

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 181/94
~~F.A. No.~~

199

DATE OF DECISION 22.12.1994

SHRI R.N. KALRA

Petitioner

SHRI V.S.R. KRISHNA,

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondent

SHRI K.C. SHARMA WITH
 SHRI C.S. LOBANE.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V. Krishnan, Vice-Chairman (A)

The Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Smt. Lakshmi Swaminathan)
 Member (J)

(N.V. Krishnan)
 Vice-Chairman (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
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O.A.No. 181/94.

Date of decision. 22-12-94

Hon'ble Shri N.V. Krishnan, Vice-Chairman (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri R.N. Kalra,
S/o late Shri R.D.M. Kalra,
R/O 8/11, Sarva Priya Vihar,
New Delhi-110 016. .. Applicant

(By Advocate Shri V.S.R. Krishna)

versus:

EMPLOYEES PROVIDENT FUND ORGANISATION
THROUGH:

1. The Chairman,
Central Board of Trustees,
Employees Provident Fund Orgn.,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
2. The Central Provident Fund Commissioner,
Employees Provident Fund Orgn.,
Central Office, 9th Floor,
Mayur Bhawan, Connaught Circus,
New Delhi-110 001.
3. The Secretary,
Ministry of Labour,
Government of India,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
4. The Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
5. Shri P.C. Tanwar,
Regional Provident Fund Commissioner,
Grade I (on deputation) 7th Floor,
Sky Lark Building, 16, Nehru Place,
New Delhi-110 019.
6. Shri B. Pugazhendi,
Joint Director,
Ordinance Factory Board,
Calcutta.

7. Shri H.N.S. Ahmed,
Joint Director,
Ordinance Factory Board,
Calcutta.
8. Shri Ashwani Kumar,
Deputy Director,
Defence Estate,
Western Command,
S.C.O. 818, Mani Mazra,
Chandigarh-cum-Cantonment Executive Officer,
Ferozepur (Punjab) ... Respondents.

(By Advocate Shri K.C. Sharma with
Shri G.S. Lobane)

O_R_D_E_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)]

The applicant, who is working as Private Secretary Grade I in the scale of Rs. 3700-5000 in the Lok Sabha Secretariat, is aggrieved by the appointment orders issued by respondent No. 2 (Annex-respondents 5 to 8 ure A-1 collectively) appointing/ to the posts of Regional Provident Fund Commissioners (RPFC) Grade I in the office of respondent No. 2 on deputation. Respondent No. 2 had issued a memo. dated 19.5.1993 (Ann. A4) for filling up vacancies in the grade of RPFC Gr. I on deputation basis in their organization. As per para 2 of the Memo., under the recruitment rules, the following officers were to be considered, namely,

- (i) Officers of the IAS with 9 years service as such; or
- (ii) Officers under the Central/State Govts. holding analogous posts or with 5 years service in post in the scale of pay of

Rs. 3000-4500 or equivalent.

Para 3 of the Memo. further provides that the terms and conditions applicable to the officers appointed on deputation from one Central Government Department to another Department are applicable in this case also. This memorandum was circulated to several Ministries/Departments of the Government of India, all Chief Secretaries of State Governments and the Office of the Comptroller and Auditor General of India,

2. According to the applicant, his application for the post of RPFC Grade I was forwarded through the Lok Sabha Secretariat.

3. The applicant's case is that he has been ignored in preference to the other selected candidates, namely, respondents No. 5 to 8, which he claims is illegal. He has, therefore, sought a direction to quash and set aside the impugned orders issued to respondents No. 5 to 8 and an order directing the respondents to consider the applicant's case for selection on deputation basis to the post of RPFC Grade I in accordance with the Recruitment Rules of 1952.

