
(2010) 09 DEL CK 0203

In the Delhi High Court

Case No : Writ Petition (C) No. 3662 of 2002

Karan Singh Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Central Excise Rules, 1944 — Rule 173(Q)(1), 173B, 173F(3), 173G(1), 173G(2)
Central Excises and Salt Act, 1944 — Section 11A(1), 2, 3, 6
Constitution of India, 1950 — Article 14, 16, 16(1), 162, 19(1)

Citation : (2010) 09 DEL CK 0203

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Maninder Acharya, for the Appellant; Ankur Chhibber, for the Respondent

Judgement

Gita Mittal, J.—By way of this writ petition the petitioner assails the order dated 3rd May, 2002 by which the petitioner has been invalidated out from service with the Central Reserve Police Force (`CRPF" hereafter) on the basis of a Medical Board conducted by the respondents on 23rd November, 2001 and the Board of Officers opinion dated 30th April, 2002. Learned Counsel for the petitioner has also assailed the proceedings of the Board of Officers dated 23rd November, 2001 and 30th April, 2002 which had also recommended that the petitioner be invalidated out of service.

2. The factual narration giving rise to the present writ petition is undisputed.

3. While serving with the 52nd Battalion of the CRPF, the petitioner had been granted 15 days casual leave w.e.f. 15th November, 1990. Unfortunately while returning from his village Raiwana, Post Kayasa, Distt. Alwar, Rajasthan to the unit on 1st December, 1990, the bus in which he was travelling turned turtle, resulting in serious injury to his eye and head. Having regard to the serious nature of the injuries, the petitioner underwent a series of treatment. He was ultimately taken to the Base Hospital, CRPF, Jharoda Kalan, New Delhi. As a

result of the injuries suffered in this accident, he lost vision of his right eye. The Chief Medical officer of the Base Hospital, CRPF consequently on 2nd February, 1991 reported that the petitioner was unfit for regular service.

4. The second medical examination by the unit medical officer on 10th June, 1991 brought forth the opinion that the petitioner was fit in all aspects except his blindness in the right eye. The petitioner had also communicated his willing for any post with the CRPF having light duties preferably those of the "daftary" in the force. The petitioner's unit consequently recommended his rehabilitation.

5. The respondents had framed a scheme for rehabilitation of force personnel vide Circular Order No. 28/89 dated 15th November, 1989. In order to appreciate the issue which arises for consideration, it becomes essential to deal with the ethos in which this scheme was framed. The circular itself notices that in 1980s, CRPF personnel suffered in large numbers in various operations conducted by the force members in Punjab, Sri Lanka, Darjeeling, Manipur etc. which resulted in severe casualties as well as injuries and disabilities in the members of the force. It was felt by the respondents that the resultant disabilities not only incapacitated the force members physically but worked tremendous hardships to their families as well. Additionally, young men with just two or three years service had been boarded out on account of injuries even if they were fit to perform the duties of less laborious nature than actual comeback.

6. In this background, the matter received serious attention and a committee was constituted under the Chairmanship of the Additional Director General to examine the matter in detail and to make recommendations regarding rehabilitation of the disabled personnel of the CRPF. These deliberations and concerns resulted in issuance of the rehabilitation policy by way of the aforementioned Circular Order No. 28/89. The observations in paras 2 to 4 of the Circular deserve to be considered in extenso and read as follows:

2. In cases of death in terrorist violence or in violence by anti-social elements, the widow of the deceased gets the last pay drawn as pension till her death or remarriage under the provisions of the L.P.A. Similarly, those who are injured in terrorist violence or in violence by anti-social elements, also get the benefits of L.P.A. on invalidation. Besides there are other benefits to the NOK of such persons in the form of ex-gratia grants, payments from Risk Fund/CWF etc.

