

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

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ORIGINAL APPLICATION No. 1203/1994

Date of Decision: 31.10.96

M.S. Heble

Petitioner/s

Mr. B.Ranganathan

Advocate for the
Petitioner/s

V/s.

UOI & Govt. of Maharashtra

Respondent/s

Mr.V.S.Masurkar for UOI

Mr.M.I.Sethna with
Mr.Sureshkumar for Govt.
of Maharashtra

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member (A)

Hon'ble Shri

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to x
other Benches of the Tribunal ?

M.R. Kolhatkar
M(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI 400001

O.A. No. 1203 OF 1994

DATED : 31ST OCTOBER, 1996

CORAM : M.R. KOLHATKAR, MEMBER (A)

M.S. Heble,
No.2 Devyani, ITI Road,
Aundh, Pune

through Legal heirs,
1. Mrs. Sita M. Heble, widow
2. Mr. Dilip M. Heble, Son
3. Mr. Pradeep M. Heble, Son
4. Mr. Sandip M. Heble, Son
(by Adv. Mr. B.Ranganathan)

..Applicants

V/s.

1. Union of India
through Secretary
Governemnt of India
Ministry of Home Affairs
New Delhi
(By Adv. Mr. V.S. Masurkar,
Cetral Govt. Standing Counsel)

2. The Chief Secretary to the
Govt. of Maharashtra,
Mantralaya, Mumbai 32.

3. The Secretary,
Home Department,
Govt. of Maharashtra,
Mantralaya, Mumbai 32.

4. The Secretary,
Finance Department,
Govt. of Maharashtra,
Mantralaya, Mumbai 32
(By Adv. Mr. M I Sethna
Senior Standing Counsel
with Adv. Mr. Sureshkumar)

..Respondents

ORDER

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[Per: M.R. Kolhatkar, Member(A)]

1. The Applicant was an I.P.S. officer of 1948 batch.
Prior to appointment to I.P.S. he was employed in

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Finance Department of State Government from 20.10.1943 to August 1944 and thereafter in the Office of the Textile Commissioner, Bombay till 11.9.1948^{*}. He joined the I.P.S. on 15.9.1948. The applicant states that while in the I.P.S., he worked in various capacities at Kolhapur, Pune, Buldhana, Sholapur, Nashik and Bombay and discharged his duties with earnestness, zeal and devotion and earned consistent good remarks and appreciation from his superiors. While working as Assistant Inspector General of Police at Bombay he was conveyed adverse remarks in respect of ACR for the year 1965-66. It is the contention of the applicant that these adverse remarks finding a place in respect of ACR of 1965-66 really pertained to the applicant's work and performance in the year 1961-62 in connection with Panshet affair (emergency arising in Pune city consequent upon floods caused by breach of Panshet dam in July 1961 and action taken by the Government against officers considered to be responsible for dereliction of duty etc.). The applicant states that the adverse remarks being unwarranted, he made a representation against them. It was turned down. He therefore felt compelled to resign. In this connection on page 6, the applicant has stated as below:

"(m) The applicant states that the ill-treatment meted out by the State Government to him had a most adverse effect on the health of his wife, who had suffered a serious nervous breakdown because of all that the applicant had to suffer

* correct date order in MP 815776 on 13-11-96.

at the hands of the Inquiry Commission of Shri Justice Naik, who in the course of his probe into the Panshet disaster, harassed and humiliated the applicant, and went to the extent of levelling against the applicant the false allegation of hatching a conspiracy to assassinate him (Shri Justice Naik) and his son. The applicant says that he had offered to the Chief Minister Shri Y.B. Chavan to face an inquiry into Shri Justice Naik's allegations against him but the Chief Minister had ignored the Applicant's offer."

The applicant states that as a result of the above circumstances, he resigned with effect from 18.1.1968 to take care of his wife's health which as contended by him had deteriorated as a result of the humiliation to which he was subjected. Thereafter, the applicant made a representation on 20.8.1973 by which he sought pensionary benefits as a special case and had also pointed out the anomalous position in rules that in the case of a Government employee who has been dismissed or removed from service, the compassionate allowance not exceeding 2/3rd of the pension is granted as and by way of pension, but in the case of those Government servants who resign no such compassionate pension/allowance is paid. The applicant had stated that in case of a Government servant who was not dismissed but resigned and therefore in whose case it can be presumed that the conduct was not such as to drive the Government to dismiss him, the case for taking a compassionate view was greater. It appears that there was no response to the above representation. Subsequently, the applicant made a detailed representation to the Prime Minister on 9.2.1990 and as a