4. The respondents have taken a preliminary objection that having regard to Section 2(d) of the Administrative Tribunals Act, 1985, this Act was not to apply

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to any person appointed to the Secretarial Staff of either House of Parliament. This objection can be straightaway dealt with inasmuch as the applicant is not seeking any appointment to the Secretarial Staff of either House of Parliament but his grievance is with regard to his non-selection to the post of RPFC Gr.I in the Organisation of Respondent No. 2. In the circumstances, the objection raised under Section 2(d) of the Administrative Tribunals Act has no force and is rejected. The other main ground taken by the respondent "an officer under the Central/State Govt." i.e. he is a Government servant nor an employee of State Government but being an employee of Lok Sabha Secretariat, he does not fulfil the conditions for appointment to the post of RPFC Grade I in terms of the Employees' Provident Fund Organization (Commissioners) Recruitment Rules, 1966 read with the Memorandum dated 19.5.1993 reproduced above. On this point lengthy arguments were advanced by both the learned counsel for the parties.

5. Shri VSR Krishna, learned counsel for the applicant has referred to Article 12 of the Constitution which gives the definition of the "State" as including the Government and Parliament of India

and the Government and legislature of each of the States. He has further referred to Article 98(3) of the Constitution which empowers the President, after consultation with the Speaker of the House of the People or the Chairman of ^{the} Council of States to make rules regulating the recruitment and conditions of service of persons appointed to the Secretarial Staff of the House of the People or the Council of State. His contention is that since the Secretarial Staff of the Lok Sabha is paid from the Consolidated Fund of India, the applicant is a Government servant even though they may have separate recruitment and disciplinary rules. He has also drawn ^{our} attention to the separate provisions made under Chapter V of the Constitution with regard to the Comptroller and Auditor General of India. Article 148(5) also provides for rules to be made by the President in respect of the conditions of service of the persons serving in the Indian Audit & Accounts Department after consultation with the Comptroller & Auditor General of India. The O.M. dated 19.5.1993 announcing the filling up of the vacancies in the grade of RPFC had been sent to C&AG of India. According to Shri Krishna, therefore, since the persons serving in the C&AG have been treated as

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Government servants, there was no reason to discriminate against the staff working in the Lok Sabha Secretariat. He has further mentioned that the memorandum had been displayed in the notice board of the Lok Sabha Secretariat and it was in pursuance of this that the applicant had applied for the post through proper channel. Similarly, the learned counsel contends that Chapter II ^{of Part XIV} of the Constitution deals with Public Service Commission for the Union and for the State starting from Article 315 and ending with Article 323. Article 322 provides that the expenses of the Union or the State Public Service Commission, including any salaries, allowances and pension payable to or in respect of Members or staff of the Commission shall be charged on the Consolidated Fund of India or as the case may be the Consolidated Fund of the State. According to him, even though the staff of these organizations may have separate recruitment rules regarding recruitment, conditions of service, discipline and so on, they are nevertheless Government servants as they are paid from the Consolidated Fund of India.

6. On the other hand, Shri K.C. Sharma, learned counsel for the respondents has vehemently refuted the above

avernments. According to him, Article 12 of the Constitution which gives the definition of "The State" and includes the Government and Parliament of India and other authorities is only for the purpose of Fundamental Rights dealt with in this part i.e. Part III

7. He also draws our attention to the avernments made in the additional counter reply filed by the respondents on 2nd September, 1994. Article 50 of the Constitution which is under Part IV, (Directive Principles of State Policy) enjoins upon the State the to take steps to separate/judiciary from the executive in the public affairs of the State. Article 73 defines the executive powers of the Union which would extend -

- (a) to the matters with respect to which Parliament has power to make laws; and
- (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.

Shri Sharma, therefore, contends that the term 'Government' has been used in the Constitution as distinct from the term 'Parliament'. He, therefore, submits that the subject of "Parliament" has been dealt with in Chapter II of Part V of the Constitution and Article 79 defines the Constitution of the Parliament. It is in this Chapter

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that Article 98 provides for a secretariat of Parliament. Article 77 provides for the conduct of Government business and clause (3) empowers the President to make rules for the more convenient transaction of the Business of the Government of India. According to the learned counsel, having regard to the various provisions of the Constitution, Parliament and its Secretariat do not form part of the Government of India but it is a supreme body to oversee the functions of the executive and make laws in respect of the same. Article 98 ensures that the Secretariat of Parliament is a separate entity exclusively under the Presiding Officers of each House of Parliament and is independent of the executive i.e. the Government of India.

