

## LETTERS PATENT APPEAL.

*Before Prem Chand Pandit and S. S. Sandhawalia, JJ.*

UNION OF INDIA AND OTHERS,—Appellants.

*versus*

MADAN LAL,—Respondent.

**Letters Patent Appeal No. 43 of 1967.**

September 10, 1970.

*State Re-organisation Act (XXXVII of 1967)—Section 115(2)—Seniority of a government servant fixed in joint seniority list prepared by the Central Government under the section—Such seniority subsequently altered to the detriment of the servant without affording him opportunity of hearing—Order of alteration—Whether valid.*

*Held*, that even in purely administrative orders, which involve civil consequences the rules of natural justice have to be followed and an opportunity granted to the person, who is going to be adversely affected by them. The fixing of seniority of a government servant to his disadvantage seriously affects his future chances of promotion in service. Under the principles of natural justice he must be given notice before revising his seniority in the list to his detriment. Hence where the joint seniority list prepared by the Central Government under section 115(5) of State Re-organisation Act, 1956 is subsequently altered to the detriment of a government servant, without affording him opportunity of hearing, the order of such alteration is invalid.

(Para 6)

*Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice A. N. Grover passed in C.W. No. 562 of 1966 on 11th November, 1966.*

SUKH DEV SINGH KANG, ADVOCATE, for the appellants.

I. B. BHANDARI, ADVOCATE, for the respondent.

JUDGMENT

1. This is an appeal filed by the Union of India, State of Punjab and two others, under Clause 10 of the Letters Patent against the judgment of a learned Single Judge of this Court setting aside the order, by which Madan Lal, respondent, was shown at serial No. 87 instead of No. 19 in the final joint seniority list framed under section 115(5) of the States Reorganisation Act, 1956.

2. On 24th April, 1947, Madan Lal joined as a Police Constable in the united Punjab. Later on, he was absorbed as an Executive Clerk (Accounts Branch) in the Police Department. On 16th June, 1956, he was appointed as an Accountant by the Director, Health Services, Punjab, in the grade of Rs. 80—5—110/5—150. On 1st November, 1956, the States of Punjab and Pepsu were merged. On 16th December, 1958, a tentative seniority list of the clerical staff of the medical institutions was circulated and his name was shown at No. 87 among the category of Clerks. He submitted a representation on 10th August, 1959, saying that this seniority should be fixed amongst the Accountants from the date of his appointment, that is, 16th June, 1956, in the parent State. In April, 1962, his prayer was granted by the Punjab Government and his seniority was fixed among the Accountants. After rejecting the representations of some other officials, his name was placed at serial No. 19 in the provisional joint seniority list. On 24th August, 1962, he was promoted in the senior scale of 106—6—160/8—200, and later in March 1964, he was appointed as a Head Clerk in the scale of 116—8—180/10—250. Subsequently, four Clerks, three from the erstwhile State of Punjab and one from the erstwhile State of Pepsu, made representations to the Government of India, which altered the joint seniority list by placing Madan Lal at serial No. 87 instead of No. 19. According to the State of Punjab, this was done by the Central Government after considering the recommendations of the State Advisory Committee appointed by the Government of India under the States Reorganisation Act, 1956. The reason for assigning this serial number to him was that his post was equated to that of a Clerk on the ground that on 31st October, 1956, he was in the grade of 80—150, which was found lower than that of unified scale of Clerks (60—175). This action was taken by the Government of India under section 115(5) of the States Reorganisation Act.

3. To challenge this action, Madan Lal filed a writ petition in this Court, which came up before A. N. Grover J. Two main contentions were raised before the learned Judge on behalf of Madan Lal. The first was that the provisions of rule 16 of the Punjab Services Integration Rules, 1957, laid down that *inter se* seniority of an employee in the present scale should not be disturbed in determining his seniority in the State of Punjab. The second was that the order by the Central Government was made without any notice to Madan Lal, who was not given an opportunity of being heard. The learned Single Judge did not decide the first contention and accepted

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the writ petition after holding that Madan Lal, respondent, should have been afforded an opportunity of being heard before disturbing his seniority. Against this decision, the present Letters Patent Appeal has been filed.

4. After hearing the counsel for the parties, we are of the view that this appeal must fail. It is common ground that the joint seniority list was prepared by the Central Government under section 115(5) of the States Reorganisation Act, 1956, which reads:

“(5) The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to—

- (a) the division and integration of the services among the new States and the States of Andhra Pradesh and Madras; and
- (b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons.”

5. It is undisputed that the respondent was neither heard by the State Advisory Committee nor by the Central Government before his seniority in the said list was changed from No. 19 to 87. Four Clerks, namely, Inder Singh, Suraj Parkash, Krishan Kumar and Raj Kumar Kundra, made representations against the fixing of respondent's seniority and it was on the basis of their representations that the impugned order had been made by the Central Government. The respondent was never informed about the contents of the representations either by the Central Government or by the State Advisory Committee. After referring to two authorities of the Supreme Court, the learned Single Judge observed—

“I have not the slightest hesitation in holding that while deciding the question of seniority of the petitioner which is likely to affect not only his future chances of promotion but also the holding of his present job from which he has been reverted as a result of the decision of the Central Government, it was obligatory on the Government to either directly or through the Advisory Committee afford an opportunity to the petitioner in such a manner as it was considered proper to make his representation or submit his explanation in respect of the representation of the four

clerks which they had preferred against the assignment of their respective places in the joint seniority list. The petitioner admittedly was not afforded by such opportunity and it is not possible to understand how his omission to ask for a hearing would affect the matter inasmuch as there is nothing to show that he was even informed of the existence of any such representations against him. The orders which have been impugned in the matter of the fixation of his seniority in the joint seniority list would have to be quashed for the aforesaid reason."

6. Now it has been held by the Supreme Court that even in purely administrative orders, which involve civil consequences, the rules of natural justice should be followed and an opportunity granted to the person, who is going to be adversely affected by them. In *State of Orissa v. Dr. (Miss) Binapani Dei* (1), it was held—

"It is true that the order is administrative in character, but even as administrative order which involves Civil Consequences as already stated must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

7. Undoubtedly, fixing the seniority of a government servant to his disadvantage would seriously affect his future chances of promotion in service. Under the principles of natural justice, he must be given notice before revising his seniority in the list to his detriment. In the present case, no such opportunity was given to the respondent either by the State Advisory Committee or the Central Government and he was not even informed about the representations made against him by the four Clerks mentioned above. Thus, the order passed by the learned Single Judge is unassailable.

The result is that this appeal fails and is dismissed, but with no order as to costs.

S. S. SANDHAWALIA, J.—I, agree.

(1) 1967 S.L.R. 465.

B.S.G.