

N.S. Mehta & Ors vs Union Of India & Ors on 20 April, 1977

Equivalent citations: 1977 AIR 1673, 1977 SCR (3) 664, AIR 1977 SUPREME COURT 1673, 1977 3 SCC 260, 1977 LAB. I. C. 904, 1977 (1) SCWR 593, 1977 2 LABLN 46, 1977 SERVLJ 536, 1977 2 SCJ 369, 1977 3 SCR 664, 1977 U J (SC) 388, 1977 2 SERVLR 215

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Bench: M. Hameedullah Beg, A.C. Gupta, P.S. Kailasam

PETITIONER:

N.S. MEHTA & ORS.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 20/04/1977

BENCH:

BEG, M. HAMEEDULLAH (CJ)

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BEG, M. HAMEEDULLAH (CJ)

GUPTA, A.C.

KAILASAM, P.S.

CITATION:

1977 AIR 1673

1977 SCR (3) 664

1977 SCC (3) 260

ACT:

Seniority--Whether the decision in Union of India v. M. Ravi Verma & Ors, etc. (1972) 2 S.C.R. 992 contained an invariable mechanical rule of seniority applicable to all classes of services so that nothing beyond length of service in a particular grade could determine seniority--Central Secretariat Service Rules, 1962, Rule 17--Whether placing those who have passed the typewriting test within two years of the fixed date in separate category for the purpose of promotion violates Articles 14 and 16 of the Constitution of India.

HEADNOTE:

Under the scheme which culminated in the promulgation of

the Central Secretariat Clerical Service Rules, 1962 (effective from 1-5-1954), it was provided that those officers who were otherwise eligible for confirmation in the services at the initial constitution should also pass a typewriting test to be held by the Union Public Service Commission within a period of two years from 1-5-1956. The names of the petitioners who had not passed the typewriting test did not figure in the gradation list dated 7-2-1972 prepared for making promotions to the next grade of Assistants. The petitioners challenged the orders on several grounds, namely, (i) The principle of seniority contained in the Ministry of Home Affairs' O.M. dated 22-6-1949 as interpreted by this Court in 1972 (2) SCR 992 had not been applied to them; (ii) The impugned list was formulated in an arbitrary fashion; (iii) Their seniority must date back to their dates of promotion as Upper Division Clerks; and (iv) Rule 17 of Central Secretariat Clerical Service Rules, 1962 being inconsistent with O.M. dated 22-6-1949 and 22-2-1959 ~~violates~~ 14 and 16 of the Constitution. The respondent raised three objections to the petitioners' case in their returns, namely, (i) There was a reasonable criterion for the difference made between the case of the petitioners and those placed on the impugned list of 7-2-1972 who are above the petitioners because they have passed the prescribed typewriting test ~~Article~~ 14 and 16 of the Constitution could not be said to have been violated in this case whatever else may have been infringed; (ii) The petitioners not having assailed the order of confirmation of the scheme on 1-5-1958 prescribing a reasonable ground for distinction between the class of cases in which typewriting tests have been passed to which the contesting respondents in the impugned list below and the class of the petitioners which had not passed the test. the petitioners could not challenge the impugned scheme of 1972 at all; (iii) A number of persons have been promoted and put above the petitioners since 1962 acting under the scheme providing the typewriting test so that there was inordinate delay in filing the petition ~~Article~~ 22 of the Constitution.

Dismissing the petition, the Court,

HELD: (1) The alleged violation of the rule of seniority according to length of service was not decisive even according to the Ministry of Home Affairs O.M. dated 22-6-1949. This memorandum shows that it was only directory laying down a general rule of seniority which was presumably subject to other exceptional factors which could also be taken into account. [666 A]

P.C. Sethi & Ors. v. Union of India & Ors. [1975] 3 S.C.R. 21, followed.

(2) A rule prescribing a typing test cannot be said to be unconnected with the duties of clerks who desire a promotion to the next grade. A discrimination made on such a ground could not ~~Article~~ 14 and 16 of the Constitution whatever else it may be said to violate. [668 E]

(3) A violation of statutory or other kind of rule in a particular case cannot amount to a violation of Articles 14 and 16 of the Constitution. There may also be cases in which a rule made is ultra vires for unreasonableness or 665 an any other ground and should not be deemed to exist. In such a case, if the rule is enforced it may on the facts of the particular case amount to a violation of Articles 14 and 16 of the Constitution also. The petitioners case is not such a case at all. [668 E-F]

(4) The principles laid down by this Court in Joginder Nath and Ors. v. Union of India & Ors. [1976] (2) S.C.R. 553 and in Amrit Lal Berry v. Collector of Central Excise [1975] 2 S.C.R. 960, apply to the petitioners case regarding laches on their part. [669 C-El

JUDGMENT :

ORIGINAL JURISDICTION: Writ Petition No. 156 of 1972. (Under Art. 32 of the Constitution of India). S.S. Javali, A. K. Srivastava and B.P. Singh, for the petitioner.

