

PETITIONER:
JASWANT SINGH NERWAL ETC.

Vs.

RESPONDENT:
STATE OF PUNJAB AND ORS. ETC.

DATE OF JUDGMENT 14/02/1991

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
RAMASWAMY, K.

CITATION:
1991 SCR (1) 411 1991 SCC Supl. (1) 313
JT 1991 (1) 474 1991 SCALE (1) 395

ACT:

Punjab Civil Services (Executive Branch) Rules, 1930:
Punjab Civil Services Examination-Candidate-Change of
preference intimated and approved in time-Held valid-
Candidate's father-Member of Public Service Commission-
Not participating in deliberations at candidate's viva
voce-Selection of candidate-Valid.

HEADNOTE:

For the recruitment of 71 officers in the Punjab Civil Services (Executive Branch) and Allied Services, the Punjab Public Service Commission, at the behest of the State of Punjab, held a competitive examination. As per the requirement of the Punjab Civil Services (Executive Branch) Rules, 1930, the applying candidates specified the posts in order of preference in their respective applications. One such candidate, appellant V.M. Bansal, who had initially indicated his first preference for the post of Excise & Taxation Officer, intimated to the Commission, but undisputedly before the declaration of the result, that he wanted change of his preference so that his first preference was of Punjab Civil Service (Executive Branch). This change was allowed by the Commission. Bansal's father, who was a member of the Commission, did not participate in the deliberations of the Commission when Bansal was interviewed. Of the 71 candidates declared successful, Bansal was declared successful for a post in the Punjab Civil Service, and appellant Jaswant Singh Nerwal for the post of Tehsildar in the Allied Services. Some of the unsuccessful candidates challenged the entire selection on various grounds before the Punjab and Haryana High Court by means of a writ petition. On the other hand, Nerwal, through a separate writ petition, challenged the change of preference allowed by the Commission to Bansal which led to Bansal becoming a Punjab Civil Service Officer and Nerwal a Tehsildar, and claimed that he be declared successful to a post in the Punjab Civil Service in preference to Bansal. The High Court by a common judgment rejected the claim of Nerwal and dismissed his writ petition, but allowed the writ petition preferred by the unsuccessful candidates in part inasmuch as the selection of Bansal as a Punjab Civil Service Officer

and his consequential appointment was quashed. The High Court however did not disturb the selection of the remaining 70 successful candidates but

412

required Bansal to compete again with the other unsuccessful candidates as per its direction extracted in the judgment. The High Court in issuing the aforesaid direction applied the decision of this Court in A. K. Kraipak & Ors. etc. v. Union of India & Ors., [1970] 1 SCC 457, to neutralise Bansal's father being a member of the Commission. And even though Bansal's father had not participated in the deliberations of the Commission, when Bansal was interviewed, his brooding presence was held negatively to have influenced the selection and the possible ouster of a possibly successful candidate. Hence these two appeals by special leave, one by Bansal and the other by Nerwal, against the judgment of the High Court.

Allowing the appeal of Bansal and dismissing the one filed by Nerwal, the Court,

HELD: (1) Besides Bansal's father, there were four other members of the Public Service Commission and who had functioned as a Commission. There was a long list of as many 540 candidates to be interviewed and the interviews went on from 24.9.1973 upto 30.10.1973. [417G]

(2) Bansal's father did what was expected of him, in having declined to participate in the deliberations of the Commission when Bansal went for the viva voce test. [418C]

(3) No material has been shown to entertain the doubt that Bansal's father being a member of the Public Service Commission, per se had the effect of other members keeping track of comparatives in order to single out Bansal as a successful candidate. There is not a word of mala fide suggested against the other members of the Public Service Commission, of having shared the supposed animus of Bansal's father. There is therefore no reason to sustain the judgment of the High Court on this aspect of the case. [418A-B]

A.K. Kraipak & Ors. etc. v. Union of India & Ors., [1970] 1 SCC 457, distinguished; Javid Rasool Bhat & Ors. v. State of Jammu & Kashmir & Ors., [1984] 2 SCC 631, affirmed; B.N. Nagarajan & Ors. v. State of Mysore & Ors., [1966] 2 SCR 682, referred to.

Ashok Kumar Yadav & Ors. etc. v. State of Haryana & Ors. etc., [1985] Supp. SCR 657, relied upon.

