

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
NO. 664950 IM HAVILDAR/CIERK SC BAGARI

DATE OF JUDGMENT: 15/04/1999

BENCH:
Syed Shah Mohammed Quadri, S.N. Phukan.

JUDGMENT:

S.N.PHUKAN, J.

This appeal is directed against the full bench decision dated 24.12.1993 of the High Court of Himachal Pradesh in Civil Writ petition No, 747 of 1991.

For the purpose of appreciating the points urged in this appeal we may briefly state the facts.

The respondent appeared in person before the High Court. In this Court though notices were issued he did not appear hence the matter was taken up for hearing in his absence.

The respondent is a Havildar/Clerk in Indian Army and he was interested in prosecuting his studies further for obtaining higher educational qualifications such as post-graduation in law but he felt handicapped because of the provisions contained in Army Instruction namely Army Order No. 11 of 1987 according to which only Regular Commissioned Officers can be granted extra-ordinary leave subject to certain conditions and not persons like the petitioner, who is not an officer. Therefore, he challenged the said Army Order before the High Court on the grounds of discrimination, without any lawful basis etc.

Before the High Court the present appellants took the stand that study leave is granted to a Regular Commissioned Officer to get higher studies having a direct and close connection with the spheres of his duties. It was also stated that the nature of duties of Junior Commissioned Officers and non-Commissioned Officers is different as compared to Regular Commissioned Officers. The appellants took the stand that the matter of grant or refusal of study leave is purely discretionary. The allegation of discrimination was denied. It was also stated that for Junior Commissioned Officers and Noncommissioned Officers there are institutions of the appellants where these Officers are trained.

We find from the judgment that & prayer made on behalf of the present appellants for adjournment was denied on the ground stated in the judgment and the writ petition was disposed of without hearing the learned counsel for the appellants.

The High Court relying on the decisions of this Court came to the finding that the duties of clerical nature are also important and therefore, rejected the stand of the appellants and held that higher educational qualification is also necessary for clerical staff.

According to the High Court the present classification for granting study leave was not founded on an intelligible differentia and the same has also no relation to the object sought to be achieved and benefit of study leave must be made available equally to all classes of above officers of Indian Army.

We have heard Mr. P.N. Mishra, learned Senior counsel for the appellant.

Before entering into the reasoning given by the High Court let us now first consider the scope and ambit of Articles 14 and 16 vis-a-vis different classes of employees.

We may refer to:

In All India Station Masters' and Assistant Station Masters' Association Delhi and others Versus General Manager, General Railway and others AIR 1960 SC 384 = 1960 (Vol.II) SCR 311 while considering Article 16 of the Constitution the Constitution Bench of this Court inter alia held that equality means - equality equality as between members of the same class of employees, and not equality between members of separate, independent classes.

Similar views were expressed by the Constitution Bench of this Court in Jagannath Prasad Sharma Versus The State of Uttar Pradesh and others AIR 1966 SC 1245 = 1962 (Vol.I) SCR 151 and in paragraph 15 it was inter alia held that equal protection of the laws does not postulate equal treatment of all persons without distinction, it merely guarantees the application of the same laws alike and without discrimination to all persons similarly situated.

In The State of Mysore and another Versus P. Narasinga Rao AIR 1968 SC 3349 = 1966 (Vol. I) SCR 407 this Court considered the validity of the Rules and it was inter alia held that it is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation and when any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied namely classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things ground together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved and in other words there must be some rational nexus between the basis of classification and the object intended to be achieved. It was also held that Articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other and in other words Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such and, therefore, there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured.

In the decision of this Court in Indian Railway SAS Staff Association & other Vs. Union of India and others (1998 (2) SCC 651), it was held that there can be many criteria for classification of posts such as administrative procedure and others which have to be taken into consideration by the authorities concerned before deciding on the classification.

Situated thus, broadly speaking, concept of equality has an inherent limitation arising from very nature of the guarantee under the Constitution and those who are similarly circumstanced are entitled to equal treatment. If there is a rational classification consistent with the purpose for which such classification was made, equality is not violated. Article 16 of the Constitution does not bar a reasonable classification of employees or reasonable tests for selection. Equality of opportunity of employment means equality as between members of the same class of employees and not equality between members of separate independent classes.

Mr. Mishra, learned counsel for the appellant, has drawn our attention to Clauses (XII), (XV) and (XVIII) of Section 3 of The Army Act, 1950. These clauses define 'Junior Commissioned Officer', 'Non-Commissioned Officer' and 'Officer'. Clause (XVIII) of Section 3 of The Army Act, 1950, while defining the term 'Officer', has clearly stated that the Officer or Non-Commissioned Officer. Relying on the above definitions, Mr. Mishra has rightly pointed out that legislature has classified the personnel of the Armed Forces into different categories and this classification has not been challenged. We are of the opinion that legislature while creating different classes of officers has classified them on the basis of the requirement of armed forces and thus this classification cannot be said to be arbitrary. If pay, perks and other privileges granted to these officers are different, we are, therefore, of the opinion that there is no question of violation of provisions of articles 14 and 16 of the Constitution.

