## CHAPTER I

# CAUSES AND REMEDIES*

After the commencement of the Constitution which, *inter alia,* contains specific provisions in the form of articles 14 and 16, 309 and 311 together with the constitutional remedies provided under articles 32 and 226 of the Constitution of India, the civil servants have a right to seek constitutional remedies available to them whenever any action taken against them is violative of any provisions of the Constitution or in violation of any statutory provisions made in exercise of powers under article 309 of the Constitution regulating the recruitment and conditions of service. But it was least expected that the litigation between the state and its servants would reach such an alarming proportion. It is a matter of common knowledge that in various high courts in the states and in the Supreme Court of India large number of cases of civil servants have come up for adjudication and in majority of the cases the claims put forward by the civil servants are accepted in courts and reliefs are granted. This indicates that there is sufficient basis for the civil servants to approach the courts for relief in such large number of cases.

### Causes

Some of the main causes, which are responsible for such large number of litigation between the State and its servants, to state illustratively, and not exhaustively, are:

(i) Though the Constitution has made specific provisions for regulating matters relating to recruitment and conditions of service by acts of appropriate legislature under article 309 and by rules framed under proviso to article 309 in respect of several matters no legislative enactments or statutory rules have been framed and the matters are allowed to be regulated by executive orders which are issued and modified several times and leaving the matters indefinite and unpredictable.

(ii) Even when statutory rules under proviso to article 309 are framed, they are not framed taking all the circumstances into consideration and are not precise and are frequently amended again resulting in indefiniteness and confusion.

* Revised by Arya A. Kumar, Assistant Research Professor, ILI.

(iii) Even after rules are framed, the rules are interpreted differently to suit individual cases and inconsistent stands are taken by the state before the courts to suit particular cases.

(iv) Orders relating to conditions of service and disciplinary matters are passed committing patent illegalities leaving no other alternative for the civil servants but to seek redress in courts of law.

(v) Indecision or inordinate delay in taking decisions in respect of the legitimate grievances put forward by the civil servants even in cases where similar questions have been the subject matter of decisions of the high court or the Supreme Court.

A perusal of the various decisions of courts reveals that uncertainty in the matter relating to orders or rules regulating recruitment, fixation of quota and seniority and in the matter of prescription of qualifications and the like, have given rise to long line of litigations, involving large number of officers.

In this connection, it is useful to quote some of the observations made by the courts in their decisions relating to grievances of civil servants.

In *Jaisinghani* v. *Union of India*,[1] criticising the non-observance of quota rules between direct recruitment and promotions and consequential disobedience to seniority rules, the Supreme Court observed as follows:

> In this context, it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole Constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law.(See Dicey-"Law of the Constitution"-Tenth Edn., Introduction) "Law has reached its finest moments", stated Douglas, J in *United States* v. *Wunderlich*(1951) 342 US 98 "when it has freed man from the unlimited discretion of some ruler... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes* (1770) 4 Burr 2528 at p.2539 "means sound discretion guided by law". It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful.[2]

1 AIR 1967 SC 1427.
2 *Id.* at 1434.

Regarding the promotion policy, in *Ashwani Gupta* v. *Union of India,*[3] the apex court observed that,"the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion.Therefore the action of respondents, in not promoting the petitioner cannot be said to be arbitrary."

On vice of arbitrariness *vis-à-vis* rule of law the apex court held that,"Every state action, in order to be valid, must not be susceptible to the vice of arbitrariness. This is the essence of article 14 and the rule of law the system that governs the country, upon which Indian system of governance is based.[4]

In *Ramachandra Shankar* emphasising the necessity of framing statutory rules the Supreme Court observed as follows:

> We find in the course of our judicial experience and we notice this fact with some apprehension, that members of public services in alarmingly large numbers resort to legal remedies in courts of law for agitating their grievances in regard to service matters. This phenomenon is symptomatic of sense of injustice and subversive of that undivided and devoted attention to official duties which is so essential for efficient and dynamic functioning of the government. It can, therefore, hardly be overemphasised that there is great need for simplifying and streamlining service rules and giving them statutory shape so as to promote contentment among the services by extending the area of equal treatment and imparting stability to conditions of service. It is not desirable that the fortunes of such a vital and strategic instrument of government as the public services be left to be governed by mere departmental resolutions and executive instructions. These cannot take the place of statutory rules, which alone can impart stability and security and ensure observances of the rule of law. Legal rules must govern the recruitment and conditions of public servants so that there is no arbitrariness or inequality in state action in regard to them and the rule of law is not eroded. And such should preferably be framed without avoidable delay and after consultation with groups which apprehend discriminatory treatment as that would go a long way to produce a sense of contentment and satisfaction. We make these observations not with a view to casting any reflection on the administration but to highlight a problem which has come to our notice quite often, in the hope that it will help appreciate the social dimensions of the problem and the damage to public interest which

3 2007 (2) SLR (P &H) 373.

4 *A.P. Aggarwal* v. *Govt of NCT of Delhi*, (2000) 1 SCC 600.

