
(2002) 02 JH CK 0057

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6006 of 2001

Ashutosh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 71

Citation : (2002) 02 JH CK 0057

Hon'ble Judges : Vinod Kumar Gupta, C.J.; Vishnudeo Narayan, J

Bench : Division Bench

Advocate : S.B. Gadodia and A.K. Pandey, for the Appellant; P.K. Pd. and A. Allam and SC-II, for the Respondent

Final Decision : Dismissed

Judgement

The Court

1. What is under challenge in this petition is the judgment of the Central Administrative Tribunal. The petitioners had impugned before the Tribunal the notification dated 11.6.2001 which, in supersession of the earlier notification dated 14.11.2000, has altered the allocation of the petitioners and the private respondents between Jharkhand and Bihar Cadres of the Indian Forest Service. As per notification dated 14.11.2000, the petitioners had been allocated Jharkhand, as per the subsequent impugned notification dated 11.6.2001, this allocation was reversed and whereas the private respondents were allocated Jharkhand cadre (they, as per the notification dated 14.11.2000 had been earlier allocated to Bihar cadre), the petitioners cadre was changed from Jharkhand to Bihar.

2. The State of Jharkhand came into being by virtue of Section 3 of the Bihar Reorganisation Act, 2000. Provisions relating to the "service" have been dealt with in part-VIII of the said Act. Section 71 "of the Act relates to All India Services and in pursuance of the prescriptions and the mandate contained in

Section 71 of the said Act, the Central Govt. while exercising power and authority under this section formulated some guidelines and prepared a scheme for allocation of the Officers belonging to the erstwhile Bihar Cadre to Jharkhand Cadre. In this connection, we may refer to the "Records of discussions" in the meetings of the Advisory Committee constituted under the Bihar Reorganisation Act, 2000 which is popularly known as the U.C. Agarwal Committee.

3. In the affidavit filed on behalf of Union of India by the Under Secretary, Ministry of Environment & Forests, it has been spelt out and very elaborately explained that Roster Blocks of 4 Officers each were prepared and based on the guidelines prepared by the U.C. Agarwal Committee every Officer whose name figured at Sl. No. 3 in every such 4-Officers Roster Block was retained in Bihar cadre and other three Officers in every such Block were allocated the Jharkhand Cadre. This, of Course, was subject to another stipulation regarding the exchange between willing and un-willing officers with which, of course, we are not concerned in this case. This formula was adopted in the retention of every third Officer in the Roster Block of 4-Officers each to be retained in Bihar Cadre and the remaining three Officers in every such Block to be allocated to Jharkhand cadre. There is no dispute with regard to these guidelines or the adoption of this formula. It was on this basis that the Original Notification dated 14th November, 2000 was issued. The names of none of the petitioners in the Roster blocks of 4-Officers each as formed the basis of the issuance of the Notification dated 14th November, 2000, figured at Sl. No. 3 of any of such Blocks. As explained above, therefore, the petitioners were allocated Jharkhand Cadre.

4. One single event brought about a dramatic change a little later. As explained above, the aforesaid arrangement was with respect to Direct Recruit Outsiders belonging to General Cadre. One Officer by the name of S.B. Gayakwad belonged to S.C. category. Wrongly and erroneously his name was included in the aforesaid arrangement. This mistake having been detected, after the issuance of the Notification dated 14.11.2000. Roster Blocks of 4-Officers each were prepared afresh minus the name of Gayakwad this time. Roster Blocks thus, prepared minus one name, the entire placing-position in the Roster Blocks got altered. All of the petitioners who had not found place at sl. No. 3 in any of the Roster Blocks, by the altered situation, found themselves pushed up at Sl. No. 3 in every Roster Block. This indeed was very unfortunate for them, but all this happened because of the mistake of earlier including Gayakwad wrongly in the General Category, whereas he actually belonged to S.C. category. By this subsequent rectification of error and the consequential alteration in the Roster Block position of the Petitioners, all of them, found themselves at Sl. No. 3 in every Roster Block: thus, following the guidelines and the adoption of the accepted formula as per U.C. Agarwal. Committee Report they were retained in Bihar and the private respondents who also by the quirk of fate, by this unexpected bounty of exclusion of Gayakwad. had their positions in the Roster Blocks altered and since none of them this time figured at Sl. No. 3 in any of their respective Roster Blocks, they were allocated Jharkhand Cadre. It is in this

background that the reversal in the "fortunes of the petitioners and the private respondents took place. It is in this factual backdrop that the Cadre allocations got entirely reversed between the petitioners and the Private respondents. But all this was done strictly in accordance with the guidelines and the adoption formula. Only because of a mistake earlier committed, the composition of the Roster Blocks got changed.

5. In assailing the impugned Notification issued on 11.6.2001, the learned Counsel for the petitioners relied upon Rule 5 of the IFS Cadre Rules. 1966 which says that before allocation Cadres of the Officers, the Central Government shall consult the State Governments concerned. On the premise that in this case, the Central Government did not consult the State Government, according to the learned Counsel for the Petitioners, the impugned order violated Rule 5 (Supra) and, thus, is illegal and invalid on that ground alone. Let us deal with this argument.

6. The Bihar Reorganisation Act. 2000, being a special Act will have an overriding effect upon any previous enactment on the subject. Section 71 of the said 2000 Act specifically empowers the Central Government to determine the initial strength and composition of the two Cadres of the Successor States of Jharkhand and Bihar and it also gives power and authority to the Central Govt. to allocate the Cadres in such manner as it may decide. Sub-section (5) of Section" 71 of the said 2000 Act lays down that nothing in this Section shall be deemed to affect the operation, on or after the appointed day of the All India Services Act. 1951, or the rules made thereunder. The emphasis is on the words "on or after the appointed day." "Appointed day" admittedly is 15th November. 2000. Therefore, before the appointed day, the Central Government in exercise of the power vested in it under Sub-sections (1) to (4) of Section 71 of the Act could pass an order notwithstanding anything to the contrary contained in the All India Services Act. 1951, or the rules made thereunder.

7. Section 91 of the 2000. Act also being part of the special law clearly lays down that the provisions of the 2000 Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. This also takes care of any stipulatory requirement contained in Rule 5 of 1966 rules (supra).

8. After this judgment was pronounced. Mr. S.B. Gadodia. learned Counsel appearing for the petitioners referred to Section 75 of the 2000 Act and submitted that the Central Govt. may, or may have, established an Advisory Committees for consideration of the representations that may be made by the petitioners. We do not know whether any such Advisory Committee has been established or constituted by the Central Government or not. If indeed, there is any such Advisory Committee in existence, the petitioners are at liberty to submit their representations to the same for redressal of their grievances. But, we on our own refrain from making any comment on this aspect of the matter.

9. For the foregoing reasons, we find no merit in this writ petition, which is dismissed, but without any order as to costs. Any direction issued on 19.12.2001 shall stand vacated