

V. T. Khanzode and Others

Vs

Reserve Bank of India and Another

Writ Petitions Nos. 4158-4182 of 1978

(CJI Y. V. Chandrachud, Syed M. Fazal Ali, A. D. Koshal JJ)

05.03.1982

JUDGMENT

CHANDRACHUD, C.J. –

1. These are 25 petitions under Article 32 of the Constitution of India challenging the decision of the Reserve Bank of India as regards the introduction of common seniority and inter-group mobility amongst different grades of officers belonging to Group I (Section A), Group II and Group III, with retrospective effect from May 22, 1974. That decision or order is contained in Administration Circular No. 8 dated January 7, 1978 as also in Office Order No. 679 dated April 27, 1978 and has been acted upon in the draft combined seniority list of officers in Grade B (appointed as such prior to January 1, 1970) and in Grades C, D, E and F. The contention of the petitioners is that the aforesaid circular, office order and combined seniority list are violative of their fundamental rights under Articles 14 and 16 of the Constitution, and are also ultra vires the power, jurisdiction and competence of the Reserve Bank of India, being without the authority of law and in contravention of the provisions of the Reserve Bank of India Act, 1934.

2. The facts leading up to the impugned decision dated January 7, 1978, the office order dated April 27, 1978 and the draft combined seniority list are as follows : The Reserve Bank of India (respondent 1) was established under the Reserve Bank of India Act, 1934, hereinafter referred to as 'the Act'. Under Reserve Bank of India (Staff) Regulations, 1948 framed under Section 58 of the Act, the terms and conditions of service of the staff(including officers) of the respondent-Bank were revised and regulated. These Regulations were amended from time to time. Provisions regarding record of service, seniority and promotion are contained in Regulations 27 to 30 (Chapter III), which read thus :

27. Record of service. - A record of service shall be maintained by the Bank in respect of each employee at such place or places and shall be kept in such form and shall contain such information as may be specified from time to time by the Chief Manager.

28. Seniority. - An employee confirmed in the Bank's service shall ordinarily rank for seniority in his grade according to his date of confirmation in the grade and an employee on probation shall ordinarily rank for seniority among the employees selected along with him in the same batch according to the ranking assigned to him at the time of selection.

29. Promotion. - All appointments and promotions shall be made at the discretion of

the Bank and notwithstanding his seniority in a grade, no employee shall have a right to be appointed or promoted to any particular post of grade.

30. (1) An employee transferred from one appointment to another or confirmed in a grade or appointment higher than his substantive grade or appointment, shall be liable to be reverted without notice at any time within one year of such transfer or confirmation.

(2) An employee who has been appointed to officiate in a higher grade or appointment, or whose confirmation in a higher grade or appointment is subject to his undergoing probation for any specified period or otherwise, shall be liable to be reverted without notice at any time when he is so officiating or undergoing probation.

(3) Nothing in sub-regulations (1) and (2) shall affect the provisions of Regulation 47.

3. Ever since the date of the Staff Regulations of 1948 and even prior thereto, there were "groups" constituted for the different departments of the Reserve Bank, and officers were required to exercise irrevocable options for service in any particular group. Those who had opted for a service in a particular group were to be normally eligible for promotion in that group only. The grouping was revised with effect from April 1, 1951 when employees were asked to exercise their option with regard to the group of their choice. In 1951, the various departments of the Bank were re-classified into three groups, Group I, Group II and Group III. This system of grouping continued until 1955, in which year the Bank found it necessary to reorganise the Agricultural Credit Department. Accordingly, the staff attached to the various departments were regrouped into Groups I, II, III and IV, with effect from April 1, 1957. In each of these Groups, there are six grades of officers based on pay scales, namely, Grades A, B, C, D, E and F, the lowest being Grade A and the highest being Grade F. Each group had its own seniority list, that is to say, there were four separate seniority lists, one for each group. The latest of such lists, prior to the impugned combined seniority list, is dated July 1, 1976.

4. The Reserve Bank had constituted a Cadre Review Committee in 1970, comprising Shri Justice J.L. Nain, then a sitting Judge of the Bombay High Court, Shri V. Isvaran, I.C.S. (Retd.) and Professor N.S. Ramaswamy, a Management Expert. The Committee submitted a report in October 1972, on the basis of which the Bank issued Administration Circular No. 15, dated May 22, 1974, specifying the decisions taken by it in the light of the recommendations made by the Committee. One such decision which the Bank took was to prepare a common seniority list for and to provide for inter-group mobility at the lowest level of officers in each group, namely, Grade A officers, including those who were promoted to Grade B on or after January 1, 1970. With regard to higher grades (including officers in Grade B promoted prior to January 1, 1970), the Bank decided to retain the "group-wise seniority as at present". The inter-group mobility in Grades C and D was to be introduced only to a limited extent, namely, "on a swap basis" : It was first to be introduced in Grade C and thereafter to be extended "in due course" to the officers in Grade D. The two higher grades viz. Grades E and F were left untouched and no intention was expressed in the above circular to introduce either combined seniority or any scheme for inter-mobility in these grades. In accordance with the decisions expressed in the aforesaid circular dated May 22, 1974, the Bank published separate seniority lists of officers in Grade B and above for the years 1974, 1975 and 1976. The petitioners, all of whom are officers in Group I, were given their due seniority as of July 1, 1976.

5. By the impugned Administration Circular No. 8, dated January 7, 1978, the Bank stated that it had decided to combine the seniority of all officers on the basis of their total length of service (including officiating service) in Group I (Section A), Group II and Group III. The seniority of all officers in each of the three groups was to be combined with effect from May 22, 1974 on the basis of their total length of service, including officiating service, in the grade in which they were then posted on a regular basis. The circular introduced combined seniority with retrospective effect from May 22, 1974 (the date of Administration Circular No. 15) as it was "fair and equitable to the officers as a class".

6. Briefly stated, the effect of this decision is that the group-wise system of seniority which was in existence for more than 27 years stands substituted by a combined seniority for officers in Group I (Grade A) and in Groups II and III with retrospective effect. That has adversely affected the existing seniority of officers, particularly of those in Group I, who are now placed many places below their existing position of seniority, some by several hundred places.

