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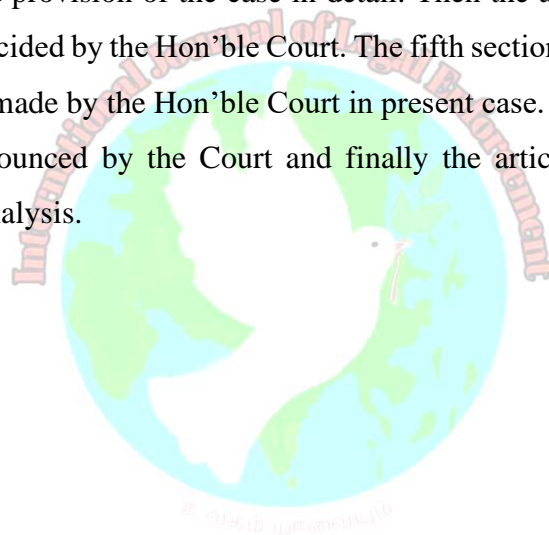
ARTICLE ON
EXTENSION OF SERVICE FOR THE PURPOSE OF
PROMOTION: A CASE ANALYSIS OF H. M. SINGH V. UNION
OF INDIA, (2014) 3 SCC 670

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ABSTRACT

The present article is an analysis of the case of H. M. Singh v. Union of India. The article entails in a detailed discussion on the topic of promotion of one Major General H.M. Singh while he was a period of extension after his retirement. The case was decided in the favour of Appellant. It is one of the landmark cases in the field of Service Law.

The article firstly introduces the topic. Then it entails in facts. Thirdly the article discusses the concerned provision of the case in detail. Then the article deals with the issues that were framed and decided by the Hon'ble Court. The fifth section entails in all the important observations that were made by the Hon'ble Court in present case. The sixth section entails in the final decision pronounced by the Court and finally the article ends with a conclusion concluding the entire analysis.



1. INTRODUCTION

The present case undertakes discussion on matter of promotion to a post while the candidate is on extension period post his retirement. The Apex Court of the country allowed the appeal by H. M. Singh and allowed his claim for the post of Lieutenant General.

The Hon'ble Supreme Court asserted that in a circumstance where an officer has attained the age of retirement, provided that there was not any vacancy for his consideration to be promoted to a higher rank and where such an officer is granted extension in service, given that he is the highest-ranking officer for the consideration, cannot be promoted to a higher rank when on his extension period any vacancy accrues.

The issues in this case were that

- (i) Whether the non-consideration of the claim of the Appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India? And
- (ii) Does the orders dated 29.2.2008 and 30.5.2008, by which the Appellant was granted extension in service, for periods of three months and one month respectively, were not sustainable in law, inasmuch as, they were in violation of Rule 16A of the Army Rules which postulates, that an officers who has attained the age of retirement or has become due for such retirement on completion of his tenure, may be retained in service for a further period by the Central Government, only if the exigencies of service so require?

The circumstances where the above-mentioned issues arose is that Appellant was the senior most Major General and was eligible for the promotion of Lieutenant General. The vacancy accrued when the Appellant had 14 months of service before his retirement. But the procedure for filling the vacancy began for the first when the Appellant had only 2 days of service left. At this juncture, the President of India granted him an extension of service. This extension was denied by the Respondents and finally an appeal was filed in the Supreme Court of India.

The present analysis entails in every aspect of this case.

2. BRIEF FACTS

The brief facts of the case are as follows:

