
(1966) 12 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1936 of 1965

S. Rajinder Pal Singh and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 08-12-1966

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 226, 309
Fundamental Rules — Rule 123, 44

Citation : AIR 1968 P&H 19

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Maluk Singh, for the Appellant; C.D. Dewan, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, J.—Rajinder Pal Singh and 124 others, petitioners, are the employees of the office of the Accountant General Punjab, posted at Chandigarh. The entire office of the said Accountant General used to be at Simla before 1964. On January 21, 1964, an office order (Annexure "A") was issued by the Accountant General, desiring those officials of that office, who wished to be transferred to Chandigarh, to furnish their willingness to the Administration Section of the office by the 30th of January 1964 as it was decided that a part of that office might be shifted to Chandigarh. It was made clear in the office order, which was circulated to all the sections in the office that Government will have no obligation either at that time or in the near future thereafter to provide any residential accommodation to the staff which might choose to go to Chandigarh.

On February 10, 1964, another office order (Annexure "AA") was issued by the office of the Accountant General intimating to the officials that it has been decided to shift the Outside Audit Department and the Works Audit Department wings of the office, which were till then located at Simla to Chandigarh, very shortly. It was added in the order that "in consequence of this change, the

Headquarters of these Wings will change to Chandigarh." All the persons who were at that time working in the Public Works Inspection Parties and Outside Audit Department Field Parties, were required to furnish their willingness or otherwise to the Administration Section of the office not later than February 18, 1964.

It was also mentioned in the order that in case no option was received by the prescribed date, it would be presumed that the officials concerned were not willing to be sent out to Chandigarh. Reference was also made to the earlier office order, dated January 21, 1964 (Annexure "A"). It is the admitted case of both sides that all the petitioners expressed their willingness to be transferred to Chandigarh in pursuance of the abovesaid office orders. The petitioners have filed as Annexure "J" to the writ petition, a copy of the circular letter issued by the office of the Accountant General to all Public Works Divisional Officers of Punjab State and other concerned offices, on February 22, 1964 about the shifting of the Works Audit Department wing from Simla to Chandigarh.

2. On March 2, 1961, the petitioners submitted a representation (Annexure "D") to the Accountant General claiming special compensatory allowance in terms of the Central Government's letter, dated July 17, 1958 (Annexure "C") for a period of one year as had been allowed to the officials of the Punjab and Himachal Pradesh Circle of the Geological Survey of India (Annexure "F") at the time of the shifting of their office from Simla to Chandigarh in March, 1961 and to the staff of the Central Excise Department on the move of that office from Ambala to Chandigarh in 1961. A similar printed representation was later on submitted by the petitioners in 1965 (copy of Annexure E) to the Comptroller and Auditor General of India.

The special compensatory allowance was claimed for one year at 12 1/2 per cent of the pay admissible to the petitioners. Reference was made to the previous application submitted to the Accountant General, and it was stated that though the petitioners had waited for over a year, they had not received even a formal reply to their demand, and that it was only when they waited on the Accountant General on March 4, 1965, that they were informed of the demand having been rejected. Justification for the demand was sought to be made out in the representation. By letter, dated July 12, 1965 (Annexure R-3), the Deputy Accountant General, Punjab, Chandigarh, informed the petitioners that the matter regarding the grant of special compensatory allowance had been considered in consultation with the Government of India, Ministry of Finance, and it had been decided that the request of the staff at Chandigarh for the grant of the said allowance could not be acceded to as the movement of the staff from Simla to Chandigarh could not be said to be "unusual and unforeseen in character" in terms of the Ministry of Finance, Office memo., dated 6th January, 1964. This situation led the petitioners to file the present writ petition in this Court on June 23, 1965, praying for a writ of mandamus or certiorari or other appropriate writ being issued directing the respondents (the Union of India and

the Comptroller and Auditor General of India), to comply with the provisions of the letter of the Government of India, dated July 17, 1958 (Annexure "C"), and to grant the petitioners special compensatory allowance admissible to them in terms thereof.

