

O.N. Chauhan vs Collector Of Central Excise, Allahabad on 23 May, 1955

Equivalent citations: AIR1955ALL528

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. These are two petitions under Article 226 of the Constitution, one by Shri O. N. Chauhan and the other by Shri G. K. Sinha, praying for a writ in the nature of certiorari quashing the order of the Collector, Central Excise, Allahabad, dated 10-11-1953, and a writ in the nature of mandamus ordering the Collector of Central Excise, Allahabad, the opposite party, to restore the petitioners to the cadre of Selection Grade Inspector to which they were appointed permanently by the order of 27-2-1953.

2. The petitioners were permanent Inspectors in the Central Excise Department Allahabad in August 1952; Letter No. 4(98)--Ad. (CX) 51, dated 20-8-1952, from Government of India, Ministry of Finance (Revenue Division), New Delhi, to the Collectors of Central Excise said in para. 2:

"The Selection grade for Inspector of Central Excise will constitute 15 per cent of the cadre strength of Inspectors, appointments thereto being made of permanent incumbents only on the basis of seniority-cum-fitness."

3. It was mentioned in letter No. C. No. II-359-ET/52/810, dated 12-1-1953, forwarding the Government of India, Ministry of Finance (Revenue Division), New Delhi, letter No. C. No. 4(98) Ad. (CX)/51, dated 3-12-1952, to Collectors of Central Excise:

"The selection grade posts for Inspectors will constitute 15 per cent of the sanctioned permanent posts of ordinary grade Inspectors, and in calculating the number of Selection grade posts fractions of a whole number will be ignored. All the selection grade posts will be permanent and the cadre strength of the ordinary grade will be reduced by the number of posts placed in the selection grade."

4. The Collector of Central Excise, Allahabad, hereinafter referred to as the Collector, had to select 60 inspectors for the Selection Grade from among the permanent inspectors in his charge. He made that selection and passed an order on 27-2-1953. The order is:

"The following confirmed Inspectors are appointed with effect from 1-8-1952 to the Selection Grade in the scale of Rs. 200-10-300 in the posts sanctioned in Government of India, Ministry of Finance (Revenue Division) No. 4 (98) Ad. (CX) 51, dated 20-8-1952."

Among the names we find those of the two petitioners at serial. Nos. 43 and GO respectively.

5. It appears that a number of permanent inspectors who were senior to a number of these selected inspectors submitted representations to the Central Board of Revenue or the Government of India. The Government of India disagreed with the interpretation put by the Collector on their directions contained in their two letters, dated 20-8-1952, and 3-12-1952. The Government of India informed the Collector by their letter No. 7(79)--Ad (CX) 53, dated 7-8-1953, that they had held that appointments of inspectors of Central Excise to the Selection Grade made on 'selection basis' instead of seniority-cum-fitness were irregular and should be cancelled after giving a show-cause notice to the individuals concerned why their appointments to the selection grade should not be cancelled and made it clear that such a notice would not be with reference to the obligations imposed by Article 311(2) of the Constitution but was being given on grounds of fairplay and principles of natural justice.

The Collector was consequently asked to review the cases of all the inspectors, to cancel such appointments to the Selection Grade as be necessary in accordance with the procedure indicated in that letter and to fill in the resulting vacancies strictly in accordance with the principle of seniority-cum-fitness.

6. The Collector reviewed the cases of all the inspectors. It appears that he ultimately sent up his final proposals for selection to the Central Board of Revenue. By its letter, dated 14-10-1953, the Board laid down considerations which should deprive a permanent inspector of the Selection Grade and communicated that judging from that standard the Board did not think that any of the permanent inspectors whose cases were reviewed were unfit for promotion to the Selection Grade.

The Board then gave directions how the 60 posts of Inspectors (Selection Grade) were to be filled up and indicated that that arrangement would necessitate reversion of 42 out of 60 inspectors who were appointed to the Selection Grade by the Collector's order, dated 27-2-1953, and directed that they be reverted. It also approved of the draft notice to be issued to the previously selected inspectors to show cause why they be not reverted.

