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(1983) 02 GAU CK 0011

In the Gauhati High Court

Case No : Civil Rule No. 29 of 1976

Shri Baljit Rai Sur — APPELLANT

Vs

State of Tripura and Others — RESPONDENT

Date of Decision : 25-02-1983

Acts Referred:
All India Services (Discipline and Appeal) Rules, 1969 — Rule 6(1)
Constitution of India, 1950 — Article 311(2)
Police Service (Cadre) Rules, 1954 — Rule 6(2)
Police Service (Pay) Rules, 1954 — Rule 9(1)

Citation : (1984) 1 GLR 15

Hon'ble Judges : S.M. Ali, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; P.K. Majumder, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, J.—The Petitioner, who argued his case in person with ability and eloquence-, had joined the Indian Police Service in 1954. After serving the State of Punjab in various capacities, so also the Government of India, he became a member of Union Territories Cadre. On Manipur and Tripura attaining Statehood, a separate cadre for these States was formed and the Petitioner became a member of this cadre as Additional Inspector General of Police which post he held from 27.11.72. Soon thereafter he was posted as Inspector General of Police which order came into effect from 28.2.73. He was awarded Police Medal on the Indepence day of 1975 and the Chief Secretary of the State also had kind words to say about him in the communication dated January 10, 1976 (Annexure ''B'' to the petition). But soon thereafter the Petitioner was to land in trouble. It is his case that with effect from 14.1.76 be was forced to go on leave for 120 days and on his resumption so posting order was passed. brought this matter to the notic of the President of India by submitting a memorial on 10.5.76 to which the Petitioner received no reply. However, an order came to be passed on

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14.9.76 stating that the services of the Petitioner are placed at the disposal of the Government of India for "appointment, on deputation, as Deputy Inspector General in the Central Reserve Police Force, Kohima Rang with immediate effect".

2. The Petitioner promptly challenged this order by appro, aching this Court on 21.9.76. Though the Rule was made returnable within three months because of the rafusal of the prayer for stay, it is a pity that the same could be finally heard only in February, 1983. It may be stated that following the refusal of the prayer of stay, the Petitioner had joined his deputation post on 30.9.76.

3. The contention of the Petitioner is that the order of sending him on deputation as Deputy Inspector General in the Central Reserve Police Force, which assignment he bad to accept most relunctantly and under constraint, is punitive and is in violation of the Service Rules governing the Petitioner, apart from the same being hit by Article 311(2) of the Constitution.

4. The case of the Respondent No. 1, the State of Tripura, who alone has filed its counter in the case, is that the State "was badly in need of a Senior Officer for the post of Inspector General of Police in public interest and for better security of the State and as such an I.P.S. Officer of 1948 seniority from the State of Gujarat was brought on deputation," Efforts were, therefore, made to find out a place for Petitioner''s posting under the Central Government "by maintaing his rank and emoulments". As the Petitioner was not in the Inspector Generals'' pane) pre-pared by the Government of India, he was placed in the Deputy inspector Generals'' panel. It is also submitted on behalf of the State that since officers far senior to the Petitioner were serving as Deputy Inspector General with the Central Government, it was not possible to get a deputation post of the rank and pay of Inspector General. Accordingly, the Petitioner was posted as Deputy Inspector General. Central Reserve Police. The contention that the Petitioner was punished by reducing him in rank has been denied inasmuch as, according to the State, the Petitioner had not been confirmed in the post of Inspector of police. The question of violation of Article 311(2) of the Constitution does not, therefore, arise.

5. The Petitioner, however, submits that his deputation as Deputy inspector General was in violation of the second proviso to Rule 6(2) of the I.P.S. (Cadre) Rules, 1954, and it is also hit by Rule 9(1) of the I.P.S. (Pay) 1954. Finally, he fuge inasmuch as without passing a formal order of reversion his reduction in rank has been brought about. In support of the last submission, some reliance has also been placed by the Petitioner on Explanation (iv) to Rule 6(1) of the All India Services (Discipline and Appeal) Rules, 1969, read with a communication dated 6th April, 1972, frem Under Sucteters in Government of India as at A(sic) ''A'' of the (sic)

6. It (sic) also appointed to that post. A posting has to follow appointment'' It cannot precede it. It this connection we may refer to the leaning of the word "post" as given in Webster''s Third International Dictionary 1971 Edn. Vol.II at

