

CHAPTER III

Limitation on the Power of a Reorganised State

It is competent for the Parliament to make a law effecting reorganisation of States and also to provide for incidental, supplemental and consequential provisions in exercise of its powers under Articles 3 and 4 of the Constitution. Therefore, a law made by Parliament in exercise of its powers under Articles 3 and 4, may contain provisions which curtails or modifies the normal constitutional powers of the States to constitute, deal and recruit with its services, in so far it relates to a reorganised State under such a law. When such a provision is made in a law made by the Parliament in exercise of that power, the power of the reorganised State to deal with its services would be subject to the provisions of such law made by the Parliament.¹ The Parliament in exercise of its powers under Articles 3 and 4 of the Constitution has enacted several laws for effecting reorganisation of States in India.² As a consequence of reorganisation of States, the division and integration of service personnel between the pre-existing States and the new States had to be provided. Therefore, the laws so enacted also contained provisions relating to division and integration of services and also for the protection of conditions of service of service personnel of the erstwhile States in the reorganised States. As the States Reorganisation Act is the most important of them and the provisions contained therein are similar to those contained in other enactments, matters arising under the States Reorganisation Act are referred to in this Chapter.

1. Limitations Imposed Under the States Reorganisation Act

(1) *Approval of central government to the rules* : Sub-section (7) of Section 115 of the States Reorganisation Act preserves the power of the new States to regulate recruitment and conditions of service in exercise of the powers conferred under Article 309 of the Constitution of India in respect of allottees under that Section. Proviso to the said Section limits that power, and provides that the conditions of service of allottees which were available to them immediately prior to the reorganisation of States cannot be altered to their disadvantage without the previous approval of the Central Government. There-

1 (a) *M. A. Jaleel V. State of Mysore*—1961 *Mys. L. J.* 425.

(b) *Union of India V. P. K. Roy*—AIR 1968 SC 850.

2 (a) *The Andhra State Act 1953* (Sections 61 to 64).

(b) *The States Reorganisation Act, 1956* (Sections 114 to 117).

(c) *The Bombay Reorganisation Act, 1959* (Sections 80 to 83).

(d) *The Punjab Reorganisation Act, 1966* (Sections 80 to 84).

fore, it is not competent for the Government of the New States formed under the provisions of the States Reorganisation Act to frame any rules altering the conditions of service of allottees to their disadvantage without the previous approval of the Central Government. Consequently, any rules so framed without such previous approval would be unenforceable against the allottees.³⁻⁹

(2) *Specific approval necessary* : Though the Supreme Court had held that a general approval given by the Central Government to the States to alter the conditions of service would satisfy the requirement of proviso to Section 115(7) of the States Reorganisation Act in Raghavendra Rao's case³ the said view was clarified in Mohammad Bhakar's case⁵ and has been reiterated in subsequent cases.^{6&8} In view of the later decisions, any rules which create a disadvantage to an allottee in any matter relating to his conditions of service requires the previous approval of the Central Government. Without the approval of the Central Government, the new rules containing disadvantageous provisions cannot be enforced against an allottee.⁸⁻¹⁰ An approval under proviso to Section 115(7) of the Central Government must be established and cannot be assumed.⁶

(3) *Subsequent modification of approval binding* : Assuming that the general approval had been given by the Central Government to the new State to alter the conditions of service of allottees, relating to promotion, any subsequent directions issued by the Central Government modifying the general approval given earlier, and imposing certain conditions and restrictions in the matter of alteration of conditions of service of allottees is binding on the State Government. Therefore, when the Central Government has issued clear directions that in prescribing departmental examinations for the promotion of allottees in the new State, the State should exempt the allottees after they cross 45 years of age and should give a reasonable time in respect of others, the said direction is binding on the State Government. In view of the power given to the Central Government under proviso to Section 115(7) for according approval to the rules read with Clause (b) of Sub-section (5) of Section 115 which empowers the Central Government to ensure fair and equitable treatment to allottees, and the power under Section 117 to issue direction for giving effect to the provisions of Section 115, the State Government cannot ignore or act contrary to the subsequent directions. Such a direction whether amounts

