

A R. R. VERMA AND ORS.

v.

UNION OF INDIA AND ORS.

April 11, 1980

B [V. R. KRISHNA IYER AND O. CHINNAPPA REDDY, JJ.]

Constitution of India, 1950, Article 133—Writ Petition dismissed as infructuous—Grant of Certificate of fitness, propriety of.

C *All India Services (Conditions of Service—Residuary matters) Rules, 1960, whether offends Article 14 of Constitution, as conferring arbitrary and uncanalised power upon the Central Government to grant relaxation whenever it pleased to do so.*

Power to Review its earlier orders by the Central Government when such a power of review is not expressly conferred by the rules.

D One Sri Ahluwalia a senior member of the Indian Police Service sought to quash the decision of the Union of India dated 26-6-1976 whereby his year of allotment was fixed as 1965. When the Writ Petition of Sri Ahluwalia was pending in the High Court of Himachal Pradesh, some of the respondents in that Writ Petition and one R. R. Verma—all direct recruits, choose to file a Writ Petition in the Delhi High Court questioning the notice dated June 29, 1973 calling upon them to submit representations against the year of allotment proposed to be allotted to M/s. Sahney, Dhaliwal and Ahluwalia. After the Writ Petition of Ahluwalia was allowed, and after the Central Government passed the order dated July 27, 1979, pursuant to the direction issued by the High Court of Himachal Pradesh to Union of India to refix the seniority and year of allotment to Sri Ahluwalia, the Delhi High Court dismissed the Writ Petition filed by the direct recruits as infructuous. The High Court, however granted a certificate of fitness to appeal to this Court under Article 133 of the Constitution.

F Dismissing the appeal, the Court

HELD : 1. The Writ Petition having been dismissed as infructuous it is not proper on the part of the High Court to grant a certificate of fitness under Article 133 of the Constitution. [480G-H]

G 2. Rule 3 of the All India Services (Conditions of Service—residuary matters) Rules, 1960 is couched in a language suggestive of near-autocratic power reminiscent of “bad old days” of the Imperial Raj but, the rule is not ment to vest the Central Government with power to pass any order they like with a view to promote the interests of a favoured Civil servant. It is really meant to relax. In appropriate cases, the relentless rigour of a mechanical application of the rules, so that civil servants may not be subjected to undue and undeserved hardship. Sufficient guidance can be had from the very rule and from the scheme of the various statutory provisions dealing with the conditions of service of Members of the All India Service. [481G-H, 482A-B]

H 3. Rule 3 is not unconstitutional on the ground that it vests an unfettered discretion in the Government. Section 3 of the All India Services Act enables

the Central Government in consultation with the Governments of the States concerned to make rules for the regulation of, recruitment, and the conditions of service of persons appointed to an All India Service. Pursuant to the power given by Section 3 of the All India Services Act the Central Government has made innumerable sets of rules, some common to all the All India Services and some applicable separately to each of the All India Services. The All India Services (Leave) Rules, the All India Services (Conduct) Rules, the All India Services (Discipline and Appeal) Rules, the All India Services (Travelling Allowance) Rules, and the All India Services (Conditions of Service-residuary matters) Rules are examples of rules made under Section 3 of the All India Services Act which are common to all the All India Services. The Indian Police Service (Cadre) Rules, the Indian Police Service (Recruitment) Rules, the Indian Police Service (Probation) Rules, the Indian Police Service (Regulation of Seniority) Rules are examples of rules made under section 3 of the All India Services Act applicable to a single All India Service, namely, the Indian Police Service. The rules deal with countless matters which concern a civil servant, such as creation of cadre, fixation of Cadre Strength, recruitment, seniority, promotion, leave, allowances, conduct, discipline and appeal, and a host of such other matters. The golden thread, which runs through the entire complex fabric or rules is the securing of honest and competent civil servants. Integrity and efficiency are the hall marks of any Civil service anywhere and they are what are contemplated and aimed at by the wide range of rules. The interest to be served is always the public interest and not individual interest. Public interest, in the matter of the conditions of service of civil servants, is best served by rules which are directed towards efficiency and integrity. [482B-G & 483D]