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page 1771. It has been defined inter alia to mean "an office or position to which a person is appointed." It would be also appropriate to note the definition of ''''posting" as given at the next page of the aforesaid Dictionary, One of the meanings ascribed to this word is "appointment to a port or command". In the Notification of 25.2.73 (Annexure ''I''), we have, therefore, to read the appointment itself of the Petitioner as Inspector General of Police. As nothing had been said in it about its being a temporary or officiating arrangement, we have to regard the appointment as substantive in nature. Where appointment to a post is adhoc, temporary or officiating, the same is spelt out clearly in the order itself ; and is required to be so done. Any other. view would make the career of an incumbent too hazardous. If an order is unqualified, the same has to be understood as an order of substantive appointment, unless there be contemporaneous document of unimpeachable character to show the contrary. No such document is before us. We are, therefore, unable to read the appointment of the Petitioner to the post of Inspector General as an appointment on trial. In this connection, it is worth pointing out that when the Petitioner had seen himself RS Inspector General of Police he had suspended a senior officer named Shri I.M. Mahajan whose year of allotment is 1953, whereas the Petitioner is of 1934 batch. As the post of Inspector General of Police is a Selection Grade post as pointed out in Sant Ram Sharma Vs. State of Rajasthan and Another, and as appoiatment to such a post is primarily based on merit and not on seniority alone as held in Sant Ram, this fortifies the stand of the Petitioner that this appointment was in a substantive capacity on due consideration of his merit.

7. In this view of the matter, we are really not called upon to decide as to whether the Petitioner had automatically acquired "substantive status" on completion of three years of his service as Inspector General in view of Clause (iv) of the Explanation below Sub-rule (1) of Rule 6 of All India Services (Discipline and Appeal) Rules, 1969, which is the view of the Government of India as expressed in letter No. 37/2/71-AIS (III) dated 6.4.72, a copy of which is at Annexure ''A'' As, however, the Petitioner has pressed this communication also in service, we would state that we have our doubt about the correctness of the legal proposition mentioned in the letter, as confirmation to a post would depend upon the provisions of Service Rules, in particular those dealing with the period of probation etc. As in known an incumbent of All India Service does not even acquire the status of quasi-permanence unless a specific order in that regard is passed. However, this is our tentative view as for the case at hand a final decision in this regard is not necessary.

8. Let it now be seen whether in sending the Petitioner on deputation as Deputy Inspector General, C.R.P.F. the afore-said Service Rules were violated or not. The first violation, according to the Petitioner is of the second proviso to Rule 6 (2) of the above mentioned Cadre Rules. That proviso lays down:

Provided further that no cadre officer shall be deputed under Sub-rule (1) or Sub-

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rule (2) to a post carrying a prescribed pay which is less than, or a pay scale, the maximum of which is less than, the basic pay he would have drawn in the cadre post but for his deputation.

As per the Petitioner, the basic pay his was drawing as Inspector General of Police in 1976 was Rs. 2,625/- whereas the maximum of the post of Deputy Inspector General is Rs. 2,250. We are referred to Annexure ''J-2'' by which the pay scale of the Inspector General of Police of Tripura was fixed as Rs. 2,500-125/2.2750 with effect from 3.11.73 by a communication dated 7.6.76, After earning one increment of Rs. 125/'', the Petitioner submits, that his basic pay came to Rs. 2,625/- whereas as per him the maximum of the pay scale meant for Deputy Inspector General, C.R.P.F. is Rs. 2,250. We are, however, unable to express any opinion on the alleged violation of the aforesaid proviso as from the materials on record it is difficult for us to find out as to what is the maximum of the pay scale of Deputy Inspector General, C.R.P.F., though it would appear from the averment made in para 11 of the counter filed by the State that the deputation post was not of the same pay as that of the Inspector General. On the verbal statement of the Petitioner alone, we cannot however, conclusively hold that his deputation was in violation of the aforesaid proviso. This apart, it world seem to us that lethality of this proviso would not work if an incumbent holding a post could be legally reverted to a lower post whose pay or pay scale is not lower than the post to which the incumbent is sent on deputation. In such a case the real vice would consist in the reversion though the order of deputation may not speak of the same in so many words. To put it differently if a member of the service has no right to hold the post carrying higher pay, his deputation to a post carrying lesser pay may not p(sic) se be hit by this proviso as the underlying idea behind the provision is to see that an incumbent is not penalized in the garb of sending him on deputation. Of course, if the deputation order be a cloak to reduce the person in rank the matter shall wear a different look.

