

(1981) 09 GAU CK 0013

Gauhati High Court

Case No: Civil Rule No. 146 of 1978

Bichitra Mohan
Barman

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Sept. 18, 1981

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 16, 19, 21

Citation: (1982) 1 GLR 64

Hon'ble Judges: T.C. Das, J

Bench: Single Bench

Advocate: A. Sarma, A.B. Choudhury, S.A. Choudhury and B. Dutta, for the Appellant; S.N. Chetia, Central Govt. Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

T.C. Das, J.

A citizen has a right to ventilate his grievance in an appropriate Court of Law if he is aggrieved by improper and order of any authority before whom his grievance was placed but failed to consider it in its proper perspective and in a legal manner. If any injustice is caused to him by any order of the authority without any legal sanction and in a wrong manner, he can certainly approach the appropriate Court if not otherwise, debarred by law, for his redress with a hope that justice would be done to him. Here is the (SIC) of a poor employee Shri Bichitra Mohan Barman who is working in departmental workshop HQ 1064 field. workshop (G.R.E.F) C/O 99 A.P.O. and was once adjudged, as the best trainee for securing the highest marks in the Trade of Motor. Mechanic and rewarded with a Medal, but due to wrong done to him, as alleged, he had to suffer in the career of his service by the repeated orders of his employer relating to his promotion and reversion, Naturally, as he felt aggrieved, and while convinced that the authority before whom he made several

representation seeking redress, did not consider the same, has come to this Court by way of this writ petition under Article 226 of the Constitution of India questioning the validity of those orders. The main grievance of the Petitioner has been stated in this writ petition, relates to the order of fixation of pay and allowances in the post of E.E.M. with effect from 1.3.73 though the Petitioner claims that he is entitled to pay and allowance in the said grade With effect from 5.12.69 on which date he joined as E.E.M. on promotion. The facts leading to this Writ application may be Stated briefly as follows

2. On 19.11.62, the Petitioner was recruited as a Vehicle. Mechanic in the General Reserve engineering Force-for short the "GREF" the Petitioner was adjudged the best vehicle mechanic and was awarded a Certificate of Merit by the Chief Engineer, Project Dentak on 31.5.7.

3. The Petitioner was declared quasi-permanent with effect from 20.11.69 in the post and soon after, "he Petitioner was promoted to the Trade of E.E.M. (Engineering Equipment Mechanic) and was posted to the (SIC) while 32 Field workshop on 5.12.69. While working as E.E.M. over three months, the Petitioner was informed that his initial appointment as Vehicle Mechanic was irregular and as such the Petitioner's promotion as E.E.M. was cancelled by the order dated 20.8.70 and (SIC) converted to the post of Vehicle Mechanic with (SIC) effect from 5th December, 1969. It is however(SIC) Petitioner in his writ petition that while (SIC) promoted as aforesaid, several other vehicle Me (SIC) were also promoted as E.E.M., having equal experience as of the Petitioner but their promotions were not in any way affected except the case of the Petitioner. The Petitioner has stated that he was the senior most amongst other persons promoted as aforesaid but the Petitioner was singled out and reverted to the position of Vehicle Mechanic on the alleged ground that the initial appointment was irregular. It has been further stated by the Petitioner that at the intervention of the authority of the Government of India the matter of regularising the alleged irregularity of appointments of the GREF personnel including that of the Petitioner was taken up for consideration and the same were regularised. The Petitioner was again promoted to the post of E.E.M. with effect from 17.2.72 and was adjusted in the 32 field Workshop. During 1973 there was reorganisation of the GREF establishment and the Petitioner was declared surplus in the Trade of E.E.M, and consequently the Petitioner was asked either to go on discharge or volunteer for the Trade of Vehicle Mechanic. In such a compelling circumstance, the Petitioner had to accept the Trade of Vehicle mechanic with effect from 1.3.72. Thereafter, the officer Commanding 32 Field Workshop (GREF) on considering the Petitioner's seniority in the post, requested the HQ to maintain the seniority of the Petitioner by restoring his seniority with effect from 19.11.62 Vehicle Mechanic. The Petitioner also made several representations to the authority concerned from time to time stating his grievance but to no avail. However, on or about 16.4.78. the Petitioner was informed (vide Annexure-9 to the petition dated 16.3.78) that his seniority on promotion was examined by Departmental Promotion

Committee (D.P.C.) to the effect that the Petitioner's seniority in the Trade of E.E.M. was fixed as 17.2.72. The Petitioner further alleges that the authority concerned had to admit that his reversion was irregular but at the same time failed to consider the period for reckoning his seniority as E.E.M. from 20.6.69, the date of his original promotion to E.E.M. The Petitioner's grievance is that though the authority concerned has admitted the irregular reversion of the petitioner, the authority concerned was not correct in reckoning the date of his seniority in the Trade of E.E.M. and not to grant him pay and allowances to the Petitioner for the intervening period.

