
(1980) 02 RAJ CK 0044
In the Rajasthan High Court
Case No : Civil Writ Petition No. 305 of 1974

Yashwant Kumar	Vs	APPELLANT
The State of Rajasthan		RESPONDENT

Date of Decision : 25-02-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 309

Citation : (1980) WLN 114

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agrawal, J.—In this writ petition filed under Articles 226 & 226 of the Constitution of India, the petitioner Shri (sic)Yashwant Kumar, has challenged the validity of the order dated October 14, 1974, passed by the Excise Commissioner, Rajasthan, whereby the petitioner had been reverted from the post of Excise Inspector, Grade II to the post of Lower Division Clerk.

2. The petitioner was initially appointed as a Lower Division Clerk In the Department of Excise of the Government of Rajasthan on February 21, 1956 By order dated March 1, 1968, he was promoted to the post of Prosecuting Inspector (Excise) for a period of three months He continued to hold the said post till January 3, 1972, when by order dated January 1, 1972 he was transferred to the post of Excise Inspector, Jahajpur. The petitioner was thereafter posted at various places either as Prosecuting Inspector (Excise) or as Excise Inspector. On June 6, 1974, the Rajasthan Excise Subordinate Service (General Branch) Rules 1974 (hereinafter referred to as" the Rules,), made by the Governor of Rajasthan in exercise of the powers conferred on him under the proviso to Article 309 of the Constitution, were published in the Gazette. The Rules provide for regulating the recruitment and conditions of service of persons appointed to the Rajasthan Excise Subordinate Service (General Branch), (hereinafter referred to as" the Service"). The Service included the posts of Inspector of

Excise Grade I, Inspector of Excise Grade II and Assistant Public Prosecutor of Excise. Rule 6 provides for recruitment to the Service and in clause (iii) of the first proviso to Rule 6, a provision was made with regard to the absorption in the Service of persons who were appointed to the posts included in the Schedule in ad hoc/ officiating/temporary basis before January 1, 1972 and who were working as such on the date the Rules came into force, being screened by a Committee referred to in Rule 24 for adjudging their (sic)suitability on the posts held by them. In accordance with the Rules, a Screening Committee was constituted. The petitioner was however, not selected by the Screening Committee and on the basis of the recommendations of the Screening Committee, the order dated October 14, 1974, was passed whereby the petitioner was reverted from the post of Excise Inspector, Gr. II to the post of Lower Division (sic) Clerk. Being aggrieved by the aforesaid order, the petitioner has filed this writ petition.

3. Shri M. Mridul, the learned Counsel for the petitioner, has urged the following contentions in support of the writ petition:

(1) While adjudging the suitability of the petitioner for absorption in the Service, it was incumbent upon Screening Committee constituted under the Rules to afford a personal hearing to the petitioner and the Screening Committee arrived at its decision with regard to the unsuitability of the petitioner without affording such an opportunity to the petitioner.

(2) The recommendation of the Selection Committee with regard to the unsuitability of the petitioner for being appointed to the Service are (sic) violative of Articles 14 and 16 of the Constitution inasmuch as persons less meritorious than the petitioner and whose Service Record was much inferior than that of the petitioner have been adjudged as suitable while the petitioner has been found unsuitable.

(3) The Screening Committee has found the petitioner unsuitable for appointment to the Service on the basis of the entries in the Annual Confidential Reports of the petitioner and said entries were made mala fide,

(4) Respondents No. 4 to 9 who have been adjudged as suitable for absorption by the Screening Committee were not eligible for being considered under Rule 6 of the Rules in as much as they did not possess the requisite qualifications for being considered for appointment to the Service.

4. In support of his first contention that it was incumbent upon the Screening Committee to have afforded to the petitioner personal hearing before arriving at its decision with regard to the unsuitability of the petitioner, Shri Mridul has submitted that the decision of the Screening Committee with regard to suitability of a person who was holding a post included in the Schedule on the date of commencement of the Rules vitally (sic) affects the, rights of the said person in as much as the decision of the Committee adjudging such a person as unsuitable for absorption in the Service would result in his being completely barred from future promotion to the higher posts included in the Service and in same cases it

may also lead to the termination of his services. The submission of Shri (sic)Mridul is that a decision which has such far reaching consequences, cannot be arrived at without affording to the affected Government Servant an opportunity of a personal hearing at the stage when his suitability for being absorbed is being considered by the committee. In support of his aforesaid submission. Shri Mridul has placed reliance on the decision of the Supreme Court in Mohd. Rashid Ahmad Vs. State of U.P. and Another,