G.L. Sanghi, S.P. Mital and Girish Chandra, for respondents Nos. 1 and 3.

B. Datta, for respondent No. 194.

The Judgment of the Court was delivered by BEG, C.J.--This is a petition under Article 32 of the Constitution praying for a writ of certiorari, or a writ of Mandamus or, any other appropriate, writ, order or direction for the enforcement of the fundamental rights of the petitioners under Article 14 and 16 of the Constitution. The petitioners have been working as Upper Division Clerks and pray for the quashing of a list, issued with Office Memorandum dated 7.2.1972, for making promotions to the next grade of Assistants on which the names of respondents 4 to 203 appear but not those of the petitioners. They claim that the principles of seniority, contained in the Ministry of Home Affairs O.M. dated 22.6.1949, as interpreted by this Court in UNION OF INDIA v. M. RAVI VERMA & ORS. ETC.(1) had not been applied to them. The contention seems to be that the last mentioned decision contained an invariable mechanical rule of seniority applicable to all classes of services so that nothing beyond length of service in a particular grade could determine seniority. It was alleged that the impugned list was formulated in an arbitrary fashion. Hence, the petitioners complain of violation of Articles 14 and 16 of the Constitution.

In paragraph 6 of the petition it was stated that even persons appointed nine or ten years after the petitioners had been promoted as long ago as 1969 to the grade of Assistants to which the petitioners put forward their own claims. It was also stated that a large number of persons have superseded the petitioners but a few names only have been mentioned from amongst them. The whole case of the petitioners thus rests on the submission that nothing beyond length of service must determine the place on the list for promotion to the grade of Assistants.

The petitioners allege a common cause of action inasmuch as the impugned list of 17.2.1972 affects all of them. They claim that all of them should have been governed by the principles contained in (1) [1972] 2 SCR 992.

the Memorandum of 22.6.1949. This Memorandum (Annexure 'C' to the petition) shows that it was only directory laying down a general rule of seniority which was presumably subject to other exceptional factors which could also be taken into account. Hence, an alleged violation of the rule of seniority according to length of service was not decisive even according to this Memorandum.

The counter-affidavit filed by Shri P.L. Gupta, Deputy Secretary to the Government of India, gives the long history of a scheme which culminated in the promulgation of the statutory rules framed under Article 309 of the Constitution of India called the Central Secretariat Clerical Service Rules, 1962 by the President of India. It shows that the scheme of 1949 was given a final shape by the Cabinet in 1954. and became effective from 1.5.1954. Under the scheme, as finally framed, it was provided that those officers who were otherwise eligible for confirmation in the services at the initial constitution, should also pass a typewriting test to be held by the Union Public Service Commission within a period of two years from 1-5-1956. It appears that the confirmation of the initial constitution of the service was delayed until 1958.

Some of the rather ambitious assertions of the petitioners suggest that their case is that they had been appointed to an Upper Division grade on a regular basis so that their seniority must date back to their date of promotion. This suggestion was controverted by the respondents who alleged that the petitioners had been only allowed to continue provisionally on a temporary basis in the grade of Upper Division of Clerks. It was stated, in the counter-affidavit, that as typing test had to be passed within two years of 1st of May 1958, those who did not come within this class came in the class of the petitioners who, were serving on an ad hoc or temporary basis. Hence, it was submitted that those who had passed the typewriting test within two years of the fixed date belong to another category altogether. The respondents, therefore, submit that there has been no contravention of Articles 14 and 15. Serious grounds of objection to the petitioner's case are three fold: firstly, that there was a reasonable criterion for the difference made between the cases of the petitioners and those placed on the impugned list of 7.2.1972 who are above the petitioners because they have passed the prescribed typing test so that Articles 14 and 16 of the Constitution could not be said to have been violated in this case whatever else may have been infringed; secondly, that the petitioners, not having assailed the order of confirmation of the scheme on 1.5.1958. prescribing a reasonable ground for distinction between the class of cases in which typing test had been passed, to which the contesting respondents in the impugned list belong and the class of the petitioners, which had not passed this test, the petitioners' could not challenge the impugned scheme of 1972 at all; thirdly, a member of persons had been promoted and put above the petitioners since 1962, acting under the scheme providing the typing test, so that there was inordinate delay in filing the petition under Article 32 of the Constitution on 24.4.1972.

In their Writ Petition the petitioners have no doubt challenged the validity of rule 17 of the Central Secretariat Clerical Service rules for inconsistency with the Memoranda of 22.6.1949 and 22.12.1959 and alleged that this also constitutes a violation of Articles 14 and 16 of the Constitution. This rule

was among rules notified on 28-9-1962. It lays down as follows :--

"17. Seniority(1) The relative seniority of members of Service appointed to any Grade before the appointed day shall be regulated by their relative seniority as determined before that day.