7. According to the petitioners, the Reserve Bank has no power, competency or jurisdiction to introduce the impugned scheme which discriminates against officers in higher posts, adversely affecting their vested and existing rights of seniority. The scheme, according to them, is without any rationale and far from furthering the efficient functioning of the Bank, it will affect it adversely by compelling officers to leave positions in which they had acquired long and valuable experience and work in posts for which they possess no expertise. For example, for the Department of Banking Operations and Development (in Group II), the emphasis was laid on the commercial banking experience of officers whereas, for recruitment and selection in the Agricultural Credit Department (in Group III), the emphasis was on experience in cooperation and agricultural finance. That is why the Bank had laid the pre-condition that the selected officer should give a specific and irrevocable undertaking to serve in the Group for which he was selected. Another grievance of the petitioners is that although the Bank has stated in paragraph 9.2.1 of the impugned circular that the seniority of officers will be combined on the basis of their total length of service, the seniority list has, in fact, been prepared in a very arbitrary and inequitable manner. In a large number of cases, it is alleged, the actual service rendered by the officers concerned has been arbitrarily reduced and adjusted in the length of service of other officers, and the latter have been notionally treated as officiating in higher grades from dates much prior to their actual promotions to those grades. In some cases, on the other hand, officiation in higher posts has been wholly ignored. This has generally resulted in accelerated and discriminatory benefit being conferred upon officers mostly belonging to Groups II and III, vis-a-vis the petitioners and the other officers in Group I. The petitioners apprehend that a large number of officers who have been promoted since January 1, 1976 against normal vacancies in their own departments on the basis of their experience and expertise of the relative work, are likely to be reverted and replaced by officers from other groups, mostly from Group III, who were selected for the specific job requirements of that group and who have no experience of the work done in the Group I departments. The petitioners also challenge the retrospective effect given to the impugned circular from May 22, 1974 as irrational and arbitrary. Further, according to them, the said circular dated January 7, 1978, the office order dated April 27, 1978 and the combined seniority list are violative of the Reserve Bank (Staff) Regulations, 1948.

8. In reply to the writ petition, a counter-affidavit has been filed on behalf of the Reserve Bank by Shri S.L. Jathar, Deputy Manager in the Department of Administration and Personnel, Central Office, Bombay. The case of the Bank, as disclosed in that affidavit is as follows : The Reserve Bank of India (Staff) Regulations, 1948, are not statutory in character, not having been framed under Section 58 of the Reserve Bank of India Act, 1934. The said Staff Regulations did not

provide for the division of the staff of the Bank into different groups but only categorised them as Officers, Personal Assistants, etc. In view of the growing need for specialisation in departments handling research work and developmental activities, a functional segregation of departments into four groups, with group-wise seniority for officers, was introduced in the year 1951. Appendix XII to the Report of the 'Reserve Bank of India Cadre Review Committee', which refers to the grouping of the departments from time to time, shows that the groupings were not static and fixed but were changed as and when necessary. Group I was composed of General Departments dealing with the day-to-day operational functions of the Bank, including accounts and organisational matters, Group II of Departments dealing with regulatory and inspection functions over the money market; Group III of Departments dealing with the cooperatives and agricultural credit institutions; and Group IV of Research Departments. Each Department had a separate line of seniority and although the Bank had the right under the Staff Regulations to post any employee to any group, each group operated as an independent seniority unit and the employees were eligible for promotion within their group only. It was, however, noticed that the group system had resulted in glaring inequalities in promotional opportunities in the various Departments, because of the accelerated pace of expansion of Departments in some of the groups, wherein relatively junior employees were able to secure earlier promotions and confirmations. So far as the non-officer staff was concerned, the Bank took several steps from time to time to equalise their chances of promotion. Finally, in pursuance of an agreement with the All-India Reserve Bank Employees' Association, which is a representative Association of Class III employees of the Bank, the Bank introduced a combined seniority scheme for clerical staff in May 1972 under which, the separate seniority lists of clerical employees in Class III were merged into one list with effect from May 7, 1972, irrespective of their respective groups. The validity of that scheme was challenged in several High Courts and the matter came up on appeal to this Court from a decision of the Delhi High Court which has struck down the scheme. This Court, in *Reserve Bank of India v. N.C. Paliwal* ((1977) 1 SCR 377 : (1976) 4 SCC 838 : 1977 SCC (L & S) 82 : 1976 Lab IC 1483.) upheld the scheme. The Cadre Review Committee whose report was received by the Bank on October 11, 1972 recommended, broadly, the gradual introduction of inter-mobility of officers in different groups and the framing of a common seniority list, except for officers in specialised groups like Economists, Statisticians, Lawyers and Engineers. According to the Committee, the most rational basis for drawing up a common seniority list was to go by the date of entry of each officer in a grade in a continuous officiating capacity. The Bank announced its decision as regards the Committee's recommendations, by the Administrative Circular No. 15 dated May 22, 1974. In December 1975, the Bank appointed a Departmental Committee under Shri C.L. Thareja, the then Chief Manager of the Bank, to work out the modalities of integration of the group-wise seniority lists of officers in the higher grades which had not yet been integrated. That Committee submitted its report on December 15, 1976. It unanimously recommended simultaneous introduction of combined seniority for all grades but, its members could not agree on the date to be adopted for integration of the group-wise seniority lists. The Chairman and one member favoured January 1, 1976 as the date of integration while the remaining two members favoured January 1, 1970. A Committee of the Central Board of the Bank decided to appoint May 22, 1974 as the date for integration as a *via media* and also because, it was on that date that the Bank had announced to its officers its decision on combined seniority, mobility and interchangeability. Fixation of January 1, 1970 as the date for integration would have adversely affected the interest of Group I officers while the other date, January 1, 1976, would have adversely affected the interests of officers in other groups.

