
(2014) 11 RAJ CK 0146
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13139/2013

Om Prakash Jajoo

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 RAJ CK 0146

Hon'ble Judges : Prakash Gupta, J; Govind Mathur, J

Bench : Division Bench

Advocate : Pramendra Bohra, Advocate for the Appellant; R.S. Saluja and A.K. Rajvanshy, Advocate for the Respondent

Judgement

1. To question correctness of the judgment dated 13.9.2013 passed by learned Central Administrative Tribunal, Jodhpur Bench, Jodhpur, this petition for writ is preferred.
2. The facts necessary for adjudication of the petition are that the Department of Comptroller & Auditor General of India is having two cadres; one of Auditor and another of Divisional Accountants. The post of Divisional Accountants is a part of the cadre of accountants and that is available with several departments under Government of Rajasthan, but controlled by the Comptroller & Auditor General of India and Principal Accountant General (Accounts & Establishment), Rajasthan, Jaipur. Suffice to mention that the Divisional Accountants posted in the offices of the Government of Rajasthan receive salary from consolidated funds of the State of Rajasthan and they are under immediate control of the head of the office where they are posted.
3. By an order dated 28.10.1994 a decision was taken by the Government of India to transfer the cadre of the Divisional Accountants to the State Government but effect to that has not been given so far. By an another notification dated 20.2.2004 the Government of India after availing necessary approval from His Excellency the President of India reiterated its earlier decision to transfer the

cadre of Divisional Accountants to the State Government. The correctness of the notification aforesaid was challenged by several employees either by way of filing writ petitions before this Court or by way of filing Original Applications before the Central Administrative Tribunal, Jaipur/Jodhpur. In one case i.e. Suresh Kumar & Ors. v. Union of India & Ors. (Original Application No. 52/2004) the Central Administrative Tribunal vide its order dated 20.2.2004 directed the respondents concerned not to take action in furtherance of the notification dated 20.2.2004. Pertinent to mention here that the main contention of the applicants in the original application aforesaid was that the transfer of the cadre of Divisional Accountants in the services of the State of Rajasthan shall amount to alteration of service conditions. In view of the direction aforesaid no effect was given to the notification dated 20.2.2004 too.

4. A petition for writ (SB Civil Writ Petition No. 15296/2009) then was filed before Jaipur Bench of this Court by some of the Divisional Accountants working on deputation with assertion that they cannot be repatriated to their original post. In the petition for writ aforesaid the Single Bench of this Court while denying claim of the petitioners to continue on deputation directed that the accountants appointed by the Comptroller and Auditor General of India on regular basis cannot be subjected to alteration in service conditions in pursuant to the notification dated 20.2.2004 till the matters are finally decided by the Central Administrative Tribunal and the High Court.

5. Being aggrieved by the judgment passed by learned Single Bench another set of employees who were contesting claim of the petitioners preferred a special appeal (DB Civil Special Appeal (Writ) No. 299/2010) before a Division Bench of this Court (at Jaipur) wherein by an order dated 19.5.2010 effect and operation of the judgment passed by learned Single Bench was stayed. The order dated 19.5.2010 came to be modified by an order dated 10.8.2010 permitting the State of Rajasthan to fill up 252 posts of Divisional Accountants which were said to be lying vacant subject to final decision of the appeal.

6. The Director, Directorate of Treasury and Accounts, after getting the order dated 19.5.2010 passed an order dated 21.6.2013 transferring the present petitioner, a Divisional Accountant, from the office of the Superintendent of Police, Government Railway Police, Jodhpur North, Jodhpur to the office of the Superintending Engineer, Public Health Engineering Department, Division-I, Jodhpur. In the order dated 21.6.2013 the post of Divisional Accountant in the office of the Superintending Engineer, Public Health Engineering Department was shown as a vacant post.

7. Being aggrieved by the order of transfer, respondent Suresh Kumar preferred an original application before the Central Administrative Tribunal, Jodhpur Bench, Jodhpur with contention that he was holding the post of Divisional Accountant in the office of the Superintending Engineer, Public Health Engineering Department, Division-I, Jodhpur, therefore, the same was not vacant, hence no posting could have been made on the post aforesaid by the Directorate of Treasury and

Accounts, Government of Rajasthan, Jaipur. The Central Administrative Tribunal, Jodhpur by its judgment dated 13.9.2013 accepted the original application and set aside the order of transfer to the extent that was relating to the present petitioner.

8. Present applicant Shri Om Prakash Jajoo by this petition for writ has given challenge to the judgment dated 13.9.2013 mainly on the ground that the Central Administrative Tribunal, Jodhpur has set aside the order of transfer in his absence and as such violation of principles of natural justice is apparent and that makes the judgment impugned illegal.

9. We heard learned counsel for the petitioner at length.

10. True it is, the petitioner was not before the Central Administrative Tribunal being not joined as a respondent in the original application, but in our considered opinion that will not make the judgment impugned passed by the Central Administrative Tribunal bad. The petitioner has accepted that the post in the office of the Superintending Engineer, Public Health Engineering Department, Division-I, Jodhpur was not lying vacant but was occupied by the respondent original applicant. On acceptance of this fact we are of the view that even in the event of having opportunity to defend the order of transfer the petitioner could have not protected the same. The Division Bench of this Court in DB Civil Special Appeal (Writ) No. 299/2010 permitted the State of Rajasthan to fill up 252 vacant posts of Divisional Accountants and admittedly the post of Divisional Accountant in the office of the Superintending Engineer, Public Health Engineering Department was not lying vacant, as such no posting/transfer could have been made by the Directorate of Treasury and Accounts of the Government of Rajasthan in the office aforesaid. The order impugned as such does not suffer from any wrong that may warrant interference of this Court while exercising powers under Article 226 of the Constitution of India.

11. The writ petition, therefore, is dismissed. No order to cost.