9. We now come to the allegation of playing foul with Rule 9 (1) of the above mentioned Pay Rules. That Rule states:

No member of the Service shall be appointed to a post other than a post specified in schedule III, unless the State Government concerned in respect of posts under its control, or the Central Government in respect of posts under its control, as the case may be, makes a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule.

As the post of Deputy Inspector General, C.R.P.F, is not borne in any of the categories mentioned in Schedule III, the Petitioner is technically correct in submitting that he could not have been appointed to the post of Deputy Inspector General without the equivalence of that post qua a post specified in the Schedule having been declared. But then from what would be noted later and what has been stated in Madan Gopal Singh v. Union of India 1969 S.L.R. 576 , which decision has been strongly relied on by the Petitioner himself, it would appear that the post of Deputy Inspector General, C.R.P.F. is really equivalent to

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that of Deputy Inspector General in a State. Thus, though no equivalence has been declared in so many words, the silence in this regard cannot be sufficient to hold violation of Rule 9(1) of the Pay Rules. E.P. Royappa Vs. State of Tamil Nadu and Another, cannot, therefore, really assist the Petitioner in as much as it is not even the stand of the contesting Respondent that the post of Deputy Inspector General, C.R.P.F. is equivalent in status and responsibility to that of the Inspector General of Police of the State. This stand is totally against the one taken in Royappa. So, we cannot declare the impugned order illegal and set the fame aside in exercise of our writ jurisdiction because of the technical violation of Rule 9(1) of the I.P.S. (Pay) Rules.

10. But then having held that the Petitioner''s appointment to the post of Inspector General of Police was substantive in character, we have no hesitation in agreeing with Shri Sur that his deputation as Deputy Inspector General, C.R.P.F was a punishment inflicted on biro, and as the procedural safeguard provided in Article 311(2) of the Constitution was not complied with, the order has to be set aside. It is well settled after the decision of the Supreme Court in Parshotam Lal Dhingra Vs. Union of India (UOI), that if a Government servant has a right to a particular rank, then the reduction from that rank will operate as penalty for he will then lose the emoluments and the privileges of that rank. As it is not in dispute that the post of Deputy Inspector General to which the Petitioner was deputed by the impugned order is not of the same rank as that of Inspector General of Police of Tripura, it follows that the Petitioner''s appointment to the former post was a reduction in rank, as be being a confirmed Inspector General of Police had a right to bold that post. Let it be, stated that as it has not been disputed by the State that the past of Deputy Inspector General, C.R.P.F. is not of the same rank as that of Inspector General of the State, we have not felt it necessary to examine question on our own-Still we may refer to the views expressed by the learned Single Judge [in Madan Gopal Singh (supra) wherein this aspect has been gone into in details. May we state that with respect we agree with what has been said in this regard in the aforesaid judgment.

11. In view of our decision that the posting of the Petitioner as Deputy Inspector General of the C.R.P.F. was a case of reduction in rank because he was a confirmed Inspector General of the State, we arc nut really called upon to express (sic) opinion whether the reversion in question would have amounted to reduction in rank in view of Explanation (iv) to Rule of the All India Services. (Discipline and Appeal) Rules, 1969. We may none the less express our tentative view on the question Shri Sur has contended in the alternative that even if his appointment be regarded as on trial, as be had held the post of the Inspector General for more than three years, his reversion as Deputy Inspector General has to be regarded as penalty in view of the aforesaid Explanation, We may state that this conclusion may not follow from the Explanation inasmuch as it only states that if the officiating appointment is not for a period exceeding three years, the reversion "shall not amount to a penalty". From this, it does not follow as a necessary conclusion that in case the period of appointment is exceeding

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three years, the reversion shall have to be treated as reduction is rank in all cases. Whether this would be so or not will depend on facts and circumstances of each case. Reference may be made in this connection to Union of India v. Gajinder Singh AIR 1972 and State of Mysore v. U.K. Gadgoli AIR 1917 SC 1617.

12. As we have, however, held that the Petitioner was confirmed as Inspector General, his appointment on deputation as Deputy Inspector General, C.R.P.F. which is a post lower in rank and status to that of Inspector General, has to be regarded as reduction in rank. As this was brought about without complying with the requirements of Article 311(2) of the Constitution, the impugned order has to be set aside, which we hereby do. To do complete justice between the parties, we further direct the Respondents to appoint the Petitioner to a post equivalent, in status and responsibility to that of Inspector General of Police of a State.

13. The petition is allowed as aforesaid.

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