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**(1965) 04 CAL CK 0022**  
**In the Calcutta High Court**

Sunil Chandra Chaudhuri

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 09-04-1965

**Acts Referred:**

Constitution of India, 1950 — Article 311

**Citation :** (1965) 1 CALLT 186 : 69 CWN 901 : (1966) 1 LLJ 214

**Hon'ble Judges :** Bose, C.J;B.C. Mitra, J

**Bench :** Division Bench

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**Judgement**

B.C. Mitra, J.—This appeal is directed against a judgment and order of Sinha, J., dated 12 July 1960, whereby a rule nisi obtained by the appellant was discharged. This appeal arises out of a number of writ petitions by several sub-inspectors of excise, who after hiding officiating posts of inspectors of excise for different periods, had been reverted to their substantive rank of sub-inspectors. But in the several other appeals being F.M. s. Nos. 168 of 1961, 275 of 1960, 307 of 1961, 164 of 1961, 139 of 1962, 197 of 1960, and 219 of 1960, Sinha, J., had made the rule nisi obtained by the sub-inspectors of excise absolute. The State of West Bengal had preferred the said appeals. These appeals have been disposed of by the judgment delivered by my Lord the Chief Justice on 8 April 1965. In the writ petition out of which this appeal arises, however, Sinha, J., discharged the rule and the appeal has been preferred by the appellant who was a sub-inspector of excise promoted to hold the officiating post of inspector of excise. In the opinion of the trial Court the facts involved in the writ petition out of which this appeal arises were different from the facts in the other writ petitions mentioned above and therefore, while in the other writ petitions the rule nisi obtained by the sub-inspectors were made absolute, in the writ petition out of which this appeal arises it was discharged. The facts leading up to this appeal are as hereunder set out.

2. On 29 January 1947 the appellant was appointed a sub-inspector of excise, and he was confirmed in that post in August 1949. In October/November 1957

respondent 1 forwarded to the Public Service Commission, names of 92 sub-inspectors of excise including the name of the appellant, for the purposes of preparing a panel of officers in order of preference, fit for promotion to the rank of inspectors of excise. Out of these 92 officers, 25 were selected for interview and out of these 25 officers who were interviewed 10 were selected, including the appellant, as officers fit for promotion to the post of inspector of excise. The names of these ten persons were placed in a panel of officers found fit for promotion. In the panel thus prepared, the appellants position was ninth in order of merit and one Salil Behari Dutta was placed tenth in order of merit. This panel was prepared in December 1957. It appears that the first appointment of the appellant as officiating inspector was made by notification No. 728-Ex., dated 22 August 1958, for the period up to 31 August 1958. Thereafter this appointment was extended from time to time, firstly, from 1 November 1958 to 31 January 1959, secondly from 1 February 1959 to 31 March 1959, and finally from 1 April 1959 to 9 April 1959. The said Salil Behari Dutta who occupied the tenth position in the panel prepared in December 1957 was firstly appointed as officiating inspector till 31 January 1959, and this officiating appointment was later on extended to 31 March 1959.

3. By notification No. 267, dated 7 April 1959, the appellant along with nine others were reverted to their substantive post of sub-inspector of excise. It is alleged by the appellant in his petition, that by notification No. 268-Ex., dated 7 April 1959, ten new sub-inspectors of excise whose names were for the first time included in a revised panel prepared in 1959, and five of whom are junior to the appellant, have been appointed to act as inspectors of excise, on the basis of the said revised panel. It is further alleged that the appellant was not granted any interview by the Public Service Commission before revision of the panel in 1959, and no opportunity was given to him to show cause why his name should not be removed from the panel.

