

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(4)

O.A. No. 2713/2000
T.A. No.

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DATE OF DECISION 19-1-2001

Sh.J.P.Hans and Ors

... Petitioner

Sh.V.S.R. Krishna

... Advocate for the
Petition(s)

Versus

Lt.Governor Govt.of NCT of ... Respondents
Delhi & Ors

Sh.Rajinder Pandita for Respondents ... Advocate for the
1& 2. Respondents
Sh.Yogesh Sharma for R 3-4

CORAM :

The Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)
The Hon'ble Sh. Govindan S.Tampi, Member (A)

1. To be referred to the Reporter or not.? Yes
2. Whether it needs to be circula-ted to
other Benches of the Tribunal?

No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2713/2000
MA 3167/2000

New Delhi, this the 19th day of January, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Sh. Govindan S. Tampi, Member (A)

1. Shri J.P.Hans
Sr. Superintendent
Integrated Child Development Services,
Govt. of NCT of Delhi,
Jahangirpuri,
New Delhi.
2. Shri R.P. Singh
Sr. Superintendent
Sewa Sadan Complex
Govt. of NCT of Delhi
Lampur, Delhi.

...Applicant

(By Advocate Shri V.S.R.Krishna)

V E R S U S

1. The Lt. Governor,
Govt. of NCT of Delhi
Rajniwas Marg,
Delhi.
2. The Secretary *Social* *by*
Directorate of ~~Association~~ Welfare,
Secretariat,
Govt. of NCT of Delhi
I.P.Estate,
New Delhi.
3. Shri N.S.Meena
Dy. Director (CT)
Dept. of Social Welfare
Govt. of NCT of Delhi
I.P.Estate, New Delhi
4. Shri C.P.Pandey
Dy. Director (Estates)
Govt. of NCT of Delhi
I.P.Estate, New Delhi.

...Respondents

(By Advocates: Shri Rajinder Pandita for Respondents
1 & 2 and Shri Yogesh Sharma for
Respondents 3 & 4)

O R D E R (ORAL)

SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)

The applicants, two in number, are aggrieved
by the order passed by Respondents 1 & 2 dated
19-12-2000 (Annexure A-1).

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2. The brief relevant facts of the case are that by the aforesaid order, Respondents 3 & 4 have been directed by Respondent 2 to look after the charge of certain districts, namely, South, North and North-West, in addition to their duties till further orders. The main grievance of the applicants is that they, who are Group-A officers in the pay scale of Rs.3000-4500/-, by virtue of the impugned order are directed to be placed below Respondents 3 & 4, who are only Group-B officers in the pay scales of Rs. 2000-3500/-, who have been directed to look after the charge of the districts. The applicants state that they are presently working as Sr. Superintendents (SS) in the Directorate of Social Welfare. One preliminary objection has been raised by Shri Rajinder Pandita, learned counsel that Respondent 2 has been mentioned as an "Association" of Welfare instead of the Directorate of Social Welfare, which the learned counsel for the applicant has submitted is a typographical mistake. In view of the clear averments made in paragraph 4 (1) of the OA that the applicants are working in the Directorate of Social Welfare, the submission made by the learned counsel for the applicants is accepted. In the circumstances of the case, the name of Respondent 2 is ordered to be corrected as the Secretary, Directorate of Social Welfare.

3. Learned counsel for the official respondents has also taken another preliminary objection that necessary parties, namely, the Union of India has not been impleaded in the present OA. Neither a copy of the provisions of the Government of NCT Act, 1992, nor the judgements relied upon have been

shown to us. Apart from that, taking into consideration the facts and circumstances of the case, we are also unable to agree with the contentions of the learned counsel for the respondents that the OA suffers from the infirmity of non-joinder of necessary parties. It is noted that the impugned order has been passed by Respondents 1 & 2 who have been correctly impleaded in the OA and this preliminary objection is also rejected.

4. A third preliminary objection has been taken that the OA is not maintainable, as no representations have been submitted by the applicants to the respondents in terms of Sections 19, 20 & 21 of the Administrative Tribunals Act, 1985. By the impugned order dated 19-12-2000, the respondents have directed Respondents 3 & 4 to look after additional duties of the charge of the districts, under which admittedly the applicants are working, till further orders. Shri Rajinder Pandita, learned counsel relies on the judgement of the Full Bench of the Tribunal in B. Parameshwara Rao Vs. The Divisional Engineer, Telecommunications, Eluru & Another (CAT, Full Bench Judgements (Vol.2) 250, OA 27/1990). Section 20 (1) of the Administrative Tribunals Act, 1985, provides inter alia, that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The OA has not been admitted. By interim order granted on 29-12-2000, Respondents 1 & 2 were directed to ensure that Respondents 3 & 4 were not promoted to work in the posts mentioned in the impugned order. In the circumstances of the case, we

find force in the submissions made by Shri V.S.R.Krishna, learned counsel that this is a case where a representation to the respondents was not per se necessary. In any case, no service rule has also been brought to our attention by the official respondents which the applicants could have availed of. Taking into account the facts circumstances of the case as an exceptional case as mentioned in the judgment in B.Parameshwara Rao's case (supra) the Tribunal has excercised its discretion in giving the interim order dated 29-12-2000. Therefore, this preliminary objection is also rejected.