Now the question is whether the impugned order, namely, Army Order No. 11 of 1987 is discriminatory. We quote below the relevant portion of the order as quoted in the impugned judgment of the High Court :-

Rule 1 and 2 are given below :-

"1. All regular Officers will be eligible for the grant of extra leave known as Study Leave for pursuing special studies in India or Ex-India under the conditions specified in para 2 below.

2. Conditions for the grant of study leave are as under :

(a) Study leave will be admissible to Officers of all Arms and Services.

(b) Study Leave may be granted to an officer enabling him to undergo, in or Ex-India, a non academic full time regular course/programme/doctoral studies leading

a recognised formal diploma/degree in institutions recognised by the Ministry of Education, Science and Technology, certified by Army Headquarters as enhancing the usefulness as an officer. Study Leave will not be granted for correspondence courses, part time courses and attending night classes.

(c) Study Leave shall not be granted to an officer who is due to retire from service within 5 years or the date of return to duty from study leave in respect of Cols and above, and 7 years for Lt.Cols and below. Residual service will be calculated in the rank of the officer at the time of sanction of study leave. Study leave shall not be granted to an officer who has rendered less than 10 years service. However, the minimum service can be lowered under special circumstances on merits of the case by the sanctioning authority. Residual service for battle casualties and permanent low medical category officers whose category is either attributed or aggravated due to uncongenial military service shall be three years.

(d) The maximum period of study leave will be upto 24 months. It may be extended by a period of two months annual leave (if not already availed) of the year in which study leave commences, plus an additional two three years cycle spanning the study leave period, if so required for the specific study being undertaken. Furlough rates of pay will be admissible during furlough leave when granted. The maximum period of study leave, including annual leave and furlough will be 28 months during the entire service of the officer.

(e) Study leave Ex-India will ordinarily be admissible for those non-academic courses which are not available at any University or Institution in India.

(f) Study leave will be admissible not more than twice throughout the service, subject to the over all 28 months limit prescribed in sub-para (d) above.

(g) Study leave vacancies will be filled up.

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"The application for approving study leave has to be scrutinised by the Screening Committee as per the impugned order and priorities which are to be followed by the

Screening Committee are quoted below :-

- (a) Usefulness off the subject of study to Arms/Service.
- (b) Subjects contributing to an officer's employability in the service.
- (c) Residual Service of the officer from the point of view of utility of his education to the service.
- (d) Officers who have obtained admission in recognised Universities or Institutions will be preferred.
- (e) Officers who have been away from regimental duties for the last two years after specialised courses or post graduate courses will be given lower priority.
- (f) Officers with a good career profile will be given preference.
- (g) Battle casualties and disabled officers who have limited scope for furthering their career will be given preference."

The High Court after stating the law laid down by this Court in various decisions including *Maneka Gandhi vs. Union of India* and others (AIR 1978 SC 597), *Ajay Hasia vs. Khallid Mujib Sehravardi* and others (AIR 1981 SC 487), *R.D. Shetty Vs. The International Airport Authority of India* and others (AIR 1979 SC 1628), *Union of India and another etc. Vs. Tulsi Ram etc.* (1985 (3) SCC 398), held that impugned Army Order is not based on reasonable classification and denial of study leave to Junior Commissioned Officers, Non-Commissioned Officers and other ranks is not only irrational and arbitrary and the classification is not founded on an intelligible different but the same also has no rational relation with the object sought to be achieved. According to High Court, benefit of study leave must be made applicable equally to all.

The Army authorities have given reasons for not making available the benefit of study leave to the other categories of officers except Commissioned Officers. It has been categorically stated that for officers of other rank, there are other institutions where courses are conducted for these categories of personnel and by sending them for these courses, proper care is taken to ensure efficiency in the armed forces. In fact, the petitioner has admitted, as stated in the writ petition, that tow weeks' Computer Course in Jodhpur University was organised by the Army Authorities.

It has also been stated in the counter that there cannot be any dispute that character and duties of Junior Commissioned Officers and Non-Commissioned Officers are different as compared to that of regular Commissioned officers. If the competent authority thought it fir and proper that case for study leave for Commissioned Officers should be considered and this benefit should not be given to other categories of officers, as for this category Army

Authorities take adequate care for training them in their own institutions or outside, it cannot be said that impugned Order No.11 of 1987 is arbitrary or irrational. The object as stated in the counter, of granting study leave is to enhance the knowledge of Commissioned Officers who have an important role to play not only to maintain discipline but also for performing their duties as Commissioned Officers. Therefore, it cannot be said that Army Order No.11 of 1987 was not founded on intelligible differentia and it has no relation with the object sought to be achieved and we hold that the Order in question is not violative of Article 14 of the Constitution.

For the reasons stated above, we find merit in the appeal and accordingly it is allowed by setting aside the impugned order. Costs on the parties.