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**(2013) 08 DEL CK 0299**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 8510 of 2011**

UOI and Others

APPELLANT

Vs

Sansar Chand

RESPONDENT

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**Date of Decision :** 27-08-2013

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 19  
Constitution of India, 1950 — Article 14, 226

**Citation :** (2013) 08 DEL CK 0299

**Hon'ble Judges :** V. Kameswar Rao, J;Pradeep Nandrajog, J

**Bench :** Division Bench

**Advocate :** Rajesh Katyal, for the Appellant; Raunak Jain, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

Pradeep Nandrajog, J.—Shorn of unnecessary details, the facts leading to filing of the above captioned petitions are that respondents in both the petitions namely; Sansar Chand, Mangal Singh Rawat and Jeevan Lal; were appointed in Special Security Bureau (hereinafter referred to as the SSB) on the posts of Constable in the General Duty cadre. There was a Homeopathy cadre in SSB. As per SSB (Homeopathy) Service Rules, 1992, the hierarchical structure of the Homeopathy cadre was as follows:- <-Senior Medical Officer (Homeopathy) <-Medical Officer (Homeopathy) <-Deputy Field Officer <-Assistant Field Officer <-Senior Field Assistant (Homeopathy).

2. The sanctioned posts in the Homeopathy cadre were as under:-

3. Since the respondents and a few other persons working as Constables in the General Duty cadre had degrees in Homeopathy they were appointed by transfer in the Homeopathy cadre on the post of Senior Field Assistant (Homeopathy) between the years 1993-1997.

4. On May 20, 1999 the Cabinet Secretariat, Government of India, issued an order regarding 10% cut in the sanctioned strength of posts in SSB, the relevant

portion whereof reads as under:-

In terms of Government directive for 10% cut in the sanctioned strength of posts of SSB excluding battalion side and SFF, president is pleased to abolish 590 posts in SSB as indicated in Annexure-I and 870 posts in SFF as shown in Annexure-II.

2. So far abolition of posts in SSB is concerned, total number of 103 posts as shown under Col. 6 of the Annexure-I are abolished with immediate effect. The posts shown under Col. 5 of the Annexure-I (Total 487 posts) which are at present filled up will be abolished automatically on that falling due to promotion, transfer, retirement, death etc. of the incumbent holding the posts.

#### ANNEXURE-I

1. Total sanctioned strength of Area side.... 5,900 posts (Gazetted & Non-Gazetted)

2. Posts proposed for surrender under.... 590 posts 10% cut in sanctioned strength

(In the above table, "S" stands for sanctioned, "P" stands for present and "V" stands for vacant.)

5. In view of paragraph 2 and Annexure-1 of the afore-noted order dated May 20, 1999 all the 10 posts of Deputy Field Officer (Homeo) and 48 posts Assistant Field Officer (Homeo) in the Homeopathy cadre were required to be abolished with immediate effect since they were lying vacant on the date of issuance of said order.

6. In the year 2001 SSB came under the administrative control of the Ministry of Home Affairs, Govt. of India.

7. On July 05, 2001 the Ministry of Home Affairs passed on order regarding abolition of posts in the Homeopathy cadre of SSB, the relevant portion whereof reads as under:-

As you are aware, the entire Homeopathy Cadre has been abolished by the Cabinet Secretariat vide their order No. A-11011/17/97-DO-448 dated 20.05.1999 under 10% cut with the direction that filled up posts will be abolished automatically on their falling vacant due to promotion, transfer, retirement, death etc. of the incumbents holding the posts.

2. The matter regarding adjustment of 79 SFAs (Homeo) who have been rendered surplus due to abolition of the Homeopathy cadre has been considered. The SFAs (Homeo) were appointed to the post on transfer from amongst the Constables (GD)/FAs etc. who had done Homeopathy course. It is observed that almost all the incumbents of the best of SFA (Homeo) have on an average 15 to 25 years of service left till the age of superannuation. As such, in the larger public interest, it has been decided to transfer them back to their parent units/cadre. In order to implement the decision, D.G. S8 has issued the following

instructions:-

(Emphasis Supplied)

8. Some persons working as Senior Field Assistants (Homeopathy) including respondent Sansar Chand who were sought to be transferred by SSB to General Duty cadre filed an application u/s 19 of the Administrative Tribunals Act, 1985 being OA No. 640-HP-2001 before Central Administrative Tribunal, Chandigarh Bench assailing the legality of the afore-noted order dated July 05, 2001.