- After being duly considered by a selection committee the Appellant was commissioned as Major General on 01.06.2004
- AVM R. Yadav retired from service with effect from 31.12.2006. From 01.01.2007 the vacancy for the post of Lieutenant General accrued.
- The Appellant was the senior most serving officer and was eligible for promotion to the rank of Lieutenant General.
- On 30.4.2007, the Appellant addressed a representation to the Director General DRDO asserting, that he was eligible for promotion against the existing vacancy of Lieutenant General.
- The Appellant requested the authorities, to immediately constitute and convene a meeting of the Selection Board, for considering his claim for onward promotion to the rank of Lieutenant General. For the above purpose.
- On 27.2.2008 for the first time a meeting of selection Committee sat for filling the vacancy. At this point the Appellant had 2 days of service left before his retirement.
- The Selection Board cleared only the name of the Appellant for the above promotion, from out of a panel of 4 names.
- The President of India issued an order dated 29.2.2008 which granted the Appellant an extension of service for a period of 3 months for the purpose of ensuring Appellant's claim to the said promotion.
- Another order dated 30.5.2008 by the President of India was issued for the same effect.
- DRDO issued an order dated 3.6.2008, retiring the Appellant from the rank of Major General with immediate effect.
- The Appointments Committee of the Cabinet denied the orders issued by the President of India and DRDO and rested its case that as the Appellant now stands retired from the service and is on extension period, he cannot be considered for the promotion to the rank of Lieutenant General.

3. STATUTORY PROVISIONS

a) Article 14¹

Article 14 reads as follows:

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

Article 14 prohibits discrimination in a universal way and ensures to all people equality before law. In opinion of a specific amount of indeterminacy affixed to the general notion of equality enunciated in Article 14, independent provisions to cover discriminatory situations have been made in successive Articles².

It has been resolutely established that Art. 14 strikes at arbitrary state administrative action and arbitrary state legislative action administrative. There has been a substantial shift in the direction of equating unreasonableness or arbitrary as the measure by which administrative as well as legislative actions are to be evaluated. A fundamental and evident test that can be applied in instances where administrative action is struck as arbitrary and, in such instances, it should be determined whether there is any obvious fundamental principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness³. It is now deemed that noncompliance with the laws of natural justice accounts to arbitrariness violating Art. 14⁴. The Supreme Court in the case *Sri Srinivasa Theatre v. Govt. of Tamil Nadu*⁵ has explained that the 2 phrases 'equality before law' and 'equal protection of law' do not imply the equivalent thing even if there may be much in common between them. "Equality before law" is a dynamic notion and having many aspects. One aspect is that there shall never be no privilege class of persons and that not a single person shall be above law. Another aspect is "*the obligation upon the State to bring about, through the machinery of law, a more equal society.... For, equality before law can be predicated meaningfully only in an equal society....*" Art. 14 entails that '*equals should be treated alike*'. But it doesn't equate that 'unequals' ought to be treated equally. People who fall in such cases should be treated equally. On the other hand, where persons or groups of persons are not situated equally, to treat them as equals would

¹ The Constitution of India, 1950

² M P JAIN, INDIAN CONSTITUTIONAL LAW 1217- 1222 (LexisNexis, 8th ed., 2018)

³ *Union of India v. International Trading Co.*, (2003) 5 SCC 437: AIR 2003 SC 3983.

⁴ *Rajasthan State Road Transport Corpn. v. Bal Mukund Bairwa* (2), (2009) 4 SCC 299, 317: (2009) 2 JT 423.

⁵ AIR 1992 SC, at 1004.

be an eminent violation of Art. 14 and would in all probable cases result in inequality. As any person are not identical by nature or situations, the changing needs of separate classes or segments of people need differential treatment. This precedes to classification among distinct classes of personnel and difference among such classes. Accordingly, to apply the principle of equality in a pragmatic approach, the courts in India have come up with the principle that if the law which is in question is founded on reasonable classification it is not considered as discriminatory^{6 7}.

Equal Opportunity embraces two separate and distinctive ideas. There is a conceptual difference among a non-discrimination principle and positive action under which the State is obliged to present a level playing pitch to the repressed classes. Positive action in this sense strives to move away from the concept of non-discrimination towards balancing results in association with various groups. Both the notions represent 'equality of opportunity'⁸.

b) Article 16⁹

Article 16(1)¹⁰ is a component of Article 14¹¹. Articles 14 and 16(1) are closely interrelated. Article 16(1) takes its origins from Article 14. Article 16(1) details the generality of Article 14 and categorizes, in a constitutional phrase, "equality of opportunity" in cases of service under the state. An essential point of difference between Articles 14 and 16 is that while Article 14 is applicable to everyone including to non-citizens, Article 16 is applicable only on citizens.