3. Other cases of personnel who are not covered by provisions of the L.P.A. who suffer injuries and become disabled are really pitiable. They find it difficult to look after themselves and the family as a result of invalidation. In many such cases, the disability is such that the person in question cannot take up any other job. The financial position of his family is worse than that of the family of a jawan dying in terrorist violence because normal disability pension is much less than the L.P.A. Moreover, the family has to support the disabled government servant throughout. We have also had cases of young men with just 2 or 3 years of service who had been boarded out due to injuries. Moreover, even if cases in

which the disability is such that the person is fit to perform duties of less laborious nature, our men have been boarded out as posts involving lighter duties have not been identified in CRPF.

4. This is a matter for great concern. Our approach to this problem does not appear to be correct; it certainly cannot be governed by norms which were applicable some 20 years ago. In the CRPF, personnel who are injured are invalidated without any effort to assess whether the personnel in question could perform duties after equipping themselves with artificial limbs etc. On the contrary, in the Army, there are two serving Generals, both of whom have artificial legs. They have not only been retained in service but have even earned their promotions.

(Underlining by us)

The above sets out the spirit of the policy formulated by the respondents in the said Circular.

7. So far as the measures which were recommended under this policy are concerned, we find that the respondents had taken a considered view and a comprehensive scheme of rehabilitation was framed regarding the manner in which a person who had suffered injury while in service with the CRPF was required to be treated was set out. In this behalf, the following provisions contained in the Circular Order No. 28/89 which have a bearing on the instant case may also be usefully extracted and reads as follows:

6. A sick/injured person should be given full medical treatment at Unit level, in Civil Hospital and GC Hospital/Base Hospital. The responsibility to ensure that the sick/injured person gets full medical treatment will be on the Medical Officer incharge of the M.I. Room/Group Centre Hospital/Base Hospital and on the Head of the Bn. Full medical treatment should include fitment of artificial limbs to those who are in need of them. After the sick/injured person has receiver full medical treatment and the Medical Officer incharge is of the opinion that the individual is not fit for normal active duty, the case of the individual should be referred to the Departmental Board for rehabilitation by the Unit concerned.

7. The Departmental Board for rehabilitation will consist of the following at the Sector level:

i) Chairman - IGP ii) Member - One DIGP iii) Member - One Addl DIGP/Comdt iv) Member - One CMO/SMO v) Member - One GDO Grade-I

8. This board will subject the person concerned to critical examination with a view to determining his physical capability, educational standard, aptitude, willingness, job requirement etc. and determine if the person could be accommodated in any job in the Force with his consent.

9. Further action will be taken thereafter in respect of those considered suitable for retention in service in lighter jobs indicated below:

- i) Dak/Office runner,
- ii) Telephone operator,
- iii) Attendants in recreation rooms, canteen co-operatives, flour mills, welfare centres, school buses, any other welfare activities etc.
- iv) RTO duty,
- v) Any other duty considered suitable by the board.

10. Above mentioned posts are mostly for ORs only. In case any person of the ranks of SI and above and personnel of technical trades like MT, Signals, Ministerial cadre etc. are disabled, they will be retained in the same rank and cadre and their consent to work in the posts mentioned in para 9 will be taken.

11. However, before taking the final decision in such cases, it will be ensured.

(a) that resulting deficiency in the post to which the disabled person belongs, does not hamper overall efficiency of a Unit/Office,

(b) that while rehabilitating such partially disabled persons in units/offices care should be taken to ensure that the number of such persons per Bn/Office, is kept within reasonable limits so that the operational efficiency of the Unit does not suffer.

(c) that such persons will be retained in service till such time they can perform their duties satisfactorily.

(d) such persons will have claim to promotions only if they pass the prescribed promotion tests without any relaxation and are found fit for higher posts.

14. Payment at the revised rates will be effective from 27/10/89 as already intimated vide signal No. RF.1/89 dated 27/10/89. Cases already decided will not be re-opened. Recurring payments already being paid to persons with 100% disability will not be increased and revised benefits will be applicable to fresh cases only.