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result of the above representation, the applicant received a communication dated 2.4.92 from D.I.G. of Police (establishment) stating that it would be possible to give the applicant the benefits of service with the Central government from 20.10.1943 till the date of the applicant joining the I.P.S. if the applicant could produce documentary evidence for his service with the Central Government. The applicant contends that the fact that D.I.G. Police wrote such a letter would show that the Central Government was inclined to consider his case in relaxation of relevant rules. The applicant thereafter continued to make representations but eventually he received a letter dated 15.4.94 at Annexure "A", which is the impugned letter, which reads as below:

" I am directed to refer your letter dated 9.3.94 on the subject cited above and to say that your request for grant of pensionary benefits was considered by this ministry but it has not found it possible to accede to your request under the relevant Rules."

It is this communication rejecting his request that the applicant has challenged.

2. The applicant has contended that his resignation was not voluntary but was forced on him by the circumstances created by the State Government, that the provision of

Rule 5 of All India Services (Death-cum-Retirement Benefits) Rules 1958 providing for compassionate allowance to

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persons even removed or dismissed from service cannot be denied to him when he had about 20 years' meritorious service to his credit and that alternatively, he ought to have been considered for pensionary benefits in terms of subsequent amendment to the Rules by which persons who had completed 20 years of service are allowed to seek voluntary retirement from service with full pensionary benefits. The applicant contends that the relaxation can be done u/r. 3 of All India Services (Conditions of Service - Residuary Matters) Rules, 1960 and that the decision to relax appears to have been taken because the information regarding previous service was collected from him officially. The applicant has pointed out that the State Government under whom the applicant had served was convinced of the case of the applicant and forwarded the claim of the applicant by making a case for relaxation of rules in favor of the applicant. Under the circumstances the applicant contends that the impugned order rejecting the applicant's request is arbitrary and illegal.

3. The Respondent 1, Central Government, have opposed the O.A. The main contention of Respondent No.1, is that so far as adverse remarks for the year 1965-66 are concerned, the applicant ought to have availed of the opportunity of sending the memorial to the President

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which he did not. Secondly, it is contended that a bare reading of his resignation letter shows that the resignation was tendered by the applicant after a careful and mature decision in view of his domestic problems viz., the ailment of his wife and the contention of the applicant that the resignation was due to the humiliation to which he was subjected is not borne out by record. So far as grant of DCRG/pension is concerned, under the relevant rules, the question to grant any retirement benefits to an All India Service officer who has resigned does not arise. The relevant rule 5(1) of the All India Services, (DCRB) Rules, 1958 reads as below:

"5. Removal, dismissal or resignation from Service:-

(1) No retirement benefits may be granted to a person who has been dismissed or removed from the Service or who has resigned from the Service;

Provided that if the circumstances of the case so warrant, the State Government may grant to a person who has been dismissed or removed from the Service, a compassionate allowance not exceeding two thirds of the retirement benefit admissible to him if he had been invalidated and not dismissed or removed from the Service."

4. The applicant has relied on Rule 16(2)(a) of DCRG Rules which provides that a Member of the Service may retire voluntarily after giving three months' previous notice to the concerned State Government concerned on the date on which he completes 20 years of qualifying service

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or any date thereafter as specified in the notice. These rules however, came into effect from 18.2.1978 i.e., after the resignation of the applicant from service. It is contended that not only are these rules separate from Rule 5(1) in terms of which pension is not permissible but these rules cannot take retrospective effect.

5. The applicant has prayed for grant of retirement benefits in relaxation of the rules and he has relied on All India Services (Conditions of Service - Residuary Matters) Rules 1960. The relevant portion of the Rules reads as under:

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 be 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 which extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner."

On this point the Respondent 1 has contended that the Rule 3 of AIS (Conditions of Service - Residuary matters) Rules, 1960 on which the applicant has heavily relied cannot be pressed into service for the purpose of redressing the grievance of the applicant, because the

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benefit to be conferred in relaxation of any rule or rules must be of a nature already provided for in the Rules. Since Rule 5 of AIS (DCRB) Rules specifically denies retirement benefits to a member of the Service on resignation, Government are not empowered to invoke Rule 3 of AIS(Conditions of Service - Residuary matters) Rules, 1960 to give benefits which are not contemplated especially since Rule 5(1) specifically denies retirement dues to a resigned AIS officer.

