

19-6-1987

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Application No. OA 588/1986

T.R. Balakrishnan Nair : Applicant

Versus

- | | | |
|--|----------------------------|-------------|
| 1. Secretary to the Govt.
Deptt. of Personnel & Training,
New Delhi. | X
X
X
X | |
| 2. Union Public Service Commission,
New Delhi. | X
X
X
X | Respondents |
| 3. Chief Secretary, Govt. of
Kerala, Trivandrum. | X
X
X
X | |
| 4. The Committee of All India
Service Recruitment by
Promotion Rules for
Kerala, represented by
Chief Secretary, Trivandrum. | X
X
X
X
X
X | |

Sri G. Sivarajan : Counsel for
applicant

Sri P.V. Madhavan Nambiar, : Counsel for
SCGSC respondents

CORAM:

Hon'ble Sri Birbal Nath, Member (Administrative)

Hon'ble Sri G. Sreedharan Nair, Member (Judicial)

ORDER

(Pronounced by Hon'ble Sri G. Sreedharan Nair, JM)

In this application we are called upon to
determine whether the order of the first respondent
rejecting the representation of the applicant,
a State Civil Service Officer requesting relaxation

of clause (3) of Regulation 5 of the Indian Administrative Services (Appointment by Promotion) Regulations, 1955 (for short the Regulations) in exercise of the powers vested in the first respondent under Rule 3 of the All-India Services (Conditions of Service - Residuary matters) Rules, 1960, referred to hereinafter as the Rules, *is legal.*

2. The Indian Administrative Services (Appointment by Promotion) Regulations, 1955 have been made pursuant to sub-rule (1) of Rule 8 of Indian Administrative Services (Recruitment) Rules, 1954, under which provision has been made for recruitment of persons to the Indian Administrative Service by promotion from amongst the State Civil Service. These Regulations provide for the constitution of a Committee to make the selection and for preparation of a list of suitable officers for promotion to the Indian Administrative Service. According to clause (3) of Regulation 5 the Committee shall not consider the cases of members of the State Civil Service who have attained the age of 54 years on the first day of January of the year in which it meets.

3. The applicant had completed the prescribed

qualifying service for consideration by the Committee during the year 1984. But he had crossed the age of 54 as on 1-1-1984, though it was only by a short period of six days. The applicant made a representation to the first respondent requesting to relax the requirement under clause (3) of Regulation 5 of the Regulations. The provision that was relied upon by him for this purpose was Rule 3 of the Rules, which is as follows:-

"3. Power to relax rules and regulations in certain cases; -

Where the Central Government is satisfied that the operation of -

- (i) any rule made or deemed to have been made under the All India Services Act, 1951, (61 of 1951), or
- (ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner."

As no reply was received by the applicant he filed O.P.No. 8436/1984 challenging the validity of clause (3) of Regulation 5 of the Regulations and in the alternative for issue of a Writ of Mandamus directing the first respondent to dispose of the representation submitted by him. The petition was dismissed by a single Bench of the High Court.

The applicant filed a writ appeal No. 519/1984 before a Division Bench of the High Court. In the meanwhile the representation that was submitted by the applicant was disposed of by the first respondent, rejecting the same. Copy of that order was produced before the Division Bench of the High Court. The Division Bench held that the order required reconsideration by the first respondent, and hence the first respondent was directed to reconsider the order "in the light of the observations contained in the judgment, according to law and advertent to all aspects of the matter". It was observed in the judgment that "all the facts relevant for proper exercise of jurisdiction under Rule 3 of the Rules have not been properly adverted to or considered in the true perspective of the Rules". It was also held that "it would be wrong to conclude that the Rules are rigid and no relaxation is possible, in which case the very purpose of the Rule 3 of the Residuary Rules would be defeated", and that "the aim should be to consider the whole matter in the true perspective and to see whether without sacrificing the spirit of the Regulation and the object sought to be achieved, relaxation, if any, could be granted to meet the ends of justice".



The challenge against the validity of clause (3) of Regulation 5 was given up before the Division Bench.

4. After the judgment of the Division Bench the first respondent reconsidered the representation of the applicant and it was rejected by the order dated 30-1-1986 (Annexure F). The applicant prays for quashing the same as illegal and void. It is alleged that there is total nonapplication of the mind on the various aspects to be considered as directed by the Division~~al~~ Bench of the High Court. According to the applicant the first respondent was influenced by extraneous considerations, and has eschewed relevant matters. It is urged that the objective satisfaction in a particular case is as to whether relaxation is to be allowed or not is not to be adopted by any rigid formula as has been adopted by the first respondent.