15. These instructions should be given wide publicity and explained to all ranks in the Force.

(Emphasis supplied)

8. It is an admitted position before us that in terms of the policy of Circular Order No. 28/89, the petitioner was produced before the Rehabilitation Board which examined the petitioner on 27th January, 1992. On a detailed consideration of the petitioner's condition, this Departmental Board for Rehabilitation had made the following observations and recommendations qua him:

(ii) No. 880945841 CT Karan Singh of 52 BN CRPF

Constable Karan Singh of 52 Bn met with a bus accident while on his way from

home town to Unit to join duty about 2 Kms from his home in Alwar District of Rajasthan. In the incident he sustained injuries in his Right Eye and head. After hospitalization he lost his eye sight of the Right Eye. As per brief history, CHD Bn-I and Unit Mo he was declared unfit in view of blindness in his eye. He can however see and the eye sight of left eye is normal though Circular order No. 28/89 deals with cases of those suffered injuries which resulted them disabled and rendered unfit due to terrorists and other forms of violence, para (6) of the circular Order clearly stipulates that sick and injured person should be given medical treatment and they be referred to rehabilitation board for considering him for rehabilitation if he is declared unfit.

It is, therefore, means those who are (Sic) inured in normal cases and those who are sick should also be considered for rehabilitation. The board therefore considered the case of No. 880945841 Ct. Karan Singh and find him to fit to perform the duties of Security aid, office orderly, Telephone orderly and canteen salesman. He can also be detailed for office clerical duties in the absence of clerk. He will be detained in service till superannuating as Constable Orderly/ Security aid.

There has been some delay in constitution of rehabilitation board and he has not been paid any pay and allowances since June 91 he was however working in the Ors mess. The board therefore recommends that DIGP, CRPF, Calcutta may direct Commandant 52 Bn CRPF to pay the pay and allowances of the intervening period.

The CMO BH-II was kind enough to recommend immediate surgery of the right eye of Ct Karan Singh to remove cataract which will given some improvement in the eye sight. Commandant 52 B should take immediate action in the matter.

(Underlining by us)

9. This Rehabilitation Board consisted of the Chairman and four senior members including medical specialists of the respondents in terms of the Circular Order No. 28/89.

10. It is an undisputed position that the petitioner was not boarded out of service and continued to be employed by the CRPF. The recommendations of this Rehabilitation Board were accepted and fully implemented. The petitioner continued to serve with the CRPF as a Constable.

11. Ms. Maninder Acharya, learned Counsel appearing for the petitioner submits that no complaint with regard to the service of the petitioner was made by the respondents at any point of time and that he continued to render satisfactory service. She submits that the petitioner had additionally even received a monetary award from the respondents for effective and meritorious discharge of duties while he was posted in Punjab.

12. It is also contended that the petitioner's medical condition has remained unchanged from 10th June, 1991 when examined in his unit and the 27th

January, 1992 when he was examined by the Rehabilitation Board till date.

13. Before us, the respondents have taken a stand that in view of the implementation of a new policy dated 6th May, 1999, they reconsidered the case of the petitioner with other personnel. The petitioner was accordingly examined by rehabilitation board at Chandigarh on 23rd November, 2001, which opined that the petitioner was unfit to continue in service and recommended his invalidation. A subsequent board of three medical officers was constituted to examine the petitioner and others with regard to whom invalidation out of service had been recommended. This medical board examined the petitioner and on 30th April, 2002, also recommended that the petitioner be boarded out of service.

14. Pursuant to the recommendation of the Rehabilitation Board on 30th April, 2002, the petitioner appears to have been boarded out from the service. It is stated that the petitioner has remained unemployed without any source of income till date.

