
(2002) 05 DEL CK 0027
In the Delhi High Court
Case No : CWP 7213 of 2001

Union of India (UOI)

APPELLANT

Vs

Shri J.P. Verma and Another

RESPONDENT

Date of Decision : 14-05-2002

Acts Referred:

Constitution of India, 1950 — Article 311(2), 312

Citation : (2002) 98 DLT 510 : (2003) 96 FLR 184

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : H.K. Gangwani, for the Appellant; Jayant Das and Ajit, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Union of Indian the respondent before the learned Tribunal, is the writ petitioner herein. It has questioned a judgment and order dated 16th November 2000 passed by the Central Administrative Tribunal, Principal Bench in its OA No. 1459/2000 wherein the respondent herein approached the learned Tribunal Purported to protect himself against the implementation of purported illegal order which was about to be passed by the petitioner reverting and repatriating him to his parent cadre i.e. State of Orissa.

2. The basic fact of the matter is not in dispute. The first respondent was sent on deputation as Additional Director General of Police in CRPF. The first respondent who is a member of the Indian Police Force and allotted the cadre of State of Orissa was appointed on deputation basis as Additional Director General of Police in CRPF by order dated 22nd June 1998 until further orders. He was sponsored for the post of Director General (Investigation) in the National Human Rights Commission by Union of India. On or about 13th June 2000, the Secretary General of National Human Rights Commission wrote to the petitioner a letter in the following terms:

"The Chairperson has directed me to place on record the fact that when we (I and Shri D R Karthikeyan) contacted Shri M K Shukla and Shri J P Verma (applicant), we were surprised to find that both the officers were only keen to find out about the perquisites attached to the office of the Director General (Investigations), NHRC - one officer wanted to know whether he can travel as he likes or whether he will have to seek permission from the Chairperson; another officer indicated the number of constables/orderlies a DG(Police) is entitled to and wanted to know whether he will be provided the same number (The obvious answer was no). Both the officer expressed their disinclination to come and meet the Chairperson after being told about the availability or otherwise of the kind of perks they were looking for in the Commission. The Chairperson, NHRC was appraised of this matter and he has directed that the matter be brought to the notice of the Home Ministry to highlight the lopsided priorities of these very senior officers who are waiting "to serve" the nation in the rank of Director General of Police."

3. Allegedly, an order for repatriation was passed in terms whereof the first respondent was repatriated to his parent cadre in the State of Orissa by order dated 3rd August 2000. On the same date, the said Original Application was filed. By reason of the impugned judgment dated 16th November 2000, the learned Tribunal allowed the Original Application directing:

"(1) The interim Order dated 4.8.2000 is made absolute with consequential benefits;

(2) The applicant shall be entitled for consideration for promotion as DG in the Centre, in accordance with his panel position against the vacant posts in future, in accordance with the relevant Rules and instructions."

4. After the afore-mentioned order was passed, a memorandum was issued to the first respondent by the petitioner to explain within a period of 30 days from the date of receipt thereof as to why disciplinary proceedings should not be initiated against him whereupon the first respondent prayed for 30 days time to file reply which was granted.

5. Mr. Gangwani, learned counsel appearing on behalf of the petitioner would submit that the learned Tribunal committed a serious error in passing the impugned order in so far as it failed to take into consideration that the deputationist cannot be said to have any legal right to continue to remain on deputation. The learned Tribunal, Mr. Gangwani argued, committed illegality in so far as it held that even in a case of this nature, the principles of natural justice were required to be complied with although by reason of the order impugned in the Original Application, the first respondent did not suffer any loss of emoluments, status nor by reason thereof suffered any stigma or penalty.

The learned counsel in support of the said contentions placed reliance upon *Ratilal B. Soni and others Vs. State of Gujarat and others*, and *State of Punjab and Ors. v. Inder Singh and Ors.*, AIR 1998 SC 7.

6. Mr. Gangwani would contend that the order of repatriation had already been passed by the petitioner on 3rd August 2000 but the respondent in his Original Application which was filed on 3rd August 2000, deliberately and intentionally suppressed the said fact nor questioned the legality or validity of the said order.

7. Mr. DAs, the learned senior counsel appearing on behalf of the respondent on the other hand, would contend that the purported letter of the National Human Rights Commission was a foundation for passing the said order dated 3rd August 2000 in terms whereof the first respondent was sought to be repatriated on extraneous consideration. The learned counsel would urge that the order of repatriation having regard to the nature of service of the first respondent which is governed by All India Services Act, 1951, could be passed only for valid reasons. A non-speaking order, the learned counsel would contend, cannot be a ground not to lift the veil inasmuch as the court is entitled to, in a given situation, to delve deep in the matter for the purpose of finding out the actual reasons therefore.

The learned counsel, in support the his afore-mentioned contention placed reliance on Anoop Jaiswal Vs. Government of India and Another, , K.H. Phadnis Vs. State of Maharashtra, and Appar Apar Singh Vs. The State of Punjab and Others, .

8. Although the order impugned before the learned Tribunal was passed on 3rd August 2000, it appears that the same was dispatched on 4th August 2000. It is, Therefore, unlikely that the first respondent at the time of filing of the Original Application was communicated with the said order although he might have come to know thereabouts.

9. Let us now consider as to whether the afore-mentioned letter dated 13.6.2000 issued by the National Human Rights Commission was the foundation for passing the order impugned in the Original Application. In its counter-affidavit before the Tribunal, the petitioner herein categorically stated:

"It would be seen from the above that the applicant behaved in a manner which is unbecoming of an officer of his seniority. It also proves that the said tow officers were ostensibly more worried about their perks and orderlies rather than the job content of the post. Int he light of the conduct of these officers in dealing with NHRC and observations of the Chairperson NHRC, the Government has taken a very serious view of the conduct of these tow officers and approved their repatriation to the parent cadres."