5. Shri Rajinder Pandita, learned counsel has relied upon the order passed by the Hon'ble Delhi High Court on 10-1-2001 as justification for the action of the respondents in passing the impugned order dated 19-12-2000. We are unable to agree with his submission because the order of the High Court is subsequent to the impugned order dated 19-12-2000 and will not assist them. He has also relied on an interim order dated 31.1.96 passed by the Tribunal in OA 2330/1995. As the facts and circumstances in the present case appear quite different from those mentioned in that interim order, this order cannot also assist the respondents.

6. In the reply filed by the official respondents, they have submitted that the applicants do not belong to any cadre, and there are certain isolated posts of a technical, special nature like Welfare Officer, Dy. Superintendent, Superintendent and Senior Superintendent. They have also stated that these officers remain in the Department for quite a long time till they are promoted to the higher post.

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To a specific query raised by the Bench during the hearing, learned counsel for the respondents could not, however, give a reply as to what is this higher post and under which recruitment rules such a promotion, if at all, has been made. The main contention of the learned counsel for Respondents 1 & 2 is that, persons like Respondents 3 & 4 who belong to ~~DANICS~~^{PS} Cadre can be posted to any post at the discretion of the competent authority. He has also submitted that in the case of Applicant No.1, the officer had been placed under suspension on a number of occasions although, admittedly departmental proceedings instituted against him were dropped. In the case of Applicant No.2, he was not working as a Senior Superintendent, but in the post of Foreman-cum-Superintendent and, therefore, according to the learned counsel for the respondents, these persons cannot claim posting as District Officers, which involves interaction with the public at large. Learned counsel has emphasised that the order dated 19-12-2000 is only a stop gap arrangement and the applicants cannot have any grievance. He has submitted that it is for the Department to take a decision looking into the relevant facts, including the necessity of the public at large for supervising various homes like the Beggar Homes, Children Homes etc.

7. Shri Yogesh Sharma, learned counsel for respondents 3 & 4 has fairly submitted that although it is for the official respondents to post any one in the districts to look after the duties, like they have done in the impugned order, the respondents may be directed to consider the eligible officers and make

proper arrangements in accordance with the rules.

8. We have carefully considered the records and submissions made by the learned counsel.

9. The first relevant fact to note in this case is that the respondents have placed certain Group 'B' officers as Incharge of certain districts in which the applicants, who are admittedly Group 'A' officers, are working. According to the respondents, the applicants have been working as Senior Superintendent and Foreman-cum-Superintendent, respectively, which are Group 'A' posts on ad hoc basis for a number of years. As mentioned above, what is the higher post to which a Sr. Superintendent can be promoted has not been indicated. There is no doubt that while the Government can assign duties and responsibilities to their officers, taking into account the relevant factors and public interest, they should also act in a reasonable and fair manner and in accordance with the relevant rules and instructions. No rule or instructions have been referred to or shown to us as to how Group-B officers belonging to the DANIC service have been assigned the job of looking after certain districts, in addition to their own duties, over the applicants who are working in higher posts in the Directorate of Social Welfare. Shri V.S.R. Krishna, learned counsel has also very vehemently submitted that while the applicants belong to the Technical cadre and possess qualifications prescribed in the relevant recruitment rules for holding the posts in the Welfare Department, no such qualifications are prescribed in the case of DANIC officers who are generalists. Besides, we find force in the submissions made by the learned counsel for the



applicants that there is no justification for placing Group-B officers as In-charge of the Districts by the impugned order dated 19-12-2000, whereas previously Deputy Directors and Senior Superintendents in the same Department have been placed as In-charge of Districts. In this view of the matter the O.A. succeeds.

10. Shri Rajinder Pandita, learned counsel has submitted that as the applicants are not the senior-most as Sr. Superintendent/ Superintendent, therefore, they do not have any vested right to aspire to hold the post of District Officer. However, it is settled law that they have a right to be considered for the post in accordance with the relevant rules and instructions, which in this case does not appear to have been done by the respondents while issuing the impugned order.

11. In the result for the reasons given above, the OA succeeds and is allowed. The impugned order dated 19-12-2000 is quashed and set aside. No order as to costs.

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(GOVINDAN S. TAMPI)
MEMBER (A)

/vikas/

Lakshmi
(SMT. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN (J)