Provided that if the seniority of any such officer had not been specifically determined before the appointed day it shall be as determined by the Department of Personnel in the Cabinet Secretariat.

MHA No. 6/2/67-CS-II dated 20.12.67. Provided further that the seniority of an officer referred to in the proviso to clause

(a) of rule 2 shall be determined by the Department of Personnel in the Cabinet Secretariat

by taking into account the continuous length of regular service rendered before the appointment day by such officer in the grade of lower Division or in any higher grade in the offices of the Central Government.

(2) All permanent officers included in the initial constitution of a Grade under rule 7 shall rank senior to all persons substantively appointed to that Grade with effect from a date after the appointed day, and all temporary officers included in the initial constitution of a Grade under that rule shall rank senior to all temporary officers appointed to that Grade after the appointed day. (3) Except as provided in sub-rules (4) and (5), the seniority of persons appointed to the two grades of the service after the appointed day shall be determined in the following manner, namely :

1. UPPER DIVISION GRADE

(i) Permanent Officers.--The seniority inter se of officers substantively appointed to the Grade after the appointed day shall be regulated by the order in which they are so appointed to the Grade.

(ii) Temporary Officers.--The seniority inter se of temporary officers appointed to the Grade after the appointed day shall be regulated as follows, namely:

(a) Persons included in the Select List for a Grade shall rank senior en bloc to those not included in the Select list.

(b) The seniority inter se of person included

in the Select List shall be in the order in which their names are included in the Select List.

(c) The seniority inter se of persons not included in the Select List shall be regulated by the order in which they are approved for long term appointment to the Grade.

Rule 7 provides as follows "7. Initial Constitution of each cadre.--The permanent and temporary officers of each Grade in each cadre on the appointed day shall be as determined by the Deptt. of Personnel in the Cabinet Secretariat." We find that, acting under Rule 7 set out above, the Government of India had issued an order on 12-11-1962 allot- ting permanent and temporary officers of the Upper Division grade to the Central Secretariat Clerical Service. Apparently, that allotment also determined the order of seniority. In other words, the rule relating to the passing of a typing test had been followed for a long period and had actually been given effect to under the statutory rules in promotions made and lists drawn up. This explains the petitioners' challenge to the validity of Rule 17. We are unable to see how a rule prescribing a typing test is unconnected with the duties of Clerks who desire a promotion to the next grade. We do not find that a dis- crimination made on such a ground could violate Articles 14 or 16 of the Constitution whatever also it may be said to violate. It is not necessary for us to hold that a violation of a statutory or other kind of rule in a particu- lar case cannot amount to a violation of Articles 14 and 16 of the Constitution. There may also be cases in which a rule made is ultra vires for mreasonableness or on any other ground and should not be deemed to exist. In such a case, if the rule is enforced, it may, on the facts of the partic- ular case, amount to a violation of Articles 14 and 16 of the Constitution also. The case before us does not appear to be such a case at all. It seems to be covered by what this Court said in P.C. Sethi & Ors. v. Union of India & Ors., (1) with regard to the Office Memorandum of 22.6.1949 (at pp. 207-208):

" the Office Memorandum of June 22, 1949, is no bar to the Government in making separate provisions for the mode of constitution and future maintenance of the service of Assistants. There is, therefore, no obligation under the aforesaid Office Memorandum on the part of the Government to enforce a rule of bald length of continuous service irrespective of other considerations than the service was sought to be reorga- nised and reinforced. As noticed earlier the service had to be reconstituted and the tempo- rary Assis-

(1) [1975] 3 SCR 20.

tanks properly observed keeping in view the question of quality and efficiency as well as at the same where regard being had to accom- modate as large number as possible to gradual absorption. In doing so we are unable to hold that the Government has violated the provi- sions of articles 14 or 16 of the Constitu- tion. The Classification under the instruc- tion for the constitution of regular temporary establishment in the manner done cannot be characterised as unreasonable in view of the object for which these had to be introduced in reconstituting the service to ensure security of temporary employees assistant with effi- ciency in the Service. There is no discrimi- nation whatsoever amongst the equals as such nor any arbitrary exercise of power by the Government."

This Court has also explained in Joginder Nath & Ors. v. Union of India & Ors.(1) and Amrit Lal Berry v. Collector of Central Excise, New 'Delhi & Ors.(2) the principles on which this Court will

interfere under Article 32 of the Constitution for an alleged violation of Articles 14 and 16 of the Constitution. It is also explained, there how delay in invoking the jurisdiction of the Court, which may create equitable rights of others, may give rational grounds for discrimination so that it would cease to be a case of any violation of Articles 14 and 16 at all.. We think that the principles laid down in the cases mentioned above apply here.

Consequently, we dismiss this Writ Petition, but, in the circumstances of the case, the parties will bear their own costs.

S.R

(1) [1975] 2 S.C.R. 553.

(2) [1975] 2 S.C.R. 960.

Petition dismissed.