9. Vide order dated December 05, 2001 the Tribunal allowed the aforesaid application and quashed the order dated July 05, 2001, the relevant portion whereof reads as under:-

Five applicants have joined in this O.A. pleading that they initially joined Special Security Bureau (SSB) under the then Cabinet Secretariat, New Delhi as Constables (General Duty) on various dates from 1974 to 1986, as per Annexure A-3/A. There is another cadre of Senior Field Assistant (Homeopathy) for which applicants were called for by the respondents for making appointment in the said cadre by way of transfer on the basis of interview and selection as per the merit, in the year 1993. After selection, applicants were given appointment to the said post, on transfer basis, after rendering technical resignation. After acceptance of their resignations, they were relieved to join new assignment. They were put on probation for a period of two years which they completed successfully. Claim that after this, they are deemed to be confirmed, as is apparent from seniority list dated 9.2.1998, as on 20.1.1998, Annexure A-9. Claim that they are performing duties of para-medical staff (Homeopathy) from the date they were appointed by way of transfer as Senior Field Assistant (Homeopathy) and they severed their lien from constabulary. In 1998, respondents called for options from applicants as to whether they would like to be repatriated to their parent group centre or would continue in Homeopathy cadre, applicants opted for continuing as of as end showed unwillingness for their re-transfer back to Group Centres. However, without their willingness, the respondents sought to revert the applicants to their parent most of Constables and applicants were asked to join their parent SSB group centres as a Constable in the lower pay scale and lower status. Pay scale of SFA is Rs. 3200-4900 and that of Constable (GD) Rs. 3050-4950. Vide Annexure A-1 to A-3. Applicants have prayed for quashing the impugned orders Annexures A-1 to A-3 with a further prayer to direct the respondents 1 to 4 to allow them to continue in their present post of Senior Field Assistant with all the consequential benefits.

2. Respondents have filed written statement contesting the case of the applicants on the grounds that since the entire Homeopathy cadre has been surrendered under 10% cut vide Cabinet Secretariat order dated 20.5.99, Annexure R-1, the competent authority has taken a decision to re-transfer all the SFA(H)s to their parent cadre/units in larger public interest and in the interest of the individuals. There is no vacant post available in the equivalent rank to accommodate these

SFA(H). The competent authority has decided to retransfer them who are basically trained Constable/Field Assistants, to utilize their services in the SSB Group Centres/Units in public interest by giving them all financial benefits increments, promotion etc. Applicants were appointed on transfer basis. The order dated 5.7.2001 has not been implemented by 31.2.2001 and kept in abeyance till further orders, as there is no post of equivalent status available in the organization, the applicants have rightly been re-transferred.....We have heard learned counsel for the parties and perused the material on file.

3. We find that order at Annexure A-1 has been passed by the Respondent No. 2, patently in contradiction of the decision of Respondents Ministry as conveyed through Annexure R-1 dated 1.6.1999 and particularly decision conveyed by Government of India through letter dated 20th May, 1999. Same being relevant is being reproduced below:-

4. The decision of the Ministry is quite clear that these posts were not to be abolished immediately which has been done in fact by passing of order at Annexure A-1. Thus, Annexure A-1 is liable to be quashed.

