
(2010) 09 DEL CK 0131

In the Delhi High Court

Case No : Writ Petition (C) 2623-29 of 2004

Director of Accounts and Others

APPELLANT

Vs

Anil Kumar Mehra

RESPONDENT

Date of Decision : 10-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309, 39

Citation : (2010) 09 DEL CK 0131

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Maninder Singh, Gaurav Sharma and J.P. Karunakaran, for the Appellant; Arti Mahajan in WP(C) 2623-29/2004, Arti Mahajan, for R-1, 4 and 5 in WP(C) 17688-92/2004, Arti Mahajan, for R-1 and Sandeep Jha, for R-2 in WP(C) 2441/2010, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The undisputed position is that pertaining to the matters of accounts a full-fledged unit having an independent cadre and applicable service rules which functions under the overall supervision of the Chief Controller of Accounts has been created by the Union of India which caters to the needs of the various Ministries, Offices and Departments of the Union of India. A completely separate cadre stands constituted pertaining to the Cabinet Secretariat and pertaining to the work of accounts of the Cabinet Secretariat and various units under it like RAW, Special Security Bureau (SSB), Chief Inspector of Armaments (CIOA) etc. are manned by this cadre which has independent service rules.

2. Thus, it is a case of two different cadres, as would be evident from the further facts noted by us hereinafter.

3. The respondents of all the writ petitions were inducted in the accounts cadre under the Cabinet Secretariat and were working as Senior Auditors/Assistant Account Officer. They had nothing to do with the cadre in the Accounts

Department of the Union of India or for that matter the Ministry of Home Affairs.

4. The Central Government took a decision that the SSB and CIOA units be transferred under the administrative control of the Ministry of Home Affairs on as is where is basis and accordingly on 15.1.2001 the Cabinet Secretariat issued the necessary order but deferred actual control be handed over pending completion of some procedural formalities being identification of the posts and the personnel which had to be transferred and finally the Cabinet Secretariat passed an order on 9.3.2001 transferring 125 posts to the Ministry of Home Affairs and on 16.4.2001 an office memorandum was issued by the Ministry of Home Affairs that the ministerial staff transferred would be absorbed on as is where is basis.

5. Apart from the issue whether the ministerial staff assigned to the units SSB and CIOA could be transferred outside their cadre and absorbed without their consent, relevant would it be to note that the decision to transfer the two units under Ministry of Home Affairs was notified on 15.1.2001 and it was stated that the transfer would be on as is where is basis and this required the existing ministerial staff in the two units to be so transferred.

6. The respondent of W.P.(C) No. 2623-29/2004 was not working under the SSB unit under the Cabinet Secretariat as on 15.1.2001. He was transferred /posted in the SSB unit on 26.2.2002 and by March he was transferred to the Ministry of Home Affairs. Likewise, the respondent of W.P.(C) No. 2441/2010 was not working either under the SSB unit or CIOA as on 15.1.2001. He was transferred/posted in the SSB unit (on a date not known), after 15.1.2001 and was likewise transferred under the Ministry of Home Affairs. To this extent these respondents have an additional plea to urge vis-?-vis the respondent of W.P.(C) No. 17688-92/2004 who was working in the SSB unit as on 15.1.2001.

7. The three respondents had filed independent original applications before the Central Administrative Tribunal challenging the unilateral act of the Cabinet Secretariat in transferring their services to the Ministry of Home Affairs. How were they prejudiced was brought out by the respondent of W.P.(C) No. 2441/2010. He exposed that the Ministry of Home Affairs was treating him as the junior most Assistant Account Officer by holding that the applicable recruitment rule did not envisage any induction by transfer into the cadre and thus he must rank the junior most.

8. Allowing the Original Application filed by the respondent of W.P.(C) No. 2623-29/2004 vide impugned order dated 29.10.2003 which is the order prior in point of time vis-?-vis the orders passed in the original applications filed by the two respondents of the other two writ petitions, the Tribunal held in his favour on two grounds.

9. Firstly, the Tribunal noted that FR 9(4) defined cadre to mean the strength of a service or a part of a service sanctioned as a separate unit and thus the respondent of the said writ petition i.e. the applicant before the Tribunal was on the strength of a service under the Cabinet Secretariat and held a cadre post

under the Cabinet Secretariat. The Tribunal further noted that as per FR 15 it was permissible to transfer a Government servant from one post to another, but the same had to be within the cadre. The Tribunal further noted the decision of the Supreme Court reported as P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others, and read the said decision to interpret the law that it was open to the Government to amalgamate department or bifurcate departments, merge and demerge cadres, but by and under appropriate rules. The Tribunal noted that no such rules were notified bifurcating the accounts cadre under the Cabinet Secretariat and thereafter merging one segregated unit thereof with the Accounts Department under the Ministry of Home Affairs. Thus, the Tribunal held in favour of the applicant before it.

10. A second line of reasoning applicable to the respondent of W.P.(C) No. 2623-29/2004 has also been adopted by the Tribunal to hold in his favour. The Tribunal held that the decision notified on 15.1.2001 was to transfer on "as is where is basis" the SSB unit and the CIOA unit from under the Cabinet Secretariat to the Ministry of Home Affairs and since the applicant before it was not either under the SSB unit or the CIOA unit as on said date, he could not be therefore transferred to the Ministry of Home Affairs.

