary to adjudicate upon this matter and it is hence unnecessary to advert in detail to this part of the case. It suffices to mention that the Chief Minister has personally tiled a detailed affidavit controverting each allegation of fact made against him. As regards the matter pertaining to the official record, the allegations have been denied in an equally exhaustive affidavit filed by Shri Virendra Nath, I. A. S., Deputy Secretary, Political and Services, Government of Haryana, Chandigarh.

8. In the amended petition, which was allowed to be placed on record, it is averred that during the pendency of the original writ petition, the Haryana Government had reverted the petitioner from the post of the Deputy Secretary to that of an Under-Secretary, primarily on the ground that the name of the petitioner had been delisted from the select list of the I.A.S. Officers. It is his case that this reversion is by way of punishment and results in evil consequences to him and, therefore, this action is hit by Article 311(2) of the Constitution of India.

9. In the return tiled on behalf of the respondent - State the allocation of the petitioner to the State of Haryana by the order of the Central Government dated the 16th February, 1971, stands admitted. It is averred that his case was considered for promotion to the selection grade of the Haryana Civil Service (Executive Branch) along with officers senior to him and he was promoted to the selection grade in an officiating capacity, from the date the vacancy in the said grade was available, namely, the 3rd of September, 1968. The petitioner had

made representations about this matter and the final rejection thereof was conveyed to the petitioner by the State Government of the 21st of July, 1972, vide Annexure R3. Regarding the service of the petitioner, it has been averred in para, 2 of the return that even the record of his service in the State of Punjab until April, 1971 contained some adverse annual reports reflecting upon his performance which had been duly conveyed to him.

10. It is admitted that a meeting of the Selection Committee was held on 2nd of December, 1971 and the petitioner was found fit by the Committee for inclusion in the select list for the ensuing year 1972. However, the petitioner's claim of excellent service record is denied and it is averred that even the previous service record of the petitioner upto April, 1971, showed that he had been adjudged on certain occasions as average and in few cases adverse remarks made against him in the annual confidential reports had been duly conveyed to him. It is pointed out that in the relevant select list for the year 1972, one vacancy stood reserved for Shri Sukhdev Parshad since 1969 and during the year 1972, five other vacancies arose which were duly filled at different times and the petitioner's turn for appointment hence did not come. The sixth vacancy became available on the 21st of December, 1972, owing to the death of Shri Jagdish Chander, I.A.S. and action to fill up this vacancy was commenced in January, 1973, but before that another meeting of the Selection Committee had taken place on the 26th of December, 1972. In this meeting the petitioners' name was again included in the select list for the year 1973 and he was placed at serial No.2.

11. It is the admitted case that during the whole of the year 1973 also the petitioner was not appointed to the service. It is claimed that the State Government is entitled in law to make observations on the recommendations made by the Selection Committee and accordingly it took the view that there had been deterioration in the work and performance of the petitioner as also of another officer by the name of Shri Gian Chand and on that account they did not deserve to be included in the select list. Consequently the State Government suggested to the Union Public Service Commission that the Selection Committee may be requested to reconsider their recommendations in regard to the above-said two officers. In view of these considerations it is averred that there was no question of recommending the petitioner for appointment to the service. In para 7 of the return, a tabulated list of the vacancies which arose during the years 1972 and 1973 has been given. It is thereafter alleged that during the year 1973, the petitioner earned two adverse reports for separate periods of service in the preceding year. According to the confidential report dated the 6th of May, 1973, for the period from 1-4-1972 to 20-9-1972 he was adjudged as an officer of "below average capacity" and similarly in the next report dated the 23rd of July, 1973, covering the period from 21-9-1972 to 31-3-1973, the petitioner was graded as an officer of "below average ability." This report also contained adverse remarks against the petitioner which were duly conveyed to him on the 26th of July, 1973 in two separate communications. It is the respondent-State's case

that the mere fact of the petitioner's name being on the select list for 1973 did not entitle him to the appointment to the service because the relevant Regulations provide that if between the date on which he was included in the select list and the date of the proposed appointment there has occurred deterioration in his work which in the opinion of the State Government renders him unsuitable for appointment to the service then the State Government may not recommend his name to the Central Government. Indeed it is claimed that before any such appointment, the State Government is to issue a certificate showing that subsequent to the inclusion of the name of a person in the select list, there has been no deterioration in his work which renders him unsuitable for appointment to the I. A. S. It is averred that in view of the adverse annual confidential reports" the petitioner's name could not be recommended by the State Government for appointment to the service. In fact the State Government proposed a special review of the select list in terms of Regulation 7(4) for the removal of the name of the petitioner therefrom and in the alternative suggested that the case of the petitioner be left to the decision of the Selection Committee which was due to meet in the month of December, 1973. In this meeting dated the 16th December, 1973, after considering the case of the petitioner he was held not fit for further continuance on the select list. These recommendations of the Selection Committee were endorsed by the State Government and latter approved by the U.P.S.C. and the Central Government itself. The claims of the petitioner about having an excellent service record have been repeatedly denied.