Public employment is an important component of right to equality envisioned in Article 16 of the Indian Constitution¹². Article 16 entails on a constrained subject, viz., public employment.¹³

Equal protection of the laws does not propose equal treatment of all individuals without difference; it simply guarantees the function of those laws alike without prejudice to all individuals similarly situated. Therefore, Article 16 does not prohibit a rational classification of employees or rational tests for selection. Equality of opportunity of employment means selection. Equal opportunity of employment equates equality as among individuals belonging

⁶ *Ashutosh Gupta v. State of Rajasthan*, (2002) 4 SCC 34

⁷ *Onkar Lal Bajaj v. Union of India*, (2003) 2 SCC 673: AIR 2003 SC 2562.

⁸ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212: AIR 2007 SC 71.

⁹ The Constitution of India, 1950

¹⁰ *ibid*

¹¹ *ibid*

¹² *Principal, Mehar Chand Polytechnic v. Anu Lamba*, (2006) 7 SCC 161: AIR 2006 SC 3074.

¹³ *Principal, Mehar Chand Polytechnic v. Anu Lamba*, (2006) 7 SCC 161: AIR 2006 SC 3074.

to the same section of employees and not equality amongst individuals belonging to distinct, independent, sections. There is no counterview in saying that equal opportunity, until and unless the person complaining of such discrimination is equally positioned with the individual or individuals who claims to have been favoured. People who are likewise circumstanced have a right to equal treatment.¹⁴

There is no employee that has a vested right to be promoted to a higher rank, but he undoubtedly has the right to be considered for such promotion as per the procedures. Prospects of being promoted are not conditions of employment. A law that merely alters the prospects of being promoted does not equate to a shift in the conditions of employment. But if a certain law grants a right of actual promotion, or a right to be considered for being promoted, is an employment rule¹⁵. The Hon'ble Supreme Court of India has observed in the case of *State of Maharashtra v. Chandrakant Anant Kulkarni*¹⁶:

"Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not".

Inequality of opportunity for the purpose of promotion or considered for the promotion among individuals of a single class, which is founded on no reasonable principles, is invalid under Article 16¹⁷. The Hon'ble Supreme Court has restated that a condition of higher educational requirement is a permissible basis of classification, but the suitability will be contingent on the facts and circumstances of each case¹⁸.

4. ISSUES FRAMED AND DECIDED BY THE HON'BLE COURT

ISSUE 1

Whether the non-consideration of the claim of the Appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India.

¹⁴ *All India Station Masters' and Assistant Station Masters' Association Delhi v. Gen. Man., Central Railway*, AIR 1960 SC 384; (1960) 2 SCR 311; *Jagannath Prasad Sharma v. State of Uttar Pradesh*, AIR 1961 SC 1245; *Indian Rly. SAS Staff Association v. Union of India*, (1998) 2 SCC 651; AIR 1998 SC 805.

¹⁵ *High Court of Calcutta v. Amol Kumar Roy*, AIR 1962 SC 1704; *Mohd. Shujat Ali v. Union of India*, AIR 1974 SC 1631; (1975) 3 SCC 76; *Mohd. Bhakar v. Y. Krishna Reddy*, 1970 SLR 768 (SC); *Ramachandra Shankar Deodhar v. State of Maharashtra*, (1974) 1 SCC 317; *Syed Khalid Rizvi v. Union of India*, (1993) Supp (3) SCC 575; *State of Mysore v. G.N. Purohit*, 1967 SLR 753 (SC).

¹⁶ AIR 1981 SC 1990; (1981) 4 SCC 130.

¹⁷ *State of Mysore v. Krishna Murthy*, AIR 1973 SC 1146; (1973) 3 SCC 559. Also, *Mohd. Shujat Ali v. Union of India*, AIR 1974 SC 1631; (1975) 3 SCC 76.

¹⁸ *T.R. Kothandaraman v. Tamil Nadu Water Supply and Drainage Board*, (1994) 6 SCC 282.

The Apex court decided this issue in the favour of Appellant. The Respondents made themselves very clear that they were desirous to fill the vacancy of Lieutenant General when it became available on 1.02.2007. They have pleaded that there was no arbitrariness exercised on their part. The court stated that hence the Appellant was the senior most serving Major General and therefore eligible to be considered for the position of Lieutenant General. Fundamental right of being considered for the said vacancy along with the fundamental right of being promoted (if found suitable) vests in him. He was deprived of his fundamental right of equality before the law, and equal protection of the laws which is extended by Article 14¹⁹.