6. So far as State Government viz., Respondents 2 to 4 are concerned they have adopted the contentions of Respondent No.1. They have conceded that the State Government was inclined to consider the case of the applicant for grant of pensionary benefit in relaxation of rules, but since the matter is one in which the final decision is required to be taken by the Central Government and since the Central Government has taken the decision, nothing further can be done.

7. It is not necessary for me to deal at length with the psychological state of the officer when he resigned, because whatever he may say can be considered to be an after thought. The State Government letter dated 20.12.1993, which is annexed as Exhibit to the reply of Respondents Nos. 2 to 4 is however very eloquent in this regard and it clearly brings out that the State

Government has fully appreciated the personal qualities of and the peculiar circumstances in which, the applicant was placed and therefore recommended to the Central Government that Shri Heble's request for grant of pension and gratuity in relaxation of Rule 5(1) of the All India Service (Death-cum-Retirement Benefit) Rules may be considered by the Government of India in exercise of powers conferred by Rule 3 of the All India Service (Conditions of Service - Residuary Matters) Rules, 1960. It would be worthwhile to reproduce the State Government letter dated 28th December 1993 which sets out the peculiar circumstances of the case and the reasons for making its particular recommendation. The letter reads as below:

I am directed to refer to your letter No.I-31011/4/90-IPS-II, dated 27th March, 1990, on subject noted above and to state as under in regard to Shri Heble's representation for grant of pension and other retirement benefits:-

Shri M S Heble was an officer of the first batch of the IPS recruited in the year 1948. In 1961 when he was Superintendent of Police, Pune, the Panshet disaster occurred. In the said incident the State Government served charge sheet on Shri Heble, for alleged acts of commission and omission in his duties and appointed a committee to go into the charge sheets served on him. Since the said committee had exonerated Shri Heble, he had conflict with the then Inspector General of Police of this State. Thereafter, adverse remarks from ACR for the year 1965-66 were communicated to Shri Heble. He had submitted a representation to the State Government in the matter. However, the State Government rejected his representation. In view of the above, and because of the hardships and

humiliation he had suffered at the hands of Naik Commission Inquiry into the Panshet disaster and subsequent inquiry and rift with the then Inspector General of Police, he felt that a vicious atmosphere was deliberately created to force him out of service. In the result Shri Heble resigned from service in 1968 after completing 19 years service in the IPS.

Since then Shri Heble has been requesting Government to reconsider his case for grant of pension and other retirement benefits to him. According to Rule 5(1) of All India Services (Death-cum-Retirement Benefits), no retirement benefit are admissible to a person who has resigned from the service.

2. According to Rule 16(2)(A) of Indian Police Service (Death-cum-Retirement Benefits), Rules, 1968, a member of the service may after giving 3 months previous notice in writing to the State Government concerned retire from service on the date on which he completes 20 years of qualifying service or any date thereafter to be specified in the notice.

Shri Heble had resigned from service after completing 19 years of service in IPS. However, before joining IPS on 15.09.1948, he has served first in the Finance Department of the Government of Bombay from 20th October 1943 to 17th August, 1944 and thereafter in the Textile Commissioner's Office from 20th August 1944 to 11th September, 1948. Having regard to the circumstances already narrated, this department was of the view that taking into consideration his above mentioned service, prior to his appointment to IPS, his total service will be above 25 years and so he may be given the benefit of pension and gratuity according to Rule 15(2.A) of Indian Police Service (Death cum Retirement Benefits) Rules 1958.

However, the said rule of Death cum Retirement Benefit Rule came into force from 18th Feb. 1978 i.e., long after Shri Heble resigned from service (in 1968). Also Rule 5(1) of the All India Service (Death Cum Retirement Benefit) says that no retirement benefits may be granted to a person who has been dismissed or removed from the service or who has resigned from the service. In this case Shri Heble resigned from service and therefore, it is not possible to give him the benefit of the said rule unless prior sanction of Central Government is accorded.

3. Hence, taking into consideration, the peculiar circumstances of this case, this Government recommends that Shri Heble's request for grant of pension and gratuity in relaxation of rule 5(1) of the All India Service (Death cum retirement benefit) Rules may be considered by the Government of India in exercise of the powers conferred by Rule 3 of the All India Services (conditions of Service Residuary Matters) Rules, 1960.