8. In this connection Shri Sharma has referred to the Constituent Assembly Debates 1949. Article 98 of the Constitution was discussed in the Constituent Assembly as Article 79-A of the Draft Constitution and he has referred to the introductory remarks of Dr. B.R. Ambedkar which are reproduced below :-

" It was, as every one most probably in this House knows, a matter of contention between the Executive Government and the President ever since the late Mr. Vithalbhai Patel was

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called upon to occupy the President's Chair in the Assembly. A dispute was going on between the Executive Government and the President of the Assembly. The President had contended that the Secretariat of the Assembly should be independent of the Executive Government. The Executive Government of the day, on the other hand, contended that the Executive had the right to nominate, irrespective of the wishes and the control of the President the personnel and the staff required to serve the purposes of the Legislative Assembly.

Ultimately, the Executive Government in 1928 or 1929 gave in and accepted the contention of the then President and created an independent secretariat for the Assembly. So far, therefore, as the Central Assembly is concerned, there is really no change effected by this new article 79-A, because what is provided in clause (1) of article 79-A is already a fact in existence.

But, it was pointed out that this procedure which has been adopted in the Central legislature as far back as 1928 or 1929 has not been followed by the various provincial legislatures. In some provinces, the practice still continues of some officer who is subject to the disciplinary jurisdiction of the legislature Department being appointed to act as the Secretary of the legislature Assembly with the result that that officer is under a sort of a dual control and exercised by the department of which he is an officer and the control by the President under whom for the time being he is serving. It is contended that

this is derogatory to the dignity of the Speaker and the independence of the Legislature Assembly.

The Conference of the Speakers passed various resolutions insisting that besides making this provision in the Constitution, several other provisions should also be made in the Constitution so as to regulate the strength, appointment, conditions of service and so on and so on. The Drafting Committee was not prepared to accept the other contentions raised by the Speakers' Conference. They thought that it would be quite enough if the Constitution contained a simple clause stating that Parliament should have a separate secretarial staff and the rest of the matter is left to be regulated by Parliament. Clause(3) provides that, until any provision is made by Parliament, the President may, in consultation with the Speaker of the House of the People or the Chairman of the Council of States, make rules for the recruitment and the conditions of service. When Parliament enacts a law, that law will override the rules made pro-tempore by the President in consultation with the Speaker of the House of the People. I think that the provision that we have made is sufficient to meet the main difficulty which was pointed out by the Speakers' Conference. I hope the House will find no difficulty in accepting this new article."

9. Regarding the Office of the Comptroller and Auditor General of India, Shri Sharma submits that Clause 5 of Article 148 makes a specific provision that this provision is subject to the provisions of the Constitution, whereas in Article 98 there is no such provision and hence there

is a difference in the treatment of the persons serving in the Office of the Comptroller & Auditor General of India and the Secretarial Staff of each House of Parliament.

10. We have carefully considered the very able arguments preferred by both the learned counsel.

11. The Employees' Provident Fund Organization is a body created under the Employees' Provident Fund and Misc. Provisions Act, 1952. Under the Employees' Provident Fund Organisation (Commissioners) Recruitment Rules, 1966, the qualification prescribed for promotion/transfer on deputation to the post of RPFC Grade I is, inter-alia, "officers under the Central/ State Governments holding analogous posts (i.e. RPFC Grade II with 5 years service in the grade) or with 5 year's service in posts in the scale of Rs. 3700-4500."

Admittedly, the applicant was drawing salary in the scale of Rs. 3700-4500 in the Lok Sabha Secretariat w.e.f. 1.1.1986 and so he had the 5 years service in the grade. The only question, therefore, is whether the applicant was an officer under the Central/State Government for satisfying the eligibility condition.

