

served by section 357 should not be ignored and criminal courts should not shirk the question of determination of compensation and proceed on the assumption that award of compensation is not a true concern of the criminal law.

Bhopinder Singh Dhillon, J.—I agree.

M. R. Sharma, J.—I also agree.

N.K.S.

FULL BENCH

CIVIL MISCELLANEOUS

Before O. Chinnappa Reddy, B. S. Dhillon and Surinder Singh, JJ.

ARJUN SINGH NEGI,—Petitioner.

versus

THE UNION OF INDIA, ETC.,—Respondents.

Civil Writ Petition No. 30 of 1976.

September 15, 1976.

Natural Justice—Departmental Promotion Committee screening the cases of all eligible candidates for promotion to a higher post—Such candidates—Whether entitled to be heard.

Held, that the principles of natural justice are easy to proclaim but their precise extent is far less easy to define. One of the essential elements of the principles of natural justice is *audi alteram partem*, i.e., both sides shall be heard. However, the application of this principle is attracted to a case where there are two opposing parties to a controversy. There are really no two contesting parties before the Departmental Promotion Committee when it is seized of the matter regarding promotion to a higher post on a regular basis. The Departmental Promotion Committee is to consider the matter of promotion for the purpose of filling a certain post and is called upon to review not only the seniority but also the qualifications, experience, work and conduct of all the eligible candidates for the purpose of a comparative assessment. The Committee is not to confine itself to a dispute between two candidates or for the matter of that, between the candidates inter-se. Before such a Committee there is no such dispute for the decision of which it is necessary to lend ears to the contesting parties. The principle of *audi alteram partem* is, therefore

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neither applicable nor available in such a situation. Thus a Departmental Promotion Committee while screening the cases of all the eligible candidates for promotion to a higher post is not required to hear every such candidate.

(Para 4)

Prithvi Raj Mehra v. State of Punjab, 1968, S.L.R. 887 overruled.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of Certiorari Mandamus or any other suitable Writ, Direction or Order be issued, directing the respondents:—

- (i) to produce the complete records of the case;
- (ii) the order at Annexure P-4, be quashed;
- (iii) it be declared that the petitioner continues to be an Accountant;
- (iv) the petitioner be exempted from filing the originals of Annexures P-1 to P-4;
- (v) the petitioner be exempted from serving the five-days notice as required under the High Court Rules and Orders, Volume V;
- (vi) this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case;
- (vii) this Hon'ble Court may also grant all the consequential reliefs like arrears of salary, seniority, etc.;
- (viii) it is further prayed that pending the disposal of the writ petition, the operation of the order at Annexure P-4 be stayed. It may, however, be mentioned that the petitioner has not yet handed over charge of the post of Accountant.
- (ix) the costs of this writ petition may also be awarded to the petitioner.

J. L. Gupta, Advocate, with G. C. Gupta, Advocate; for the petitioner.

Kuldip Singh, Advocate for respondent Nos. 1 & 2.

ORDER

Surinder Singh, J.—(1) The sequence in the oft-treaded path is facts—understanding—judgment. Let us face the facts. The petitioner, Arjan Singh Negi, says in this petition filed under Article 226

of the Constitution of India, that he was recruited as a Lower Division Clerk in the office of the Director, Census Operations, Haryana, Chandigarh; on April 14, 1969. He was promoted as an Upper Division Clerk first on *ad hoc* basis on September 3, 1970, and thereafter on regular basis on October 31, 1971. The post next higher in rank is that of Accountant. A regular Upper Division Clerk having three years of service to his credit is eligible for promotion to the post of Accountant. I. C. Sethia (the third respondent) was recruited directly in the same office as an Upper Division Clerk in the year 1970. Having joined as such earlier to the petitioner, the third respondent was admittedly senior to him. On July 25, 1972, an order was passed by which the third respondent who was working as an Assistant Accountant, was posted as a Cashier, while the petitioner who was at that time working as a Cashier; was asked to work as an Assistant Accountant. It is not disputed that both the posts of the Assistant Accountant and Cashier are within the same cadre of Upper Division Clerks. The order of transfer (Copy Annexure 'P-2') appears to have been necessitated because the third respondent had declined to undergo training in accounts work and had given in writing that he was not interested in being promoted to the post of Accountant. The order, therefore, recited that the third respondent had forfeited his rights for promotion to the post of Accountant. On July 24, 1973, an order was passed by the Director of Census Operations (Copy Annexure P-3) by which the petitioner was promoted as an accountant on "temporary and strictly *ad hoc* basis." In October, 1975, the occasion arose for the appointment of a regular incumbent on the post of Accountant. An order was, therefore, passed on December 26, 1975 (Copy Annexure P-4) promoting the third respondent as an Accountant, though in temporary capacity, as he was placed on probation for two years. By means of the same order, the petitioner who had been working as an Accountant on *ad hoc* basis, was reverted to the post of Upper Division Clerk. This order has ambulated the petitioner to this Court.

