(1977) 08 KL CK 0027

High Court Of Kerala

Case No: W.A. No. 371 of 1974

State of Kerala		APPELLANT
	Vs	
Krishnan Namboodiri and Others		RESPONDENT

Date of Decision: Aug. 12, 1977

Acts Referred:

- Constitution of India, 1950 - Article 226
- Duties of Excise (Goods of Special Importance) Act, 1957 - Section 3, 4

Hon'ble Judges: V.P. Gopalan Nambiyar, C.J; K.K. Narendran, J

Bench: Division Bench

Advocate: C.S. Ranjan, Government Pleader, for the Appellant; K. Chandrasekharan and K. Vijayan, for the Respondent

Final Decision: Allowed

Judgement

Gopalan Nambiyar, C.J.
We think this writ appeal should succeed. We are of the opinion that the learned Judge was wrong in interfering with the assessment of the Departmental Promotion Committee in regard to the eligibility for promotion of the Petitioners.

2. The writ Petition is a sequal to an earlier writ Petition in this Court - O.P. No. 377 of 1970. Ext. P-5 is a copy of the judgment in the said writ Petition. The three writ Petitioners who are Tahsildars challenged their non-inclusion in the select list prepared by the Departmental Promotion Committee for promotion as Deputy Collectors in the Revenue Department. A learned Judge of this Court took the view that the procedure adopted by the Departmental Promotion Committee in making the two selections in the year 1969 was not in conformity with paragraph 8A of GO. (P) 420/Public (Rules) Department, dated 29th December 1967 (Copy Ext. P-1) and that the two selections and appointments made pursuant thereto cannot be regarded as valid. The learned Judge further observed as follows:

8. In view, however, of the submission made by the learned Government Pleader that the State Government is agreeable to have the Petitioner''s claims for inclusion in those two select lists considered afresh by the D.P.C. after issuing to the Petitioners proper notices in accordance with the provisions contained in paragraph 8A as they stood in 1969 and after affording them due opportunity to; make their representations, I do not think it necessary to quash those two selections and appointments because in case that is done serious administrative inconvenience may result''. The appointments made pursuant to those selections should however be treated by the Government as only provisional and the whole matter concerning the two selections 1969 should be reviewed by the D.P.C. for the limited purpose of considering the Petitioners'' claims for inclusion in the select list. Till the select lists are finalised afresh after such review the promotions granted in consequence of the two selections conducted in 1969 will be regarded as purely ad hoe and temporary. The final orders in the matter in the light of the review to be conducted by the D.P.C. should be passed by the State Government within a period not exceeding 4 months from today.

In pursuance of the judgment, the Departmental Promotion Committee met on 26th April 1971 and after considering the claims of the Petitioners found them unsuitable for Selection. Exts. P-7, P-13 and P-20 are the copies of the notices issued to the three Petitioners embodying the tentative conclusion of the Departmental Promotion Committee and the reasons therefor. Exts. P-8, P-14 "and P-21 are the representations of the three Petitioners in answer to the above three notices issued to them. After receipt of these representations the Departmental Promotion Committee met and considered the matter again on 9th June 1971. By Exts. P-9, P-15 and P-22 orders, the Committee decided that each of the three Petitioners was unsuitable for promotion and could not be included in the select list. The orders are more or less on the same footing. We resist the temptation to quote at least one of them by way of example, or for purposes of convenience. Each of them runs to more than two foolscap pages of typed matter. Ext. P-9 wound up with the conclusion:

After considering the case in all aspects the committee has come to the final conclusion that there is no case for any reconsideration of its earner decision not to include him in the select list. The tentative conclusion at its last meeting was confirmed.

More or less to the same effect is the conclusion finally recorded in Ext. P-15 and Ext. P-22 (but not in identical language). The Departmental Promotion Committee consisted of the Chairman of the Public Service Commission-, the Revenue Secretary and the Secretary to the Board of Revenue. It was not disputed before us that the personnel; of the Committee was constituted of persons quite competent to make the assessment in regard to the eligibility for promotion of the Petitioners. Ext. P-1 G.O. which constitutes, the Departmental Promotion Committee, provided by

paragraph 5 that the criterion for assessment of merit is the confidential reports of the officers; and that such reports for at least the three previous years should be made available to the Committee for the purpose. It is not disputed that the confidential reports were considered by the Committee and that its assessment was based on these reports.

