
(1965) 09 KL CK 0005
In the High Court Of Kerala

Vasudeva Menon (M.K.)

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-09-1965

Acts Referred:

Constitution of India, 1950 — Article 16, 311

Citation : (1966) 10 KLJ 739 : (1966) 1 LLJ 630

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Judgement

P. Govindan Nair, J.—The petitioner while he was serving in the substantive post of a sub-inspector in the Police Department of the State was promoted on 26 October 1963 as a circle inspector. By order, Ex. P. 2, dated 26 January 1964, the petitioner has been reverted to the post of a sub-inspector. It is this order, Ex. P. 2, that is challenged in this writ application.

2. Counsel on behalf of the petitioner has contended that the order, Ex. P. 2, which is said to have been passed as a result of a selection made by the promotion committee constituted for selecting from the cadre of sub-inspectors those who are to be promoted as circle inspectors, is really against the terms of the rules that are applicable, namely, rules dated 17 May 1963 relating to the Public Services-Police Department- Appointments by promotion and transfer. He also contended that there has been violation of Article 311 of the Constitution of India in that the petitioner has really been reduced in rank by way of punishment without affording him a reasonable opportunity of showing cause guaranteed by the article.

3. On behalf of the State, it is urged that there has been no infringement of the rules, that Article 311 is not attracted and that the order Ex. P. 2, was passed only because the promotion committee did not choose or select the petitioner as one among the sub-inspectors entitled to be promoted to the cadre of circle inspectors.

4. It is admitted that the petitioner had no right to the post of circle inspector. In other words, his substantive rank at the time of Ex. P. 2 order was not that of a circle inspector and he had no lien to that post. It is also admitted that the post of circle inspector is a selection post.

5. Rules 2, 3(iv)(c) and 5 of the rules referred to have been particularly relied on by counsel in support of the first contention that there has been violation of the rules. Rule 2 provides:

In respect of promotion to the rank of head constables and above, select list will be prepared and maintained for each category in accordance with the procedure outlined below.

Rule 3 indicates as to who all should be included in the select list and Rule 3(iv) (c) enacts:

Lists of officers considered for inclusion in the "select" list shall be prepared in the order of their seniority in the form given in appendix B to these rules, indicating in the case of each officer whether he has been recommended or not and, in the latter case, the reasons therefor. The lists shall be accompanied by the service books (where they are maintained by the recommending officer) and the personal files of the officers concerned. Separate lists shall be prepared for officers of each category.

Rule 5(ii) provides:

After due consideration of the recommendations received by the board for inclusion of officers in the "select" list with reference to the records of the persons recommended for inclusion in the list and of those proposed to be superseded and the reasons furnished in support of the recommendations and the supersessions, the board shall prepare the "select" list in the form given in appendix C. The officers included in the "select" list shall be arranged in the order of their seniority.

6. The petitioner's objection is that the provisions in the rules which have been extracted have not been complied with in the matter of the selection said to have been made on the basis of which Ex. P. 2 was passed. Apart from this assertion, there is nothing to indicate that these rules have not been complied with. In Para. 8 of the counter-affidavit filed on behalf of the State it is stated:

According to Ex. P. 1 dated 12 February 1963, if the controlling authority considers that an officer is unfit to receive a promotion in his turn he should record a definite opinion to that effect stating his reasons therefor. A complete copy of this has also to be sent to the officer concerned. But, in the personal file of the petitioner, there is no such adverse remark. It is further submitted that Ex. P. 1 has application only to cases of appointment by promotion on the basis of seniority and subject to fitness. As stated already, appointment to the post of circle inspectors of police from among sub-inspectors of police is by transfer from a select list prepared by the departmental promotion committee by selection on

the basis of merit and ability. In the matter of appointment by selection, better persons are selected in preference to persons of lesser merit and ability.

In Para. 12 it is further stated:

The departmental promotion committee which met on 23 December 1963, 2 January 1964 and 9 January 1964 did not recommend the inclusion of the petitioner in the select list of sub-inspectors of police fit for promotion as circle inspector.

7. In the light of the above, it is clear that it is not on the basis of the adverse remarks made against the petitioner in the confidential records or on the basis of any recommendations made by the officer who should prepare a list of the candidates who should be considered for promotion by the departmental promotion committee, that the petitioner has not been selected. From Para. 12 of the counter-affidavit It is also clear that the petitioner was not selected for being promoted as circle inspector because the departmental promotion committee did not consider him fit for promotion. It is not enjoined by any rules that the departmental promotion committee should record its reasons. In the absence of any such rules, I do not think that this Court is entitled to insist that reasons should be recorded by the departmental promotion committee. Nor can this Court insist that the reasons must be such as would satisfy this Court. After all the departmental promotion committee consists of senior officers; the Chairman of the Kerala Public Service Commission, a Secretary to Government and the Inspector-General of Police. It is not incorrect to entrust such high officers with the duty to determine which among a set of candidates satisfy the requirements for being promoted to a " selection post." It is inevitable that the implementation of the equal opportunity guaranteed by Article 16 of the Constitution must at some stage be left to the honesty, integrity, impartiality and sense of fairness of the officers of Government. I do not think that this Court is entitled to apply its mind to the question as to who should be selected or to the question whether the particular selection made is justified or not. This, as I see it, must certainly be left to the officers and the Government and in the absence of any whimsical, arbitrary or mala fide exercise of the power this Court has no right to interfere. I am therefore unable to accept the contention of counsel that there has been violation of the rules to which reference has been made or that the selection made is not a proper one.

