
(1985) 08 KL CK 0004
In the High Court Of Kerala
Case No : W. A. No. 519 of 1984

T. R. Balakrishnan Nair

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-08-1985

Acts Referred:

Administrative Service (Appointment by Promotion) Regulations, 1955 — Regulation 5(3)

All India Services (Conditions of Service Residuary Matters) Rules, 1960 — Rule 3

Citation : (1986) 23 KLJ 175

Hon'ble Judges : K. Bhaskaran, C.J.; V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : T.C.N. Menon, for the Appellant; P.V. Madhavan Nambiar and Government Pleader, for the Respondent

Judgement

Bhaskaran, C.J.—The appellant, who was a Deputy Collector, was an aspirant for being selected and appointed to the Indian Administrative Service (I. A. S.) cadre, under the provisions of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, hereinafter referred to as the Regulations. He is a graduate in law. He was a full member of the Kerala State Civil Service (Executive) and was having to his credit about 30 years' service. He was not included in the select list for appointment to the I. A. S. cadre in the year 1983 as he was not having, as on the first day of January of that year, not less than 8 years of continuous service in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government, which is a required qualification prescribed for being considered in terms of the second proviso to Regulation 5(2) of the Regulations. In 1984 he was not found eligible for inclusion in the select list though he had by then completed not less than 8 years' continuous service in the post of Deputy Collector as on the first day of January of that year he was found to have crossed the age limit of 54 years, his having completed 54 years on 25-12-1983. Regulation 5(3) provides:

The Committee shall not consider the cases of the 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.

2. The petitioner had submitted a representation dated 31-8-1984, a true copy of which is Ext. P1, to the first respondent (Secretary, Department of Personnel and Administrative Reforms), requesting to relax the requirement of Regulation 5[3], insofar as he was concerned. Not having received any reply to Ext. P1 representation, he filed O. P. No. 8436 of 1984 - L praying inter alia that Regulation 5(3) of the Regulation be declared void and in-operative and for the issue of a writ of mandamus directing the first respondent to dispose of Ext. P1 representation within a reasonable time that might be fixed by this Court. A learned Judge by judgment dated 12-10-1984 dismissed the writ petition saying that the power of Government to allow relaxation in the matter of requisite qualifications was subject to the restraints and limitations as indicated by the Full Bench decision of this Court reported in Sreedharan Pillai v. State of Kerala (1973 KLT 151) and that the declaration of the Regulations as void would not help the appellant-petitioner, as, if the Regulations then in force were to be struck down as invalid, the old Regulation, which was more disadvantageous to the petitioner, would revive.

3. Shri T. C. N. Menon, the counsel for the appellant-petitioner, fairly conceded that the appellant did not appear to have a good case to challenge the validity of Regulation 5 (3). His submission was that the first respondent did not exercise the discretion vested in him under rule 3 of the All India Services (Conditions of Service-Residuary Matters) Rules, 1960, hereinafter referred to as the Residuary Rules, in the true spirit of those provisions. That rule provides:

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 exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

4. According to Shri Menon, the Government while disposing of Ext. P1 representation by Ext. P2 order dated 26-4-1985 (produced along with the affidavit in C. M. P. No. 15658 of 1985 for amendment of the Memorandum of Appeal) appeared to have lost sight of the real significance and purpose of regulation 5(3). He would argue that the real intention was, as on the first day of the year in which the Committee met, the officer concerned should have at least, one year service ahead of him. In this case, he pointed out, by virtue of the provisions contained in Rule 60 (a) of the Kerala Service Rules, Part I, he was

entitled to continue in service till the last day of December, 1984. which coincided with the last day of the year 1984. Rule 60 (a) of the Kerala Service Rules provides:

Except as otherwise provided in these Rules the date of compulsory retirement of an officer shall take effect from the after-noon of the last day of the month in which he attains the age of 55 years.....

This meant, he went on to say, that it made no difference whether he completed 55 years on 25th December, 1983 or on the first day of January, 1984; in either case he being entitled to continue in service till the end of the year 1984. This aspect of the matter, he submitted, was not considered in its true perspective by the Government while disposing of Ext. P1 representation by Ext. P2 order.

