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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 542/2002

New Delhi this the 17th day of January, 2003.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMN)

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Mahendra Pal Singh,
Presently Junior Technical
Assistant (Testing),
Under Director General of Civil Aviation,
Safdarjung Airport,
New Delhi.

-Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

1. Union of India through
the Secretary,
Ministry of Home Affairs,
Rehabilitation Division,
Settlement Wing,
Jaisalmer House, North Block,
New Delhi.

2. The Secretary,
Ministry of Civil Aviation,
Opposite Safdarjung Airport,
New Delhi.

3. The Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
Deptt. of Personnel & Training,
North Block, New Delhi.

4. The Director General,
Civil Aviation,
Opposite Safdarjung Airport,
New Delhi.

-Respondents

(By Advocate Shri K.R. Sachdeva)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns action of the respondents whereby he has been appointed as Junior Technical Assistant (Testing) (JTA), in the pay scale of Rs. 6500-10500 on a lower post and status which he was holding earlier to his re-deployment. He has sought consideration for appointment to Group 'A' and 'B' gazetted post with all consequential benefits.

2. Applicant was appointed as Junior Engineer and was posted in Dandakarnia Project. He was promoted as Assistant Engineer Group "B" on approval by the DPC on 31.8.1987. He was declared surplus w.e.f. 1.10.87 and directed for being posted immediately. He opted for being surrendered to Central (Services Staff) Cell. By an order dated 17.5.89 he was posted in the office of the Executive Engineer (Construction), Dandakarniya Project and was transferred to Orissa w.e.f. 15.9.90.

3. As per Office Order dated 29.5.93 Dandakarnia Project which was being dealt with in Dandakarniya Cell has been transferred and merged with the Settlement Wing w.e.f. 1.6.93 with all the staff. It was stipulated that after merger of the post alongwith incumbent in the Settlement Wing, the seniority in the merger grade will be fixed on the date of regular appointment to the same or equivalent post in the parent organization subject to maintenance of inter-se-seniority in the parent organisation.

4. Applicant was taken over on the terms of Settlement Wing w.e.f. 1.6.93 and continued as Assistant Engineer Group "B".

5. On account of re-organisation of the Settlement Wing of Rehabilitation Division, applicant who was working as Assistant Engineer was again identified as surplus and was transferred along with his post to the Surplus Staff establishment in the Settlement Wing w.e.f. 1.2.98 vide order dated 4.2.98. He was taken on the strength of the Director General, Civil Aviation as JTA by order dated 20.9.2000 and his pay has been fixed at Rs.8500/- per month + Rs.125 Personal Pay w.e.f. 23.8.2000

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in the current pay scale of Rs.6500-200-10500 as personal in an officiating capacity until further orders. Applicant sent representation and a legal notice which has not been responded to by the respondents.

6. Shri B.S. Mainee, learned counsel appearing for applicant contended that in accordance with the Scheme of Disposal of Personnel rendered surplus due to reduction of establishment in Central Government offices/departments through OM dated 1.4.89 and in the light of the provisions of clause 11.5 the surplus employees have to be accorded option to retain their existing classification if they are re-deployed on the post carrying lower classification and this facility has been continued. It is in this back drop contended that out of 21 years of service applicant had served for 13 years on a Group 'B' gazetted post. According to Sh. Mainee, he has been posted as JTA in a Group 'C' post and his entire service of 23 years has been washed off. According to Sh. Mainee applicant belongs to ST category and has been deprived of any assignment on regular basis as well as promotion. By referring to his rejoinder it is stated that Deputy Director of Administration has directed him to make a formal request for posting as Group 'B', which has not yet been considered.

7. On the other hand, respondents' counsel Sh. K.R. Sachdeva vehemently denied the contentions and by referring to Ministry of Home Affairs OM dated 3.9.84 it is contended that the same has been made part of the statutory rules, i.e., CCS (Redeployment of Surplus Staff) Rules, 1990 framed under Article 309 of the Constitution of India and as per Rule 6 (e) a surplus employee redeployed on a

post carrying a lower pay scale who seeks ^{to} re-adjust is to be governed and eligible for protection of status in terms of Department of Personnel and A.R.'s OM dated 3.9.84. According to the learned counsel statutory rules would over-ride any Scheme which is only an executive instructions.

8. Shri Sachdeva further placing reliance on OM of 1984 by referring to clause 4 (5) contended that though the option for getting status and classification though provided under the scheme but the facility of this option is questioned, which is not available to gazetted surplus officer to claim gazetted status on personal basis when re-deployed on a non-gazetted post.

9. It is further contended that applicant was transferred as a surplus employee and his pay has been protected. As applicant due to disciplinary proceedings could not be declared surplus along with the counter-parts he was declared surplus and having accepted the post offered it is not open to him to assail the same. Further it is stated that Director General of Civil Aviation while filling up the post of JTA referred the case to DOP&T for obtaining non-availability certificate from Surplus Cell of DOPT in accordance with Rule 3 (2) (ii) of the CCS (Redeployment of Surplus Staff) Rules, 1990 and applicant's name was sponsored for JTA. As re-deployment of applicant is to be regulated in terms of the statutory rules notified by the Ministry of Personnel, Public Grievances and Pensions he has no legal and valid claim.

10. We have carefully considered the rival contentions of the parties and perused the material on record. An employee who has been declared surplus due to reduction of establishment in a Government office or department is to be governed by the statutory rules framed by the Government under Article 309 of the Constitution of India, viz. CCS (Redeployment of Surplus Staff) Rules, 1990. According to Rule 6 of the Rules a surplus employee who has already been re-deployed shall not be eligible to seek re-adjustment, if he is redeployed on a post carrying a lower pay scale and is gazetted surplus officer seeking re-adjustment/re-deployment to a gazetted status. The option referred to in clause 11 (5) of the Scheme does not apply to a gazetted surplus officer. The case of a gazetted surplus officer is to be regulated in terms of Rule 6 (4) (e) of the Rules ibid where the eligibility for promotion is to be governed by OM dated 3.9.84. As in the aforesaid OM the option is not available to gazetted surplus officer, the claim of applicant cannot be countenanced. Moreover, being a Government servant he is bound by the statutory rules framed for surplus employees and as per Rules applicant's pay has been protected but as far as classification and status of service is concerned, being a gazetted officer option is not available to him. As such we do not find any infirmity in the action of the respondents in re-deploying him as JTA by protecting his pay as personal to him.

11. In the result, OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

(Govindan S. Tampi)
Member (A)

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