5. Clause (iii) of the first Proviso to Rule 6 of the Rules which deals with absorption of persons who were working on the posts included in the Schedule to the Rules on ad hoc/officiating/temporary basis since before January 1, 1972, reads as under:

(iii) The persons who were appointed to the posts included in the Schedule in ad hoc/officiating/temporary basis before 1-1-1972 and were working as such on the date these rules come into force shall be screened and recommended by a Committee referred to in Rule 24 for (sic)adjudging their suitability on the posts held provided that they possess the academic qualifications prescribed in these rules either for direct recruitment or promotion of the prescribed qualifications on the basis of which the (sic)persons were selected for ad hoc/officiating/temporary appointment.

The relevant provisions of Rule 24 with regard to the Committee referred to in Clause (iii) of the first proviso to Rule 6, are as under:

24(3)-A Committee consisting of the Commissioner as Chairman, the Deputy Secretary to the Government in the Finance (Excise Department, Deputy Secretary to the Government in the Department of Personnel and Deputy Commissioner, Excise Department nominated by the Commissioner who shall also be Member Secretary, shall consider the cases of all persons included in the list referred to in sub-rule (1) interviewing such of them as it may deem necessary and shall prepare lists containing names of suitable candidates to be promoted on the basis of seniority cum merit and merits respectively upto one-and-a-half times the number of posts to be filled in on the respective basis.

6. From a perusal of clause (iii) of the first proviso to Rule 6 and Rule 24(3), I find that the Rules do not prescribe the procedure which has to be followed by the Committee in the matter of adjudging the suitability of persons for appointment to the Service. The question which arises for consideration is whether the Committee can arrive at its decision with regard to the suitability of a person for appointment to the Service on the basis of the record of service alone, as contended by the learned Deputy Government Advocate, or the Committee has further to afford a personal hearing to the person concerned before arriving at a decision with regard to his suitability or otherwise for appointment as contended by Shri Mridul.

7. A similar question arose before the Supreme Court in Mobammed Rashid Ahmed's case (supra) where the Supreme Court was dealing with a case relating

to absorption of the employees of the Municipal Councils in the Centralised Service constituted by the Government of Uttar Pradesh Section 112A of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 which provided for Centralisation of services contained a provision for absorption of officers and servants serving on the posts included in the Centralised Service as well as officers and servants performing the duties and functions of those posts if they were found suitable. The State Government had issued certain circulars laying down the procedure to be followed for absorption of officers and servants. Under the said circulars the Divisional Committees were constituted for making necessary recommendations to the State Government with regard to (sic) suitability of the officers and servants for absorption in the Centralised Service after giving them an opportunity of personal interview. The Supreme Court, while dealing with the nature of the functions entrusted to the State Government in the matter of adjudging the suitability of the officers and servants, for absorption in the centralised service, has observed:

The very nature of the functions entrusted to the State Government under rule 6(2)(iii) of the U.P. Palika (Centralised) Services Rules, 1966 for purposes of final absorption u/s 112 A of the Adhiniyam, implies a duty to act in a quasi judicial manner. It cannot be denied that an officer or servant provisionally absorbed u/s 577 (e) or temporarily appointed u/s 577(e), had the right to be considered for purposes of final absorption.

Such officers or servants, (sic) particularly those in permanent employment who had put in 20 to 25 years of service in the erstwhile Municipal Boards or Development Boards were vitally affected in the matter of final absorption.

By Section 112-A of the Act, the Legislature created a machinery for determining the suitability or otherwise of such officers or servants for absorption in the newly created Centralised Services. The entrustment of this work to the State Government u/s 112 A, imposed a corresponding duty or obligation on the Government to hear the officers and servants concerned. In view of this, it is rightly urged that the impugned orders, unless they conform to the rules of natural justice, were liable to be struck down as invalid.

The Supreme Court has further observed:

The whole purpose of the (sic) personal interview was that when it was proposed to declare such an official unsuitable for absorption, the Committee had to afford him an opportunity to appear before it and clear off his position.

8. In said case, the Supreme Court found that in the case of Mohd. Rashid, Ahmed, no opportunity of a hearing had been afforded to Mohd. Rashid Ahmed by the Minister for Local Self Government before passing the order terminating his services and the Supreme Court held that the order terminating the services of Mohd Rashid Ahmed suffered from a serious legal infirmity.