9. That is the answer made by the Reserve Bank to the petition. Originally, the writ petition was filled against two respondents only : (1) The Reserve Bank of India and (2) the Chief Manager,

Reserve Bank of India, Department of administration and Personnel, Central Office, Bombay. The petitioners did not implead to the petition any of the officers belonging to the other groups who are likely to be affected if the relief sought by the petitioners is granted. Later, by an order dated July 24, 1978, respondents 3 and 4 were allowed to join in the petition on their own application. Respondent 3, Shri M.P. Saxena, was then the Deputy Chief Officer, Department of Banking Operations and Development, New Delhi, while respondent 4, Shri S. Acharya, was Deputy Chief Officer, Agricultural Credit Department, Chandigarh.

10. Respondent 3, whose counter-affidavit has been adopted by respondent 4, has raised a preliminary objection to the maintainability of the writ petition on the ground that hundreds of officers similarly situated who are all specifically identifiable and who would be prejudicially affected if the prayers in the writ petitions are granted, have not been impleaded as respondents. According to him, this is a case of a few privileged persons trying to retain their undue privileges at the cost of a scheme introduced to improve the operational efficiency of the Institution and for the common good of the officers as a class. Respondent 3 has also raised the objection that no writ petition can lie under Article 32 to enforce or challenge service conditions which are purely contractual.

11. The contentions raised by respondent 3 in his counter-affidavit may be summed up thus : Groupings and regroupings of departments have been undertaken by the Reserve Bank as and when the need arose in the context of changing requirements, and all such groupings and regroupings have been done as a result of administrative decisions and given effect to through appropriate administration circulars. While the expedient of group-wise promotions based on group-wise seniority lists served the immediate convenience over a period of time, this artificial segregation resulted in compartmentalised approach to questions of policy, impairing thereby the overall efficiency of the institution as a whole. Further, it also led to other anomalies and imbalances, more particularly in promotional opportunities of the staff attached to different groups. In some groups, expansion was quicker and greater than in others. It is in order to meet this situation that several measures were initiated by the Bank and by the associations of employees of various categories. Since these measures did not meet the situation adequately, the Bank initiated a dialogue with the respective Associations for introducing a combined seniority for the various grades in different groups. For officers at the base level, namely, A Grade (direct recruits), the Bank had maintained a common list of seniority in place of group-wise lists since 1968. Thereafter, groupings and regroupings have been a continuous process to meet the needs of the changing situations, and the present scheme of combined seniority which is one such, has come about as a matter of administrative, historical and functional necessity. The implementation of the scheme of inter-group mobility is being stalled by the Bank's internal administration, which was controlled solely by a small section of officers drawn from Group I, which all along had unfair advantage of accelerated promotions as compared with officers in Groups II and III. Thus, the petitioners' plea is an attempt to perpetuate the unfair and unequal privileges which they had enjoyed over the years without any justification and with detriment to Bank's interests - a fact which has been recognised by an impartial tribunal like the Cadre Review Committee. The Staff Regulations of 1948 are in the nature of standardised contractual conditions of service. They were not framed under Section 58 of the Act and therefore, it is competent to the Bank to alter them by administrative circulars.

12. On these pleadings, the three main questions which arise for our consideration are, firstly, whether the Reserve Bank of India (Staff) Regulations, 1948 are statutory in character; secondly, whether it is competent to the Bank to provide for conditions of service of its Staff by administrative circulars; and, thirdly, whether the impugned circular and seniority list offend against

the provisions of Article 14 and 16 of the Constitution. The contention of the petitioners is that the Regulations were framed under Section 58 of the Reserve Bank of India Act, 1934; that they cannot be altered by administrative circulars; that conditions of service cannot be framed by administrative circulars but must be framed by Regulations made under Section 58 of the Act; and that, the impugned circular and seniority list violate their right to equal treatment in the matter of their service conditions and career. The Reserve Bank and the contesting respondents have joined issue with the petitioners on all of these questions.

13. Turning to the first question, Section 58(1) of the Reserve Bank of India Act, 1934 provides that :

The Central Board may, with the previous sanction of the Central Government, make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act.

Sub-section (2) of Section 58 provides that in particular and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the matters mentioned in the various clauses of that sub-section. Clause (j) refers to "the constitution and management of staff and superannuation funds for the officers and servants of the Bank", while clause (r) refers to the subject : "generally, for the efficient conduct of the business of the Bank". Sub-sections (3) and (4) were inserted in Section 58 by Act 51 of 1974. By sub-section (3), any regulation made under Section 58 shall have effect from such earlier or later date as may be specified in it. Sub-section (4) requires that every Regulation shall, as soon as may be after it is made by the Central Board, be forwarded to the Central Government which, in turn, shall cause a copy of the same to be laid before each House of Parliament. Thereafter, the Regulation takes effect in accordance with the modifications, if any, made by the Parliament.

14. A side argument may be disposed of briefly. It was suggested on behalf of the petitioners, though faintly, that the power to frame service conditions is derived from clause (j) of Section 58(2) of the Act. It is impossible to accept this contention. That clause cannot be split up to read : "the constitution and management of staff; and superannuation funds for the officers and servants of the Bank". It hardly makes any sense that way. What the clause means is : "the constitution and management of staff funds and superannuation funds for the officers and servants of the Bank". An important subject like the service conditions of the staff could not have been provided for in such a dubious and indirect manner. Nor indeed, could it have been described as "constitution and management of staff". A rule of seniority cannot properly fall under such a head. We endorse the view taken by the Calcutta High Court in *Reserve Bank Employees' Association v. Union of India* ((1980) 2 SLR 167) that Section 58(2)(j) refers to staff funds and superannuation funds and that it cannot comprise service conditions.

15. But, the provisions of sub-section (2) of Section 58 cannot be taken to be exhaustive of the power of the Central Board to make regulations. It is well-settled that where a specific power is conferred without prejudice to the generality of a power already conferred, the specific power is only illustrative and cannot restrict the width of the general power. (See *King-Emperor v. Sibnath Banerji* (72 IA 241 : AIR 1945 PC 156 : 221 IC 243) and *Om Parkash v. Union of India* (AIR 1971 SC 771, 773, 774 : (1970) 3 SCC 942, 944 (para 6)). Therefore, the ambit of the general power conferred by sub-section (1) cannot be attenuated by limiting it to matters specified in sub-section

(2) of Section 58.