3 Raghavendra Rao *V.* Deputy Commissioner—AIR 1965 SC 136.

4 Suryanarayana *V.* State of Mysore—1967(2) *Mys. L. J.* 544.

5 Mohd. Bhakar *V.* Y. Krishna Reddy—SLR 1970 SC 768.

6 Gurucharandas *V.* State of Punjab—AIR 1972 SC 1640.

7 M. D. Shukla *V.* State of Gujarat—AIR 1971 SC 117.

8 State of Haryana *V.* Shamsher Jang—AIR 1972 SC 1546.

9 T. S. Mankad *V.* State of Gujarat—AIR 1970 SC 143.

10 Bhaskar Gupta *V.* State of Gujarat—1970 L & I cases 1438 (Gujarat).

to granting of qualified previous approval or a direction under Section 117 of the States Reorganisation Act, it is binding on State Government.¹³

(4) *Rules altering conditions of eligibility for promotion* : (a) Any rule relating to promotion of a civil servant relates to his conditions of service. Imposition of new conditions of eligibility by way of prescribing departmental examinations for promotion which an allottee was not required to pass prior to the reorganisation of States certainly amounts to alteration of his conditions of service to his disadvantage. Unless such a rule has been promulgated with the previous approval of the Central Government, the State cannot operate the said rule against an allottee.¹¹⁻¹³

(b) Similarly the prescription of an additional qualification for promotion for an allottee for securing promotion to the higher post amounts to alteration of conditions of service to his disadvantage and if the prescription of the said condition has not been made with the previous approval of the Central Government the said condition cannot be enforced against an allottee for his promotion.¹⁴

(5) *Alteration of quota rule* : (a) Chances of promotion is not a condition of service. A provision in the Recruitment Rules of the parent State prescribing certain specified quota for promotion from a lower cadre to the higher cadre cannot be regarded as rules regulating conditions of service. Therefore, any rules framed by the new State altering the quota prescribed for purpose of promotion from lower cadre to the higher cadre cannot be considered as amounting to alteration of conditions of service and such a rule cannot be held to be invalid for want of previous approval of the Central Government under proviso to Sub-section (7) of Section 115 of the States Reorganisation Act.¹⁵

(b) While chances of promotion is not a condition of service, right for consideration for promotion is a "condition of service". Therefore, when the rules in force in the parent State provided for promotion from a cadre of service to a higher cadre and prescribed the quota for promotion the rules framed by the new State, making no provision at all amounts to not mere alteration of chances of promotion but has the effect of taking away the right

11 Mohd. Bhakar *V.* Y. Krishna Reddy—SLR 1970 SC 768.

12 State of Haryana *V.* Samsher Jang—AIR 1972 SC 1546.

13 Suryanarayana *V.* State of Mysore—1967(2) Mys. L. J. 544.
Mysore Government Secretariat Recruitment (Amendment) Rules, 1966, held invalid.

14 (a) K. S. Nadagouda *V.* State of Mysore—W.P. No. 2134/1968.
Mysore Forest Services Recruitment Rules, 1959, in so far it prescribed A.F.C. qualification for promotion as Deputy Conservators held inapplicable to allottees.
(b) Y. B. Raja *V.* State of Mysore—W.P. No. 1835/71 DD 10-1-74.

15 (a) Ramachandra Shankar *V.* State of Maharashtra—AIR 1974 SC 259 at 267 para 12.
(b) K. S. Bellubbi *V.* State of Mysore—1972 L & I cases 105 (Mys).
(c) V. B. Badami *V.* State of Mysore—W.P. No. 192/72 DD 15-12-72 (Mys).
(d) Govinda Raju *V.* State of Mysore—AIR 1963 Mys. 265.

for consideration for promotion. Hence alteration of quota rule resulting in deprivation of the right for consideration amounts to alteration of conditions of service to the disadvantage of allottee and consequently proviso to Sub-section (7) of Section 115 of the States Reorganisation Act is altered. Therefore, without approval by the Central Government the rule is unenforceable against allottees.¹⁶

(6) *Practice is no condition of service* : Proviso to Sub-section (7) of Section 115 of the States Reorganisation Act provides that the conditions of service applicable in the case of an allottee immediately prior to reorganisation of States cannot be altered by the State Government to the disadvantage without the previous approval of the Central Government. The conditions of service with reference to which protection is given under the said provision are those regulated by rules or orders issued by competent authorities. But a practice followed in the parent State there being no basis for such practice cannot be considered as condition of service for which protection is given under proviso to Sub-section (7) of Section 115 of the States Reorganisation Act.¹⁷

