

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No.1090/2000
T.A No. with
1091/2000

(B)

Date of Decision 9-1-2001

Lakhmi Chand(OA 1090/2000) ..Petitioner
Balwant Singh & Ors(1091/2000)

Sh.N.S.Verma ..Advocate for the Petitioner(s)

Versus

UOI & Ors ..Respondent

Sh.N.S.Mehta, Senior ..Advocate for the Respondents
counsel

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

Hon'ble Shri Govindan S.Tampi, Member(A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal ? No

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)

Vice Chairman (J)

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Central Administrative Tribunal
Principal Bench

W
O.A. 1090/2000
with
O.A. 1091/2000

New Delhi this the 9 th day of January, 2001
Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

O.A. 1090/2000

Lakhmi Chand,
S/o late Shri Angan Lal,
R/o H.No. 619/21, Chattar Pur Village,
(Near Matka Chowk),
New Delhi. Applicant.

(By Advocate Shri N.S. Verma)

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Versus

1. Union of India through
The Secretary,
Govt. of India,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Land & Development Officer,
Land and Development Office,
Nirman Bhawan,
New Delhi.
3. Director General of Works,
Govt. of India,
Central Public Works Department,
Directorate General of Works,
Nirman Bhawan,
New Delhi. Respondents.

(By Advocate Shri N.S. Mehta, Sr. Counsel)

O.A. 1091/2000

1. Balwant Singh,
S/o Shri Jeewan Singh,
R/o D/1043, Ward No.8,
Mehrauli,
New Delhi-30.
2. Arjun Singh,
S/o Shri Avadh Bihari Singh,
R/o 976, Baba Kharak Singh Marg,
Connaught Place,
New Delhi-110001.

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3. Hem Chander Pandey,
S/o Shri Harish Chander Pandey,
R/o C-8, Vishwas Park,
Uttam Nagar,
New Delhi.

(By Advocate Shri N.S. Verma)

Versus

1. Union of India through
The Secretary,
Govt. of India,
Ministry of Urban Development,
Nirman Bhawan,
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Govt. of India,
Central Public Works Department,
Directorate General of Works,
Nirman Bhawan,
New Delhi.

... Respondents.

(By Advocate Shri N.S. Mehta, Sr. Counsel)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

In O.A.1090/2000 and O.A.1091/2000, the applicants have challenged the validity of the orders passed by the respondents dated 10.4.2000 and 26.5.2000 (Annexures A-3 and A-4 and Annexures A-4 and A-5, respectively). As the relevant facts and main issues involved in these two applications are the same, learned counsel for the parties have submitted that these cases may be taken up together. Accordingly, both these cases are being disposed of by a common order. For the sake of convenience, the facts in Balwant Singh's case (OA 1091/2000) have been referred to here.

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2. The brief relevant facts of the case are that the Land and Development Office (L&DO) which was a subordinate office of the then Ministry of Urban Development (now Ministry of Urban Development and Poverty Alleviation) was upgraded to the status of an Attached Office of the Ministry. This was done by Notification issued by the Government of India, Ministry of Urban Development dated 4.4.2000 (Annexure A-3). By Office Order dated 10.4.2000 (Annexure A-4), it has been stated that in pursuance of the Ministry's Notification dated 4.4.2000, a decision has been taken to encadre the technical posts mentioned therein with those of comparable cadres/grades/posts under the Directorate General of Works (DG (W), CPWD). Paragraph 3 of the order further states that the technical posts referred to therein will, however, continue to remain on the strength of the L&DO under the administrative control of that office. It has been further mentioned in that order that the aforesaid posts stand encadred in the comparable grades/posts in the DG (W), CPWD with effect from the dates the officers of comparable status of CPWD are posted against these posts. Subsequently, in pursuance of the Ministry's Office Order dated 10.4.2000, it had been decided to encadre the posts of Overseer/Technical Assistant in the L&DO with those of comparable cadres/grades of Junior Engineer (Civil) under the DG(W), CPWD.

3. Shri N.S. Verma, learned counsel for the applicants has, in addition to the aforesaid Notifications also relied on the letter dated 25.2.2000 from the Hon'ble Minister of State, Personnel, Public Grievances and Pensions to the Hon'ble Minister for Urban Development (Annexure A-2). According to him, while the Department of Personnel

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had only given approval for upgradation of the status of L&DO from a subordinate office to an Attached Office, no such approval had been given for encadrement of the technical posts, to which the applicants belong, in the CPWD, Ministry of Urban Development. This he has submitted is a serious flaw. He has submitted that in paragraph 4.7 of the reply filed by the respondents, the respondents have only stated that they were taking up the matter for encadrement of the CSSS and CSS to the DOP&T and has submitted that even this proposal has been turned down. In this connection, he has also submitted that only part of L&DO cannot be upgraded but it has to be the whole office or nothing. According to him, in this case, since certain grades like CSSS and CSS have not been encadred, the technical officers cannot also be considered to be encadred, as contended by the learned counsel for the respondents.

