

GUDUR KISHAN RAO AND ORS. A
v.
SUTIRTHA BHATTACHARYA AND ORS.

FEBRUARY 23, 1998

[S. SAGHIR AHMAD AND G.B. PATTANAIK, JJ.] B

Service Law :

Indian Administrative Service (Recruitment) Rules, 1954: Rules 8 and 9. C

All India Services—Ceiling—Supernumerary posts—Adding or Change in ceiling—Effect of—Validity—State Civil Service Officers—Promotion to IAS—Ceiling of 33-1/3% laid down in R.9(1)—14 supernumerary posts created by issuing notification to accommodate State Civil Service Officers who were illegally kept out of promotion to the IAS—These posts added to Item 3 of the Schedule to the Cadre Strength Regulations—However, no corresponding increase made against Items 1 and 2—Held: Any Regulation merely increasing the number of posts in Item 3 without corresponding increase of Items 1 and 2 is violative of the ceiling of 33-1/3% and also the mandate of the Cadre Strength Regulation itself—Hence, the said ceiling cannot be exceeded by creation of supernumerary posts against Item 3—Therefore, the said notification declared invalid—Consequently, another notification promoting the State Civil Service Officers against the supernumerary posts also declared invalid—IAS (Cadre) Rules, 1954, R.4(1)—IAS (Fixation of Cadre Strength) Regulations, 1955, Sch. Items 1 to 3. D E

Service Rules and Regulations—Interpretation of—Harmonious construction—Held: Court would attempt to make a harmonious construction of different sets of rules and regulations to try to save them—But if they cannot be saved in any manner they would struck down—Interpretation of Statutes. F

Appointment and Promotion—Notifications created supernumerary posts and promotions of State Civil Service Officers to the IAS—Validity of—Held: Most of the promotee officers might have superannuated in the meantime—Therefore, promotions already made need not be disturbed—However, officers promoted in excess of ceiling limit allowed to continue and adjusted in H
1053

A *subsequent years - But such continuance will not confer on them the benefit of seniority and the year of allotment—Aforesaid directions issued with a view to doing “complete justice between the parties.”—Constitution of India, 1950, Art. 142.*

B *All India Service—Condition—Scheme and History of—Stated and explained—All India Services Act, 1951—All India Services (Conditions of Service-Residuary Matters) Rules, 1960—Indian Civil Administrative Service Cadre Rules, 1950—Constitution of India, 1950, Art. 312(1).*

C **The appellants were promottee officers of the Indian Administrative Service (IAS) who were initially appointed as Deputy Collectors in the State Civil Service. The Government of India, Ministry of Personnel issued a Notification dated 15-12-1993 creating 14 supernumerary posts in the IAS to accommodate the appellants who were illegally kept out of promotion to the IAS for the year 1987. These 14 supernumerary posts were added by amending Item 3 in the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955. By another Notification dated 16-12-1993 the Government of India appointed the appellants to the IAS.**

E **The respondents, who were direct recruit IAS officers, challenged the said two Notifications before the Central Administrative Tribunal. The Tribunal quashed the two Notifications on the ground that these contravened Rule 9 of the Indian Administrative Service (Recruitment) Rules, 1954. Hence this appeal.**

F **On behalf of the appellants it was contended that the Notification dated 15-12-1993 was a rule made under Section 3(1) of the All India Services Act, 1955 and could not be struck down on the ground that it contravened Rule 9 of the Recruitment Rules; and that since the Recruitment Rules and the Notifications were made under Section 3(1) of the Act both must be harmonised.**

G **On behalf of the respondents it was contended that Rule 9(1) of the Recruitment Rules prescribed a ceiling of 33-1/3% of the number of posts shown against Items 1 and 2 of the Schedule to the Regulations and therefore, the Notification dated 15-12-1993 violated Rule 9(1) since it did not make a corresponding increase against Items 1 and 2.**

