

(1970) 06 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 481 of 1969

Munshi Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-06-1970

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 311

Citation : AIR 1971 Patna 221

Hon'ble Judges : S.C. Misra, C.J;K.B.N. Singh, J

Bench : Division Bench

Advocate : Prabha Shankar Misra and Krishna Murari, for the Appellant; Tara Kant Jha and Bishwanath Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Misra, C.J.—This is an application for a writ of certiorari quashing the order contained in annexure 3 or a writ in the nature of mandamus commanding the respondents opposite party to act in accordance with law and cancel or withdraw or rescind the order already passed.

The petitioner was appointed as sorter in the Posts and Telegraphs Department in the cadre of time-scale clerk in the R.M.S. office, Patna Junction. The petitioner was posted to different stations in course of his career and claims to have been given officiating promotion in the lower selection grade and cadre of the clerks with effect from the 5th of November, 1967, to the 10th of January, 1968, and on various other dates with interim breaks up to the 14th of February, 1969.

A call for a token strike came from the All India Postal and Telegraphs Employees Union, Class III and IV. and 19th September, 1968, was the date fixed for it. Some members of the staff of Class III and IV of that department joined the strike and, apparently as can be gathered from the gist of the petition, the petitioner also joined that token strike. It is stated that the petitioner was reverted from the rank of the lower selection grade of the cadre to his original

grade as a sorter in the time-scale clerks, as is clear from annexure 3 of the petition. The petitioner has been shown at serial number 133 of the latest gradation list of the R.M.S., corrected up to the 1st of April, 1966, issued under the authority of the Post Master General. Patna, whereas opposite party Nos. 6 to 11 have been shown at serial numbers 142, 161, 164, 166, 169 and 172, Memo to the effect promoting opposite party Nos. 6 to 11 to the lower selection grade was issued by the Director of Postal Services, Bihar, Patna, on the advice of the departmental promotion committee. This purports to have been done in pursuance of a directive under circular No. 35/16/68-S.P.B, III (PT), dated the 3rd December. 1968, which provides:

". . . . The promotion of all eligible strikers will be held over for one year from 19-9-1968. They can be considered for promotion again after they earn one good report regarding their work and conduct. This will apply to all promotions whether by selection, seniority-cum-fitness or through Departmental promotion examinations."

2. The grievance made on behalf of the petitioner is that the directive issued (annexure 1) runs counter to Article 311 of the Constitution of India and the demotion of the petitioner without holding an enquiry and without giving him an opportunity to show cause is invalid. The reduction in the rank of the petitioner is major penalty under Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and that is a penalty which could not be imposed without following the procedure laid down under Rule 14 of the above Rules. Withholding of promotion, no doubt, is a minor penalty, but reduction in rank is a major penalty and, in any case, so far as the petitioner is concerned, what has been done amounts to imposition of two penalties, apart from the fact that the petitioner was already penalised by having one day's salary deducted for his failure to attend to his duties on the day of the token strike.

The Civil Services Rules have been framed under Article 309 of the Constitution and hence the directive in question must be struck down as illegal. The directive is also bad as it discriminates between strikers and non-strikers. Even the absence from duty of the petitioner on the day of strike cannot be regarded as participation in the strike inasmuch as the petitioner had made a representation and unless the representation is disposed of, the departmental authorities could not infer that the petitioner has taken part in the strike.

3. In a counter-affidavit filed on behalf of the Union of India and the Director General of Posts and Telegraphs New Delhi, respondents-opposite party Nos. 1 and 2, it is urged that the petitioner's promotion from time to time was only officiating promotion of a temporary nature and that would not be the basis of any right of the petitioner to selection grade post and, in that view of the matter, it could not be reasonably contended that there is any question of demotion involved in it. In my opinion, the contention on behalf of the Union of India must be accepted as correct. The very fact that the petitioner was given a chance to officiate for a short period in the selection grade cadre, as is contained in

paragraph 3 of the petition and he was reverted again to his original cadre, would show that he was not a regular promotee as yet to the selection grade. The question of demotion arises when an officer is promoted to a permanent post in any grade without any time limit. Where, however, an officer is given a chance to officiate in short term vacancies and reverted again, it cannot be said, if he is not given that appointment on a permanent basis, that it is a case of demotion. The argument based on the departmental authority refusing to promote the petitioner and instead promoting opposite party Nos. 6 to 11, therefore, cannot be regarded as a major penalty on which stress has been laid by learned counsel for the petitioner and in that view of the matter. Article 311 of the Constitution is not at all attracted to the facts of this case.

4. The contention that the procedure laid down in Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules should be followed does not arise. That Rule would be attracted only if the petitioner were promoted substantively to the higher rank and then he would be sought to be reduced to the original rank. That not having been done, Rule 14 cannot be invoked for attacking the departmental order in this case.

5. It has next been contended that In the case of the petitioner two penalties have been imposed in respect of his failure to attend to his duties on the 19th of September, 1968, one being reduction in rank and the other being the refusal to consider his case for promotion. This argument is also answered by the view expressed above.

6. The main question, however, which has been urged in this application as also in C.W.J.C. Nos. 404 and 405 of 1969 is whether the directive issued by the Director-General of Posts and Telegraphs for withholding the promotion of all those postal employees who abstained from attending to their duties on the 19th September, 1968, which was the day of strike, for a period of one year and the consequent promotion of officials junior in service to the petitioners is violative of the fundamental right guaranteed under Article 14 of the Constitution of India and also violative of the General Rules under the Central Civil Services (Classification, Control and Appeal) Rules. Since I have answered this question against the contention to this effect advanced in C.W.J.C. No. 404 of 1969, the same consideration arises in the present case also and the contention of the petitioner must be rejected.

7. In the result, this application fails and is dismissed.

K.B.N. Singh, J.

8. I agree.