(4) The manner in which the viva voce test is conducted, no single

413

member can possibly usurp to himself the total functioning of the Commission and jealous as human nature is, no other member can be expected to have abdicated his powers to another, at that level, and to oblige another. These circumstances do not give rise to the likelihood of Bansal's father espousing the cause of his son to the other four members of the Commission and monitor the performance of 540 candidates to be interviewed, the results of written examination of which, he was not alleged to be aware before hand. In these circumstances, it is to uphold the view of the High Court requiring Bansal to be interviewed again so as to rub against the unsuccessful candidates and to suffer the consequence. [418C-H]

In the instant case, the system of division of marks out of the allocated marks for the viva voce test amongst the actual number of members present and participating in the interview, was not however commended by the Court, nor

did the Court approve the provision of 200 marks for the viva voce test because of the percentage now authoritatively fixed in Ashok Kumar Yadav's case. [418F]

(5) Bansal has stayed put and working as an Officer in the Punjab Civil Service and his displacement at the present stage would otherwise be inequitable serving nobody's purpose due to the time lag. The unsuccessful candidates cannot possibly now, at this stage, due to age and other supervening factors be fit for the viva voce test, so as to elbow out Bansal. The obedience of the directions of the High Court at this late stage would overly be counter productive and thus not worth sustaining. [419A-B]

(6) Once it is established that the change of preference could be made and it was intimated and approved timely, the conclusion is inescapable that Bansal's first preference to a post in the Punjab Civil Service ranked superior to Nerwal's preference, because of their interse ranking in the examination results. Thus the appeal of Nerwal has no substance and deserves rejection. [419H-420A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 334 of 1978.

From the Judgment and Order dated 14.2.1977 of the Punjab and Haryana High Court in Civil Writ Petition No. 1860 of 1975.

WITH

Civil Appeal No. 833 of 1977.

414

From the Judgment and Order dated 14-2.1977 of the Punjab and Haryana High Court in Civil Writ Petition No. 1172 of 1974.

Anil Dev Singh, P.P. Rao, O.P. Sharma, Janinder Lal, N.S. Das Bahl, R.C. Gubrela, R.S. Suri, R.S. Sodhi (NP) and M.S. Dhillon (NP) for the appearing parties.

The Judgment of the Court was delivered by

PUNCHHI, J. These two allied appeals arising from a common judgment of the Punjab and Haryana High Court at Chandigarh, in Civil Writ Petitions Nos. 1172 of 1974 and 1860 of 1975, on grant of special leave, can appropriately be disposed of by a common judgment.

In order to recruit 71 officers in the Punjab Civil Services (Executive Branch) and Allied services, the Punjab Public Service Commission, at the behest of the State of Punjab, held a competitive examination in December, 1972. As advertised 12 vacancies were for the Punjab Civil Services and the remaining for Allied Services. The applying candidates as per the requirement of the Punjab Civil Service (Executive Branch) Rules, 1930 (for short the Rules) specified the posts in order of preference in their respective applications. The result of those who were declared qualified was published in the daily Tribune dated September 21, 1973. Out of the 71 candidates declared successful Shri V.M. Bansal, the appellant in Civil Appeal No. 833 of 1977 was declared successful for a post in the Punjab Civil Service and Shri Jaswant Singh Nerwal, the appellant in Civil Appeal No. 334 of 1978 for the post of Tehsildar in the Allied services. Some of the unsuccessful candidates challenged this selection in its entirety on various grounds before the High Court through Civil Writ Petition No. 1722 of 1974. On the other hand challenge in Civil Writ Petition No. 1860 of 1975 was made by Nerwal against Bansal for the latter having been allowed in the

meantime substituted preference for the posts to the ones given in the first instance in his application, and which led to his becoming a Punjab Civil Services Officer and Nerwal to be a Tehsildar, in the Allied services and had the substitution not been allowed the position would have been that Nerwal would have been in the P.C.S. and Bansal an Excise & Taxation Officer. The challenge thus was to the Commission having allowed substitution of the preference. The High Court negatived the challenge of Nerwal and his claim to be declared successful to a post in the Punjab Civil Service

415

in preference to Bansal and thus dismissed Civil Writ Petition No. 1860 of 1975. Simultaneously Writ Petition No. 1172 of 1974 preferred by the unsuccessful candidates was allowed in part inasmuch as the selection of Bansal as a Punjab Civil Service Officer and his consequential appointment was quashed. The High Court, however, did not disturb the selection of the remaining 70 successful candidates but required Bansal to compete again by issuing the following direction:

"However, he is entitled to compete with the other unsuccessful candidates for securing place in the merit and we, therefore, direct that Shri V.M. Bansal (respondent no. 8) along with the other unsuccessful candidates be again interviewed by the members of the Commission except Shri J.R. Bansal (respondent no. 4) and whosoever is selected on merits shall have to be appointed against the post for which he is selected in accordance with the Rules. We may, however, observe that if Shri J.R. Bansal (respondent no. 8) is again selected on merits, he will be entitled to his original seniority and all other benefits of the Service which he would have enjoyed had his selection not been quashed. If in any case, no candidate is selected against the post of P.C.S. Cadre in accordance with the Rules, any of the other selected candidates may then make representation to the Government for being appointed to the post of P.C.S. in accordance with the Rules."

