

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Son Pal Vs. General Manager, Northern Railway, New Delhi and ors.

Son Pal Vs. General Manager, Northern Railway, New Delhi and ors.

SooperKanoon Citation : sooperkanoon.com/689534

Court : Delhi

Decided On : Feb-12-1973

Reported in : ILR1973Delhi875

Judge : V.S. Deshpande, J.

Acts : [Constitution of India](#) - Article 16; [Government of India Act, 1935](#) - Sections 241

Appeal No. : Civil Writ Appeal No. 501 of 1972

Appellant : Son Pal

Respondent : General Manager, Northern Railway, New Delhi and ors.

Advocate for Pet/Ap. : G.D. Gupta,; S.S. Chadha and; P.N. Sethi, Advs

Judgement :

V.S. Deshpande, J.

(1) The two questions arising in this case for decision relate to-

(1) Whether the Government can restrict the right of a Government servant to apply for another post and if so, to what extent? And

(2) Whether the Government can take into consideration the past record of a Government servant before permitting him to take up another post for which he

has been selected and recommended by a Service Commission and if so, whether a hearing should be given to the Government servant concerned by the Government before taking final decision in this respect?

(2) The petitioner is a Guard in the Northern Railway and is a Law graduate. He applied for a post of a Law Assistant in the Northern Railway in response to an advertisement by the Railway Service Commission which required that 'serving Government employees may send their applications on the prescribed form direct to the Railway Service Commission if they anticipate delay in routing the application through their department but they will be admitted to the test/interview only on production of 'No objection Certificate' from their department'. The petitioner was interviewed on 25th May 1971 when he produced before the Commission an old 'No objection Certificate' dated 31-8-1966 which was issued to him by the Railway only for the purpose of registration of his name with the Employment Exchange. Subsequently on 29-5-1971 the petitioner was informed by the Railway that 'No objection Certificate' could not be granted to him in terms of printed Serial No. 4504 as he is undergoing punishment in vigilance and other cases. The Serial No. 4505 says that the applications of a Government servant who is undergoing penalty should not be forwarded. Nor should such Government servants be released from duty to go on deputation etc. Even after the expiry of the penalty, he should not be permitted to go on deputation to another department etc., till his case is examined. But the Railway Service Commission acting on the old 'No objection Certificate' selected the petitioner for appointment to the post of a Law Assistant but made it 'subject to his being found suitable in all respects'. Thereafter the General Manager, Northern Railway, wrote to the Divisional Superintendent, New Delhi, that the petitioner was selected by the Railway Service Commission for appointment as Law Assistant 'subject to production of 'No objection Certificate' with full particulars of service duly verified by the Head of Department'. He further wrote that 'an offer of appointment letter is sent herewith and the same may be delivered to him in case the required no objection certificate is given by the Head of Department'. In the offer of appointment also it was stipulated that the character of the petition should be verified before appointment and he should not have any undesirable antecedents which may debar him from recruitment to Government service.

(3) The Divisional Superintendent thereupon wrote to the Railway Service Commission on 9-11-1971 that the petitioner had been selected as Law Assistant subject to production of 'No objection Certificate' with full particulars of service duly verified by the Head of Department. He enclosed the service particulars of the petitioner and pointed out that the petitioner was still undergoing punishment of various nature and that 'a Dar enquiry in a vigilance case is pending against him'- He then concluded his letter as follow:-

'INview of the position stated above, please advise if you still want to absorb him as a Law Assistant'.

Annexed to the letter was a list of as many as eighteen punishments which had been imposed on the petitioner from January 1959 to August 1971. As these punishments had to be undergone consecutively and not concurrently, it is stated by the Railway in their affidavit that the petitioner would be undergoing these punishments up to 1st April 1976. In reply to the above, the Commission wrote to the General Manager that 'candidates selected by Commission arc recommended for appointments subject to their being found suitable in all respects. Hence it will be appreciated that the suitability or otherwise of candidates, specially of serving Railway employee, has to be examined by Railways, in the light of their service records and Police verification reports. The Commission do not have any objection if a candidate is not appointed to a post for valid reasons of unsuitability'.

