

SUPREME COURT OF INDIA

N. Subba Rao

Vs.

Union of India

C.A.Nos.2436 to 2439 of 1969

(S. M. Sikri, C.J.I., A. N. Ray, I. D. Dua, D. G. Palekar and M. H. Beg, JJ.)

23.08.1972

JUDGEMENT

RAY, J.:-

1. This four appeals are by certificate from the common judgment dated 23 February, 1968 of the Andhra Pradesh High Court.
2. The subject-matter of these appeals relates to the equation of posts and integration of services of officers of the Public Works Department in the State of Andhra Pradesh consequent on the reorganisation of States in the year 1956.
3. On 1 November, 1956 the State of Andhra Pradesh came into existence under the States Reorganisation Act, 1956 (hereinafter referred to as the Act). The State of Andhra Pradesh was formed out of the former State of Andhra Pradesh and the Telengana area of the former Hyderabad

State (hereinafter referred to as the Andhra State and the Telengana area).

4. The appellants were Engineers in the employment of Andhra State. On the formation of the State of Andhra Pradesh the appellants under the provisions of the Act continued to serve the State of Andhra Pradesh. The respondents who were Telengana officers in the employment of the State of Hyderabad continued to serve the State of Andhra Pradesh.

5. Prior to the reorganisation a Conference of Chief Secretaries was held in the months of April and May, 1956. It was agreed at the Conference that four principles should be followed for equation of posts in the two services, namely, the services of Andhra State and Hyderabad State which were to be allocated to the State of Andhra Pradesh. These four principles were; first, the nature and duties of a post; second, the responsibilities and powers exercised by the officers holding a post; the extent of territorial or other charge held or responsibilities discharged; third, the minimum qualifications, if any, prescribed for the two posts and fourthly, the salary of the post.

6. In regard to the fixation of the inter se seniority of officers holding equivalent posts it was agreed that three factors should be taken into consideration. The first was the length of continuous service whether temporary or permanent in a particular grade. This length could exclude periods for which an appointment is held in a purely stop-gap or fortuitous arrangement. The second consideration was the age of the person, other factors being equal, for instance, seniority might be determined on the basis of age. Thirdly, as far as possible, the inter se seniority of officers drawn from the same State should not be disturbed.

7. The Central Government in the month of September, 1956 directed the State Government to draw up provisional common gradation list keeping in view the general principles agreed to at the Conference of the Chief Secretaries.

8. It may be stated that out of the former State of Hyderabad some areas were transferred to Mysore and some to Bombay which became Maharashtra and the Telengana area became part of the State of Andhra Pradesh.

9. Under the States Reorganisation Act the questions relating to equation of posts and integration of services of the employees of Andhra and Hyderabad States are to be decided finally by the Central Government. Section 115 of the Act in sub-sec. (5) provides that the Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to (a) the division and integration of services among the new States and the State of Andhra Pradesh and Madras, and (b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons.

10. The Governments of Andhra Pradesh constituted Advisory Committee for integration of services of Andhra and Hyderabad States and preparation of common gradation lists for all services personnel in Andhra Pradesh. There were two Advisory Committees. One was with respect to the gazetted staff and the other with respect to non-gazetted staff. The conclusions of the Advisory Committees were reviewed by the State Government and the opinion of the Central Government was sought and adopted by the State Government on decisions to be taken.

11. Thereafter in the month of April, 1957 the Government of India informed the State Government of its decision to establish two Advisory Committees one at the Centre and the other in the State for assisting the Central Government in dealing with all representations from service personnel affected by the reorganisation.

12. Following the recommendation of the Advisory Committee on the integration of gazetted services of Public Works Department and the suggestions made by the Government of India the State Government in the month of December, 1960 laid down certain principles for integration of services and preparation of common gradation list of Andhra and Hyderabad personnel belonging to Gazetted Engineering Service of the Public Works Department. The State Government prepared a provisional common gradation list of gazetted officers in the month of November, 1961.