4. The Respondents have contested the petition by filing an affidavit-opposition in reply to the various contentions as made by the Petitioner in his writ petition. The Respondents have sought to maintain their all earlier orders on the basic ground that the Petitioner was erroneously considered for promotion by their D.P.C. held in 1969. The Respondents have further stated in their affidavit-in-opposition that the irregularity in the matter of promotion was, however, regularised and the Petitioner's position relating to his promotion was reckoned and restored on and from 1.3.73. The Respondents have contended that as the appointment of the Petitioner was irregular which was regularised from 25.3.71 and promoted to the Trade of E.E.M. with effect from 1.3.73 he was not entitled to pay and allowances for the intervening period as per orders passed by the Head quarters Director General of Border Roads dated 26.5.78 and 19.6.78 respectively (vide Annexures-B and C to the affidavit-in-opposition), It has been further stated by the Respondents that though the Petitioner was made quasi-permanent as per General Civil Services (Temporary Service) Rules, 1965, he had no right to claim for promotion as his substantive appointment was irregular, and further contended that considering the promotion and seniority of the Petitioner the relevant provision "to the Government of India's decision No. 4 below Article 422, Choudhury's compilation of C.S.R. Vol, J, 8th Edition "was taken into consideration for the purpose of reckoning his seniority but such restoration of seniority cannot have its retrospective effect as confirmation/promotion had already been done in that category. Therefore, according to the Respondents as stated in their affidavit, no pay and allowances could be allowed for the intervening period.

5. Mr. A. Sarma, the learned Counsel appearing on behalf of the Petitioner has made short submission before me and the main plank of his argument is to the effect that while the authority concerned has admitted their own mistake in passing constant orders of promotion and reversion, the Petitioner is entitled to his pay and allowances for the intervening period as his suffering was due to the direct case of wrong done by the authority concerned. The learned Counsel has further submitted that in respect of the confirmation or promotion, as the case may be, relating to others in the said category though cannot be disturbed in any manner, but the seniority of the Petitioner should be counted on and from the date of his initial promotion to the Trade of E.E.M on and from on and not on and from 1.3.73 as fixed

by the Respondents. These are two points as submitted by the learned Counsel of the Petitioner to be considered by this Court.

6. Mr. S.N. Chetia, learned Additional Central Government Standing Counsel for the Union of India representing Respondents has submitted that though it was found subsequently by the authority concerned that the reversion of the Petitioner was irregular his seniority and promotion Was thereafter duly considered and the Petitioner was restored to the post of R.B.M as well as for the purpose of reckoning the seniority on and from that period i.e. from 1.3.73.

7. In course of his argument, Mr. Sarnia the learned Counsel for the Petitioner has referred to me a decision of this Court in Civil. Rule No. 4(S) of 1975 (Pares Chandra Purkayastha v. Union of India disposed of on 13.3.81 as reported in 1981 Lab. L.C. 929) and has submitted that an identical question of law arose in the said case where this Court had the occasion to consider the question as to whether the petitioner in the said Civil Rule was entitled to get his pay and allowances and the benefit of his seniority including promotion during the period where he was debarred from the enjoyment of his legal benefits and dues by the wrong order of the authority concerned. My learned brother Hon"ble Mr. Justice Lahiri in deciding the above matter considered and followed the principle as laid down in several decisions of the Supreme Court and observed:

It is true that such administrative action may be taken, but such action sane reason fairness cannot be upheld. It is wrong to suggest that administrative actions of discretionary nature is not subject to judicial review. The notion of a discretion which is to be exercised not on a capricious and impetuous way, but in a disciplined an responsible manner is a conception which had a wide application in Indian law.

Discretion in public affairs is seldom absolute. It is ordinary qualified. It must be used "judiciously", So that question is commonly expressed as "judicial discretion" though exercised in administrative actions. Executive, no less than judiciary is under a general duty to act fairly. Indeed, fairness grounded on reason is the quint essence of the guarantees epitomised in Articles 14 and 16 of the Constitution. Governmental action in the field of Administrative law, should be, to put it in the negative language must not be (SIC) and (SIC) in a positive form "It must be reasonable and fair". Administrative action is a positive act. It must be grounded on some principles, must be reasonable and relevant.

In the aforesaid decision, it was further observed:

Under the guise of absolute (SIC), if (SIC) and unguided discretion is regarded as acceptable formulae for making such an order it will be the surest menace to public interest and must fall for unreasonableness, arbitrariness, distinguished penalty.