5. There are other reasons for quashing the order at Annexure A-1 as well which are that the case of the applicants is that once they had applied for appointment to the post of SFA from their earlier posts of Constables (GD) through proper channel, after their selection under the respondents, they had submitted technical resignations and thus effectively had severed their relationship of servant and master with the respondents. It would be a very strange situation where an officer is transferred to the post from which he already stands severed his lien of having rendered technical resignation. We are quite doubtful about the authority of signatory of order at Annexure A-1 for laying down their conditions of service in the Department to which he purports them to transfer which includes that on their re-transfer, their pay shall be protected and adjusted against the future increments and also instructions regarding their seniority after their re-transfer as to how can be order such conditions of service without consultation with respondent no. 1. That part of the order would be not only illegal but without jurisdiction.

5. It is true that respondent No. 1 is at liberty to take any decision about status or the tenure of service of any Government servant working under them. That decision having already been taken and conveyed through letter dated 20th May, 1999, we hold the order at Annexure A-1 is not only in violation of the decision of Government of India but is illegal as it has no authority behind it, the same having been not passed after consultation with the respondent no. 1.

7. In view of our discussion above, this O.A. is allowed. Order of Annexure A-1 qua the applicants is hereby quashed. Consequential orders at Annexure A-2 and A-3 qua the applicants are quashed. They are granted declaration of continuity of their service on the posts of SFAs (H). No costs.

(Emphasis Supplied)

10. On January 17, 2003, the Ministry of Home Affairs issued an order cancelling the aforesaid order dated July 05, 2001 transferring the 79 persons working as Senior Field Assistants (Homeopathy) to their parent cadres/units.

11. On May 07, 2003 the Ministry of Home Affairs issued another Office Memorandum regarding 10% cut of posts in SSB and the same reads as under:-

Subject: Grant of exemption to Central Para-Military Forces (CPMFs) and Intelligence Bureau from the purview of austerity measures-10% cut in posts.

The undersigned is directed to refer to the correspondence resting with this Ministry of subject mentioned above and to say that the Govt. has decided to grant exemption to Central Para Military Forces (CPMFs) and Intelligence Bureau from the purview of 10% cut in posts as contained in Deptt. of Expenditure's O.M. No. 7(28) E. Coord/91 dated 16th January, 1992.

2. This issues with the concurrence of Integrated Finance Division of this Ministry vide their Dy. No. 908/Fin. III/2003 dated 2nd May, 2003.

12. Thereafter, SSB sought a clarification from Ministry of Home Affairs that as to whether the posts which had already been surrendered by SSB pursuant to the order dated May 20, 1999 issued by Cabinet Secretariat are to be treated as revived automatically in view of exemption granted to the Central Para-Military Forces including SSB by Ministry from the purview of 10% cut in posts vide memorandum dated May 07, 2003. Vide (file) noting dated October 20, 2003 the Ministry clarified that the posts already surrendered cannot be revived.

13. Respondent Sansar Chand submitted a representation to the competent authority in the year 2009 stating therein that he had become eligible to be considered for promotion to the post of Assistant Field Officer (Homeopathy) but SSB has not considered him for promotion to said post till date, which action of SSB was alleged to be arbitrary and fouling of Article 14 of Constitution of India.

14. Vide order dated October 29, 2009 the competent authority rejected the representation of Sansar Chand on the ground that no post of Senior Field Officer (Homeopathy) exists in SSB inasmuch as entire Homeopathy cadre was abolished in SSB in the year 1999.

15. Aggrieved by the aforesaid, respondent Sansar Chand filed an application u/s 19 of the Administrative Tribunals Act, 1985 being OA No. 2091/2010 before the Central Administrative Tribunal, Principal Bench, New Delhi pleading therein that the stand taken by SSB to reject his representation that the entire Homeopathy cadre in SSB is abolished is fallacious inasmuch as Ministry of Home Affairs had granted exemption to the Central Para-Military Forces including SSB by Ministry from the purview of 10% cut in posts vide memorandum dated May 07, 2003.

16. In their reply filed, SSB/Ministry of Home Affairs pleaded that all 48 posts of Senior Field Officer (Homeopathy) and 10 posts of Deputy Field Officer (Homeopathy) were abolished immediately after the issuance of the order dated

May 20, 1999 for said posts were lying vacant at that time and thus the exemption from abolishing the posts granted to SSB vide order dated May 07, 2003 had no effect whatsoever on such abolished posts in view of clarification dated October 20, 2003 issued by Ministry of Home Affairs that the posts already surrendered cannot be revived in terms of order dated May 07, 2003.