13. The Telengana Engineers challenged the common gradation list by writ petitions in the Andhra Pradesh High Court. The Telengana Engineers challenged the equation of posts of the Sub-Engineers and Divisional Engineers to the posts of Assistant Engineers and Executive Engineers respectively in Andhra and the fixation of their inter se seniority. The grievance of the Telengana Engineers was that the Government of Andhra Pradesh had given preference to personnel of Andhra State by retrospectively relaxing rules in respect of probation as well as qualification in favour of Andhra Engineers. According to the Telengana Engineers the result of the relaxation of rules was that Andhra Engineers who could not be considered senior to Telengana Engineers on the appointed day, namely, 1 November 1956 were given seniority. The High Court in the month of July, 1964 dismissed the writ petitions on the ground that Telengana Engineers had an alternative remedy by way of representation to the Central Government under Section 115 (5) of the Act.

14. The Telengana Engineers thereafter filed petitions for special leave to appeal to this Court against the judgment of the Andhra Pradesh High Court. The Telengana Engineers also filed petitions in this Court under Article 32 of the Constitution. On 22 January, 1965 this Court dismissed the Writ Petitions and gave leave to the Telengana Engineers to withdraw the petitions for special leave. This Court in passing the orders said: "We hope and trust that the Central Government will take immediate steps to finalise the list of integration in the manner prescribed in section 115 of the States Reorganisation Act, 1956 and the State Government will take expeditious steps to place all the necessary materials before it".

15. The Central Government thereafter on 24 December, 1965 after considering the representations made by the personal of both the Telengana area and the Andhra State gave its final decision concerning the equaation of posts and inter se seniority of officers holding equivalent posts. Broadly stated, the Central Government equalised the posts of Andhra State and Telengana area under four categories. In the first category were placed Chief Engineers of Andhra and Telengana. In the second category were placed Superintending Engineers of both the places. The third necessary went to Executive Engineers of Andhra and Executive Engineer as well as Divisional Engineer of Telengana area. The Divisional Engineers of Telengana area were to be placed en bloc at the end of third category. In the fourth category were placed the Assistant Engineers of Andhra and Telengana and thereafter Sub-Engineer and Sub-Divisional Officer of Telengana. As to Sub-Engineers of Telengana area the decision was that they were to be placed en bloc below the Assistant Engineers from both the regions of Andhra and Telengana. Again, the Sub-Divisional Officers were to be placed en bloc at the bottom of the category.

16. Apart from equalisation of posts the Central Government laid down four principles with regard to inter se seniority. First, it was said that the pre-prohibition service rendered by the Andhra Officers which did not count for increments in the parent State should not be taken into account for determining their Inter-State seniority in the integrated gradation list of the Engineer Officers of the Public Works Department of the Reorganised State. The second principle was that as for the Executive Engineers from Hyderabad, the service rendered as Divisional Engineers should not be counted towards their seniority in the cadre of Executive Engineers. The third principle is the bone of contention between the Andhra Officers and the Telengana Officers. The Government of India decided that the action taken by the Government of Andhra Pradesh in regularising with retrospective effect and in relaxation of the normal rules, the temporary appointments made in the erstwhile Andhra State to the posts of Assignment Engineers and Executive Engineers by promotion from the next lower category of officers has the effect of altering the service conditions of Andhra employees to the detriment of the interest of the employees from the Telengana unit. Taking this and other connected factors into account the Government of India decided that action taken by the Andhra Pradesh Government in this regard is not in order and the representations submitted against these orders should be accepted. The fourth principle was that Class I status of the Hyderabad Assistant Engineers might be protected as personal to them.

17. Thereafter the Andhra Pradesh Government on 17 March, 1966 made a strong representation to the Central Government defending as essential the retrospective regularisation of the services of the personnel belonging to the former State of Andhra Pradesh. The State of Andhra Pradesh said that it was valid and proper to take into consideration the continuous service of the Andhra employees from a date anterior to 1 November, 1956.

