
(1976) 03 CAL CK 0027
In the Calcutta High Court
Case No : Civil Revision No. 5875 (W) of 1972

B.N. Dey

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-03-1976

Acts Referred:

All India Services Act, 1951 — Section 2A, 3, 3(1)
Constitution of India, 1950 — Article 226, 309
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 49
Forest Service (Recruitment) Rules, 1966 — Rule 4(1), 4(3A), 6, 8

Citation : (1976) 1 ILR (Cal) 386

Hon'ble Judges : Amiya Kumar Mookerji, J

Bench : Single Bench

Advocate : Balai Chandra Roy and Nishit Nandan Adhikari, for the Appellant; Soumen Bose and Shiva Santi Hazra and Ganendra Narayan Roy and Suprakash Banerjee for State, for the Respondent

Judgement

Amiya Kumar Mookerji, J.—The Petitioner joined the West Bengal Senior Forests Service on April 1, 1947. He was appointed to officiate the post of Deputy Conservator of Forest on January 1, 1949. In 1961, he was promoted to the post of Conservator of Forest and on October 12, 1964, he was confirmed in the permanent post of Conservator of Forest. On July 1, 1966, the Central Government by Ministry of Home Affairs notification No. S.O. 2525 dated August 20, 1966, constituted the Indian Forest Service in exercise of powers u/s 2A of the All India Services Act, 1951. In exercise of the powers conferred by Sub-section (1) of Section 3 of the All India Services Act, 1951, the Central Government framed the Indian Forest Services (Recruitment) Rules, 1966. The said Rules came into force from July 1, 1966. On August 1, 1966, 34 officers were recruited to the Indian Forest Service on probation in the Indian Forest Service Cadre of West Bengal by a notification No. 3/16/66-A(IV) dated February 9, 1967. On September 2, 1968, the Respondent No. 6 J.K. Ganguly was confirmed in the Indian Forest Service Cadre of West Bengal with effect from

October 1, 1967. On April 29, 1969, the Supreme Court of India set aside the selection of the State, Cadre of Jammu and Kashmir in the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . On February 7, 1970, the Petitioner was appointed on promotion in the Indian Forest Service, West Bengal State Cadre, on probation and by a notification dated September 26, 1973, he was confirmed in the Indian Forest Service on the State Cadre of West Bengal, with effect from February 7, 1971. On March 1, 1971 the Central Government framed Sub-rule (3A) of Rule 4 of the Indian Forest Services (Recruitment) Rules, 1966. By a notification dated July 17, 1971, issued by the Joint Secretary to the Government of India, Cabinet Secretariat Department of Personnel, three notifications dated February 9, 1967, May 28, 1968 and July 17, 1968, by which the officers were recruited under Sub-rule (1) of Rule 4 of the Indian Forest Services (Recruitment) Rules, 1966, to the West Bengal Cadre of the Indian Forest Service with effect from October 1, 1966, have been rendered ab initio void. It was also stated in the said notification that consequently the Central Government proposed to take further steps to make fresh recruitment under Sub-rule (1) of Rule 4 of the Indian Forest Services (Recruitment) Rules, 1966. On October 19, 1971, under Rule 6 of I.F.S. (Recruitment) Rules, 1966, the President appointed 41 West Bengal State Forest Officers recruited under Sub-rule (1) read with Sub-rule (3A) of Rule 4 of the said Rules on probation to I.F.S. with effect from October 1, 1966. On May 17, 1972, under Rule 6 of I.F.S. (Recruitment) Rules, 1966, the President appointed those 41 officers of the West Bengal Forest Service to the West Bengal Cadre of I.F.S. under Sub-rule (1) read with Sub-rule (3A) of Rule 4 of the said Rules with effect from October 1, 1966. On July 3, 1974, provisional gradation list of officers borne in the West Bengal Cadre in Indian Forest Service was published showing the position of the Respondent No. 6 at serial No. 4 and that of the Petitioner at serial No. 5. According to the Petitioner the appointments as made by the notifications were made mechanically without any application of mind and only for the purpose of regularising with retrospective effect appointments made initially in the year 1966 without consideration of the fresh or relevant materials and Without considering the Petitioner's case. It is the case of the Petitioner that as the selection of the first initial recruitment for the State Cadre of West Bengal was not rendered invalid by any judgment or order of any Court and as such, retrospective effect sought to be given to the second selection to initial recruitment for the State Cadre by a notification dated May 17, 1972, is liable to be set aside as ultra vires and illegal. The Petitioner being aggrieved moved this Court under Article 226 of the Constitution and obtained the present Rule.

