

(2001) 10 DEL CK 0165

In the Delhi High Court

Case No : CM No. 6520 of 2001 in CWP No. 3773 of 2001

Ram Dhari Singh and Others

APPELLANT

Vs

Delhi Vidyut Board

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Electricity (Supply) (Amendment) Act, 1958 — Section 15, 78
Electricity (Supply) Act, 1948 — Section 12, 15, 2, 5, 78

Citation : (2001) 63 DRJ 620

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Neeraj Kaul and Manish Kumar, for the Appellant; Raj Birbal, Senior Advocate and Gynendra Mishra, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—By this Order the interim application filed by the Petitioner long with the Writ Petition shall be disposed off. The prayers in the application are:-

"a) restrain the respondents from appointing AFOs/ROs by transfer on deputation from any other organisation, in terms of the instructions of Central & State Government,

b) restrain the respondent from regularizing/absorbing the AFOs/ROs in DVB who have been appointed by transfer on deputation against the instructions of the Central and State Governments and The R&P Rules, till disposal of the writ petition."

2. The Petitioners are on the regular strength of the Delhi Vidyut Board (hereafter - DVB). In the petition it has been averred that the overwhelming majority of deputationists have been recruited by DVB contrary to its statutory Regulations and are continuing in the service of the DVB pursuant to extensions

granted to them from time to time contrary to these very statutory Regulations, which reads thus:

Name of Post Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods. -----

1	10	-----	-----	Asstt. Chief Accountant/ 50% by promotion failing Asstt. Finance Officer/ which by transfer/ on Accounts Officer (Audit)/ deputation and 50% by Revenue Officer. transfer on deputation.
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In case of rectt. by Circumstances in which promotion/deputation/transfer UPSC is to be consulted grades from which promotion/ in making rectt.

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-----	-----	Promotion:	Consultation with the UPSC, not necessary Accounts Supdts. with 3 years unless the provisions of service in the grade rendered these rules are proposed after appointment thereto on a to be relaxed on any regular basis. occasion.

Transfer on deputation:

Officers of the rank of SAS Accountant (Rs. 500-900) or equivalent with 3 yrs. service in the grade rendered after appointment thereto on a regular basis in any of the organized Accounts Deptt. viz. Indian Civil Accounts Department, Indian Audit & Accounts Deptt., Indian defense Accounts Deptt., Indian Railway Accounts Deptt. Indian Post & Telegraphs Accounts and Finance Deptt. (Period of deputation shall ordinarily not exceed 3 yrs.)

3. Details of 26 persons who are working in the subject post of Assistant Finance Officers (AFO) of which only three are apparently eligible have been stated in the writ petition. Out of these three persons, it appears that Shri J.K. Rastogi has been granted another extension on 26.9.2001 while the matter was actively sub-judice. This fact was brought to the notice of the Court by Mr. N.K. Kaul, Learned Counsel for the Petitioners, and he has vehemently and justifiably taken umbrage to this action. Consequent upon this extension granted yesterday, Mr. Rastogi will now be working with the DVB for the fifth consecutive year. Half of the persons in the list of deputationists are from the Cement Corporation of India, a Company whose fortunes and operation are in the doldrums, a circumstance which certainly does not auger well even for the monopolistic DVB, whose own fortunes are fluctuating if not floundering and are in turmoil.

4. The DVB has adopted the position that there is no irregularity in the practice pursued by it. It has heavily relied on an extract from Swamy's Handbook - 2000, but on a careful perusal thereof it actually militates against the argument canvassed by Mr. Raj Birbal, Learned Senior Counsel appearing on its behalf. Reliance has been placed on the judgment of the Apex Court in Rakesh Ranjan Verma and others Vs. State of Biha and others, for the proposition that the Board

is supreme and is not fettered by or subservient to any directions of the Central or Delhi Government. However, contrary to this stance, the DVB has also averred that it has been implementing directions received from these Governments from time to time. Mr. Birbal has strongly contended that inasmuch as the 27 persons detailed in paragraph 18 of the petition have not been impleaded, the petition may suffer from the vice of non-impleadment of necessary parties. Reliance has been placed on Sections 5, 12 and 15 of the Electricity (Supply) Act, 1948. The argument proceeds that on the application of Section 12 of this Act, the DVB is a body corporate having perpetual succession and a common seal. Mr. Birbal has further contended that the writ petition deserves dismissal since the Petitioners have no personal interest in its outcome; they belong to the feeder cadre (viz. Accounts Superintendents) of the AFO and would not obtain any advantage even if it is allowed. On being confronted with the Minutes of a Meeting on 8.3.2001 between the Chairman and office-bearers of the State Electricity Workers Union to the effect that "all deputationists must be sent back as per Orders of Government of India and Government of National Capital Territory of Delhi", it has been contended that these "understandings" are not binding on the Board. The DVB appears to me to be approbating and reprobating on most issues.