18. The Government of India on 14 June, 1966 reiterated its earlier decision dated 24 December, 1965 and was of the view that it was not possible to alter the decision already taken against the action of regularisation with retrospective effect.

19. The Andhra employees thereupon filed writ petition No. 1363 of 1966 being Civil Appeal No. 2436 of 1969 questioning the decision of the Government of India dated 14 June, 1966.

20. Subsequent to the filing of the writ petition by the Andhra employees the Government of India on 22/24 December, 1966 gave a decision to the effect that the continuous service of some of the Andhra officers prior to 1 November, 1956 should be taken into account in determining the inter se seniority of the officers. This decision was in favour of some of the Andhra officers and was in partial modification of the decision of the Government of India dated 24 December, 1965 and reiterated on 14 June, 1966.

21. The decision of the Government of India dated 22/24 December, 1966 was that the Central Government classified Assistant Engineers of Andhra State whose services were regularised with retrospective effect into three categories. The first category was in respect of those Assistant Engineers of Andhra State who had satisfactorily completed their probation in the lower post and had also put in the required number of years of service in the lower cadre on the date on which they were promoted as Assistant Engineers and whose cases could not be referred to the Public Service Commission in time because of administrative delay. In the second category fell those who had satisfactorily completed their probation in the lower post but had not completed the requisite number of years of service in the lower cadre on the date on which they were promoted as Assistant Engineers but completed the minimum required service for promotion on some dates before 1 November, 1956. In the third category were placed those who had either not satisfactorily completed their probation in the lower cadre and/or had not completed the required number of years of service in the lower cadre on the date on which they were promoted as Assistant Engineers and also had not completed the minimum required service for promotion on any date before 1 November, 1956.

22. The decision of the Government of India dated 22/24 December, 1966 was that the Central Government had no objection to retrospective regularisation of the services of the officers falling under the first category. With regard to the second category the Central Government had no objection to the regularisation of the services of the officers falling under that category provided that their services were regularised not from the dates on which they were promoted as Assistant Engineers but from the dates on which they were eligible for promotion under the normal rules. In other words, the services of officers in the second category might be regularised with effect from the dates prior to 1 November, 1956 on which they completed the minimum number of years of service in the lower cadre necessary for promotion as Assistant Engineers. As regards the officers falling under the third category the Central Government decided that their services might not be regularised from dates prior to 1 November, 1956. The Central Government however said that the officers in the third category should be included along with their conferees from the Telengana area of Hyderabad in accordance with the prescribed principles and procedure. Thereafter those in the third category should take their turn in accordance with their seniority in the final list for promotion to the post of Assistant Engineers.

23. The Telengana area officers filed three writ petitions in the Andhra Pradesh High Court. These were numbered 799, 833 and 896 of 1967. In writ petition No. 799 of 1967 the Telengana area officers asked for mandamus directing the respondents to treat the post of Sub-Engineer of Telengana area as equivalent to the post of Assistant Engineer of Andhra State and integrate the services of Sub-Engineers of Telangana area and Assistant Engineers of Andhra State according to the agreed principles at the Chief Secretaries Conference in the months of April and May, 1956. The Telengana area officers also asked for an order quashing the decision of the Government of India dated 22/24 December, 1966 approving the retrospective regularisation and relaxation of rules in regard to temporary appointments by the Andhra State to the post of Assistant Engineers.

24. In writ petition No. 833 of 1967 the Telengana area officers asked for mandamus directing the respondents to treat the posts of Executive Engineers of Telengana area as equivalent to the post of Executive Engineers (Special Grade) of Andhra State and to treat the post of Divisional Engineers of Telengana region as equivalent to the post of Executive Engineer (Ordinary Grade) of Andhra region and to integrate their services according to the agreed principles at the Chief Secretaries Conference in the months of April and May, 1956. The Telengana officers also asked for orders quashing the decision dated 22/24 December, 1966 of the Government of India approving the regularisation with retrospective effect and relaxation of the normal rules with regard to temporary appointments made by Andhra State to the post of Executive Engineer and by promotion from the next lower category of officers.

