

(27)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Regn.Nos. (1) OA 289/87  
(2) OA 368/87

Date of decision: 13.04.92.

(1) OA 289/87

Shri M.J. Mirza & Others

...Applicants

Vs.

U.O.I. through the Secretary,  
Min. of Labour & Others

...Respondents

(2) OA 368/87

Shri C.C.S. Reddy

...Applicants

Vs.

U.O.I. through the Secretary,  
Ministry of Labour & Another

...Respondents

For the applicants in (1) and  
(2) above

...Shri Jog Singh,  
Counsel

For Respondent No.1 in both the  
OAs

...Shri P.P. Khurana  
Counsel

For Respondent Nos. 2 to 6 in  
OA 289/87

...Shri G.D. Gupta,  
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha,  
Vice Chairman(J))

The applicants in these applications are Labour Commissioners working in the Ministry of Labour. As common questions of law have been raised in these applications, it is proposed to deal with them in a common judgment.

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2. The basic grievance of the applicants relates to the constitution of the Central Labour Service by the Central Labour Service Rules, 1987 made by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution (1987 Rules). According to them, the President has no power to create or constitute such a new service under the proviso to Article 309 of the Constitution. The applicants have also challenged the validity of the 1987 Rules on the ground that it is violative of the provisions of Articles 14 and 16 of the Constitution. They have further contended that the constitution of such a new service by the President of India is violative of ILO convention No. 81 of 1987 and that it tends to diminish the independence of enforcement of the central industrial relations machinery.

3. The basic stand of the respondents is that the 1987 Rules do not suffer from any legal or constitutional infirmity or violate the ILO convention or dilute the independence of the enforcement of central industrial relations machinery, as has been alleged by the applicants.

4. We have gone through the records of the case and have heard the learned counsel of both parties at length. They have also filed exhaustive written submissions and relied upon numerous authorities and court decisions which have also been perused by us.

5. The first question arising for consideration is the amplitude of the power conferred on the President under the proviso to Article 309 of the Constitution.

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Are there any fetters on the power of the President?

Is the formation of a new service within the ambit

and scope of the expression 'recruitment'? Article

309 of the Constitution reads as under:-

"Article 309. Recruitment and conditions of service of persons serving the Union or State. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State..

Provided that it shall be competent to the President or such person as he may direct in the case of services, and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act".

6. In our opinion, the legal position is quite clear.

Until provision in regard to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union are made by Parliament, the President is competent to make appropriate rules regulating recruitment and conditions of service of such persons. This power is subject to the provisions of the constitution. Thus, if any rule contravenes any of the provisions of the Constitution including Articles 14 and 16 of the Constitution, <sup>the</sup> ~~rule~~ shall be void.

7. The proviso to Article 309 is intended as a

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transitional provision empowering the executive to make rules having the force of law relating to the recruitment and conditions of service, until the appropriate legislatures legislate on the subject. However, until the powers conferred by Article 309 are exercised by the appropriate legislature, the rules made by the President will continue to be in force, in so far as they are not inconsistent with the provisions of the Constitution.

8. The rule making function is a legislative function and the power conferred on the President under the proviso to Article 309 of the constitution is a legislative power.

9. In our opinion, the expression 'recruitment' occurring in proviso to Article 309 of the Constitution is of wide import. It includes the constitution of a new service, method of filling up the various posts in that service, laying down the qualifications and other eligibility conditions for filling up the post in the said service and the like. In our considered opinion, the constitution of a new public service falls within the ambit and scope of the expression 'recruitment'. In fact most of the public services under the Union <sup>or</sup> in connection with the affairs of the Union have been made by the rules made under the proviso to Article 309 of the Constitution.

10. In the written submissions filed by the applicants, reference has been made to the debates of the Constituent

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Assembly. In our opinion, the said debates are not relevant in the present context.

11. In the light of the foregoing legal position, we may consider the salient facts of the case. Historically, the organisation of the Chief Labour Commissioner (Central) commonly known as the Central Industrial Relations Machinery (CIRM) came into being on 9.4.1945 with the appointment of the Chief Labour Commissioner, New Delhi by the Government of India pursuant to the recommendations of the Royal Commission on Labour in India. The task entrusted to the Chief Labour Commissioner and its organisation was prevention and settlement of industrial disputes, enforcement of labour laws and promotion of Welfare among labour in industries in the central spheres, such as Railways, Labour Ports, Mines and Oil Fields and other undertakings owned or controlled by the Government. The Chief Labour Commissioner in the Central was assisted by three Labour Commissioners with headquarter at Bombay, Calcutta and Lahore. Originally Labour Commissioners in turn were assisted in their work by Conciliation Officer (Central), Labour Inspectors(Central) and Jr. Labour Inspectors(Central). *an*

