

D.K. Agarwal vs High Court Of Judicature At Allahabad on 11 May, 1988

Equivalent citations: 1988 AIR 1403, 1988 SCR SUPL. (1) 317, AIR 1988 SUPREME COURT 1403, 1988 (3) SCC 764, 1988 LAB IC 1658, (1988) 2 JT 465 (SC), (1988) 57 FACLR 135, (1988) 2 SERVLR 558, (1988) 2 SCJ 523, (1988) 2 ALL WC 852, (1988) 2 LAB LN 903, 1988 RAJLR 439, (1988) 2 CURLR 159, 1988 UJ(SC) 2 290, 1988 2 JT 465, 1988 SCC (L&S) 886

Author: M.M. Dutt

Bench: M.M. Dutt, Misra Rangnath

PETITIONER:

D.K. AGARWAL

Vs.

RESPONDENT:

HIGH COURT OF JUDICATURE AT ALLAHABAD

DATE OF JUDGMENT 11/05/1988

BENCH:

DUTT, M.M. (J)

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DUTT, M.M. (J)

MISRA RANGNATH

CITATION:

1988 AIR 1403	1988 SCR Supl. (1) 317
1988 SCC (3) 764	JT 1988 (2) 465
1988 SCALE (1) 1043	

ACT:

U.P. Higher Judicial Service Rules, 1975: Rules 4B and 27-Judicial officer-Adverse remarks against-Before communication to judicial officer-To be placed before Chief Justice-Member of higher judicial service-Grant of selection/super time scale-Within administrative jurisdiction of High Court-Interference by Court does not mean granting relief but referring the matter back to High Court for reconsideration.

Constitution of India, 1950-Article 32-Administrative jurisdiction of High Court-When and in what circumstances can the Supreme Court interfere though ordinarily it does not.

HEADNOTE:

In April, 1986, the Selection Committee constituted by the Chief Justice of Allahabad High Court recommended the grant of super-time scale to the appellant, a member of the U.P. Higher Judicial Services, under Rule 27A of the U.P. Higher Judicial Services Rules, 1975. The Full Court of the High Court considered the recommendation on two occasions, but no decision could be taken as each time the Administrative Judge made certain new allegations against the appellant. Finally, on January 17, 1987, the Full Court found the appellant unfit for a post in the super-time scale. On the eve of the Full Court Meeting the Administrative Judge was stated to have written a secret letter to the Chief Justice.

Aggrieved, the appellant filed a writ petition before the Division Bench. Meanwhile, the appellant made a representation to the High Court on its Administrative side for reconsideration of the resolution of the Full Court. While no decision was taken by the Full Court at its meeting held on May 16, 1987, an adverse entry for the year 1986-87 was recorded by the Administrative Judge. The Chief Justice enquired into the allegations contained in the adverse entry and found that the allegations had no foundation whatsoever. He recorded in his minutes that he regarded the appellant as a very good, able and competent administrator with an unblemished integrity.

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The Division Bench, after noticing the remarks of the Chief Justice, quashed the resolution of the Full Court, and referred back the matter to the Full Court for reconsideration. It also directed that the appellant be given an opportunity of explaining the imputations made against him in the letter written by the Administrative Judge on the eve of the Full Court meeting! of January 17, 1988.

Dissatisfied with the above decision, the appellant filed an appeal by special leave in this Court.

Meanwhile, the Full Court at its meeting held on February 20, 1988, again rejected the recommendation of the Selection Committee for the grant of super-time scale to the appellant.