Bansal is here before us to have the aforesaid direction quashed and Nerwal to have the place of Bansal as a Punjab Civil Service Officer.

We heard learned counsel for the respective parties on every aspect of the case at great length. The High Court was goaded to issue the above direction regulating selection between Bansal and other unsuccessful candidates, as also the consequence thereof, on applying the decision of this Court in A.K. Kraipak & Ors. etc. v. Union of India & Ors., [1970] 1 SCC 457 to neutralise Bansal's father Shri J. R. Bansal being a member of the Public service Commission. And even though he had not participated in the deliberations of the Commission, when Bansal had been interviewed, his brooding presence was held negatively to have influenced the selection and the possible ouster of a possibly successful candidate. Kraipak's case was one where one of the persons, who sat as a member of the selection board, was himself, one of the persons to be considered for selection. He participated in the

416

deliberations of the selection board when the claims of his rivals were considered. He participated in the decisions relating to the preference in seniority. He participated at

every stage in the deliberations of the selection board where there was conflict between his interest and duty. In such set of facts this Court unhesitatingly came to the conclusion that there was a reasonable likelihood of bias and therefore the principles of natural justice had got violated. But this Court in *Javid Rasool Bhat & Ors. v. State of Jammu & Kashmir & Ors.*, [1984] 2 SCC 631 did not vitiate the selection of a candidate to admission in a medical college on the ground of presence in the selection board of the father of one of the candidates. In this case, the Principal of Medical College, Srinagar whose daughter was a candidate for admission to the Medical College informed the Selection Committee at the very outset about this fact and told them that he would not have anything to do with a written test and would not be present when his daughter would be interviewed. The other members of the Selection Committee agreed to the proposal. The procedure adopted by the Selection Committee and the members concerned was in accord with the generally accepted and well known procedure adopted by the Public Service Commissions every where in the country, as it was not unusual for candidates related to members of the Service Commission and selection Committees to seek employment. In such a situation the practice generally in vogue is for the member concerned to excuse himself when the particular candidate is interviewed and such a selection is beyond challenge, unless, of course, mala fide. See this Court's decision in *S.N. Nagarajan & Ors. v. State of Mysore & Ors.*, [1966] 3 SCR 682, also.

Then we have the momentous decision of this Court in *Ashok Kumar Yadav and Ors. etc. etc. v. State of Haryana & Ors. etc. etc.*, [1985] (Supp.) SCR 657 which without whittling down the salutary principle evolved in *Kraipak's* case (supra) has put the Public Service Commissions, being creatures of the Constitution, at a higher pedestal. At pages 686-87, it was ruled as follows:

"But the situation here is a little different because the selection of candidates to the Haryana Civil Service (Executive) and allied services is being made not by any Selection Committee constituted for that purpose but it is being done by the Haryana Public Service Commission which is a Commission set up under Article 316 of the Constitution. It is a Commission which consists of a Chairman and a specified number of members and is a Constitutional Authority. We do not think that the princi-

417

ple which requires that a member of a selection committee whose close relative is appearing for selection should decline to become a member of the selection committee or withdraw from it leaving it to the appointing authority to nominate another person in his place, need be applied in case of a Constitutional Authority like the Public Service Commission, whether Central or State. If a member of a Public Service Commission were to withdraw altogether from the selection process on the ground that a close relative of his is appearing for selection, no other person save a member can be substituted in his place. And it may sometimes happen that no other member is available to take the place of such member and the functioning of the Public Service Commission may be affected. When two or more members of a Public Service Commission are holding a viva

voce examination they are functioning not as individuals but as the Public Service Commission. Of course, we must make it clear that when a close relative of a member of a Public Service Commission is appearing for interview, such member must withdraw from participation in the interview of that candidate and must not take part in any discussion in regard to the merits of that candidate and even the marks or credits given to that candidate should not be disclosed to him."

It was the admitted case before the High Court that Bansal's father did participate in the deliberations of the Commission when the viva voce test of other candidates appearing before the Commission had been taken and he had accordingly awarded marks to the candidates otherwise competing with his own son. The High Court has still deduced that in spite of the afore-suggested bias the candidates who got selected against the posts (except his son) got their due unbiased and therefore their selection cannot be questioned. Taking this deduction to be correct, the High Court before issuing the direction under challenge, had further to find that there was bias in excluding the unsuccessful candidates. We do not find this to have engaged the attention of the High Court. It is noticeable that besides Bansal's father there were four other members of the Public Service Commission and who had functioned as a Commission. As is evident there was a long list of as many 540 candidates to be interviewed and the interviews went on from 24-9-1973 uptill 30-10-1973. In the nature of things, there was no material before the High Court, and none has been pointed to us, from which it could be concluded that the members

418

of the commission could keep track of the comparatives of each of those 540 candidates so as to manipulate a favourable result to Bansal. We have not been shown any material to entertain the doubt that Bansal's father being a member of the Public Service Commission, per-se had the effect of other members keeping track of comparatives in order to single out Bansal's as a successful candidate. And lastly there is not a word of mala fide suggested against the other members of the Public Service Commission, of having shared the supposed animus of Bansal's father. Thus, in the facts and circumstances of this case, we do not find any reason to sustain the judgment of the High Court on this aspect of the case. Bansal's father did what was expected of him, in having declined to participate in the deliberations of the commission when Bansal went for the viva voce test.

