

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.NO.966/2000

New Delhi, this the 19th day of December, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

1. Rishipal,
S/O Sh. Shanti Swroop,
R/O 27, Sec-19, Faridabad.
 2. Daryao Singh Rathi,
S/O Sh. Deep Chand
R/O H.No.363, Vill.
Rajpur, New Delhi-68.
 3. K.K.Philip, W/O Sh. Thomas Philip
R/O 457, LR Complex, New Delhi-3.
 4. Saranjit Singh,
S/O Sh. Amrik Singh
R/O E/146/2, Tank Road,
Karol Bagh, New Delhi-5.
 5. Gopal Krishan,
S/O Sh. Ghanshyam Singh,
R/O 5573/75, Padam Singh Road,
Karol Bagh, New Delhi-5.
 6. B.S.Nair, S/O Sh. R.Bhaskaran Nair
R/O 633, Sec. V R.K.Puram, New Delhi.
 7. Deepak Kumar, S/O Sh. Ram Chander,
R/O 32/381, Panchkuin Road,
New Delhi-1.
 8. Kundan Singh, S/O Sh. Man Singh
R/O 1965, Laxmibai Ngr. New Delhi.
- (By Advocate: Sh. Deepak Verma) ...Applicants

VERSUS

1. The Secretary,
Deptt.of Expenditure,
Ministry of Finance,
North Block, New Delhi-1.
2. The Secretary,
Ministry of Home Affairs,
Govt. of India, North Block,
New Delhi-1.
3. The Director General (DG)
Border Security Force (BSF),
HQs, CGO Complex, Lodi Road,
New Delhi-3.

(By Advocate: Sh. J.B.Mudgil)

...Respondents.

O R D E R (ORAL)

Hon'ble Shri Rizvi, M (A):-

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(2)

The applicants, eight in number, working in various grades in the respondent No.3's set up, seek the following relief:-

"Implement the report of the Staff Inspection Unit (SIU) as per letters dated 23.6.93 and 25.8.99 (Annexures A-1 & A-2) with regard to the creation of civilian / ministerial posts at Headquarters."

By the aforesaid report, the SIU has recommended creation of following posts in the respondent No.3's organisation.

CAO	1
SO	6
Asst.	6
UDC	29
LDC	23

2. The learned counsel appearing for the applicants has drawn our attention to the circular instructions issued by the Govt. in the Ministry of Finance (MOF) highlighting the sanctity of SIU's recommendation. The specific instructions which the applicants have placed on record are the OMs dated 20.11.80 & 11.1.88. The latter would seem to emphasise the mandatory nature of the instructions earlier issued on the subject. The procedure to be followed in implementing the recommendations made by the SIU has been laid down in some detail in the aforesaid OM of 20.11.80. The same provides for periodical reviews of the action taken and furnishing of reports to the authorities concerned etc. In these instructions, it is clearly provided that the recommendations of the SIU shall continue to be regarded as mandatory. The case of the applicants centres round and is based entirely on this argument.

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3. In support of his contention, the learned counsel has relied on the judgement of this Tribunal in V.S.Bhargava Vs. Advisor to the Administrator, Chandigarh Administration reported as [1989] 10 ATC 645 which in turn places reliance on Supreme Court's judgement in B.S. Minhas Vs. Indian Statistical Institute, reported as 1983 (4) SCC 582. The Supreme Court in Minhas's case in turn relied on Ramana Dayaram Shetty Vs. International Airport Authority of India reported as (1979) 3 SCC 489. In the aforesaid case, the Tribunal was dealing with the binding nature of the administrative instructions issued in respect of a policy decision. The relevant extract from the Tribunal's aforesaid judgement in which references have been made to the Supreme Court's judgements in B.S. Minhas (supra) & Ramana Dayaram Shetty (supra), is reproduced below:-

"4...Hence, we find no valid reason as to why the respondents should not adhere to their own policy decision. It is not simply a question of enforcement of a right by a Government employee based on the instructions of the government, but it also involves the vital question as to why the respondents should not scrupulously stick to their own policy decision. Certainly we can ask the respondents to adhere to their own instructions in the larger interest of their own employees. In B.S. Minhas Vs. Indian Statistical Institute, it was held following Ramana Dayaram Shetty Vs. International Airport Authority of India, that:-

It is a well settled rule of administrative law that an executive authority must be rigourously held to the standards by which it, professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them."

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4. The Tribunal had in the aforesaid case was constrained to ask the respondents to adhere to their own instructions in the larger interest of their own employees. The Supreme Court has, as mentioned above, observed that executive authority must scrupulously observe the standards set by it and acts in violation thereof could be invalidated.

