

UNION OF INDIA VS B.S AGARWAL

APPEAL (CIVIL) 6713-6715 of 1997

- Sidrah Jami

Court – Supreme Court of India

Bench – G.N. Ray, G.B. Pattanaik

Decided on – 29th September, 1997

FACTS

The case of Union of India Vs B.S Agarwal has played a crucial role in the evolvement of law with regards to the same. In this case, there has been SPL No.25014 of 1996 that came out of an appeal against the order (dated 29-10-1986) which was passed by the Central Administrative Tribunal, New Delhi in the OA No.2122 of 1995. Then the appeal SLP No.24361 of 1996 was directed against the order (dated 22-8-1999) that was passed by the Central Administrative Tribunal Mumbai Bench in OA N0.184 of 1992 and the appeal SLP No.9068 of 1997 was directed against the order (dated 7-3-1997) that was passed by the Central Administrative Tribunal, New Delhi in OA No.2536 of 1996. The most common thing that was seen in all these appeals was the interpretation of para 7.3 of the Scheme which was related to the appointments of posts of General Managers and equivalent in the Indian Railways.

ARGUMENTS RAISED BY THE APPELLANT

Mr. T.R Andhyarujina, learned Solicitor General of India for Union of India

- The Attorney General submitted that Article 14 and Article 16 of the Indian Constitution has not been violated in all these appeals. Article 14 relates to the principle of Equality before law that means that the state has to treat everyone equally within the boundary of India whereas Article 16 is related to the principle of providing equal opportunity for people in any type of employment.

- He said that all the appointments related to the posts of General Manager and equivalent

were done according to the proper interpretation of paragraph 7.3 of the residual length of service of two years from the date of accrual of a vacancy in a decision which was given by the Central Administrative Tribunal, Allahabad Bench.

- He also submitted that the 1994-1995 panel of the officers who were eligible for the appointment of General Managers and equivalent included Mr. Kamal Raj and Mr. BS Agarwal. Under this, the appointments of these posts were based on the understanding of para 7.3 of the scheme which was cited by Central Administrative Tribunal and came out of empaneled officers who had two years of residual service from the date of accrual of vacancy. He stated that Mr. Agarwal and Mr. Kamal Raj did not have two years of actual service either on the date of accrual of vacancy or the date of actual appointment of empaneled officers.

- Mr. S.A. Zaidi, respondent SPL No.9068 of 1997 was included for the posts of General Manager and equivalent in the 1995-1996 panel however Mr. Zaidi was not appointed in the same. He didn't have two years of service as his retirement date was 31-7-1998. Under this, there were 15 officers out of 19 officers who were senior to Mr. Zaidi but still didn't get an appointment in any of the posts. He said that the appointments of posts should be made according to the residuary service of two years that are reckoned from the date of actual of vacancy.

- He also submitted that para 7.3 should be properly carefully studied so that there is no confusion in relation to the appointment of the empaneled officer. He further stated that on the date of appointment if the officers who are senior in nature if they are outcasted as they don't have two years tenure. There should be a proper tenure for the posts and the officers should take concentrated decisions with appropriate actions within the tenure of the officers.

- He also laid down that appointment and the actual date of subsequent stages of consideration are not fixed and depends on the final decision of the Committee however the date of accrual of vacant is fixed.

- He further stated that the appointments of the posts of General Managers and equivalent

were made by the Union of India according to the proper analysis of 7.3 which was given by the Central Administrative Tribunal, Allahabad.

ARGUMENTS RAISED BY RESPONDENT

Mr. Shymala Pappu has appeared in the appeals that arose out of SPL (C) No.25014 of 1996 and SLP (C) No. 24361 of 1996 for B.S Aggarwal and Kamal Raj. It was seen that para 7.3 was read in accordance with para 4.1 and para 10 of the scene which concentrated for providing relaxation.

- He submitted that a panel of Senior Administrative Grade (SAG) have an equivalent status of Joint Secretary and Officers of higher position had the duty of appointing General Managers and equivalent who are less than the age of 56 years on 1st July. This panel is approved by the Appointment Cabinet Committee. He laid down that paragraph 9 of the scheme said that the high-powered selection committee should meet once a year between 1 April and 31 March of next year. He also contended that Mr. BS Aggarwal had an outstanding service record as he received a prize of one lakh rupees for fantastic work related to construction and an award called Indian Railway Construction Shield. Mr. BS Aggarwal was represented for the Chairman, Cabinet Secretary, Railway Minister, Railway Board and Prime Minister. Various officers who were junior to Mr. BS Aggarwal were appointed as General Manager however Mr. BS Aggarwal was not favored with any post. Central Administrative Tribunal disclosed that Mr. BS Aggarwal wasn't appointed because he didn't have tenure of two years when the vacancy had accrued. He suggested that paragraph 7.3 clearly stated that certain flexibility was allowed in the provision regarding the tenure of two years. Paragraph 4.4 dealt with the inter se seniority. Three officers who were junior to Mr. BS Aggarwal. Two officers had less than two years of tenure. The inter se seniority and an excellent record of Mr. BS Aggarwal was ignored in this case and three juniors were appointed for the posts.