Dismissing the appeal, this Court

H **HELD : 1. Under Rule 9 of the Indian Administrative Service**

(Recruitment Rules), 1954, there is a prohibition that the number of persons recruited under Rule 8 in any State and at any time will not exceed 33-1/3% of the number of posts shown against Items 1 and 2 of the Cadre in relation to the State. The Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955 framed by the Central Government under Rule 4(1) of the India Administrative service (Cadre) Rules, 1954 categorically fixed the number of posts borne, the strength and composition of the cadre for each of the States and so far as Item 3 dealing with the promotion by Selection under Rule 8 of the State Civil Service Officers is concerned it has to be 33-1/3% of Items 1 and 2 of the Schedule to the Regulations. That being so, any Regulation merely increasing the number of posts in Item 3 without any corresponding increase of Items 1 and 2 on the face of it would be violative of the very mandate of the Regulation and at any rate it would violate Rule 9 of the Recruitment Rules. The Regulation itself having been framed under Rule 4(1) of the Cadre Rules and Rule 8 having provided for a maximum of such promotion, the impugned notification increasing the number of posts only for State Civil Service Officers to be promoted contravenes Rules 8 and 9 of the Recruitment Rules and the mandate of the Regulation itself. Having considered the provision of the Recruitment Rules, the Cadre Rules and the Cadre strength Regulation the conclusion is that the impugned notification dated 15-12-1993 contravenes Rule 9 of the Recruitment Rules and under the scheme of the All India Services Act, 1951, Rules and Regulations it is not possible to sustain the notification in question by giving any harmonious construction to the provisions. The Notification dated 16-12-1993 promoting the appellants to the Indian Administrative Service must also be held invalid. [1065-G-H; 1066-A-D]

Mohinder Singh Gill v. The Chief Election Commissioner, [1978] 2 SCR 272, relied on.

2. It is a cardinal principal of construction that when Rules and Regulations have been framed dealing with different aspects of the conditions of service of the employees the courts would attempt to make a harmonious construction and try to save the provisions and not to strike down the same. But where it is not possible even with doing some amount of violence to the language used in the notification to give a harmonious construction, then necessarily the court will have no other option to set aside a notification if the said notification contravenes any provisions of the Act or the Rule or is otherwise constitutionally invalid. [1065-C]

3. Even prior to the independence of the country, in a conference held

- A under the Chairmanship of Sardar Vallabhbhai Patel a decision had been taken to create two All India Services such as Indian Administrative service and Indian Police Service to replace the former India Civil Service and Indian Police. It was further decided that the recruitment to these two services should be made through the Federal Public Service Commission on the basis of annual Competitive Examination. In the very same meeting a further decision had been taken that a maximum of 25% of the cadre post in the All India Services should be thrown open to the State Civil Service Officers and State police of outstanding merit. In pursuance of the aforesaid decision the two All India Services were formed and they were put on statutory basis under the Indian Civil Administrative Service Cadre Rules, 1950. The Parliament then passed the All India Services Act, 1951 under Article 312(1) of the Constitution which empowers the Government of India to make, after consultation with the State Government, rules for the regulation of recruitment and conditions of service of the persons appointed to an All India Service. In exercise of power under Section 3 of the Act—The Recruitment Rules, The Cadre Rules, The All India Services (Conditions of Service-Residuary Matters) Rules, 1960 have been made by the Central Government. The Cadre Rules enable the Central Government to determine the strength and composition of the cadre in each State by framing regulation and in exercise of such power the Cadre Strength Regulations, 1955 have been framed by the Central Government and not only the total authorised strength of the cadre for each State has been indicated but also it indicates the number of posts for different categories of posts within the cadre. Thus, the Act, the Rules and the Regulations are a complete set of provisions dealing with different aspects of the service conditions to Indian Administrative Service and the entire scheme contained in these rules and regulations have to be borne in mind in answering the questions involved in the present case.

[1063-G-H; 1064-A-D]

4. As a necessary consequence of the quashing of the notification dated 16-12-1993 the appointment of the 14 officers included therein to the Indian Administrative Service with retrospective effect would stand invalidated, though as a matter of fact the said notification has been given effect to and most of the State Civil Service Officers promoted thereunder with retrospective effect might have superannuated in the meantime. Therefore, with a view to doing complete justice between the parties under Article 142 of the Constitution, the promotions already made need not be disturbed at this length of time. However, those officers who were promoted in excess of

the ceiling limit are permitted to continue in the IAS and to be adjusted in the subsequent years. But such continuance will not confer on them the right to count their seniority and year of allotment. [1068-B-E] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6525 of 1994 Etc. B

From the Judgment and Order dated 26.8.94 of the Central Administrative Tribunal, Hyderabad in O.A. No. 118 of 1994.