5. Yet another contention raised by Sri Menon is that the first respondent totally overlooked the fact that none in the service would have been adversely affected if the regulation was relaxed in the case of the appellant taking into consideration that though he had completed 54 years, six days prior to the first day of January 1984, he was entitled to continue in service till the very last day of 1984. The reason is, it was pointed out, as against 9 vacancies available, there were only four aspirants. He also submitted that by relaxing the rules, while promoting justice and relieving the appellant of the undue hardship he had to face, none would have been adversely affected. This, according to Sri. Menon, was a fit case for exercise of the power under rule 3 of the Residuary Rules. A further submission made by him was that except for a technical defect of his having attained the age of 54 years before the first day of January 1984, in all other respects he was having the requisite qualifications.

6. It is entirely for the Central Government to consider and decide whether the power to relax rules and regulations under rule 3 of the Residuary Rules has to be exercised or not on the facts and in the circumstances of each case. In so doing, it might not be proper to act against the spirit of the rules.

7. Shri P. V. Madhavan Nambiar, the Standing counsel to the Central Government, submitted that in exercise of the power under the rule, the requirements of the Regulations could not be completely ignored. According to him, the service qualifications and age restrictions provided under the Regulations are not relaxable. He also emphasised the expression "undue hardship" (in contra distinction to hardship) used in rule 3 of the Residuary Rules contending that it was only in cases of "undue hardship", not in cases of "hardship", without anything more, that the discretion vested in the Central Government under rule 3 could be exercised, He was not, however, able to indicate the dividing line between "hardship" on the one hand and "undue hardship" on the other. " We find it difficult to appreciate this stand taken by Shri Nambiar. The power conferred on the Central Government under rule 3 is specifically for relaxing the rule or regulation in certain cases. Where any regulation or rule causes undue hardship in any case, the Central Government is empowered to dispense with or

relax the requirement of that rule or regulation to such extent and subject to such exceptions and conditions as it might consider necessary. The questions whether there is undue hardship and to what extent and in what manner it is to be removed, are those falling within the ambit of rule 3 of the Residuary Rules. If we hold that they are inflexible as not to attract rule 3 of the Residuary Rules, no purpose would be served by the discretion vested in the Government under that rule. According to us, the real test is whether the rule or regulation causes undue hardship in a particular case. Once the Government is convinced that the strict or literal application of the rule or regulation would cause undue hardship in the particular case, in our view, it would be within the power of the Government to dispense with or relax the requirement of that rule or regulation to such extent and subject to such exceptions and conditions as it might consider necessary, for dealing with the case in a just and equitable manner. We have already highlighted some of the aspects peculiar to this particular case, brought to our notice by Shri Menon. As De Smith would put it (in *Judicial Review of Administrative Action*-Fourth Edition, at page 283),

An authority may have a discretion whether to exercise a power, and a discretion in the manner of exercising it. But discretionary powers are frequently coupled with duties.....Again, to the extent that a discretionary power is not absolute, the repository of a discretion is under a legal duty to observe certain requirements that condition the manner in which its discretion may be exercised.....

Where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled, to call for its exercise that power ought to be exercised, and the Court will require it to be exercised.

Wade in his "Administrative Law", Fifth Edition, at page 355:

.....Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely - that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended.....The real question is whether the discretion is wide or narrow, and where the legal line is to be drawn. For this purpose, everything depends upon the true intent and meaning of the empowering Act.

8. We have carefully gone through Ext. P2 order by which the first respondent disposed of Ext. P1 representation. We are of the opinion 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.

9. The first respondent appears to have proceeded on the assumption that the requirements of regulation 5(3) in regard to the age as on the first day of January of the year in which the Committee met was of absolute nature admitting of no relaxation at all. The force of the arguments that in this

particular case the appellant had service till the very end of that year did not receive proper attention of the Government. So also, the fact that he had all the requisite qualifications and that no body else would be affected by the rule being relaxed also did not appear to have received proper consideration at the hands of the Committee. The purpose of the rule as we have already noticed, is to relieve undue hardship to the officer to the extent possible. We repeat, it is for the Government to consider all aspects of the matter and to come to the conclusion Whether undue hardship is involved in the case of the appellant or not. What we would like to stress is that before taking a decision on that point, all aspects have to be objectively considered. It would be wrong to conclude that the rules are rigid and no relaxation is possible, in which case the very purpose of rule 3 of the Residuary Rules would be defeated. 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 the appellant to meet the ends of justice.

