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S. S. SHARMA &amp; ORS.

v.

UNION OF INDIA &amp; ORS.

November 10, 1980

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[V. R. KRISHNAIYER, R. S. PATHAK &amp; O. CHINNAPPA REDDY, JJ]

*Central Secretariat Service Rules—Rule 12 sub-rule 2(a) and Central Secretariat Service Grade I (Limited Department Competitive Examination for filling vacancies reserved for Scheduled Castes and Scheduled Tribes) Regulation 1979—Whether violates Articles 14, 15 and 16 of the Constitution.*

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The Central Secretariat Service (Amendment) Rules 1979 which inserted sub-rule (2a) below sub-rule (2) of Rule 12 of the Rules provided for the holding of a limited departmental competitive examination, including a statement of the conditions of eligibility and indicating how the selection would take place on such examination.

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The next higher category in the Central Secretariat Service above the Section Officers' Grade consists of Grade I posts. Recruitment to the Grade I posts are made under Rule 12 of the Central Secretariat Service Rules. For the purpose of such promotion a select list is prepared. Pursuant to an office Memorandum issued by the Department on 20th July, 1974, 15% and 7½% of the promotion posts stand reserved for Scheduled Caste and Scheduled Tribe candidates respectively.

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The petitioners were permanent Section Officers in the Central Secretariat Service and officiating as Under Secretaries in different Ministries. They along with several other officials were included in the field of selection for the purpose of drawing up the select list for the year 1977 for promotion to Grade I posts. Twenty-seven vacancies reserved for members of the Scheduled Castes and Scheduled Tribes, remained unfilled because no candidate belonging to those categories was found suitable. For the purpose of filling those reserved vacancies, the Government of India decided to hold a limited departmental competitive examination confined to members of the Scheduled Castes and Scheduled Tribes.

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The petitioners argued that (i) the reservation of vacancies for members of the Scheduled Castes and Scheduled Tribes by the office Memorandum dated 20th July, 1974 was invalid (ii) the newly enacted sub-rule (2a) of Rule 12, in the Central Secretariat Service Rules and the related regulations were invalid and the rule operated prospectively only and could not affect the 27 vacancies to be filled in the select list of 1977. The Respondents took a preliminary objection that it was not a contention raised in the writ petitions and should not be allowed to be raised for the first time by way of oral submission.

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Dismissing the petition,

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HELD : 1. The entire scope of the petitions is limited to challenging the validity and application of the Central Secretariat Service (Amendment) Rules, 1979 and the consequent regulations for holding a limited departmental competitive examination. No relief has been sought for quashing the Office Memorandum dated 20th July, 1974. No ground has been taken in the writ petitions assailing the validity of the Office Memorandum. The Courts should

ordinarily insist on the parties being confined to their specific written pleadings and should not be permitted to deviate from them by way of modification or supplementation except through the well-known process of formally applying for amendment. It is not that justice should be available to only those who approach the court confined in a straight jacket; but there is a procedure known to the law, and long established by codified practice and good reason, for seeking amendment of the pleadings. [1189 D-F]

If undue laxity and a too easy informality is permitted to enter the proceedings of a court, it will not be long before a contemptuous familiarity assails its institutional dignity and ushers in chaos and confusion undermining its effectiveness. [1189 F-G]

Oral submission raising new points for the first time tend to do grave injury to a contesting party by depriving it of the opportunity, to which the principles of natural justice held it entitled, of adequately preparing its response. [1189 G-H]

Whether or not reserved vacancies should be dereserved is a matter falling primarily within the administrative discretion of the Government. There is no right in candidates seeking to fill vacancies belonging to the general category to insist on dereservation of reserved vacancies so long as it is possible in law to fill the reserved vacancies. If at all, a claim in that behalf can arise only if no valid arrangement can be made for filling the reserved vacancies and dereservation is called for by reason of the prohibition, in clause (v) of paragraph 2 of the office memorandum dated 20th July, 1974, against the carry forward of reservations from year to year in the event of an adequate number of Scheduled Caste and Scheduled Tribe candidates not being available in any particular year. Before reaching this extremity, the Government acts wholly within its power in adopting an alternative arrangement for filling the reserved vacancies. Dereservation as a process should be resorted to only when it is not reasonably possible, within the contemplation of law, to fill the reserved vacancies. The process of dereservation would otherwise be antagonistic to the principle embodied in Article 16(4) and Article 46 of the Constitution. [1190 G-F]