The Hon'ble Apex Court decided that the sole purpose of order dated 29.02.2008 and order dated 30.05.2008 extending the Appellant's service for a total period of 4 months was to give effect to the benefit enshrined under Article 14. It was decided that these orders were issued to enable his claim to be considered for onward promotion to the rank of Lieutenant General and the same cannot be held to be in violation of Rule 16A²⁰. By the virtue of these orders the Respondents had a clear intention to treat the Appellant justly by honouring him with the said promotion to the rank of Lieutenant General. The Hon'ble Court said, "... The action of the authorities in depriving the Appellant due consideration for promotion to the rank of the Lieutenant General, would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the Respondents would unquestionably have been arbitrary...."²¹

The court decided that the Appellant had the right to be considered for the said promotion and be promoted if found eligible. It is noteworthy that the Appellant had 14 months of service left when the said post of lieutenant General accrued. But due to arbitrariness of the Respondents the Appellant had to suffer the losses²².

ISSUE 2

Does the orders dated 29.2.2008 and 30.5.2008, by which the Appellant was granted extension in service, for periods of three months and one month respectively, were not sustainable in law, inasmuch as, they were in violation of Rule 16A of the Army Rules which postulates, that an officers who has attained the age of retirement or has become

¹⁹ The

²⁰ Army Rules

²¹ M P JAIN, INDIAN CONSTITUTIONAL LAW 1341- 1354 (LexisNexis, 8th ed., 2018)

²² *ibid*

due for such retirement on completion of his tenure, may be retained in service for a further period by the Central Government, only if the exigencies of service so require?

The Hon'ble Apex Court decided this issue against the favour of Respondents. The Court decided that orders issued by the President of India on 29.02.2008 and 30.05.2008 allowing the extension of Appellant's service, to give effect to the benefit of Articles 14 and 16 to the Appellant, cannot come under the purview of violation of the norms stipulated in Rule 16A of the Army Rules. The procedure for contemplating to fill the said vacancy was initiated for the first time when the Appellant had only 2 days left in the service, and the Appellant cannot be blamed for such delay. The Respondents never denied the reasons for which these orders were issued, and they cannot deny the veracity of the above orders.

The Respondents contend that any officer who is on his extension period cannot be entitled for a promotion. The Court said that, ".... A collective reading of the paragraphs 8 and 9 reveals an extremely relevant objective, namely, situations wherein an officer attains the age of retirement without there being a vacancy for his consideration to a higher rank, even though he is eligible for the same. Such an officer who is granted extension in service, cannot claim consideration for promotion, against a vacancy which has become available during the period of his extension in service....". This reasoning for the operative part of the proceedings of the Appointments Committee of the Cabinet, is laudable and legal. It was the unanimous view of the bench that extension can only be granted for promotion against a vacancy in the offing. In the present case, the vacancy was available on 01.01.2007, and at that point of time the Appellant had good 14 months of service remaining. The vacancy was not available after his age of retirement on superannuation.

The Court decided that the case in hand cannot be covered by "*technical plea canvassed at the hands of the learned senior Counsel for the Respondents.*" The court further held that denial of promotion to the Appellant only because he was on extension period, in the light of present circumstances is unsustainable, and arbitrary. The Court rejected the said bias.

5. OBSERVATIONS BY THE HON'BLE COURT

The Hon'ble court in the present case made the following observations:

1. "*.... the proceedings of the Selection Board reveal, that its recommendations were based on record of service, past performance, qualities of leadership, as well as*

vision. No other name besides the Appellant's name was recommended for promotion....”