5. In view of an apparently contradictory and vacillating stand adopted by the DVB I thought it necessary to confirm whether the Counter had been drafted and filed on the instructions of the Board, as it must mandatorily and legally have been done. It is discovered that neither a Vakalatnama nor a Memorandum of Appearance has been filed on behalf of the DVB. The Counter/Reply on behalf of the DVB is in the form of an affidavit of the Assistant Administrative officer, and does not contain even a perfunctory statement on this deponent's authorisation to represent the DVB. Mr. Birbal is unable to produce any Resolution of the Board, or any clause in the Constitution or Memorandum and Articles of the Board indicative of this authorisation. The deponent is serving in the middle echelons of the DVB, but still seeks to represent it in a matter which has large scale ramifications in the functioning of the DVB. Although the petition has been heard for several hours spread over two days, Mr. Shali, Standing Counsel for the DVB did not put in appearance at all. No doubt Mr. Birbal was present, but because of the absence of instructions, he was unable to elucidate as to whether or not the Reply filed on behalf of the DVB was drafted on the instructions of the Board and as to whether he had been requested to appear on behalf of the Board. The position is worse confounded when, on enquiry, it has been revealed because of a Court query that the palpably prevaricating and contradictory defense of the DVB is contained in the affidavit of the Assistant Administrative Officer who is himself on deputation to the DVB. Had these facts been apparent at the threshold of the arguments I would not have hesitated in treating the petition as an undefended one. The DVB, like any other incorporated body, must act through its Board and in consonance with its Constitution. This is the direct impact of Section 12 of the Electricity (Supply) Act. Since arguments were heard in great detail, it would be only proper that all the submissions should be dealt

with.

6. The argument that the Petition is not maintainable in the absence of impleadment of persons likely to be effected by its outcome, and because the Petitioners do not have any personal interest or advantage in advocating the issues raised therein, is indubitably attractive. On careful consideration however, these Objections do not have merit. The Petitioners have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution and have raised questions pertaining to the general practice and policy adhered to by the DVB. While there may well be victims in the event that the practice and policy of the DVB and its implementation is held to be not in consonance with law, since it is not aimed directly against the deputationists and since the interests of the deputationists would rise and fall with that of the DVB, the presence of the deputationists is not essential for the proper and complete adjudication of the dispute. The requirement of impleading of the persons likely to be affected by an order of the Court would be generally found essential in seniority matters where the dispute is essential inter-se the various persons within the cadre or failing in the zone of consideration. On the second question I would accept the argument that since the Petitioners belong to the feeder cadre they possess a personal interest in the issues that have been raised. In the event that it is found that the deputationists have no right to continue on their posts, it can certainly be gainsaid by the Petitioners that they may be considered on an ad-hoc or temporary or permanent basis to officiate in these posts. Every employee can legitimately expect to rise in the hierarchy of the organisation in which he serves. This is especially so keeping in view the contention of the Petitioners that a trend can be perceived from the orders and circulars of the Government and from the decision of the Board/Chairman DVB that the employment of deputationists is to be brought to an end.

7. The method and manner of the recruitment of deputationists by the Respondents appears to be indefensible except in the case of three persons at Sr. Nos. 24, 25 and 26 in paragraph 18 of the Petition. It must always be borne in mind that the subject recruitment is to the finance/accounts department of the DVB. It is Therefore, only logical that persons who are to be considered for appointment should have on a finance/accounts background. This is obvious also for the reason that in case of recruitment through promotion, the feeder cadre is that of Accounts Superintendent with three years service in the grade rendered after appointment thereto on a regular basis. the DVB has palpably thrown this essential aspect to the winds. As envisaged in the Recruitment of Promotion Regulations (R&P Regulations) which indisputably have statutory force, the other half of recruitment is through transfer on deputation of officers of the rank of SAS Accountants or its equivalent; such persons should have already serve for three years in that grade after appointment thereto on a regular basis, as in the case of Accounts Superintendent already working with the DVB. Mr. Birbal, Learned Counsel for the DVB has put forward a desperate argument with the word "equivalent" as is to be found in the P.&R. Regulations enables the