25. In writ petition No. 896 of 1967 the Telengana area officers asked for mandamus directing the respondents to treat the posts of Assistant Engineers of Telengana region as a class superior to the post of Andhra State Engineers and the post of Sub-Engineers and Sub-Divisional Officers of Hyderabad State as equivalent to the post of Assistant Engineers of Andhra State and to integrate the services of the personnel of the two regions by adhering to the agreed principles at the Chief Secretaries Conference in the months of April and May, 1956. The Telengana area officers also asked for an order quashing the decision dated 22/24 December, 1966 of the Government of India approving the retrospective regularisation and relaxation of normal rules with regard to temporary appointments made in Andhra State to the post of Assistant Engineers and by promotion from the next lower category of officers.

26. The Andhra officers filed writ petition No. 1439 of 1967 and asked for order quashing the decision dated 22/24 December, 1966 of the Government of India in so far as it related to rejection of regularisation with retrospective effect of officers of Andhra State falling under categories (b) and (c) mentioned in that decision.

27. The High Court by a common judgment dealt with writ petitions Nos. 1363 of 1966 and 1439 of 1967 filed by the Andhra officers and writ petitions Nos. 799, 833 and 896 of 1967 filed by the Telengana area officers. The decision of the Government of India dated 22/24 December, 1966 was quashed on the ground that it suffered from the vice of denial of principles of natural justice to the

Telengana area officers. The High Court said that it was open to the Government of India to adhere to its previous decisions of 24 December, 1965 and 14 June, 1966 or to vary the decisions but the Central Government was to give an opportunity to the services affected to make their representations. The High Court further said that if the Central Government wanted to vary the earlier decisions of 24 December, 1965 and 14 June, 1966 then all the services affected should be given an opportunity to make their representations. The Central Government was in that case in consultation with the Central Advisory Board to lay down principles of equation of posts and fixation of inter se seniority and to finalise the preparation of common gradation lists.

28. The High Court did not however give any decision on the merits of the question of retrospective regularisation of the services of the Andhra Engineers or the equation of posts. The High Court further said that they refrained particularly from examining the individual cases of the Andhra State officers inasmuch as the same might not arise if the principles of equation of posts and integration were settled after due consideration of the representation on fair and equitable basis.

29. The High Court however expressed the view that the temporary promotions of Executive Engineers and Assistant Engineers in the Andhra State prior to 1 November, 1956 were stop-gap or fortuitous arrangements.

30. In the result, the High Court dismissed the writ petitions Nos. 1363 of 1966 and 1439 of 1967 filed by the Andhra officers. The High Court allowed writ petitions Nos. 799, 833 and 896 of 1967 filed by the Telengana officers. Civil Appeals Nos. 2436 and 2439 of 1969 arise out of writ petitions Nos. 1363 of 1966 and 1439 of 1967 filed by the Andhra State officers. Civil Appeals Nos. 2437 and 2438 of 1969 arise but of writ petitions Nos. 799 and 833 of 1967 and the appellants in this Court are the Andhra State officers.

31. It may be stated here that Civil Appeals Nos. 157, 158 and 343 of 1969 are pending in this Court. These three appeals arise out of writ petitions Nos. 799, 833 and 896 of 1967 filed in the Andhra Pradesh High Court by the Telengana area officers. The Telengana area officers filed those three appeals challenging the finding of the High Court that the decision of the Central Government dated 24 December, 1965 was not final and that it was open to the Central Government to consider the temporary (stop-gap or fortuitous) service of Engineers from a particular region for the purpose of seniority after giving an opportunity to the affected persons and after consultation with the Central Advisory Board.