16. Section 58(1) of the Act confers power on the Central Board of Directors of the Bank to make regulations in order to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of the Act. It seems to us clear that it is not only convenient but manifestly necessary to provide for the service conditions of the Bank's staff in order to give effect to the provisions of the Act. The Act was passed in order to constitute a Bank for achieving economic purposes of the highest national importance : regulating the issue of Bank notes, keeping reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage. It is, in our view, not open to any question either on the basis of reason or authority that the power to provide for service conditions of the staff is at least incidental to the obligation to carry out the purposes for which the Bank was constituted. As observed in *Armour v. Liverpool Corporation* (1939 Ch 422, 434, 435 : (1939) 1 All ER 363 : 108 LJ Ch 147 : 160 LT 203) :

To assist in removing from the minds of its employees the fear of an unprotected old age, to foster their happiness and contentment, and to procure their good and efficient service, are objects which, even if economic considerations alone count, are incidental, if not vital, to the proper carrying on of any undertaking as well by a municipal as by any other corporation.

The doctrine of ultra vires in relation to the powers of a statutory corporation has to be understood reasonably and so understood, "whatever may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised ought not (unless expressly prohibited) to be held by judicial construction, to be ultra vires". (See *Attorney-General v. Great Eastern Rly. Co.* ((1880) 5 AC 473 (HL))). The Central Board has, therefore, the power to make service regulations under Section 58(1) of the Act.

17. Shri Nariman pleads for such a power but his purpose in doing so is to urge that Section 58(1) is the sole repository of the power of the Central Board to provide for the conditions of service of the Bank's staff. He contends that statutory corporations like the Reserve Bank of India have no inherent or residuary powers and that they must seek and find their powers and obligations in the charter of their creation. Therefore, the argument proceeds, it is imperative that regulations governing terms and conditions of service of the Bank's staff must be framed under Section 58(1) only and cannot be framed by administrative circulars issued in the exercise of any non-statutory power or authority.

18. In support of this submission, reliance is placed by the learned counsel on the statement of law contained in paragraphs 1326 and 1333 (pages 775 and 779) of Halsbury's Laws of England, 4th Edn. In paragraph 1326 it is stated that :

Corporations may be either statutory or non-statutory, and a fundamental distinction exists between the powers and liabilities of the two classes. Statutory corporations have such rights and can do such acts only as are authorised directly or indirectly by the statutes creating them; non-statutory corporations, speaking generally, can do everything that an ordinary individual can do unless restricted directly or indirectly by statute.

Paragraph 1333 says that :

The powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation, or may be fairly regarded as incidental to, or consequential upon, those things which the legislature has authorised. What the statute does not expressly or impliedly authorise is to be taken to be prohibited.

There is no doubt that a statutory corporation can do only such acts as are authorised by the statute creating it and that, the powers of such a corporation cannot extend beyond what the statute provides expressly or by necessary implication. If an act is neither expressly nor impliedly authorised by the statute which creates the corporation, it must be taken to be prohibited. This cannot, however, produce the result for which Shri Nariman contends. His contention is not that the Central Board has no power to frame staff regulations but that it must do so under Section 58(1) only. On that argument, it is material to note that Section 58(1) is in the nature of an enabling provision under which the Central Board "may" make regulations in order to provide for all matters for which it is necessary or convenient to make provision for the purpose of giving effect to the provisions of the Act. This provision does not justify the argument that staff regulations must be framed under it or not at all. The substance of the matter is that the Central Board has the power to frame regulations relating to the conditions of service of the Bank's staff. If it has that power, it may exercise it either in accordance with Section 58(1) or by acting appropriately in the exercise of its general power of administration and superintendence.

19. The statement of law in Halsbury puts emphasis on the limitation on powers of statutory corporations in the light of the provisions of statutes under which they are constituted. From that point of view, the provisions of Section 7(2) of the Act are important. By that section, the general superintendence and direction of the affairs and business of the Bank are entrusted to the Central Board of Directors, which is empowered to exercise all powers and do all acts and things which may be exercised or done by the Bank. Matters relating to the service conditions of the staff are, pre-eminently, matters which relate to the affairs of the Bank. It would therefore be wrong to deny to the Central Board the power to issue administrative directions or circulars regulating the conditions of service of the Bank's staff. To read into the provisions of Section 58(1) a prohibition against the issuance of such administrative directions or circulars is patently to ignore the scope of wholesome powers conferred upon the Central Board of Directors by Section 7(2) of the Act. Indeed, this section brings the impugned circular and seniority list within the rule mentioned in Halsbury : they have the authority of the statute.

20. In this behalf, reliance is also placed by Shri Nariman on a decision of a Constitution Bench of this Court in *Sukhdev Singh v. Bhagatram* ((1975) 3 SCR 619 : (1975) 1 SCC 421, 434-435 and 462 : 1975 SCC (L & S) 101 : (1975) 1 LLJ 399 : (1975) 45 Com Cas 285). Ray, C.J., who spoke for three members of the Bench, observes in his judgment that the powers of statutory bodies are derived, controlled and restricted by the statutes which create them and that any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires. The concurring judgment of Mathew, J. also contains observations to the same effect (see pages 628, 630 and 659 of the Report). This enunciation of law is to the same effect as in Halsbury and our answer is the same. While issuing the administrative circular governing the staff's conditions of service, the Central Board of Directors has neither violated any statutory injunction nor indeed has it exercised a power which is not conferred upon it by the statute. The circular is strictly within the confines of Section 7(2).