4. An early reply is solicited. "

8. In the light of the above, I am required to consider the case of the Applicant (Incidentally the applicant has been substituted by his legal heirs consequent on his death on 16.8.1995).

9. The IPS Service is an All India Service. Article 312 of the Constitution of India deals with the All India Services. Article 312(2) states that 'The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian police Service shall be deemed to be services created by Parliament under this Article'. Article 312(1) says that new All India Services can be created when the Rajya Sabha declares by resolution supported by not less than 2/3rds of the Members present and voting that it is necessary and expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all India services common to the Union and the States. The All India Services Act, 1951, enacted by the Parliament conferred the power on the Central Government to make rules for the regulation of recruitment and

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conditions of service of persons appointed to an All India Service. These rules have to be framed after consultation with the Governments of the States concerned. The All India Service Manual, Part I, 6th Edition, in its introduction recounts that the decision to have two All India Service viz., IAS and IPS at the commencement of the Constitution was taken in the Premiers' conference held in October 1946 prior to the Independence; it was also then decided that the recruitment to these services should be made through Federal Public Service Commission on the basis of annual Competitive Examination of a very high standard and that the members of these Services should be free from political control, contented and having a sense of security. It was held that by adopting this method the Provincial Governments would find the surest means of having an efficient Service and maintaining the integrity and impartiality of the members of the Service. Thus it is seen from the above review of the background of creation of Services and a bare reading of the related constitutional and statutory provisions that the services are "All India" viz., common to the Union and the States in letter and spirit. It is because of this intention that a resolution of the Rajya Sabha for creation of a new All India Services is required and also framing of rules requires prior consultation with the State Governments. It is thus evident that All India character

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including in particular participation of the Union and the States is an essential characteristic of the Indian Police Service. An officer of the IPS works for the affairs of the State as well as the affairs of the Union. The final authority in various important matters rests with the Central government. However, the significance of the IPS as an All India Service cannot be lost sight of. The calibre and conduct of an officer whose major portion of the service is spent with the State Government can be appreciated better and the pulls and pressures under which he works can be understood more realistically by the State Government than the Central Government. If the State Government, after taking into account the peculiar circumstances of the case and on the basis of a query raised by Central Government, makes a recommendation to the Central Government and the Central Government rejects the recommendations out of hand by a barely worded non-speaking order, to me it appears that this goes against the scheme of All India Services. The Central Government is required to consider the recommendations of the State Government very carefully and accept the same unless there are valid reasons.

10. The Rules themselves viz., AIS(DCRB) Rules do not contain a power to relax and therefore the power to Relax must be read from the All India Services (Conditions of Service - Residuary Matters) Rules, 1960. The stand of

the Central Government that the relaxation cannot go beyond what is envisaged in the Rules is patently erroneous; power to relax contained in All India Services (Conditions of Service: Residuary Matters) Rules 1960 is a wide power which takes in its sweep the power to relax all the various rules relating to the All India Services and in particular including the rules in which there is no specific provision to relax the rules. All India Services (Conditions of Service - Residuary Matters) Rules 1960 therefore cover the All India Services (DCRB) rules.

11. In this connection I refer to the very weighty observations of the Supreme Court in R.R. VERMA AND OTHERS Vs. UNION OF INDIA AND OTHERS, 1980 SCC(L&S) 423, by O. Chinnappa Reddy, ^J while dealing with the scheme of All India Services Act and Rules. The Hon'ble, Supreme Court has observed as under:

"4. Section 3 of the All India Services Act enables the Central Government in consultation with the Government of the States concerned to make rules for the regulation of recruitment, and the condition of service of persons appointed to an All India Service. Pursuant to the power given by Sec.3 of the All India Services Act, the Central Government has made innumerable sets of rules, some common to the All India Services and some applicable separately to each of the All India Services. The All India Services (Leave) Rules, the All India Services (Conduct) Rules, the All India Services (Discipline and Appeal) Rules, the All India Services (Travelling Allowances) Rules, and the All India Services (Conditions of Service - Residuary Matters)