4. Another main ground taken by the learned counsel for applicants is that the impugned transfer order dated 26.5.2000 has been passed by the respondents in colourable exercise of powers. He has relied on another internal communication between L&DO and the Ministry of Law (Litigation Section) dated 9.6.2000 annexed to the rejoinder. He has submitted that in this letter, it has been mentioned, *inter alia*, that the transfer order has been issued as part of the measures being taken by the Government to eradicate the deep rooted corruption in the L&DO. This letter has been issued to the Ministry of Law by the concerned Department for appointment of a Senior Standing Counsel to represent them in this case. He has submitted that it is clear, therefore, that the reason for the transfer order is for rooting out corruption. He has also

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submitted that even in Paragraph 9 of the reply filed on behalf of the respondents they have referred to the Government's efforts to root out corruption and to effect clean administration which, according to him, casts a stigma on the applicants. He has, therefore, submitted that the transfer order has been issued by the respondents for a colourable purpose which cannot, therefore, be sustained in the eye of law.

5. Shri N.S. Verma, learned counsel has also submitted that no guidelines for seniority and promotion have been laid down before encadrement nor as mentioned above, the approval of the DOP&T obtained for encadrement of the technical posts. He has also emphasised that as per the annexures to Annexure A-3, the duties and responsibilities of Overseers and Assistant Engineers are quite different from the duties expected to be performed by their counter parts, that is JEs and AEs (Civil) in CPWD. He has submitted that no options were also given to the applicants as to whether they would like to go to posts in CPWD and as they do not have experience and expertise of the duties expected of them in the CPWD, the transfer order is also bad on these grounds. He has relied on a number of judgements, namely, Ilyas Ahmed Vs. The Station Director, All India Radio, Hyderabad and Anr. (1979 (2) SLR 651 (AP High Court); P. Pushpakaran Vs. Chairman, Coir Board (1979(1) SLR 309) (Kerala High Court); Jagdish Chander Vs. State of Haryana (1990 (6) SLR 126) (Punjab and Haryana High Court); Kanhaiya Lal Vs. State of Bihar and Ors. (1982(3) SLR 266) (Patna High Court) and Prem Parveen Vs. Union of India and Ors. (1973(2) SLR 659). Relying on these judgements and

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for the reasons mentioned above, learned counsel for the applicants has prayed that the impugned orders may be quashed and set aside.

6. We have seen the replies filed by the respondents and heard Shri N.S. Mehta, learned Sr. Counsel. Learned Sr. counsel has also submitted the relevant records for our perusal, including the approval of the competent authority for encadrement of technical posts of L&DO with comparable grades/posts in CPWD. He has submitted that as per the Notification dated 4.4.2000, the Government had upgraded the status of the L&DO from a Subordinate Office to an Attached office in the Ministry of Urban Development. The letter relied upon by the applicants dated 25.2.2000 is an inter-Departmental communication which, however, clearly shows that the approval of the DOP&T had been obtained for this purpose. He has submitted that the decision to upgrade the L&DO to an Attached Office in the Ministry is a policy decision, which was taken with the objective of effecting transfers of the officers and staff to other offices under the Ministry, in furtherance of administrative convenience and exigencies. He has relied on the judgement of the Supreme Court in C.P. Damodaran Nayar and Anr. Vs. State of Kerala & Ors. (AIR 1974 SC 1343).

7. Learned Sr. counsel has also drawn our attention to the reply filed by them in Balwant Singh's case (OA 1090/2000). In paragraph 5A of the reply, they have stated that since the technical posts of L&DO were encadred with comparable cadres of DG(W), CPWD, concurrence of DG(W) CPWD was required and this was obtained which he has submitted was prior to the issue of the impugned transfer

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order dated 26.5.2000. He has also pointed out that in the Office Order dated 10.4.2000, in pursuance of the upgradation of the status of L&DO as an Attached office of the Ministry, it has been specifically stated that the technical posts in L&DO have been encadred with those of comparable cadres/grades/posts in DG (W), CPWD. He has also submitted that, contrary to the contentions of Shri N.S. Verma, learned counsel for the applicants, there is no conflict between paragraphs 2 and 3 of this order. Paragraph 2 deals with the encadrement of the technical posts in the comparable grades/posts in DG (W), CPWD, while the L&DO continues to have administrative control over these posts. Learned Sr. counsel has submitted that the decision to upgrade the status of L&DO and the consequent absorption of the officers in comparable grades/posts in DG (W), CPWD were all administrative decisions within the competence of Government to take. In the reply, the respondents have explained that this is to give better transparency and better administration and to ensure that persons in L&DO who have been on particular seats or type of seats for a number of decades are transferred to other offices in the same Ministry. He has also submitted that no aspersions of corruption have been made on any particular officer of L&DO, although that office itself needed to be cleaned up from the evil forces of corruption, for which the Government had taken the appropriate decisions, in accordance with the relevant rules and instructions. In this connection, he has submitted that the reliance placed by the learned counsel for the applicants on paragraphs 6(2) of Swamy's Manual on Office Procedure (Annexure RA-I) would not assist him. According to him, the officers in the Attached Office of L&DO would continue to provide the services which they were

