
(2000) 05 DEL CK 0018

In the Delhi High Court

Case No : CWP. No's. 1112/98 and 4383 of 1998

V.J. Mohan Rao and Others

APPELLANT

Vs

U.O.I. and Others

RESPONDENT

Date of Decision : 26-05-2000

Acts Referred:

Citation : (2000) 5 AD 259 : (2000) 56 DRJ 262

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

**Advocate : Mr. C.L. Narasimham and Mr. C.B. Chandra Sekhar, for the Appellant;
Mr. U. Hazarika and Mr. Sachin Datta, for the Respondent**

Judgement

A.K. Sikri, J.

CWP BO: 1112-98

1. Petitioner joined Border Road Development Board (BRDB for short) on 21.4.1969, now a department under the Ministry of Surface & Transport, as Assistant Executive Engineer in the General Engineering Reserve Force (GERF for short). He was promoted to the post of Executive Engineer on 4.7.1983. Central Pay Commission had recommended periodical cadre review of various staff cadres at an interval of 5 years with a view to ensuring reasonable career progression to the employees and at the same time ensure operational efficiency through comprehensive manpower planning. On this basis Border Road Organisations conducted cadre review in Civil Engineering cadre in the GERF on 21.5.1987 and orders were issued for revising the cadre strength vide office order dated 24.5.1987 which were implemented by the Government granting promotion to the various concerned officers. However no such cadre review was conducted in respect of electrical and mechanical cadre of GERF to which cadre petitioner belongs with the result that petitioner stagnated in the post of Executive Engineer for 12 long years and Therefore he made representation dated 19.1.1995 requesting for cadre review and consequential measures. Vide

letter dated 3.4.1995, respondent No.4 however assessed the staff requirements in the Electrical & Mechanical Cadre with reference to the operational requirements taking into account the mechanisation of the separate services for construction of roads on the international border and recommended sanction of additional posts in various cadres including the cadre of Superintending Engineer and Chief Engineer to which the petitioner was aspiring for promotion. No action had however been taken on this recommendation. In the course of the proceedings in the High Court of Gauhati CWP No.3210/91, respondent No.4 filed an affidavit to the effect that the question of conducting cadre review of Electrical & Mechanical engineering cadres in the GERF was under consideration of the Government. But however no follow up action was forthcoming. The petitioner submitted another representation on 29.5.1995 for conducting cadre review of the E&M Cadre and granting him promotion against the additional posts. He pleaded that the matter should be treated as urgent in view of the fact that he was due to attain the age of superannuation on 28.2.1999. There was no response to this representation. Still when no action was taken by the respondents and cadre review was not undertaken, petitioner filed this petition in March 1998 wherein he prayed for the following reliefs:

"i) to issue a writ of mandamus or appropriate order or direction to the respondents to conduct Cadre Review of the Electrical & Mechanical Cadre of General Engineering Reserve Force with reference to the ground position which obtained at the time similar review was conducted in respect of the sister cadre of Civil Engineering and issue orders based thereon for sanction of additional posts in the Cadre of Superintending Engineer and Chief Engineer with effect from the same date corresponding posts were sanctioned in 1987 for Civil Engineering Cadre;

ii) to direct that Departmental Promotion Committee be constituted in accordance with the relevant Recruitment Rules and the petitioner be considered for promotion to the posts of Superintending Engineer and Civil Engineer with retrospective effect from the date his immediate junior in the Civil Engineering Cadre was promoted;

iii) to further direct that all consequential benefits including fixation of pay in the promotion post from the date of retrospective promotion be granted;

iv) to further direct that for the purpose of sanction of retirement benefits including pension, gratuity, family pension and encashment of leave, pay fixed as a result of retrospective promotion but not actually drawn in the event of the petitioner retiring on superannuation (due date is 28.2.1999) be deemed to be "emoluments" within the meaning assigned to this expression in Rule 33 of CCS(Pension) Rules, 1972; and

v) to issue such other writ or direction or pass such other order or orders as this Hon'ble Court may deem proper in the facts and circumstances of the case, in the interest of justice."

2. It may be stated that during the pendency of this writ petition, Government issued an order bearing No.FBRDB/02/02/88-GE.I Vol. IV dated 15.7.1999 approving restructuring of Border Roads Engineering Service (Electrical & Mechanical) by creation/up gradation/abolition of Group "A" posts in various grades. However, it has been stated in para 3 of the said order,

"The creation, upgradation and abolition of posts in terms of the revised cadre structure would take prospective effect...."

3. Thus cadre review has now taken place. The grievance of the petitioner which remains is relating to the retrospective effect to be given to the revised cadre structure. As per decision of Government dated 15.7.1999 the revised cadre structure would take prospective effect i.e. from 15.7.1999 whereas the petitioner demands that order dated 15.7.1999 be given retrospective effect. Petitioner accordingly filed CM No.10250/99 referring to order dated 15.7.1999 wherein he has submitted that his prayer was for implementing the cadre review from retrospective effect and the respondents are bound to give retrospective effect to this decision.