21. So long as staff regulations are not framed under Section 58(1), it is open to the Central Board to issue administrative circulars regulating the service conditions of the staff, in the exercise of power conferred by Section 7(2) of the Act. In *T. Cajee v. U. Formanik Siem* ((1961) 1 SCR 750 : AIR 1961 SC 276 : (1961) 1 LLJ 652) a District Council was constituted under the Sixth Schedule to the Constitution, for the United Khasi and Jaintia Hills District in the Tribal Areas of Assam. The rules in the Sixth Schedule empowered the District Council to make laws with respect to various matters regarding the administration of the district, including the appointment or succession of Chiefs and Headmen. No law was however made regulating such appointments. Even so, it was held by this Court that the District Council had the power to appoint or remove administrative personnel under the general power of administration vested in it by the Sixth Schedule. Delivering the leading judgment of the Bench, Wanchoo, J., said that where executive power impinges upon the rights of citizens, it will have to be backed by an appropriate law; but where executive power is concerned only with the personnel of the administration, it is not necessary that there must be laws, rules or regulations governing the appointment of those who could carry on the administration under the control of the District Council. The District Council had therefore the power to appoint officers by virtue of the fact that the administration was vested in it. In *B.N. Nagarajan v. State of Mysore* ((1966) 3 SCR 682 : AIR 1966 SC 1942 : (1967) 2 SCJ 664 : (1967) 1 LLJ 698), Rule 3 of the Mysore State Civil Services (General Recruitment) Rules, 1957 provided that recruitment to the State Civil Services shall be made by a competitive examination or by promotion and that the method of recruitment and qualifications shall be as set forth in the Rules specially made in that behalf. It was urged before this Court that no recruitment could be made to any service until the rules were made. That argument was rejected on the ground that it is not obligatory under the proviso to Article 309 to make rules of recruitment before a service can be constituted and that it was no necessary that there must be a law in existence before the executive is enabled to function. It is true that reliance was placed in that case on the provisions of Article 162, by which the executive power of a State extends to the matters with respect to which the legislature of the State has power to make laws. But the decision is useful for illustrating that the power to frame rules or regulations does not necessarily imply that no action can be taken administratively in regard to a subject-matter on which a rule or regulation can be framed, until it is so framed. The only precaution to observe in the cases of statutory corporations is that they must act within the framework of their charter. Its express provisions and necessary implications must at all events be observed scrupulously.

22. It may bear mentioning that any action taken by the Central Board of Directors under Section 7(2) is subject to the directions given by the Central Government under Section 7(1), just as any regulation framed by it under Section 58 is subject to the previous sanction of the Central Government. In either case, the Central Board has to abide by the decision or directions of the Central Government. There can therefore, be no apprehension that, by taking action under Section 7(2), the Central Board may circumvent the condition on which the power conferred by Section 58 can be exercised by it. The overall authority of the Central Government acts as a restraining influence on any action taken by the Central Board, whether it acts under one or the other provision of the Act.

23. Having seen that the Central Board has the power to provide for service conditions of the staff by issuing administrative circulars, the next question for consideration is whether the Staff Regulations of 1948 were issued under Section 58 of the Act. The importance of this question lies in the fact that, quite clearly, if the 1948 Regulations are statutory, they cannot be altered by administrative circulars and, in that event, the impugned circular will not have the effect of superseding them. Having considered the entire material on this subject, including the correspondence that has transpired between the Reserve Bank and the Central Government, we find

it difficult to take the view that the Staff Regulations of 1948 were framed in the exercise of power conferred by Section 58. One fact which stands out in this regard is that whereas Section 58(1) envisages the making of regulations "with the previous sanction of the Central Government", the Regulations of 1948 do not purport to have been made with such sanction. Indeed, insofar as the ex facie aspect of the matter is concerned, the Regulations of 1948 do not purport to have been made under Section 58 at all. It is true that this by itself is not conclusive because, failure to mention the source of power cannot invalidate the exercise of power, if the power is possessed by the authority which exercises it. But, the common course of the manner in which the Central Board exercises its power when it purports to do so under Section 58 is not without relevance and has an important bearing on the question under consideration. The Employees' Provident Fund Regulations of 1935, the Note Issue Regulations of 1935, the General Regulations of 1949, the Scheduled Banks' Regulations of 1951 and the Guarantee Fund Regulations, which were all framed under Section 58, contain a preamble reciting that they were framed under that section and that they were framed with the previous sanction of the Central Government. By way of illustration, we may cite the Preamble of the Reserve Bank of India General Regulations, 1949, which runs thus :

In exercise of the power conferred by Section 58 of the Reserve Bank of India Act, 1934 (2 of 1934) and in supersession of the Reserve Bank of India General Regulations, 1935, the Central Board of the Reserve Bank of India, with the previous sanction of the Central Government, is pleased to make the following Regulations....

It is significant that such a recital is conspicuously absent in the Regulations of 1948. That renders it safe and reasonable to accept the statement contained in the counter-affidavit filed on behalf of the Reserve Bank by Shri Shamrao Laxman Jathar, Deputy Manager in the Department of Administration and Personnel, to the effect that the Staff Regulations of 1948 are not statutory in character, not having been made under Section 58 of the Act of 1934. The rejoinder-affidavit dated July 16, 1979 filed on behalf of the petitioners by Shri Jammadas Gupta reiterates the contention that the Regulations of 1948 were framed under Section 58(1) with the sanction of the Central Government. Support is sought to that contention from the correspondence annexed to the affidavit filed in support of the writ petition and the correspondence annexed to the rejoinder. Of particular importance is the statement contained in the 'Memorandum to the Central Board' dated January 21, 1949, submitted by the then Governor of Reserve Bank, Shri C.D. Deshmukh, on the subject of "Reserve Bank of India Regulations". That Memorandum contains a list of regulations which were made by the Central Board "with the approval of the Central Government". The very first item in the list is "Reserve Bank of India (Staff) Regulations". Having considered the correspondence bearing on the subject and particularly the aforesaid Memorandum, we see no reason to doubt the contention of the Bank that the Regulations of 1948 were not framed under Section 58 and that they were not made with the previous sanction of the Central Government. The then Governor of the Reserve Bank of India, Shri C.D. Deshmukh, a distinguished Economist and Civilian, was perhaps justified in assuming from the correspondence that the Central Government has no objection to the proposed regulations, which explains his statement, that they were made with the "approval" of the Central Government. But, it is one thing to infer that the Regulations had the approval of the Central Government since no objection was raised by it to the making of the regulations and quite another that they were made with its previous sanction. The supplementary affidavit dated March (sic) 1980 which was filed on behalf of the Reserve Bank by Shri Pradeep Madhav Joshi, Deputy Manager in the Department of Administration and Personnel, has dealt fully with the correspondence on the subject of previous sanction of the Central Government to the Regulations of 1948. We are inclined to accept the statement contained in paragraph 9 of the said affidavit that the Memorandum of January 21, 1949 contains a "factual mistake" to the effect that the Staff Regulations, (which would

include the Regulations of 1948) were made with the approval of the Central Government. We therefore conclude that the Reserve Bank of India (Staff) Regulations of 1948 were not made under Section 58 of the Act and that, in fact, the Central Board had not obtained the sanction of the Central Government to the making of those Regulations.