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A earlier doing. He has also submitted that the applicants in the present two applications had filed earlier OA 2126/96 which was decided by the Tribunal on 15.3.2000. In that case, the applicants who were working as Overseers in L&DO had claimed parity in pay scales to Junior Engineers of CPWD. Shri N.S. Mehta, learned Sr.counsel has, therefore, submitted that on the contrary, the same applicants are now contending that their nature of duties and responsibilities as Overseers/Assistant Engineers in L&DO are quite different to those performed by the officers in comparable grades in CPWD, which again shows that the applicants are not taking a consistent stand.

8. With regard to the question of seniority, learned Sr. counsel for the respondents has submitted that the inter-se seniority of the applicants with the Assistant Engineer (civil), CPWD will be decided on the basis of regular appointments of these officials and the relevant extant orders of the Government and there is no vagueness in this.

9. During the hearing, Shri N.S. Verma, learned counsel for the applicants has handed over a letter dated 10.11.2000 from the DG (W), CPWD to the L&D Officer, copy placed on record. In this letter, reference has been made to one Shri Chaman Lal, Assistant Engineer of L&DO wherein it has been stated that he cannot be posted/attached to CPWD till the finalisation of the encadrement of the technical posts. Learned counsel for the applicants had submitted that this being the position in the case of Shri Chaman Lal, the same would apply to the applicants. On the other hand, Shri N.S. Mehta, learned counsel ~~on the other hand~~, has

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4 submitted that the encadrement of the technical posts in CPWD had been approved by the competent authority, that is the DG (W) before the impugned transfer order has been passed. Besides, he has submitted that with regard to Shri Chaman Lal, he had been placed under suspension, which was also a reason for not posting him to CPWD. Learned Sr. Counsel has, therefore, submitted that the transfer orders dated 26.5.2000 which have been impugned in these two O.As. are without any merit, as they have been passed in accordance with law and the administrative decisions taken by the Government and has, therefore, prayed that the O.As may be dismissed.

10. We have carefully considered the pleadings, the relevant official records and the submissions made by the learned counsel for the parties.

11. The impugned Office Order dated 10.4.2000 has been passed by the respondents in pursuance of the Ministry's Notification dated 4.4.2000, upgrading the status of L&DO from a Subordinate Office to that of an Attached Office of the Ministry. This is a policy decision which is within the competence of the Government of India to take, taking into account the relevant facts and circumstances. In this Order, it has been further stated that the decision has been made to encadre the technical posts in L&DO with those of comparable cadres/grades/posts under the DG (W), CPWD. The contention of Shri N.S. Verma, learned counsel that there has been no encadrement of the technical posts in the L&DO with the DG (W), CPWD cannot be accepted in the light of these Orders. We also see force in the submissions made by Shri N.S. Mehta, learned Sr. Counsel that as the

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4 technical posts in L&DO were to be encadred with those of comparable grades/posts in DG(W), CPWD by virtue of the Office Order dated 10.4.2000, there is any conflict in the statements given in paragraphs 2 and 3 of that Order, namely, that the posts continue to remain in the strength of L&DO under their administrative control as the latter office is still continuing. This again is a matter of policy within the purview of the Government.

12. The further contention of the learned counsel for the applicants that the Government had taken the decision to upgrade the L&DO as an Attached Office only for the purpose of transferring the applicants as a means of punishment cannot also be accepted. These are administrative decisions which can neither be held to be unreasonable nor arbitrary in the facts and circumstances of the case. The respondents have stated that the transfer orders are being passed as part of the measures taken by the Government to eradicate the deep-rooted corruption in the L&DO and by upgrading the office as an Attached Office, they would be able to transfer the officials to other offices, who have been in a particular seat for decades. No one can find fault with the decision of the respondents to take suitable measures to try and root out corruption in Government Departments and merely because a particular Office has been so identified, it cannot mean that the consequential orders as in the present case are vitiated. The impugned transfer order dated 26.5.2000 has merely attached the officers, mentioned therein to DG (W), CPWD in the same Ministry, and nowhere this order casts any stigma on the applicants. It is settled law that who is to be transferred and where is for the Head of the Department to

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consider taking into account the relevant facts and circumstances (See the observations of the Supreme Court in Union of India Vs. S.L. Abbas (1993(2) SLR 585). Therefore, the contention of the applicants that the respondents have adopted a pick and choose policy in transferring the applicants from L&DO to their comparable cadres in the CPWD office does not assist them or show any mala fide or arbitrary action on the part of the respondents to justify any interference in the matter.