9. From the aforesaid decision of the Supreme Court, in Mohd. Rashid Ahmed v.

State of U.P. (supra) it follows that the determination of suitability of a Government servant for the purpose of absorption in Service implies a duty to act in a judicial manner and for a proper and effective discharge of the said duty, it is necessary that the authority which has been entrusted with the said duty must afford to the employee concerned an opportunity to appear before it so that it may clear off the position with regard to any adverse material existing against him in the service record.

10. Applying the said principles to the facts of the present case, it must be held that the committee referred to in Sub-rule (3) of Rule 24 which was required to screen the persons who were appointed to the posts included the Schedule to the Rules on adhoc/officiating/temporary basis before January 1, 1972 and who were working as such on the date the Rules came into force and to adjudge their suitability for appointment to the Service should have afforded to the persons who were sought to be selected for appointment, an opportunity to appeal before it and clear up the position with regard to the adverse entries existing against them in the service record. It is not disputed that in the present case, the Committee which considered the case of the petitioners did not afford such an opportunity to the petitioner and has made the recommendation adjudging the suitability of the petitioner entirely on the basis of the service record.

11. It appears that by order dated June 28, 1972, the petitioner was censured on the view that 17 liquor shops in the area of the petitioner when he was posted as Excise Inspector, Jahajpur, could not be auctioned in the year 1972-73 and the explanation which has been offered by the petitioner was found to be unsatisfactory. An adverse entry in the confidential roll of the petitioner for the year 1972-73 was also communicated to him by order dated November 14 1973 wherein it was observed that while he was posted as Excise Inspector at Tahajpur, he did not make any effort for the grant of licences for the shops and on account of lesser number of offences involving contraventions of the law being registered, the shops in the year 1972-73 could not be licenced and that while he was posted as Inspector at Nasirabad, the (sic)licenced were not satisfied with him and for that reason the shop could not be licensed. The case of the petitioner is that if he had been afforded an opportunity of personal hearing by the Committee, he would have pointed out that the aforesaid adverse remarks contained in the confidential roll of the petitioner for the year 1972-73 were unfounded and he would have invited the attention of the Committee to the letters dated 4-2-1972, 15-3-1972, 17-4-1972 21-5-19 72 and 11-6-72 written by him to the Assistant Excise Officer, Bhilwara for sending a raid party during the period the petitioner was posted as Excise Inspector at Jahajpur. The petitioner has also submitted that if an opportunity of personal hearing had been provided to him, he would have placed before the Committee the various orders passed by the Government sanctioning grants to the petitioner in appreciation of his Services. In my view there is considerable force in the aforesaid contention urged on behalf of the petitioner.

12. Taking into consideration the facts and circumstances of the case, I am of the opinion that it was incumbent upon the Committee to have afforded to the petitioner an opportunity to appear before it and clear up the position regarding the adverse material contained in his service record which was being relied upon by the Committee for the purpose of arriving at its decision with regard to the suitability of the petitioner for appointment to the Service. If such an opportunity had been afforded to the petitioner, he would have been able to explain the said adverse material contained in his service record and the denial of such an opportunity (sic) vitiates the recommendation of the Committee with regard to the suitability of the petitioner for appointment to the Service. The order dated October 14, 1974 whereby the petitioner has been reverted from the post of Excise Inspector Gr. II to the post of Lower Division Clerk is based completely on the recommendations of the Screening Committee which was constituted under clause (iii) of the First proviso to rule 6 of the Rules. V. the recommendations of the Screening Committee with regard to the suitability of the petitioner for appointment to the service have been held to be violative of the principles of natural justice, the order dated October 14, 1974 which is based on the said recommendations cannot also be sustained and must be quashed. As in my view the impugned order dated October 14, 1972 is liable to be quashed on the basis of the first contention urged by Shri Mridul, I do not consider it necessary to deal with the other contentions urged by him.

13. In the result, the writ petition is allowed and the order dated October 14, 1974 with regard to the reversion of the petitioner from the post of Excise Inspector Gr. II to the post of a Lower Division Clerk is quashed. It is directed that the Screening Committee should be reconstituted in accordance with the provisions of the Rules for the purpose of adjudging the suitability of the petitioner for appointment to the Service and the said Screening Committee will adjudge the suitability of the petitioner for appointment to the Service after affording an (sic) opportunity to the petitioner to appear before it and to explain the adverse material contained against him in the service record. There will be order as to costs in this writ petition.