

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. No.. 1568/94 /19 Decided on: 9.4.96

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G.S. Chauhan & Ors. APPLICANT(S)

(By Shrimati Raj Kumari Chopra Advocate)

VERSUS

U.O.I. & Anr. RESPONDENTS

(By Shri K.C. Sharma Advocate)

DR. RAM
THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI S.R. ADIGE~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal ? Yes

Adige
(S.R. ADIGE)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 1568/994

New Delhi: this the 9th ~~Sept~~, 1996.

HON'BLE MR.S.R.ADIGE, MEMBER(A),
HON'BLE DR.A.VEDAVALLI, MEMBER(J).

Shri G.S.Chauhan,
S/o Late R.S.Chauhan,
Central Water Commission,
Sewa Bhawan, R.K.Puram,
New Delhi

AND

71 others (as per memo of parties)Applicants.
By Advocate Mrs. Raj Kumari Chopra.

Versus

1. The Union of India
through the Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi -1.

2. Chairman,
Central Water Commission,
Sewa Bhawan,
R.K.Puram,
New Delhi

.....Respondents.

By Advocate Shri Dandapani proxy for Shri K.C.Sharma,
for the respondents.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member(A).

In this application, Shri G.S.Chauhan and 71 others, all Ministerial Staff, working in subordinate Field Offices of the Central Water Commission, have sought a direction to

(i) allow next time scale promotion with retrospective effect with financial benefits from the date from which their counterparts working in HQ Office and Central Ground Water Board have been given;

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- (ii) direct posting of Ministerial Staff working in the Subordinate Field Offices of CWC in HQ Office of that Organisation;
- (iii) entrust the management of their cadre to the Ministerial Staff of the Field Offices of the CWC;
- (iv) debar the persons from the Central Secretariate Clerical Service (CSCS) from being posted outside the Secretariate and post those working outside back to the Ministries/Secretariats.

2. It is common ground that the CWC which was set up in 1945, as an attached office of the Ministry of Water Resources, consists of Headquarters Office and a large number of subordinate Field Offices located in various parts of the country. In the headquarters Office, the hierarchy consists of IDCs, UDCs, Assistant Section Officers and Under Secretary etc., whereas the hierarchy in the field offices consists of IDCs, UDCs, Head Clerks and Circle Superintendents. The Ministerial Staff in the Headquarters Office are thus distinct and separate from those in the Subordinate(Field) Offices, with a separate organisational structure, pay scales, recruitment rules and policy of transfers. In this connection, we note that under the Central Secretariat Clerical Service Rules, 1962 which have been promulgated under Article 309 of the Constitution and thus have statutory force, the term "cadre" has been defined in Rule 3(c) of those rules to mean the group of posts in Upper Division and Lower Division grades of the service in any Ministry or attached office specified in Column (2) of the First Schedule and the CWC, HQ Office under the Ministry of Energy (Department of Power) is one of such attached offices mentioned in

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the First Schedule. In other words, Upper Division and Lower Division clerical posts are cadre posts for Members of the CSC Service by virtue of the CSCS Rules, 1962 which, as stated above, have constitutional protection. Those rules have not been impugned, and till such time those rules are quashed and set aside, the applicants have no enforceable legal right to occupy ministerial posts in HQ Office of CMC which fall to the cadre of CSCS. Furthermore, the respondents have stated in paragraph 4.6 of their reply which has not been denied by the applicants in their rejoinder, that for the posts of clerks in the ministerial cadre of subordinate offices of CMC it is clearly mentioned in the advertisements itself that the candidates will be posted only in the subordinate offices of CMC, and the applicants cannot claim that they did not know this fact when they joined.

3. In view of the above legal position, no relief can be granted to the applicants in respect of Reliefs (ii) and (iv) above and as Relief (iii) is essentially a matter of executive policy determined by the Rules of Executive Business which have not been impugned, no relief is admissible on this issue either.