3. Once a decision has been taken to reserve vacancies for a backward class of citizens, the programming effected to that end should not be disturbed unless the avenues for fulfilling it have been explored and have failed. It is only reasonable that the Government should dereserve the vacancies in view of the prohibition against carrying them forward to the next year. [1190 G-H, 1191 B]

4. The question of holding the examination arises only, as sub-rule (2a) of rule 12 declares that when the reserved vacancies cannot be filled because eligible officers from the Scheduled Castes and Scheduled Tribes are not available through the original process. Resort to the further process arises because of the constitutional mandate in favour of Scheduled Castes and Scheduled Tribes because reserved vacancies must be filled if that is possible. It has not been shown that the general category vacancies have remained unfilled for want of suitable candidates. No need has arisen of being compelled to resort to a further process of selection in regard to such vacancies. There is no requirement in law that the select list pertaining to a particular year must be finalized within that year. [1191 E-G, 1192 B]

It is open to the Government to complete the process of selection and finalise it after the expiry of that year. It seems that when the Government found that suitable candidates belonging to the Scheduled Castes and Scheduled Tribes

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**A** were not available for inclusion in the field of selection, it decided to consider the advisability of adopting some other mode of filling the reserved vacancies. The select list for 1977, which included already ninety-one names of officers appointed to the general category vacancies, was held in abeyance for the purpose of filling the twenty-seven reserved vacancies. After discussion with the Chairman of the Union Public Service Commission and consideration of the alternatives before it the Government decided on holding a limited departmental competitive examination. As long as the select list was not declared final, no officer could claim any right. [1192 B-E]

**B**

6. It is now well accepted, and has been affirmed by successive decisions of this Court, that relaxed eligibility criteria would be justified in the case of candidates of backward classes. The principle finds expression also in the original rule 12 of the Central Secretariat Service Rules. The record indicates that the lower eligibility standard was decided on after consultation with the Chairman of the Union Public Service Commission. [1192-GH, 1193 A].

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*General Manager, Southern Railway v. Rangachari*, [1962] 2 S.C.R. 586. *M. R. Balaji v. State of Mysore* [1963] Supply. 1 S.C.R. 434, *State of Kerala v. N. M. Thomas*, [1967] 1 S.C.R. 906, affirmed.

ORIGINAL JURISDICTION : Writ Petition Nos. 626-630 of 1979.

**D** (Under Article 32 of the Constitution)

*Raghubir Malhotra, Yash Pal, N. D. Garg and S. K. Bisaria* for the Petitioners.

*Miss. A Subhashini* for Respondent No. 1.

**E** *S. T. Desai, Miss Bina Gupta and Praveen Kumar* for other Respondents.

The Judgment of the Court was delivered by

**F** PATHAK, J.—The petitioners have filed these writ petitions under Art. 32 of the Constitution challenging the validity of the Central Secretariat Service (Amendment) Rules, 1979 and of the Regulations made consequent thereto by the Union of India for the purpose of holding a departmental competitive examination limited to candidates belonging to the Scheduled Castes and Scheduled Tribes for filling up vacancies reserved for those categories in Grade I of the Central Secretariat Service.

**G** The petitioners are permanent Section Officers in the Central Secretariat Service and almost all of them are presently officiating as Under Secretaries in different Ministries. The next higher category in the Central Secretariat Service above the Section Officers' Grade consists of Grade I posts. Recruitment to the Grade I posts are made under Rule 12 of the Central Secretariat Service Rules; vacancies are filled by the promotion of, *inter alia*, permanent officers of the Section officers' Grade who satisfy certain prescribed qualifications. For the purpose of such promotion a select list is prepared.

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The preparation of the select list is governed by the Central Secretariat Service (Promotion to Grade I & Selection Grade) Regulations, 1964. The select list is to be prepared once every year. The names of eligible officers are arranged in a single list by the Department of Personnel & Administrative Reforms in the Cabinet Secretariat in accordance with the field of selection determined by the Selection Committee. Pursuant to an Office Memorandum issued by the Department on 20th July, 1974, 15% and 7½% of the promotion posts stand reserved for Scheduled Caste and Scheduled Tribe candidates respectively.

