
(1978) 01 DEL CK 0016

In the Delhi High Court

Case No : Letter Patent Appeal No. 1 of 1978

Ranbir Chandra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-01-1978

Acts Referred:

Citation : (1978) ILR Delhi 241 : (1978) LabIC 1027 : (1978) RLR 328

Hon'ble Judges : V.S. Deshpande, J;H.L. Anand, J

Bench : Division Bench

Advocate : L.M. Sanghvi, Mohinder Narain, Manju Malhotra, S.C. Malik, K.N. Kataria, Ashok Sen and Bishambar Lal, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) This Letters patent Appeal is directed against the order, dated 15th November, 1977, of the learned single Judge, by which the operation of the order of respondent No. 1, passed on 22-7-77 refixing the seniority of the apellant was stayed.

(2) The appellant qualified for appointment as a Class I Officer, as a result of the combined competitive examination held by the Federal Public Service Commission in 1945 for Central Civil Services, including the Military Accounts Department and the Income Tax Officers Class I Grade II. He was allocated to the Military Accounts Department, which stood at par with Income Tax Officers, Class I Grade Ii Service. In that department at that time the recruitment on the results of the said examination was being made only to the Emergency Cadre to which the appellant was appointed. Even the appointments to Income Tax Officers, Class I Service were also made on temporary basis.

(3) In June, 1950, the Special Recruitment Board interviewed Officers including the appellant, who had been appointed to the Emergency Cadre of the Military Accounts Department and put them into three categories, namely.

(A)Those suitable for absorption in Class I of the Military Accounts Department and Indian Audit and Accounts Service;

(B)Those suitable for absorption in Class II posts in the Income Tax Department and defense Ministry; and

(C)Those unsuitable for permanent appointment in either Class I or Class II of the Central Services.

THE appellant was placed in category (b) and made to join as Income Tax Officer Class II.

(4) The appellant since then has been contending that the decision of the Board was unjust, arbitrary and erroneous on the grounds that-

(1)Officers of category (c) were allowed to continue in Class I in the Emergency Cadre of the Military Accounts Department and were later found fit for confirmation in Class I with benefit of retrospective seniority; and

(2)Officers who were placed for absorption in the Military Accounts Department by the Board were also allowed the benefit of a redetermination of their seniority on the basis of ranks obtained in the competitive examination. Thus the errors and injustice done by the Board in 1950-51 were corrected by the Government by the year 1957 by administrative decisions in respect of candidates except the appellant.

(5) Ultimately, the appellant succeeded in convincing the Government that injustice had been done to him alone while the other persons similarly situated or less favorably situated than the appellant, were given the benefit of eligibility to appointment in Class I of the Central Services as a result of the combined competitive examination of 1945. After consulting the Union Public Service Commission and getting their approval, the Government passed the impugned order.

(6) The reasons for the impugned order given in the affidavit of the Government, dated 25-10-1977, are as follows:-

"ULTIMATELY,the Government of India, in consultation with the U.P.S.C. decided to refix the seniority of respondent No. 6 (the appellant here) in the Class I Service of the Income Tax Department after taking into account the totality of the circumstances and the various factors. In doing so, the Government of India have only rectified a mistake by talcing a decision which is at par with the decisions of the Military Accounts Department (now known as defense Accounts Department) whereby some other persons who were in a similar or even worse situation as respondent No. 6 were given benefits by virtually nullifying the decisions taken in 1950 in relation to the said Officers and respondent No. 6."

After the passing of the impugned order, the Departmental Promotion Committee recommended the appellant for appointment as a Commissioner of Income Tax. Thereupon a writ petition was filed by 34 persons, who felt aggrieved by the new

seniority given to the appellant for getting the impugned order quashed. They also applied for stay of the operation of the impugned order. The stay was granted by the learned single Judge after considering the prima facie case made out in the writ petition, the irreparable injury that would be caused to the petitioners and the balance of convenience to be taken into account in granting or refusing the stay.