10. In *Government of Andhra Pradesh and Others Vs. Sri D. Janardhana Rao and Another*, the Supreme Court held that rule 47 of the Andhra Pradesh State and Subordinate Service Rules gave power to the Governor to relax the rigour of the general rules in such manner as might appear to him to be just and equitable. It has also to be borne in mind that in *R.R. Verma and Others Vs. Union of India (UOI) and Others*, , the Supreme Court held that the power to relax rules and regulations in certain cases under rule 3 of the Residuary Rules is not unconstitutional on the ground that it vested unfettered discretion to the Government. That decision is also an authority for the proposition that the Central Government would have power to review its order though no such power is conferred by the Rules. Speaking for the Bench, Chinnappa Reddy S. in that decision, in paragraph 4 of the judgement at page 1463 stated as follows:

Hence it is that the Central Government is vested with a reserve power under Rule 3 to deal with unforeseen and unpredictable situations and to relieve the civil servants from the infliction of undue hardship and to do justice and equity. It does not mean that 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 public interest with a view to secure civil servants of efficiency and integrity. When, and 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 action affecting rights of parties is subject to judicial review on grounds now well known. Viewed in this light, we do not think that Rule 3 is unconstitutional on the ground that it vests an unfettered discretion in the Government,

In *Shri. Amrik Singh and Others Vs. Union of India (UOI) and Others*, . Krishna Iyer, J. also has made it clear that Rule 3 of the Residuary Rules is not arbitrary.

Therein, the learned Judge said : Rule contains guidelines, Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship, then the iniquitous consequence thereof may be relieved against by relaxation of the concerned Rule or Regulation, There must be undue hardship and, further the relaxation must promote the dealing with the case "in a just and equitable manner". These are perfectly sensible guidelines. What is more, that is implicit, in the Rule, the compliance with natural justice so that: nobody may be adversely affected even by administrative action without a hearing. There is nothing unreasonable, capricious or deprivatory of the rights of any one in this residuary power vested in the Central Government.

Having considered all aspects of the matter, in depth, we are of the opinion that Ext. P2 order requires to be reconsidered by the first respondent. We would, therefore, direct the first respondent to reconsider Ext. P2 order in the light of the observations contained in this judgment, according to law, and adverting to all aspects of the matter and pass appropriate orders. In view of the urgency expressed by the appellant, this would be done within two months from the date of receipt of a copy of this judgment. This Court in C. M. P. No. 29683 of 1984 directed on 15-11-1984 that the petitioner's name be provisionally considered for inclusion in the select list to be prepared for the year 1984 of candidates for appointment by promotion to I. A. S. cadre and that such inclusion would be subject to the result of the writ appeal. In C M. P. No. 33436 of 1984, this Court further directed on 21-12-1984 that for the purpose of selection to the I. A. S. cadre alone, he will be deemed to be in service in spite of his retirement on 31-12-1984. In case the reconsideration of Ext. P2 order pursuant to the direction given in this judgment results in the relaxation of regulation 5 (3) of the Regulations to the extent necessary so far as the appellant is concerned, and if the Selection Committee had already selected the appellant and included him in the select list of 1984. the decision of the Government will be given effect to by appointing him to the I. A. S. cadre, without any avoidable delay. The writ appeal is disposed of as above. There will be no order as to costs.

Soon after the judgment was pronounced, the Standing Counsel to the Central Government made an oral request for leave to appeal to the Supreme Court. We do not find any substantial question of law of general importance, which requires to be decided by the Supreme Court involved in this case. Hence leave declined.

Issue carbon/photostat copy of this judgement to counsel on both sides, on usual terms, if applied for in that behalf.