4. Sri R. Chaudhuri, learned Counsel for the appellant, contended that there was no substance in the respondents' contention that the appellant was reverted to his substantive post as the Public Service Commission removed his name from the panel prepared in 1959. He argued that if there was any substance in the contention of the respondents, the said Salil Behari Dutta could not have continued as officiating inspector, because his name also did not appear in the revised panel of 1959. It was argued that Salil Behari Dutta occupied one place lower than that of his client in the panel of ten persons prepared by the Public Service Commission in 1957. Further, Sri Chaudhuri submitted that the said Salil Behari Dutta's position in the Civil List was 34 and that of his client was 33. Therefore, his client was not only admittedly senior to Dutta, but he was also considered better than Dutta, in order of merit, by the Public Service Commission who placed his client higher than that of Dutta in the 1957 panel. Sri Chaudhuri contended that the panel played no part in the matter of promotion and reversion of sub-inspectors of excise. The continuance of Salil Behari Dutta in the post of officiating inspector of excise, in spite of his name not being in the

revised panel of 1959, it was argued, showed that promotion and reversion was done arbitrarily and not upon a consideration of the recommendations of the Public Service Commission. Sri Chaudhuri further contended that his client having once been selected by the Public Service Commission for inclusion in the panel, there was no occasion for a fresh consultation with the Public Service Commission and a second recommendation from it regarding his fitness and suitability to continue to hold the post of officiating inspector of excise. It was further argued that the reversion of the appellant to the rank of sub-inspector would not only affect his chance of promotion, pension and emoluments but would also affect his seniority as five of the ten sub-inspectors of excise had been newly promoted to the rank of inspector. It was argued that the order of reversion dated 7 April 1959 issued by the Commissioner of Excise was an order reducing the appellant in rank in contravention of Article 311(2) of the Constitution.

5. Learned advocate for respondent 1 contended that it was not a fact that Salil Behari Dutta was not in the panel of 1959. He referred to the 1959 panel and submitted that Salil Behari Dutta's name was included in the panel. There is, however, nothing stated about this inclusion of Salil Behari Dutta's name in the 1959 panel in the affidavit-in-opposition affirmed by A.K. Kusari on 5 May 1960. It was argued that Dutta was in fact selected by the Public Service Commission, for inclusion in the 1959 panel, and that was why he had been allowed to continue in the post of officiating inspector of excise.

6. Sri Chaudhuri, however, sought to repel this contention of the respondent by contending that his client having been included in the 1957 panel, there was no occasion for preparing a fresh panel, until the 1957 panel was exhausted by promotion of all the persons included therein. He argued that it was the settled practice of the Government not to make any promotions or officiating appointments from a new or fresh panel, until the previous panel was exhausted by promotions or officiating appointments. In support of this contention Sri Chaudhuri referred to the letter, dated 31 August 1957, from G.D. Goswami to the Secretary, Public Service Commission, which is annexure S to the affidavit-in-opposition. In this letter it was stated that officiating vacancies were filled up from the 1951 panel first and then from the 1953 panel, after the 1951 panel was exhausted. Sri Chaudhuri contended that no officiating appointments were made from the fresh panel of 1953 until the previous panel of 1951 was exhausted. The appellant was in the 1957 panel. He held the officiating posts for the different periods, hereinbefore mentioned. Sri Chaudhuri submitted that even assuming that a panel was properly prepared in 1959, no appointment from that panel should have been made until the 1957 panel was exhausted by promoting all the persons in the 1957 panel or by appointing them to officiating posts. There is a good deal of force in this contention of Sri Chaudhuri. There can hardly be any doubt that at least with regard to the 1951 and 1953 panels, no appointments were made from the 1953 panel until all the persons in the 1951 panel were either promoted or appointed to officiating posts.

7. Sri Chaudhuri next contended that ten officers were selected after interview for the 1957 panel. Out of these ten persons, nine were either appointed to act in permanent vacancies or were appointed in officiating posts, and the appellant was the only employee who was left out, although he was included in the panel upon selection by the Public Service Commission. Sri Chaudhuri contended that the exclusion of his client's name from the 1959 panel and the order for his reversion to the substantive post of sub-inspector of excise, had affected the seniority of the appellant and non-compliance with Article 311(2) makes the order of reversion bad. I shall revert to this question later in this judgment.

8. It was contended on behalf of the respondents that the appointment of the appellant to the officiating post of inspector was purely an interim arrangement, temporarily made to fill up vacancies, which were to be filled up finally after disposal of certain civil rules of this Court, issued at the instance of several other sub-inspectors. It was further contended that the appellant's appointment was purely temporary for fixed terms, and was of a provisional nature, and that the panel prepared in 1957 was also provisional and no permanent appointment could be made on the basis of the said panel.