(4) The Railway took the stand that the 'No objection Certificate' could not be granted to the petitioner because he was undergoing punishment. The principle underlying the grant or withholding of 'No objection Certificate' is that the employee should not go scotfree from the punishment already imposed upon him by managing to switch over to other higher posts. Otherwise the very object of punishing the employee is entirely frustrated and defeated. Reference was made to printed Seriall No. 3100 which prohibited the registration of the name of the Government employee with the Employment Exchange during the period the penalty imposed on him is in force. In 1970, thereforee, when the application for the post of a Law Assistant was made by the petitioner, the petitioner was not entitled to be registered in the Employment Exchange as he was undergoing a

penalty. The old 'No objection Certificate' could not, therefore, be availed of by him in 1970. Even though the petitioner was selected for appointment by the Railway Service Commission, the appointment was to be subject to (1) production of a 'No objection Certificate' and (2) verification of his character and antecedents by the Railway. As the petitioner was undergoing penalty and was to do so till 1-4-1976, his appointment to the post of a Law Assistant was, therefore, withheld by the Railway.

(5) The petitioner contends that he was entitled to apply for the post of a Law Assistant inasmuch as Seriall No. 4504 did not apply to his case and the 'No objection Certificate' could not, therefore, be withheld by the Railway. He also contends that the Railway was not justified in looking to his past record before appointing him to the post of a Law Assistant and if it did so he should have been heard by the Railway before a final decision was taken not to appoint him.

(6) As to the right of a Government servant to apply for other posts and the right of the Government to place restrictions on such applications, the legal position briefly appears to be as follows: The Government servants are a class by themselves separate from other persons who are not Government servants. The equality of opportunity for employment under the State enjoyed by these two different classes may, therefore, be different under Article 16 of the Constitution. When the Government employs a person, it obviously intends to retain him in the post to which he is appointed. If he is allowed to apply for some other post and go away, the Government would have to take the trouble of finding out another person for the job. In 1943, therefore, the Government had issued Rules under section 241 of the [Government of India Act, 1935](#), prohibiting Government servants for applying to other posts except with the permission of the Government. The rules were held to be valid by the Supreme Court in *Birendra Kumar Nigam v. The Union of India*, (Writ Petition Nos. 220 to 222 of 1962 decided by the Constitution Bench of the Supreme Court on 13th March 1964) which was followed by this Court in *T. P. Mahajan v. Union of India*, (Civil Writ 771 of 1972 decided on 3-1-1973) in which the pros and cons are fully discussed and all the case-law on the subject has been reviewed. The main purpose of insisting on a 'No objection Certificate' before a Government servant is allowed to apply for another post is

that a Government servant undergoing a punishment should not be able to escape the suffering of punishment by changing jobs under the same Government. The object of the imposition of the punishment is that it should be suffered by the Government servant. This reason is, therefore, sufficient in law to justify the refusal of a 'No objection Certificate' by the Government to a Government employee who is undergoing punishment. On the first question, therefore, I find that the Railway was justified in not issuing a 'No objection Certificate' to the petitioner initially.

(7) The selection of the petitioner to the post of a Law Assistant involved two clearly different processes. The first process was that his merits should be judged by an impartial body of persons from among the competing candidates. This was done by the Railway Service Commission. The second process was that even if the petitioner was found fit for appointment on merits, the employer should see to his past record of service to decide whether he is suitable for such appointment. There is a sharp distinction between the nature of these two functions. So far as the assessment of the merit of a candidate is concerned, it is the exclusive function either of the Commission (as in this case) or of a Departmental Promotion Committee (as in other cases) or of the Government itself (as in some cases). As was observed by the Supreme Court in the High Conn, Calcutta v. Amal Kumar Roy, : [1963]1SCR437 :--

'THE plaintiff has failed to make out a cause of action for the suit. The High Court, being the sole authority to decide the question of appointment of a Munsif to the higher rank of a Subordinate Judge, had exercised its power, after fully considering the plaintiff's case for promotion, to pass him over for a year.The exercise of the power vested in the High Court is not justiciable'.