15. The primary ground of challenge to the action taken by the respondents to board out the petitioner is premised on the submission that a decision stood taken based on the Circular Order No. 28/89 which was a final decision and created vested rights of the petitioner in his continued employment. It is contended by Ms. Maninder Acharya, learned Counsel for the petitioner that the same could not have been effected by any change in the rehabilitation policy of the respondents. Learned Counsel has further contended that the Standing Order No. 7/99 (dated 6th May, 1999) does not have any retrospective operation and in any case, could not have been effected in such cases or injuries which occurred prior thereto; stood examined and final view stood taken in terms of the Circular Order No. 28/89. In support of her submission reliance has been placed on the judgments reported at *Kusumam Hotels (P) Ltd. Vs. Kerala State Electricity Board and Others*, ; *Jay Mahakali Rolling Mills Vs. Union of India (UOI) and Others*, ; *P. Tulsi Das and Others Vs. Govt. of A.P. and Others*, ; *Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others*, ; (1993) 1 LLJ 284 SC *State of Gujarat v. Raman Lal Keshav Lal*; *T.R. Kapur and Others Vs. State of Haryana and Others*, .

16. Mr. Ankur Chhibber, learned Counsel appearing for the respondents submits that the action of the respondents in reviewing the cases in terms of the Standing Order No. 7/99 dated 6th May, 1999 cannot be faulted and that the respondents were justified in taking a relook at the matter.

17. We have given our considered thought to these submissions.

18. The rehabilitation scheme envisaged in the Circular Order No. 28/89 of 1989 was undoubtedly a welfare measure considered essential by the respondents not only towards rehabilitation of force personnel who were injured while on duty but also contained an extensive consideration of its necessity having regard to the ability of personnel injured or even disabled persons to perform duties depending

upon the nature and extent of disability. The Circular makes recommendations of not only retention of such persons in service but also provided for consideration of such personnel for promotion as well, subject to their passing the prescribed promotion tests. It is evident that the spirit and intendment of this policy was a recognition of the fact that persons who were disabled while serving with the CRPF, could make a meaningful contribution to the force despite their disability. The same was necessary not only as a measure for rehabilitating the force personnel but also in the larger cause for ensuring social justice to the cause of the disabled. This was a laudatory step forward towards morale boosting for members of the force which deserves to be encouraged.

19. So far as the petitioner was concerned, the respondents had made an effective evaluation of the petitioner's medical, physical and mental condition in 1992. The Expert Committee constituted by them in 1992, had taken a view that the petitioner could perform certain duties which were well within the functioning of CRPF. The final view stood taken and the petitioner had been assigned such duties.

20. The only injury which the petitioner was found to be suffering from was the injury to his right eye and the resultant blindness thereof. In terms of the policy of 1989, the final order stood passed which had found that the petitioner was fit to perform the duties of security aid, office orderly, telephone orderly and canteen salesman etc. It had also been recommended that the petitioner could be detailed for office clerical duties in the absence of clerk. A specific direction had been made that the petitioner would be "detained in service till superannuation as Constable Orderly/Security Aid". Not only this, in the year 1992, the board had considered the fact that there had been delay in constitution of the rehabilitation board and that the petitioner had not been paid the allowances since June, 1991 despite his discharging duties in the officers' mess. The board had recommended payment of pay and allowances for this intervening period as well. It is an admitted position that these recommendations were accepted and fully acted upon. The petitioner had been satisfactorily performing the assigned duties. The respondents have also released the entire pay and allowances to the petitioner as well for the intervening period.

21. It is noteworthy that the views of the Expert Board or Committee created by the respondents could be set aside or overruled by another Expert Committee only in the event that circumstances had changed or a variation in the medical condition had come about which could justify a variation or a differential view. Obviously, the fresh decision which is taken would be subject to judicial review and would have to disclose an application of mind to all relevant material.

22. The proceedings of the board which was held in Chandigarh on 23rd November, 2001 disclose no material basis or reasons at all except a bald recommendation to the effect that he is to be "to be invalidated out".

23. The proceedings of the board dated 30th April, 2002 have been placed before

this Court. These proceedings record that the petitioner was completely blind in the right eye for which his case had been taken up by the rehabilitation board held at Durgapur on 27th January, 1992. It is important to note that this board found no deterioration in the petitioners physical or mental condition from 1992 and no variation from 1992 is mentioned. The only additional observation which is noted by the board in 2002 is to the effect that the petitioner had suffered from Kochs in chest in the year 2000 for which he had completed the course of AKT for nine months. The board specifically recorded that there was no symptom of pulmonary kochs. In any case, this disease was not the basis for the recommendation in 2002. The only reason for its recommendation was that the petitioner being blind by right eye was "unable to perform active duties".