Allowing the appeal by special leave,

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HELD: 1.1 Whether a member of the Higher Judicial Service should be granted the selection grade or the super-time scale is a matter exclusively within the administrative jurisdiction of the High Court. This Court will not ordinarily interfere with any decision of the High Court in such a matter. However, if the High Court acts in violation of any rule framed by it or of the principles of natural

justice or comes to any finding not supported by any reliable material, this Court has to examine the matter for ends of justice. But, interference does not mean granting of relief which the High Court is entrusted to grant in its administrative jurisdiction. The Court will ordinarily refer back the matter for reconsideration of the High Court. [322F-H]

However, in the instant case ends of justice would require interference by disposing of the matter finally, without referring it again to the High Court. [323A]

1.2 Proviso to Rule 4(B) of the U.P. Higher Judicial Service Rules requires that before an adverse remark is communicated to the concerned judicial officer; it must be placed before the Chief Justice. By necessary implication, therefore, the rule requires concurrence of the Chief Justice for taking necessary action on the adverse remark by communicating to the judicial officer concerned. [324A-B]

In the instant case, although the Chief Justice did not agree with the adverse remarks, action was taken by communicating them to the appellant in utter violation of the proviso to Rule 4B and also in disregard of the minutes of enquiry of the Chief Justice. [324B-C]

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The appellant had denied the allegations contained in the letter of the Administrative Judge but no attempt was made by the Full Court to have the comments of the retired Judge who orally made the allegations. Further, the allegations which were made from time to time against the appellant resulting in the postponement of consideration by the Full Court were all found to be untrue. [324C-D]

An enquiry was made by the Chief Justice and the allegations contained in the adverse entry for 1986-87 have been found to be without foundation. Indeed, the Chief Justice recorded that he regarded the appellant as a very good, able and competent administrator with an unblemished integrity. [323E-F]

Therefore, in the absence of any material on record to form the foundation in support of the allegations and in view of the minutes of the Chief Justice, the Full Court was not at all justified in acting on the allegations contained in the letter of the Administrative Judge and depriving the appellant of the grant of super-time scale. [323F]

The appellant was, therefore, entitled to a posting in the supertime scale. Since the appellant has already retired he shall be paid the monetary benefit with effect from January 1, 1987 and his pension suitably altered. [324F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1875 of 1988.

From the Judgment and order dated 10.12.1987 of the Allahabad High Court in Civil Misc. Writ No. 4434 of 1987.

S N. Kacker, Gobind Dass, E.C. Agarwala, Ms. Purnima Bhatt and V.K. Pandita for the Appellant.

K. Parasaran, Attorney General (Not Present) Gopal Subramaniam and Mrs. S. Dikshit for the Respondents.

The Judgment of the Court was delivered by DUTT J. After hearing the learned Counsel for the parties, we grant special leave and, as full and complete submissions have been made, we proceed to dispose of the appeal on merits.

The only question that is involved in this appeal is whether the appellant D.K. Agarwal, who was a member of the Higher Judicial Service under the State of U.P., to be precise, the District and Sessions Judge, Gonda, and since retired on February 29, 1985, was entitled to the super-time scale.

The appellant was appointed to the post of District and Sessions Judge on October 31, 1983. In or about December, 1985, the Selection Committee constituted by the Chief Justice of the Allahabad High Court and consisting of three Judges of that Court recommended the grant of selection grade to the appellant on the basis of merit as required under Rule 27 of the U.P. Higher Judicial Service rules, 1975, hereinafter referred to as 'the Rules'. The Full Court approved the recommendation for the grant of the selection grade to the appellant and granted the same to him with retrospective effect from November 1, 1983.

In April, 1986 the Selection Committee recommended for the grant of super-time scale to the appellant under Rule 27A of the Rules. It appears that the said recommendation of the Selection Committee came up for consideration before the Full Court on two occasions, but the Full Court could not take any decision as each time K.N. Misra, J., who was then the Administrative Judge, made certain new allegations against the appellant. On January 17, 1987, again the recommendation of the Selection Committee came up for consideration before the Full Court for the third time. On that day, the Full Court found the appellant unfit for a post in the super-time scale as recommended by the Selection Committee. It, however, transpired that just on the eve of the Full Court Meeting held on January 17, 1987, S.K. Dhaon, J., who was then the Administrative Judge, wrote a secret letter to the Chief Justice which will be referred to presently.