(7) *Alteration of pay scales without the approval of the central government* : Alteration of pay scales by the successor State to the disadvantage of allottees cannot be given effect to as it amounts to alteration of condition of service to the disadvantage of an allottee. Rules or orders prescribing new scales which are disadvantageous to an allottee are invalid for want of previous approval of the Central Government.¹⁸

(8) *Right of confirmation secured under the parent state rules* : A person appointed on probation subject to confirmation after satisfactory completion of probation and the fulfilment of the prescribed requirements for confirmation is entitled to be confirmed in pursuance to the rules under which he was appointed on probation. Proviso to Sub-section (7) of Section 115 of the States Reorganisation Act preserves that right. Government of the new State cannot deny confirmation, the right for which became available to a civil servant under the rules of the parent State under which he was appointed on probation.¹⁹

(9) *Inter-se seniority cannot be altered* : Seniority of persons determined in the parent State confers a right on a civil servant for further promo-

16 Samartha Ramadass *V.* State of Mysore—W.P. No. 909/71 (Mys). AIR 1974 SC 259 explained and distinguished.

17 Nirmaljeet Kaur *V.* Union of India—SLR 1972 P & H 809.

18 J. K. Pal *V.* State of Madhya Pradesh—AIR 1969 MP 143.

19 K. Veeraiah *V.* State of Mysore—1969(1) Mys. L. J. 454.

tion. The inter-se seniority so determined by the parent State cannot be altered by the new State to the disadvantage of an allottee.²⁰

(10) *Determination of inter-se seniority when not fixed* : (a) Where however the inter-se seniority of officials allotted from any particular parent State had not been determined, the successor State has the necessary power and duty to fix the inter-se seniority. Such inter-se seniority has to be fixed by the successor Government applying the rules which were in force in the parent State. This power of the successor Government can be exercised under Article 162 of the Constitution.²¹

(b) If in any given case even the rules or principles relating to fixation of seniority were not framed or fixed by the parent State, it is competent for the successor State to formulate the principles governing the fixation of seniority and to fix inter-se seniority on that basis.^{21-b}

(11) *Alteration of rule regarding age of superannuation* : A rule of retirement is a condition of service. Therefore, where a civil servant was entitled to continue in service until he reached the age of superannuation of 58 years under the rules which were in force in his parent State, it is not open to the Government of the new State to frame a rule reducing the age of superannuation without the previous approval of the Central Government. Consequently any premature retirement made on the basis of the altered rule to his disadvantage without the previous approval of the Central Government is illegal and invalid.²²

(12) *Rules regarding compulsory retirement* : A rule providing for compulsory retirement after the completion of the prescribed age or prescribed qualifying service is a rule regulating conditions of service. When under the parent State rules, there was no provision for ordering the compulsory retirement of a civil servant a rule framed authorising compulsory retirement after the prescribed number of years of service or age by the new State amounts to alteration of conditions of service of a civil servant who is an allottee to his disadvantage. Such a rule not having been framed with the previous approval of the Central Government in terms of proviso to Sub-section (7) of Section 115 of the States Reorganisation Act is invalid and unenforceable against an allottee.²³

20 (a) Chandra Mouli *V.* State of Mysore—1970(2) *Mys. L. J.* 187.

(b) M. C. Naik *V.* State of Mysore—1972(1) *Mys. L. J.* 235.

(c) C. Syed Ghouse *V.* Union of India—1972(1) *Mys. L. J.* 224.

(d) P. S. Menon *V.* State of Mysore—AIR 1970 Ker. (FB) 165.

21 (a) Moulvi *V.* State of Mysore—W.P. No. 1410/61 (Mys).

(b) Nanaiah *V.* Union of India—W.P. No. 1815/67 (Mys).

22 (a) Padmanabhacharya *V.* State of Mysore—1962 *Mys. L. J.* 146.

(b) B. U. Venkataramaniah *V.* State of Mysore—1971(1) *Mys. L. J.* 370.

23 (a) T. S. Mankad *V.* State of Gujarat—AIR 1970 SC 143.

(b) S. K. Setty *V.* State of Mysore—1970(2) *Mys. L. J.* 197.