CWP NO: 4383 of 1998

4. Petitioner in this case is also an employee of GERF where he joined as Assistant Executive Engineer on 1.9.1966. He was promoted as Executive Engineer(E&M) on 14.3.1972. He was placed in the select panel for promotion from Executive Engineer(E&M) by DPC held on 8.3.1982 and approved by UPSC but was not promoted. He made representation dated 9.9.1985 requesting respondents to implement the promotion orders. Reply dated 2.7.1986 was given stating the problem to implement the promotion orders because there was no further promotion and position regarding removal of stagnation through Cadre Review was under consideration. The position regarding the cadre review has already been mentioned while stating the facts of CWP No.1112/98 above and petitioner has also stated the identical facts and has pleaded that since cadre review was not undertaken inspite of repeated demands, he filed the present writ petition on 31.8.1998 making same prayers as are made by the petitioner in CWP No.1112/98.

5. In support of their claim for giving retrospective effect to the decision, the petitioners have made the following submissions:

I) The respondents filed counter affidavit supported by an affidavit sworn in by the Deputy Director, DGBR stating,

".....we have already projected cadre review cases in respect of Mechanical Engineering Officers of Border Roads Engineering Service during Nov.87".

"The Cadre Review proposals has finally been cleared by Department of Expenditure and Sectt. BRDB has resubmitted the same in Apr. 97 for Govt. approval."

".....It is submitted that there is no doubt that the petitioner has been serving the department sincerely and efficiently".

".....The Cadre Review Proposals were formulated way back in 1986 and since then have been under consideration of the Govt. at various level..."

".....The organisation has been doing its best for approval of Cadre Review of BRES(E&M) officers. But certain factors beyond its influence/control were probably responsible for the delay.....".

II) The broad policy of the Government of India in this matter as stated in various orders applicable to Government servants in general (which were issued pursuant to the recommendations of various Pay Commissions) is that the strength of the cadres in all the departments of the Govt. of India without exception should have a periodical review preferably at an interval of 5 years as part of standing policy of comprehensive manpower planning with a view to enhance the performance levels of the departments and at the same time ensure reasonable career progression of the members of the cadre.

III) Respondent No.4 has gone on record to the effect that there was a functional need for additional posts in the cadre of Superintending Engineer and Chief Engineer in Electrical & Mechanical discipline vide letter No.13803/CRC/Mech-Cadre/DGBR/ETA dated 3.4.1995 but the higher authorities did not act on his recommendation for sanction of these posts, nor did they give any reasons, which is arbitrary and unjust."

The petitioner is virtually kept as captive in the GERF inasmuch as in the year 1979 when he applied for appointment as Executive in NTPC, his application was not forwarded by the Border Roads Organisation on the ground that the Department could not spare him. At the same time, the Department which held him in captivity had not discharged the responsibility of conducting the cadre review for 38 long years. The tragic fact is that by the time 38 years are over, the petitioner has reached the last phase of his official career.

III) The lapse was entirely on the part of the respondents and equity demands that the petitioner should be granted whatever monetary benefit would have accrued to him had not the lapse been committed by the respondents.

IV) The matter came up before the High Court of Gauhati and in the course of the proceedings in CWP No.3210/1991 - Kashmiri Lal Noaty Vs. Union of India, an affidavit was filed by the Director General, Border Roads Organisation that the matter of cadre review of electrical and mechanical cadres was also under consideration of the Government and the petitioner was advised that the cadre review of civilian officers would be carried out after the same for mechanical cadre is finalised.

6. In reply to this CM filed by the petitioner, respondents have tried to justify the prospective date of cadre review. It is inter alia stated that the cadre review itself was a long drawn process involving many agencies. The cadre review proposal

for BRES (E&M) Group "A" officers was initiated way back in Nov"1987 and had remained under process at various levels till April, 1997 when Ministry of Finance issued instructions not to entertain any proposal pertaining to creation/upgradation of post, Cadre Review etc. pending decision of the Govt. on the recommendations of the V Central Pay Commission. It is further submitted that initiation of a proposal does not give the right of promotion to a person. This cannot be claimed till the proposal is agreed by the Competent Authority and DPC is finalised. Though the Cadre Review proposals were submitted to Govt. and it is incorrect to say that the respondent No.4 has gone on record to the effect that there was a functional need for additional posts in the cadre of Superintending Engineer and Chief Engineer in Electrical and Mechanical Cadre. Respondent No.4 is only a recommending authority and his recommendations cannot be taken as final requirement in the cadre. The Cadre Review in respect of civilian officers cadre was finalised before the cadre review of Mechanical Officers as the High Court of Gauhati had set a time limit for finalising the cadre review of civilian officers. While delivering judgment in Civil Rule No.3210 of 1991, the Gauhati High Court had only given a suggestion to consider if benefits can be given with retrospective effect in Cadre Review. It is further submitted that another Civil Rule No.2015 of 1996 was filed by Sh. Hans Raj, SE(E&M) SG, in High Court of Gauhati praying for the Cadre Review with retrospective effect. The said Civil Rule was decided on 4.8.1998 and the Court after deliberation has directed to finalise the Cadre Review but no directions regarding retrospective effect has been given by the Court. Civil Engineering and Mechanical Engineering Cadre are two separate streams, one being "Line" and another being "Staff" can not be treated at par and predominance of "line" over "staff" cannot be over-ruled due to nature of works involved. Hence the petitioner's claim that he should be promoted from the date when his immediate junior in Civil Engineering Cadre was promoted or that the Cadre Review should be given effect with retrospective effect is not justified.