7. The Collector then gave notice to 40 inspectors whom he had previously selected for the Selection Grade. Those persons showed cause. The Collector considered what they had to say and coming to the conclusion that their objections were not acceptable passed an order on the 10-11-1953, saying that on re-examination of the appointments made to the Inspector (Selection Grade's) posts on the basis of "seniority-cum-fitness" it was found that some inspectors senior in the inspector's grade to those mentioned in that order would require to be appointed to the Selection Grade in preference to them. He cancelled his order, dated the 27th of February appointing the 40 persons including the two petitioners mentioned in this order and ordered that they would revert as inspector (ordinary

grade) with effect from the date of the order.

8. The two petitioners and a number of other such inspectors who were reverted made representations to the Central Board of Revenue. Their representations were rejected. The rejection order was communicated to them by the Under-Secretary of the Board by his letter, dated 22-2-1954.

This letter said that the Board had carefully considered the representations, that their appointment to the Selection Grade post was irregular and had operated to the prejudice of their seniors and that the cancellation of such irregular appointment did not amount to the penalty of reduction in rank within the meaning of Rule 49, Civil Services (Classification, Control and Appeal) Rules.

9. The petitioners being dissatisfied with the final order of the Board filed the present petitions. The learned counsel for the petitioners has mainly submitted two points for consideration. The first point is that the petitioners were substantively appointed to the permanent posts of Selection Grade Inspectors whose creation was communicated by the Board's letter, dated 20-8-1953, and that therefore their appointment to these posts could not be set aside by the Collector who really had no power to review his previous order of 27-2-1953.

The second point is that the final order ordering their reversion to the post of Inspector (ordinary grade) from the post of inspector (Selection Grade) amounts to reducing them in rank and that such an order could be passed in accordance with the provisions of Article 311(2) of the Constitution and, as no opportunity after the consideration of their explanations to the show-cause notice was given to them to show cause against the proposed reduction in rank, the order of the Collector cancelling his previous order appointing them to the Selection Grade and reverting them to the post of Inspectors (ordinary grade) deserves to be set aside.

10. I am of opinion that these petitions should fail.

11. I shall deal with the second point first. The order impugned does not reduce the petitioners in rank as contemplated in Article 311(2) of the Constitution, which is:

"No such person as aforesaid (i.e., no person who is a member of a civil service of the Union or an all-India Service or a civil service of a State or holds a civil post under the Union or a State) shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

....."

The Supreme Court in the case reported in --'Shyam Lal v. State of Uttar Pradesh', AIR 1954 SG 369 (A) had to consider the scope of the provisions of Article 311(2) of the Constitution in a case of compulsory retirement of a public servant and Das J., made the following observations distinguishing the case of compulsory retirement from the case of removal or dismissal.

"There can be no doubt that removal--I am using the term synonymously with dismissal--generally implies that the officer is regarded as in some manner blameworthy or deficient, that is to say, that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do. The action of removal taken against him in such circumstances is thus founded and justified on some ground personal to the officer.

Such grounds, therefore, involve the levelling of some imputation or charge against the officer which may conceivably be controverted or explained by the officer. There is no such element of charge or imputation in the case of compulsory retirement..... In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity.....

In other words, the enquiry was to help the Government to make up its mind as to whether it was in the public interest to dispense with his services. It follows, therefore, that one of the principal tests for determining whether a termination of service amounts to dismissal or removal is absent in the case of compulsory retirement."

Their Lordships of the Supreme Court further referred to Rule 49, Civil Services (Classification, Control and Appeal) Rules, which clearly indicated that dismissal or removal was a punishment.

12. Reduction in rank is also a punishment under Rule 49, Civil Services (Classification, Control and Appeal) Rules and is described in its Clause (iii) as "reduction to a lower post or time-scale, or to a lower stage in a time-scale." Paragraph 1 of Rule 55 Civil Services (Classification, Control and Appeal) Rules is:

"Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of a Service (other than an order based on facts which had led to his conviction in a criminal court or by a court-martial) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself.

The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs, an oral inquiry shall be held.

At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to

give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness.

The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof."

Rule 3, Clause (iii) of the Rules framed for Central Service Class III in exercise of the powers conferred on the Central Government by Rules 44 and 54, Civil Services (Classification, Control and Appeal) Rules, printed in Appendix XIV at p. 115 of the Central Excise Circle and Divisional Office Procedure Manual corresponds to para. 49, Clause (iii), Civil Services (Classification, Control and Appeal) Rules. Rule 6(ii) of these Rules is:

"(ii) The authority imposing any penalty under these rules shall maintain a record showing--

(a) the allegations upon which he proceeded against the officer punished,

(b) the officer's representation, if any, and the evidence taken, if any,

(c) the finding and the grounds thereof.