V.R. Reddy, Additional Solicitor General, Arvind Bobde, P.P. Rao, Venkat Ramani, P. Anoop, S. Muralidhar, P.S. Narasimha, V.G. Pragasam, Ms. Sashi Kiran, Anil Katiyar, Rajeev Sharma, Ms. Neelam Sharma, Ajay Sharma, Rupesh Kumar, T.C. Sharma, P. Venkat Reddy and S.U.K. Sagar for the appearing parites. C

The Judgment of the Court was delivered by

G.B. PATTANAİK, J. These eight appeals are directed against the order of the Central Administrative Tribunal, Hyderabad Bench dated 26.8.1994, and involve common questions of law. By the impugned order the Tribunal has quashed the two Notifications dated 15.12.1993 and 16.12.1993 of the Government of India, Ministry of Personnel inter alia on the ground that the Notifications in question amending the Indian Administrative Service (Fixation of Cadre Strength) Regulations (hereinafter referred to as 'Regulation') contravenes Rule 9 of the Indian Administrative Service (Recruitment) Rules, 1954, (hereinafter referred to as the 'Recruitment Rules'). The appellants in all these appeals are the promotees to the cadre of Indian Administrative Service who had been recruited by way of direct recruitment to the post of Deputy Collectors in the State Service. Respondents nos. 1 to 4 in Civil Appeal No 6525 of 1994 are the direct recruits to the Indian Administrative Service. These respondents - direct recruit IAS officers had filed OA No. 118 of 1994, challenging the Notifications of the Government of Indian dated 15.12.1993 and 16.12.1993, as already stated. Another direct recruit IAS officer had filed OA No 542 of 1994 and yet another direct recruit IAS officer had filed OA No. 543 of 1994 and all the three OAs were disposed of together by the Tribunal by order dated 26.8.1994. Though the dispute essentially centres round the year of allotment in the cadre of Indian Administrative Service between the direct recruits and the promotees but the said dispute arises because of several earlier orders passed by the Tribunals and the two D
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- A Notifications were issued by the Union Government in implementation of the directions of the Tribunal. It would, therefore, be necessary to set out facts in brief.

- B The appellants were initially recruited to the post of Deputy Collectors in the State of Andhra Pradesh and were appointed by order dated 29.12.1978 issued by the Government of Andhra Pradesh. On getting posting orders in different places in the State one of them (Umamalleswar Rao) joined his post on the very next day as his posting was at Hyderabad itself. The other appointees joined their respective posts on different dates in January 1979 depending upon the time that was required for them to go and join the post.
- C The State Government issued G.O. No. 493 dated 8.4.1992, indicating that the services of these officers would count from the date on which the respective higher rank holders in the merit list joined the duty in January 1979. On account of the aforesaid Government Order Umamalleswar Rao's date of joining became 18.1.1979 though factually he had joined the duty on 13.12.1978.
- D Under the Provisions dealing with promotion to the IAS cadre, an officer belonging to the State Civil Service must complete 8 year of service on 1st January of the year in which the Select Committee meets in order to be eligible for being considered for promotion. Umamalleswar Rao who had factually joined as Deputy Collector on 13th December, 1978, but was deemed to have joined the post on 18.1.1979 because of the Government Order dated 8.4.1982
- E was not eligible for being considered for promotion in the year 1987 as he could not complete 8 years by 1.1.1987. He, therefore, filed an application before the Andhra Pradesh Administrative Tribunal which was registered as R.P. No. 9173 of 1987 contending therein that his services from the date of his joining on the post of Deputy Collector 13th December, 1978 should be counted. Similar applications were also filed by some other officers which
- F were registered as R.P. No. 7311 of 1987 and R.P. No 7194 of 1987. In case of Umamalleswar Rao the Tribunal granted an interim direction that his case be placed before the Select Committee who is to prepare Select List for the year 1987. The Select Committee which met on 15.12.1987 considered the cases of 26 officers for promotion who had completed 8 years of service on 1.1.1987. The number of vacancies which were anticipated for being filled up
- G by promotion was 13. All the 26 officers who were considered by the Selection Committee were included in the Select List for the year 1987 as the Select List was to be prepared for twice the number of vacancies. The Selection Committee also gave their respective positions in the Select List. Out of the said Select List 7 were promoted to the IAS earlier to 16.12.1988 and 5 were promoted
- H w.e.f 16.12.1988. The 13th man in the Select List was not promoted as certain