Our view in this regard is further strengthened by the manner in which the viva voce test is conducted and which the High Court even has not disapproved. It appears that out of a total of 825 marks, 625 marks have been allotted for written tests and the remaining 200 marks for viva voce test. These viva voce marks are distributed in various heads as enumerated by the High Court. What is significant is that each member individually gets 25 marks but on actual working, if one of them is not attending, the share of marks are divided in the present members. Further these marks are strictly not divided as 25 marks for each member but each member allots marks to each candidate out of 125 marks and these when added are divided by 5 or by the actual number of members present and participating in the interview. We may not be taken to be commending such a system of division of marks out of the allocated marks for the viva voce test but it seems this is the practice in which they are actually

worked out. Similarly the provision of 200 marks for viva voce test cannot meet our approval because of the percentage now authoritatively fixed in Ashok Kumar Yadav's case (supra). On these particulars and for these reasons no single member can possibly usurp to himself the total functioning of the commission and jealous as human nature is, no other member can be expected to have abdicated his powers to another, at that level, and to oblige another. These circumstances do not give rise to the likelihood of Bansal's father espousing the cause of his son to the other four members of the commission and monitor the performance of 540 candidates to be interviewed, the results of written examination of which, he was not alleged to be aware beforehand. In these circumstances, we find it difficult to uphold the view of the High Court requiring Bansal to be interviewed again so as to rub against the unsuccessful candidates and suffer the consequence.

419

On the grant of special leave to Bansal, operation of the judgment and order of the High Court appealed against, was on 27th July, 1977, stayed. Bansal has stayed put and working as an Officer in the Punjab Civil Service and his displacement at the present stage would otherwise be inequitable serving nobody's purpose due to the time lag. The unsuccessful candidates cannot possibly now, at this stage, due to age and other supervening factors, be fit for the viva voce test, so as to elbow out Bansal. The obedience of the directions of the High Court at this late stage would overly be counter productive and thus not worth sustaining.

This brings us to the claim of Nerwal for displacement of Bansal from the post in the Punjab Civil Service in substitution to that held by him as a Tehsildar. The facts as found by the High Court are that initially Shri V.M.Bansal's first preference was for the post of Excise & Taxation Officer, but on December 4, 1973, he had intimated to the Commission that he required change of his preference so that his first preference was of Punjab Civil Service (Executive Branch). The intimation was received in the office of the commission on December 4, 1974 itself and the Chairman of the commission on the same date allowed the change. That such change was permissible before the declaration of the result is beyond dispute. What was urged before the High Court was that since Bansal's application did not form part of all like applications sent in a bundle by the commission to the state Government on 11th December, 1973 and had rather been sent separately later on December 20, 1973, that by itself raised a doubt as to the authenticity thereof. The High Court negated the contention. It held that this circumstance alone did not conclusively prove that the change of preference was intimated to the commission after the declaration of the result on December 7, 1973 as alleged. Though the High Court went on to observe that there was no statutory rule that no change in preference could be made after the result is communicated by the commission to the State Government, we are not obliged to go into that question. In face of the finding of the High Court that circumstantially it was established on the record that the preference had been changed by Bansal on 4-12-73, before the declaration of the result, it is difficult to take a contrary view. The High Court had even seen the original record to come to that view. Such like inferences drawn are in the realm of facts and we have not been persuaded to take a different view. Once this is established that the change of preference could be made and it was intimated and approved timely, the

conclusion is inescapable that Bansal's first preference to a post in the Punjab Civil

420

service ranked superior to Nerwal's preference, because of their interse ranking in the examination results. Thus, the appeal of Jaswant Singh Nerwal has no substance deserving rejection.

Resultantly for the views afore-expressed, Civil Appeal No. 833 of 1977 preferred by Shri V.M. Bansal is allowed and the Civil Writ Petition No. 1172 of 1974 before the High Court would stand dismissed and Civil Appeal No. 334 of 1978 of Shri Jaswant Singh Nerwal would stand dismissed affirming the dismissal of his Writ Petition No. 1860 of 1975 before the High Court, but without any order as to costs in both appeals.

D.R.L.

C.A. No.334/78 dismissed

C.A. No.833/77 allowed.

421