

Central Administrative Tribunal
Principal Bench

OA No. 513/2002
MA 916/2002

(G)

New Delhi, this the 13th day of November, 2002.

Hon'ble Shri Kuldip Singh, Member (J)
Hon'ble Shri M.P.Singh, Member (A)

Shri Suresh Kumar Nayak
Assistant
Office of Directorate General, SSB
East Block-V, R.K.Puram
New Delhi-110066.

..... Applicant.
(By Advocates: Shri K.L.Bhandula
and
Shri M.L.Ohri)

Versus

- 1 Union of India through
The Cabinet Secretary
Cabinet Secretariat
New Delhi.
2. The Secretary
Ministry of Home Affairs
North Block
New Delhi.
3. The Director General
Special Service Branch
Ministry of Home Affairs
East Block-V, R.K.Puram
New Delhi-110066.

..... Respondents.
(By Advocate: Shri B.S.Jain)

Order (oral)

By Shri Kuldip Singh, Member (J)

The applicant in this OA has assailed Annexure A.1 and Annexure A.2 vide which certain Assistants who were working under the Directorate General of Security (DGS) under the Cabinet Secretariat Earlier there were four Units for this service. The Government of India had taken a policy decision to trifurcate these four units into 3 units and consequent upon the trifurcation the employees who were working in the services were allocated the unit on the basis of 'as is where is'. *[Signature]*

(P)

Arguing the same, the counsel for the applicant submits that before allocating any of the 3 units the department should have asked the option of the members of the service as to which unit they want to go. The applicant had been nominated to SSB unit since he was working as per the impugned orders. The applicant had requested for his transfer from SSB to another component Unit, ARC, but he could not be transferred for administrative reasons in public interest. The applicant alleges that allocating staff to other units in the cadre on the basis of 'as is where is' is arbitrary and violative of Article 14 and 16 of the Constitution of India and it is likely to effect the chances of promotion of the applicant to the higher post. Because those assistants who were junior in the common seniority of unified DGS (Secretariat) Service cadre, who are at present posted in SFF Secretarial Service, will take absolute advantage over their seniors in DGS (Secretarial) Service Cadre including the applicant as they will get bright chance of promotion to the post of "Section Officer" and subsequently to the post of Assistant Director" Annexed is the seniority list has to show chances of promotion would be affected. Thus the applicant alleges since the order of allocating the employees on the basis of as is where is is being violative of article 14 and 16 of the Constitution should be quashed and set aside.

The respondents have contested the OA. Respondents in their reply pleaded that this is a policy decision of the Govt. of India and the position are not subject of judicial review of the govt. and court should not interfere in that. Besides, that the respondents pleaded that through out

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applicant had been asking the transfer for certain places where his parents are living and seeking ARC cadre seeking transfer to his native place in Orissa. Learned counsel for the respondents had also some judgement which are also mentioned in the counter affidavit.

Besides, that the respondents has chances of promotion. On just the basic foundation of the OA is not a recognised right for promotion and only a right to be considered for promotion which is a right considered under service rules and on that ground applicant has no submission to seek allocation to a particular cadre.

We have heard learned counsel of the parties and gone through the records available.

Shri Ohri appearing for the applicant submits in the past a similar bifurcation took place in the Ministry of Telecommunication as Department of Posts and Department of Communication and DoPT itself gave options to employees to join in all the department as per their option. The same opportunity should have been also applied in this case too. Ld. counsel for the applicant has also reported to a judgement reported in 1975(1) SLR in the name of Krishan Kapania and Others Vs. State of Punjab.

Learned counsel for the applicant has referred to para 7 of the judgement which reads as under:-

In Brijlal Goswami V. State of Punjab and others, AIR 1965 Punjab 401, a Full Bench of this Court held that where a cadre is bifurcated which results in affording discriminatory treatment to one cadre in matters relating to conditions of service, the bifurcation of cadre should be held as violative of Article 16 of the Constitution. If the same principle is applied to this case, the various employees like the Typists, Telephone Operators etc. who were included in the cadre of Clerks, had formed one cadre and if this cadre is bifurcated the Typists and Telephone Operators etc. are wholly deprived of the chances of their further promotion to the posts of Assistants, then the order bifurcating the cadre would have to be held as violative of Article 16 of the Constitution. In this view of the matter, it must be held that order dated November

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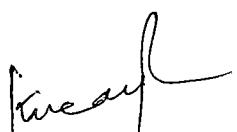
9, 1973, by which the joint cadre had been done away with is violative of the rights of the petitioners under Article 16 of the Constitution. It is no argument to say that by rescinding the earlier order old practice has been reverted to. Once a joint cadre has been created under orders of a competent authority, it can only be dismembered if the fundamental right of the public servants are not infringed. I have already observed that this principle would only apply to those employees who had become members of the joint cadre. In case of future recruitments it shall be open to Mr. Speaker to lay down conditions that those who are recruited as Telephone Operators, Receptionists or Typists etc. shall not be eligible for promotion as Assistants.

The observations so made by the Hon'ble Punjab High Court go to show that the order of bifurcation was held as violative of Article 14 and 16 of the Constitution and it is specifically observed that order dated 09.09.93 must be held to be violative of the rights of the petitioner under article 16 of the Constitution. It was further observed that once a cadre is created under the orders of Competent authority, it can only be dismembered if the fundamental rights of the public servants are infringed. In this case we find that earlier there were four units which were trifurcated in three units. One unit is under the Ministry of Home Affairs and the other two remain under the Ministry of Communication. This fact does not affect the right of the applicant to seek allocation to a particular unit. The infringement of the fundamental right of the applicant would definitely affect his service conditions. Thus we find that the impugned order cannot be sustained. While allocating the cadres we hope the direction of DoPT as followed in the case of Ministry of Communication, will be taken into consideration.

The OA is allowed in the aforesaid terms. No costs.


(M.P. Singh)
Member (A)

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(Kuldip Singh)
Member (J)