In conclusion my learned brother held:

It has been held that such administrative actions must be reasonable, fair and just. It has been ruled that law so enunciated is based on the Preamble to the Constitution and the Directive Principles which concretise and give shape to the reasonableness envisaged in Articles 14, 19 and 21 and other fundamental rights. It has been held that where Government action fails to satisfy the test of reasonableness, fairness and justness it must be struck down as invalid.

Mr. A. Sarma, the learned Counsel for the Petitioner has Preferred to me another decision of the Supreme Court reported in [The Manager, Government Branch Press and Another Vs. D.B. Belliappa](#), and has drawn my pointed attention to paragraph 24 of the aforesaid case, which runs as follows:

24. Conversely, if the services of a temporary Government servant are terminated, arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in, a class apart from his juniors in the same service, a question of unfair discrimination may arise not with standing the fact that in terminating his servicee, the appointing authority was reporting to act in accordance with the terms of the employment. Where a charge of unfair discrimination (SIC) motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to display that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action. Excepting, perhaps in cases analogous to those covered by Article 311(2), provision (c), the, authority cannot withhold such information from the Court on the lame excuse, that the impugned order is purely administrative. and not judicial, having been passed in exercise of it's administrative discretion under the rules governing the conditions of the service. "The giving of reasons", as Lord Denning put it in *Breen v. Amalgamated Engineering Union* (1971) 1 ALL ER 1148 "is one of the Fundamentals of good administration" and to recall the words of this Court in [Khudiram Das Vs. The State of West Bengal and Others](#), in a Government of law "there is nothing like unfettered discretion immune from judicial review ability". The executive no less than the judiciary, is under a general duty to act fairly, Indeed, fairness founded on reason is the essence of the guarantee epitomised in Articles 14 and 16.

8. In another decision of the Supreme Court *Sheodayal Sinha V. State of Bihar* (Civil Appeal No. 487(N) of 1981 disposed of on 8.4.81) their Lordships of the Supreme Court the occasion to consider the questions of promotion under Rule 12 of the Rules framed under the Government of India. Act and to consider the validity of the order as to whether (SIS) the provision of Articles 14 and 16 of the Constitution. It was held:

The cases of the Appellants had to be considered as they were eligible for promotion and since their cases were not considered, Articles 14 and 16 of the Constitution were clearly attracted.

Rule 12 extracted above makes it incumbent on the Governor to supply the Commission with the necessary records of the officer nominated, for promotion together with the records of persons who are Senior to the nominated officer. Apart from there being a clear violation of the rules and orders framed by the State Government as the cases of the Appellants had not been considered for promotion which the government was bound to consider, there has been a clear violation of Articles 14 and 16 of the Constitution of India.

9. In considering the decisions cited above, it may be possible to have an irresistible Inference which arises from the materials placed in this writ petition to come to a conclusion that the nature of orders as impugned in this, petition are violative of all the norms of justice and fair-play and of Articles 14 and 16 of the Constitution.

10. Turning to the petition, it appears that the grievance of the Petitioner is to the effect that he was debarred from getting all the benefits due to capricious orders as per Annexures 1,6,8 and 9. While claiming the benefit, the Petitioner has stated that though subsequently the authority concerned had to admit that the orders affecting the Petitioner's promotion in, the service were irregular, but arbitrarily fixed pay and allowances on and from 1.3.73 and not from the earlier period, Mr, Chetia, learned Additional Standing Counsel for the Central Government appearing on behalf of the Respondents could not give any reply nor could show any provision of law or Rules to justify the impugned orders in fixing the date-line for the pay and allowance relating to the promotion of the Petitioner for the intervening period. I have gone through the decision in Civil Rule No. 4(S) of 1975 (Supra) as referred to me by the learned Counsel and I fully endorse the view expressed therein by my learned brother Hon"ble Mr. Lahiri and I am of the firm opinion that the principle adopted in the above case is squarely applicable in the present case so far it relates to the granting of pay and allowances to the Petitioner.

11. In considering the facts and circumstances of this case and also upon hearing the learned Counsel for the parties,(SIC) hold, that the impugned, orders in so far as it relates to determination of allowing pay and allowances with effect from 1.3.73 is invalid and declare that the Petitioner is entitled to get all the above benefits on and from 5.12.69 i.e., on and from the date of Petitioner's promotion to the post of E.E.M. This is because the authority concerned cannot take advantage of its own wrong done to the Petitioner by passing constant order of promotion and reversion that caused him to suffer (SIC) loss of seniority in Service and other legal benefits without any rightful cause. However, I would like to make it clear that it is upto the authority concerned to consider the seniority of the Petitioner and place him in the list accordingly as the authority may deem fit and proper in exercising their administrative jurisdiction.

In the result the petition is allowed to the extent indicated above. The Rule is made absolute. No order as to cost.