12. The argument of the learned counsel for the applicant based on Article 12 of the Constitution that the

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Government and Parliament of India are both considered at par as "The State" and hence the applicant should be considered as a Central Government employee cannot be accepted. Article 12 itself provides that unless the text otherwise requires it is only for the purposes of this Part.i.e. Fundamental Rights that " The State " includes the Government and the Parliament of India. It has been held (see Rajasthan State Electricity Board v.Mohan Lal [AIR 1967 SC 1857 & 1861-1863] AND Ranjit Kumar v.UOI [AIR 1969 Cal. 95] that the fact that a statutory corporation exercising statutory powers may be " State " within the purview of Article 12 does not necessarily lead to the conclusion that the employees hold civil posts under the State Government or they are Central Government servants under Article 311 of the Constitution, as the question under the two provisions are different. Therefore, the contention of the learned counsel for the applicant based on Article 12 has no merit. the context in which In / the recruitment rules refer to an officer under the " State Government " they refer to the Government which exercises powers over the territory of the States as mentioned in Article 1(2) of the Constitution and

specified in the first schedule.

13. The contention that employees of the Lok Sabha Secretariat are not "Officers of the Central Government" is fortified by the views expressed in the debates in the Constituent Assembly referred to above and the provisions of Articles 98 and 77 of the Constitution. Chapter I of Part V of the Constitution deals with the executive powers of the Union whereas Chapter II deals with Parliament under which Article 98 dealing with the Secretariat of the Parliament figures. The Secretariat of Parliament is not dealt with as part of the executive powers of the Union i.e. Govt. of India.

14. A similar matter had come up for consideration before the Supreme Court with regard to an officer of the High Court in Pradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta High Court (1955 (2) SCR 1331). The applicant therein was appointed by the Chief Justice of Calcutta, High Court and on 4.3.48 as the Registrar/ Accountant General and confirmed on 15.11.48. In respect of certain charges, the Chief Justice (C.J) directed an enquiry to be held by Mr Justice Das Gupta of that Court and

after giving him an opportunity of being heard,
the petitioner was dismissed by the Chief Justice
on 3-8-51. A review to the Chief Justice was
on 3-9-51
rejected by a Bench of three Learned Judges.

Hence, an appeal was filed in the Supreme Court.

Three grounds were raised i) The Chief Justice
had no powers to dismiss him, ii) The Chief
Justice could not have delegated his powers
to hold the enquiry to another Judge . iii)
In any case, as the State Public Service
Commission(P.S.C) was not consulted under
Article 320 of the Constitution the order of
dismissal is void.

15. After considering the constitutional
position right from the Chapter of the Supreme
Court of Calcutta issued in 1774 through the
Govt. of India Act, 1915 as amended in 1919, Govt.
of India Act, 1935 and lastly Article 229 of
the Constitution of India and the effect of the
Civil Services (Classification Control & Appeal)
Rules 1930, the court did not find any substance
in the first two grounds.

16. The question was whether there was any

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substance in the third ground relating to consultation with the Public Service Commission.

17. One line of reasoning¹³ was that the Chief Justice of a High Court had full powers to appoint officers and servants of the High Court under Art.229(1) of the Constitution, and that this carried with it the power of dismissal also. The only limitation that could be imposed on that power is contained in the proviso to 229(1) viz. in respect of future appointments the Governor could provide by rules that the appointment may be made only after consultation with the Public Service Commission. This is the only area where the P.S.C. could have a role to play. Therefore, consultation was not necessary with the P.S.C. as this would be contrary to the Constitutional provisions.

18. The Court, however, did not rest its decision on this ground alone. It went into the question whether consultation with the Public Service Commission was necessary in terms of Art.320(3)(c) which reads as follows:-

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" The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters."

More specifically the question posed was whether the petitioner could be considered to be a person "serving under the Govt. of a State in a civil capacity" such that in a disciplinary matter affecting that person, the P.S.C. ought to have been consulted.