32. Counsel on behalf of the Andhra State officers contended that the decision of the Central Government dated 22/24 December, 1966 was not in violation of the principles of natural justice inasmuch as Telengana area officers had made representations in the year 1965. It was also said that the decision of the Central Government dated 22/24 December, 1966 was nothing more than accepting in part the recommendations of the Central Advisory Committee given in the month of

November, 1965. According to the appellants; the Telengana area officers made their representations to the Central Advisory Committee and also to the Central Government. The High Court correctly, (sic) held that the order of the Central Government dated 22/24 December, 1966 was made without giving the Telengana area officers any opportunity of making representation against the course of action which the Central Government adopted by that decision.

33. The second contention on behalf of the appellants, namely, the Andhra State officers was that the High Court was wrong in holding that the temporary service of the Andhra officers was a stop-gap or fortuitous arrangement. It was said on behalf of the Andhra officers that there was no bar in the States Reorganisation Act to regularising the services which were irregular in the sense that the Public Service Commission was not consulted at the time of appointment but such consultation was done later. It was also said that the appointments in the Andhra State were initially irregular, but they were not invalid appointments. It was contended that irregular service, if any, must be counted for the purpose of integration of services and fixation of seniority. The retrospective regularisation and relaxation of rules was defended by counsel for the appellants to be within the power of the Andhra Pradesh State to deal with its own old personnel on the ground that such power was not only not taken away by the States Reorganisation Act but was preserved.

34. The rival contentions on behalf of the Telengana area officers were that the Central Government under section 115 (5) of the Act was not competent to confer any new rights but only to determine the rights existing as on the mid-night of 31 October, 1956. It was specially emphasised on behalf of the respondents, the Telengana area officers, that the Andhra Pradesh State had no jurisdiction to regularise the services of the Andhra State officers with retrospective effect from a date anterior to 1 November, 1956. The reason advanced against such retrospective regularisation was that it would confer the right of seniority which would pertain only to regular service and thereby enable the Andhra State officers to occupy a place in the inter-State seniority which they could not have but for the regularisation. Irregular appointment was also said to confer no right to the post. The reason was that the appointment was temporary and therefore it conferred no right. Counsel on behalf of the Telengana area officers contended that the principles arrived at the Chief Secretaries Conference indicated that only regular service, whether temporary or permanent, could be counted to determine the length of continuous service.

35. It is not necessary to express any opinion in these appeals as to whether the services of Andhra State officers were stop-gap or fortuitous arrangements. Under the States Reorganisation Act power is conferred on the Central Government to bring about the integration of services in the State of Andhra Pradesh by ensuring fair and equitable treatment to all persons affected by the provisions of S. 115 of the Act. The Government of Andhra Pradesh is under a duty to bring all relevant facts to the notice of the Central Government. The Andhra State Officers are to present their view point in order to ensure that the final decision of the Central Government is fair and equitable to all employees of the new State. The Telengana area officers are also entitled to make representations in order to ensure integration of the services and fair and equitable treatment to all persons affected by the provisions of the section.

36. Under the States Reorganisation Act the Central Government is entrusted with the power of the division and integration of the services and the ensuring of fair and equitable treatment to all persons affected by the provisions of section 115 of the Act in regard to allotment of officers from an existing State to a successor State. With regard to powers of the State Section 115 (7) of the Act provides that after the appointed day (1 November, 1956) nothing shall affect the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State. There is however an important proviso to sub-section (7). It is that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