Being aggrieved by the decision of the Full Court turning down the recommendation of the Selection Committee, the appellant filed a writ petition before a Division Bench of the High Court. During the pendency of the writ petition, the appellant made a representation to the High Court on its Administrative Side on April 13, 1987 praying for reconsideration of the resolution of the Full Court dated January 17, 1987. While no decision was taken by the Full Court at the meeting held on May 16, 1987, an adverse entry for the year 1986-87 was recorded by S.K. Dhaon, J. On July, 9 1987 as follows:

"He creates trouble. He fomented a conflict between the members of the Bar and the subordinate staff of the courts in Kanpur Nagar which ultimately resulted in the transfer of Sri Arjan Dev Mahajan, the then District Judge, Kanpur Nagar. This was done with an ulterior motive. He also instigated the subordinate staff of the courts in Kanpur Dehat to make agitations from time to time on the question of bifurcation of the staff between the courts at Kanpur Nagar and Kanpur Dehat.

His integrity too is highly doubtful, hence not certified. His work and conduct should be kept under constant gaze .

It so happened that the Chief Justice enquired into the allegations contained in the adverse entry. After such enquiry, the Chief Justice, as would appear from his minutes dated July 14, 1987, found that the allegations had no foundation whatsoever and observed as follows:

"I find from the Character Roll entries that Sri Agarwal had been given remarks and praise, as District Judge, Gonda, in the years 1983-84 and 1984-85 and of course not much expression has been given in the entry of 1985-86 as the Hon'ble Administrative Judge had no occasion to see his work. The entry doubting the integrity and involvement of Sri Agarwal in the Kanpur dispute that had arisen in 1986 obviously does not find support, more so, because it was given on 9.7.1987 on the eve of Full Court Meeting scheduled to be held on 10.7.1987. I do not agree with the assessment as I regard Sri Agarwal as a very good, able and competent administrator with an unblemished integrity."

In the earlier part of his minutes, the learned Chief Justice stated as follows:

"The members of the Bar informed that their view about the integrity and conduct of Sri Agarwal had already been expressed by the President, Kanpur Bar Association, A copy of the annual Magazine "Kanpur Bar Association, Kanpur" was given to him wherein I find the following observations:

"I will be failing in my pious obligation if I do not extend my heartfelt gratitude and thanks to Mr. K.K. Chaubey, our most affectionate friend, philosopher and guide, and to Mr. D.K. Agarwal, a most competent and efficient administrator, who has helped us a lot to create cordial atmosphere between Bar and Bench."

The Division Bench of the High Court in its judgment dated December 10, 1987, noticed the remarks of the Chief Justice about the appellant as made by him in his said minutes dated July 14, 1987. The Division Bench quashed the resolution dated January 17, 1987, of the Full Court and directed that an opportunity should be given by the Court to the appellant of explaining the imputations made against him by the Administrative Judge in his letter sent to the Chief Justice just on the eve of the Full Court Meeting held on January 17, 1987. Further, it was directed that the case of the appellant for appointment to a post in super-time scale should be reconsidered by the Court at a very early

date keeping in view the fact that the appellant was to retire from service in February, 1988.

As the Division Bench did not grant the super-time scale to the appellant, but referred the matter back to the Full Court for reconsideration of the same, the appellant filed the present appeal.

During the pendency of the appeal in this Court, the Full Court at its meeting held on February 20, 1988, again rejected the recommendation of the Selection Committee for the grant of super-time scale to the appellant.

The question that arises for our consideration is whether the appellant, who has since retired from service, was entitled to the super-time scale. There can be no doubt that whether a member of the Higher Judicial Service should be granted the selection grade or the super-time scale is a matter exclusively within the administrative jurisdiction of the High Court. This Court will not ordinarily interfere with any decision of the High Court in such a matter. This is, however, subject to the exception that if in considering whether a member of the Higher Judicial Service should be granted the super-time scale or not, the High Court acts in violation of any rule framed by it or of the principles of natural justice or comes to any finding not supported by any reliable material, this Court has to examine the matter for ends of justice. But, interference does not mean granting of the relief which the High Court is entrusted to grant in its administrative jurisdiction. All that the Court will ordinarily do is to refer back the matter for reconsideration of the High Court. In the instant case, however, we consider that for ends of justice we should interfere by disposing of the matter finally, that is to say, without referring it again to the High Court for the reasons stated hereafter.