24. The High Courts of Bombay (Bimal Kumar Shome v. P.C. Bhattacharya, Miscellaneous Petition No. 206 of 1967, decided on August 6, 1969), Calcutta ((1980) 2 SLR 167) and Delhi (R.M Joshi v. R.B.I., Civil Writ No. 876 of 1974, decided on March 19, 1980 by a Full Bench) have all taken the view that the Staff Regulations of 1948 are not statutory, not having been framed under Section 58 of the Act. We endorse the correctness of that view.

25. Since the Staff Regulations of 1948 are in the nature of administrative directions, it was competent to the Central Board to alter or amend them by an administration circular. No lack of statutory powers is involved in that process. Under Section 7(2), the Central Board has the power to provide for service conditions of the Bank's staff by administration circulars, so long as they do not impinge upon any Regulations made under Section 58 of the Act.

26. It now remains to be considered whether the impugned Administration Circular No. 8, dated January 7, 1978; Office Order No. 679, dated April 27, 1978; and the draft combined seniority list of officers prepared pursuant thereto, are violative of the petitioners' right to equality in the matter of their service conditions. The salient features of the impugned administration circular may be summarized thus :

- (a) A common seniority and inter-group mobility is introduced simultaneously in all Grades of officers attached to Group I (Section A) and Groups II and III.
- (b) The seniority of all officers is combined as on May 22, 1974, on the basis of their total length of service (including officiating service), in the grade to which they were then posted on a regular basis. In doing so, the existing inter se seniority of the officers in the respective groups is maintained and the subsequent supersessions for promotion or confirmation in the respective groups are suitably reflected. The date of confirmation is not taken into account for this purpose.
- (c) The circular covers all officers in Group I (Section A) and Groups II and III who were appointed to Grade B prior to January 1, 1970 as well as officers in the higher grades C, D, E and F. The circular does not cover officers in Sections B to L of Group I, technical officers in Group III and officers attached to Group IV.
- (d) All promotions to Grade C and above which were made on a provisional basis after January 1, 1976 are to be reviewed individually in order to ascertain as to which of the officers may be allowed to continue in the higher grade on the basis of their seniority and suitability. Consequential adjustments are to be made in a phased and gradual manner in order to ensure that the operational efficiency of the various departments and the Bank's requirements of a specialised staff of officers are not adversely affected.
- (e) Officers promoted to higher grades prior to January 1, 1976 are to be allowed to retain their existing grades, though not necessarily the same post, and their seniority is to be adjusted under a common seniority scheme.

(f) Officers appointed to officiate in the higher grade on a provisional basis on or after January 1, 1976 and who are allowed to continue in such grade on the basis of their seniority and suitability, are to be considered for confirmation in the normal course.

(g) Officers who are in a lower grade but who rank higher in seniority in the common seniority list than those who are already officiating or confirmed in the higher grade, are to be considered for promotion on the basis of their suitability.

(h) All future promotions to Grade C and to the higher grades are to be made on the basis of the common seniority list, subject to selectivity.

(i) Wherever possible, the transfer of officers from one department or group to another in the same grade has to be encouraged in order to enable a broader diffusion of experience and to prepare a wider base for deployment of officers in different departments.

(j) All promotions from Grade B to C are to be made on the basis of seniority-cum-suitability, with greater emphasis on suitability. The selections for this purpose are to be made by the Reserve Bank of India Services Board.

(k) Selections for promotions to Grade D and above are to be made by a Committee of the Deputy Governors, who are to give greater consideration to merit, apart from the aptitude and experience of the officers concerned.

27. Office Order No. 679, dated April 27, 1978 was issued in pursuance of the aforesaid circular. The Bank announced by it that the tentative combined seniority list of officers in Grade B (appointed prior to January 1, 1970) and Grades C, D, E and F would be available for inspection up to May 12, 1978. Officers aggrieved by the tentative seniority list were asked to submit their representations within 15 days. The tentative combined seniority list shows the proposed position occupied seniority-wise by 644 officers belonging to Group I (Section A) and Groups II and III.

28. These writ petitions were filed by the petitioners on June 10, 1978 in order to challenge the administration circular, the office order and the combined seniority list referred to above. The 25 petitioners are all officers in Group I.

29. The case of the petitioners is that the administrative circular and the draft combined seniority list are violative of their rights under Articles 14 and 16 of the Constitution because : (a) The combined fixation of seniority has the effect of treating unequals as equals insofar as officers belonging to different groups are concerned, whose appointment, recruitment, promotion and seniority had all along been fixed, accepted and acted upon on a group-wise basis; and (b) recruitment, selection and promotion of officers having been made on a group-wise basis from time to time and their seniority having been fixed accordingly, the seniority is now fixed retrospectively from an arbitrary date, viz., May 22, 1974.

30. These contentions, particularly the first, have to be answered in the light of historical date governing the constitution and management of services under the Reserve Bank, from time to time. Without an awareness of the history leading to the events which the petitioners have challenged as unconstitutional, it will not be possible either to appreciate their contention or to provide an answer to it.

