
(2013) 07 P&H CK 0589
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12666 of 2012

Rajesh Sethi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Citation : (2013) 4 SCT 670

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Rajiv Atma Ram and Mr. Pranav Chadha, for the Appellant; Rishav Jain, for the Respondent

Judgement

Rajiv Narain Raina, J.—A National Highways Tribunal has been established with the promulgation of the Control of National Highways (Land & Traffic) Act, 2002 (for short "the Act"). This Tribunal has been established in eight cities, that is, Chandigarh, Lucknow, Calcutta, Mumbai, Jabalpur, Bangalore, Chennai and Guwahati. The Tribunal has jurisdiction, powers and authority to entertain appeals from orders passed or actions taken under Sections 26 to 28 and 36 to 38 by the Highway Administrations. Each of these Tribunals is to be manned by a Presiding Officer. The method of recruitment to the post of Presiding Officer is governed by the National Highways Tribunal (Procedure for appointment as Presiding Officer of the Tribunal) Rules, 2003 (for short "the Rules"). A high powered selection committee has been constituted under the rules to be headed by an Hon'ble Sitting Judge of the Supreme Court of India as nominated by Hon'ble the Chief Justice of India, to act as Chairman of the committee. The Secretary to Government of India in the Ministry of Road Transport and Highways is a member of the Selection Committee together with the Secretary to Government of India in the Ministry of Law and Justice (Department of Legal Affairs). The High Powered Selection Committee makes recommendation to the Central Government and to accordingly make a list of persons selected as Presiding Officers to be valid for two years. It transpires that in the year 2005, 7

out of 8 posts were vacant. Application from intending eligible persons were invited through OM dated 9.8.2005. An advertisement was published and the posts were circulated through Registrars of different High Courts including this Court. 51 applications were received for filling up seven posts. The High Powered Selection Committee met. 19 candidates were interviewed on 20.12.2006, one of whom was the present petitioner. The committee finally recommended Mr. Chaudhary Satish Kishan at select position one and the petitioner below him. A reserve panel was also recommended with the name of Mr. Sanjeev Walia for appointment in future. Mr. Chaudhary Satish Kishan was appointed as Presiding Officer, National Highways Tribunal, Mumbai, on 6.9.2007. The petitioner awaited appointment. He asserts that he came to know of this appointment in June 2011 after making elaborate enquiries.

2. Without offering appointment to the petitioner despite selection by the High Powered Selection Committee, the Government of India issued fresh advertisement in the Press on 21.6.2007 for drawing up a fresh panel. Once again the selection committee met on 11.5.2008 for interviewing candidates. The petitioner was one of ten candidates interviewed. Fresh recommendations was made. The petitioner's name was recommended again. On 29.8.2008, the Government of India asked for the petitioner's consent for being appointed in any of the eight locations in the event appointment is offered. The petitioner gave his consent on 8.9.2008. The Appointments Committee of the Cabinet of the Central Government considered the recommendations and four names were approved including that of the petitioner. This information, the petitioner says is based on information supplied to one Mr. Mohan Giri under the Right to Information Act, 2005. The order supplying information is at P-13. While the petitioner awaited appointment, to his surprise and disappointment, a fresh advertisement appeared in the press for drawing a fresh panel of seven names to be Presiding Officers vide letter dated 7.4.2011 (P-14). The petitioner came to know that Mr. Gyan Chandra had secured appointment as presiding Officer on 26.11.2009. Mr. Gyan Chandra was in the same select list as the petitioner and had been part of the same process till ACC. He learnt of this fact in June 2011. Left with little option the petitioner made a representation (P-15) to the Central Government bringing all facts to its notice and praying that he be appointed by issuing a notification. This representation was made on 11.7.2011. The representation against non appointment was rejected and the gist of the order was communicated vide letter dated 23.8.2011 which reads as follows:

Subject: Representation against the non-appointment of the applicant as Presiding Officer of National Highway Tribunal.