24. It is necessary to point out that so far as the observation that the petitioner suffered from koch's disease in 2000 is concerned, the respondents have found that he had taken the prescribed treatment. No observation with regard to the existence of such disease in the petitioner on the date of the examination has been noticed. Koch's disease is the medical name for the infection known as "tuberculosis". It is not the respondent's case that any such infection rendered the petitioner unfit for duties.

25. It is evident from the available record, that these boards in 2001 and 2002 have arrived at a different conclusion from that of the board which examined the petitioner in 1992 on the same disability without any change in condition. They have recorded no reasons or explanations for the recommendation to invalidate the petitioner. The boards in November, 2001 and April, 2002 have also completely ignored the fact that the petitioner was satisfactorily performing his duties despite his blindness in the right eye for a long period of over 10 years after 1992 when he had received the injury.

26. The respondents had effected an evaluation in terms of para 11 of the Circular No. 28/89, with regard to the impact on the overall efficiency of the petitioner's unit/office. On an assessment that the petitioner would be able to perform duties satisfactorily, the petitioner had been assigned duties which he was performing.

In the above facts, the petitioner has been dealt with arbitrarily and unfairly.

27. The findings of the unfitness for service and the recommendations for invalidation therefore, are held to be based on no relevant material at all and are legally unsustainable.

28. There is yet another important facet to this matter. It appears that after a long period of almost 10 years of the working of the policy contained in the Circular Order No. 28/89, the respondents thought it fit to supersede the same and implement a new policy. This new policy was notified as Standing Order No. 7/99 dated 6th May, 1999. It is noteworthy that this policy also underlines the responsibility of the CRPF to make all efforts to rehabilitate the personnel mentioned therein and to support their families otherwise it would have the

demoralizing effect on the force personnel. It is important to note that such policy was not retrospective in operation and would obviously apply to such persons, who were disabled or injured only after the implementation thereof. The policy did not even suggest, let alone direct review of cases in which decision stood taken in terms of the Circular Order No. 28/89.

29. The issue which therefore arise before us is as to whether the Standing Order No. 7/99 had retrospective operation. A similar question has been raised before the Supreme Court on several occasions including in matters relating to legislative action and stands authoritatively settled. The court has clearly laid down the parameters within which crystallized rights could be impacted by retrospective application of legislative action, and even policies.

A question as to whether the status of ex-ministerial employees who had been allocated to the Panchayat service as Secretaries, Officers and servants of Gram and Nagar Panchayats under the Gujarat Panchayat Act, 1961 as Government servants could be extinguished by making retrospective amendment of the said Act in 1978 arose before the Supreme Court in *State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others*, . The Constitution Bench struck down the amendment on the ground that it offended Articles 311 and 14 of the Constitution.

The law was declared by the Supreme Court in the following terms:

52. ...The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not yesterday's. The legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history. (pp. 319-320) (of SCR): (at p. 177 of AIR).

30. The above principles laid down by the above Constitution Bench were followed by the Supreme Court in *Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others*, while striking down an amendment to the Punjab Government National Emergency (Concession) Rules which took away acquired or accrued fundamental rights with retrospective effect, as offending Articles 14 and 16 of the Constitution of India. The court held that "The retrospective amendment of the Rules in the said case had the effect of depriving the benefit of military services beyond a particular date with retrospective effect thereby

taking away the vested rights which accrued to the petitioner and this was declared to be ultra vires the Constitution and struck down."