17. Vide judgment dated March 29, 2011 the Tribunal allowed the OA filed by respondent Sansar Chand and directed the SSB/Ministry of Home Affairs to consider Sansar Chand for promotion to the posts of Assistant Field Officer (Homeopathy) and Deputy Field Officer (Homeopathy) from the date of his eligibility and, if found fit by the DPC, promote him retrospectively on notional basis to said posts. The Tribunal further directed that Sansar Chand would not get back wages but said promotion (s) would count for the purposes of seniority and calculation of increments.

18. In coming to above conclusion, it has been held by the Tribunal as under:-

(i) Once SSB was granted exemption from cutting/abolishing 10% of posts by Ministry of Home Affairs vide its order dated May 05, 2003 it would stand to reason that the vacant posts of Assistant Field Officer (Homeopathy) and Deputy Field Officer (Homeopathy) which were abolished pursuant to the order dated May 20, 1999 issued by Cabinet Secretariat would be restored and that if the same are not restored it would amount to violation of the order dated May 07, 2003.

(ii) The Recruitment Rules of Homeopathy cadre of SSB would show that the posts of Assistant Field Officer (Homeopathy) and Deputy Field Officer (Homeopathy) remained in existence even after issuance of order dated May 20, 1999 by Cabinet Secretariat. Such being the position, there was no requirement on the part of SSB or its Cadre Controlling Authority i.e. Ministry of Home Affairs to pass an order restoring the posts of Assistant Field Officer (Homeopathy) and Deputy Field Officer (Homeopathy) for the reason said posts stood revived by virtue of the order dated May 07, 2003 and the Recruitment Rules which show the existence of said posts.

(iii) The contention advanced by SSB/Ministry of Home Affairs that the posts of Assistant Field Officer (Homeopathy) and Deputy Field Officer (Homeopathy) have ceased to exist has no basis. The only reason for abolition of said posts was the issuance of order dated May 20, 1999 by Cabinet Secretariat requiring SSB to cut/abolish 10% posts. Once SSB has been exempted from making said cut, status quo ante will be revived. SSB/Ministry of Home Affairs would be required to pass a fresh order for abolition of aid posts, if in their view it was not necessary to operate said posts.

19. Thereafter respondents Mangal Singh Rawat and Jeevan Lal filed an application before the Tribunal claiming the same relief as was granted to respondent Sansar Chand by the Tribunal in view of the fact that they are similarly situated as Sansar Chand.

20. In their reply filed, amongst other pleas, it was pleaded by SSB/Ministry of Home Affairs that OA filed by respondents Mangal Singh Rawat and Jeevan Lai is barred by limitation for the reason said respondents are claiming such promotion which had fallen due to them 13 years before the filing of OA by them.

21. Vide judgment dated April 18, 2012, the Tribunal allowed the OA filed by respondents Mangal Singh Rawat and Jeevan Lal on the basis of the reasoning contained in the judgment dated March 29, 2011 passed by the Tribunal in OA No. 2091/2010 filed by respondent Sansar Chand and in view of the fact that respondents Mangal Singh Rawat and Jeevan Lal are similarly situated as respondent Sansar Chand. It would be relevant to note the following portion of the judgment dated April 18, 2012 passed by the Tribunal:-

2. We have heard Shri Raunak Jain, Advocate for applicant and Shri Rajesh Katyal, Advocate for respondents and perused the entire facts of the case....The issue was raised by the learned counsel for the respondents that the OA is highly time barred by 13 years and no application has been moved on behalf of the applicants for condonation of delay and this matter was not in issue in the earlier OA as the earlier OA was decided on 29.03.2011 on the analogy of the order passed by the CAT, Chandigarh Bench on 5.12.2001. So far as the case of Sansar Chand concerned, the same plea was available with the respondents. It may be possible that the points of limitation was raised on behalf of the respondents in the OA but the Tribunal has not considered it appropriate to record a finding in this issue and on this ground it cannot be said that the applicant are not similarly situated employees.