9. I should at once point out, however, that the contentions of the respondents are Inconsistent. It is alleged that the appellant was not given a further extension in the officiating post as his name was not in the panel prepared in 1959. It is at the same time contended that the appellant's appointment was provisional and temporary for fixed terms and therefore, on expiry of the term he was reverted. Inconsistency in these two contentions is patent. If the appellant was reverted because his name was not included in the revised panel of 1959, his reversion on the other ground, namely, that the appointment was temporary and provisional only for a fixed term and he was liable to be reverted automatically on the expiry of the term can have no justification.

10. It was next contended by Sri Chaudhuri that in the notification No. 268-Ex., dated 7 April 1959, by which ten sub-inspectors were appointed to officiate as inspectors of excise temporarily, there was condition attached, namely, that the continuance of the said officers as officiating inspectors of excise would depend on the periodical review of the panel, to be carried out by the Public Service Commission. Sri Chaudhuri argued that it might be contended that, because of this condition the ten officers who were appointed by the said notification were liable to be reverted, if their names were not included in the revised panel upon the periodical review mentioned in the notification. But Sri Chaudhuri argued, in notification No. 728-Ex. dated 22 August 1958, by which his client was appointed to the post of officiating inspector of excise, there was no such condition attached, nor was any such condition attached to the subsequent orders dated 2 December 1958, 19 February 1959 and 26 October 1959, by which the appointment of his client to the officiating post was extended from time to time. That being so, Sri Chaudhuri argued a review and revision of the 1957 panel in which his client's name was included, could not be held at all, as the order of

appointment and the several orders of extension of service to the officiating post did not impose any condition for such review or revision. But although no condition for review and revision of the panel by the Public Service Commission was included in the said orders, it has to be noticed, however, that the appointment of the appellant and the subsequent extensions were for a specified period and therefore, the question of review and revision as in the case of an appointment made " until further orders " did not arise.

11. The law regarding reversion of an officer from an officiating higher post to his substantive post, has been laid down by the Supreme Court in several decisions, namely:

- (1) Parshotam Lal Dhingra Vs. Union of India (UOI), .
- (2) Shri Madhav Laxman Vaikunthe Vs. The State of Mysore, .
- (3) P.C. Wadhwa Vs. Union of India (UOI) and Another, ,
- (4) The State of Bombay Vs. F.A. Abraham, .
- (5) The High Court, Calcutta Vs. Amal Kumar Roy, .
- (6) Ranendra Chandra Banerjee Vs. Union of India (UOI), .
- (7) A.N. D'silva Vs. Union of India (UOI), ,
- (8) U.R. Bhatt v. Union of India 1962 I L.L.J. 656.
- (9) Sukhbans Singh Vs. State of Punjab,

12. The law on the question as stated by the Supreme Court, and so far as it applies to this case, is that if as a result of an order of reversion the holder of an officiating post suffers a loss of seniority and postponement of future chances of promotion to the senior scale, such a reversion would be by way of punishment, and if no opportunity of showing cause against the action proposed to be taken was given to the employee concerned, the order of reversion would be bad under Article 311(2) of the Constitution. Applying the law as laid down by the Supreme Court to the appeal now before us, there is no doubt that the appellant suffered not only the loss of the benefit of a higher pay, but he has also suffered loss of seniority. Officers junior to him, who were placed lower in the panel and also in the civil list, have been appointed officiating inspectors of excise and therefore, the appellant has suffered a loss of seniority in his substantive rank of sub-inspector of excise. The reversion order, therefore, has operated upon the appellant as a punishment in so far as he has suffered a loss of seniority.

13. The trial Court held that the reversion order of the appellant on its merits would have been bad for certain distinguishing features, that is to say, features which distinguished this case from the case of the other sub-inspectors who were reverted to their substantive posts and in whose case the trial Court made the rules absolute in Civil Revision Cases Nos. 1076, 1017 and 1111 of 1959. The distinguishing feature, according to the trial Court, was that in the case of the

appellant the Public Service Commission was required by the Government of West Bengal to make a panel only for the interregnum, that is to say, until certain other cases in the High Court were decided. The trial Court came to the conclusion that the 1957 panel in which the appellant's name was included was expressly made for a temporary period to serve a temporary purpose, and after the civil rules pending in this Court were disposed of, the period for which the appellant was appointed expired, further panels were prepared in which the appellant's name was not included and therefore he was reverted to the substantive post of sub-inspector. It was also held that the appellant could succeed only if he was able to show that he had the right to be in the panel and the striking off of his name from the panel itself was temporary and had ceased to exist, no further right of the appellant could survive. These features were held by the trial Court to be distinguishing" features which justified the discharge of the rule nisi obtained by the appellant.