(2) The official respondents have resisted the action. In the return filed by Shri Ardaman Singh, Deputy Director, Census Operations, Haryana, it is averred that the third respondent had shown disinclination for being promoted to the post of Accountant, as at the relevant time, according to the Draft Recruitment Rules, he was also eligible for promotion to other posts which were higher than that of Accountant. The situation, however, changed after the final

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Recruitment Rules were notified in February, 1973. As per these Rules, an Upper Division Clerk, was eligible for promotion only to the post of Accountant and that too if he had put in at least three years of service as an Upper Division Clerk. All other avenues for the promotion of the third respondent having been blocked in view of these Rules, he represented that he may be considered for being promoted to the post of Accountant, which he had earlier declined. The representation of the third respondent was considered by the Departmental Promotion Committee at the time of the filling the post of the Accountant on regular basis, alongwith the cases of all other officials including the petitioner. After due consideration, the third respondent was placed at No. 1 in the panel which was drawn for selection to the post of Accountant and he was promoted as such. In regard to the petitioner, it was stated that he had been appointed to the post of Accountant merely on *ad hoc* basis and this appointment had not been regularised by obtaining the approval of the Departmental Promotion Committee, which was the only competent authority to select a person for the post of Accountant on merit-cum-seniority basis.

(3) Shri J. L. Gupta, learned counsel voiced the grievance of the petitioner and while doing so, confined his attack against the impugned order (Copy Annexure P-4) on the sole ground that the principles of natural justice had been violated, in that the petitioner was never afforded an opportunity of hearing before being reverted to the post of Upper Division Clerk. The buoyancy of the contention will have to be tested.

(4) The learned counsel has spoken of natural justice. What exactly is natural justice? The principles of natural justice are easy to proclaim but their precise extent is far less easy to define. (Evershed M. R. in *Abbott v. Sullivan* (1957) I.K.B. 189, at page 195). It may, however, be stated without reserve that in the light of dicta available from the Legal Treasuries, if I may use the term, the main principles of natural justice may be summarised in two essential elements (a) no man shall be a judge in his own cause, and (b) *audi alteram partem*, i.e., both sides shall be heard. Obviously, it is element (b) which is sought to be invoked in support of the argument advanced by the learned counsel. However, the application of the principle would be attracted only to a case where there are two opposing parties to a controversy. The question to be seen is, whether

there were really two contesting parties before the competent authority, which was seized of the matter regarding promotion to the post of Accountant on regular basis. The answer is obviously in the negative. A departmental Promotion Committee which is to consider the matter of promotion for the purpose of filling a certain post, is called upon to review not only the seniority but also the qualifications, experience, work and conduct of all the eligible candidates for the purpose of a comparative assessment. The Committee is not to confine itself to a dispute between the petitioner and the third respondent, or for the matter of that, between the petitioner and some other candidates. In fact, in the present case there was no such dispute before the Committee, for the decision of which it was necessary to lend ear to the contesting parties. A situation may, of course, be visualised where a complaint or a representation directed *against* the petitioners, is required to be considered. In such a case it would be the bounden duty of the committee to afford hearing to the petitioner before condemning him. There was no such thing in the present case. As stated in the return, the Committee had given due consideration to the merits of all the eligible candidates including the petitioner. The principle of *audi alteram partem* is neither applicable, nor available, in such a situation.