enquiry against him was pending. The 14th man, one Shri Ram Chandra A
 Murthy filed an application before the Tribunal, which was registered as OA
 No 223 of 1989, claiming that he was entitled to be promoted against 13th
 vacancy. That application was allowed by the Tribunal and special Leave
 Petition against said judgment by the Union of Indian stood dismissed. He
 was, therefore, appointed to the Indian Administrative service w.e.f 16.12.1988 B
 the date on which the vacancy was available. In the meantime, the State
 Tribunal heard the Petitions filed before the Tribunal by the promotees and
 by Order dated 22.3.1988 quashed G.O.M No 493 dated 8.4.1982 and held that
 the services of the Deputy Collectors has to be reckoned from the date of
 their appointment and the case of such of the Deputy Collectors who had not
 been considered for being included in the Select List of IAS of 1987 on C
 account of non completion of 8 years of service by 1.1.1987 should be
 reconsidered. In implementation of the aforesaid direction of the Tribunal
 Government order was issued on 31.5.1990 regularising services of the
 appellants with effect from the date of their appointment order i.e. 29.12.1978.
 The appellants, therefore, made a Representation to the government to review D
 1987 Select List for the IAS. Since no orders were passed on the representation,
 two Petitions were filed before the Tribunal being OA No. 442 of 1988 and
 OA No 206 of 1991 for a direction to the Authority to constitute a Review
 Committee for re-drawing up of the Select List for the year 1987. The Tribunal
 disposed of those matters by Order dated 21.1.1992 directing the Government
 to constitute a Review Committee and to review the case of all those who E
 became eligible for consideration on completion of 8 years of service by 1st
 January, 1987 and if, ultimately they are found suitable to promote them to
 the IAS with effect from the date their juniors were promoted. In accordance
 with the direction of the Tribunal as aforesaid, the Selection Committee was
 constituted and on re-consideration of the case of the appellants along with
 other similarly situated officer, 14 of them were included in the Revised Select F
 List, thus the Select List for the year 1987 consisting of 26 officers initially
 selected and 14 others additionally selected. The Selection committee also
 thought it appropriate not to disturb the members of the original Select List,
 under such circumstances the State Government thought it appropriate to
 create supernumerary post in the IAS to accommodate 14 officers who were G
 brought into the Select List of 1987 on reconsideration. The State Government
 sent the necessary proposal to the Central Government and at that stage
 some of the direct recruited officers of the IAS filed application before the
 Tribunal which was registered as OA No 457 of 1993, contending that the
 proposal of the State Government for creation of 14 additional supernumerary
 posts in the IAS is without jurisdiction. That application was disposed of with H

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A the direction to the State Government to consider and dispose of
Representations filed by the direct recruits in accordance with law. The
Central Government examined the proposal of the State Government and
finally issued the Notification dated 15.12.1993, by which Notification the
Cadre Strength Regulation was amended for the State of Andhra Pradesh and
14 supernumerary posts were created. The Government of India further
B issued a Notification on 16.12.1993, appointing the 14 persons of the State
Civil Services to the Indian Administrative Service who were brought into the
Select List of the year 1987 by the Review Selection Committee. A Review
Petition appears to have been filed by the State Government at the instance
of the Central Government before the Tribunal and Contempt petition also
C have been filed by the present appellants before the Tribunal but all those
petitions were disposed of by the Tribunal on a finding that the directions
of the Tribunal have been duly complied with and the earlier order of the
Tribunal does not contain any error on the face of the order requiring to be
reviewed. The direct recruit IAS officers being aggrieved by the Notifications
of the Government of India 15.12.1993 and 16.12.1993, approached the Central
D Administrative Tribunal and the said Tribunal by the impugned order dated
26 August, 1994, having allowed the same and having quashed the
Notifications, the present appeals have been preferred.

Mr. Salve the learned senior counsel appearing for the appellants
contended that the Notification dated 15.12.1993 though purports to be an
E amendment to the Regulation but the same having been issued in exercise of
powers conferred under sub-section (1) of Section 3 of the All Indian Service
Act, 1951 (hereinafter referred to as 'the Act') is essentially a rule and that
rule cannot be struck down on the ground that it contravenes Rule 9 of the
Recruitment Rules. The learned counsel further contended the Recruitment
F Rules also having been made in exercise of power under Section 3(1) of the
Act and the Notification dated 15.12.1993 also having been made in exercise
of said power, attempts should be made for harmonising both the rules and
at any rate if both the rules cannot be allowed to operate on a harmonious
construction then the later rule being made for a specified purpose must
prevail. Mr. Salve, the learned senior counsel further argued that by Notification
G dated 15.12.1993 the cadre strength of Andhra Pradesh has been increased
by 12 to accommodate the State Civil Service Officers who were illegally kept
out of consideration while preparing the select list of the year 1987 to implement
the orders of the Tribunal in their favour and by such increase of cadre
strength for a limited period there has been no contravention of Rule 9 of the
H Recruitment Rules, and therefore, the impugned judgment of the Central