2. *“.... that the vacancy against which the claim of the Appellant was considered, had arisen on 1.1.2007, it clearly emerges, that the Appellant was the senior most eligible officer holding the rank of Major General whose name fell in the zone of consideration for promotion....”*
3. *“.... It is not possible for us to accept, that the aforesaid determination in allowing extension in service to the Appellant can be in violation of the norms stipulated in Rule 16A of the Army Rules....”*
4. *“.... The action of the authorities in depriving the Appellant due consideration for promotion to the rank of the Lieutenant General, would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the Respondents would unquestionably have been arbitrary....”*
5. *“.... that had the claim of the Appellant not been duly considered against the vacancy for the post of Lieutenant General, which became available with effect from 1.1.2007, we would have had to hold, that the action was discriminatory. This because, of denial of due consideration to the Appellant, who was the senior most eligible serving Major General, as against the claim of others who were junior to him. And specially when, the Respondents desired to fill up the said vacancy, and also because, the vacancy had arisen when the Appellant still had 14 months of remaining Army service. Surely it cannot be overlooked, that the Selection Board had singularly recommended the name of the Appellant for promotion, out of a panel of four names....”*
6. *“.... The present case is therefore, not covered by the technical plea canvassed at the hands of the learned senior Counsel for the Respondents....”*
7. *“.... No other name besides the Appellant's name was recommended for promotion. Having been so recommended, the President of India, in the first instance, by an order dated 29.2.2008, extended the service of the Appellant, for the period of three months with effect from 1.3.2008 "or till the approval of the ACC whichever is earlier". Since the Appointments Committee of the Cabinet did not render its determination within the extended period expressed in the order dated 29.2.2008, yet another order to the same effect was issued by the President of India on*

30.5.2008 extending the service of the Appellant for a further period of one month with effect from 1.6.2008 "or till the approval of the ACC whichever is earlier""

6. DECISION

Ratio Decidendi: It is arbitrary and unsustainable to deny promotion to a legitimate and eligible candidate. An innocent person cannot be made to suffer for the wrongdoings of another.

The Appeal was allowed. The Court decided both the issues in favour of Appellant. The non-consideration of the claim of the Appellant violates the fundamental rights vested in him under Articles 14²³ and 16²⁴. The determination in allowing extension in service to the Appellant cannot be described as in violation of the norms stipulated in Rule 16A of the Army Rules.

The Court decided that, "... The action of the authorities in depriving the Appellant due consideration for promotion to the rank of the Lieutenant General, would have resulted in violation of his fundamental right under Article 14 of the Indian Constitution. Such an action at the hands of the Respondents would unquestionably have been arbitrary.... Without rejecting the above claim on merits, the Appellant was deprived of promotion to the rank of Lieutenant General...."

The Court decided that, "extension in service granted to the Appellant" can be deemed to satisfy the parameters of exigency of service, stipulated in Rule 16A²⁵. The Appellant was found eligible for the post of Lieutenant General of the grounds of his record of service, past performance, qualities of leadership, as well as, vision, and was the only name that was selected by the selection committee. It was, therefore, decided that "the Appellant would also be entitled to continuation in service till the age of retirement on superannuation stipulated for Lieutenant Generals, i.e., till his having attained the age of 60 years." He will be deemed to hold the Rank of Lieutenant General till 28.02.2009 and will be entitled to all monetary benefits which would have been due to him. He is also entitled to revised retiral benefits.

²³ The Constitution of India, 1950

²⁴ *ibid*

²⁵ The Army Rules, 1954

7. CONCLUSION

The case of H.M. Singh v. Union of India²⁶ is a landmark case in the field of service law. it has been availed in almost every field of service law.

The Hon'ble Supreme Court struck down the action of the authorities as being discriminatory and violative of Article 16 of the Constitution of India. The present case revolves around the fact that the Appellant was the senior most serving officer and was legally liable to be considered for the promotion of Lieutenant General and be promoted if found eligible. The vacancy accrued when he had good 14 months of in service. But the procedure to fill the vacancy began when he had 2 days of service left. To give effect to his claim the President of India issued two orders extending his service by a total period of 4 months. But ACC asserted that he is not eligible for this promotion as he is a retired officer and on an extension period.

The court decided that non-consideration of the claim of the Appellant violated the fundamental rights vested in him under Articles 14 and 16 of the Indian Constitution. It held the actions of Respondents as arbitrary and held their claim of rejecting Appellant's name on the grounds that it is in violation of Rule 16A of Army Rules as unsustainable. The bench held the actions of Respondents "biased".

²⁶ (2014) 3 SCC 670