Now very wide as the range covered by the rules is, the rules can never be exhaustive. Unforeseen and complex situations often arise. Very often it is found that all too strict application of a rule works undue hardship on a civil servant, resulting in injustice and inequity, causing disappointment and frustration to the civil servant and finally leading to the defeat of the very objects aimed at by the rules namely efficiency and integrity of civil servants. Hence it is that the Central Government is vested with a reserve power under rule 3 to deal with unforeseen and unpredictable situations, and to relieve the civil servants from the infliction of undue hardship and to do justice and equity. It does not mean that the Central Government is free to do what they like, regardless of right or wrong; nor does it mean that the Courts are powerless to correct them. The Central Government is bound to exercise the power in the public interest with a view to secure civil servants of efficiency and integrity, and when and only when undue hardship is caused by the application of the rules, the power to relax is to be exercised in a just and equitable manner but, again, only to the extent necessary for so dealing with the case. Moreover, the exercise of the power of relaxation like all other administrative action affecting rights of parties is subject to judicial review on grounds now well known. [482G-H, 483A-C]

4. It is not correct to say that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untoward and startling re-

A sults. Surely, any Government must be free to alter its policy or its decision in administrative matters. If they are to carry on their daily administration they cannot be hide-bound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected. Again, if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a Court. [483F-H, 484A]

Patel Narshi Thakershi and Ors. v. Pradvamunsihji Arjunsinghji, AIR 1970 SC 1273; *D. N. Roy and S. K. Banerjee and Ors. v. State of Bihar and Ors.*, [1971] 2 S.C.R. 522 and *State of Assam and Anr. v. J. N. Roy Biswas* [1976] 2 S.C.R. 128, distinguished.

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2686 of 1979.

From the Judgment and Order dated 27-8-1979 of the Delhi High Court in Civil Writ Petition No. 844/78.

R. K. Garg and C. M. Nair for the Appellant.

H. S. Marwah for the Respondent No. 6.

D *V. M. Tarkunde and P. P. Juneja* for Respondent No. 7.

Lal Narain Sinha Att. Genl., *Abdul Khader* and *Miss A. Subhashini* for the Union of India.

The Judgment of the Court was delivered by

E CHINNAPPA REDDY, J.—The judgment in this appeal is really an appendix to the judgment pronounced by us in Civil Appeal No. 2112 of 1979. The relevant facts may be gathered from that judgment.

The further events requiring to be mentioned are these : While the Writ Petition filed by Ahluwalia in the High Court of Himachal Pradesh was pending, some of the respondents to the Writ Petition and one

F R. R. Verma all direct recruits, chose to file a Writ Petition in the Delhi High Court questioning the notice dated June 29, 1979, calling upon them to submit representations against the year of allotment proposed to be allotted to Sahney, Dhaliwal and Ahluwalia. After the Writ Petition of Ahluwalia was allowed, and after the Central

G Government passed the order dated July 27, 1979, pursuant to the direction issued by the High Court of Himachal Pradesh, the Delhi High Court dismissed the Writ Petition filed by the direct recruits as infructuous. The High Court, however, granted a certificate of fitness to appeal to this Court under Article 133 of the Constitution. Therefore, this appeal. The Writ Petition having been dismissed as infructuous we do not see how a certificate under Article 133 could have

H been granted. But, we do not want to dismiss the appeal on that preliminary ground. Shri R. K. Garg, learned counsel for the appel-

lants challenged the order of the Central Government dated July 27, 1979 on three grounds : (1) Rule 3 of the All India Services (Conditions of Service—residuary matters) Rules, offended Article 14 of the Constitution and was ultra-vires as it conferred arbitrary and uncanalised power upon the Central Government to grant relaxation whenever it pleased it to do so. (2) The discretion to relax the rules was wrongly exercised in the present case. (3) The Central Government was powerless to review its earlier orders as such a power of review was not expressly conferred by the rules.

The second question has already been considered by us in Civil Appeal No. 2112 of 1979 and we have held that this was a fit case for the exercise of the power of the Central Government to relax the rules.

The first question is about the Constitutional validity of rule 3 of the All India Services (Conditions of Service—residuary matters) Rules 1960. Rule 3 is as follows :

“3. Power to relax rules and regulations in certain cases.—Where the Central Government is satisfied that the operation of—

(i) any rule made or deemed to have been made under the All India Services Act, 1951 (61 of 1951), or

(ii) any regulation made under any such rule,

regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such extent and subject to such exceptions and conditions, as it may consider necessary for dealing with the case in a just and equitable manner”.