7. It was further submitted that the petitioner had no right for seeking cadre review itself and Therefore it was not permissible for him to claim that the cadre review should be done retrospectively. Mandamus could be issued only if the petitioner could show legal right for cadre review itself. Moreover the decision taken by the respondents regarding restructuring of a cadre was a policy decision and while taking this policy decision it was the prerogative of the Government to fix a date from which this decision was to be implemented. In support of aforesaid submissions, counsel for the respondents Mr. U. Hazarika relied upon the following judgments:-

1. S.P. Shivprasad Pipal Vs. Union of India and Others,

"Para 19: However it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. But this cannot be a ground for setting aside the merger which is essentially a policy decision. This Court in Union of India Vs. S.L.

dutta examined this contention. In S. L. Dutta case a change in the promotional policy was challenged on the ground that as a result, service conditions of the respondent were adversely affected since his chances of promotion were reduced. Relying upon the decision in the State of Maharashtra vs. Chandrakant Anant Kulkarni this Court held that a mere chance of promotion was not a condition of service and the fact that there was a reduction in the chance of promotion would not amount to a change in the conditions of service."

2) State of Andhra Pradesh Vs. v.C. Subbarayudu and Others, .

3) Association for the Officers of the W.B. Audit and Accounts Service and Others Vs. W.B. Audit and Accounts Service Association and Others, 1995 Suppl (4) SCC 44 .

"Para 5: This Court has repeatedly held that merger of more than one cadre or division of one cadre into two or more cadres is an executive act and is entirely within the administrative sphere of the State Government. This Court in Reserve Bank of India Vs. N .C. Paliwal held as under:(SCR Headnote p.379)

"The integration of different cadres into one cadre cannot be said to involve any violation of the equality clause. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with clerical service sought to be effectuated by the Combined Seniority Scheme cannot, in the circumstances, be assailed as vocative of the principle of quality."

Para 6: Again in Inder Singh vs. Vyas Muni Mishra, this Court observed as under: (SCR Headnote p.973)

"The High court exceeded its jurisdiction in directing the merger of the posts of Ganna Gram Sewaks and Cane Supervisors.

The merger or bifurcation of a cadre is an executive act. It is for the State to consider whether two groups of persons working under two district posts perform the same kind of duties or not, and whether in implementing the Directive Principles, as contained in Article 39(d) of the Constitution, it is necessary to merge the two posts into one cadre post."

8. The foregoing discussion would show that the Government of India has now taken decision dated 15.7.1999 whereby cadre restructuring is done w.e.f. 15.7.1999. The main ground on which the petitioners justify their claim is that there is a delay on the part of the Government to finally deciding this matter inasmuch as cadre review proposals were formulated way back in 1986 and if final decision has taken almost 11 years and lapse is on the part of the Government, petitioners should not suffer because of that.

9. No doubt, the cadre review proposals were formulated in the year 1986 thereafter the matter had been under consideration of the Government at various

levels and Government took considerable time in deciding the matter finally. However that by itself will not justify giving retrospective effect to the decision of the Government relating to cadre review. In reply to the CM filed by the petitioners, respondents have tried to explain the delay occurred in cadre review. Further the proposals were only recommendatory in nature and till they are finally accepted by the competent authority, such proposals do not give any right to a person. Ultimate authority is the Government to accept or not to accept the proposals. Moreover, matter regarding restructuring of a cadre is a policy decision in which the ultimate discretion lies with the Government, and Therefore, while taking this policy decision, it is the prerogative of the Government to fix a date also from which such a decision is to be implemented when the petitioners have no legal right to claim cadre review, they obviously cannot stake their claim for giving retrospective effect to such resuscitating of cadre when it takes place. The CM No.10250/99 is without any merit and is accordingly dismissed. As far as writ petitions are concerned, the main relief prayed for was direct the respondents to conduct cadre review of the Electrical and Mechanical cadre of GEF. This has already been done by the respondents themselves.

No further orders are required in these writ petitions which are accordingly disposed of as such.

No order as to costs.