3. The petition has been contested on behalf of the respondents. Besides pleading that the case of the petitioners does not fall within the four corners of the above-mentioned letter of the Government of India, dated July 17, 1958, it has been averred on behalf of the Union of India that the petitioners have no legal right which might be justiciable in a Court on merits. It has been stated that the Headquarters of the office of the Accountant General, Punjab, have not been shifted to Chandigarh, and still continue at Simla, and it is only those persons who volunteered to be shifted from Simla to Chandigarh, who were so transferred. The concessions referred to in the Central Government's letter dated July 17, 1958, are stated to be available only to such Government servants, whose headquarters have been shifted from their existing location to some other city or town in pursuance of Government's policy to relieve pressure for office accommodation in cities like Delhi; whereas in the instant case, the respondents contend that the headquarters continue to be at Simla even after the shifting of certain wings to Chandigarh in March 1964.

The shifting is stated to have been effected not in pursuance of Government policy, but primarily because large number of employees of the Accountant General's office stationed at Simla had been pressing for postings to Chandigarh, as would be evident from the resolution of the staff association (Annexure R-I), and because some of the employees were required to vacate the residential accommodation with them in Simla as a result of the Punjab Government decision to shift their camp offices to Simla during summer 1964.

4. It would be appropriate at this stage to set out in some detail the contents of the relevant communications issued by the Central Government from time to time. The basis of the claim of the petitioners is the letter, dated July 17, 1958, from the Deputy Secretary to the Government of India, Ministry of Finance (Department of Expenditure), New Delhi, addressed to the Comptroller and Auditor General of India and all offices under his control (Annexure "C"). The heading of the office memorandum is in the following words:--

"Grant of concessions to Central Government servants whose headquarters are being changed as a result of Government policy."

It is the common case of both sides that the petitioners are Central Government servants, though it is not admitted that their headquarters had at all been changed or shifted as a result of Government policy. The relevant part of the said office memorandum is quoted below verbatim:--

"In supersession of the earlier orders on the subject, the undersigned is directed to state that the President is pleased to sanction the following concessions to the Central Government servants in offices the headquarters of which are being

shifted from their present locations to another city or town as a result of Government policy:--

1. (i) An advance of two months' pay in addition to the usual advance of travelling allowance.....

(ii) In relaxation of the time-limits prescribed in S.R. 116(b)(ii), claims for travelling allowance in respect of Journeys performed by members of the Government servant's family and for the carriage of personal effects may be admitted up to a period of twelve months from the date of transfer.

(iii) (a) Permission may be given for the retention of Government accommodation at the former headquarters on payment of normal rent for a period of six months or till the officers have been able to secure family accommodation at the new headquarters, whichever is earlier.

(b)

2. The following additional concessions may be allowed for non-gazetted officers drawing a pay (inclusive of dearness pay) of Rs. 250 or below per month (including class IV staff):--

(i) A special compensatory allowance for a period of one year from the date of joining at the new headquarters at the following rates: --

(a) Non-gazetted staff other than class IV staff: 12 1/2 per cent of pay subject to maximum of Rs. 25 per month. Pay for this purpose will also include dearness pay.

(b).....

(ii)

3. These orders will take effect from the date of issue. Past cases decided on merits will not be reopened."

5. The above office memorandum was followed by a communication, dated November, 29, 1958 (Annexure "CC"), making the concessions referred to in letter, dated July 17, 1958, admissible to non-gazetted officers drawing pay exceeding Rs. 250 per mensem subject to marginal adjustments. The amendment was given retrospective effect from the date of the original letter, dated July 17, 1958. Then followed office memorandum, dated December 27, 1960 (Annexure "CCC"), informing all the Ministries that the President had been pleased to decide that the concessions mentioned in the original letter, dated July 17, 1958, would also be admissible to non-gazetted Government servants drawing pay up to Rs. 300 per mensem in a revised pay-scale subject to marginal adjustments up to a limit of Rs. 325 or Rs. 340 per mensem. The amending order was directed to take effect from the date of the introduction of the revised pay-scales, i.e., from the 1st of July, 1959.