13. Rule 7 provides for an appeal against the imposition of any of the penalties specified in Rule 3.

14. The petitioners themselves do not seem to have considered their reversion in dispute as penalty as they did not file appeals but simply made representations to the Central Board of Revenue as would appear from Annexure E to the petition.

15. It appears to me, therefore, that the expression "reduction in rank" in Article 311(2) of the Constitution implies the posting of a public servant to a post of a lower rank by way of punishing him for some misbehaviour. The cancellation of the order, dated 27-2-1953, and reversion of the petitioners on account of a favourable view taken of the representations made by the superseded inspectors and not on account of any fault being found with the work of the petitioners cannot amount to reducing the petitioners in rank within the meaning of Article 311(2) of the Constitution.

In cases of reduction in rank in such circumstances the public servant concerned can possibly have nothing to explain. It is only when objection is taken to some conduct of his that he can explain such conduct and say that the suggested punishment of reduction in rank was not suitable or justified.

16. The cases reported in -- 'Kashinath Patnaik v. P. K. Kapila', AIR 1952 Orissa 285 (B) and -- 'Dandapani Gouda. v. State of Orissa', AIR 1953 Orissa 329 (C) are not of help in this connection. In the former case' it was not urged on behalf of the State that reversion from a higher substantive post to a lower substantive post would not amount to reduction in rank.

It was not considered whether reduction in rank for the purposes of Article 311(2) of the Constitution does require it to be on account of some alleged misconduct of the public servant or not. Further it appears that the public servant was reverted to the lower post as his work in the higher post was considered unsatisfactory and that, therefore, his reversion could amount to reduction in rank within the meaning of Article 311(2) of the Constitution.

In the latter case it was just observed that reduction in rank implied bringing down to a lower rank or position or dignity, either in the same cadre, or giving a lower place either in the same class. of officers or to a lower class of officers. It was not considered whether this should be as a punishment or not in order to come within the ambit of Article 311(2) of the Constitution.

17. The petitioners belong to Central Services, III Class. Rules for first appointment, discipline and appeals concerning their services provide that censure and withholding of increments or promotion could be imposed by the Collector and that the appellate authority men is the Central Board of Revenue.

In ease of non-appealable orders of the Collector, a representation would lie to the Board in view of C. B. R. Letter C. No. 261-Admn. (GL) 44, dated 1-9-1944, printed in Appendix XVII at page 1.26 of the Central Excise Circle and Divisional Office Procedure Manual. This letter specifically refers in para. 2 to the non-selection for a post declared as a selection post to which appointment should be made strictly on merit.

It follows, therefore, that the order of the Collector, dated 27-2-1953, affecting such senior inspectors who were not selected for the selection post could be revised by the Board on a representation by the superseded persons who had a grievance. Rule 18 of the Rules for Central Service Class III is:

"18. Notwithstanding anything contained in the foregoing provisions, the Central Government may, of its own motion or otherwise, call for the record of any case in which an order has been made by an authority subordinate, to it in the exercise of any power conferred on such authority By these rules,

(a) confirms, modify or reverse the orders;

or

(b) direct that a further inquiry be held in the case;

or

(c) reduce or enhance the penalty imposed by the order;

or

(d) make such other order in the case as it may deem fit." The Board could, therefore, pass orders on such representations in favour of the persons making the representations. It seems to have referred the matter to the Government of India which by its letter, dated 7-8-1953, conveyed to the Collector that his selection was irregular, that his order, dated 27-2-1953, should be cancelled and that he should review the cases of all the inspectors.

The Collector, therefore, had the power to review the cases of all the inspectors and make a fresh selection after his previous order had been cancelled. He did so and selected some senior persons, with the result that a number of previously selected inspectors had to be reverted.

18. The selection of the senior men to the selection grade could be given practical effect only by reverting the previously selected junior inspectors to their original posts in the ordinary grade. It is true that no such rule in the Civil Services (Classification, Control and Appeal) Rules or in the Fundamental Rules has been shown on behalf of the State which lays down in clear terms that in such contingency when the appeal of a superseded public servant is allowed the junior who had been selected previously must be reverted.