Sir,

I am directed to refer to your representation dated 11th July, 2011 on the above cited subject and to say that your representation has been examined in this Ministry. Since the panel of candidates approved by Appointments Committee of the Cabinet, has already expired on 23rd June, 2011, it is not feasible to appoint

you as Presiding Officer at this stage.

Yours faithfully, (Sd) (Maya Prakash)

Deputy Secretary to the Government of India

3. A reading of the order endorses the fact asserted by the petitioner that the highest authority, that is, the Appointments Committee of the Cabinet had indeed approved his name for appointment as Presiding Officer, National Highways Tribunal.

4. In this background, having waited and waited with no relief in sight, he has approached this Court by filing the present petition under Article 226 of the Constitution of India praying that the decision dated 7.4.2011 (P-14) proposing to draw a fresh panel should be quashed inasmuch as it inversely denies appointment to the petitioner to a post for which his name has been recommended by a Selection Committee headed by no less than an Hon''ble sitting judge of the Supreme Court of India.

5. On notice of motion having been issued, the respondents have put in appearance and a reply has been filed on behalf of Union of India. The facts are by and large not in dispute. The selection of the petitioner stands admitted. There can be no doubt that the name was also approved by the Appointments Committee of Cabinet. It is also admitted that Mr. Gyan Chandra was appointed as Presiding Officer, National Highways Tribunal at Lucknow on 26.11.2009 but demitted office on attaining the age of 62 years on 30.11.2011. He served for two years. He was on the same panel/select list as the petitioner. It is then explained in the written statement at page 119 of the paper-book that in anticipation of the retirement of Mr. Gyan Chandra:

the position against the post of Presiding Officer in National Highways Tribunals was considered and the Appointing Authority decided that the panel of names of the three candidates awaiting appointment as presiding Officers is quite old, hence the process of appointment of Presiding Officers of NH Tribunals be started afresh.

6. I have heard Mr. Rajiv Atma Ram, learned Senior counsel and Mr. Rishav Jain for the Central Government at length and with their assistance have traveled through the writ paper-book.

7. It is well settled that the normal rule of service jurisprudence is that mere selection does not give an indefeasible right to appointment. The jurisdiction exercised by the writ Court in such matters has been explained by B.P. Jeevan Reddy, J. in *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, . Government can refuse to appoint recommendees of the Public Service Commission in respect of any particular candidate if any material is discovered disclosing his involvement in any criminal activity or something which would disable a person to hold public office. The Court has a right to know the reason why appointment is not to be offered. Mr. Atma Ram submits that the petitioner

suffers from no disability to hold judicial/quasi judicial office as none has been pointed out in the written statement. The only reason assigned for non-appointment is that the panel has become quite old. This reason according to Mr. Atma Ram if accepted in judicial precedent would furnish dangerous ground and give a handle to the Government to defeat rights of citizens with impunity by simply sitting on the file, letting time pass and then to take advantage of its own wrong. The nature of public office which is to be filled and the process involved would also need to be kept in mind and whether non appointment after selection to high office is contrary to public interest. There may be hundreds of aggrieved people smarting under orders or inactions of the Highways Administrations without a forum for redressal of grievance. In such a situation another alarming thing can happen where in absence of forum available and sitting, aggrieved persons might be compelled to resort to invoking writ jurisdiction under Article 226 of the Constitution in which case it might unnecessarily burden the dockets of the High Courts which may be compelled to interfere in appropriate cases.

8. Mr. Atma Ram would again return to the dicta laid down in *Asha Kaul* to submit that the Government has no absolute right to disapprove or reject the recommendations of the Government nor can it pick and choose candidates out of the select list as done in the case of Mr. Gyan Chandra. After all, a selection committee headed by a sitting Judge of the Supreme Court of India sitting and making recommendations cannot be seen as a wasteful exercise and then to subordinate the selection committee to the whims of the Government, Such a course would not display the respect such a committee deserves nor redound to Governments credit. If such actions are repeated without legal or valid justification and appointments stymied, it may tend to lower the prestige and authority of the Supreme Court itself. Nothing would be more devastating and damaging than this. Mr. Atma Ram submits that it is also not the case where a name is referred back for reconsideration of the Committee on some material unearthed against the candidate after the recommendation was made which may render a person unfit to hold office.