5. The first respondent has filed a reply. It is contended that against the impugned order the applicant had filed O.P.No.4155/1986 before the High Court of Kerala for quashing the same on the grounds urged in the present application, which was dismissed by the judgment dated 17-6-1986, and hence this application is not maintainable

as it is barred by resjudicata. The representation of the applicant was reconsidered by the first respondent in the light of the observations in the judgment of the Division Bench of the High Court, and in accordance with law after adverting to all aspects of the matter. The first respondent had issued instructions as early as on 1-1-1966 that undue hardship as contemplated in Rule 3 of the Rules signifies unforeseen or unmerited hardship to an extent not contemplated when the Rule was framed and it does not cover any ordinary hardship or inconvenience which normally arises.

6. At the outset the preliminary objection as to the maintainability of the application in view of the order of the High Court in O.P.No.4155/1986 has to be considered. That was a petition filed by the applicationⁿ for quashing the order of the first respondent dated 30-1-1986, the very same order that is under attack before us. The High Court dismissed the petition at the stage of admission itself, after hearing both the counsel of the applicant as well as the Central ^{Government} Standing Counsel on whom copy of the petition was served. It was held that no justification is made out for interference.



7. It was submitted by the counsel of the applicant that the judgment of the High Court in O.P.No. 4155/1986 cannot be a bar to the maintainability of this application, for the judgment has to be ignored by this Tribunal, as one without jurisdiction. It was submitted that the applicant by mistake filed the petition before the High Court, at a time when the jurisdiction of the High Court as regards this matter was no longer there in view of the Administrative Tribunals Act, and that it was more upon the Central Government Standing Counsel to point out to the High Court that it has no jurisdiction to entertain the petition.

8. We are not persuaded to accept the preliminary objection raised by the first respondent.

From 1-11-1985, the date on which this Tribunal was established as per the Administrative Tribunals Act, 1985 the High Court of Kerala had no jurisdiction, powers or authority in relation to *disputes relating to* recruitment or matters concerning such recruitment to posts in connection with the affairs of the Union in view of Section 28 of the Act. Such jurisdiction, powers and authority have been specifically conferred on the Central Administrative

Tribunal under Section 14 of the Act. Hence the judgment of the High Court in O.P. 4155/1986 is without jurisdiction or authority. Though it was the applicant himself who filed the petition before the High Court, nevertheless the judgment being one without jurisdiction has to be ignored, and ~~on its~~ ^{hence} ~~basis~~ the plea of resjudicata cannot be sustained.

9. We over-rule the preliminary objection.

10. So far as the parties to this application are concerned there is a binding judgment of the High Court of Kerala in writ appeal No. 519/1984. By that judgment the High Court has held that relaxation of even the requirement as to age is permissible, and on that premise the first respondent was directed "to consider the whole matter in the true perspective and to see whether without sacrificing the spirit of the Regulation and the object sought to be achieved, relaxation, if any, could be granted to the appellant to meet the ends of justice." In the circumstances the scope of adjudication in this application has become very much narrowed down. What we are to examine is only whether the impugned order has been passed by the first respondent in the light of the observations of the High Court, and in accordance with law.

11. The High Court has pointed out in its judgment that three aspects have to be taken into account in considering the representation of the applicant claiming relaxation. The first relates to the circumstance that the applicant is entitled to ^{be} in service till the end of the year 1984. That none else would be affected by the relaxation being allowed is the second point. _____

~~12~~ Lastly the question of undue hardship contemplated in the Rules governing relaxation. On a careful reading of the order we are satisfied that ^{all the} ~~unless~~ three aspects have been considered in their proper perspective in the impugned order. ~~On the~~

12. ^{On the} first point it is explicitly stated in the order that the ^{intention} ~~inclusion~~ of Clause (3) of Regulation 5 of the Regulations is not that an officer should have atleast one more year of service on the first day of January of the year in which the selection Committee meets and that on the other hand the intention ^{is} ~~has also been~~ that State Civil Service officers already too old in age are not taken into ~~account~~ the Indian Administrative Service. We are not able to find anything in the Regulation to hold that the intention is not as stated by the first respondent, ^{and} ~~or~~ that what was



intended was that an officer should have atleast one ~~year~~ ^{years} more service as on the first day of January of the year. It is pointed out in the impugned order that the availability of one more year of service relied upon by the applicant is not relevant. This is buttressed by the reasoning that in the other States where the age of retirement is 58 years the State Civil Service officers are not being considered for appointment to the Indian Administrative Service when once they have crossed the age of 54, even though they have about 4 years of service still left.

13. The second point that none else would be affected by the relaxation of the Rule has also been adverted to in the impugned order. ~~Though~~ Such a ground was urged before the High Court on the ~~Supreme Court~~ ^{its} premise that during a particular year though there were 9 vacancies the aspirants were only four in number, ~~How~~ the other State Civil Service officers would be affected by the relaxation being allowed is adverted to in the order. It is pointed out that as a matter of fact there are many State Civil Service officers in many States who become ineligible for consideration because they do not fulfil the basic qualification

regarding age. The first respondent hence has taken the view that making an exception in the case of the applicant by allowing the relaxation similar requests from other State Civil Service officers will also have to be allowed.

