
(2021) 09 CAT CK 0030

In the Central Administrative Tribunal

Case No : Original Application No. 1710 Of 2021, Miscellaneous Application No. 2182 Of 2021

Davender Pal Makkar & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 28-09-2021

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2021) 09 CAT CK 0030

Hon'ble Judges : Manjula Das, J; Mohd. Jamshed, Member (A)

Bench : Single Bench

Final Decision : Dismissed

Judgement

Manjula Das, J

MA No.2182/2021

The applicants have filed this MA praying for joining in a single OA. For the reasons mentioned therein, the MA is allowed.

OA No.1710/2021

The applicants have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:

- 1) Quash the Order No: DOP/AA-I/65051/ P&T/Works dated 30th of July 2021.
- 2) Quash the Order No. DOP/AA1/65060/CE/21 dated 30 July 2021 to the extent whereby applicant No: 1 has been directed to continue as CTE till superannuation or until further orders.
- 3) Or pass any other order as deemed fit in the circumstances and in the interest of Justice by this Hon'ble Court.

2. Briefly stated, the applicants belong to the stream of Civil Works Officers cadre of the Defence Research & Development Organization (DRDO). Both the

applicants have been promoted to the apex scale in the cadre. The first applicant is due for retirement from service on 30.09.2021. It is their case that the 2nd applicant is likely to succeed the first applicant on his superannuation to the post of Chief Executive (Civil Works & Estates), Group 'A' in Level 14 pay scale. The applicant No.2 is presently posted as Chief Construction Engineer, and is stated to have been promoted as Chief Executive (Civil Works & Estates) after clearance from the Appointments Committee of the Cabinet (ACC). It is stated that in order to negate the effect of promotion of the applicants, and to favour the 4th respondent, Dr. K. Radhakrishna, the respondents have devised a scheme by which the said respondent, who belongs to the stream of Scientists in DRDO, and governed by different set of recruitment rules, with a separate stream of promotions, has been appointed to the non-existent post of Director of Civil Works & Estates at the DRDO Headquarters, to functionally exercise the powers of the post of Chief Executive (Civil Works & Estates), to which post the applicants have been promoted. It is alleged that the word 'Director' has been invented to create an impression that there exists a post of Director, over and above the applicants, contrary to the recruitment rules. It is further alleged that the 4th respondent has been appointed even without the vigilance and ACC clearance to discharge the functions of Chief Executive (Civil Works & Estates).

3. It is further averred that the order dated 30.07.2021, whereby the 4th respondent has been transferred from CCE (R&D) to Director Civil, Works & Estates w.e.f. 01.08.2021, has been deliberately worded in such a manner as if he is being appointed to the post of Director of Civil Works & Estates, a non-existent post. It is also stated that the applicants are governed by the DRDO, Ministry of Defence (Civil Works Officers Cadre) Recruitment Rules, 2000, whereas the recruitment in the stream of Science, to which the 4th respondent belongs, is governed by a different set of recruitment rules called, the DRDO Service Rules, 1979. The applicants further contend that a bare perusal of the recruitment rules of both the streams would reveal that there is no post of 'Director' in either of the stream.

4. It is submitted that the DRDO consists of personnel of Science cadre as 'Scientists', and Civil Works cadre as 'Engineers', and that both the cadres have separate seniority lists, and separate promotional avenues. It is further submitted that the method of promotion in the Science cadre is different and is governed by Flexible Complementing Scheme (FCS), where promotion is granted in a time-bound manner, irrespective of the availability of vacancies, in addition to other perks available to a Scientist, as against the personnel working in Civil Works cadre, who are promoted as per the rules applicable to civilian employees of the Government, including the process of ACC before promotion to higher posts. It is stated that the personnel from Scientists cadre, instead of being posted exclusively for research work, are being posted in the Directorate of Civil Works & Estates, at the cost of promotional avenues of the personnel of Civil Works cadre.

5. It is alleged that the 4th respondent, who is a Scientist in the Science cadre, has been appointed as Director of Civil Works & Estates in order to over-reach the promotion of the applicants, who have been promoted to the post of Chief Executive (Civil Works & Estates) after following the due procedure. It is further alleged that although vide order dated 30.07.2021, the applicant No.1 has been promoted as Chief Executive (Civil Works & Estates), he has been directed to continue to work as Chief Technical Examiner (CTE), the post from where he was promoted. It is accordingly contended that posting the 4th respondent, who belongs to the Science stream, as Director of Civil Works & Estates, is contrary to the rules, and that the action of the respondents is patently illegal and arbitrary. The applicants have accordingly prayed for quashing and setting aside the order dated 30.07.2021 to the extent the applicant No.1 has been directed to continue as CTE till superannuation or until further orders.