(5) The learned counsel has indeed sought asylum by reference to a Division Bench decision of this Court in *Prithvi Raj Mehra v. The State of Punjab* (1), where the learned Judge while dealing with the matter regarding the functions of the Departmental Screening Committee of the Public Works Department (B. & R.), Public Health, constituted under the Rules pertaining to the said department, were of the view that the officers whose cases are to be screened by the Committee are entitled to an opportunity of hearing. They were further of the view that if this opportunity is not afforded to the officers, the Rules of natural justice and fair play are infringed. The argument in support of this conclusion is that the Committee is invested with the power to supersede an eligible candidate and that an elaborate procedure for screening of candidates had to be carried out. As such, before making a recommendation to the Public Service Commission the Committee should hear the Officers concerned in accordance with the rules of natural justice. The learned Judge also placed reliance upon certain observations made in *Jagdish Pandey v.*

(1) 1968 Services Law Reporter 887.

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The Chancellor, University of Bihar and others (2). The facts of that case were, however, very much distinguishable both from those in the present case as also in the case before the Division Bench. In *Jagdish Pandey's case* (supra), the Bihar Legislature had passed the Bihar State Universities (Amendment) Act No. 13 of 1962. Section 4 of the said Act provided that notwithstanding the earlier Legislation, every appointment, dismissal, removal, etc., of a teacher made on or before the specified date, shall be subject to such orders as a Chancellor of a University, may on the recommendation of the University Service Commission, pass with respect thereto. The appellant, Jagdish Pandey in that case, had been appointed as a Principal of a College. A challenge against this appointment, made by means of a writ petition in the Patna High Court, had failed. After, the coming into force of the Bihar Act 13 of 1962, the Chancellor of the University conveyed his approval to the appointment of Jagdish Pandey as Principal only till November, 1962, or till the candidate recommended by the Commission joined, whichever was earlier. Subsequently, realising that the order passed by the Chancellor, in respect of the appellant, might be challenged, the Commission issued a Show Cause Notice to the appellant with a view to modify the earlier order. On the recommendation of the Commission, the Chancellor passed another order on August 18, 1962, in so far as it related to the appellant, which modified the terms of this service to the extent that he was required to obtain a Second Class Master's Degree within a specified time, failing which his services were to be terminated. It was in this set up that an observation was made by the Supreme Court that it was implicit in section 4 of the Bihar Act that the Commission before making its recommendation, should hear the teacher concerned according to the principles of natural justice. In fact, these observations were made with a view to come to a conclusion that even in the absence of a specific provision for grant of hearing, section 4 of the Act could not be struck down under Article 14 of the Constitution as discriminatory. These observations could not have been construed to lay down a general rule that a hearing by the Departmental Committee to all the candidates is mandatory under the rules of natural justice, even for the purpose of departmental promotion. With utmost respect to the learned Judges deciding *Prthvi Raj Mehra's case* (supra), it is not possible for us to subscribe to the view expressed on this subject and it must be held that to that extent the decision does not lay down correct law.

(2) A.I.R. 1968 Supreme Court 353.

6. Some other authorities cited at the Bar had no relevance to the point in issue and, as such these have not been noticed.

7. Shorn of the natural burden, the scales of justice do not at all tilt in favour of the petitioner. The writ Petition is dismissed, but with no order as to costs.

O. Chinnappa Reddy, J.—I agree.

Bhopinder Singh Dhillon, J.—I also agree.

N.K.S.

FULL BENCH

CIVIL MISCELLANEOUS

Before O. Chinnappa Reddy, S. C. Mittal and Surinder Singh, JJ.

JAGDISH RAI, ETC.,—Petitioners.

versus

STATE OF HARYANA, ETC.,—Respondents.

Civil Writ Petition No. 2149 of 1972.

September 17, 1976.

Constitution of India 1950—Article 16—Reservation of posts in favour of Ex-Servicemen—Whether permissible.

Held, that Article 16(4) of the Constitution of India is not an exception to Article 16(1) but is illustrative of one of the methods of achieving equality. It is not exhaustive of the classifications necessary and, therefore, permissible for achieving equality and the general principles applicable to situations under Article 14 are equally applicable under Article 16(1). While the best and the most meritorious of those seeking appointment under the State should be selected, it is also equally fair and equitable that a just proportion of the posts should be given to those who, because of a peculiar handicap, may not stand a chance against those not so handicapped. It would be an extension of the principle of Article 16(4) to those that do not fall under Article 16(4). Defence personnel who on account of their service with the Army, the Navy and the Air Force over the years have lost opportunities for entering Government