- He clearly stated that there was a clear injustice happening in the case of BS Aggarwal and Kamal Raj as there was a violation of Article 14 and Article 16 of the Indian Constitution.

- He also submitted that the clear interpretation of paragraph 7.3 was laid down under **DPS Ahuja vs Union of India [1]**. The decision that was given by the Allahabad Bench should be referred to a larger bench so that they give a decision that doesn't violate Article 14 and Article 16 of the Indian Constitution. Mr. Devendra Dwivedi, learned counsel appeared for respondent SAA Zaidi in the appeal that arose out of SLP (C) No.9068 of 1997. This appeal focused on the aspect on the proper interpretation of paragraph 7.3 and to see if Mr. Zaidi was discriminated under Article 14 and Article 16 of the Indian Constitution.

- He suggested that every person has a right to get employed as well as to get promotion under Article 16(1) of the Constitution. Every employee should be treated equally according to the other candidates. He said that merit, suitability and seniority should be considered for a proper decision-making process for the appointment of posts. Under the case of **Sant Ram Sharma vs State of Rajasthan [2]**, the court held that the persons should be selected according to their merit and suitability and if by chance there is equal merit then a senior should be considered.

- He further stated that the policy should be reasonable and fair and should not be made arbitrarily. There should be no ambiguity during the interpretation of the statute. The words used in the statute should be made according to Article 14 and Article 16 of the Indian Constitution. If there is a violation of any right then the judiciary is allowed to interfere. The problems that were caused due to the government should not violate any of the constitutional provisions. This was laid down under the case of **B. Prabhakar Rao vs State of A.P.**

- He said that an officer who was junior of Mr. Zaidi was appointed which clearly implied that there was a wrong interpretation of para 7.3 and hostile discrimination against the respondent.

- He also said that if there is a deviation of residual service of two years from the date of appointment then it can be invoked by para 10 which relates to relaxation.

ISSUE

These are certain questions that were raised in the present case:

1) One of the main questions that was raised in this case is what is the proper interpretation of para 7.3 which was related to the appointment of posts of General Manager and Equivalents?

- 2) Was the decision of non-appointment of Mr. BS Agarwal, Mr. Kamal Raj and Mr. SAA Zaidi for General Manager posts and Equivalent posts correct?
- 3) What is the time for residual tenure to be reckoned?

RULE OF LAW

The court applied that the matter related to appointment and promotion should not violate Article 14 and Article 16 of the Indian Constitution.

Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 16: (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office 1[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

2[(4A) Nothing in this article shall prevent the State from making any provision for reservation 3[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favor of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

4[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled

up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

ANALYSIS

After understanding the facts circumstances, appeals and submissions of the case the court held that respondents have rightly contended that appointment and promotion should not violate Article 14 and 16 given under the Indian Constitution. The inter-se seniority for the appointment of post of General Manager and equivalent should not be ignored. The relation that is made under para 10 should not be arbitrary in nature. The question of tenure for two years is referred in para 7.3 which is related to the date of the proposal for filling up such vacancy, date of accrual of vacancy, the date of the actual appointment, date of selection of the empaneled officers for appointment to the posts of General Managers and equivalent. The 7.3 para should be according to equity, justice and unmerited hardship. The proposals for appointments are sent to a committee after the empanelment of eligible officers. Para 7.3 referred to the residual service of two years on the higher post of General Manager. This para should be given proper and reasonable interpretation to avoid any type of uncertainty and variable factors that can bring justice and hardship. An empaneled officer having higher inter se seniority over others has a reasonable expectation to get an appointment on the accrual of vacancy but if the actual appointment is not made promptly either on account of inherent time-lag associated with procedural formalities or on account of bureaucratic lethargy or by delaying the process of appointment in a calculated and designed manner an eligible and senior officer in the panel cannot but suffer unmerited hardship if para 7.3 is interpreted in the manner advocated by the learned counsel for the respondents. The court also saw that there was no appointment of empaneled officers with residual tenure less than two years from the date of accrual of fancy have been made. Mr. BS Aggarwal and Mr. Krishna Raj were included in the panel of 1994-1995 as eligible officers for the appointment of posts of general makers

and equivalent. Mr. BS Aggarwal and Mr. Kamal Raj did not have residual service related to the date of accrual of vacancy therefore they were not appointed for the posts. Shri Zaidi was included in 1995-1996 panel but wasn't appointed for the posts as they did not have two years of residual service from the date of accrual of vacancy. The question that was related to hostile discrimination did not arise against Mr. Zaidi. The appointments that were made for the posts of General Manager and equivalent were proper and just, therefore the appeals filed by the respondents were dismissed.

CONCLUSION

In this case, many appeals were filed by the petitioners and the respondents. The case revolved around a question related to the interpretation of para 7.3 and the appointment of posts related to the General Manager and equivalent. The court clearly held that the appointment of posts cannot violate Article 14 and Article 16 of the Indian Constitution. It laid down a clear interpretation of para 7.3. The court also held that Mr. BS Aggarwal and Mr. Krishna Raj didn't have the proper residual service on the date of accrual of vacancy therefore weren't included in the posts. The appointments for General Manager and equivalent were properly made therefore the judgment wasn't passed in the favor of the respondent.

JudicateMe