administrative Tribunal is erroneous. Mr. Bobde, the learned senior counsel appearing for the appellants in some of the civil appeals contended that in service jurisprudence creation of post and recruitment to the post are two different concepts. Under Rule 9 of the Recruitment Rules the embargo is against recruitment, and therefore, it prohibits appointment by promotion to the IAS in any State under Rule 8, exceeding 33 1/3 per cent of the number of posts shown against items 1 and 2 of the Regulations. But the Notification dated 15.12.1993 merely creates 12 posts for periods specified therein by increasing the authorised strength of the cadre and as such it does not contravene Rule 9 of the Recruitment Rules. Mr. Reddy the learned Additional Solicitor General, appearing for the Union of India contended with force that special situation having arisen on account of directions given by the Central Administrative Tribunal and against the said directions the Union having come to this Court and special leave petition having been rejected, to implement the directions of the Tribunal the Union Government had no other alternative than to increase the cadre strength to accommodate the promotes officers in the IAS and in such special situation the Central Government has exercised powers under Section 3(1) of the Act itself, and therefore, the Notification issued in exercise of such power could not have been struck down by the Tribunal.

Mr. P.P. Rao the learned senior counsel appearing for the respondents 1 to 4, who were the direct recruit IAS officers, on the other hand submitted that under the scheme of service rules and regulations determining the service conditions of employees in the Indian Administrative Service cadre, it is not possible to read a particular Notification in isolation. According to Mr. Rao, Section 3(1) of the Act confers power on the Central Government to make rules regulating the recruitment and conditions of service of persons appointed to the All Indian Service. In exercise of such power the Central Government has made the Recruitment Rules of 1954, which prohibits promotion of the number of persons from State Civil Service to the cadre of IAS in excess of 33 1/3 per cent of the posts shown in items 1 and 2 of the cadre in relation to the State in question. The Central Government has also made, in exercise of power under Section 3(1) of the Act, the Indian Administrative Service (Cadre) Rules, 1954 (hereinafter referred to as 'the Cadre Rules') and Rule 4 of the Cadre Rules empowers the Central Government to determine the strength and composition of the cadre constituted under Rule 3 for each State or group of States by framing regulation in consultation with the State in question. In exercise of the aforesaid power contained in Rule 4(1) of the Cadre Rules the Central Government has made regulations and the strength and composition

- A of the cadre of the Indian Administrative Service of various States have been specified in the Schedule to these regulations. Under the aforesaid scheme when the central Government has issued a Notification dated 15.12.1993 thereby creating additional posts by increasing the cadre strength in item no. 3 of the Schedule for the State of Andhra Pradesh that would be beyond the power of the Government under the Regulation inasmuch as the determination
- B of the number of persons to be recruited indicated in item 3 of the Schedule is dependant upon the number of posts contained in items 1 and 2 of the said schedule i.e. the number of senior post under the State Government and Central deputation reserve at 40 per cent of item 1. In the aforesaid premises, the impugned Notification having directly contravened Rule 9 of Recruitment
- C Rules the Tribunal was wholly justified in quashing the said Notification. Mr. Rao also contended that merely because the source of power exercised by the Central Government in issuing the Notification dated 15.12.1993 have been indicated to be Section 3(1) of the Act and Rule 4 of the Rules it cannot have the status of Act or the Rule as it is merely an amendment to the Cadre
- D Strength Regulation and has rightly been nomenclatured as Indian Administrative Service (Fixation of Cadre Strength) 12th Amendment Regulation, 1993. Such Regulation when on the face of it contravenes Rule 9 of the Recruitment Rules, regulation has to be struck down and consequently there is no illegality in the impugned order of the Tribunal. Mr. Rao also contended that the aforesaid Regulation contravenes Section 3(1-A) of the
- E Act itself as it prejudicially affects the interest of all those direct recruits to the Indian Administrative Service on account of the retrospective operation of the Notification, and therefore, the same has rightly been struck down. Mr Rao, lastly urged that under the scheme of the Service Rules and Regulations meant for IAS only 13 persons could have been in the Select List for the year 1987 for being promoted to the IAS but effect of the impugned Notification
- F dated 15.12.1993 and the consequent Notification dated 16.12.1993 is that the Select List for the year 1987 for promotion to the IAS consists of 40 persons which contravenes the Recruitment Rules, and therefore, the impugned Notifications have rightly been struck down. Mr. Venkat Ramani, the learned senior counsel appearing for some of the respondents, submitted that the
- G Notification issued by the Central Government must be read as the language of the Notification indicates and not on the basis of the source of power in exercise of which the Notification has been issued and thus construed it is an amendment to the Cadre Strength Regulation and if the said Regulation contravenes Rule 9 of the Recruitment Rules the same cannot be allowed to operate and the Tribunal has rightly quashed the same. In support of this
- H contention the learned counsel placed reliance on the decision of this Court

in the case of *Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi & Ors.*, [1978] 2 SCR 272. A