31. The Reserve Bank of India was constituted on April 1, 1935 under the Reserve Bank of India Act, 1934. The main purpose of constituting the Bank, as stated in the Preamble of the Act was "to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage". In course of time, new functions came to be added as a result of new measures so as to meet the growing needs of an expanding economy. During the first decade after the inception of the Bank in 1935, these functions were carried out through three Departments : The Banking Department, the Issue Department and the Agricultural Credit Department. The Agricultural Credit Department was trifurcated into three branches with effect from August 1, 1945 : (i) the Agricultural Credit Department, (ii) the Department of Research and Statistics and (iii) the Department of Banking Operations. The first two branches, which were of a specialised nature, were grouped together for the purposes of promotions of officers while the third branch was grouped for that purpose with the banking group on the General Side. All promotions were made from two separate common seniority lists, one for the specialised or technical group and the other for the banking group. The Departments were regrouped again into three groups, with effect from April 1, 1951. Group I consisted of staff attached to the Department of Research and Statistics, Group II of the staff attached to the Department of Banking Operations, the Department of Banking Development and the Agricultural Credit Department and Group III of the staff attached to the other Departments on the General Side. The staff attached to the Agricultural Credit Department was reconstituted into a new group, namely, Group IV with effect from April 1, 1955. The Industrial Finance Department and the Department of Non-Banking Companies were added to Group II in September 1957 and March 1966, respectively. Group V was created for the staff of the Industrial Development Bank of India with effect from April 1, 1965. The composition of the five groups was readjusted on that date to ensure greater administrative efficiency.

32. This system of grouping had many drawbacks bearing on the promotional opportunities of officers in the various groups. To mention but a few, the drawbacks were : (i) Unequal size of one group as compared to another, (ii) uneven expansion in one group as compared to another, and (iii) earlier confirmations of officers in one group as compared to those in another.

33. In 1955, Group I was the largest of all the three groups on the basis of the total number of officers in Grades B and above in each of the three groups. The subsequent expansion in staff strength has been greater in Groups II and III than in Group I with the result that by the end of 1975, the total strength of officers in Grades B and above was the smallest in Group I as compared to the other groups. The number of officers in Grade A, however, continues to be the largest in Group I on account of the operational nature of its functions. While the increase in the total number of officers in Grades B and above in Group I over a period of 20 years was 280 per cent, the corresponding increase in Groups II and III was 451 per cent and 1100 per cent respectively. However, the large expansion in Groups II and III was mainly at the junior officers' level, particularly in Grade D. As regards senior officers i.e. officers in Grades D, E and F, while the expansion in Groups I and II could be regarded as more or less equal, the expansion in Group III, particularly in Grade D was marked. In spite of this, the total number of posts of senior officers and the percentage of such posts as compared with those of junior officers continued to be smaller in Groups II and III. Officers in Groups II and III also took a longer time generally for confirmation as the posts against which they were promoted were either initially sanctioned on a temporary basis and continued as such for quite some time before they were made permanent or the vacancies were caused by deputation of regular officers to Commercial Banks, State Cooperative Banks, etc. for which no permanent vacancies were created. On the other hand, Group I had more or less its normal growth during these years and there was a smooth flow of normal vacancies. The officers recruited

in the early years of the Bank had also gradually started reaching the age of superannuation and there was a regular flow of retirement vacancies. The officers in Group I had, therefore, their confirmation quickly and thereby derived distinct benefits.

34. Under the Bank's rules, the seniority of an officer in a particular grade was ordinarily dependent on the date of his confirmation in that grade and although for the purpose of promotion, the seniority of an officer was given weightage only within the same group for a notional comparison of seniority of officers in different groups, an officer who was confirmed earlier in one group as compared with another who was confirmed later in another group had an edge over the latter in matters of service benefits. Such comparisons arising from promotional imbalances in the various groups caused resentment among the affected officers. This state of affairs had long agitated the minds of the officers in Groups II and III and they brought this state of affairs to the management's notice by various representations beginning from 1968.

35. The Management of the Bank took several steps from time to time to correct the promotional imbalances but these steps did not touch even the fringe of the problem, especially since, the ad hoc schemes and proposals were mainly aimed at correcting imbalances at the lower level. Ultimately, in face of growing discontentment amongst officers belonging to Groups II and III, the Management decided to refer the question to the Cadre Review Committee (CRC), which was appointed by the Bank in May 1970. The Committee was, among other things, required to examine and make recommendations for the changes desirable in the existing constitution of the cadres of officers, having due regard to the need to provide reasonable prospects of increments and promotion and to ensure such degree of interchangeability as administrative efficiency and exigencies of the Bank's services demanded. The Committee, under the Chairmanship of Shri J.L. Nain, a sitting Judge of the Bombay High Court, submitted its report in October 1972.

36. The Cadre Review Committee expressed the view that there was irrationality in the way the groupings had been done and the way in which seniority was being maintained group-wise and that Group I had an unfair advantage in matters of promotion over Groups II and III. The Committee further held that as certain departments were inordinately large as compared to others, this by itself, in the context of absence of inter-group mobility brought about imbalances in promotional opportunities. The Committee also recognised that mobility from one group to another would not only facilitate removing the imbalances in promotional opportunities but that it would also lead to "better operational efficiency". The Committee stressed the need for a common seniority list for each grade of officers throughout the Bank, except in respect of the Economic and Statistic Departments and among lawyers, engineers and other technical sections of officers. It recommended a system of promotion from a lower grade to higher grade which would ensure, among other things, to the largest extent possible, equality of opportunity of promotion among all officers in the same grade and effective operation of mobility of officers between different departments and groups. In regard to the operation of the combined seniority scheme, the Committee recommended its immediate introduction for A and B Grades and within a period of two years for the C Grade. In regard to the rest of the Grades, namely, D, E and F, and Committee recommended the application of this principle mutatis mutandis and left it to the discretion of the Bank to introduce it as and when it chose, taking into consideration the exigencies of the situation. The Committee was also of the view that it was necessary that mobility and interchangeability as between groups among all grades of officers should be introduced in the shortest time possible.