11. The decision which is second on the point of time is dated 2.1.2004 allowing the Original Application filed by the respondents of WP(C) No. 17688-92/2004 in which the Tribunal followed the decision dated 29.10.2003 and held on the first line of reasoning of the said decision that the applicant could not be transferred outside his cadre.

12. The third decision in point of time is dated 4.12.2009 wherein the Tribunal held in favour of the respondent of WP(C) No. 2441/2010 adopting the twin reasoning as per the order dated 29.10.2003.

13. Learned Counsel for the petitioners urged that in the letter of appointment of all the respondents it was specifically mentioned that: "the appointment carries with it the liability to be transferred out of Delhi/department, if any portion of the office moves elsewhere or if any work done in the office is transferred elsewhere."

14. Counsel urged that un-disputably the respondents of the three captioned writ petitions accepted each and every term of the letter of appointment and thus they had already given consent to be transferred to any department or office if the work was transferred elsewhere. Counsel urged that it was a case of the SSB Unit and the CIOA Unit i.e. two offices under the Cabinet Secretariat moving elsewhere and thus the respondents of the three captioned petitions were liable to be transferred. Counsel urged that the Tribunal erred in not even considering the aforesaid argument.

15. The submission urged has to be noted and simply rejected for the reason that the applicable clause in question has to be understood within the parameters of law and not contrary to the law. The clause simply means that if any portion of the office under the Cabinet Secretariat is moved elsewhere, the

respondents would be liable to serve at the said elsewhere. To put it pithily, the clause does not mean and cannot be interpreted to mean that the respondents could be transferred outside their cadre.

16. Thus, the various decisions cited by learned Counsel for the petitioners which hold that an employee is liable to be transferred by the employer to any place or unit of the employer are wholly inapplicable for the reason the said decisions pertain to a transfer under the same employer but to a different work place. We need not note the said decisions which have been cited in the Brief Synopsis List of Dates filed along with the writ petition.

17. In the decision reported as P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others, it was held:

The State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts.

18. Suffice would it be to state that none can dispute the power of the Government to bifurcate a cadre as also amalgamate departments and cadres, posts etc. but by and under appropriate rules.

19. The reason why appropriate rules have to be framed is that mergers and de-mergers of cadre affect the rights of the employees concerned and these rights are governed by the Rule of Law. As in the instant case, some employees on the cadre strength of the Cabinet Secretariat would be de-merged from their cadre and then would be amalgamated in the cadre under the Ministry of Home Affairs. The necessity of the Rules would be in light of the law laid down by the Supreme Court reported as State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others, wherein pertaining to merger of cadres it was held that the principles for effecting integration would be requiring equation of posts on the principles:

(1) where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis but

(2) where there were no such similar cadres, the following factors will be taken into consideration in determining the equation of posts:

(a) Nature and duties of a post;

(b) Powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged;

(c) The minimum qualifications, if any, prescribed for recruitment to the post and;

(d) The salary of the post.

20. In the decision reported as Inder Singh and Others Vs. Vyas Muni Mishra and Others, it was held:

Merger or bifurcation of a cadre is an executive act and normally the Court does not deal with it. It is for the State to consider whether two groups of persons working under two distinct posts perform the same kind of duties or not and whether in implementing the directive principle, as contained in Article 39(d) of the Constitution, it is necessary to merge these two posts into one cadre or post. If the State Government is of the view that it is necessary that there should be a merger of the two posts into one post, the State Government has to take steps in that regard by framing proper rules with regard to seniority, promotions, etc. But, when two groups of persons are in the same or similar posts performing same kind of work, either in the same or in the different Government departments, the Court may in suitable cases direct equal pay by way of removing unreasonable discrimination and treating the two groups, similarly situated, equally.

21. In the decision reported as S.P. Shivprasad Pipal Vs. Union of India and Others, it was held:

Under Article 309 of the Constitution the legislature is empowered to regulate the recruitment and conditions of service of persons appointed to public post in connection with the affairs of the union or State. The proviso to Article 309, however, empowers the President, in the case of services and posts in connection with the affairs of the union to make rules regulating the recruitment and conditions of services of persons appointed to such services and posts until provision in that behalf is made or under an Act of the appropriate legislature. The power to regulate recruitment and conditions of service is wide and would include the power to constitute a new cadre by merging certain existing cadres.

22. Learned Counsel for the petitioners did not dispute that no rules have been framed to effect de-merger within the Cabinet Secretariat and further, no rules have been framed for the merger of the staff under the Cabinet Secretariat in the cadre under the Ministry of Home Affairs. Further, learned Counsel conceded that no options were sought from the respondents of the three captioned writ petitions before they were transferred under the Ministry of Home Affairs.

23. What has happened is, as noted in para 7 above, the respondents, in the absence of any rules, are being treated as the junior most officers against the respective posts held by them under the Ministry of Home Affairs. This brings out the facet that unless appropriate rules are framed the transfer of the respondents would be in violation of their Constitutional Rights guaranteed under Article 14 and 16 of the Constitution of India.

24. The writ petitions are accordingly dismissed.

25. The petitioners shall pay costs to the respondents of the three writ petitions which we quantify to be Rs. 5,000/- in each writ petition.