> may be likely to result if the problem is not promptly and satisfactorily resolved.[5]

In the case of repugnancy between rules framed under Art 309 and those under ordinary statutory power, the latter will prevail, as the special rules made earlier could not be abrogated by the later general rules[6].

In *Sakaladip*, the Supreme Court made the following observations:

> Before parting with this case, we may observe that on the findings of the high court about the correctness of which we have no doubt the appellant was not treated justly. He was even denied promotion due, which was not a bona fide one inasmuch as its object was to deprive the appellant the rights he would have otherwise enjoyed. It is regrettable that his superior officers should treat a subordinate government servant in this manner. We hope that although the claim of the appellant has been found to be barred by limitation, the Union of India will consider the equities of the case and see its way to give such relief to the appellant, as we are precluded under the law from granting to him due to the operation of the law of limitation.[7]

The High Court of Mysore while disposing of a batch of 83 writ petitions of college lecturers whose services were terminated contrary to government orders, observed as follows:

> The respondents must know best, as to what is good for education. But we are not sure whether they have realised the extent of damage that they have caused to the cause of education in this state. It is not for us to pronounce on the present day standard of education. But no one can say that there is no need for able, enthusiastic and inspiring educationists and that in large numbers. The nation wants them to have missionary zeal. Here are 83 young men with brilliant acadamic record. They desire to be educationists. Given sufficient encouragement most of them are likely to become good educationists. But a frustrated teacher is likely to be a danger to the society. It is unfortunate that they were made to start their career in the education department with bitterness and frustration. This is something that should have been avoided. All that we hope is that the injury suffered by the petitioners will not leave a permanent scar in their mind and make them forget their true role in life, and their obligation to the society. These cases have given us more than the usual amount of worry. They have distressed us. Undoubtedly we were worried about

5 *Ramachandra Shankar* v. *State of Maharashtra*, SLR 1974(1) SC 470 at 488: AIR 1974 SC 259.

6 *A.B. Krishna* v. *State of Karnataka*, JT 1998(1) SC 613.

7 *Sakaladip* v. *Union of India*, 1974 SLWR 66 at 71.

> the injustice meted to these young men. But what worried us more is the trend noticed in a department and that in a department of education. We would have been happy if it has been possible for the government to set matters right and there was no occasion for the petitioners to come to this court for relief.[8]

Similarly, as regards the inconsistent stand taken by the state, which has been responsible for long line of litigations between the State of Mysore and its servants, was a subject matter of specific observation by the High Court of Mysore and the same is extracted hereunder:

> We cannot but observe that the State Government has not taken a consistent stand in the several cases pertaining to the said rules. As pointed out in the order of reference to the Full Bench in *Krishna Gowda* v. *State of Mysore*, the learned Government Pleader appears to have conceded before the Bench that decided *Syed Hussain Syed Sab* v. *Superintendent of Police, Belgaum* that the Departmental Examinations Rules 1962 were applicable to the officials of the Police Department though separate Recruitment Rules have been framed for that Department. But before the Full Bench in *Krishna Gowda's* case, the stand taken on behalf of the State appears to be that Departmental Examinations Rules 1962, have no application for a Department for which separate Recruitment Rules have been made under the proviso to article 309 of the Constitution. Though the opinion of the full bench was pronounced earlier to the Supreme Court hearing C.A. Nos. 1462 to 1550 of 1966, curiously enough the state government does not appear to have brought to the notice of the Supreme Court the opinion of the full bench in *Krishna Gowda's* case. As pointed out the contentions advanced on behalf of the state in those appeals were on the footing that the Departmental Examinations Rules 1962 were applicable to the Secretariat Service (for which separate Recruitment Rules had been made under the proviso to Article 309). Similar was the stand taken by the state government before this court in *T.S. Gurusiddaiah* v. *The Chief Secretary, Government of Mysore.*

The inconsistent stands taken by the state government from time to time have contributed considerably to confusion and uncertainty regarding the applicability of the Departmental Examination Rules, 1962, to different cadres of service in the state.[9]

Judicial interference in service matters is called for only to ensure rule of law by observing fundamental rights, statutory provisions, rules and instructions

8 *Mukunda Krishna* v. *Director of Collegiate Education*, 1964 Mys LJ Suppl 531 at 540.
9 *Suryanarayana* v. *State of Mysore*, 1967(2) Mys L J 544.

and fairness.[10] The government's policy regarding disinvestment and sale of its majority shares of Public Sector Undertaking *vis-a-vis* the right of the employees was the subject matter of dispute before the court in *Balco Employees' Union (Regd.)* v. *Union of India.*[11] The apex court held that unless decision is contrary to any statutory provision or the Constitution, court cannot interfere with policy/ economic decisions of the government. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, the courts would decline to interfere. The court observed as follows:

> Merely because the workmen may have protection of Article 14 and 16 of the Constitution , by regarding BALCO as a state, it does not mean that the government had to give the workers prior notice of hearing before deciding to disinvest. In otherwords, the existence the existance of rights of protection under Article 14, 16 and 311 of the Constitution cannot possibly have the effects of vetoing the government's right to disinvest.Nor can the employees claim a right of continous consultation at different stages of the disinvestment process.