It further stated:

"(m) keeping in view the observations of the NHRC, the competent authority has approved the repatriation of the applicant and Shri M.K. Shukla, IPS (MP:66). Shri Shukla has since relinquished the charge of the post he was holding at the Centre and would have joined or would be joining shortly his parent Cadre."

10. In terms of Article 312 of the Constitution of India, the Parliament has

enacted All India Services Act, 1951. Indian Police Service is an All India Service within the meaning of Section 2 thereof.

11. As regards deputation of the concerned officers, admittedly government instructions have been issued commonly known as "The Indian Police Service (Cadre) Rules, 1954, the relevant provisions whereof are:

"1.2 At the time of the constitution of the IAS/IPS in 1947, it was decided to include the following categories of posts in the IAS cadres:

(a) All superior posts in the administrative departments of and above rank of District Officers, i.e. Collectors, Commissioners, Members, Board of Revenue, Secretaries, Deputy Secretaries, etc.

(b) A proportion of miscellaneous post including those of Heads of Departments.

13. The senior posts as notified in the Schedule of each State cadre were divided into three main categories, viz.:

(a) Senior posts under the State Government;

(b) Central Deputation Quota; and

(c) Deputation reserve.

The other categories and reserves, such as leave and training reserves and the junior posts are ancillary to the three main categories described above.

1.5 The Central Government Quota fixes the share of the Government of India out of the State cadre for the various requirements of the Centre. By and large this quota may be taken to be the limit of deputation to the Government of India.

A bare perusal of the said rules clearly go to show that the deputation of the first respondent was made against the deputation quota.

12. By making the afore-mentioned averments in its counter-affidavit filed before the Tribunal, the petitioner in no uncertain terms has accepted the fact that the letter of the National Human Rights Commission was the foundation and not the motive for passing the order dated 3rd August 2000.

It may be true that a deputationist in common law has no legal right but it is not in dispute that the petitioner's service is governed by the All India Services Act, 1951 framed in terms of Article 312 of the Constitution of India. Furthermore, the Ministry of Home Affairs has issued an Office Memorandum dated 6th April 2000 from a perusal whereof, it appears that the suitability of IPS Officers for manning posts at the Centre commonly known as empanelment is assessed at various ranks of the level of DIG and above. It is not in dispute that the first respondent was deputed for a period of four years and his tenure was to expire only on 9th October 2002. In the said OM, it has categorically been stated that the deputation would be for a period of four years.

13. Valid and cogent reasons were required to be assigned for the first respondent's repatriation. In view of the assertions made by the petitioner in its counter-affidavit before the Tribunal, the respondent has conducted himself in such a manner as a result whereof he became unfit to hold the said post. He, Therefore, had committed misconduct, according to the petitioner.

14. There cannot be any doubt whatsoever that only because an order is not a stigmatic one on its face, the court even in a given situation, like the present one, cannot find out the real motive for passing the said order.

15. In *Anoop Jaiswal (supra)*, the law has been laid down by the apex court in the following terms:

"13. In the instant case, the period of probation had not yet been over. The impugned order of discharge was passed in the middle of the probationary period. An Explanation was called for from the appellant regarding the alleged act of indiscipline, namely, arriving late at the gymnasium and acting as one of the ringleaders on the occasion and his Explanation was obtained. Similar Explanations were called for from other probationers and enquiries were made behind the back of the appellant. Only the case of the appellant was dealt with severely in the end. The cases of other probationers who were also considered to be ringleaders were not seriously taken note of. Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution."

16. Yet again, in *K.H. Phadnis v. State of Maharashtra (supra)*, it has been held:

"17. The order of reversion simplicities will not amount to a reduction in rank or a punishment. A government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or

integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, Article 311 will be attracted."

17. The question has been considered in great details by the Supreme Court in *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, , upon taking into consideration a large number of decisions, in the following terms:

"35. The above decision is, in our views, a clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma."

18. The said decision has subsequently been followed by the apex court in *H.F. Sangati etc. Vs. R.G. High Court of Karnataka and Others etc.*, and *V.P. Ahuja Vs. State of Punjab and Others*, .

A finding of fact has been arrived at by the learned Tribunal to the effect that the order dated 3rd August 2000 was penal and stigmatic in nature. We find no reason to differ from the said view.

19. In *Ratilal B.Soni and Ors. v. State of Gujarat, and Ors.* (supra) the question which arose for consideration was as to whether an employee on deputation has any right to be absorbed. The answer to the said question was rendered in negative. The said question does not arise for consideration in this writ petition.

20. In *State of Punjab and Ors. v. Inder Singh and Ors.* (supra), it was held that although a deputationist who was given a promotion on ad hoc basis, thereby only he cannot claim a right to be absorbed in services as the lonee Department had no such cadre of its own wherein he was promoted.

The said decisions, Therefore, are not applicable to the facts and circumstances of this case.

21. According to the first respondent although Shri Aggarwal who was similarly situated, has been promoted, the petitioner although had been empanelled for the post, no order of promotion has yet been passed.

22. According to the respondents, he has been victimized by the respondent by initiating a departmental proceeding only because he had approached the Tribunal. Having regard to the fact that the said question was not the subject matter of the Original Application filed by the first respondent before the

Tribunal, we do not find any reason to go thereinto.

23. For the afore-mentioned reasons, there is not merit in this writ petition which is accordingly dismissed but in the facts and circumstances of this case, there shall be no order as to costs.