Inapplicability of Note 1 to Rule 285 of M.C.S.Rs.

(c) K. Raghavendra Rao *V.* State of Mysore—1971(1) *Mys. L. J.* 326.

(13) *Retirement made after approval valid* : A rule of compulsory retirement framed which could not operate against an allottee for want of previous approval of the Central Government at the time when it was made, becomes operative from the date with effect from which the approval of the Central Government is obtained in terms of proviso to Sub-section(7) of Section 115 of the States Reorganisation Act. Every retirement made in exercise of powers under such a rule after the date of approval by the Central Government is valid.²⁴

(14) *Rule regulating disciplinary proceedings* : When under the rules regulating disciplinary proceedings, a civil servant in his parent State did not confer on him any right to choose any one of the two existing rules regulating disciplinary proceedings, it is not open to the civil servant to contend that he cannot be subjected to disciplinary proceedings under the rules framed by the new State which are exactly similar to the corresponding rules of the parent State.²⁵

(15) *Rule providing for retrospective suspension* : Rule regulating suspension of a civil servant relates to his condition of service. Therefore, if under the rules regulating disciplinary proceedings against a civil servant of the parent State, there was no deeming provision of retrospective suspension on the commencement of a *denovo* enquiry after the penalty imposed in an earlier proceeding is quashed by a decision of the court, any rule regulating disciplinary proceedings in the new State providing for such retrospective suspension amounts to alteration of his conditions of service to his disadvantage and to that extent it cannot operate against him.²⁵

(16) *Continuance after retirement for holding enquiry* : Where under the rules of the parent State, a civil servant had the right to retire from service on his attaining the prescribed age of superannuation and there was no provision for retention beyond the age of superannuation for purposes of holding disciplinary proceedings any rule framed by the new State providing for retention of such civil servant beyond the age of superannuation for purpose of holding departmental enquiry is a rule which is disadvantageous to an allottee. Such a rule not having been framed with the previous approval of the Central Government is invalid and consequently the disciplinary proceedings continued beyond the age of superannuation is also invalid.²⁷

2. Enquiry into Misconduct in Parent State

(1) In the case of a Government servant of an erstwhile State, against whom an order of penalty had been passed in a departmental enquiry, and

24 Radhaktishna Rao *V.* State of Mysore—1970(2) *Mys. L. J.* 448.

25 Venkobacharya *V.* State of Mysore—1971(1) *Mys. L. J.* 242.

26 S. V. G. Iyengar *V.* State of Mysore—1960 *Mys. L. J.* 822.

27 Abdur Rub *V.* State of Mysore—W.P. No. 7259/69 (Mys).

Rule 95(b) of M.C.S.Rs. held inapplicable to allottees from former State of Mysore.

the writ petition filed by him was pending in the High Court of the former State and the same stood transferred to the new State and the order of penalty was quashed by the High Court of the new State on account of the procedural defect in the departmental enquiry, it is competent for the Government of the new State to continue the departmental enquiry and to impose punishment on the allottee. The Central Government has also issued directions under Section 117 of the States Reorganisation Act to the effect that the Governments of the new States to which a civil servant is allotted has the power to continue the departmental enquiry and impose penalties. In view of this direction given by the Government and also having regard to the fact that the civil servant has been allotted to the new State, the competence of the Government of the new State to hold departmental enquiry cannot be questioned.²⁸

(2) Where however the charges levelled against a Government servant had connection with any area which became part of another State and the departmental enquiry was pending on the date of reorganisation, the Government to which the area in question stood transferred will alone have the competence to hold departmental enquiry in view of Section 125 of the S. R. Act. In such a case, if such a civil servant is allotted to another new State that new State cannot continue the disciplinary proceedings. Even when the question as to which of the State has the competence to continue such departmental enquiry arises the said question has got to be referred to the High Court of the principal successor State under Section 125 of the States Reorganisation Act and that High Court alone has the power to decide as to which State the disciplinary proceedings stand transferred.²⁹ Section 125 of the S. R. Act which imposes such a limitation on the power of the new State under Articles 310 and 311 of the Constitution, is valid in view of Article 3 and 4 of the Constitution.²⁹

3. Liability for Wrongful Dismissal of a Civil Servant in the Parent State

(1) When a civil servant is dismissed while he was serving in the parent State and the cause of action entirely arose in the territory which becomes the territory of a new State, an action against such dismissal in a court of law can be taken against that State in whose territory the cause of action wholly arose. In such a case, the liability of a pre-existing State becomes the liability of the successor State and the suit against the new State is maintainable against an order of dismissal passed before its formation.³⁰

(2) The expression used in Section 61 of the Bombay Reorganisation Act (corresponding to Section 88 of the States Reorganisation Act), namely, "any liability in respect of any actionable wrong other than the breach of

28 *Mathada Neelakanta Sastry V. State of Mysore*—1965(2) *Mys. L. J.* 257.