8. Even so it is urged that this is a case where the provisions of Article 311 have been attracted. It is unnecessary to read this article as it has been the subject-matter of Several decisions and its scope and ambit have been clearly defined by the Supreme Court. This article can only apply to cases where there has been an imposition of penalty or punishment. Three things are mentioned in Article 311, namely, dismissal, removal or reduction in rank. According to counsel for the petitioner, there has been punishment imposed on the petitioner by reduction in rank. It is said that the petitioner has been punished in that the petitioner has lost his seniority and his future chances of promotion. Even if the petitioner wa3

not entitled to the post of circle inspector, it is said that the reduction from the post of circle inspector involved the loss of seniority and future chances of promotion. This can and must spell out the imposition of punishment by reduction in rank. It is therefore urged that I must hold that Article 311 is attracted. In support of this contention reliance is placed on the well-known case in *Parshotam Lal Dhingra v. Union of India* 1958-I L.L.J. 644. The passage which has been referred is the following:

A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating; higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied or under the rules, the right to reduce him to a lower post, does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty.

The first of the contingencies referred to by the Chief Justice cannot apply to this case since the petitioner admittedly did not have a right to the rank of circle inspector. However, it is urged that by reducing the petitioner from the post of circle inspector to that of a sub-inspector he has certainly lost his seniority in the substantive rank and his future chances of promotion have been affected. It is so contended on the basis that two of his juniors, who at the time of the alleged selection had been working as circle inspectors provisionally promoted to the cadre like the petitioner after the petitioner was so promoted, were allowed to continue in the cadre of circle inspector whereas the petitioner had to come down to the substantive rank of sub-inspector. I do not understand the judgment in *Dhingra* case 1958-I L.L.J. 544 (*vide supra*) to mean that in every case where there has been a loss of seniority or loss of future chances of promotion, this Court must inevitably come to the conclusion that the reduction in rank has been by way of penalty. If such is the conclusion, it will not be possible in any case to make a selection from a group of employees if any of those not selected happened to be working in the higher cadre due to the exigency of service at the time of selection and had to be reverted because he was not selected. All that the learned Judge said is that it

does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment.

This means that in certain circumstances an order reducing to a lower rank may amount to a punishment even where the person reverted has no right to the post. I am unable to find anything in the judgment in *Wadhwa (P.C.) v. Union of India* and Anr. 1964-I L.L.J. 395 which is against what had been stated above. It was ruled therein:

We have therefore come to the conclusion that the first contention urged on behalf of the appellant that he has a right to go automatically into the senior scale is not correct and cannot be upheld.

9. The Supreme Court came to the conclusion from the entries on the personal file of the employee concerned that the employee was really reverted by way of punishment and the contention of the employee (appellant) before the Supreme Court that in all the circumstances the order of reversion was by way of punishment, was accepted by the Court. Having done so, the judgment proceeded to say:

It should be made clear however that when a person is reverted to his substantive rank, the question of penal consequences in the matter of forfeiture of pay or loss of seniority must be considered in the context of his substantive rank and not with reference to his officiating rank from which he is reverted, for every reversion must necessarily mean that the pay will be reduced to the pay of the substantive rank. In the case before us the appellant has not merely suffered a loss of pay which was inevitable on reduction in rank, but he has also Buffered loss of seniority as also postponement of future chances of promotion to the senior scale. A matter of this kind has to be looked at from the point of substance rather than of form. It is indeed true, as was pointed out in *Parshotam Lal Dhingra* case 1958-I L.L.J. 544 (vide supra), that the motive operating on the mind of the Government may be irrelevant; but it must also be remembered that in a case where Government has by contract or under the rules the right to reduce an officer in rank, Government may nevertheless choose to punish the officer by such reduction. Therefore, what is to be considered in a case of this nature is the effect of all the relevant factors present therein. If on a consideration of these factors the conclusion is that the reduction is by way of punishment involving penal consequences to officer, even though Government has a right to pass the order of reduction, the provisions of Article 311 of the Constitution are attracted and the officer must be given a reasonable opportunity of showing cause against the action proposed to be taken against him.

10. Perhaps the process of reasoning has been reversed in the latter case by the Supreme Court, for as I understand the passage quoted above, what has been insisted upon is to find out from all the materials available, whether what has been done is really the imposition of a punishment and whether such action as has been taken has penal consequence. If both these conditions are satisfied, the

Court can come to the conclusion that the provisions of Article 311 are attracted.

11. I am not able to conclude from these decisions that in every case where an action had adversely affected an employee in the matter of seniority in his substantive rank and had further affected his future chances of promotion, it must be held that there has been an imposition of punishment. I am therefore unable to accept the contention of counsel on behalf of the petitioner that in this case there has been any violation of Article 311 of the Constitution.

12. I dismiss this petition, but make no order as to costs.