

(2011) 08 GAU CK 0014

In the Gauhati High Court

Case No : Writ Petition (C) No. 305 and 415 of 2011

Ashwani Kumar and Another

APPELLANT

Vs

Sanjay Garg and Others

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 GLD 610 : (2011) 4 GLR 339

Hon'ble Judges : Iqbal Ahmed Ansari, J;H. Baruah, J

Bench : Division Bench

Advocate : K.N. Choudhury, Mr. J. Patowary, Ms. R. Deka, Mr. M. Mahanta and Mr. B.K. Kashyap, appeared for the Petitioners, for the Appellant; D. Barua, Central Government Counsel and Mr. A. Ahmed, Private respondent, Advocates appeared for the Respondents, for the Respondent

Judgement

I.A. Ansari, Judge

1. Both these writ petitions, made under Article 226 of the Constitution of India, having arisen out of judgment and order, dated 01.10.2010, passed, in OA No. 153 of 2010, by the learned Central Administrative Tribunal, Guwahati Bench, are being disposed of by this common judgment and order inasmuch as the issues, which have arisen for determination, are identical because of the fact that the issues are based on the facts, which are common to both the appeals.

2. We have heard Mr. D. Barua, learned Central Government Counsel, appearing on behalf of the petitioners in WP (C) No. 415 of 2011, and Mr. K. N. Choudhury, learned senior counsel, appearing on behalf of the petitioners in WP (C) No. 305 of 2011. We have also heard Mr. A. Ahmed, learned counsel, for the applicant-respondent in both the writ petitions.

3. Before we come to the crucial issues, which have arisen for determination, certain material facts, which have led to the present writ petition, may be set out, in brief, as under:

(i) In terms of the office memorandum, dated 14.12.1983, issued by the Ministry of Finance, Department of Expenditure, New Delhi, in respect of the employees of the Central Government, serving in the Northeastern Region, the fixed tenure for posting is two years, at a time, for those officers, who have completed 10 years; whereas the fixed tenure for posting, at a time, is 3 years in respect of those officers, who have completed less than 10 years. The office memorandum also provides that the officers, on completion of fixed tenure of service, as mentioned hereinbefore, may be considered for posting to a station of their choice "as far as possible".

(ii) The applicant-respondent, who stood posted to the Regional Office (RO), Guwahati, in his capacity as Executive Engineer (Civil), was transferred, in the same grade, to Headquarter, New Delhi, on an order issued, in this regard, on 06.08.2009. On 10.08.2009, the applicant-respondent was relieved by the RO, Guwahati. Aggrieved by his transfer to Headquarter, New Delhi, the applicant-respondent filed an application, namely, OA No. 151 of 2009, in the Central Administrative Tribunal, Guwahati Bench, impugning the transfer order, dated 06.08.2009, on the ground that he had been transferred to RO, Guwahati, by an order issued, in this regard, on 28.05.2007, he joined here on 11.06.2007 and, then, came to be promoted, on 09.06.2009, while working at the RO, Guwahati, as Superintending Engineer (Civil) and remained attached to the same station. On completion of his two years in the Northeastern Region, he gave RO, Chandigarh, and RO, Lucknow, as his chosen places of posting, the option having been exercised by him, on 15.12.2008, pursuant to the letter, dated 20.11.2008, received by him, requiring him to give his option in this regard, but disregarding his option, which he (applicant-respondent) had given, he was, vide the impugned order, dated 06.08.2009, transferred to Headquarter, New Delhi, from the RO, Guwahati. However, OA No. 151/2009, which the applicant-respondent had so filed, was disposed of, on 11.08.2009, by the learned Central Administrative Tribunal (CAT), Guwahati Bench, with direction to the present writ petitioners, in WP(C) No. 415 of 2011, who are the authorities to dispose of the applicant-respondent's representation, whereby he had reiterated his choices as regard places of his posting.

(iii) Thereafter, the applicant-respondent submitted, on 12.08.2009, a representation seeking transfer to the places of his choice, namely, RO, Chandigarh, and RO, Lucknow. On 25.08.2009, the Annual Transfer Committee (ATC) met for consideration of various case of transfer including that of the applicant-respondent. The ATC recommended that the applicant-respondent be given the option of posting at RO, Patna, RO, Ranchi, or at Chief Engineer's Office, at Silchar in lieu of posting at the Headquarter, New Delhi. The authorities concerned accordingly issued an order, on 01.09.2009, giving the applicant-respondent 7 (seven) day's time to intimate his choice of place of posting out of the said three possible places of posting, namely, RO, Patna, RO, Ranchi or at Chief Engineer's Office, at Silchar.