Respondents to engage deputationists from any organisation where officers are in the rank akin to an SAS Accountant. He also put forward another argument that since the word "viz." has been employed in the Regulations, the organisations whose names follow thereafter are only examples and Therefore do not proscribe or prohibit persons being recruited from any organisation other than Indian Civil Accounts Department, Indian Audit and Accounts Department, Indian defense Accounts Department, Indian Railways Accounts Department, Indian Posts and Telegraph Accounts and Finance Department is exhausted. In other words, Mr. Birbal suggests that the Departments named indicate that the clause should be interpreted ejudem generis. As I see it, if the intention expressed in the statutory Regulations was only to indicate some departments and not exhaustively enumerate then, this intendment could have easily been expressed by using the words "such as" or "for example" or using the abbreviation "etc." at the end of the sentence. These are common tools available to the legal draftsman for crafting such Regulations. The initial appointment on deputation must be from amongst those persons - (a) belonging to any of these organisations and simultaneously (b) being officers of the rank of SAS Accountant or its equivalent with three years service in the grade rendered after appointment thereto on a regular basis in the in numerated department. These two concomitants must be meticulously met and should coexist. Since according to the DVB itself the R&P Regulations have statutory force, any appointment which is not in consonance with the said provisions is illegal, and Therefore calls for jural interdiction.

8. The next aspect is that it has been explicitly stated that the period of deputation shall ordinarily not exceed three years. It is contended by Mr. Kaul, Learned Counsel appearing for the Petitioners that in almost all cases, the deputationists have exceeded this period. If the contention of Mr. Birbal, Learned Counsel for the DVB is to be accepted, the Court must substitute the duration of three years with five years as being the ordinary period of deputation. Even in the extract of Swamy's Handbook - 2000, in the Chapter of Deputation and Foreign Services, this is not what can be gathered as the prevailing opinion. Stipulations of this genre can only mean that a deputation must come to its end after three years and that it would be an exception to grant an extension of the deputation. Therefore, a prerequisite for an extension of deputation would be a conscious decision clearly discernible from the order itself, that in the peculiar circumstances then in existence, it is essential and unavoidable to do so. Due to the inherently finite and transient nature of deputation, it cannot be an acceptable reason for its continuance beyond the normal period that other persons are not available. This would violate the Regulation itself. Apart from the meaning plainly extractable from the provisions of the P.&R. Regulations, it also appears that the very purpose of appointing persons on deputation would be defeated if such persons are allowed to continue in the department for long periods. The salutary rationale behind appointments on deputation would be to infuse fresh as well as distinct blood into the department. This would, in large

measure, fight against the creation of cliques and vested interests within the department. The practice adopted by the DVB, however, runs this rationale aground and defeats its very purpose. Therefore, there must be very strong and unavoidable reasons, to be dealt with specifically and spelt out in detail, that have been found necessary of deputation is granted. This practice is not being adopted by the DVB and extensions thereto have been granted mechanically and in normal course as if it is the rule and not the exception. The practice is illegal.

9. The contention of Mr. Birbal, Learned Senior Counsel for the DVB that Section 15 of the Electricity (Supply) Act, 1958 vests discretion and power in the Board for appointment of all officers and employees other than its Secretary, is also without merit. Where statutory regulations are in force, Section 15 does not envisage that such Regulations shall not be meticulously followed. If the Regulations Therefore, specify the methodology and rigours for appointment by deputation, these cannot be ignored, regardless of Section 15. Section 78 categorically states so.