12. In particular as regards the proceeding of the Selection Committee on the 16th, December, 1973, it is averred that it had considered the service record of the eligible officers including the petitioner and the latter was not found fit for further continuance in the list. It is stated in express terms that his exclusion from the list was not on the ground that he has attained the age of 52 years on the 1st of January, 1973, and in fact his case was considered irrespective of any consideration of age. It has been averred that the petitioner has not correctly reproduced the reasons recorded by the Committee for exclusion of his name from the select list and it is wrong to suggest that this delisting was done on the basis of rubber stamp reasons. It is claimed that action of the Selection Committee was in conformity with the law laid down in *M.L. Capoor*" scase (1974) LabIC 338 (supra). It is then admitted that respondents Nos. 8 to 23, who were junior to the petitioner in the seniority list of the Haryana Civil Service (Executive Branch) were brought on the select list in the meeting of the Selection Committee in December, 1973. It is highlighted that for the purpose of this selection, seniority is not the governing factor and indeed merit and suitability in all respects have to be considered and given preponderance and weight. It has been alleged that the respondents junior to the petitioner had in fact better service records than the petitioner and were on merits entitled to supersede him for the purpose of being placed on the list.

13. By virtue of orders dated the 14th and 15th of February, 1974, the petitioner is admitted to have been appointed to the post of Under Secretary to the

Government of Haryana in the department of Finance and it is the claim that this posting is in no way violative of any provision of law. His appointment to his present post is alleged to be not a case of reversion nor is it any way by way of punishment. Lastly, the correctness and legality of the actions of the respondent-State has been reiterated.

14. As referred to earlier, Shri Bansi Lal, Chief Minister of Haryana in a detailed affidavit dated the 29th of June, 1974, has in terms denied the allegation of any personal malice against the petitioner.

15. In his replication, the petitioner has more or less reaffirmed his earlier stand and in an additional affidavit filed by Shri Virendra Nath, I.A.S., Deputy Secretary, Political and Services, a further elaboration of the State's position has been made to counteract some fresh allegations in the replication.

16. As noticed at the outset Mr. Trighatia after rambling over a variety of grounds ultimately arrived at what appears to us to be the sheet-anchor of his case, He highlighted the delisting of the petitioner by the Selection Committee whilst preparing the select list in December, 1973. It was pointed out that the petitioner's name after the fullest consideration had continued on the preceding lists consecutively for the years 1972 and 1973. It is the petitioner's claim that the Selection Committee unceremoniously dropped his name from the list for considerations which are entirely extraneous and in any case without recording reasons in accordance with the requirements of the Regulations. It was contended that the factum of the petitioner having attained the age of 52 on the 1st of January, 1973, was entirely irrelevant because his name had earlier continued on the list. The cryptic conclusion of dropping the petitioner from the existing list according to the petitioner, disclosed no reason worth the name. No reference was made to the records of the other officers retained on the list nor any comparison made with his record to show as to why they were being preferred to him. On these premises, the petitioner contended that there was a glaring violation of Regulation 5(3) and 5(7) (as amended).

17. We find substance in this contention of the petitioner, both on the basis of the relevant provisions of Regulation 5 and in view of the enunciation of the law in M.L Capoor's case (1974) LIC 338 (SC) (supra).

18. Apparently aware of the Achille's heel of their case, the respondents attempted to set up a defence of privilege. It was claimed that the proceedings of the Selection Committee and in particular the recording of reasons by it pertained to the affairs of the State and their disclosure would be contrary to public interest. The issue, therefore, arises whether the record of reasons by the Selection Committee is protectep by the privilege u/s 123 of the Indian Evidence Act.

19. Civil Miscellaneous No. 3789 of 1974 was moved on behalf of the petitioner in this case praying inter alia for the summoning of the preceedings of the Selection Committee held in December, 1972 and In December, 1973, along with

the observations of the State Government made in regard thereto. On 7th June, 1974, Tewatia, J., ordered the production of the relevant record. In response thereto Civil Miscellaneous 8060 of 1974 has been moved on behalf of the Union Public Service Commission claiming privilege under s. 123 of the Evidence Act on the ground that the documents summoned from it were unpublished records relating to the affairs of the State and their disclosure would cause injury to public interest and would materially affect the freedom and candour of expression of opinion in the determination and execution of public policy. The Commission had entrusted the relevant documents in a sealed cover to their counsel Shri Gurbachan Singh for production in Court along with the application with instructions to press the claim for privilege. Learned counsel for Union Public Service Commission even when pressed has not been able to pin-point exactly either the gravity or the nature of public injury apprehended in case the claim of privilege is disallowed. He has, however, faintly pressed the application supported as it is by the affidavit of Shri A.R. Kidwai, Chairman and the Head of the Department of the Union Public Service Commission.

