Col. A.S. Sangwan vs Union Of India (Uoi) And Ors. on 26 March, 1980

Equivalent citations: AIR1981SC1545, 1981LABLC831, 1980SUPP(1)SCC559, 1980(12)UJ519(SC), AIR 1981 SUPREME COURT 1545, 1981 LAB. I. C. 831, (1981) 2 LABLJ 34, 1980 SCC (SUPP) 559, 1980 UJ (SC) 519, 1981 SCC (L&S) 378, (1981) 2 LAB LN 34, (1980) 2 SERVLR 1

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Bench: O. Chinnappa Reddy, V.R. Krishna Iyer

JUDGMENT

V.R. Krishna Iyer J.

1. The subject matter of the Writ Petition and Civil Appeal is the same and relates to the competing claims of the petitioner (Co Sangwan) and the third respondent (Col. A.S. Sekhon) to be promoted as Brigadiers in the Directorate of Military Farms. Either of them, if promoted as Brigadier, automatically expects to become Director of Military Farms, and that is the bone of contention between them. Currently, the post is being held by an acting hand because of this litigation.

2. Way back in 1971, pursuant to a policy statement of 1964, a select list was made in which the third respondent found the third place and the petitioner was left out. The first and second positions in the 1971 selection went in favour of one Col, R.C. Datta and Acting Col. Dahiya. They had their turn as Directors of the Military Farms and when Col. Dahiya retired on 31st July, 1979 the post fell vacant and an appointment had to be made. Meanwhile, a writ petition under Article 226 was moved before the High Court of Jammu & Kashmir to interdict the Central Government from proceeding to make any fresh selection in departure from the selection list of 1971 overlooking the claim of the third respondent before us. His contention was that since he was already in the select list which was made pursuant to the policy statement of 1964, any further selection cannot supersede his claim. The core of the contention was that once a policy had been made in exercise of the general executive power of the Union of India and made known and acted upon, it would be arbitrary to depart from it overnight by making a fresh selection and without an antecedent reformulation of policy and making that policy known to the concerned sector in the army. The High Court issued a writ forbidding any fresh selection in variance of the 1971 selection and so the aggrieved party, the present petitioner, has come to this Court by an appeal by special leave. He has also challenged the immutability of the 1964 policy statement as arbitrary under Art, 14 of the Constitution and filed the above writ petition in that behalf.

3. The long course of history which traces the career of these two competing hands may not have direct relevance to the decision of the only issue with which we are contended. Without injury to a

correct decision, we may by pass the various stages in the career of either. It may. perhaps, be true that both of them have had a good career and may have a good record of service. It may even be that both of them may serve well if appointed as Directors of Military Farms. We are concerned only with one principle which is at issue, and on that we have heard the learned Attorney-Genera! appearing for the Union of India.

4. The policy statement of 1964 was, as we have earlier stated, not issued under any rules or regulations or statute. The executive power of the Union of India, when it is not trammelled by any statute or rule, is wide and pursuant to its power it can make executive policy. Indeed, in the strategic and sensitive area of defence, Courts should be cautious although Courts are not powerless. The Union of India having framed a policy relieved itself of the charge of acting capriciously or arbitrarily or in response to any ulterior considerations so long as it pursued a consistent policy. Probably, the principle of equality which interdicts arbitrariness promoted the Central Government to formulate its policy in 1964. A policy once formulated is not good for ever, it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and re-adjust it according to the compulsions of circumstances and the imperatives of national considertions. We cannot, as Court give directives as to how the Defence Ministry should function except to state that the obligation not to act arbitrarily and to treat employees equally is binding on the Union of India because it functions under the Constitution and not over it. In this view, we agree with the submission of the Union of India that there is no bar to its changing the policy formulated in 1964 if there are good and weightly reasons for doing so. We are far from suggesting that a new policy should be made merely because of the lapse of time, nor are we inclined to suggest the manner in which such a policy should be shaped. It is entirely within the reasonable discretion of the Union of India. It may stick to the earlier policy or I give it up. But one imperative of the Constitution implicit in Article 14 is that if it does change its policy, it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily. This object is achieved if the new policy, assuming Government wants to frame a new policy, is made the same way in which the 1964 policy was made and not only made but made known. After all, what is done in secret is often suspected of being capricious or mala fide. So, whatever policy is made should be done fairly and made known to those concerned. So, we make it clear that while the Central Government is beyond the forbiddance of the Court from making or changing its policy in regard to the Directorate of Military Farms or in the choice or promotion of Brigadiers, it has to act fairly as every administrative act must be done.

5. The learned Attorney-General made it clear that the Union of India is willing to abide by the above directions of this Court and quickly consider the need, if any, for a new policy, and if it considers that there is such need, to frame it quickly. Of course, DOW that there are contestants and rival points of view, it may not be improper for the Central Government to take into consideration any legitimite representation regarding the formulation of policy that affected persons like the petitioner and the third respondent may make. We do not mean that the Central Government should wait listlessly for representations to pour in. Either party, namely, petitioner and respondent No. 3 or for that matter any other, is free to make representations to the Central Government provided they do so within one week from now. The Central Government will proceed to take a quick decision but a wise decision, and thereafter make it available to the concerned circle in the

army. If it chooses to re-frame policy which necessitates a fresh selection, then it will be open the Central Government to make such a selection in such fair manner as it decides. But we further impose a time bound restriction upon the Central Government, since rights of parties are involved. We direct the Central Government, having heard the learned Attorney-General on this point, that the new policy, if any, shall be made within one month from now. The learned Attorney-General says that this is quite feasible. We should not be misunder stood to lay down the proposition that it is not open to the Central Government to make any policy, regarding any matter including the selection to the Directorate of Military Farms, at any time it likes, provided its acts justly and fairly.

6. We make it further clear that the Central Government will be free to act subject to the directions we have given above the untrammelled by the reasoning of the direction given above High Court. We dispose of the Writ Petition and the Civil Appeal on the above basis.