In view of the rival submissions at the Bar the following questions arise for our consideration:

1) The Notification dated 15.12.1993 whether can be held to be a Rule though nomenclatured as Regulation amending the Cadre Strength Regulation? B

2) Whether it is possible to construe the Notification and Rule 9 of the Recruitment rules harmoniously and can the Notification be allowed to operate notwithstanding the limitation provided in Rule 9 of Recruitment Rules for promotion of the State cadre officers to the Indian Administrative Service? C

3) When the validity of Rule or Regulation crops up for consideration can the authority framing the Rules and Regulations take the shelter that it was in implementation of certain directions of the Tribunal in favour of some employees and whether such a plea can be sustained even though the Rules and Regulations framed are found to be beyond the powers of the rule making authority or is otherwise constitutionally invalid? D

4) Even if the impugned order of the tribunal striking down the Notifications dated 15.12.1993 and 16.12.1993 can be found fault with, what would be the appropriate direction which this Court can issue for doing complete justice between the parties in view of special situation which necessitated the issuance of the Notification dated 15.12.1993? E

Before we proceed to answer the aforesaid questions formulated by us it would be appropriate to notice the very scheme of the Act, Rules and Regulations determining the conditions of service of the persons appointed to the Indian Administrative Service, Even prior to the independence of the country, in a conference held under the Chairmanship of Sardar Vallabhbhai Patel a decision had been taken to create two All India Services such as Indian Administrative Service and Indian Police Service to replace the former Indian Civil Service and Indian Police. It was further decided that the recruitment to these two services should be made through the Federal Public Service Commission on the basis of annual Competitive Examination. In the very same meeting a further decision had been taken that maximum of 25% of the cadre post in the All Indian Services should be thrown open to the State Civil H

- A Service Officers and State Police Officers of outstanding merit. In pursuance of the aforesaid decision the two All Indian Services were formed and they were put on statutory basis under the Indian Civil Administrative Service Cadre Rules, 1950. The Parliament then passed the All Indian Services Act, 1951 under Article 312(1) of the Constitution which empowers the Government of India to make after consultation with the State Government, rules for the regulation of recruitment and conditions of service of the persons appointed to an All Indian Service. In exercise of power under Section 3 of the Act - The Recruitment Rules, The Cadre Rules, The All Indian Services (Conditions of Service - Residuary matters) Rules, 1960 (hereinafter referred to as 'the Residuary Rules') have been made by the Central Government. The Cadre Rules enables the Central Government to determine the strength and composition of the cadre in each State by framing regulation and in exercise of such power the Cadre Strength Regulation, 1955 have been framed by the Central Government and not only the total authorised strength of the cadre for each State has been indicated but also in indicates the number of post for different categories of posts within the cadre. Thus, the Act, the Rules and the Regulation are a complete set of provisions dealing with different aspects of the service conditions to the Indian Administrative Service and the entire scheme contained in these rules and regulations have to be borne in mind in answering the questions formulated by us.

- E So far as the first question is concerned, the Notification dated 15.12.1993 on the face of it is an amendment to the Cadre Strength Regulation, 1955 and by the said Notification 14 posts against item no 3 to be filled up by promotion and selection in accordance with Rule 8 of the Recruitment Rules have been increased for the period indicated in the notification. The obvious necessity for increasing the cadre strength so far as item no. 3 of the Schedule of the Cadre Strength Regulation is to accommodate the 14 State Civil Service Officers who had been excluded from the purview of consideration while drawing up the Select List for the year 1987 and in whose favour the Tribunal has issued certain directions. The Cadre Strength of the Indian Administrative Service for each of the State is fixed by the regulation which regulation is framed in exercise of power under sub-rule (1) of Rule 4 of Cadre Rules. This being the position the notification increasing the number of posts in respect of item no 3 of the schedule relating to Andhra Pradesh as well as the increase of the total authorised strength of the cadre in Andhra Pradesh is nothing but an amendment to the Regulation in question, and therefore, notwithstanding the level of notification that the same has been issued under
- H sub-section (1) of Section 3 of the Act read with sub-rule (2) of Rule 4 of the

Cadre Rules and Rule 3 of the Residuary Rules the same cannot have the status of an Act of the Rule as contended by Mr. Salve the learned counsel appearing for the appellants. On a plain grammatical meaning of the words used in the notification being given as well as the object for which the notification has been issued if borne in mind the only conclusion that can be arrived at is that the said notification is a regulation amending the Cadre Strength Regulation and called the 12th Amendment Regulation, 1993.