31. A similar question arose before the Supreme Court in the judgment reported at *Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others*, . The validity of a retrospective amendment to the service rules adversely affecting the pension of the employees who already stood retired on the date of the notification issued by way of an amendment. The court held that the pension admissible was under the Rules in force at the time of retirement, and the reduction of the pension as admissible with retrospective effect was held to be arbitrary and unreasonable, after an exhaustive review of case law of the subject. The court observed as follows:

20. It can, therefore, be said that a rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

21. In *B.S. Yadav and Others Vs. State of Haryana and Others*, , a Constitution Bench of this Court, while holding that the power exercised by the Governor under the Proviso to Article 309 partakes the characteristics of the legislative, not executive, power and it is open to him to give retrospective operation to the rules made under that provision, has said that when the retrospective effect extends over a long period, the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules (p. 1068 of SCR) : (at pp. 585 and 586 of AIR).

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24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in *Roshan Lal Tandon Vs. Union of India (UOI)*, ; *B.S. Yadav and Others Vs. State of Haryana and Others*, and *State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others*, .

33. Apart from being violative of the rights then available under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.

(Emphasis supplied)

32. In *Kusumam Hotels (P) Ltd. Vs. Kerala State Electricity Board and Others*, it was held that:

21. It is now a well settled principle of law that the doctrine of promissory estoppel applies to the State. It is also not in dispute that all administrative orders ordinarily are to be considered prospective in nature. When a policy decision is required to be given a retrospective operation, it must be stated so expressly or by necessary implication. The authority issuing such direction must have power to do so. The Board, having acted pursuant to the decision of the State, could not have taken a decision which would be violative of such statutory directions.

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38. Appellants, indisputably, continued to derive the benefits in terms of the original order. They obtained certificates of classification. It is on the aforementioned context, the question as regards construction of the impugned notification dated 26.9.2000 arises. Ex facie, the said policy decision could not be given a retrospective effect or retroactive operation. The State was not exercising the power under any statute to grant or withdraw the concession. It was exercising its statutory power of issuing direction. It is, therefore, a statutory authority. The 1948 Act does not authorize the State to issue a direction with retrospective effect. The Board, therefore, could only give prospective effect to such directions in absence of any clear indication contained therein. By reason of withdrawal of concession with retrospective effect, the accrued right of the appellants had been affected. In *Kuldeep Singh Vs. Govt. of NCT of Delhi*, this Court held:

In a case of this nature, where the State has the exclusive privilege and the citizen has no fundamental right to carry on business in liquor, in our opinion, the policy which would be applicable is the one which is prevalent on the date of grant and not the one, on which the application had been filed. If a policy decision had been taken on 16.9.2005 not to grant L-52 licence, no licence could have been granted after the said date.

We, however, are not concerned with a similar situation.

33. Reference can also be usefully made to Jay Mahakali Rolling Mills Vs. Union of India (UOI) and Others, wherein the court held as follows:

2. Background facts in Civil Appeal No. 5109 of 2002 in a nutshell are as follows:

A show-cause notice was issued to the appellant alleging that the appellant was not entitled to the exemption under Notification No. 208/83-CE dated 1.8.1983 on the final product falling under Tariff Item No. 25(9)(ii). Allegation was that the appellant M/s Jay Mahakali Rolling Mills had contravened the provisions of Rule 174 of the Central Excise Rules, 1944 (in short the "Rules") read with Section 6 of the Central Excise and Salt Act, 1944 (in short the "Act") and Rules 173-B; 53 read with 173-G(4); 9(1), 49, 52-A read with 173-G(1), 173-G(2) and 174-F; 54 read with 173-F(3) of the Rules and thereby committed the offence of the nature described in Clauses (a), (b), (c) & (d) of Sub-rule (1) of Rule 173(Q) of the Rules by reasons of wilful misstatement, suppression of facts with intent to evade payment of central excise duty. The appellant was, therefore, asked to show-cause as to why Central Excise Duty amounting to Rs. 12,67,006.19, on 3473.705.2.2 MT excisable goods i.e. rolling products manufactured and cleared by it without payment of duty for the period 23.8.1984 to 31.8.1987 should not be recovered from it under Rule 9(2) of the Rules read with proviso to Sub-section (1) of Section 11A of the Act. They were also required to show-cause as to why penalty should not be imposed under Clauses (a), (b), (c) and (d) of Sub-rule (1) of Rule 173-Q and Rule 9(2) of the Rules. In response, appellant submitted that in Notification No. 101/87-C.E. dated 27.3.1987 materials were specified as inputs in view of the amendment. It was submitted that there was no ill-intention or suppression of

