
(2009) 03 SHI CK 0036
In the High Court Of Himachal Pradesh

Shri Kaushal Kumar

APPELLANT

Vs

H.R.T.C. and Others

RESPONDENT

Date of Decision : 19-03-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 2 ShimLC 10

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The petitioner was removed from service on 16.8.1982. He preferred an appeal against the penalty of removal. The Chairman of the respondent-Corporation on 31.8.1982 on reconsideration of the appeal modified the order and the penalty of stoppage of four increments with cumulative effect was imposed on 12.7.1984. He joined his duties on 16.7.1984. There was second case also against him. In this case also penalty of stoppage of three increments with cumulative effect was imposed on 5.7.1985. The respondents No. 3 to 6 were promoted to the post of superintendents Grade II vide communication dated 16.7.1991. The petitioner was not considered for promotion on the basis of Annexures-RA and RB respectively. The case of the respondents is that the case of the petitioner could not be considered for promotion on ad hoc basis due to imposition of penalties vide Annexures-RA and RB. The petitioner was not considered fit for his promotion owing to the penalties which remained operative till 31.12.1991. The case of the petitioner is that the penalties were made operative only upto 1.1.1991. The Departmental Promotion Committee in the present case was held. The private respondents were promoted vide communication dated 16.7.1991, The Court is of the opinion that the penalty was operative only up to 1.1.1991 and not 1.12.1991. The case of the petitioner was required to be considered for ad hoc promotion. A Division Bench of this Court in Dr. V.K. Bhargava v. State of H.P. and Ors. ILR (HS) (1985) has held that Articles 14 and 16 of the Constitution of India will also apply when the promotions are

made on ad hoc basis. Their Lordships have held as under:

It cannot be possibly disputed that even an ad hoc appointment to a post is an appointment to an office, howsoever tenuous its character may be. Such ad hoc appointment authorizes the appointee to occupy the post and to perform the functions and to discharge the duties and to draw the emoluments attached to the post. In case of ad hoc appointment to any post by way of promotion, there is also the conferment of a higher status or position. When such an appointment is made to any office under the State, Articles 14 and 16 will undoubtedly have an impact. Article 16, sub-Article (1) provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. It is settled law that Article 16 is only an incident of the application of the concept of equality enshrined in Article 14. Article 16, sub-Articles (1) and (2), really give effect to the equality before law guaranteed by Article 14 and to the provision of discrimination guaranteed by Article 15(1). These three provisions form part of the same constitutional code of guarantees and supplement each other and they give effect to the doctrine of equality in the matter of appointment and promotion. In other words, Article 16 guarantees that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office there under. (See; *The General Manager, Southern Railway Vs. Rangachari*, *State of Mysore and Another Vs. P. Narasing Rao*, and *C.A. Rajendran Vs. Union of India (UOI) and Others*, In deciding the scope and ambit of the fundamental right of equality of opportunity guaranteed by this Article, it is necessary to bear in mind that in construing the relevant Article a technical or pedantic approach must be avoided. Looked at from this angle, there is no reason to exclude the applicability of Article 16 in matters relating to ad hoc employment or appointment to any office under the State. Any arbitrariness, unfairness or inequality of treatment in the matter of ad hoc employment or appointment, including an appointment by way of ad hoc promotion, to any office under the State would, therefore, give rise to a legitimate challenge enforceable in writ jurisdiction on the ground of the breach of Article 16. If there are any policy decisions/executive instructions governing ad hoc appointments and there is any arbitrary or irrational departure therefrom on the part of the State, the challenge can be justifiably based on the ground that such act impinges upon the guarantee of equality of treatment enshrined in Article 16. If there is a statutory enactment regulating such appointments and there is a breach thereof, an additional ground of challenge based on the infringement of a legal right would also be available. This much on principle.

2. The petitioner had right to be considered for promotion even on ad hoc basis with his juniors. It has also been mentioned in the reply filed by the respondents that the case of the petitioner was not considered due to the contemplated departmental proceedings. This question is no more res-integra in view of the definitive law laid down by their Lordships" of the Hon"ble Supreme Court in case *Union of India Vs. K.V. Jankiraman*, etc. etc., . The law is that when a charge-

sheet is issued in departmental proceedings or charges are framed in the criminal case, in that eventuality, the case of the employee is required to be considered, however, the proceedings are required to be kept in a sealed cover. The petitioner could not be deprived of consideration for promotion only on the basis of contemplated departmental proceedings as has been done in this case. It is also not disputed that respondents No. 2 to 6 were junior to the petitioner in the seniority list of Assistants/Accountants.

3. Accordingly, the writ petition is allowed. The respondents are directed to consider the case of the petitioner for promotion on ad hoc basis to the post of Superintendent Grade-II with effect from the date his juniors were promoted with consequential benefits. No costs.