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12. The present strength and set up of CIRM is as follows:-

S.No.	Name of the post	No. of sanctioned posts	Scale	Remarks
1.	Chief Labour Commissioner(Central)	1	Rs. 2250-2500/ Rs. 2500-2750 (held by IAS Officer)	} Yet to be revised
2.	Jt. Chief Labour Commissioner(Central)	1	Rs. 2000-2250	
3.	Dy. Chief Labour Commissioner(C)	4	Rs. 1500-1800	
4.	Regional Labour Commissioner(C)	16	Rs. 1100-1600	
5.	Assistant Labour Commissioner(C)	69	Rs. 700-1300	
6.	Labour Enforcement Officer(C)	159	Rs. 2000-3200	Revised "

13. The post of Labour Enforcement Officer(Central) is a Class II or a Group 'B' post. The post of Assistant Labour Commissioner, Regional Labour Commissioner, Deputy Chief Labour Commissioner, Joint Chief Labour Commissioner and Central Labour Commissioner are Class I or a Group 'A' post. The line of promotion is from Labour Enforcement Officer upwards in the aforesaid posts. The applicants have stated that it is the normal and legitimate expectation of every officer who joins the post of Labour Enforcement Officer to go up the ladder of promotion subject to his being qualified by length of service and fitness.

14. There is a second set of officers known as Labour

Officers (Central Pool). The strength and set up of the Central Pool of Labour Officers is as follows:-

"S.No.	Name of the Post	No. of Posts sanctioned	Scale of Pay
1.	Sr. Labour Officers	45	Rs. 1100-1600
2.	L.Os. (C.P.)	188	Rs. 700-1300"

15. There is yet a third set of officers who are under the Welfare Wing of the Ministry of Labour which is headed by the Director General (Labour Welfare) who is ex-officio Joint Secretary to the Government of India. He is assisted by a Welfare Commissioner (Head Quarters) with supporting staff comprising of 9 Welfare Commissioners and 5 Assistant Welfare Commissioners. The posts of Welfare Commissioners are held by officers on deputation from officers of Central Pool Labour Officers and CIRM on deputation basis.

16. The merger of the three wings, mentioned above, was brought about by the 1987 Rules which provide for the formation of the Central Labour Service. Before the Rules were made, a cadre review committee had gone into the need and justification for the same.

17. Rule 3 of the 1987 Rules provides that there shall be constituted a service known as the Central Labour Service consisting of members specified in Rule 5. All the posts included in the Service shall be classified as Group 'A' posts. Rule 5 provides that persons appointed to a duty post under Rule 6 and persons appointed to duty post under Rule 4(4) and Rule 7 shall be the members of the service. Rule 6 which deals with the initial constitution of the service

provides that all the existing departmental candidates holding Group 'A' post in various grades on regular basis on the date of commencement of these rules shall be deemed to be appointed to the corresponding duty post and the grade of the Service in a substantive or officiating capacity, as the case may be. As regards future maintenance of Service, it has been stipulated in Rule 7 that appointments to the various grades of the Service shall be made in accordance with the method of recruitments, field of promotion, minimum qualifying service in the next lower grade and other eligibility conditions for appointment by promotion or transfer on deputation, as the case may be, as specified in Schedule II. The selection of officers on promotion shall be made on the recommendation of the Departmental Promotion Committee constituted in accordance with Schedule III. The educational and other qualifications experience and age limits for appointment by direct recruitment to Grade V (Assistant Labour Commissioner (Central)/Labour Officer (Central Pool)/Assistant Welfare Commissioner) of the Service shall be as specified in Schedule IV.

18. Rule 9 which deals with seniority provides that the inter se seniority of the officers appointed to the various grades mentioned in Schedule I at the initial

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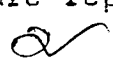
constitution stage of the Service under Rule 6 shall be determined according to the length of regular continuous service in the grade subject to the maintenance in the respective grade of the inter se seniority of the officers recruited under the Rules mentioned in Rule 2(c).

19. The proviso to Rule 9 reads as follows:-

- "(i) Assistant Labour Commissioner (Central) Labour Officers and Assistant Welfare Commissioners shall be equated but, however, all Assistant Labour Commissioner (Central) holding such posts on or before the 31st day of December, 1972, shall be en bloc senior to Labour Officers;
- (ii) Senior Labour Officers and Regional Labour Commissioners (Central) shall be equated but however all the Regional Labour Commissioners (Central) holding such posts on or before the 2nd day of March, 1980, shall be en bloc senior to Senior Labour Officers; and
- (iii) Welfare Commissioners and Deputy Chief Labour Commissioners shall be equated."