20. To narrow down the issue, it may be noticed that the only relevant document now appears to be the reasons recorded by the Selection Committee in its meeting of the 16th of December, 1973. It was by virtue of these reasons and in this meeting that the petitioner was superseded and his name was deleted from the previous existing select list. Mr. Dewan, learned Counsel for the respondent did not contest the self-evident fact that the deletion of the name of the petitioner from the select list whilst retaining or bringing his juniors in the State service thereon would amount to supersession. The relevant Regulation is in the following terms:

5 (7). If in the process of selection, review or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession.

It is evident that the abovesaid provision is mandatory. The word used is "shall" and indeed It has not been argued on behalf of the respondents that the provision is of a directory nature. It is hence incumbent on the Selection Committee to expressly make a record of its reasons for the supersession of a member of the State Civil Service. It has been authoritatively held that this provision is intended to be and perhaps is the only statutory safeguard against the arbitrary and adverse action against the members of a State Civil Service in the matters of their promotion to the Indian Administrative Service. That the relevant Regulation has been framed under the All India Services Act and has the force of law is the common case of the parties. It, therefore, appears incongruous even on first impression that a matter which has been expressly made a requirement of law by the statute and is in terms intended for the production of the civil servants should be veiled in secrecy and privilege. If these reasons are not to be disclosed but to be kept privileged then the very object and purpose of the regulation may well be rendered nugatory. Not only the fact

whether any reasons were recorded at all would be beyond the reach and ken of the Court but further the adequacy and the relevancy of these reasons would also be beyond the pale of their examination.

21. In this context again reference may be made to M.L. Capoor's case (supra). It is evident from the judgment that neither in the High Court of Allahabad nor before their Lordships of the Supreme Court was any claim of privilege raised regarding the proceeding of the Selection Committee and in particular the recording of reasons for the supersession. Their Lordships have quoted verbatim the reasons recorded by the Selection Committee in that case. One, therefore, fails to see how identical proceeding which have been the subject-matter of open public enquiry and justiciability in one case would now become sacrosanct as unpublished record whose disclosure would be injurious to public interest in the present one. In M.L. Capoor's case their Lordships of the Supreme Court have not only made reference to the reasons recorded but also closely examined them regarding the adequacy and nature thereof and made them the subject of acute judicial comment. If the claim of privilege were to be upheld in such a situation it would virtually render the recorded reasons as unjusticiable.

22. We may notice that even though pressed repeatedly, learned Counsel, for the Commission was unable to either highlight or point out as to how exactly the disclosure of the minutes of the Selection Committee and in particular the reasons recorded by it would be injurious to public interest. On a subsequent examination of the said document we are ourselves unable to detect or apprehend the nature of any such injury. Indeed as we have noticed above, the nondisclosure thereof may well be injurious to the public servant who may be robbed of the only statutory safeguard against arbitrary action and thus the claim of privilege, if upheld would indeed be against the larger interest of public weal.

23. The Chairman of the Public Service Commission has filed as affidavit in support of the claim of privilege. We have closely perused the contents thereof and we are of the view that this affidavit does not satisfy the stringent requirements laid by the law for making a valid claim u/s 123 of the Evidence Act. In a recent enunciation of the rule in the The State of U.P. Vs. Raj Narain and Others, , their Lordships have again highlighted the larger public interest which requires that the Court should have the fullest possible access to all relevant materials for the purposes of administration of justice. It is only when injury to public interest by far outweighs this consideration on that evidence cannot be admitted and the claim of privilege is to be upheld. Obviously the burden is heavily on the person claiming the privilege to show that a disclosure of the contents of the documents would be gravely injurious to the public interest. As to the essential requirements of the affidavits it is still instructive to refer to the locus classicus on the point, the The State of Punjab Vs. Sodhi Sukhdev Singh, , where it has been laid down:

...The affidavit should show that each document in question has been carefully

read and considered, and the person making the affidavit is satisfied that its disclosure would lead to public injury. If there are a series of documents included in a file it should appear from the affidavit that each one of the documents, whose disclosure is objected to, has been duly considered by the authority concerned. The affidavit should also indicate briefly within permissible limits the reason why it is apprehended that their disclosure would lead to injury to public interest.