The contents of memorandum, dated January 6, 1964, from the Government of

India in the Ministry of Finance to the Comptroller and Auditor General of India, were communicated to the office of the Accountant General, vide endorsement, dated 28th of January, 1964. A reference was invited to the original memorandum, dated July 17, 1958, in which certain concessions were sanctioned to the Central Government servants in offices, the headquarters of which were shifted from their existing locations to other cities or towns as a result of Government policy, and it was stated as below:--

"These orders were issued particularly in the context of a large-scale move of Government offices from Delhi and other big cities to new headquarters as part of a plan to relieve congestion and pressure on accommodation. However, time and again, there have been proposals to extend the benefits of these orders to cases where an office or part of an office was shifted or indeed where only some officials were transferred as a result of a reorganisation or redevelopment of activities or staff within a department among different stations. There have been instances in which the concessions were actually allowed without making certain whether they were really admissible and intended for the circumstances of a particular case. This Ministry has been taking the view that for attracting the benefit of these orders, "the shift of headquarters should be unusual and unforeseen in character, and that the concurrence of this Ministry should ordinarily be obtained in advance "before the concessions are allowed or promised",

(underlining (here in " ") by me).

2. As references and enquiries on this subject have been coming in frequently and misunderstanding or uncertainty often results in a certain amount of dislocation and inconvenience, it is requested that adequate steps may kindly be taken to ensure that this Ministry is invariably consulted at an appropriate stage before the change of headquarters or reorganisation is decided upon on a particular occasion and a clear decision is obtained well in advance whether the concessions available under the Orders of 17th July 1958, would be admissible in the circumstances of any individual case."

6. Three questions appear to arise from the argument addressed by the learned counsel for the parties in this case. The first is, whether the original office memorandum, dated July 17, 1958 as subsequently amended from time to time confers any legal right on the petitioners which they can claim to enforce by a writ petition under Article 226 of the Constitution? The second question would be that if the petitioners succeed in obtaining an answer to the first question in their favour, does their case fall within the four corners of the office memorandum in question as modified from time to time? The last question which calls for an answer is whether the petitioners have been discriminated against in the matter of being bestowed the benefits of the concessions allowed by the Central Government for payment of the special compensatory allowance in question.

(6-A) Shri Maluk Singh, the learned counsel for the petitioners, submitted that

the order contained in the office memorandum of the Central Government fell within the ambit of the proviso to Article 309 of the Constitution and, therefore, amounts to a statutory rule which the petitioners are entitled to enforce against the respondents. Article 309 is in the following terms:--

"309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions or services of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act".

The case of the petitioners is that the office memorandum in question having been issued by the Government of India, Ministry of Finance, with the sanction of the President of India and since the petitioners are working in services and against posts in connection with the affairs of the Union, the President is deemed to have made a rule relating to the conditions of service of the petitioners and other similarly situated persons in the matter of grant of the particular special compensatory allowance in dispute, and that no provision in that behalf having been made till now by an Act of any appropriate Legislature under the purview of Article 309, the rule so made by the President has effect, and can be enforced against the petitioners.

I find myself unable to agree with this contention, because the President of India does not appear to have framed any statutory service rule under the proviso to Article 309 of the Constitution while according his sanction to the financial expenditure involved in the payment of the special compensatory allowance, which has been decided by the Government of India to be given as one of the concessions enumerated in the office memorandum, dated July 17, 1958. If the President intended to make a rule under the proviso to Article 309, it could not be called a concession. Statutory rules are entitled to be enforced as a matter of right. It is true that the Court has to look to the contents of the relevant matter and not to the label put on it, but even the tenor of the body of the office memoranda in question shows that the Central Government did not intend to frame any service rule in connection with the payment of the compensatory allowance in question, but merely wanted to convey and communicate to all concerned, the financial sanction of the President for incurring of the extra expenditure which is bound to be involved in making certain concessions to the class of Central Government employees who fell within the purview of the memoranda to the extent indicated therein.

7. The "concessions" purported to be given to the employees in question, in the specified circumstances, do not, therefore, appear to me to fall within the proviso to Article 309 of the Constitution and cannot be treated as statutory rules on that account.

8. In support of the proposition that the memoranda issued by the Central Government contain a statutory rule, it was then contended by counsel that if it were not so, the communication, dated July 17, 1958, could not abrogate or amend or relax the requirements of supplementary Rule 116 (b) (iii) under which six months" limitation is fixed for making a claim for travelling allowances. It is argued that since the said statutory rule was specifically relaxed under paragraph I (ii) of that memorandum (reproduced in an earlier part of this judgment), the contents of the memorandum itself are deemed to have statutory force.