So far as the second question posed by us is concerned it is no doubt a cardinal principle of construction that when Rules and Regulations have been framed dealing with different aspects of the conditions of service of the employees the courts would attempt to make a harmonious construction and try to save the provisions and not to strike down the same. But where it is not possible even with doing some amount of violence to the language used in the notification to give a harmonious construction,, then necessarily the court will have no other option than to set aside a notification if the said notification contravenes any provisions of the Act or the Rule or is otherwise constitutionally invalid. Bearing in mind the aforesaid principle of construction it appears to us that the impugned amended Regulation cannot be harmoniously construed with Rule 9 of the Recruitment Rules. Under the Recruitment Rules recruitment to the Indian Administrative Service can be made by competitive examination; by selection of persons from among the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union; by promotion of member of a State Civil Service; and by selection, in special cases from among the persons who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service. So far as the promotion of members of a State Civil Service is concerned the procedure is provided in Rule 8 of the Recruitment Rules. Under the said Rule 8 the Central Government on the recommendation of the State Government concerned and in consultation with the Public Service commission makes recruitment to the service by promotion from amongst the members of the State Civil Service in accordance with Regulation to be framed by the Central Government. Under Rule 9 of the Recruitment Rules, there is a prohibition that the number of persons recruited under Rule 8 in any State and at any time will not exceed 33 1/3 per cent of the number of posts shown against items 1 and 2 of the Cadre in relation to the State. The Cadre Strength Regulation framed by the Central Government in exercise of power under sub-rule(1) of Rule 4 of the Cadre Rules categorically fixes the number of posts borne and the strength and composition of the cadre for each of the States and so far as item no.3

- A dealing with the promotion by Selection under Rule 8 of the State Civil Service officers are concerned it has to be 33 1/3 per cent of items 1 and 2 of the Schedule. That being so, any regulation merely increasing the number of post in item 3 without any corresponding increase of items 1 and 2 on the face of it would be violative of the very mandate of the Regulation and at any rate it would violate Rule 9 of the Recruitment rules. The Regulation itself having been framed in exercise of power under sub-rule (1) of Rule 4 of the Cadre Rules and Rule 8 having provided that the recruitment by promotion to the service from amongst the members of the State Civil Service has to be made in accordance with the Regulation and Rule 9 of the said Recruitment Rules having provided for a maximum of such promotion, the impugned notification
- C increasing the number of posts only for State Civil Service Officer to be promoted contravenes Rules 8 and 9 of the Recruitment Rules as well as contravenes the mandate of the Regulation itself. Having considered the provisions of the Recruitment Rules, the Cadre Rules and the Cadre Strength Regulation we have no hesitation to come to the conclusion that the impugned notification dated 15 December, 1993 contravenes Rule 9 of the Recruitment
- D Rules and under the scheme of the Act, Rules and Regulations it is not possible to sustain the notification in question by giving any harmonious construction to the provisions. The Tribunal, therefore, was fully justified in striking down the notification dated 15 or December, 1993.

- E So far as the third question is concerned, the same is in relation to the arguments advanced by the learned Additional Solicitor General appearing for the Union of India as well as Mr. Salve appearing for the appellants -who are officers of the State Civil Service that since those officers were illegally excluded from consideration when Select List of the year 1987 was drawn up, they had approached the Tribunal and Tribunal having issued directions in their favour the said direction had to be implemented and if on implementation
- F of the same the Government of India has issued the impugned notification, the said notification must be sustained. In other words, the argument proceeds on the ground that the valuable right accrued in favour of the officers of the State Civil Services who were kept out of consideration for promotion when the Select List of the year 1987 was brawn up cannot be taken away by
- G striking down the impugned notification under which supernumerary posts were created and promotions were given to those State Civil Service Officers from the date their juniors stood promoted. We are unable to persuade ourselves to agree with the submission of the learned counsel as it appears to us in the proceedings before the Central Administrative Tribunal the
- H grievance of these State Civil service officers was that though they were all