4. It may also be mentioned here that it has been vehemently argued that the Staff in Ministerial cadre in the Subordinate (Field) Offices of the CMC have duties and responsibilities equal to the ministerial staff in HQ Office of CMC and are therefore entitled to equality of treatment. Although this argument has not been encapsulated as a specific relief in relation to reliefs mentioned in paragraph 1 above, to the extent that this equality of treatment is for equality of pay on the principle

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of "equal pay for equal work", it may be stated that the difference in pay scales of the two cadres (one for the Ministerial Staff in HQ Office of CMC and the other for the subordinate(Field) Offices of CMC) has been considered by the successive Pay Commissions, and as rightly pointed out by the respondents, the applicants have an opportunity for presenting their case before the Vth Pay Commission which has been set up, for considering the representations, if not already done. In State of UP Vs. J.P. Chaurasia AIR 1989 SC 19, the Hon'ble Supreme Court has held that "the question whether two posts which very often may appear to be the same or similar should carry equal pay, the answer to which depends upon several factors, namely, evaluation of duties and responsibilities of the respective posts and its determination should be left to expert bodies like the Pay Commission. The Court should normally accept the recommendations of Pay Commission."

5. In so far as Relief(i) viz. time scale promotion with retrospective effect with financial benefits is concerned, promotion to any particular grade is subject to the availability of vacancies in that particular grade and the number of persons who are promoted to higher posts, cannot be more than the number of vacancies available. Here again it has been vehemently argued that there is stagnation in the ministerial cadre of the CMC Subordinate Offices in comparison to H.Q Office, Central Ground Water Board etc. and therefore additional promotional channels need to be opened out to avoid frustration etc. Support in this connection has been sought from the Hon'ble Supreme Court's

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ruling in Raghunath Prasad Vs. The Secretary, Home (Police) Department, Govt. of Bihar & others 1988(1) SIR 347. In that case, appellant Shri Raghunath Prasad had sought to switch over ^{to} the general cadre of the Bihar Police because there was no promotional opportunity available in the Wireless Organisation. The Hon'ble Supreme Court had noted that "reasonable promotional opportunities should be available in every wing of public service and that generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. The State of Bihar should provide atleast two promotional opportunities to the officers of the State Police in the Wireless Organisation and in case the State of Bihar fails to comply with that direction, a fresh opportunity has to be given to the police personnel in the Wireless Organisation to exercise option to revert to the general cadre."

6. From the statement showing the composition of the Ministerial Cadre of Subordinate Offices of CWC filed by the respondents in their additional affidavit dated 16.11.95, it appears that the position is as follows:

S1.No.	Name of Post.	No. of posts sanctioned
1.	Circle Superintendent	11
2.	Head Clerk	32
3.	U.D.Clerk	209
4.	L.D.Clerk/Hindi Typist (240+12)	252
5.	Stenographer Gr.II	17
6.	Stenographer Gr.III	43

(X)
(Y)

7. From the above table, it is clear that the position in the Subordinate Offices of CWC is not on all fours with that of the Wireless Organisation of the Bihar Police where there was no promotional opportunity at all. What appears to be in the case of Subordinate Offices of CWC is the relative inadequacy of promotional opportunities but this fact is admitted by the respondents themselves who in their additional affidavit filed on 16.11.95, have stated that they had submitted a cadre review proposal in respect of the Ministerial Staff of the Subordinate Offices of the CWC, to the Ministry of Water Resources in May, 1995 as a matter of executive action to ameliorate the feeling of stagnation in the Staff of Subordinate Offices of CWC. We have no doubt that the respondents will expedite their final decision on that proposal.

8. In this connection, it may also be mentioned that having regard to general problem of stagnation faced by the 'C' and 'D' Grade employees in the Govt. of India, the Finance Ministry issued an O.M. dated 13.9.91 (Annexure-III), whereby a Scheme to ensure atleast one promotion in service career to each Grade 'C' and 'D' employees has been introduced.

9. In this connection, the applicants have also drawn attention to their meagre promotional opportunities vis-a-viz ministerial staff in

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the subordinate offices of CWC, the Engineering Staff in the CWC (Both HQ office and Subordinate Offices) and the Central Ground Water Board. The HQ Office of CWC as well as Central Ground Water Board have their own cadres of Ministerial Staff with their own organisational structure, pay scales, recruitment rules etc. Similarly, as the CWC is primarily a Technical Organisation, it has a large technical staff who occupy posts in the HQ Office as well as Subordinate Offices, and as the nature of their duties, responsibilities, recruitment rules, organisational structure, pay scales etc. is quite different from that of ^{the} Ministerial staff in the Subordinate Offices of CWC, it is not legally obligatory for the CWC to put their ministerial staff working in their subordinate offices on par with the technical staff in service conditions.