2. The original petition was amended. An affidavit-in-opposition on behalf of the Government of West Bengal was filed and affirmed by Amal Krishna Guptas, Deputy Secretary of forest Department, Government of West Bengal. It is stated therein that the list of officers eligible for inclusion in the first selection list for promotion to Indian Forest Service was submitted to the Selection Committee for consideration. The Petitioner's name was included in that list of eligible officers.

The Government of India informed the State Government under its memo, dated March 6, 1969, the approved names in the selection list. In the said list the name of the Petitioner did not appear. The second Selection Committee sat in 1969. When the approved names were finally sent, the Petitioner's name was there. In view of the selection in 1969 and approved by the Union Public Service Commission on February 7, 1970, the Petitioner was promoted to the Indian Forest Service under a notification dated August 14, 1970. In view of the decision of the Hon'ble Supreme Court in the case of A.K. Kraipak v. Union of India Supra in the matter of initial recruitment to the Indian Forest service in the State of Jammu and Kashmir Cadre, the Government of India duly considered objectively the judgment and decided to cancel all the earlier appointments and make fresh initial recruitment under Sub-rule (3A) of the Indian Forest Services (Recruitment) Rules, 1966. Accordingly, the appointment to the Indian Forest Service through initial recruitment against the State Cadre of West Bengal was declared ab initio void under memo, dated July 17, 1971. An arrangement was made for fresh selection. The Respondent No. 6 was junior to the Petitioner in West Bengal Senior Forest Service; but while the Respondent No. 6 was appointed in the Indian Forest Service on probation, with effect from October 1, 1966, as an initial recruit under Rule 4(1) of the Recruitment Rules and was confirmed in the post of a Conservator of Forest in the Indian Forest Service with effect from October 1, 1967, the Petitioner was appointed on probation in the Indian Forest Service with effect from February 7, 1970, as a promotee under Rule 8 of the Recruitment Rules and confirmed in the post of Conservator of Forest in the said Indian Forest Service with effect from February 7, 1971. The Respondent No. 6 is an initial recruit in the Forest Service with effect from October 1, 1966 and the Petitioner is a "promotee" to the said Indian Forest Service with effect from February 7, 1970.

3. It is contended by Mr. Roy, appearing on behalf of the Petitioner in support of the Rule, that in exercising powers under Sub-clause (1) of Section 3 of the All India Services Act, 1951, the Central Government has got no power to amend Sub-rule (3A) of Rule 4 of the Indian Forest Services (Recruitment) Rules, 1966, retrospectively. Parliament can delegate its legislative powers within the recognised limit. Where any rule is made by any authority to whom such powers have been delegated by the Legislature, it cannot be possible to make the same so as to give retrospective operation. Unless the language employed in the Act in expressed terms or by necessary implication empower the Central Government to make such rule with retrospective effect.

4. Reliance was placed upon the decision of the Supreme Court in *Hukam Chand etc. Vs. Union of India (UOI) and Others*, .

5. Mr. Bose, appearing on behalf of the Union of India, contended that this identical point has been decided by the Supreme Court in *Shri Parvez Qadir Vs. Union of India (UOI)*, .