29 *S. V. G. Iyengar V. State of Mysore*—W.P. No. 480/1960 (Mys).

30 *State of Maharashtra V. B. A. Joshi*—AIR 1969 SC 1302—1969(3) SCR 917—Sections 60 and 61 of Bombay Reorganisation Act, 1960, which are in para-materia with S. 87 and 88 of the S.R. Act, 1956, interpreted.

contract", are not intended to cover only a liability in respect of any tort. The words are wide enough to cover a liability to continue to employ a person in service of the concerned State and to pay him his due remuneration in a case where an order of dismissal has been passed against such person in contravention of Article 311(2) of the Constitution. Under Section 61 of the Bombay Reorganisation Act in a case of this nature the initial liability would be of the principal successor State, where the cause of action did not arise wholly within the territory which from the appointed day became the territory of another State. Therefore, where a civil servant was employed to serve at a place which became part of another new State but the order of dismissal was passed at a place which did not stand transferred to such a new State, the initial liability in an action for illegal dismissal would be that of the State within whose area the cause of action arose. In such a situation the remedy of a civil servant should be against the State to which the area in which the order of dismissal was passed belongs, and not against the State to which the area in which he was working stood transferred.³¹

(3) *Effect of setting aside of the order of dismissal* : When in a case where a civil servant had been dismissed before the formation of the new State and the area in which he was working and was dismissed becomes part of a new State and in a suit filed by him the order of dismissal is declared invalid, the effect of such a declaration is the civil servant concerned must be deemed to have been working in the area which became part of such new State with effect from the appointed day. Consequently he falls within the purview of the general allotment order issued by the Central Government to the effect that every person who was working in an area which became part of the new State shall stand allotted to that State. In such circumstances, it is not open for the Government of the new State which has suffered a decree of the civil court to contend that the said civil servant has not been allotted to the new State. A civil servant in such a position is entitled to be treated as an allottee to the new State and to get all consequential benefits at the hands of the Government of the new State.³²

4. Central Government's Power to Issue Directions

(1) Under Section 117 of the States Reorganisation Act, the Central Government is empowered to give directions to the Governments of any reorganised States for the purpose of giving effect to the provisions of Sections 114, 115 and 116 of the States Reorganisation Act. Under Sub-section (5) of Section 115 of the Act, the Central Government is given the power for the purpose of—

31 *Bhalachandra V. State of Gujarat*—AIR 1964 Guj. 1 (FB)—Sections 61, 81 and 82 of the Bombay Reorganisation Act which are similar to S. 88 and Sections 115 and 116 of the States Reorganisation Act interpreted.

32 *Vasantha Narayana Rao V. State of Mysore*—1971(2) Mys. L. J. SN. P. 140.

- (a) the division and integration of services among the new States ;
- (b) the ensuring of fair and equitable treatment to all persons affected by the provisions of Section 115 and the proper consideration of any representations made by such persons.