37. The power of the Central Government with regard to division and integration of service came up for consideration before this Court in *Union of India v. P. K. Roy* (1968) 2 SCR 186 = (AIR 1968 SC 850). It was said there that the work of integration requires the formulation of principles, the actual preparation of preliminary gradation list in accordance with the principles, the invitation of representations by the persons affected thereby, the consideration of representations and the publication of the final gradation list incorporating the decision upon the representations. The Act also empowers the Central Government to establish Advisory Committees for the purpose of assisting the Central Government. In *P. K. Roy's case*, (1968) 2 SCR 186 = (AIR 1968 SC 850) (supra) the ruling of this Court was that the preliminary work of preparation of the gradation list on the principles decided upon by the Central Government could be left to the State Government concerned and there would be no mischief of delegation of power by that course of action. The power of the Central Government under S. 115 of the Act is that the decision has to be of the Central Government. The Central Government can therefore take the aid and assistance of the State Government in the matter of effecting the integration of the services but the final integration is to be done only with the sanction and approval of the Central Government. In the present appeals, there is no question of delegation. The integration of services is to be done by the Central Government. In the task of integration of services the Central Government will consider the rival contentions of Andhra officers and Telengana area officers as to whether the services of the Andhra officers were stop-gap or fortuitous arrangements.

38. The power of the State Government to change conditions of service within the meaning of S. 115 (7) of the Act was considered by this Court in *N. Raghavendra Rao v. Deputy Commr. South Kanara*, (1964) 7 SCR 549 = (AIR 1965 SC 136). This Court said "The broad purpose underlying the proviso to S. 115 (7) of the Act was to ensure that the conditions of service should be changed except with the prior approval of the Central Government". Under Art. 309 of the Constitution the power of the State is preserved to make rules. The proviso to Section 115 (7) of the Act imposes a limitation on the State not to vary the conditions of service applicable immediately before 1 November, 1956 to the disadvantage of persons mentioned in sub-section (1) or (2) of Section 115 of the Act. In *Raghavendra Rao's case*, (1964) 7 SCR 549 = (AIR 1965 SC 136) (supra) the Central Government on 11 May, 1957 addressed a memorandum to all State Governments. The Central Government there said that some conditions of service should be protected. The matters for

protection mentioned were substantive pay of permanent employees, certain type of special pay and leave rules in certain cases. With regard to departmental promotion, the Central Government memorandum said that the question whether any protection should be given in respect of rules and conditions applicable to Government servants affected by reorganisation immediately before the date of reorganisation in the matter of travelling allowance, discipline, control, classification, appeal, conduct, probation and departmental promotion was also considered. The Central Government memorandum agreed with the State view that it would not be appropriate to provide for protection in the matter of those conditions. This memorandum was construed by this Court to amount to an approval by the Central Government of change of service rules by the State. It, therefore, follows that if there is any question of change of conditions of service it will have to be found out whether in the first place it amounts to change in the conditions of service and, if so, secondly to find out whether there was prior approval of the Central Government. One of the contentions advanced by the Telengana officers in the present appeals was that the retrospective regularisation and relaxation of rules by the State of Andhra Pradesh subsequent to the appointed day would amount to change in conditions of service and conferment of new advantages on Andhra officers to the detriment to the Telengana officers. It will be within the province of the decision of the Central Government under S. 115 of the Act in regard to integration of services and ensuring fair and equitable treatment to all persons whether the retrospective regularisation and relaxation of rules will amount to any change in the conditions of service or will result in denial of fair and equitable treatment to any of the persons affected thereby.

39. The Central Government under the Act is required to effect the integration of services of officers in the Telengana area and officers of the Andhra State. The Central Government will have to decide whether the regularisation of promotions of Andhra Engineers and relaxation of rules and retrospective regularisation was permissible. The Central Government will determine finally the principles governing the equation of posts and the preparation of common gradation lists.

40. In the result, the order of the High Court quashing the decision of the Central Government dated 22/24 December, 1966 is upheld. The observations of the High Court on the temporary service of the Andhra officers to be stop-gap or fortuitous arrangements are set aside. The Central Government will determine the principles governing the equation of posts. The Central Government will now proceed with the integration of services of Telengana area officers and Andhra State officers and determine the principles governing the equation of posts and prepare gradation lists after giving opportunities to the persons affected to make their representations.

41. In view of the divided success of both the parties, they will bear their costs both in the High Court and in this Court.

Order accordingly.