14. On the question of undue hardship the order refers to the consistent view that has been followed by the first respondent since 1966 that undue hardship signifies unforeseen or unmerited hardship to an extent not contemplated when the Rule was framed and that it does not cover any ordinary hardship or inconvenience which normally arises. It was upheld that in the case of the applicant it would not be possible to hold that any/unforeseen or any unmerited hardship has been caused. in the circumstances that many State Civil Service officers become ineligible for promotion to the Indian Administrative Service on account of crossing the age bar ^{was} ~~so~~ relied upon in support of this view.

15. From what is stated above it emerges that the first respondent has reconsidered the original order rejecting the representation of the applicant, in the light of the observations contained in the judgment of the High Court in writ appeal No.519/1984,

adverting to all aspects of the matter. It cannot be said that an objective consideration was not made. Nor can it be said that the consideration was not in accordance with law. To satisfy the requirements of law what is enjoined by Rule 3 of the Rules is to determine whether there is undue hardship by the application of the relevant clause in the Regulation. The provision therein is that the Committee constituted for preparing the select list of the State Civil Service officers shall not consider a State Civil Service officer who had attained the age of 54 on the first January of the year in which the Committee meets. It is an absolute mandate that has been given to the Committee, its effect being to deprive of those State Civil Service officers who have crossed the age of 54 from being included in the zone of consideration. Can it be said that by this provision undue hardship is caused to the applicant? A rule or regulation cannot be considered as causing hardship in any particular case unless it is oppressive or arbitrary. The operation of the Rule or the Regulation has to be so severe to hold that it causes hardship. The epithet ~~is~~ 'undue' means more than necessary,

not proper, illegal. It denotes something wrong according to standard of moral, which the law enforces in relation of men, and in fact illegal (vide Black's Law Dictionary, 5th Edition). It is clear from a reading of Rule 3 of the Rules that the object of the Rule is only to deal with such cases where the Central Government is satisfied that the operation of any rule made under the All India Services Act, 1951 or any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any particular case. From the year 1966 onwards the first respondent has been consistently taking the view that undue hardship signifies unforeseen or unmerited hardship to an extent not contemplated when the particular rule or regulation was framed and that it does not cover any ordinary hardship or inconvenience which normally arises. This interpretation has been applied to the case of the applicant as well and it was held in the impugned order that it cannot be said that any unforeseen or unmerited hardship has been caused. It cannot be said that the view is erroneous in law.

16. If the applicant had not crossed the age

would have been
bar he ~~was~~ eligible for consideration for promotion to the Indian Administrative Service. Since the applicant actually completed 54 years of age only 6 days prior to the crucial date, human nature being what it is, the applicant may have room for grievance. The particular case can be referred to as an unfortunate case. ~~It will also be~~ It will not follow that it is ~~described as~~ a hard case. ~~But~~ At any rate it cannot be said that by the operation of the particular clause in the Regulation undue hardship is caused. It is quite natural that when an age limit is prescribed as one of the basic qualifications for recruitment to a post there may be persons who find themselves not eligible as they have crossed the age limit by a few days. Even in the matter of appointment to the Indian Administrative Service by the method of direct recruitment such cases will arise. Indeed in the impugned order it is clearly stated that as a matter of fact there are many State Civil Service officers in many States who become ineligible for consideration because they do not fulfil the basic qualification regarding age. The existence of such cases is not something not within the knowledge of the rule makers when the Rules were made. Palpably the object

for relaxation
of the provision, is not to deal with such cases,
but only with those cases where on account of
the application of any rule or regulation
privation, suffering or adversity is caused
improperly or illegally, and not foreseen when
the rule or regulation was made. ^{It is} for dealing
with such cases in a just and equitable manner, ~~the~~
power is conferred to dispense with or relax
the requirements of the particular rule or regu-
lation so as to avoid the undue hardship.

17. It follows that the impugned order dated
30-1-1986 cannot be assailed.

18. Before parting with this case we would
like to add that we should not be understood as
having held that Rule 3 of the Rules has ~~an~~ appli-
cation to clause (3) of Regulation 5 of the Regu-
lations, for the Rules as ^{is clear from} its nomenclature ~~itself~~
^{and purport} ~~indicates~~ relate only to conditions of service
of persons appointed to an All India Service,
while the Regulations have been made pursuant to
sub-rule (1) of Rule 8 of the Indian Adminis-
trative Service (Recruitment) Rules, 1954, and
deal only with recruit^{ment} and not with conditions
of service. However as between ^{the} parties to this
application the matter is concluded by the

judgment of the Division Bench of the High Court of Kerala in writ appeal No. 519/1984, and hence this matter has been considered in accordance with that judgment.

19. This application is dismissed.

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19/6/87

(Birbal Nath)
Member (Administrative)
19-6-1987

[Signature]
19-6-87

(G. Sreedharan Nair)
Member (Judicial)
19-6-1987

Index : YES / ~~NO~~

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