(7) We are of the view that all these three considerations operate in favor of the allowing the impugned order to stand and not granting the stay of its operation for the following reasons:-

1. Prima Facie Case

ON the undisputed facts, it cannot be denied that injustice was done to the appellant alone, while other persons who have qualified for appointment to a Class I post in the combined competitive examination of 1945 were given that benefit either immediately or later by 1957. No reason appeared to the Government and the U.P.S.C. and none appears from the order under appeal why the petitioner alone should have been denied the benefit. The following considerations advanced against the validity of the impugned order do not stand scrutiny :

(A) It is said that the seniority rules of 1973 do not contemplate the refixation of seniority of the appellant. Firstly, the injustice done to the appellant in 1945 had to be undone by the Government. The seniority rules do not preclude a review of an error and discriminatory treatment which had taken place in 1945. The facts of the case are unusual and the decision of the Government had to be taken only in respect of one candidate. The subsequently framed rules could not be expected to provide for the decision of such a single case. What is to be seen is that they do not prevent an order by the Government by which the petitioner was to be deemed to have been appointed in Class I not only in 1945 when he actually was placed in Class I, but also in 1950 when he was wrongly placed in Class II. The service rules cannot be used so technically as to prevent the Government from redressing a patent grievance when the Government is convinced that it should be so redressed

(B) The seniority list of Income Tax Officers Class I issued in 1974 is said to have been approved by the Supreme Court on 16-4-1974. The impugned order was attacked on the ground that it was not open to the Government to alter the said seniority list. While the general principles of determining seniority were laid down by the Supreme Court, the particular facts of the case of the appellant were never considered by it. It cannot be said, Therefore, that the impugned order, in any way, disturbs any of the principles of seniority laid down by the Supreme Court. On those very principles, it stands to reason that the appellant's seniority should have been refixed by the Government.

(C) The revised seniority list referred to above related to persons appointed to the grade of Income Tax Officers Class I through competitive examinations held from

1948 to 1970 and by promotion in 1957 and thereafter. But, the claim of the petitioner is based on the result of the competitive examination of 1945 and he could not, Therefore, have been considered at the time the seniority list was framed.

THE power of the Government to redress the injustice does not seem to have been challenged. In fact, the primary difference between the finality of a judicial decisions and the reviewability of an administrative action is clear. If the administration commits an error, it is always open to it to correct it in the interests of justice. Such action is not prevented by considerations which often prevent the review of a judicial decision on merits.

2.irreparable Injury

NO direct injury, much less an irreparable one could be shown to be caused to any of the persons filing the writ petition by the impugned order. The said order enabled the Government to appoint the appellant to the post of a Commissioner of Income Tax. Whether any of the persons filing the writ petition would be affected by it is doubtful. The promotion of the post of Income Tax Commissioner is by selection and on merit. The refixation of seniority of the appellant which placed him above some persons previously above him does not mean that by the mere gain in seniority the appellant was entitled to be appointed as a Commissioner of Income Tax. The appointment could be made only by selection. It is not known which and if so how many of the persons filing the writ petition would be selected for appointment to the post of a Commissioner of Income Tax. They could only urge that the appellant was made senior to them. They could not urge, however, that selection was made on the basis of seniority. Assuming that some of the persons filing the writ petition would also be selected as Commissioners of Income Tax and would be junior to the appellant because of the earlier promotion of the appellant based on the impugned order, it cannot be said that this would be the result of the impugned order. On the contrary, it would be the result of the eligibility of the appellant to be considered for selection. That eligibility was given to him sheerly by considerations of justice. The first principle in entertaining a writ petition and in granting relief is to redress injustice and to advance the cause of justice. The facts are such that injustice had been done to the appellant. The redressing of such injustice was not meant to harm the interests of others. At any rate, it can not be said to cause any injustice to the writ petitioners. The extraordinary powers of this court under Article 226 should not be exercised unless considerations of justice demanded (see *Shri Vashist Bhargava v. Income Tax Officer, Salary Circle* (1975) 1 Delhi 634 and the following decisions of the Supreme Court relied upon therein. namely, *A.M. Allison Vs. B.L. Sen*, , *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, , *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, . *D.N. Banerji Vs. P.R. Mukherjee and Others*, , *Sangram Singh Vs. Election Tribunal, Kotah*, *Bhurey Lal Baya*, , and *Durga Prashad Vs. Chief Controller of Imports and Exports*, .

