

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(9)

Regn. Nos. (1) OA 289/87
(2) OA 868/87

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 868/87

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

COPAM:

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

THE HON'BLE MR. B.N. DHUNDIYAL, 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.

(10)

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

independent and violates the provisions of Articles 14 and 16 of the
Constitution. They have further contended that the
activities to be carried on by the service are not in accordance
with the constitution of such a new service by the President of
India. The 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.

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, rule shall be void.

7. The proviso to Article 309 is intended as a

clarification and it is not intended to limit the

constitutional power of the President in this regard.

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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 is not to be equated with the executive function

proviso to Article 309 of the constitution is a legislative

power. According to us, the said power

is limited to 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 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

(B)

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

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11 In the light of the foregoing legal position, we may

11. In the light of the above, it is suggested that you should 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
subsidiary organisations. The main
organisation was prevention and settlement of industrial
disputes, enforcement of labour laws and promotion of Welfare

disputes, enforcement of labour laws and promotion of welfare and public welfare and especially 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

is two were assisted in their work by Conciliation Officer

(Sects), Labour Inspectors(Central) and Jr. Labour

(Central), Labour Inspectors(Central) and
Labour Inspectors(Central) and

Inspectors(Central). *an*

Individuals with high levels of conscientiousness tend to be more organized, persistent, and goal-oriented.

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

"S.No. Name of the post No. of Scale
sanctioned posts

| S.No. | Name of the post | No. of Scale sanctioned posts | Remarks |
|-------|---|-------------------------------------|---|
| 1. | Chief Labour Commissioner(Central) | 1 | Rs.2250-2500/ Rs.2500-2750 (held by IAS Officer) |
| 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 posts and Assistant Labour Officer(Central) is 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

expectation 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. The applicants have stated that 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 | Scale of Pay sanctioned |
|-------|------------------|--------------|----------------------------|
|-------|------------------|--------------|----------------------------|

| | | | |
|----|---------------------|-----|---------------|
| 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 Quarter) 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

eligible, and the candidates so deemed to be appointed

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

to the corresponding post.

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 qualifica-

tions required for the recruitment to Grade V (Assistant Labour Commissioner)

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

appointment to them, on selection and deputation

(17)

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 hierarchy of the posts held on or before the 31st day of December, 1972, holding such posts 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 subsequently during the initial constitution of the Service shall be senior to those officers appointed subsequently. The seniority of the officers appointed subsequently 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.

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 interchangability 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

streams and more qualified than those belonging to the erstwhile

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

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

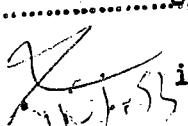
as follows:-

"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 sacrificing 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 infraction 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

Administrative Tribunal
Central Administrative Tribunal
New Delhi, 1987
Principal Bench, New Delhi

(B.N. DHOONDIYAL) 12/4/87
MEMBER (A)

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