9. Mr. Atma Ram would then refer to the decision of the Supreme Court in *R.S. Mittal Vs. Union of India (UOI)*, Kuldeep Singh, J. speaking for the Court held that though mere selection does not confer any vested right to appointment, but it certainly gives a right of consideration for appointment. The Appointing Authority cannot ignore the recommendations of the Selection Board headed by the Sitting Judge of the Supreme Court. The Court in this case considered non-appointment of a candidate to the post of Judicial Member, Income Tax Appellate Tribunal made by a Selection Board headed by a sitting Supreme Court Judge. The Selection Board in this case was also constituted under statutory rules being Rule 4(1) and (2) of the ITAT (Recruitment and Service Conditions) Rules 1973. The Court held in para 12 as follows:

It is no doubt correct that a person on the select-panel has no vested right to be appointed to the post for which he has been selected. He has a right to be

considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.

10. Again, in *Shankarsan Dash Vs. Union of India*, , the Supreme Court observed that though the State is under no legal duty to fill up all or any of the vacancy, however, it does not mean that the State has the licence to act in an arbitrary manner. The decision to fill up or not to fill up vacancies has to be taken bona fide for appropriate reasons.

11. The State is under an obligation to act fairly. It appears that the true test to be applied to examine the conduct of the Government in denying appointments is whether there has been fairness-in-action on its part. In the present case, twice over the whole exercise was reduced to a farce and recruitment processes brought to a grinding halt contrary to public interest. In *Asha Kaul* the Supreme Court pointed out that the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain, that they have no legal right to appointment. The Court expressed its anxiety when it spoke "We do not think that any government can adopt such a stand without any justification today".

12. Rule 3(6) of the Rules in relation to the National Highways Tribunal deals with the method of appointment of the Presiding Officer. The said Rule reads as follows:

3. Method of appointment of Presiding Officer:

(1) to (5) xxx xxx

(6) The Central Government shall on the basis of the recommendations of the Selection Committee make a list of persons selected for appointment as Presiding Officer and the said list be valid for a period of two years. The appointment of Presiding Officer shall be made from the list so prepared.

13. The rule appears to be unambiguous. It says that appointments "shall" be made from the list prepared. The lists were prepared. It was to meet such situations arising out of statutory rules that in *Dir. S.C.T.I. for Med. Sci. and Tech. and Another Vs. M. Pushkaran*, the Supreme Court had put a caveat on the

normal rule that on selection candidates do not acquire any right to the post - "Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies." In this case there is a clear rule governing the subject.

14. To further his argument, Mr. Atma Ram relies on *Surinder Kumar & others v. State of H.P. & another*; 2010 (4) S.C.T. 70 : 2009 (8) SLR 667 *Food Corporation of India and Others Vs. Bhanu Lodh and Others*, and *Jitendra Kumar and Others Vs. State of Haryana and Another*,

15. The learned senior counsel next would draw strength from a judgment delivered by the learned Single Judge of the Delhi High Court in W.P. (C) 3660/2007 on 6.8.2012 in *Shiv Charan Lal Sharma v. Union of India and others* also relating to appointment to the post of Presiding Officer, National Highways Tribunal. This case relates to a recruitment process initiated by circular dated 25.2.2003 inviting applications to fill up the said posts. The petitioner who was a practicing Advocate with 26 years standing in the Rajasthan High Court applied for the post. The Selection Committee constituted u/s 4 met and recommended his name along with others. Appointment was not offered. A fresh advertisement was issued on 9.8.2005 before expiry of the earlier select list. The stage in that case was a step before the present one. The stage of ACC had not been crossed unlike in this case. The Court directed as follows:

37. Since the name of the petitioner has not been approved by the ACC which is mandatory, therefore, the respondent Ministry is directed to send the name of the petitioner for ACC approval. If the ACC approves the same, the concerned Ministry shall issue the appointment letter to the petitioner against the first available vacancy.