3. Balance of Convenience

THE Government action may be primarily classified into two, namely (1) as affecting civil servants, and (2) as affecting others. The protection of the liberties of the individual by this court under Article 226 of the Constitution is mainly invoked in cases falling in class (2). The Constitutional protection given to civil servants has, however, to be taken into account. The Government action falling in class (1) may, Therefore, be sub-divided as follows :

(A) affecting a legal right of the civil servants ; and

(B) internal administration consisting of decisions on the particular facts relating to a particular civil servant.

THE facts of the present case do not show that a constitutional or legal right is infringed, but rather that in exercising the power of internal administration of civil services, the Government has taken an individual decision on the particular facts of one unusual case- It is primarily for the Government with the help of the Union Public Service Commission to deal with the facts of a particular case relating to a civil servant it is understood that the Union Public Service Commission took as much as three years in fully considering the case of the appellant and in advising the Government that his seniority should be refixed. When so much of consideration had been given by the appropriate authorities before the passing of the impugned order to the case of the appellant, ordinarily such a case would not qualify for this court suspending the operation of the impugned order. It is in relation to such internal administration of civil services by the Government that the following observations of Prof. Paul Apple by in *Morality and Administration in Democratic Government*. 81-82 (1952) are attracted :

" WITH the growth of knowledge, science, and public expectations, the principal development of government has been in the strictly executive field . . . The administrative search for morality is a search for appropriate ways to serve the popular will in action.....However unclear the distinction between the juridic and the executive functions and processes, it seems at least more illuminating and relevant now to search for it than to go on simply defining administration as the more specific formulation of the more general legislative formulations or to build general administrative thinking around the favorite fictions of legal distinctions, "quasi-legislative" and "quasi-judicial"."

ANOTHER well-known political scientist Chester Bernard has warned that the lofty intrusion of the judiciary into administration may chill the creative responsibility of the administrators. His much quoted observation is that "not to make decisions that others should make, is to preserve morals, to develop competence, to fix responsibility and to preserve authority". (*The functions of the Executive* 194) (1938).

(8) It is the general rule in writ petitions filed by civil servants that the impugned

administrative action of the Government is set aside if the writ petition succeeds. The balance of convenience is in favor of not suspending the operation of the Government order. For, the individual writ petitioner can always be given the appropriate relief if his writ . petition succeeds. The Government is a Government of law. It always implements the decisions of the courts giving such reliefs to the writ petitioners. But it is extremely unusual for this court to stop the iteration of a Government order merely because the writ petition seems to make out a prima facie case. There are various consideration against such a course. Since ordinarily it is the business of the Government and the Union Public Service Commission to go into the facts of a particular case of a civil servant, their examination of facts and decision to do justice in such a case is not ordinarily interfered with by this court. The issue of a stay against the Government order obstructs the functioning of the Government. Such obstructions should be avoided initially, unless it becomes inevitable when the writ petition is disposed of on merits. Rights of third parties also get prejudiced by premature stay suspending the operation of administrative action for which no compensation can be available or sufficient. It is, Therefore, only in an extraordinary case that stay is granted in a writ petition by the civil servant against the Government. For instance if the order of the Government is unjust or bona fide then consideration of justice may justify the grant of stay. In the present case, the impugned order is not said to be either unjust or bona fide. There is no reason, Therefore, for departing from the usual practice of not granting stay in such a case. It is because were were impressed by the justice of the case of the appellant and no extraordinary circumstances were present to justify the suspension of the operation of the order dated 22nd July, 1977, that we thought that the stay was operating unjustly against the appellant since the appellant has only a few years to serve and it would be unjust to delay his promotion which he has got after so many years of representation, we allowed the appeal by a brief order on 13th January, 1978 and set aside the stay. But to minimise any hardship to the writ petitioners, we have advanced the date of hearing of the writ petition by the learned single judge to 15th February, 1978.

(9) ABOVE are the reasons for the said order, which are being announced today as notified in the cause list.