The function of judging the merits of a candidate is largely subjective. All that is necessary is that the material for such purpose should be placed before the authority and should be taken into consideration by it. The candidate may be tested or interviewed by the authority for this purpose. But after this, the question of hearing the candidate before the final assessment of his merit does not arise.

(8) On the other hand, the other function of scrutinising the past record of the candidate with a view to decide whether he is suitable for appointment is not an entirely subjective function. The past record has to be objectively viewed. In a proper case, the candidate whose record is being considered may be heard before a decision is taken to exclude him from appointment on the ground of past record. A candidate who has been selected on merits has a right to expect that he would be appointed on such selection. Before his expectation is defeated on some other ground, it is only just and proper that he should be heard in respect of such other ground. It is true that the past record of the candidate is known to him. But even then, the candidate may be able to explain why it should not bar him from the appointment or why it is not relevant to operate as a bar or, at any rate, that it should not operate as a bar for too long a time. In *State of Mysore v. K. Manche Gowda*, : [1964]4SCR540 , it was argued for the Government that the Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him. This argument was rejected at pages 547-548 of the report in the following words:-

'THIS contention misses the real point, namely that what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate Explanationn to offer For the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers.....He may have many other Explanationns. The point is not whether his Explanationn would be acceptable but whether he has been given an opportunity to give his exolanation. We cannot accept the doctrine of 'presumptive knowledge' or that of 'purposeless enquiry'. as their acceptance will be subversive of the principle of 'reasonable opportunity'. '

Similarly, in *Board of High School and Intermediate Education, U.P. v. Kumari Chitra Srivastava*, : [1970]3SCR266 , it was argued for the appellant that the facts

were not in dispute and no useful purpose would be served if the Board had served a show cause notice on the respondent. The Supreme Court, however, observed as follows:-

'WE are unable to accept this contention. Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defense but on the nature of the order proposed to be passed.Principles of natural justice are to some minds burdensome but this price-a small price indeed-has to be paid if we desire a society governed by the rule of law'.

In *The D.F.O. South Kheri v. Ram Sanahi Singh*, : AIR 1973 SC205 , the order in favor of the respondent by a subordinate forest officer was revised by the appellant without hearing the respondent. The Supreme Court observed at page 206 of the report as follows:- that order he has deprived the respondent of a valuable right..... Granting that the order was administrative and not quasi-judicial, the order had still to be made in a manner consonant with the rules of natural justice when it affected the respondent's rights to property'. In *State of Punjab v. K. R. Erry*, : (1973)ILLJ33SC , a high-powered commission presided over by a High Court judge inquired into the faulty design and construction but without giving an opportunity to the respondent to explain why he should not be held blameworthy in that respect. The Supreme Court observed that:-

'SHRI Erry would be justified in his contention that such a finding would have been appropriate only if his Explanation had been obtained by Mr. Justice Dulat in the course of the enquiry or by the State Government before the cut was imposed'.

(9) On the second question, therefore, while the Railway was justified in taking into consideration the past record of service of the petitioner, the ordinary principle of fairness required that the petitioner should have been heard by the Respondent 2 Divisional Superintendent, Northern Railway, Delhi, before finally deciding not to allow the petitioner to take up the post of a Law Assistant. In the present writ petition, the pleadings of the parties have made the whole position clear. The opportunity to be given to the petitioner may, therefore, be given as follows:-

(10) The petitioner shall immediately make a representation to the Respondent No. 2 as to why a 'No objection Certificate' should be issued to him and why the record of punishments imposed on him which the petitioner is still undergoing should not be taken into account against him. He may also represent that he would be able to serve these punishments in the new post of Law Assistant if he is allowed to occupy it. His representation shall be considered by the Respondent No. 2 and then a final decision shall be taken as to whether the petitioner is to be allowed by the Respondent No. 2 to take up the appointment as a Law Assistant. The Respondent No. 2 shall inform the petitioner his decision on the representation made by the petitioner within three months of the receipt of the representation of the petitioner by the Respondent No. 2.

(11) The writ petition is, therefore, partly allowed in the above terms but the rest of it is dismissed. Parties are left to bear their own costs.