It appears to me that even this argument of Mr. Maluk Singh is not tenable as the very premises on which it is built, are non-existent. Supplementary Rule 118 (b) (iii) provides that a member of a Government servant's family, who follows him within six months from the date of his transfer, may be treated as accompanying him. Under that rule, a Government servant is entitled to claim travelling allowance for such member of his family on transfer. By Government of India, Ministry of Finance. Correction No. 733, dated 2nd February, 1955, the following words have been added to Clause (iii) of Sub-rule (b) of rule 116, of the supplementary rules:--

"these time-limits may be extended by the competent authority in individual cases attendant with special circumstances".

It appears to me that the relaxation of time-limit prescribed in Supplementary Rule 116 in connection with the claims for travelling allowance in respect of journeys performed by members of a Government servants family, and for the carriage of personal effects by paragraph 1 (ii) of the Government of India letter, dated July 17, 1958 (twelve months instead of six months), has been made in exercise of the powers conferred by Supplementary Rule 116 itself, as amended and not in derogation or supersession of it. In this view of the matter, the basis of the argument of the learned counsel for the petitioner, does not appear to exist.

9. It was then sought to be argued on behalf of the petitioners that the contents of the memorandum, dated July 17, 1958, had become a rule as these had been subsequently incorporated in Fundamental Rule 123. It is, however, admitted by the learned counsel that only Clause (i) of paragraph 1 of the office memorandum permitting two months" pay in addition to the usual advance of travelling allowance being paid instead of one month"s pay as originally provided in the rule concerned which has been incorporated out of the office memorandum into the Fundamental Rules. The contents of para. 2 relating to pay ment of special compensatory allowance, have admittedly not been incorporated in any of the Fundamental or Supplementary Rules. This immediately reveals the fallacy in

the argument advanced on behalf of the petitioners. There is no doubt that so much of the office memorandum as has been transplanted into the Fundamental Rules has acquired statutory character, but the concession which the petitioners want to enforce against the Government not having been so incorporated, the argument really goes against the petitioners.

10. Compensatory allowance has been defined in Rule 9 (5) of the Fundamental Rules in the following words:---

" (5) Compensatory allowance means an allowance granted to meet personal expenditure necessitated by the special circumstances in which duty is performed. It includes a travelling allowance, but does not include a sumptuary allowance nor the grant of free passage by sea to or from any place outside India." Fundamental Rule 44 deals with payment of compensatory allowances. The said provision is in the following terms:--

" F. R. 44. Compensatory allowances.--Subject to any restrictions which the Secretary of State in Council may by order impose upon the powers of the Governor General in Council or the Governor in Council, as the case may be; and to the general rule that the amount of a compensatory allowance should be so regulated that the allowance is not on the whole a source of profit to the recipient, a Local Government may grant such allowances to any Government servant under its control and may make rules prescribing their amounts and the conditions under which they may be drawn."

Certain supplementary rules have been framed under Fundamental Rule 44 relating to payment of compensatory allowances. The learned counsel went through all those rules and conceded that none of them covered the claim of the petitioners. Unless, therefore, the claim of the petitioners could fall under any of the Supplementary Rules, or Fundamental Rules or any other statutory rule, they do not appear to have any legal right to enforce payment of the amount alleged to be given as mere concession by the Central Government to some of its employees.

11. Mr. Maluk Singh relied on the judgment of the Supreme Court in *The Accountant General, Bihar and Another Vs. N. Bakshi*, , in support of the petitioners' claim. I do not think the said judgment is of any assistance in deciding the matters involved in the instant case. All that the Supreme Court held in the case of *The Accountant General, Bihar and Another Vs. N. Bakshi*, was that "remuneration" in Article 314 included even statutory allowances besides salary and that the 1957 notification which was impugned in that case seeking to deprive the services covered by Article 314 of the Constitution, of allowances which were part of the remuneration, was ultra vires Article 314. No such question arises in the case before me. I, therefore, hold that what are provided in the Central Government memoranda referred to above, are merely concessions granted by the Central Government ex gratia to some of its employees to alleviate against hardship caused to the employees in unforeseen

circumstances. The concessions have been granted in exercise of the exclusive powers of the Central Government, and not having been incorporated in any statutory rule, are not enforceable in a Court of law.