20. Rule 9 further provides that officers appointed at the initial constitution shall be senior to those appointed subsequently. The seniority of the officers appointed to the Service after the initial constitution shall be determined in accordance with the provisions contained in the Department of Personnel & Training OM No.22011/7/86-Estt. dated 3.7.1986, as amended from time to time.

21. Rule 17 which deals with repeal and saving provides that the Rules made in respect of recruitment of the Labour Officers (Central Pool) and the Labour Commissioners are repealed.



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22. Schedule I to the 1987 Rules provide that the Central Labour Service Group 'A' consists of 221 permanent posts and 118 temporary posts in the following 5 grades:-

Grade I	: Chief Labour Commissioner (Central)
Grade II	: Joint Chief Labour Commissioner(Central)/Chief Advisor (Labour Welfare)
Grade III	: Deputy Chief Labour Commissioner (Central)(Welfare Commissioner)/Director(Training)/Deputy Advisor(Labour Welfare)
Grade IV	: Regional Labour Commissioner (Central)/Senior Labour Officer/ Deputy Director (Training)
Grade V	: Assistant Labour Commissioner (Central)/Labour Officer/ Assistant Welfare Commissioner

23. Schedule IV to the 1987 Rules prescribes uniform educational and other qualifications, experience and age limit for direct recruitment to Grade V (Assistant Labour Commissioner)(Central)/Labour Commissioner/Assistant Welfare Commissioner of the Central Labour Service.

24. Thus under the 1987 Rules the distinction between the three erstwhile sets of officers has been done away with and there is interchangeability in the posts that may be held by the officers.

25. The applicants contend that they are specialists and more qualified than those belonging to the erstwhile two other streams and that the integration of the three streams into one is violative of the provisions of Articles 14 and 16 of the Constitution. As against this, the respondents have contended that Assistant Labour Commissioners/Regional

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Labour Commissioners and Labour Officers/Senior Labour Officer have almost similar functions, i.e., Implementation of Labour Laws, Labour Welfare and Maintenance of Industrial Relations though they have different areas of operation.

26. It is now well settled as a result of the decision of the Supreme Court in Kishan Mohan Lal Bakshi Vs. Union of India, AIR 1962 SC 1139 that Article 16 and a fortiori also Article 14 do not forbid the creation of different cadres for Government service and if that is so, equally these two Articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have different several cadres or one integrated cadre in its services. That is the matter of policy which does not attract the applicability of the equality clause. The aforesaid views were reiterated by the Supreme Court in Reserve Bank of India Vs. N.C. Pal-iwal, 1977 SCC(L&S) 82 at 96.

27. In V.T. Khanzode Vs. Reserve Bank of India, 1982 SCC(L&S) 147 at 167, the Supreme Court has observed as follows:-

" No scheme governing service matters can be fool-proof and some section or the other of employees is bound to feel aggrieved on the score of his expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these".

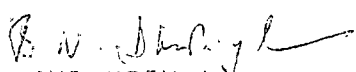
28. To the same effect are the observations of the Supreme Court in Reserve Bank of India Vs. Sahasranaman, 1986 SCC(L&S) 547 at 568 and 569. The Supreme Court observed that in most of the service conditions, it is difficult to evolve an ideal set of norms governing various conditions of service and in grey area, where service Rules operated, if more than one view is possible, without sacrificin either reason or common sense, the ultimate choice has necessarily to be conditioned by several considerations ensuring justice to as many as possible and injustice to as few.

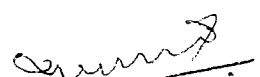
29. In the instant case, the aforesaid observations made by the Supreme Court would apply with equal force. It may be that the creation of the Central Labour Service may affect the chances of promotion of some of the officers but it has to be borne in mind that more chances of promotions are not conditions of service.

30. We do not consider it necessary to go into the various other contentions advanced by the applicants as we have come to a conclusion that there is no <sup>infraction of</sup>  $\angle$  of Articles 14 and 16 of the Constitution and that the President is competent to make the 1987 Rules regarding the constitution of the Central Labour Service. We, therefore, see no merit in the present applications and the same are dismissed.

There will be no order as to costs.

Let a copy of this order be placed in both the case files.

  
(B.N. DHOLNDIYAL)  
MEMBER (A)

  
(P.K. KARTHA)  
VICE CHAIRMAN(J)