14. I have earlier in this judgment discussed the practice followed by the Government of West Bengal regarding the 1951 and 1953 panels. It is plain from the contents of the letter dated 31 August 1957 from the Deputy Secretary to the Government of West Bengal to the Secretary, Public Service Commission, that appointment was not made from fresh panel until a previous panel was exhausted. That being the practice, and I have no doubt it was, as it should be, the appellant had the right to continue in the 1957 panel in which he was included by the Public Service Commission, who had selected him from among 25 candidates who were interviewed. There is nothing on the records to show that anything had happened which justified the removal of the appellant's name from the 1957 panel or to show that the subsequent appointment of the other officers from the 1959 panel before the 1957 panel was exhausted, was justified.

15. Turning now to the other question that the 1957 panel was a temporary panel and since this panel had ceased to exist, the appellant had no right to continue in the post of officiating inspector of excise, it is necessary to go into the question, if the pendency of the civil rules in the High Court created such a situation as to make the 1957 panel a temporary one, so that the panel became extinct immediately after disposal of civil rules by this Court. In these civil rules, some other sub-inspectors had challenged several orders of reversion, had obtained rule nisi and also an injunction restraining effect being given to the orders of reversion. It was contended by the learned advocate for the respondents that it was because of the orders of injunction, the effect of which was that the said other sub-inspectors continued in their officiating posts, that the creation of the temporary 1957 panel became necessary. I shall now proceed to see how far this contention is justified.

16. This Court could, while disposing of the civil rules, either make the same absolute or discharge them. If the rules were made absolute, that is to say, the order of reversion were held to be bad, the petitioners who were holding officiating posts would have continued to hold them, just the same as they did,

when the Government requested the Public Service Commission to prepare the 1957 panel, as there was necessity for filling up officiating vacancies. This situation regarding vacancy in officiating posts would have continued if the petitioners in the civil rules succeeded, as they would continue to hold the officiating posts to which they were appointed. If, on the other hand, these civil rules were discharged, the consequence would have been that the orders of reversion would be valid and therefore there would have been many more vacancies to be filled up either by promoting sub-inspectors to substantive vacancies or by appointing them to fill up officiating posts. The necessity for appointment to the officiating posts would have been all the greater, if the rules were discharged. It will thus be seen that in either case the pendency of the rules did not create such a situation as to make a temporary panel which would automatically cease to exist on the disposal of the said civil rules. In our view, therefore, there was no ground for treating the 1957 panel as a temporary panel which would cease to exist immediately upon disposal of the civil rules pending in this Court. The panel that was created in 1957 was a list of sub-inspectors found by the Public Service Commission to be fit for promotion to the posts of inspectors. While making the recommendation, the Public Service Commission stated that the recommendation was made on a purely temporary basis and the list that was drawn up was provisional. But it cannot be overlooked that while the appellant's name remained on the 1957 panel vacancies did occur by reason of which the notification No. 268-Ex., dated 7 April 1969, was issued appointing ten sub-inspectors of excise to officiate as inspectors of excise. That being the position, the 1957 panel cannot be regarded as a temporary panel which became extinct on the disposal of the civil rules by the High Court.

17. For the reasons mentioned above, this appeal is allowed. The judgment and order of the trial Court, dated 12 July 1960, are set aside and the rule nisi issued on 2 March 1960 is made absolute. Let a writ of certiorari be issued to quash notification, 267-Ex., dated 7 April 1959, and also the memorandum issued by the Commissioner of Excise, West Bengals posting the appellant as sub-inspector of excise, Calcutta, mentioned in Para. 10 of the petition. Let a writ of mandamus be issued directing the respondents to withdraw and cancel the said notification and the said memorandum and to forbear from giving effect to the same. Each party to pay its own costs.

Bose, C.J.

18. I agree.