13. With regard to the question of laying down the guidelines for purposes of seniority and promotion, the reply filed by the respondents shows that they have decided that the inter-se seniority of the applicants with the comparable cadres in CPWD will be based on the dates of the regular appointment of the officials read with the relevant orders issued by the Government. These principles cannot also be faulted or held to be vague with regard to determination of the inter-se seniority of the concerned officials. The applicants have nowhere contended that their status or emoluments would be in any way reduced by going to DG (W), CPWD. It has been held by the Hon'ble Supreme Court in The Director Lift Irrigation Corpn. Vs. P.K. Mohanty & Ors. (1991(1) Scale 399) that the decision to amalgamate the existing cadres by reorganising them into two cadres or as in this case to change cadres following the upgrading of the status of the Government Organisation is a policy decision which if taken on administrative exigencies is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principles. None of these flaws exists in the present case and we, therefore, find no merit in this application. The prerogative of the Government to

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create, merge, or waste out cadres in a concerned Department in the exigencies of service is well settled and in the circumstances of the cases, no consent of the applicants is required to be taken before issuance of the Office Orders dated 4.4.2000 or 10.4.2000. The plea of the learned counsel for the applicants to the contrary is, therefore, rejected.

14. Shri N.S. Verma, learned counsel had contended that since the nature of duties and responsibilities of the applicants which are given in the annexures to Annexure A-3 are quite different from the duties they are expected to perform in comparable grades of CPWD, they cannot be transferred to that office. This contention is totally contrary to their own averments in O.A.2126/96 wherein the applicants had pleaded for grant of the same pay scales as recommended by the 4th Pay Commission in the case of Junior Engineers of CPWD. The submission advanced by the learned counsel for the applicants being contrary to the earlier stand taken by the applicants themselves in OA 2126/96, it is only mentioned to be rejected that they were not capable of performing the duties of CPWD. Besides, the respondents themselves have clearly stated in the Office Order dated 10.4.2000 that the decision has been taken to encadre the technical posts in the L&DO with those of comparable cadres/grades/posts in the DG(W), CPWD and, therefore, the present contention of the applicants begs the question. We have also perused the relevant records submitted by the respondents and are satisfied that the DG (W), CPWD has approved the encadrement of the technical posts in L&DC, including the posts held by the applicants, with the comparable posts in CPWD which has been recorded in the Note date 10.4.2000.

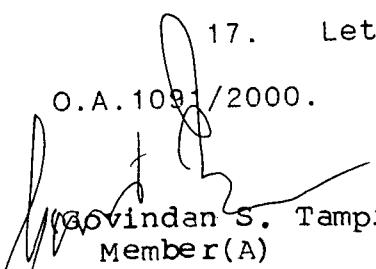
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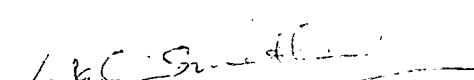
15. One other relevant point has to be mentioned here, namely, that the applicants have obtained and relied upon certain inter-Departmental correspondence, that is the letter dated 25.2.2000 from the Hon'ble Minister of State, Personnel, Public Grievances and Pension to the Hon'ble Minister for Urban Development and the letter from the Ministry of Urban Development, L&DO to the Ministry of Law (Litigation Section) dated 9.6.2000. These letters are neither marked to them nor are they intended for them, but have been obtained by the applicants to support their cases. If they were able to get these letters, it would be reasonable to presume that they were also well aware of the other relevant correspondence to eradicate corruption in certain Departments and the fact that the DG(W), CPWD had given his consent for encadrement of the technical posts. In the circumstances, they have tried to mislead the Court by only placing on record ~~some~~ ^{some} select inter-Departmental correspondence and they are, therefore, liable to pay costs for this litigation.

16. In the above facts and circumstances of the case, we are unable to agree with the contentions of the learned counsel for the applicants that the impugned transfer order dated 26.5.2000 is either vitiated by mala fides or is in violation of any statutory provisions to justify any interference in the matter. In the result, for the reasons given above, O.A 1090/2000 and O.A.1091/2000 are dismissed with costs of Rs.4000/- (Rupees four thousand) (i.e. Rs.1000/- each) ^{Rs.} against the applicants and in favour of the respondents.

17. Let a copy of this order be placed in O.A.1091/2000.


Govindan S. Tampi
Member(A)

'SRD'


(Smt. Lakshmi Swaminathan)
Vice Chairman(J)