37. Following the recommendations of the Cadre Review Committee, the Bank introduced through an administrative circular (No. 15, dated May 22, 1974), a combined seniority for A and part of B

Grades, with retrospective effect. In regard to C and D Grades, the circular provided for mobility and interchangeability on a swap basis, but the Officers' Association protested against it and demanded immediate and simultaneous introduction of combined seniority and interchangeability for the rest of the grades also.

38. Following the persistent demand made by the majority of the officers, the Bank appointed a Committee comprising Shir C.L. Thareja, the then Chief Manager, as Chairman, Shri K. Madhava Das, Chief Officer, Agricultural Credit Department, Shri P.N. Khanna, Chief Officer, Department of Banking Operations and Development, and Shri T.D. Katara, Manager, Bombay Office, to work out the modalities of the implementation of the combined seniority scheme for Grades C to F and to determine the operative date for combining the seniority. The Bank decided that pending the submission of the report by this Committee, all future promotions, namely, those effected from January 1, 1976, will be purely ad hoc and provisional.

39. The Thareja Committee, like the Cadre Review Committee, unanimously recommended the introduction of combined seniority simultaneously for all grades of officers. However, on the question of the operative date, it was divided in its view. Whereas Shri Thareja and Shri Katara, both Group I Officers, recommended that the scheme be given retrospective effect from January 1, 1976, the other two members representing Groups II and III, were of the view that it should be given effect from January 1, 1970. The Bank, by the impugned circular, accepted May 22, 1974 as the date from which the combined seniority list was to have effect.

40. It is clear from this narration of historical events that the various Departments of the Reserve Bank were grouped and regrouped from time to time. Such adjustments in the administrative affairs of the Bank are a necessary sequel to the growing demands of new situations which are bound to arise in any developing economy. The group system has never been a closed or static chapter and it is wrong to think that the officers of the various groups were kept, as it were, in quarantine. The group system has been a continuous process of trial and error and the impugned scheme of inter-group mobility has emerged as the best solution out of the experience of the past. Combined seniority has been recommended by two special committees, whose reports reflect the expertise and objectivity which was brought to bear on their sensitive task. It is clear that inter-group mobility and common seniority are a safe and sound solution to the conflicting demands of officers belonging to Group I on one hand and those of Groups II and III on the other. Private interest of employees of public undertakings cannot override public interest and an effort has to be made to harmonize the two considerations. No scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these. Vested interests are prone to hold on to their acquisitions and we understand the feelings of Group I Officers who have to surrender a part of the benefits which had accrued to them in a watertight system of grouping. Combined seniority is indispensable for the smooth functioning of the Bank and no organisation can function smoothly if one section of its officers has an unfair advantage over others in matters of promotional opportunities. The reports of the Cadre Review Committee and the Thareja Committee show that combined seniority has emerged as the most acceptable solution as a matter of administrative, historical and functional necessity. We see no justification for undoing what these committees have achieved after an objective and integral examination of the whole issue. We may mention that the conclusion to which these committees came were considered by the Bank when Shri M. Narasimhan, later India's Executive Director in the World Bank, was the Governor and it was after Dr. I.G. Patel, Formerly

Secretary, Economic Affairs, Government of India and Deputy Administrator, United Nations Development Programme, took over as Governor in December 1977 that the final decision was taken by the Central Board to introduce intergroup mobility and combined seniority.

41. In *Reserve Bank of India v. N.C. Paliwal* ((1977) 1 SCR 377 : (1976) 4 SCC 838 : 1977 SCC (L & S) 82 : 1976 Lab IC 1483), a combined seniority scheme was introduced by the Reserve Bank of India, consisting of two parts; one part provided for the integration of the clerical staff of the General Departments with the clerical staff of the Specialised Departments, while the other provided for the switchover and integration of the non-clerical staff with the clerical staff in all the Departments of the Bank. The Delhi High Court set aside the scheme on the ground that it violated Articles 14 and 16 of the Constitution. While setting aside the judgment of the High Court, this Court held that the integration of different cadres into one cadre did not involve violation of the equality clause and that neither Article 14 nor Article 16 forbids creation of different cadres in government service. Whether there should be a combined seniority in different cadres or groups was, according to the Court, a matter of policy which did not attract the applicability of the equality clause. The integration of non-clerical with clerical services which was effectuated by the combined seniority scheme was, in the circumstances, held to be not violative of the guarantee contained in Articles 14 and 16.

42. As regards the retrospective operation given to the scheme with effect from May 22, 1974, it does appear that the Board has struck a via media between two extreme contentions advanced by officers belonging to Group I and those belonging to Groups II and III. But that was inevitable and we consider it as the best solution in the peculiar circumstances of the case. In order to rectify the imbalances and anomalies caused by the compartmentalised and group-wise seniority, it was necessary to give retrospective effect to the combined seniority list. Officers belonging to Group I urged that the scheme should be brought into effect from January 1, 1976, while those belonging to Groups II and III wanted the scheme to be brought into effect from January 1, 1970. The Central Board struck a balance by choosing the date May 22, 1974, because that was the date on which the decision in regard to combining the seniority retrospectively with effect from January 1, 1970 in regard to Grade A and part of Grade B officers was announced. It was, again, on that date that the Bank had announced that a similar decision in regard to the remaining grades of officers was under its consideration. Thus, at least on May 22, 1974 it was known to officers of all grades that a combined seniority list was due to be brought into force. If a certain section of officers succeeded in obtaining promotional benefits thereafter, the imbalance introduced thereby in the services of the Bank and the consequent dissatisfaction had to be rectified. That could only be done by not recognising the accelerated promotions obtained in the intervening period by a certain class of officers. Shri Nariman has drawn our attention to various individual cases of officers in Group I whose old seniority has gone down by several steps in the new scheme. As we have stated earlier, any scheme of seniority is bound to produce isolated aberrations. That cannot justify the argument that the entire scheme is for that reason violative of the guarantee of equality.

43. We are, therefore, of the opinion that the impugned administration circular, the office order and the combined seniority list are not violative of the rights of the petitioners under Articles 14 and 16 of the Constitution.

44. For these reasons, the writ petitions are dismissed, but there will be no order as to costs.

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