The petitioners along with several other officials were included in the field of selection for the purpose of drawing up the select list for the year 1977 for promotion to the Grade I posts. After an interview by the Selection Committee, ninety-one unreserved vacancies were filled from the first ninety-one candidates in the general category. Twenty-seven vacancies, reserved for members of the Scheduled Castes and Scheduled Tribes, remained unfilled because no candidate belonging to those categories was found suitable for including in the field of selection. For the purpose of filling those reserved vacancies, the Government of India decided to hold a limited departmental competitive examination, confined to members of the Scheduled Castes and Scheduled Tribes. Accordingly, the President enacted the Central Secretariat Service (Amendment) Rules, 1979 whereby sub-rule (2a) was inserted below sub-rule (2) of Rule 12 of the Central Secretariat Service Rules. Regulations, described as the Central Secretariat Service Grade I (Limited Departmental Competitive Examination for filling the vacancies reserved for Scheduled Castes and Scheduled Tribes) Regulations, 1979 were promulgated providing for the holding of a limited departmental competitive examination, including a statement of the conditions of eligibility and indicating how the selection would take place on such examination. The first such examination was scheduled for July, 1979.

The case of the petitioners in the writ petitions is that the Government of India was not empowered to fill up the reserved vacancies by recourse to a departmental competitive examination for candidates from the Scheduled Castes and Scheduled Tribes and that instead the Government should have dereserved the vacancies and made them available to candidates falling under the general category. Had that been done, the petitioners say, they would have been considered for promotion and, having regard to their position in the select list, they allege that they stood a probable chance of being promoted to Grade I. The petitioners pray that the amendment of

- A** Rule 12, Central Secretariat Service Rules and the framing of regulations pursuant to the amendment should be declared *ultra vires*, and alternatively the amendment of the rules and the framing of the related regulations be regarded as prospective only and not affecting the twenty-seven reserved vacancies pertaining to the year 1977. It is also prayed that the Union of India should be directed to take immediate steps for de-reserving the twenty-seven vacancies for the year 1977 and upon such de-reservation the petitioners be considered for filling those twenty-seven vacancies.
- B**

The reservation of vacancies for Scheduled Castes and Scheduled Tribes in promotion posts from class II to class I of Government services flows from the Department of Personnel & Administrative Reforms Office Memorandum No. 10/41/73-Estt. (SCT), dated 20th July, 1974. Paragraph 2 of the Office Memorandum spells out how the vacancies should be filled up. The selection is made from among Scheduled Caste and Scheduled Tribe officers who are within the normal zone of consideration. If candidates qualifying on the basis of merit with due regard to seniority do not fill up all the reserved vacancies, those remaining unfilled are to be filled by selecting candidates of the two communities who are in the zone of consideration irrespective of merit but subject to their being considered fit for promotion. A select list is then prepared of all the selected officers, general as well as those belonging to Scheduled Castes and Scheduled Tribes, arranged in the order of merit and seniority according to principles laid down by the Ministry of Home Affairs. For determining the number of vacancies to be reserved for Scheduled Castes and Scheduled Tribes in a select list, a separate roster prescribed by an Office Memorandum dated 22nd April, 1970 is followed. Then, the relevant provision declares :

- G** "If, owing to non-availability of suitable candidates belonging to Scheduled Castes or Scheduled Tribes, as the case may be, it becomes necessary to de-reserve a reserved vacancy, a reference for de-reservation should be made to this Department indicating whether the Scheduled Castes/Scheduled Tribes candidates eligible for promotion in reserved vacancies have been considered in the manner indicated in this Office Memorandum."

**H** A further provision prohibits the carrying forward of reservations from year to year in the event of an adequate number of Scheduled Caste and Scheduled Tribe candidates not being available in any particular year.

Shri Raghubir Malhotra, appearing on behalf of the petitioners, opened with the contention that the reservation of vacancies for members of the Scheduled Castes and Scheduled Tribes by the Office Memorandum dated 20th July, 1974 was invalid. It was urged that the Office Memorandum possessed at best the status of departmental instructions and could not amend the Central Secretariat Service Rules. It is not, it was said, a case of administrative instructions filling any gap or area left uncovered by that body of rules but, on the contrary, it is a case where administrative instructions have been made inconsistently with the rules. At the outset an objection was taken by the respondents to our entertaining the contention because, they point out, it is not a contention raised in the writ petitions and should not be allowed to be raised for the first time by way of oral submission in the course of arguments during the final hearing of the writ petitions. It is not denied by learned counsel for the petitioners that the point has not been specifically and clearly raised in the writ petitions, but he asks us to consider it by reason of what he describes as "its fundamental importance". We have carefully perused the writ petitions, and it is plain that the entire scope of the petitions is limited to challenging the validity and application of the Central Secretariat Service (Amendment) Rules, 1979 and the consequent regulations for holding a limited departmental competitive examination. No relief has been sought for quashing the Office Memorandum dated 20th July, 1974. No ground has been taken in the writ petitions assailing the validity of the Office Memorandum on the basis now pressed before us. We are of opinion that the courts should ordinarily insist on the parties being confined to their specific written pleadings and should not be permitted to deviate from them by way of modification or supplementation except through the well-known process of formally applying for amendment. We do not mean that justice should be available to only those who approach the court confined in a straight jacket. But there is a procedure known to the law, and long established by codified practice and good reason, for seeking amendment of the pleadings. If undue laxity and a too easy informality is permitted to enter the proceedings of a court it will not be long before a contemptuous familiarity assails its institutional dignity and ushers in chaos and confusion undermining its effectiveness. Like every public institution, the courts function in the security of public confidence, and public confidence resides most where institutional discipline prevails. Besides this, oral submissions raising new points for the first time tend to do grave injury to a contesting party by depriving it of the opportunity, to which the principles of natural justice hold it entitled, of adequately preparing its response.