Further, under proviso to Sub-section (7) of Section 115, the Central Government is invested with the power of granting approval to the provisions relating to conditions of service made by the new States whenever such provisions are disadvantageous to the case of any allottee under Section 115 compared with the rules regulating his conditions of service in the parent State. In other words, the power of the new State to regulate conditions of service of its servants in so far it relates to the prescription of conditions of service which are disadvantageous to an allottee is made subject to the approval of the Central Government. The power given to the Central Government under Section 117 can be exercised and directions can be given to the State Governments in all matters relating to conditions of service of an allottee Government servant if the Central Government is of the opinion that such a direction is necessary for the ensuring of fair and equitable treatment to be accorded to the allotted Government servants. This power of the Central Government can be exercised either suo moto or on the representation of an allotted Government servant, in exercise of the power conferred under Clause (b) of Sub-section (5) of Section 115 and proviso to the said Section read with Section 117 of the States Reorganisation Act. It is competent for the Central Government either to accord qualified approval under proviso to Section 115 or issue directions to the State Government in the matter of regulation of conditions of service of a person or persons allotted under Section 115 of the States Reorganisation Act. The power of the Central Government under the above provision is not restricted in the matter of division and integration of services. Clause (a) of Sub-section (5) of Section 115 confers power on the Central Government to effect division and integration of services between the new States. Clause (b) of Sub-section (5) of the said Section confers power on the Central Government to ensure fair and equitable treatment to officials allotted to the new State. Clauses (a) and (b) are independent clauses. There is no justification for reading Clause (b) of Sub-section (5) of Section 115 as subordinate to Clause (a). Reorganisation of States brought about an unusual situation in which civil servants serving in one State were transplanted to serve in a new State without their consent or even against their wishes. It is in this context the Parliament selected the Central Government as an authority to accomplish the important and difficult task of ensuring fair and equitable treatment to officials affected by the reorganisation of the States. The said power is available to the Central Government until the last of the officials allotted to the new State retires. Therefore, the Central Government has the power to ensure fair and equitable treatment to officials affected by Section 115 even after the process of integration is over.³⁰

(2) *Right of representation* : Having regard to the plain meaning of Clause (b) of Sub-section (5) of Section 115 of the States Reorganisation Act, a civil servant affected by anything done to him under any part of Section 115 has a right of representation with respect to it. Hence he is not only entitled to make representations with reference to integration of services but also in respect of any other matter relating to his conditions of service, if he is adversely affected by any action taken under any part of Section 115 of the States, Reorganisation Act. The scope of Sub-section (5) of Section 115 Clause (b), therefore cannot be limited to the matter of integration only.³³

(3) *Direction for protection of pay scales on first promotion* : In order to ensure fair and equitable treatment to allotted Government servants, the Central Government in exercise of its powers under Section 117 of the States Reorganisation Act directed that the allotted Government servants should be given the benefit of continuing pay scale attached to the post held by them on the date of reorganisation and further they should also be given the benefit of the pay scale on first promotion which was available to them in the parent State, on their first promotion in the new State, if that is advantageous to them, subject to the following conditions:—

- (i) that an allottee must be holding the post as on 31-10-1956 in a substantive capacity; or
- (ii) he should have officiated in the post in which he was working on 31-10-1956 for a period of not less than 3 years.

For claiming the benefit of the pay scale of the promotional post in the new State in respect of an allottee who is entitled to the said protection either on account of his holding the lower post substantively on 31-10-1956 or on account of his having officiated in the lower post for a period of three years or more on 31-10-1956 the only condition which should be satisfied is that he should be promoted in the new State and that promotion should be the first promotion in the new State. On such promotion, a civil servant is entitled to claim the pay scale of the promotional post which would have been available to him in the parent State. Whether the promotion is by way of selection or on the basis of seniority and merit, or whether the post to which he is promoted is equivalent to the promotional post in the parent State or not, so long he is promoted in the new State and he is a person to whom the protection of salary on first promotion in the new State is available, he is entitled to the said benefit.³⁴ A civil servant can claim the benefit of the pay scale of the promotional post which would have been available to him in the parent State

33 (a) Suryanarayana Rao *V.* State of Mysore—1967(2) *Mys. L. J.* 544.

(b) Shankar Ganesh *V.* State of Mysore—AIR 1962 Mys. 112.

34 (a) N. A. Kulkarni *V.* State of Mysore—1 LR 93 —1964 *Mys. L. J.* SN. P. 220.

(b) State of Mysore *V.* N. A. Kulkarni—(1969) 1 SCWR 509.

(c) Krishna Rai *V.* State of Mysore—1973(1) *Mys. L. J.* 220. [1970(1) *Mys. L. J.* 403. Held not good law in view of (1969) 1 SCWR 509].

on his first promotion in the new State if he satisfies any one of the conditions mentioned above. A person who does not satisfy any one of the above requirements is not entitled to claim the pay scale of the promotional post of the parent State *on his first promotion in the new State.*³⁵

35. V. K. Javali *V. State of Mysore*—1965(2) *Mys. L. J.* 810.