facts and/or intention to evade duty. Therefore, penalty cannot be imposed. The Adjudicating Authority rejected the contention and held that duty and penalty were leviable. The order was challenged before the CEGAT which dismissed the appeal. It was held that the amendment made to the notification on 27.3.1987 has prospective application and has no retrospective application as contended by the appellant. It was further held that items which were earlier included were specified. Therefore, the stand that the amendment was merely clarificatory is without any substance. It was held that duty liable was to be reduced by the duty payable from 27.3.1987 to 31.8.1987 amounting to Rs. 2,28,898.80. The penalty was reduced to Rs. 75,000/-.

6. A bare reading of the circular clearly shows that it was intended to have prospective effect.

7. It is to be noted that in the Circular dated 31.3.1987 it has been stated that the "products like bars and rods made from such ship breaking scrap would "now" exempt from excise duty". The effect of the word "now" is that it is to operate henceforth. If the intention was to give retrospective effect, it would have been stated to be so specifically.

8. "Retrospective" means looking backward, contemplating what is past, having

reference to a statute or things existing before the Statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights.

9. By the amendment relatable to Notification on 27.3.1987, items which were earlier not included were specified as inputs have been included. That being so, the contention that the amendment merely clarified the notification as it stood prior to the amendment, is not untenable.

10. Looked at from any angle the High Court's order does not suffer from any infirmity to warrant interference. The appeal is dismissed.

34. In *P. Tuls Das and Others Vs. Govt. of A.P. and Others*, , the court was concerned with the same question with regard to exercise of executive powers laying down conditions of service. It was held that the orders passed in exercise of such powers provided the legal basis for acquisition of rights during the period when they were in force which could not be denied by retrospective application of legislative action. On this question, the court held thus:

14. On a careful consideration of the principles laid down in the above decisions in the light of the fact situation in these appeals we are of the view that they squarely apply on all fours to the cases on hand in favour of the appellants. The submissions on behalf of the respondent-State that the rights derived and claimed by the appellants must be under any statutory enactment or rules made under Article 309 of the Constitution of India and that in other respects there could not be any acquisition of rights validly, so as to disentitle the State to enact the law of the nature under challenge to set right serious anomalies which crept in and deserved to be undone, does not merit our acceptance. It is by now well settled that in the absence of Rules under Article 309 of the Constitution in respect of a particular area, aspect or subject, it was permissible for the State to make provisions in exercise of its executive powers under Article 162 which is co-extensive with its Legislative powers laying conditions of service and rights accrued to or acquired by a citizen would be as much rights acquired under law and protected to that extent. The orders passed by the Government, from time to time beginning from February 1967 to 1985 and at any rate upto the passing of the Act, to meet the administrative exigencies and cater to the needs of public interest really and effectively provided sufficient legal basis for the acquisition of rights during the period when they were in full force and effect. The orders of the High Court as well as the Tribunal also recognised and upheld such rights and those orders attained finality without being further challenged by the Government, in the manner known to law. Such rights, benefits and perquisites acquired by the Teachers concerned cannot be said to be rights acquired otherwise than in accordance with law or brushed aside and trampled at the sweet will and pleasure of the Government, with impunity. Consequently we are unable to agree that the Legislature could have validly denied those rights

acquired by the appellants retrospectively not only depriving them of such rights but also enact a provision to repay and restore the amounts paid to them to the State. The provisions of the Act, though can be valid in its operation "in future" cannot be held valid in so far as it purports to restore status quo ante for the past period taking away the benefits already available, accrued and acquired by them. For all the reasons stated above the reasons assigned by the majority opinion of the Tribunal could not be approved in our hands. The provisions of Sections 2 and 3(a) insofar as they purport to take away the rights from 10-2-1967 and obligates those who had them to repay or restore it back to the State is hereby struck down as arbitrary, unreasonable and expropriatory and as such is violative of Articles 14 and 16 of the Constitution of India. No exception could be taken, in our view, to the prospective exercise of powers thereunder without infringing the rights already acquired by the appellants and the category of the persons similarly situated whether approached courts or not seeking relief individually. The provisions contained in Section 2 have to be read down so as to make it only prospective, to save the same from the unconstitutionality arising out of its retrospective application.