19. The court noted that different expressions
310,
have been used in Art.309, 311 and 320 to refer to
the persons to whom these articles apply as follows:-

" of persons appointed to public services and posts in connection with the affairs of the Union or of any State" (Art.309)

" every person who is a member xxxxx of a civil service of the Union xxx and every person who is a member of a civil service of a state or holds any civil post under a State" (Art.310)

" a person who is a member of a civil service of the Union or of civil service of a State or holds a civil post under the Union or a State" (Art.311)

" appointments to the services of the Union and of the services of the State" (Art.320(1))

" a person serving under the Govt. of India or the Govt. of a state in a civil capacity" (Art.320(3)(c))

" services and posts in connection with the affairs of the Union and to services of posts in connection with the affairs of the State" (proviso to Art 320(3)(e))

Thereafter the Court observed and held as
under:-

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" A close scrutiny of the terminology so used shows a marked departure in the language of Art.320 (3) (c) from that in Articles 310. Officers and members of the staff attached to a High Court clearly fall within the scope of the phrase " persons appointed to public services and posts in connection with the affairs of the State" and also of the phrase " a person who is a member of a civil service of a State" as ^{is} used in Articles 310 and 311. The salaries of these persons are paid out of the State funds as appears from article 229(3) which provides that the administrative expenses of a High Court including all salaries, allowances and pensions payable to or in respect of officers and servants of the High Court, are chargeable upon the Consolidated Fund of a State. The item relating to such administrative expenses has to form part of the annual financial statement to be presented to the State Legislative Assembly under article 202 and estimates thereof can form the subject matter of the discussion in the legislature under article 203(1). They must, therefore, be taken" to hold posts in connection with the affairs of State and to be members of the civil service of the State." But can it be said that members of the High Court staff are " persons serving under the Government of a State in a civil capacity" which is the phrase used in article 320(3) (c). The use of different terminology in the various articles was not likely to have been accidental It appears, therefore, not unlikely

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that in using somewhat different phraseology, the intention was to demarcate the staff of the High Courts from the other civil services of the Union or the State. The phrase "persons serving under the Government of India or the Government of a State" seems to have reference to such persons in respect of whom the administrative control is vested in the respective executive Governments functioning in the name of the President or of the Governor or a Rajpramukh. The officers and staff of the High Court cannot be said to fall within the scope of the above phrase because in respect of them the administrative control is clearly vested in the Chief Justice, who under the Constitution, has the power of appointment and removal and of making rules for the conditions of services." (emphasis added)

20. In the circumstances, it was held that for the dismissal of the applicant, consultation with the Public Service Commission was not necessary.

21. Article 98 reads as follows:-

"(1) Each House of Parliament shall have a separate secretarial staff ;

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment, and the conditions

of service of persons appointed, to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause."

21. The basic differences between this provision and article 229 are firstly, unlike the Chief Justice of a High Court, the Constitution does not confer the powers of appointment either on the Speaker of the House of the People or on the Chairman of the Council of States and secondly, the powers to make rules, until a law is made by Parliament, is vested in the President, and not in the Speaker or Chairman. Nevertheless, it cannot be said that the secretariat staff of parliament are "officers under the Central Government ." Like the officers and servants of the High Court, the secretariat staff of Parliament fall within the scope of the expression used in Art.309,310 and 311 but, for that reason, they cannot be treated as "officers under the Central Government" which is used to describe the eligibility condition in the recruitment rules framed under the Employees Provident Fund and Misc.Provisions Act, 1952. In other words, in their case also, unless the President has framed rules otherwise, consultation with the UPSC under Art.320(3)(c)

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will not be necessary because they are notⁿ under the Govt. of India.

23. Therefore, having regard to the scheme of the Constitution and the observations of the Supreme Court in Pradyat Kumars ^{Rosa's Case 13} (Supra) we are of the view that the applicant, who is holding a secretarial post in the Lok Sabha Secretariat, is not an officer under the Central Government to be qualified for consideration to the post of RPF Grade-I under the Employees' Provident Fund Organisation in accordance with the Recruitment Rules framed for this purpose. He cannot, therefore, be affected by the recruitment of respondents from 5 to 8 and accordingly, he has no locus standi to file this O.A.

24. Accordingly, the application is dismissed. There will be no order as to costs.

(Lakshmi Swaminathan)

Member (J)

(N.V. Krishnan)

Vice Chairman (A)