6. Sub-rule (3A) in Rule 4 of the Indian Forest Service (Recruitment) Rules,

1966, reads as follows:

(3A) Notwithstanding anything contained in this Rule where appointments to the service in pursuance of the recruitment under Sub-rule (1) have become invalid by reason of any judgment or order of any Court, the Central Government may make fresh recruitment under that sub-rule and may give effect to the appointments to the service in pursuance of such fresh recruitment from the same date on which the appointments which have become invalid as aforesaid had been given to.

7. It appears that the above amendment was made by the Central Government in exercise of the powers conferred by Sub-section (1) of Section 3 of the All India Services Act, 1951 and all other powers enabling it in this behalf.

8. Entry 70, List 1, Schedule 7 provides for "Public Service Commission; All India Services; Union Public Service Commission". Article 309 provides that subject to the provisions of this Constitution, Acts on 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. Although the legislative entries mentioned above referred to only to public services; Article 309 refers to "posts" in connection with the affairs of the Union or of any State. Article 309 enables the appropriate Legislature to regulate the recruitment and conditions of service of persons appointed to public services and to such posts. All India Services Act, 1951, was enacted by Parliament to regulate the recruitment and the conditions of service of persons appointed, to All India Services to the Union and the States. That Act was enacted under the main part of Article 309 read with Entry 70, List 1.

9. In *B.S. Vadera Vs. Union of India (UOI) and Others*, the Supreme Court observed with reference to rules framed under proviso to Article 309 of the Constitution that these rules could be made with retrospective operation. The Supreme Court said that as a Legislature can legislate prospectively as well as retrospectively there can be hardly any justification for saying that the President or the Governor should not be able to make rules in the same manner so as to give them prospective as well as retrospective operation. For these reasons the ambit and content of the rule making power under Article 309 can furnish no analogy or parallel to any other case.

10. In *B.S. Vadera Vs. Union of India (UOI) and Others*, the question arose whether the Railway Board had power to modify scheme with retrospective effect. The Indian Railway Establishment Code has been framed by the President, in exercise of the powers vested in him, by the proviso to Article 309 of the Constitution. Under Rule 157 of the Establishment Code the Railway Board has full powers to make rules of general application of Non-Gazetted Railway Servant under their control. The Supreme Court observed that in that case there was no Act of the appropriate Legislature regulating the recruitment and condition of service and therefore, the main part of Article 309 is not attracted. But, under

the proviso therein, the President has got full power to make rules regulating the recruitment and conditions of service of persons.

11. In the instant case, the appropriate Legislature has passed the All India Services Act, 1951 under Article 309 of the Constitution. All India Services (Discipline and Appeal) Rules have also been framed under Sub-section (1) of Section 3 of the All India Services Act, 1951. That being so, in my opinion, there is no bar in giving retrospective effect to Sub-rule (3A) of Rule 4 of the Indian Forest Services (Recruitment) Rules, 1966. It is to be noticed that in the notification not only reference is made to Sub-section (1) of Section 3 of the All India Services Act, 1951, but all other powers enabling it in this behalf.

12. In Parves Quadir's case Supra, the Supreme Court remarked in connection with Sub-rule (3A) of Rule 4 of the Indian Forest Services (Recruitment) Rules, 1966, that the Central Government had power to make such Rule u/s 3 of the Act had not been challenged and in the opinion of their Lordships there was no doubt about it.

13. In Shyamal Kumar Sarkar v. Union of India (1972) 76 C.W.N. 729 the retrospectivity of Sub-rule (3A) was also raised. Salil K. Dutta J. applying the principle as laid down by the Supreme Court in Vadera's case Supra observed:

On the same principle, it seems clear that the Rules framed under the All India Services Act may be given retrospective operation unless thereby there is a breach of part III or any other constitutional or statutory provision.

14. In Hukum Chand's case Supra as referred to by Mr. Roy an explanation was added to Rule 49 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The said explanation reads as follows:

In this Rule and in other Rules of this Chapter, the expression "Agricultural Land" shall mean agricultural land situated in Rural Area.