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Rules, are examples of the rules made under Section 3 of the All India Services Act which are common to all the all India Services. The Indian Police Service (Cadre) Rules, the Indian Police Service (Recruitment) Rules, the Indian Police Service (Probation) Rules, the Indian Police Service (Regulation of Seniority) Rules are examples of rules made under Section 3 of the All India Services Act applicable to a single All India Service, namely, the Indian Police Service. The Rules, as may be seen deal with countless matters which concern a Civil Servant such as creation of cadre, fixation of cadre strength, recruitment, seniority, promotion, leave, allowances, conduct, discipline and appeal, and a host of such other matters. The golden thread, if we may so call it, which runs through the entire complex fabric of rules is the securing of honest and competent civil servant. Integrity and efficiency are the hall marks of any civil service anywhere and they are what are contemplated and aimed at by the wide range of rules. The interest to be served is always the public interest and not individual interest. Public interest in the matter of conditions of service of civil servants, is best served by rules which are directed towards efficiency and integrity. Now, very wide as the range covered by the rules, may be, the rules can never be exhaustive. Unforeseen and complex situations often arise as will be obvious even from a bare perusal of the cases reported in the law journals arising out of "service controversies". Very often it is found that an all too strict application of a rule works undue hardship on a civil servant, resulting in injustice and inequity, causing disappointment and frustration to the civil servant and finally leading to the defeat of the very object aimed at by the rules, namely, efficiency and integrity of civil servants. Hence it is that the central government is vested with a reserve power under rule 3, to deal with unforeseen and unpredictable situation, and ~~that~~ relieve the civil servants from the infliction of undue hardship and to do justice and equity. It does not mean the Central Government is free to do what they like, regardless of right or wrong; nor does it mean that the courts are powerless to correct them. The Central Government is bound to exercise the power in the public interest with a view to secure civil servants of efficiency and integrity and when an only when undue hardship is caused by the application of the rules, the power to relax is to be exercised in a just and

equitable manner but, again, only to the extent necessary for so dealing with the case. We do not have to add that the exercise of the power of relaxation like all other administrative actions affecting rights of parties is subject to judicial review on grounds now well known."

In my view these observations of the Apex Court fully cover a case of relaxation in the case of an honest and efficient officer as the Applicant by all accounts is.

12. The question then is whether the case is covered by relaxation of Rule 5(1) or relaxation of the newly introduced Rule 16(2)(a) of AIS (DCRG Rules). It could be said as to the proposal to relax the rules relating to voluntary retirement after completion of 20 years of service, that that rule had not come into force on the date the applicant actually resigned i.e., 18.1.1968. However, the applicant in 1973 had also made a request for grant of pensionary benefits to him as a special case in relaxation of Rule 5(1) by arguing that his is better case than the case of an officer who was dismissed from service. This contention of the applicant is quite relevant because it can be considered that if a dismissed officer is entitled to 2/3rd of pension on compassionate ground, the competent authority can decide to grant full pension on compassionate grounds to an officer who has resigned, if the competent authority is satisfied that the case is required to be covered by relaxation clause. As earlier observed by me, the action of the Central Government in rejecting the State Government's considered

recommendation for grant of pension is also not in consonance with the scheme of All India Services. I am therefore of the view that the order of the Central Government rejecting the request of the applicant and also rejecting the recommendation of the State Government to consider the applicant's case as a special case and grant pension and gratuity to heirs in relaxation of Rules is entirely arbitrary and is in violation of Article 14 of the Constitution of India. The same is therefore, quashed and set aside and the Respondents are directed to consider grant ^{of} pension and gratuity to the applicant and family pension to his widow in exercise of powers to relax contained in Rule 3 of AIS(Conditions of Service - Residuary Matters) Rules, 1960.

13. The next question is as to the date from which the applicant is to be held entitled for grant of pension keeping in view that he resigned on 18.1.68, that he was making representations since 1973, that it was his representation addressed to the Prime Minister in 1990 which resulted in the State Government recommending the grant of pensionary benefits to him as a special case by their letter dated 20.12.1993 and that the applicant has filed the O.A. on 25.10.1994, I am of the view that the applicant is notionally entitled to pension from the date of his resignation viz., 18.1.1968, but so far as the arrears are concerned, he is entitled for the arrears

from one year prior to the filing of the O.A. i.e., 26.10.1993. Since the applicant expired on 16.8.1995, the DCRG and arrears of pension up to that date and the arrears of family pension from 17.8.95 till the date of pronouncement of the order, and the payment of family pension on a regular monthly basis thereafter should be made to the widow of the deceased Applicant as per rules.

14. Action in this regard may be completed within four months from the communication of the order. There would be no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)

Member (A)

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