5. The learned counsel for the respondents has, on the other hand, brought to our notice the OM dated 5.8.99 issued by the same Ministry, namely, the Ministry of Finance which has issued the aforesaid instructions of 20.11.80 and 11.1.88. The same lays down the guidelines on expenditure management, fiscal prudence and austerity. We have perused the aforesaid OM to find that the same imposes a ban on the creation of Plan and Non-Plan posts and simultaneously recalls imposition of 10% cut in the existing posts in the various Ministries/Departments of the Govt. of India earlier enforced in 1992 but not scrupulously implemented so far. The aforesaid memorandum also imposes a ban on the filling up of vacant posts, that is to say, of posts which had already been created in the past but had remained unfilled. From a reading of the aforesaid OM of 5.8.99, it would seem that the same provides a comprehensive Scheme for affecting austerity in governmental expenditure and for observing fiscal prudence.

6. We have thus before us two sets of instructions issued from one and the same Ministry, namely, the MOF. The earlier set of instructions are the ones referred to

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by the learned counsel appearing for the applicants in which the mandatory nature of the recommendations of SIU has been emphasised. The other is the one we have referred to in the above paragraph and which provides for financial prudence etc. The latter have been issued much later, say, more than 10 years after the OM dated 11.1.88.

7. The learned counsel for the applicants has advanced the plea that the ban imposed by the aforesaid OM of August, 99 is not absolute and total as the same provides for a possible reference back to the MOF in cases in which an administrative Ministry finds it necessary to fill up vacant posts or to create new ones for unavoidable reasons. In this context, a perusal of the letter issued by the Director General, BSF placed at Annexure A-1 has been brought to our notice which goes to show that the Ministry of Home Affairs (MHA) which is administratively concerned with the BSF has taken up the matter with the internal Finance division (IFD) for obtaining clarification regarding implementation of the pending SIU report. This would mean that the MHA are currently engaged in intra-departmental consultation on the question of implementation of SIU report. The MHA, we find, have not formally approached the MOF for relaxation in the measures of economy envisaged in the OM of August, 99. In other words, the Ministry, namely, the MHA, for whose benefit the aforesaid recommendation has been made by the SIU are yet to make up their mind in this regard, although a long enough time of seven years has already elapsed since the SIU's report came on the scene.

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8. We are inclined to think that it is essential for the MHA to take up the matter with the MOF and not something which should worry the applicants. For want of adequate staff strength, the applicants are over-worked, is the point made by the learned counsel. And for this reason, they have a vested interest in the creation of additional posts recommended by the SIU. The applicants are stagnating was the other issue raised. The answer to the aforesaid problems would seem to lie, inter alia, in asking for overtime payments and for cadre review which would benefit the applicants directly and immediately. For these reasons, amongst others, we do not see any link between the implementation of the SIU's report and the applicant's well being in terms of their service interests.

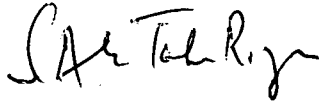
9. The various instructions including the OMs which have been brought to our notice are, we find, in the nature of administrative instructions issued by the Govt. from time to time in accordance with the exigencies of the situation. Such instructions can be impugned only on the ground of arbitrariness, malafide or discrimination and also if they happen to be contrary to any of the existing statutory rules. No such allegation has been made by the learned counsel for the applicants. We also do not find that the aforesaid instructions suffer from vice of arbitrariness or could be termed malafide or discriminatory in any respect. The same are also not contrary to any statutory rule on the subject in question.

10. We also find that in the circumstances of this case which are different from the facts and circumstances of the case adjudicated upon by the Tribunal in V.S.Bhargava's case (supra) and having regard to what we have said about the nature of administrative instructions, we find that the ratio of the decision taken by the Tribunal in that case will not apply in this OA. We have noted that the same Ministry which has issued the instructions with regard to the sanctity of SIU's recommendations has later issued instructions pertaining to the need for fiscal prudence and austerity in Govt. In normal course, the instructions issued by the Govt., on a subject later in point of time, are supposed to have the effect of modifying/annulling the instructions issued earlier on the same or related subject and viewed thus the aforesaid OM of 5.8.99 issued by the same Ministry should hold the field as on date. The Ministry of Home Affairs, administratively concerned with the BSF, where the applicants are working is nevertheless already considering the matter and will no doubt take it up, if considered necessary, with the MOF and find a solution to the problem given rise to by the recommendations of the SIU. These are processes internal to the functioning of the Govt. and we feel we should, in the absence of compelling reasons ^{such} ~~and~~ as allegations of arbitrariness and malafide or discrimination, desist from interfering with them. We note, however, that as and when a final decision in this respect emerges, the needs, if any, of the applicants will also be suitably addressed.

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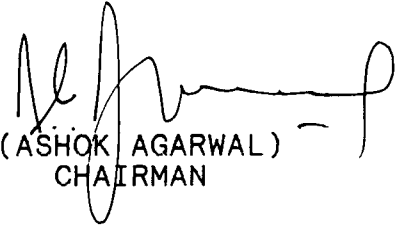
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11. In the background of the above discussion, the OA is partly allowed and is disposed of in the aforesaid terms with a direction to the respondents to consider the issues raised in this OA and take a proper decision as expeditiously as possible and in any event within a period of 6 months from the date of receipt of a copy of this order. No costs.



(S.A.T. RIZVI)
MEMBER (A)

/sunil/



(ASHOK AGARWAL)
CHAIRMAN