6. The respondents have vehemently opposed the OA by filing their respective counter affidavits. In the reply filed on behalf of the official respondents 1, 2, 3 and 5, the respondents have taken exception to the very maintainability of the OA. It is stated that the 1st applicant, promoted as CE (Civil Works & Estates) is retiring on 30.09.2021, and that it is not his case that he is affected in any manner whatever, as his salary and perks etc. are not at all reduced or downgraded. It is further stated that the present OA being in the nature of a PIL is not maintainable, and deserves to be dismissed, as it amounts to abuse of the process of law. As regards the applicant No.2, it is submitted that he would become eligible for promotion only on 01.10.2021, after superannuation of the applicant No.1, and that he cannot have any say in the appointment of the 4th respondent.

7. The respondents have strongly opposed the manner in which the applicants have challenged the valid appointment of the 4th respondent by filing frivolous litigation. It is submitted that it is a settled position that the competent authority is vested with the power to appoint/post an officer within the jurisdiction of such authority. It is further submitted that the OA is liable to be dismissed on the ground that it is for the competent authority to assign any work to the concerned officer, and no officer/employee can claim or choose to perform a particular work or assignment of his choice; the competent authority has directed the applicant No.1 to continue as CTE, on his promotion as CE (CWE), which work is to be performed by a high ranking official. It is contended that CTE is not a promotional post and it is only an appointment and the 1st applicant was to continue as CTE on his promotion, which was accepted by him and he assumed charge of the same w.e.f. 01.08.2021. It is also contended that the applicants are not entitled to challenge the order dated 30.07.2021 as neither of the applicants were entitled to be considered to be posted/ appointed as Director Civil Works & Estates. The applicant No.1 became eligible to be promoted as Chief Executive (Civil Works & Estates) only on 01.08.2021, when the ACC approved his promotion, and the applicant No.2 will only become eligible for promotion as such only on 01.10.2021, as per the directions of ACC, on

superannuation of the applicant No.1. It is accordingly submitted that the applicant No.2 is attempting to pre-empt his promotion, which is not permissible as of today.

8. Insofar as the contention of the applicants that the post of Director of Civil Works & Estates is a non-existent post, is concerned, it is stated by the respondents that the same is factually incorrect as the said post has been in existence in the DRDO including in RDCE (Research & Development Construction Establishment). It is further stated that Director Civil Works & Estates is an appointment with functional powers, whereas CE (CWE) is a promotion governed by DRDO (Civil Works Officers' Cadre) Recruitment Rules, 2000; and further that the incumbent of the post of CE (CWE) need not be at the HQ, DRDO and is liable to be posted anywhere in the country. It is stated that the 4th respondent has been appointed by the competent authority keeping in view his capability and competence, and, therefore, there is no mala fides in the appointment of the said respondent.

9. The respondent No.4 has filed a separate counter affidavit. It is stated that the appointment of the 4th respondent on the post of Director of Civil Works & Estates cannot be said to be against a non-existent post, as the said post has been in existence in DRDO including in RDCE and DCWE (Directorate of Civil Works & Estates).

10. We have heard Mr. R.K. Handoo, learned counsel for the applicants, Mr. Chetan Sharma, learned ASG assisted by Mr. Hanu Bhaskar & Mr. Sanjeev Yadav on behalf of the respondents No.1, 2, 3 and 5 and Mr. M.K. Bhardwaj, learned counsel for respondent No.4.

11. The applicants are aggrieved by the order dated 30.07.2021, whereby the 4th respondent No.4, Dr. K. Radhakrishna, has been appointed as Director Civil, Works & Estates, DRDO HQ w.e.f. 01.08.2021. The applicant No.1 has also been promoted to the grade of Chief Executive (Civil Works & Estates) vide another order dated 30.07.2021 w.e.f. 01.08.2021, with the stipulation that after assumption of charge as CE (CWE), he will continue as CTE till superannuation or until further orders. Vide the aforesaid order, the applicant has been conferred all the benefits attached to the promoted post, such as seniority and fixation of pay in the higher post under FR 22(1)(a). Insofar as the 2nd applicant is concerned, his name has been included in the extended panel vide order dated 18.06.2021, wherein it is provided that he would be promoted to the post of CE (CWE) in lieu of the applicant No.1, who will be retiring during the currency of the panel year 2021. As for the appointment of the 4th respondent to the post of Director of Civil, Works & Estates, DRDO HQ, the applicants have failed to point out as to how such appointment is to their detriment, as their salary and other perks remain untouched. We are inclined to accept the contention of the respondents that it is for the competent authority to assign any work to the concerned officer, and no employee can claim or choose to perform a particular work or assignment of his choice. The plea of the applicants that the appointment of the respondent

No.4 to the post of Director Civil Works & Estates is in order to nullify or over-reach the effect of promotion of the applicants, cannot be accepted. The competent authority is well within its right to appoint an officer within its jurisdiction to any post or position. The applicant No.1 also cannot challenge the stipulation in the order of his promotion dated 30.07.2021 to the effect that he would continue as CTE till superannuation or until further orders, as he accepted the said condition and assumed the charge of the higher post.

12. In view of the foregoing, we do not find any merit in the OA. The same is accordingly dismissed.

There shall be no order as to costs.