3. These being the facts, we should have thought that interference with the Committee''s assessment and conclusion was forbidden ground in proceedings under Article 226. But the learned Judge, in the light of the principle of the decision of the Supreme Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, recorded his conclusion thus:

20. No material is available in the notices Exts. P-7, P-13 and P-20 or in the final orders Exts. P-9, P-15 and P-22 or in the counter-affidavit filed in this case to indicate hour the cases of those who were selected were superior to that of the Petitioners. In fact in the case of each of the Petitioners it has been said that:

...the committee finds that he will not come anywhere near the standard required for appointment for selection to the higher post.

What the standard was, has not been disclosed. Evidently that was not a standard which had any concrete shape in the sense there was no specified norms fixed.

The learned Judge was of the view that the consideration of the claim of the Petitioners had not been proper. In that view the'' learned Judge quashed the selection and directed the Respondents to consider the case of the Petitioners for promotion afresh. Although the selections were quashed, for the sake of administrative convenience the continuance of such persons in such posts was felt necessary and that was directed to be done without any preferential rights to the persons so continued merely by reason of such continuance.

4. We have gone carefully through the orders of the Departmental Promotion Committee, namely, Exts. P-9. P-15 and P-22. We are quite unable to share the view of the learned Judge that they do not disclose the reasons for the Committee''s assessment or conclusion or the grounds off action: Indeed, Ext. P-1 had delimited the criterion for selection as the confidential reports. These were examined.; by the Committee, the entries were scrutinised and commented upon in the impugned orders, and the inferences and conclusions from these entries were drawn by the Committee. It was on such overall "assessment that the impugned orders were passed. It was not within the province of this Court in proceedings under Article 226 to weigh or to balance the entries in the confidential records or to reconcile the apparently conflicting effect of the entries or portions thereof. We are clearly of the opinion that the learned judge overstepped the limits for interference under Article 226 with the Committee''s assessment and conclusion.

5. We do not think that the decision of the Supreme Court in Capoor''s case (1) lends any countenance or sanctions any principle for interference in cases of this type. Capoor''s case (1) was concerned with a case of selection to the Indian Police Service under the statutory rules framed for the purpose. Capoor and Mishra were included in the select list prepared in 1961 and 1962 and remained in these select lists without being appointed till 1968. In the fresh select list prepared in that year they were dropped. They challenged their non-inclusion in the 1968 list. The defence that the Departmental Promotion Committee had considered their claims and decided to supersede them. Regulations Clause (5) of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955, contains the following provision.

(5) If in the process of selection, review or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession.

This statutory requirement marks one essential distinction between Capoor''s case (1) and the present one. We are prepared to assume that even in the absence of the specific requirement, a duty to give a reasoned order in support of the conclusion of the Committee has to be implied. That would take us to the second and the more substantial ground of difference between Capoor''s case (1) and the present one. It was pointed out by the Supreme Court in paragraph 27 that the impugned orders gave merely "rubber stamp reasons" and did not amount to reasons for the proposed supersession within the meaning of the statutory requirement in Regulation 5 clause (5). The stock reason given by the Select Committee was:

On an overall assessment, the records of these officers are not such as to justify their appointment to the Indian Administrative Service/Indian Police Service at this stage in preference to those selected.

It is clear to us that the above circumstance marks the fundamental difference between Capoor''s case (1) and the present one. We would not be justified in equating the impugned orders in this case with the ''rubber stamp reasons'' in Capoors case (1). We are clearly of the view that there was a clear application of the mind of the Departmental Promotion Committee to the task set out before it.

6. In the enumeration and assessment of the imponderable factors that go to make up merit and ability, it invariably happens that emphasis is laid by the assessing authority on one factor rather than upon another, where the cumulative effect of several factors has to determine the assessment. In the instant case the range of enquiry has been delimited by Ext. P-1 and the Committee has stuck to the delimited range. It is, not possible to formulate mathematically precise standards in the assessment of merit and ability. It appears wrong to project interference under Article 226 on the ground that there was an overemphasis on one factor or a disregard of the other, or that the standard for assessment had not been clear or

well defined.

7. One of us (myself) had to consider the decision in Capoor''s case (1) in the judgment in O.P. No. 2910 of 1972. It was observed that in the case considered there was no requirement in the rules to record reasons for the supersession and that it would be inappropriate to import any requirement of recording reasons for selection. Even if we supply this requirement, on considerations of natural justice, we are satisfied that the requirement has been met and that the Departmental Promotion Committee has given reasons and recorded the same in support of its conclusion. The learned Judge was wrong in having interfered with the assessment of the Committee.

8. We allow this appeal, set aside the judgment of the learned Judge and direct that O.P.No. 2427 of 1971 will stand dismissed. We make no order as to costs.