35. In the judgment reported at Commissioner of Agricultural Income Tax, Trivandrum Vs. Kerala Estate Mooriad Chalapuram, , this issue was answered as follows:

16. It is well-settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect: B.S. Vadera Vs. Union of India (UOI) and Others, , Raj Kumar Vs. Union of India (UOI) and Others, , K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, and The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, . It is equally well-settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well-recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessary satisfy the tests of Article 14 and 16(1) of the Constitution: State of Mysore Vs. M.H. Krishna Murthy and Others, B.S. Yadav and Others Vs. State of Haryana and Others, State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, and Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, .

36. It is necessary at this stage also to notice the contents of the standing order No. 7/99 dated 6th May, 1999. Para 3 thereof makes it clear beyond any doubt that this order was prospective in force. Para 3 of the standing order records that "it is the responsibility of Department to make all efforts to rehabilitate the personnel mentioned at para 2(A) and (B) and to support their families as, otherwise it will have a very demoralizing affect on the Force". It is evident, therefore, that this standing order relate to personnel who are covered under the categories of disabled personnel detailed in para 2 thereof. Para 2 sets out the records of disabled personnel as including all those who "are disabled" in the circumstances mentioned therein. It makes no reference to personnel who were disabled prior to the said circular coming into force. The standing order does not permit a review of decided cases.

37. In the light of the judicial pronouncements noticed hereinabove, the respondents have no authority or jurisdiction to vary the vested rights of the petitioner which stood created by the recommendation dated 27th January, 1992 pursuant to the Circular Order No. 28/89 dated 15th January, 1989.

38. The respondents having taken a considered decision and having implemented the same as a rehabilitation and welfare measure qua the petitioner and directing that he be retained in service till superannuation are estopped from changing the same to the petitioner's prejudice.

39. In view of the above discussion, the action of the respondents in reviewing the case of the petitioner despite a final view having been taken in 1989 is, therefore, clearly without jurisdiction, without authority of law and is not sustainable.

40. It is pointed out that the petitioner is without any source of livelihood. It is submitted by Ms. Maninder Acharya, learned Counsel for the petitioner that the respondents had computed the pensionary benefits which are admissible to the petitioner and offered the same to him. However, he refused to take the same. It is explained on behalf of the petitioner by Ms. Acharya that the petitioner was seeking restoration of his service and had filed this writ petition as back as in the year 2002. He did not accept the computation of the pension or offer for payment of pensionary benefits for the reason it would prejudice his prayer for restoration of his service. The petitioner cannot be faulted for not having accepted the amount tendered as pension as it would have impacted his challenge.

41. In view of the above discussion, we hold and direct as follows:

(i) The recommendations dated 23rd November, 2001, 30th April, 2002 and the order dated 3rd May, 2002 directing retirement of the petitioner from service with effect from 3rd June, 2002 are hereby set aside and quashed.

(ii) The petitioner is held to be entitled to be reinstated in service with full benefits and all consequential relief including full back wages as well as seniority

in terms of the recommendations made in his favour on 27th January, 1992 in terms of the Circular Order No. 28/89.

(iii) The respondents shall pass appropriate orders and permit reinstatement of the petitioner within a period of six weeks from today. The arrears which are admissible to the petitioner in terms of this order shall be paid within a further period of four weeks thereafter.

(iv) The petitioner shall be entitled to costs of the writ petition which are assessed at Rs. 20,000/-. The costs shall be paid along with arrears.

42. At the request of learned Counsel for the respondents, they are permitted a period of ten weeks for passing the orders.

43. The writ petition is disposed of on the above terms.