22. Aggrieved by the impugned judgments dated March 29, 2011 and April 18, 2012 passed by the Tribunal SSB/Ministry of Home Affairs had filed the above captioned petitions under Article 226 of Constitution of India.

23. From the facts noted above, it is apparent that on May 20, 1999, the Cabinet Secretariat issued an order for abolition of 10% posts (590 posts) in SSB. Significantly, the order dated May 20, 1999 prescribed as follows:-(i) the posts which were lying vacant were to be abolished with immediate effect and (ii) the posts which were occupied were to be abolished on promotion, transfer, retirement, death etc of the incumbents holding the posts.

24. At that time, there were 157 sanctioned posts in the Homeopathy cadre in SSB, all of which were required to be abolished. There were 90 occupied posts (which were to be abolished in due course of time) and 67 vacant posts (which were to be abolished with immediate effect) in Homeopathy cadre in SSB. It is not in dispute that all 48 and 10 posts of Assistant Field Officer (Homeopathy) and Deputy Field Officer (Homeopathy) were lying vacant and thus required to be abolished with immediate effect.

25. Now, started the problem. SSB did not abolish the posts in Homeopathy cadre in accordance with the order dated May 20, 1999, in that it sought to abolish all 89 posts of Senior Field Assistant (Homeopathy) with immediate effect

including 81 occupied posts by transferring the incumbents holding said 81 posts to their parent units/cadre. The aforesaid action of SSB was challenged by some of the holders of 81 posts before the Central Administrative Tribunal, Chandigarh Tribunal. The Tribunal rightly frowned upon the "manner of abolition of posts" by SSB inasmuch as occupied posts were to be abolished in due course of time and quashed the order issued by SSB transferring the holders of said 81 posts to their parent cadres/units.

26. On May 07, 2003 Ministry of Home Affairs granted exemption to SSB from cutting/abolishing 10% posts.

27. Now, the question which arose was what happens to the (vacant) posts which were already abolished in terms of the order dated May 20, 1999? SSB sought a clarification from Ministry of Home Affairs in this regard. On May 20, 2003 Ministry clarified by way of a (file) noting that the posts already surrendered (abolished) would not be revived.

28. This is the problem in the instant case. The Tribunal has glossed over said clarification given by Ministry of Home Affairs despite there being a specific reference to the same in the reply filed by SSB/Ministry before the Tribunal. This was a most vital document having material bearing on the controversy involved in the present case but the Tribunal ignored to note said document inasmuch as there is no reference to the same in the impugned judgment dated March 29, 2011 passed by the Tribunal.

29. In that view of the matter, we have no option but to remand the matter to the Tribunal for re-adjudication by taking into account the clarification dated May 20, 2003 given by Ministry of Home Affairs.

30. Before bringing the curtains down, there is another thing which requires to be noted by us.

31. While deciding the OA filed by respondents Mangal Singh Rawat and Jeevan Lal the Tribunal did not consider the plea of limitation raised by SSB/Ministry on the ground that no finding regarding said plea was given by the Tribunal while deciding the OA filed by respondent Sansar Chand. Merely because the Tribunal did not consider the plea of limitation while deciding the OA of Sansar Chand who was similarly situated as respondents Mangal Singh Rawat and Jeevan Lal is not a justifiable ground for dealing with said plea raised by SSB/Ministry in case of respondents Mangal Singh Rawat and Jeevan Lal.

32. The above captioned petitions are disposed of in above terms. Impugned orders dated March 29, 2011 and April 18, 2012 are accordingly set aside and OA No. 2091/2010 and OA No. 3976/2011 are restored for fresh adjudication before the Tribunal.

33. Parties shall appear before the Registrar of the Tribunal on September 30, 2013 and the Original Applications would then be listed before the appropriate Bench. No costs.