appointed by one notification but they factually joined at different places on A
 different dates depending upon the distance of the place in question and
 therefore inter seniority amongst them cannot be decided on the basis of the
 factual date of joining. Since some of the officers who occupied lower position
 in the list were appointed at Hyderabad itself on the date the notification was
 issued, while others senior to them having been posted at distant places B
 joined much later, when the question of consideration of promotion to the
 Indian Administrative Service of the year 1987 cropped up and the Select List
 was drawn up for that year by complying the requirement of 8 years service,
 these senior persons were excluded from consideration. It is to be noticed that
 in the same proceedings the direct recruit IAS officers were not parties as
 dispute was inter so between the officers belonging to the State Civil Service C
 who were appointed on the same date but joined on different dates. The
 Tribunal granted the relief and directed that they should be considered for
 promotion to the Indian Administrative Service in the year 1987 and the
 Review Selection Committee considered their cases and finally included them
 in the Select List of the year 1987. In view of the integrated scheme of the
 Rules and Regulations as discussed earlier and under the provisions in D
 question since only 13 persons could have been promoted to the Indian
 Administrative Service from amongst the officers belonging to the State Civil
 Service during 1987 the Select List could have been prepared for only 26
 persons and the Union Government could have promoted only 13 out of them.
 The directions of the Tribunal in favour of the officers belonging to the State
 Civil Service who were excluded from consideration while drawing up the E
 original select List for the year 1987 merely conferred a right of reconsideration
 and could not confer a right of promotion to the Indian Administrative Service
 which would be contrary to the relevant provisions of the integrated scheme
 as discussed earlier. On the basis of the revised Select List of the Year 1987
 the Central Government could have promoted only the first 13 of the list as
 the number of posts which could be filled up from amongst the officers F
 belonging to the State Civil Service in the year 1987 was only 13. But instead
 of following the aforesaid method the State Government and Union Government
 proceeded to recruit by promotion all those who were included in the Select
 List of the year 1987. Such act on the part of the Central Government and the
 State Government is contrary to the provisions of the integrated scheme of
 the Rules and Regulations governing the service conditions of the officers G
 belonging to the Indian Administrative Service and therefore it was wholly
 beyond the competence of the Central Government to issue the notification
 dated 15.12.1993 increasing the cadre strength in relation to these promote
 officers as well as the notification dated 16.12.1993 promoting these officers
 to the Indian Administrative Service. Necessarily, therefore, the said two
 notifications must be held to be invalid and inoperative and have rightly been H

A struck down by the Tribunal. In view of the aforesaid conclusions arrived at we do not find any infirmity with the order of the Central Administrative Tribunal striking down the two notifications requiring our interference.

Now coming to the fourth question posed by us, namely, what would be the appropriate direction to do complete justice between the parties we find that as a necessary consequence of the quashing of the notification dated 16.12.1993 the appointment of the 14 officers included therein to the Indian Administrative Service with retrospective effect would stand invalidated, though as a matter of fact the said notification has been given effect to and most of the State Civil Service Officer promoted thereunder with retrospective effect might have superannuated in the meantime. In this view of the matter, the State Civil Service Officers who have been promoted to the Indian Administrative Service on the basis of the original Select List as well as the review Select List of the 1987, their appointment need not be disturbed at this length of time. But so far as their seniority and year of allotment in IAS is concerned the same has to be re-done in accordance with the Rules and Regulations, so that, the direct recruits Indian Administrative Officers' interest will not be adversely affected. This can be achieved by treating only the first 13 officers of the Review Select List which contains the names of the total 40 officers in order of merit could be treated to be the officers promoted on the basis of 1987 Select List and their year of allotment may accordingly be determined. So far as the officers from serial no. 14 to 40 are concerned of the said review Select List of the year 1987 while they would be permitted to continue in Indian Administrative Service but such continuance will not confer on them the right to count their seniority and year of allotment but their cases will have to be adjusted in the subsequent year depending upon the number of vacancies and the posts available for such promotes, and their year of allotment would be re-determined accordingly. We would further make it clear that if any of these State Civil Service Officers who were much junior to the officers who had approached the tribunal on earlier occasion and who had been appointed on promotion to the Indian Administrative Service on the basis of the original Select List of the year 1987 their year of allotment has to be re-determined in view of their position having been pushed down in the review select List of the year 1987 which contains the names of all the 40 officers. We decline to interfere with the order of the Central Administrative Tribunal but we issue the aforesaid directions for the purpose of re-determination of the seniority and year of allotment of these officers which we think is necessary in the interest of justice. All these appeals are disposed of accordingly. There will be no order as to costs.

H V.S.S.

Appeal disposed of.