(iv) Being aggrieved by the decision of the ATC so taken on 25.08.2009 and conveyed to the applicant-respondent by the letter, dated 01.09.2009, aforementioned, the applicant-respondent filed another application in the CAT, Guwahati Bench, which gave rise to OA No. 175 of 2009, challenging, once again, the order, dated 06.08.2009, whereby he had been transferred to Headquarter, New Delhi, from the RO, Guwahati, and also the order, dated 10.08.2009, whereby he had been relieved. The learned Tribunal, then, passed an order, on 04.09.2009, staying the order, dated 06.08.2009, whereupon the Union of India filed a miscellaneous application in the learned Tribunal, which gave rise to Misc. Case No. 104 of 2009, seeking to get the interim direction, dated 04.09.2009, vacated. By an order, dated 12.10.2009, the learned Tribunal vacated the interim order, dated 04.09.2009, and directed the applicant-respondent to opt, within 20.10.2009, for either of the places as indicated in the letter, dated 1.09.2009, aforementioned, meaning thereby that the applicant was to indicate his option for posting at any of the three places, namely, RO, Patna, RO, Ranchi and Chief Engineer's Office at Silchar. Pursuant to the order, dated 12.10.2009, passed by the learned Tribunal, the applicant-respondent submitted his option, on 20.10.2009, in favour of his posting at RO, Patna.

(v) Notwithstanding the option, which he had so exercised, the applicant-respondent filed a writ petition against the order passed by the learned Tribunal vacating its earlier order, dated 04.09.2009. The writ petition came to be registered as WP (C) No. 4424 of 2009, wherein an order was made, on 21.10.2009, directing the present petitioners in WP (C) No. 415 of 2011/ authorities concerned not to disturb the applicant-respondent. Having obtained the interim order by this Court on 21.10.2009, the applicant-respondent withdrew his option, which he had exercised, on 20.10.2009. Thereafter, on 04.02.2010, the learned Tribunal disposed of the OA No. 175 of 2009 with direction to the authorities concerned to accommodate, within four months, the applicant-respondent within his places of choice and, in the interim, the applicant-respondent was directed not to be disturbed from his place of posting at RO, Guwahati.

(vi) Following the direction, so given, on 04.02.2010, by the learned Tribunal, the authorities concerned issued an order, on 14.06.2010, transferring the applicant-respondent to RO, Lucknow, and posted him as Superintending Engineer (Mechanical) there. The order, dated 14.06.2010, came to be challenged, once again, by way of an application made, in the CAT, by the applicant-respondent, on the ground that he, being a Civil Engineer, ought not to have been posted as Superintending Engineer (Mechanical). This application gave rise to OA No. 153 of 2010 and the learned Tribunal passed an order, on 22.06.2010, staying the order, dated 14.06.2010, whereby the applicant-respondent stood transferred to RO, Lucknow, and posted there as Superintending Engineer (Mechanical).

(vi) By its order, dated 01.10.2010, the learned Tribunal allowed the OA No. 153 of 2010 with further direction to the authorities concerned to consider the

applicant-respondent's case for posting for the year 2009 and not the year 2010, for, considering the applicant-respondent's case for the year 2010 instead of considering his case for the year 2009 for the purpose of transfer was, according to the learned Tribunal, incorrect and illegal. This apart, according to the learned Tribunal, consideration of the applicant-respondent's case, during the year 2010, was a mere pretence and farce. While recognizing the fact that no one has absolute right of choosing a place of posting, the learned Tribunal pointed out that when the applicant-respondent had given his choice, there ought to have been discernible reasons for not accommodating him at his place of choice.

(viii) However, when the question of place of choice of the applicant-respondent arose, another equally important question, which surfaced was, whether the posting of respondent Nos. 4 and 5 (who were private respondents in the OA No. 153 of 2010) was illegal inasmuch as respondent No. 4 stood posted, at the relevant point of time, as Superintending Engineer (Civil), at Lucknow, and respondent No. 5 stood posted, at the relevant time, as Superintending Engineer (Civil) in Chandigarh. The learned Tribunal observed that respondent Nos. 4 and 5 had no right to remain in a particular station, while the applicant had acquired the legal right of consideration for being posted at Lucknow or Chandigarh. Aggrieved by the fact that the respondent Nos. 4 and 5 have been held to have no right to remain in a particular station, respondent Nos. 4 and 5 have filed a writ petition, which has given rise to WP (C) No. 305 of 2011; whereas, the Union of India too has filed a writ petition, which has given rise to WP(C)No. 415 of 2011. The writ petitions have been, as indicated above, heard accordingly. In the meanwhile, however, respondent No. 4 has been transferred to Hyderabad, though the respondent No. 5 has remained at RO, Chandigarh.

4. Before we enter into the correctness of the impugned order, dated 14.06.2010, whereby the applicant-respondent has been posted at RO, Lucknow, as the Superintending Engineer (Mechanical), it needs to be noted that the service condition of the applicant-respondent as well as respondent Nos. 4 and 5, in OA No 153 of 2010 (who are petitioners in WP (C) No. 305/2011), are, admittedly, covered by a set of recruitment rules, namely, Ministry of Road Transport and Highway, Central Engineering Service (Roads) Group "A" Rules, 2003 (hereinafter referred to as "the Rules"). A careful perusal of the Rules shows that at the head of the service is the post of Director General, Road Promotion Development and Special Secretary succeeded by the post of Additional Director General and an Additional Director General is succeeded by Chief Engineer (Civil) and Chief Engineer (Mechanical). The Rules indicate that there are two distinct streams; one is headed by the Chief Engineer (Civil) and the other is headed by the Chief Engineer (Mechanical). In fact, the Rules show that the Chief Engineer (Civil) becomes eligible for promotion provided he has worked as the Superintending Engineer (Civil) for a period of three years regularly in the grade of Superintending Engineer (Civil). Similarly, a person becomes eligible for promotion to the post of Chief Engineer (Mechanical) if he, as a Superintending Engineer (Mechanical), has put in three years of service in