But such must be the result. The promotion of a junior to the selection post in preference to the senior must be deemed to be subject to the result of the appeal or representation by the superseded senior who has been given a right to appeal on represent against his supersession. When he succeeds, he secures the selection with the necessary result that the junior makes room for him and reverts.

19. The same can be impliedly inferred from certain Fundamental Rules. Fundamental Rule 12(a) provides that two or more Government servants cannot be appointed substantively to the same permanent post at the same time. It must follow therefore, that both the previously selected junior inspector and a senior inspector who has succeeded in showing that his non-selection was bad and that therefore he should be appointed to the permanent post, could not be appointed to the same post at one and the same time.

The result must be that the senior man who is entitled to that post on merit must occupy it and the junior man should make room for him, and that can take place only when the junior man is reverted to his original post.

20. Fundamental Rule 12-A is:

"Unless in any case it be otherwise provided in these rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post."

This rule is clearly subject to other rules and appears to be subject to fundamental Rule 14. Fundamental Rule 14, is:

"(a) The Governor-General in Council shall suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity.

(1) to a tenure post, or (2) to a permanent post outside the cadre on which he is borne, or (3)

(b)

(c)

(d) If a Government servant's lien on a post is suspended under Clause (a) or (b) of this rule, the post may be filled substantively, and the Government servant appointed to hold it substantively shall require a lien on it; provided that the arrangements shall be reversed as soon as the suspended lien revives.

Note: (1) This clause applies if the post concerned is a post in a selection grade of a cadre.

Note: (2) When a post is filled substantively under this clause, the appointment will be termed a provisional appointment; the Government servant appointed will hold a provisional lien on the post; and that he will be liable to suspension under Clause (a) or (b) of this rule."

21. 'Cadre' means the strength of a service or part of a service sanctioned as a separate unit. In *vJew* of the terms of para. 2 of the aforesaid letter, dated 12-1-1953, the selection grade posts of inspectors will be outside the cadre of ordinary grade inspectors on which the petitioners were borne prior to their appointment to selection grade posts.

In view of Clause (a)(2) of Rule 14 when a person is selected for the selection post his lien on the original permanent post does not cease but is suspended. The lien revives when the person promoted to the selection grade is reverted to that post. The same implication is to be found in Fundamental Rule 15(a) and (b). The rule is:

"(a) The Governor-General in Council may transfer a Government servant from one post to another; provided that, except--

(1) on account of inefficiency or misbehaviour, or (2) on his written request, a Government servant shall not be transferred substantively to, or, except in a case covered by Rule 49, appointed to officiate in, a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under Rule 14.

(b) Nothing contained in Clause (a) of this rule or in Clause (13) of Rule 9 shall operate to prevent the retransfer of a government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of

Clause (a) of Rule 14."

This rule means that the Central Government is free to transfer a Government servant from one post to another subject to the restriction that one should not be transferred to a lower post except on account of inefficiency or misbehaviour or on his written request. This supports my earlier observation that reduction in rank connotes reduction on account of inefficiency or misbehaviour.

Any way Sub-rule (b) does make it clear that in cases of persons to whom the provisions of Fundamental Rule 14(a) apply the Government is free to retransfer them to a lower post.

22. I may also say that I am not shown any clear provision which would show that such reversion cannot take place. The petitioners, being nob seniormost persons, for the selection posts, could not claim them as of right merely because they were fit for these posts; and no injustice is done to them when their seniors who are found fit are selected for the posts.

23. In view of all these considerations I am of opinion that both on account of the nature of things and on account of the implications of these various rules, there appears to be nothing wrong in a public servant, who is selected for a selection post not on account of his being the seniormost person entitled to that post but on account of "some sem'or of his being considered unfit for that post, reverting to his original post in case it be found by an authority superior to the selecting authority that the supersession of the senior was unjustified and that the selection post should go to the senior.

24. I am, therefore, of opinion that these petitions should fail and I accordingly dismiss mem with costs, which I assess at Rs. 100/- for each application.

25. This order will govern Civil Miscellaneous (Writ) No. 990 of 1954.