The letter of Dhaon, J. referred to above was handed over to the Chief Justice by Dhaon, J. just on the eve of the Full Court Meeting held on January 17, 1987. In that letter, certain serious allegations were made by Dhaon, J. against the appellant solely on the basis of what a retired Judge of the High Court had orally reported to Misra, J. The allegations contained in the said letter were not communicated to the appellant before the Full Court Meeting on January 17, 1987, but the same were communicated to him before the Full Court reconsidered the matter in the meeting held on February 20, 1988 pursuant to the judgment of the Division Bench. The appellant had denied the allegations made in the said letter against him. Upon such denial, no attempt was made by the Full Court to have the comments of the retired Judge, who had orally made the allegations against the appellant. There is, therefore, no material on record to form the foundation in support of the allegations and the Full Court, in our opinion, was not at all justified in acting on the allegations contained in the letter of Dhaon, J.

We may now deal with the adverse entry of 1986-87 made by the Administrative Judge on July 9, 1987 against the appellant. It has been already noticed that an enquiry was made by the learned Chief Justice and the allegations contained in the adverse entry have been found to be without foundation. Indeed, the learned Chief Justice recorded that he regarded Sri Agarwal as a very good, able and competent administrator with an unblemished integrity. In view of the minutes of the learned Chief Justice, the Full Court was not justified in depriving the appellant of the grant of super-time scale. Apart from that, the adverse entry should not have been communicated to the appellant for his explanation on the face of the minutes of the Chief Justice. In this connection, we

may refer to the proviso to Rule 4(B) of the Rules which inter alia. reads as follows:

"..... Provided that adverse remarks or strictures made by Administrative Judges about the judicial work and conduct of any officer of subordinate judiciary will be placed before the Chief Justice before issue.

The rule requires that before an adverse remark is communicated to the concerned judicial officer, it must be placed before the Chief Justice and, in our opinion, by necessary implication, the rule requires concurrence of the Chief Justice for taking action on the adverse remark by communicating the same to the judicial officer concerned. In the instant case, the adverse entry was communicated to the appellant even on the face of the minutes of the learned Chief Justice. In other words, although the learned Chief Justice did not agree with the adverse remarks, yet action was taken on the same by communicating the same to the appellant. This was done in utter violation of the proviso to Rule 4B and also in disregard of the minutes of enquiry of the learned Chief Justice. In this connection, it may be mentioned that the allegations which were made from time to time against the appellant resulting in the postponement of consideration by the Full Court of the recommendation of the Selection Committee for the grant of super-time scale to the appellant, were all found to be untrue. We may mention about one instance when the Full Court could not consider the case of the appellant for the grant of super-time scale at its meeting held on May 17, 1986 because an oral accusation was made by the learned Administrative Judge that the appellant and his son were involved in smuggling activity while posted as the District Judge, Gonda, in the year 1985. The matter was referred to the District Magistrate, Gonda, who by his letter dated May 31, 1986, informed the High Court that no such incident, as referred to him, had come to his notice wherein Sri Agarwal or his son might have been apprehended while carrying smuggled goods. Further, it was stated by him that he had verified from the concerned records of different Police Stations which also showed that there was no mention of any incident involving Sri Agarwal or his son in such a matter. Thus, the allegations made against the appellant or his son were baseless.

After considering the above facts and circumstances, we are satisfied that the appellant was entitled to a posting in the super-time scale. We modify the judgment of the Division Bench and direct that as the appellant has already retired, he shall be paid the monetary benefit of the super- time scale with effect from January 1, 1987. His pension shall be suitably altered on that basis. The payment shall be made within two months from today.

The appeal is allowed. There will, however, be no order as to costs.

N.P.V.

Appeal allowed.