10. Mr. Kaul, Learned Counsel for the Petitioners has next contended that the directives of the Government of the National Capital Territory of Delhi have been deliberately not followed by the DVB. He has relied on a Circular dated 17.3.1999 of Secretary, (Finance) issued to all Autonomous Bodies on the subject filling up of the post of Accounts/Finance Cadre Functionaries. In the Circular it was observed that these Bodies are not adhering to the directions/instructions of the Government and are trying to fill up these posts with non-SAS officials and that due to such appointment of non-qualified persons, the accounts were found in shabby conditions during the course of Audit by the ELFA. There is also an Order dated September 8, 1999 of the Chief Secretary, Government of National Capital Territory of Delhi that Boards are not repatriating deputation after completion of the tenure of three years and instead continue on deputation without prior approval of the Government. While on the subject of extending deputation only with the prior approval of the Government, attention should be directed to the P&R Regulations which specifically stipulate that the consultation with the UPSC is necessary where the Rules are proposed to be relaxed on any occasion. Under the Statutory Regulations, Therefore, it is a pre-requisite that the UPSC should be consulted where recruitment/appointment is to be carried on contrary to the Regulations and/or extensions beyond the ordinary period of deputation of three years is to be granted. Neither in the case of initial recruitment contrary to the Regulations, nor in the grant of an extension beyond the deputation period of three years has the UPSC being consulted. The Board appears to be functioning as a law unto itself ignoring Government directives and transgressing its own statutory Regulations. It was in these circumstances, and in order to counter the argument put forwarded on behalf of the Petitioners that Mr. Birbal has relied on the decision of the Supreme Court in Rakesh Ranjan Verma and others Vs. State of Biha and others, . However, the facts in the previous case are totally different. The observations and directions were not made in a situation where the appointments made by the Board ran counter to the statutory regulations. In this

context it should be mentioned that Section 78A of the Electricity (Supply) Act, 1948 envisages that in the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government. The questions which have arisen in this Writ Petition pertain purely to policy matters. Although, it has been contended that the DVB has acted strictly on the lines of its understanding of the Recruitment Regulations pertaining to deputationists, a contention which I cannot accept, the Board ought to have approached the Central Electricity Authority u/s 2 of Section 78 if it was desirous of not applying the policy directions of the Government of National Capital Territory of Delhi. Even this step has not been initiated and DVB has exemplified the attitude where not only has it infringed its own statutory regulations but also ignored the directions of the State Government. It would be quite reasonable to interpret the decision of the Chairman of the DVB taken on 8.3.2001 to the effect that all deputationists must be sent back as per orders of the Government, to be in conformity with the statutory obligations of the DVB. On the contrary, inexplicably and alarmingly the stand taken before this Court by an officer who is himself on deputation, having no available authorisation of the Board, is diametrically opposed to that which has found favor with the Chairman of the DVB. If a choice is to be made by the Court, it must be that of the Chairman's view. The nature of the writ petition is such that a very senior officer should have been nominated by the Board to represent it in Court, and such a person should have been above any possible charge or accusation of partisanship between the two sets of employees.

11. It had also been contended by the DVB that the R&P Regulations, which have statutory force, are likely to be replaced by fresh recruitment Rules. Article 14 of the Constitution mandates that all citizens of India shall be treated with equality in the application and enforcement of the law, and an anticipated change in the law is no ground for ignoring and not following the law as it presently exists. This argument does not deserve any further debate.

12. In the light of these considerations, I am presently unable to grant the first prayer, i.e. restrain the Respondents from appointing AFOs/ROs by transfer on deputation from any other organisation in terms of the instructions of the Central and State Government, so long as the appointments are made strictly in conformity with the Recruitment Regulations mentioned above. Since these Regulations have the force of law they would prevail over the instructions that may be given by the Central or State Governments. The argument that the Governmental instructions have rendered the statutory regulations redundant and otiose cannot be accepted at this stage of the proceedings. However, an overwhelming prima facie case has been made out and the balance of convenience and considerations of irreparable loss inevitable visiting the Petitioners call for the grant of the prayer (b) and I restrain the DVB from regularizing/absorbing the AFOs in DVB who have been appointed by transfer on deputation contrary to the R.&P. Rules as considered above. Since the conclusion that have been arrived at is that these deputationists must belong to the

Accounts Department in the Indian Civil Accounts Department, Indian Audit and Accounts Department, Indian defense Accounts Department, Indian Railway Accounts Department, Indian Post & Telegraphs Accounts and Finance Department (Period of deputation shall ordinarily not exceed three years), persons not belonging to any of these departments, such as from the C.C.I., J.N.U., A.G.C.R., UPTRON and from the Planning Department of the Delhi Government etc., have been illegally recruited. If their appointment is quashed by these orders and at this stage, it may vitally affect and cripple the functioning of the DVB. Hence, I desist from doing so. However, no extension beyond the period of three years shall be granted by the Board unless the circumstances justify it, and without first obtaining written permission from the UPSC. The Regulations do not envisage absorption of any deputationists, hence the DVB is restrained from doing so. The application is allowed in these terms.