In *Union of India (UOI) Vs. F. Gian Chand Kasturi Lal*, it was held that the refund claim in that case could not be enforced in Court as the notification under which it was claimed, did not fall under any statutory rule or notification, since no reference had been made in the notification to any section or any rule providing for refund. *J. L. Kapur, J.* (as he then was) held in those circumstances that there was no provision of law under which the refund could be enforced through a Court.

In *The State of Madhya Pradesh Vs. G.C. Mandawar*, a claim for payment of dearness allowance by Government servants at a particular rate was held to be not justiciable as the grant of dearness allowance at a particular rate under Rule 44 of the Fundamental Rules was held to be a matter of grace and not a matter of right. Compensatory allowance could only possibly be granted under Fundamental Rule 44 and the claim to enforce its payment, would be hit by the judgment of the Supreme Court in the above-mentioned case.

In a recent unreported judgment of the Supreme Court, dated November 7, 1966, in *K. V. Rajalakshmi v. State of Mysore*, (C.A. Nos. 2174 and 2175 of 1965), (a short note of which judgment appears in 1966 SG 401) (since reported in AIR 1967 SC 993), it was held that there was no service rule which the State of Mysore had transgressed nor had the State evolved any principle to be followed in respect of persons who were promoted to the rank of Assistant Engineers from Surveyors, and that the indulgence shown to the different batches of persons were really ad hoc, and the Court was not in a position to say what if any ad hoc indulgence should be meted out to the appellants before the Supreme Court. The Court further observed that it could not be held that employees were entitled to any particular indulgence or concession. The only way of meting out equality to all Surveyors who had been promoted to the cadre of Assistant Engineers, would be to say that promotions should in all cases be effective from the date of notification. The Supreme Court held that this is obviously beyond the Court's powers.

The ratio of the judgment of the Supreme Court in the last-mentioned case, appears to apply to the petitioners' claim and is enough to negative it. I am, therefore, unable to answer the first question raised in this case in favour of the petitioners. The preliminary objection of Mr. C. D. Dewan, learned Deputy Advocate General, against the maintainability of this writ petition for enforcing payment due under an alleged concession, granted by the Central Government in exercise of its executive powers, succeeds.

12. Nor have I been able to persuade myself to accept the contention of the petitioners on the merits of their claim. The headquarters of the office of the Accountant General, Punjab, are still at Simla- The two departments of the office

did not have a separate headquarter at Simla, Be that as it may, the shifting of the two departments was not in pursuance of any policy to relieve pressure of office accommodation at Simla. Moreover, the petitioners themselves offered to be transferred to Chandigarh and no question of their claiming compensatory allowance to alleviate any hard ship caused to them could arise.

The Central Government memorandum, dated July 17, 1958, as modified from time to time, permits payment to be made only if sanctioned by the Ministry of Finance. The said Ministry has expressly declined to grant the sanction in the case of the petitioners. I do not, therefore, think that the Central Government was wholly unjustified in declining to grant the compensatory allowance in question to the petitioners within the four corners of its communication of July, 1958.

13. Nor is there any merit in the last point taken up by the petitioners relating to the alleged discrimination between the petitioners on the one hand and the employees of the office of the Geological Survey of India and some other offices on the other. Enough of material is not available on the record before me to prove that all those sets of employees were similarly situated. In any case, Article 14 of the Constitution prohibits the denial to any person of equality before "Law" and guarantees to every person in this country equal protection of the "laws" within the territory of India. In view of my finding on the first question that the concessions in dispute do not amount to rules, the memorandum containing those concessions does not appear to me to be "law" which has to be equally enforced in favour of all the citizens of the country.

Nor is Clause (1) of Article 16 of any avail to the petitioners as the subject-matter of their claim, does not relate to their employment or appointment or office under the State. Even if those expressions impliedly include service conditions and the question of remuneration, all the employees of the office of the Accountant General, Punjab, have been treated alike and it does not appear to be possible to guarantee equality of opportunity between the employees of one service as compared with employees of an entirely different service or cadre,

14. No other point has been argued in this case. For the foregoing reasons, this writ petition fails and is dismissed, but without any order as to costs.