10. Under the circumstances, we are unable to grant Relief (i) either.

11. Although not specifically prayed for in the Relief Clause of the OA during hearing, it has been contended by the applicants' counsel that the ministerial staff in the subordinate offices of the CWC are subjected to frequent, irrational and whimsical transfers. The case has been cited of applicant Shri G.S. Chauhan who has been stated subjected to as many as 21 transfers in his service career of 25 years.

The applicants have not denied that in the advertisement for filling up the post itself it has been specifically stated that the

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candidates may be required to serve in any of the subordinate offices of C&C located in different parts of the country. In Gujarat State Electricity Board Vs. A.R.Sungomal Poshani AIR 1989 SC 1433, the Hon'ble Supreme Court has held that " transfer from one place is generally a condition of service and the employee has no choice in the matter." Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. In UOI Vs. H.N.Kirtania -JT 1989 (3) SC 131, it has been held that " transfer in public interest should not be interferred with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides." The applicants have not shown any statutory rules which had been infringed in the case of applicant Chauhan's transfer, and although it has been asserted that his frequent transfers were arbitrary and illegal, no specific allegation of malafide against any particular person has been alleged. It is important to mention here that the allegation of malafide amounts to a very serious and charge/unless details of the person against whom the allegation of malafide is levelled, are given backed by specific materials to support the allegation

and he is impleaded to enable him to file a reply to the allegation of malafide, an allegation of malafide cannot succeed. In this connection, it may further be mentioned that Govt. of India have laid down guidelines regarding transfers, which are to be followed by all Ministries, Departments and Offices under them. If in the light of those guidelines, and having regard to the Hon'ble Supreme Court's rulings, cited above, any of the applicants feels that he has been subjected to a particular transfer which is illegal, arbitrary or malafide, it is open to him to seek departmental remedies and if any grievance still survives thereafter, to challenge that particular transfer through an appropriate proceeding in accordance with law, if so advised. No direction can be given by the Tribunal on a general assertion made by the applicants, as has been done in the present case, that they are being subjected to frequent and irrational transfers, unless it is established to the satisfaction of the Tribunal that a particular transfer is malafide or violative of statutory rules.

12. During hearing applicants' counsel Mrs. Raj Kumari Chopra sought to fortify her arguments with a large number of rulings, namely Chandigarh Administration Vs. Manpreet Singh- JT 1991(4) 436; K. Vasudevan Nair Vs. UOI-JT 1990 (4) 58; UPSRTC Vs. Mohd. Ismail- JT 1991(2)292; UOI Vs. Tej Ram JT 1990(2) 572; M.K.Rao Vs. State of Andhra Pradesh- JT 1993(3) 474; State of J&K Vs. A.R.Zaki -JT

1992(1) 59; CSIR Vs. KGS Bhatt-ATC 1989(II)SC 880; Ziauddin Vs. Delhi Administration - 1990(13)812, A.K.Raizada Vs. UOI,- ATC 1991(18) 363; CSS Association Vs. UOI-ATC 1991 (16) 891 and other citations, but in the light of the legal position explained above, none of these rulings help the applicants.

14. Under the circumstances, we are unable to grant reliefs (i), (ii), (iii) and (iv) prayed for by the applicants. Before parting with this case, however, we may again advert to paragraph 7 above wherein we have noted that the respondents have themselves stated that they referred a revised Cadre Review Proposal to the Ministry of Water Resources, in May, 1995. It cannot be gainsaid that the availability of reasonable promotional opportunities is an important factor in improving efficiency, increasing motivation, maintaining morale, and fostering right attitudes for putting maximum efforts for achieving success in service and the cadre review will go a considerable way in securing this objective. We call upon the respondents to take a decision on the proposal in accordance with law as expeditiously as possible, and preferably within six months from the date of receipt of a copy of this judgment.

15. This OA is disposed of in terms of paragraph 14 above. No costs.

A.Vedavalli
(DR.A.VEDAVALLI)
MEMBER (J).

A.J.Ch.
(S.R.ADIGE)
MEMBER (A).

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