Maryland Law Review

Volume 8 | Issue 2 Article 6

Further on Judicial Review of Classification by Selective Service System - United States, ex rel. Bayly, v. Reckord - United States, ex rel. Bevans, v. Stone

FURTHER ON JUDICIAL REVIEW OF CLASSIFICATION BY SELECTIVE SERVICE SYSTEM

United States, ex rel. Bayly, v. Reckord

United States, ex rel. Bevans, v. Stone[1]

Petitions for habeas corpus were filed on behalf of Stanley Bayly and Roland Bevans, who were seeking release from the Army and Navy, on the ground that in ordering their induction the local Selective Service Board intentionally disregarded the regulations governing the order of selection of inductees. Both men had been married several years prior to December 8, 1941. On February 3, 1943, both had been classified in Class 1-A, group 3. On the same day or a few days thereafter Bayly asked for a deferment and Bevans' employer made a similar request on his behalf. The Local Board denied both applications, but on being reversed by the Appeal Board, deferred the two until May 23, 1943.

In the interim between the time their induction was thus postponed and that of their later actual induction, General Hershey, National Director of Selective Service, acting under the appropriate regulation,[2] issued the following instructions to the Local Boards:[3]

> "When a Local Board is filling a call it should first select and order to report for induction specified men who have volunteered for induction. To fill the balance of the call it shall, from the groups listed below, and insofar as possible in the order in which the groups are listed, select and order to report for induction specified men finally classified in Class 1-A . . ."

The groups listed were: (1) men with no dependents; (2) men with collateral dependents; and (3) married men.

The July quota for the Board was twenty-two white men. At that time there were available at least twenty-five volunteers and single men without dependents, but the Board, disregarding its usual custom of having the

---

[1] 51 F. Supp. 507 (D. C. D. Md., 1943). See, for an earlier treatment, Note, *Judicial Review of Classification by Selective Service System* (1943) 7 Md. L. Rev. 165.

[2] 50 U. S. C. A. (App.) Secs. 304, 305 (E) (1), and 310: "To fill the balance of the call [the Local Board] shall select specified men from such group or groups as the Director of Selective Service may designate . . ."

[3] Memorandum 123, as amended April 27, 1943, Par. 9.

selection made by the clerk, proceeded to do so itself, and included seventeen volunteers and single men, and five married men, among whom were the two petitioners.

After the Government Appeal Agent for the Local Board had pointed out that the Board was proceeding in an erroneous manner, and the Board ignored this, petitioners applied to the State Director for relief. Relying upon information from the Local Board that the procedure had been regular in all respects, the State Director denied the relief sought. Since no further administrative relief was available, the petitioners after induction applied to the Court for writs of habeas corpus.

The members of the Board contended that since the induction of Bayly and Bevans had been postponed, and since they would have been inducted had there been no regulation, they were not entitled to the benefit of the regulation subsequently passed, during the time of the postponement. It was also contended that no prejudice resulted to the petitioners because they could have been properly inducted in April. The Board also seemed to take the position that since the petitioners asked for a stay, their selection was to be judged as of the date of application for deferment and not as of the date of selection.

The Court said although it was not specifically given any power under the Selective Service Act, it could issue habeas corpus under its general power to release all persons unlawfully detained, and found here that the petitioners were entitled to be released, since the action of the Board in intentionally disregarding the applicable regulation was arbitrary and capricious. The action of the Board here was ultra vires. In effect, the Board disregarded regulations then in force and substituted regulations no longer applicable. To allow such action would result in a high degree of uncertainty, with each Board deciding for itself what regulations should be applied to each individual case.

Thus, although in the vast majority of cases which have arisen under the present Act, the courts have refused relief and left the individual to administrative action and appeals, the principal case clearly shows that in a proper case the courts will interfere and even go so far as to take a man out of the Army or Navy. This is one of the four cases[4] in

[4] The other three cases are: Application of Greenberg, 39 F. Supp. 13 (D. C. D. N. J., 1941); United States, ex rel. Phillips, v. Downer, Colonel, 135 F. (2d) 521 (C. C. A. 2d, 1943); and Ex Parte Stanziale, 138 F. (2d) 312 (C. C. A. 3rd, 1943).

which courts have taken such action. Most of the cases which have arisen have involved alleged wrongful classification, and "the courts have uniformly ruled that the findings whereon draft boards base their decisions are final and may not be disturbed by the courts unless it appears that the person affected thereby has not been afforded a full and fair hearing or unless the members of the local draft board acted contrary to law or abused the discretion reposed in them by the statute."[5]

Of the remaining ones of the four such cases, one, *Ex Parte Stanziale*,[6] was reversed on appeal to the Circuit Court of Appeals. This case involved an alleged wrongful classification, and it was contended that this resulted from the Board's disregarding certain regulations dealing with deferments by reason of dependency, and hence the Board was not acting within the authority given it, and its action in classifying was ultra vires. The Court said "we may assume . . . that if a Local Board violates the provisions of one of the regulations laid down for its guidance, the person affected by the violation may have court relief." The Court then went on to deny the relief sought since there was no evidence that "the Board's action was not in compliance with Selective Service Regulations". This differs from the principal case where there was not only evidence that the Board disregarded the regulation, but, also, there was the admission by the Board that it ignored the regulation in calling the petitioners.

In *United States, ex rel. Phillips, v. Downer, Colonel*,[7] the court released the petitioner from the Army on the ground that there had been an error of law in the Board's ruling on petitioner's classification. Phillips sought to be released on the ground that he was a conscientious objector. The draft board had not been able to decide "whether his objections [to war] were the result of philosophical and humanitarian concepts which [were] deemed to have the essence of religious thought, or whether they more largely resulted from his political convictions and his dissatisfaction with our present way of life". The Board decided it was based on the latter and denied him the classification sought; the Court concluded "the draftee was erroneously denied the benefit of the exemption he claimed". And this, we think, is an error of law, for it

[5] United States v. Grieme, 128 F. (2d) 811 (C. C. A. 3d, 1942).
[6] Ex Parte Stanziale, *supra*, n. 4.
[7] *Supra*, n. 4.

rests fundamentally on a different distinction between religious and political views than that which we stated in the *Kanter* case,[8] decided some time after the Hearing Officer had made his report. The Court then pointed out that it could not and would not weigh the evidence, but it could rectify any errors of law.

In the other one[9] of the four cases, it was alleged that the petitioner's husband had been erroneously classified 1-A, when he should have been 3-A because of the fact that the petitioner was entirely dependent upon him for support. The Court said this was a problem of whether the Board had been acting arbitrarily in determining that the wife was not dependent upon the husband. Although it was not expressly so stated, the Court hinted that this might be a case in which the Board had acted outside of the power given it under the Selective Service Act and the rules and regulations arising thereunder. Here the Board had been influenced to a certain extent in placing Greenberg in Class 1-A because he was not married until the day after he had had his physical examination, and the Board considered him as unmarried. The Court pointed out that a person cannot be put in Class 1-A until after his physical examination, and that the registrant's status is to be determined as of the date of his classification, and at that date Greenberg was married. Since there was no specific provision in the Act considering marriages after one date any different from those before, in effect the Board was making its own regulations when it considered a marriage occurring after a physical examination different from one occurring before it.

Thus it appears that the courts will release one who has been inducted into the armed forces if the Board has (1) acted arbitrarily; (2) intentionally disregarded the Selective Service Act or the regulations arising under it; or (3) committed an error of law.

---

[8] United States v. Kanter, 133 F. (2d) 703 (C. C. A. 2d, 1942).
[9] Application of Greenberg, *supra*, n. 4.