**Remedies**

The remedies available to the employees against the aggrieved orders of the authorities in the matters relating to service may be classified as statutory departmental remedies, civil remedies and constitutional remedies. Part VII and partVIII of Central Civil Service (Classification, Control and Appeal) Rules, 1965 under rules 22 to 29 provide statutory and departmental remedies to the government servants. Similar provisions also exist in All India Services (Disciplinary and Appeal) Rules, 1969. Civil remedies include declaratory suit, suit for specific performance and suit for damages. Apart from these a civil servant can seek constitutional remedies.

In the light of the experience derived from the long line of litigations between the state and its servants after the commencement of the Constitution, it appears absolutely necessary to take immediate steps to reduce litigation between the state and its servants which is of utmost importance for preventing the diverting of the attention of government servants to litigation and with the object of promoting smooth and efficient administration by keeping the civil servants free from discontentment so that they may give their undivided attention

10 *State of Haryana* v. *Piara*, (1992) 4 SCC 118.
11 (2002) 2 SCC 333.

to the duties with which they are entrusted. Some of the remedies among others, which may be adopted by the central and state governments, are:

(i) The making of unambiguous statutory provisions in respect of every matter relating to recruitment and conditions of service without allowing the same to be uncertain or to be regulated by executive orders.

(ii) To consult the concerned group of government servants before framing of rules of recruitment and conditions of service and if necessary, call for objections and suggestions which is the prescribed procedure under the General Clauses Act before making subordinate legislation.

(iii) Strict adherence to the rules after they are framed without resorting to frequent amendments which give apprehension in the minds of government servants that the amendments are designed to favour certain individuals. The same procedure as suggested in the framing of rules needs to be adopted even in making amendments unless the amendment becomes immediately necessary.

(iv) Specific provision in the service rules authorising the officers to keep on record oral instructions given by higher authorities whenever orders are passed on the oral instructions given by the higher authorities and by communicating the fact of receipt of such oral instructions to the higher authorities immediately.

(v) Disciplinary action against officers in cases where decisions taken are contrary to rules, when the rules are clear and unambiguous or when the questions are covered by the decisions of the High Courts or the Supreme Court as the case may be even after the same was brought to their notice.

(vi) Appointment of an official committee at the secretariat level to examine the cases filed before the courts, with necessary powers to concede such of the cases which are clearly covered by the decisions or indefensible so as to prevent further filing of cases by officials similarly situated and with the object of putting an end to the controversy between the government and its servants at the earliest opportunity.[12]

(vii) Issuing of circular instructions from time to time to all the officers vested with statutory powers relating to regulation of recruitment and conditions of service on the basis of the decisions rendered by courts from time to time with a direction to apply those principles in all similar cases.

(viii) Additional functions to be entrusted to the public service commission for conducting annual inspections relating to orders passed by the departmental

12 For instance by not conceding the case of an official dismissed from service where such order of dismissal is indefensible on account of long pendency of the case not only the civil servant suffers, it also results in heavy financial loss to state by way of payment of arrears of salary which could be avoided.

authorities in relation to recruitment and conditions of service of officials in the concerned departments and for making a report to the State government about the illegal orders passed in relation to the recruitment and conditions of service by departmental officers and a specific provision giving power to the state government to review and pass orders overruling the illegal orders passed by the departmental officers as contained in the report of the public service commission whenever the government agrees with the views of the public service commission without waiting for the government servants to file appeals or writ petitions.[13]

(ix) *Formation of administrative tribunals*: With the object of redressing the grievances of government servants and also with the object of having speedy settlement of disputes involving large number of government servants, constituting of administrative tribunals invested with the jurisdiction and power to decided appeals of civil servants against the orders in disciplinary proceedings and also orders in respect of their grievances relating to recruitment and conditions of service against the orders passed by all the authorities including the government was envisaged.

The formation of such tribunal would reduce the number of civil servants before the various high courts. The various departmental authorities will also be relieved of the burden of disposing of the departmental appeals. There will be a better investigation of the grievances of civil servants both against departmental penalties and regarding their grievances in relation to their conditions of service.The above suggestions were made in the first edition of this work published in 1974. It is gratifying that the central administrative tribunal has been established, on more or less the same lines, and administrative tribunals for each of the states are being established. In what follows, we examine the salient provisions, as well as problems of tribunalization.

13 Under the rules of recruitment to subordinate services of 1934 framed by the government of His Highness the Maharaja of Mysore, there was a specific provision for the inspection by the Public Service Commissioner of all orders relating to recruitment made by the departmental authorities and for making report to the State government. There was also a specific provisions for the State government to exercise the power of veto against the orders passed by the departmental authorities and to *suo motu* redress the injustice done to an individual official.