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**A** We must, therefore, decline to entertain the point now raised concerning the validity of the Office Memorandum.

**B** We shall now proceed directly to the principal contentions raised in the writ petitions. It is first contended that sub-rule (2a) of Rule 12, newly enacted in the Central Secretariat Service Rules, and the related Regulations, providing for a limited departmental competitive examination for members of the Scheduled Castes and Scheduled Tribes are invalid because the Central Government should have dereserved the twenty-seven vacancies when it was found that suitable Scheduled Caste and Scheduled Tribe candidates were not available for inclusion within the field of selection. There is no merit in this contention. Whether or not reserved vacancies should be de-reserved is a matter falling primarily within the administrative discretion of the Government. There is no right in candidates seeking to fill vacancies belonging to the general category to insist on dereservation of reserved vacancies so long as it is possible in law to fill the reserved vacancies. If at all, a claim in that behalf can arise only if no valid arrangement can be made for filling the reserved vacancies, and dereservation is called for by reason of the prohibition, in clause (v) of paragraph 2 of the Office Memorandum dated 20th July, 1974, against the carry forward of reservations from year to year in the event of an adequate number of Scheduled Caste and Scheduled Tribe candidates not being available in any particular year. Before reaching this extremity, the Government acts wholly within its power in adopting an alternative arrangement for filling the reserved vacancies. Dereservation as a process should be resorted to only when it is not reasonably possible, within the contemplation of law, to fill the reserved vacancies. The process of dereservation would otherwise be antagonistic to the principle embodied in Article 16(4) and Article 46 of the Constitution. Paragraph 10.4 in the Brochure on Reservation of Scheduled Castes and Scheduled Tribes in the Services, prepared by the Government of India, provides that dereservation should be proposed only when such a course becomes inevitable due to non-availability of Scheduled Caste and Scheduled Tribe candidates for appointment against the reserved vacancies after having fully observed the procedure prescribed in this behalf and after applying relaxed standards in the case of such candidates. Once a decision has been taken to reserve vacancies for a backward class of citizens, the programming effected to that end should not be disturbed unless the avenues for fulfilling it have been explored and have failed. If the petitioners can succeed in showing that the provisions in the Central Secretariat Service Rules, and the consequent Regulations,

providing for holding the limited departmental competitive examination are *ultra vires* and void and there is no evidence of any other appropriate arrangement for filling the reserved vacancies they may have a case for contending that as there is no prospect of finding suitable Scheduled Caste and Scheduled Tribe candidates for appointment to the reserved vacancies it is only reasonable that the Government should dereserve the vacancies in view of the prohibition against carrying them forward to the next year.

That takes us then to the validity of sub-rule (2a) of rule 12 of the Central Secretariat Service Rules and the Regulations of 1979. Their validity is challenged by the petitioners on the ground that they violate Articles 14, 15 and 16 of the Constitution inasmuch as they result in two avenues of promotion for Government servants belonging to the Scheduled Castes and Scheduled Tribes, while a single avenue only of promotion is available to other Government servants. *Ex facie*, the contention must fail. The two avenues of promotion pointed out by learned counsel for the petitioners consist in, one, the preparation of a list of officers falling within the field of selection, both of the general category as well as members of Scheduled Castes and Scheduled Tribes and their selection on the basis of the principles laid down and, two, the selection of candidates of Scheduled Castes and Scheduled Tribes consequent upon the limited departmental competitive examination. While considering this submission, we must remember that resort to the limited departmental competitive examination is not simultaneous with the preparation of the list embodying the field of selection. The question of holding the examination arises only, as sub-rule (2a) of rule 12 declares, when the reserved vacancies cannot be filled because eligible officers from the Scheduled Castes and Scheduled Tribes are not available through the original process. Resort to the further process arises because of the constitutional mandate in favour of Scheduled Castes and Scheduled Tribes, because reserved vacancies must be filled if that is possible. The petitioners could complain if such a need arose in respect of general category vacancies and was not supplied. It has not been shown that the general category vacancies have remained unfilled for want of suitable candidates. No need has arisen of being compelled to resort to a further process of selection in regard to such vacancies. In the circumstances, it is not possible to see how a legitimate complaint can be laid by the petitioners on the basis alleged before us. It has been urged that the decision of the Government not to dereserve the twenty-seven vacancies is vitiated by legal malice. Having regard to the considerations to which we have adverted, we see no substance in that submission.