the grade of the Superintending Engineer (Mechanical). This clearly shows that these two posts, namely, Superintending Engineer (Civil) and Superintending Engineer (Mechanical), are promotional posts meant for distinct and separate streams and not interchangeable up to the level of Chief Engineer and it is, thereafter, that Chief Engineers from both the streams become eligible to be promoted to the post of Additional Director General and for further promotions too. This becomes more than evident, when one considers the Rules inasmuch as the Rules reveal that a Chief Engineer (Civil) and Chief Engineer (Mechanical) of the Central Engineering Services (Roads) Group "A" with three years of regular service in the grade of either Superintending Engineer (Civil) or Superintending Engineer (Mechanical), as the case may be, becomes eligible for promotion, on selection basis, to the post of Additional Director General. While, thus, Chief Engineer, either Civil or Mechanical, can be promoted to the post of Additional Director General, a Superintending Engineer (Civil) cannot be promoted as a Superintending Engineer (Mechanical) nor can a Superintending Engineer (Mechanical) be promoted to the post of Superintending Engineer (Civil).

5. The submission, therefore, of the Union of India that there have been instances, in the past, where Civil Engineers have been posted as Superintending Engineers (Mechanical), has no relevance inasmuch as practice cannot allow the State to dispense with the Rules unless such a power flows from the rules themselves. In the case at hand, no such provisions exist, which allow the State to interchange and post a Civil Engineer (Civil) as Superintending Engineer (Mechanical) or vice versa.

6. We are, therefore, not impressed by the contention, raised on behalf of the Union of India, that the posting of the applicant-respondent at RO, Lucknow, as Superintending Engineer (Mechanical) is legal and valid. Once we are satisfied that the posting of the present applicant-respondent as the Superintending Engineer (Mechanical) is in violation of the relevant Rules, the order, dated 14.06.2010, whereby the applicant-respondent stands posted as Superintending Engineer (Mechanical) cannot, but be regarded as illegal.

7. We, therefore, find no infirmity, legal or factual, in the ultimate decision reached by the learned Tribunal that the posting of the present applicant-respondent as the Superintending Engineer (Mechanical) is not legally sustainable. This finding, which we reach, was sufficient to allow OA No. 153 of 2010. Logically, therefore, the learned Tribunal was not required to comment on the posting of respondent Nos. 4 and 5 who are petitioners in WP (C) No. 305 of 2011, inasmuch as neither the present applicant-respondent nor the petitioners in WP (C) No. 305 of 2011, who were respondent Nos. 4 and 5 respectively in OA No. 153 of 2010, have had any indefeasible right to be posted at a given place. The guidelines, which the applicant-respondent has relied upon, in facts, reads:

There will be a fixed tenure posting of 3 years at a time for Officers with service of 10 years or less and of 2 years at a time for Officers with more than 10 years of service, periods of leave, Training etc. in the access of 15 days per year will be

excluded in counting the tenure period of 2/3 years. Officer on completion of the fixed tenure of service mentioned above may be considered for posting to a station of their choice as far as possible.

8. Thus, the guidelines show that it is only to the extent possible and feasible that a person would be given posting of his choice. If a chosen posting cannot be given due to exigency of service, no vested right can be claimed by the incumbent, who is covered by the guidelines aforementioned. What can, indeed, be claimed is fair consideration by the respondents/authorities concerned to the place of choice of a person, who is covered by the guidelines aforementioned. Viewed from this angle, it becomes clear that the applicant-respondent cannot insist that he must be posted at the place of his choice and at no other place. What he can, indeed, demand is that the choice, which he had expressed, be given due consideration and, if questioned, the respondents/authorities concerned must be able to convince and satisfy the Tribunal, such as, the Central Administrative Tribunal, that exigency of service did not make it possible for the respondents/authorities concerned to post the applicant-respondent at his chosen place of posting. If the applicant-respondent can be posted at his chosen place of posting the posting of his choice must be given to him.

9. Because of what have been discussed and pointed out above, we maintain the impugned order passed by the learned trial Tribunal to the extent that it directs the writ petitioners, in WP (C) No. 415/2011, to consider the applicant-respondent's place of posting in fair and transparent manner for the year 2009. We also hasten to add that to the extent possible, the applicant-respondent shall be posted at the place of his choice to a post of Superintending Engineer (Civil) and, for this purpose, the respondent No. 5, who has still remained as Superintending Engineer (Civil), at Chandigarh, need not be disturbed from his place of posting unless it becomes indispensable for exigency of service.

10. With the above observations and directions, both these writ petitions shall stand disposed of.

11. No order as to costs.