Examining the affidavit in the light of the abovesaid enunciation we notice that the Chairman has not adverted to each particular document in the present case, especially to the recorded reasons by the Committee regarding which privilege is claimed. It has not been specified in the affidavit as to what exactly is the injury and the evil effects which would flow from the examination of the relevant document by the Court. The affidavit does not particularise that out of the file the record of reasons have been examined with an eye to these consequences. The requirements of the affidavit laid down by their Lordships have always been construed rather stringently. We are inclined to hold that the present affidavit thus does not measure up to those requirements. On this ground also we are unable to accede to the prayer made on behalf of the respondents.

24. For the aforementioned reasons we reject the claim of the privilege and direct the relevant document containing the record of reason for the supersession of the petitioner in the meeting of the Selection Committee held on the 16th of December, 1973, be brought on the file.

25. The issue of privilege having been resolved the matter is reduced indeed to a narrow compass. In term it is whether the reasons recorded by the Selection Committee for the supersession of the petitioner conform to the requirement or the law as laid down in Regulation 5. Even at the risk of minor repetition, the relevant provision and the reasons may be juxtaposed against each other:

Sarvshri Muni Lal Trighatia, Ram Narain Singh, Girdhari Lal Nagpal, Bharat Rattan Nagpal Shanti Lal Malhotra, V.K. Chib and Ram Prakash had attained the age of 52 years on 1 -1 -1973

5(3) The Committee shall not ordinarily consider the cases of the members of the State Civil Service who have attained the age of 52 years on the first day of January of the year in which it meets:

Provided that a member of the State Civil Service whose name appears in the select list in force immediately before the date of the meeting of Committee shall be considered for inclusion in the fresh list, to be prepared by the Committee even if he has in the meanwhile attained the age of 52 years.

5(7) If in the process of selection, review or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession.

Shri Muni Lal Trighatia, whose name also appears in the select list in force, was

considered by the Committee as not fit for further continuance in the list.

26. As regards the requirement of age, it has to be borne in mind that the name of the petitioner had existed on the select list in force immediately before the date of the meeting of the Committee. His case was thus fairly and squarely within the proviso to Sub-regulation (3). His having attained the age of 52 years thus could not be taken as a fact against the present petitioner. Indeed Mr. C.D. Dewan had to concede that this consideration was wholly extraneous to the issue whether the petitioner was to be retained or not on the select list. It is thus self-evident that if the Selection Committee at all took the consideration of the petitioner having crossed 52 years on the 1st January, 1973, it was entirely collateral and extraneous to the provisions of Sub-regulation (3) of Regulation 5.

27. The true import of Regulation 5(7), which is in pari materia with the earlier unamended Regulation 5(5), has now been the subject-matter of authoritative enunciation in the following terms in M.L. Capoor's case (1974) LabIC 338:

In the context of the effect upon the rights of aggrieved persons, as members of the public service who are entitled to just and reasonable treatment, by reason of protections conferred upon them by Articles 14 and 16 of the Constitution, which are available to them throughout their service, it was incumbent on the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded stood in relation to records of others who were to be preferred, particularly as this is practically the only remaining visible safeguard against possible injustice and arbitrariness in making selections. If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. We think that it is not enough to say that preference should be given because a certain kind of process was gone through by the Selection Committee. This is all that the supposed statement of reasons amounts to. We, therefore, think that the mandatory provisions of Regulation 5(5) were not complied with.

In the light of the above, it appears to be self-evident that the reasons recorded by the Committee do not even remotely measure up to the requirements of the law. There is nothing whatsoever to show that the record of the petitioner was compared with those who had superseded him nor anything is even suggested as to how and in what manner they deserved preference over him despite the fact of his seniority. It is not even suggested as to what was the basis for now finding him not fit for continuance in the list when indeed he had been on the select list for nearly two years and in fact was on the top of the list immediately in force before the date of the meeting of the Committee. The cryptic reasons do not

reveal any rational nexus between the facts considered and the conclusions reached. Indeed it is possible to say that the purported reasons are a mere conclusion without any adequate foundation of facts and thus within the ambit of what their Lordships have called rubber stamp reasons in M.L. Kapoor's case 1974 Lab IC 338. There is indeed no option but to hold that there has been a patent violation of Regulation 5(7) in the case of the petitioner. Accordingly we partly allow this writ petition and quash the decision of the Selection Committee arrived at in its meeting of the 16th December, 1973, whereby the name of the petitioner was removed from the select list for the ensuing year. We further direct that the Selection Committee shall reconsider the case of the petitioner within three months for the purposes of his inclusion in the select list in accordance with law. There will be no order as to costs.

28. In view of the success of the writ petition as indicated above we deem it unnecessary to consider and decide the number of other issue raised in this writ petition. Order accordingly.