- A** The next contention on behalf of the petitioners is that sub-rule (2a) of rule 12 enacted in 1979 operates prospectively only and cannot effect the twenty-seven vacancies to be filled in the Select List of 1977. The argument proceeds on the assumption that the Select List of 1977 must be completed during the year 1977. The submission is founded in fallacy. There is no requirement in law
- B** that the Select List pertaining to a particular year must be finalised within that year. It is open to the Government to complete the process of selection and finalise it after the expiry of that year. It seems that when the Government found that suitable candidates belonging to the Scheduled Castes and Scheduled Tribes were not available for inclusion in the field of selection, it decided to consider the advisability of adopting some other mode of filling the reserved vacancies. It
- C** appears that on 10th August, 1978 the Government stated in Parliament that as no Scheduled Caste and Scheduled Tribe officers could be included in the field of consideration proposals for filling the vacancies through some special method had been taken up with the Union Public Service Commission. The Select List for 1977, which
- D** included already ninety-one names of officers appointed to the general category vacancies, was held in abeyance for the purpose of filling the twenty-seven reserved vacancies. After discussion with the Chairman of the Union Public Service Commission and consideration of the alternatives before it the Government decided on holding a limited departmental competitive examination. As long as the Select
- E** List was not declared final, no officer could claim any right. In the aforesaid circumstances, it is not possible to say that in holding the departmental competitive examination the Government was applying sub-rule (2a) of rule 12, and the Regulations, retrospectively.
- F** A grievance has also been made of the circumstance that the qualifying standard for Scheduled Caste and Scheduled Tribe candidates appearing at the limited departmental competitive examination is as low as four years approved and continuous service in the Section Officer's Grade, while a period of ten years is insisted on in the case of officers who do not belong to either class and are considered
- G** for vacancies in the general category. The definition of "crucial date" in clause (a) of Regulation 2 of the Regulations of 1979 as a point of reference qualifying the eligibility standard, it is urged, permits an even lower eligibility standard for Scheduled Caste and Scheduled Tribe candidates. It is now well accepted, and has been affirmed by successive decisions of this Court, that relaxed eligibility
- H** criteria would be justified in the case of candidates of backward classes. The principle finds expression also in the original rule 12 of the Central Secretariat Service Rules. The record before us

indicates that the lower eligibility standard was decided on after consultation with the Chairman of the Union Public Service Commission. As regards the number of years of approved service considered sufficient for eligibility, we find that even if we consider ourselves entitled to go into that question the paucity of relevant material does not permit us to express any opinion in the matter.

Learned counsel for the petitioners has also challenged the reservation of the twenty-seven vacancies on the ground that the vacancies pertain to selection posts. On this point, we find ourselves bound by the decision of this Court in *General Manager, Southern Railway v. Rangachari*<sup>(1)</sup> where it has been held that Article 16(4) of the Constitution extends to selection posts.

Finally, learned counsel for the petitioners challenges the reservation of vacancies on the ground that they are irrational, inhibiting and do not provide for healthy growth of the services besides offending the equality provisions of Part III of the Constitution. Having regard to the percentage of vacancies reserved under the Office Memorandum dated 20th July, 1974, we consider that the case falls within the principles laid down in *M. R. Balaji v. State of Mysore*.<sup>(2)</sup> The majority view in *State of Kerala v. N. M. Thomas*<sup>(3)</sup> supports the validity of the reservation.

Accordingly, the writ petitions are dismissed, but without any order as to costs.

N.K.A.

*Petitions dismissed.*

(1) [1962] 2 S.C.R. 586.

(2) [1963] Suppl. 1 S.C.R. 439.

(3) [1976] 1 S.C.R. 906.