16. Mr. Rishav Jain, learned counsel appearing for the Union of India submits that in compliance of the directions of the Delhi High Court Mr. Shiv Charan Lal Sharma has been offered appointment as Presiding Officer, National Highways Tribunal in 2012 itself and has joined.

17. If Mr. Gyan Chandra and Mr. Shiv Charan Lal Sharma have been appointed as Presiding Officers, National Highways Tribunal, one by executive fiat while the other by judicial order directing consideration then there may be a case of discrimination also to contend with. In absence of any cogent reason supporting non-appointment, and on a reading of the Rules, this Court can come to possibly no other conceivable conclusion on the touchstone of reasonableness which is part of Article 14 of the Constitution that the petitioner has been dealt with unfairly and his rights have been trampled upon and sought to be defeated by mere passage of time. The justification given in denying appointment on the ground that the panel "is quite old" amounts, in the considered view of this Court, to a constitutional tort with signs of wrong-doing writ large. This case involves an individual who has been injured by the inaction of government officials who conveniently slept over the matter to let the 2 years validity period

in Rule 3(6) run out. Within the life of those 2 years the petitioner had a crystallized right since the mandatory word "shall" has been used in Rule 3(6) with reference to the list prepared. If I read it as directory, the petitioner succeeds a priori. That list is not a waiting list when we talk about filling posts beyond advertised vacancies or after consumption of advertised posts. That list is the reservoir of appointment itself. It has passed through the acid test. And the petitioner's name twice over. It can be disturbed though but only by new and important matter coming to light sufficient to justify rejection of candidature even after approval of the appointing authority, that is the Appointments Committee of the Cabinet is accorded which is not the case here, nor any such material has been brought to the notice of the Court for it to stay its hands and drop the matter.

18. I am inclined to think, that the two years in Rule 3(6) must be read and understood in the sense that if a constitutional tort is inflicted by State officials, then till the wrong-doing is set right by State officials themselves, the period of 2 years would get automatically extended in search of reparation either by the administrator himself or by the Court in an action brought on its constitutional side. The rule does not in as many words say that after the period of two years the list prepared will lapse. The rule also does not even contemplate a situation where no appointments will be made from the list prepared. A meaningless exercise? In the written statement an indefinite expression has been used to justify non appointment - the list/panel "is quite old". It is not said the list has expired. I ask what is the difference between current, live, old and quite old. It means that State officials are not quite sure, they either do not mean what they say or do not say what they mean.

19. The above interpretation placed on the rule, to my mind, appears both just, necessary and expedient to secure the ends of justice so that Tribunals are manned and is certainly more dynamic and purposeful so as not to defeat the object and purpose of the statutory rule itself and make it a plaything in the hands of those who are required to implement approvals and the law in its purity and not to twist and tweak it as they like. State officials cannot defeat Appointments Committee of Cabinet approvals unless mandated by it. No such evidence has been placed on record that the Appointments Committee of Cabinet put a hold on its own prior decision or said - No. Governments speak formally and in writing.

20. In the circumstances, and to avoid further miscarriage of justice, the only way to repair the wrongful government inflicted injury on the individual is to direct the Central Government to consider offering appointment to the petitioner forthwith on the merit determined in the second recruitment process to cure future right deprivation, keeping in the foreground that twice over he has been selected by the High Powered Selection Committee headed by an Hon"ble Sitting Judge of the Supreme Court of India and his candidature has ACC approval. For the foregoing reasons, this writ petition is allowed. The reason for denial of

appointment is declared arbitrary, unreasonable, legally bad and contrary to overriding public interest. Therefore, a writ of certiorari is issued quashing the impugned communication dated 23.8.2011 (P-16) and other orders/notings, if any, leading up to it. A mandamus is issued to the respondents to consider and offer appointment to the petitioner against available vacancy without any further delay. If there are Tribunals, they should be manned without delay.