The submission of Shri Garg was that the rule conferred upon the Central Government absolute and arbitrary discretion, a discretion left entirely to the satisfaction of the Government, Government with no prescribed objective standards or guidelines. It is true that the rule is couched in a language suggestive of near-autocratic power reminiscent of “bad old days” of the Imperial Raj but, we have no doubt that the rule is not meant to vest the Central Government with power to pass any order they like with a view to promote the interests

A of a favoured Civil servant. It is really meant to relax, in appropriate cases, the relentless rigour of a mechanical application of the rules, so that civil servants may not be subjected to undue and undeserved hardship. Sufficient guidance can be had from the very rule and from the scheme of the various statutory provisions dealing with the conditions of service of Members of the All India Service.

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Section 3 of the All India Services Act enables the Central Government in consultation with the Governments of the States concerned to make rules for the regulation of recruitment, and the conditions of service of persons appointed to an All India Service. Pursuant to the power given by Section 3 of the All India Services Act the Central Government has made innumerable sets of rules, some common to all the All India Services and some applicable separately to each of the All India Services. The All India Services (Leave) Rules, the All India Services (Conduct) Rules, the All India Services (Discipline and Appeal) Rules, the All India Services (Travelling Allowance) Rules, and the All India Services (Conditions of Service—residuary matters) Rules are examples of rules made under Section 3 of the All India Services Act which are common to all the All India Services. The Indian Police Service (Cadre) Rules, the Indian Police Service (Recruitment) Rules, the Indian Police Service (Probation) Rules, the Indian Police Service (Regulation of Seniority) Rules are examples of rules made under section 3 of the All India Services Act applicable to a single All India Service namely, the Indian Police Service. The rules, as may be seen, deal with countless matters which concern a civil servant, such as creation of cadres, fixation of Cadre Strength, recruitment, seniority, promotion, leave, allowances, conduct, discipline and appeal, and a host of such other matters. The golden thread, if we may so call it, which runs through the entire complex fabric of rules is the securing of honest and competent civil servants. Integrity and efficiency are the hall marks of any civil service anywhere and they are what are contemplated and aimed at by the wide range of rules. The interest to be served is always the public interest and not individual interest. Public interest, in the matter of the conditions of service of civil servants, is best served by rules which are directed towards efficiency and integrity. Now, very wide as the range covered by the rules is, the rules can never be exhaustive. Unforeseen and complex situations often arise as will be obvious even from a bare perusal of the cases reported in the Law Journals arising out of “service controversies”. Very often it is found that an all too strict application of a rule works undue hardship on a civil servant, resulting in injustice and inequity, causing disappointment and frustration to the civil

servant and finally leading to the defeat of the very object aimed at by the rules namely efficiency and integrity of civil servants. Hence it is that the Central Government is vested with a reserve power under rule 3 to deal with unforeseen and unpredictable situations, and to relieve the civil servants from the infliction of undue hardship and to do justice and equity. It does not mean that the Central Government is free to do what they like, regardless of right or wrong; nor does it mean that the Courts are powerless to correct them. The Central Government is bound to exercise the power in the public interest with a view to secure civil servants of efficiency and integrity, and when and only when undue hardship is caused by the application of the rules, the power to relax is to be exercised in a just and equitable manner but, again, only to the extent necessary for so dealing with the case. We do not have to add that the exercise of the power of relaxation like all other administrative action affecting rights of parties is subject to judicial review on grounds now well known. Viewed in this light we do not think that Rule 3 is unconstitutional on the ground that it vests an unfettered discretion in the Government.

The last point raised by Shri Garg was that the Central Government had no power to review its earlier orders as the rules do not vest the Government with any such power. Shri Garg relied on certain decisions of this Court in support of his submission : *Patel Narshi Thakershi & Ors. v. Pradvamunsinghji Arjunsinghji*,⁽¹⁾ *D. N. Roy and S. K. Bannerjee & Ors. v. State of Bihar & Ors.*,⁽²⁾ and *State of Assam & Anr. v. J. N. Roy Biswas*⁽³⁾. All the cases cited by Shri Garg are cases where the Government was exercising quasi judicial powers vested in them by statute. We do not think that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untoward and startling results. Surely, any Government must be free to alter policy or its decision in administrative matters. If they are to carry on its their daily administration they cannot be hide-bound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected. Here again, we emphasise that if administrative decisions are reviewed, the decisions

(1) A. I. R. 1970 S. C. 1273.

(2) [1971] 2 S. C. R. 522.

(3) [1976] 2 S. C. R. 128.

A taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a Court. We see no force in this submission of the learned counsel. The appeal is, therefore, dismissed.

S.R.

Appeal dismissed.