That amendment was given retrospective effect by providing that the said explanation was deemed to be always to have been inserted. The Supreme Court said that there was nothing in Section 40 from which the power of the Central Government to make retrospective rules might be inferred, in the absence of any such power; the Central Government acted in excess of its power insofar as it gave retrospective effect to the explanation to Rule 49. That explanation could not operate retrospectively.

15. In Hukum Chand's case Supra, Vadera's case Supra was distinguished on the ground that the view expressed therein was based upon the language employed in the proviso to Article 309.

16. In view of the above, I am unable to accept the contentions of Mr. Roy that Sub-rule (3A) could not be given any retrospective effect.

17. It is next contended by Mr. Roy that the selection for initial recruitment for the State Cadre of West Bengal was not rendered invalid by any judgment or

order of any Court and as such, conditions precedent for exercising powers under Sub-rule (3A) have not been fulfilled. According to Mr. Roy, the notification dated May 17, 1972, by which recruitments have been made, is illegal and without jurisdiction.

18. The Supreme Court struck down the initial recruitment made to the Indian Forest Service Cadre of Jammu and Kashmir on the ground that the Chief Conservator of Forest, who was himself a candidate for the Indian Forest Service, was a member of the Selection Board. That is the decision of the Supreme Court in *Kraipak's case Supra*. The fact that the Chief Conservator of Forest had absented himself from participation in the proceeding; of Selection Board when his own case was under consideration had not been accepted by the Supreme Court for not striking down the initial recruitment. Acting on the principle as laid down by the Supreme Court that a person could not be a Judge in his own cause, the initial recruitment to the Indian Forest Services in the States of Assam, Bihar and Mysore had also been struck down by the High Courts of those States. The Government of India had filed applications in the Supreme Court for the special leave to appeal against the judgments of the Assam and Mysore High Courts. The Supreme Court, however, dismissed the special leave applications. The effect of the Supreme Court's decision dismissing the special leave applications is that, in all the States wherever the Chief Conservator of Forest was both the candidate and a member of the Selection Board, the principles of natural justice had been violated and the initial recruitment to the service had been rendered ab initio void. To obviate these difficulties Sub-rule (3A) of Rule 4 of the Indian Forest Services (Recruitment) Rules has been framed. The Indian Forest Services (Initial Recruitment) Regulations, 1966, has also been amended instead of the Chief Conservator of Forest. The Secretary to the State Government concerned dealing with forest has been included in the Selection Board.

19. In *Shyamal Kumar Sarkar's case Supra*, the selections made by the Selection Committee in the West Bengal Cadre was challenged on the ground that K. Lahiri, then the Chief Conservator of Forest, was a member of the Selection Committee as well as he was a candidate. The Petitioner prayed for a writ, for quashing the said selection made by the Selection Committee. This Court did not think it proper to issue any writ in respect thereof and as such a writ would be infructuous when the impugned selections have been declared by the Union of India as void ab initio.

20. It is true that similar to Jammu and Kashmir, Patna, Assam and Mysore, initial recruitment to the Indian Forest Service in West Bengal has not become invalid by any particular judgment or an order of any Court. But at the same time, it cannot be said that where initial appointments have been made by a Selection Board consisting of the Chief Conservator of Forest, who was also interested in the selection, the reasons in the judgment of the Supreme Court in *Kraipak's case Supra* that a person could not be a judge in his own cause, would not be attracted. Thus, in view of the said judgment all initial recruitments in all

the different States of India have become invalid. Therefore, it cannot be said that conditions precedent for exercising powers under Sub-rule (3A) have not been fulfilled in the instant case.

21. As both the points raised by Mr. Roy fail, this Rule is discharged.

22. There will be no order as to costs.

23. All interim orders are vacated.

Rule discharged.