

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

DA NO. 1810/89

DATE OF DECISION: 10.7.1990

SHRI TEJA SINGH & OTHERS

APPLICANTS

VERSUS

UNION OF INDIA

RESPONDENT

SHRI B.S. MAINEE

ADVOCATE FOR THE APPLICANT

SHRI N.S. MEHTA

SR. STANDING COUNSEL FOR THE  
RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member(A))

Shri Teja Singh, Smt. Kusum Bhatia, Smt. Devika Roy, Economic Investigators, Grade-I (Rs. 550-900/1640-2900) and Shri S.K. Sharma, Artist (Rs. 425-700/1400-2300) were transferred from the Ministry of Planning (Planning Commission) along with their work to the Ministry of Programme Implementation, consequent to reorganisation of Ministries in terms of Government of India, Cabinet Secretariat OM No.74/2/26/85-Cab dated 7th October, 1985. The posts occupied by the applicants were created for monitoring and evaluation of performance of 20 Point Programme which

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activity of the Planning Commission was entrusted to the newly formed Ministry of Programme Implementation with effect from 14.10.1985. Later some more related posts with their incumbents were also transferred to that Ministry. The transfers were made without obtaining the prior consent of the applicants. The sole consideration for their transfer was that they were doing the work which was decided to be transferred to the Ministry of Programme Implementation. The case of the applicants is that they should have either been given higher scale of pay or deputation (duty) allowance as they were transferred to work on posts which do not belong to their cadre. By way of relief they have prayed that the Tribunal may direct the respondents to pay deputation allowance to them as per rules from the date of their joining the Ministry of Programme Implementation till their repatriation to their parent cadre.

The respondents in their reply have affirmed that the applicants were transferred to the Ministry of Programme Implementation, in accordance with the Government policy contained in Cabinet Secretariat OM No. 10/11/70-CS-II dated 18th August, 1970. The guidelines in this respect are:-

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- (1) As soon as the Government of India (Allocation of Business) Rules 1961 are amended specifying the items of work to be handled by a new Department, the Ministry/Department in which the work was previously being handled should issue an administrative order transferring the posts and the staff along with the work

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to the new Department. This will cover all categories of posts, technical or non-technical, including those belonging to the Central Secretariat Services. The gazetted officers will formally relinquish charge in the previous Ministry/Department and thereafter assume charge in the new Ministry/Department. The receiving Ministry will have to notify in the Gazette the assumption of charge to enable the Accountant General to issue fresh salary slips.

(2) The staff actually handling the items of work made over to the new Ministry/Department should be automatically transferred along with the work. No option should ordinarily be given to the staff in such cases.

(3) .....

(4) So far as the staff of the decentralised grades of the Central Secretariat Services are concerned, until a separate cadre for the new Ministry/Department is formed or until the staff are formally transferred to the new Ministry/Department the staff should be treated as on temporary loan from their parent cadre to the new Ministry/Department.

It is obvious from the above that in situations when Ministries/Departments are reorganised, the staff handling the work is shifted along with their work and the posts to the new Department and that ordinarily no option is required to be given to the staff while effecting such transfers. The respondents have further averred that the applicants could not be given

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deputation allowance as they were originally posted to the Ministry of Programme Implementation on outright transfer basis and not on deputation basis, along with subjects they were handling and the posts they were holding. Again they could be allowed only the pay scale attached to the posts.

2. In November, 1987 some of the affected employees had orally explained the lack of avenues for promotion for them in the new Ministry of Programme Implementation. The matter was considered by the Government and with a view to protect promotional avenues of the employees, the Planning Commission decided on 28.1.1988 to treat the staff transferred from the Planning Commission to the Ministry of Programme Implementation as on temporary loan, till the Ministry of Programme Implementation forms its own cadre. Further the first ever written representation made by the applicants on December 29, 1987, also makes no demand for payment of deputation allowance.

3. The learned counsel for the applicant, Shri B.S. Mainee, relied on the judicial pronouncement reported in:

- i) SLR 1973 (2), Delhi High Court, 659, Prem Parveen Vs. UOI; and
- ii) SLJ 1989 (3) 48, Jawahar Lal Nehru University Vs. Dr. K.S. Jawarkar & Others.

The facts in the first citation are distinguishable as the transfer was made from one cadre to the other cadre regulated by the different set of rules and having different pay scale not only for the post held at the time of transfer but also for the

next higher post. The second citation is also of no help as the matter relates to transfer of the employees alongwith work from Jawahar Lal Nehru University to Manipur University, which are two separate autonomous bodies.

4. The learned counsel for the respondents referring to the note under FR-9(23) submitted that deputation (duty) allowance was in the nature of special pay and that special pay is granted in consideration of :

- a) Specially arduous nature of the duties; or
- b) specific addition to the work or responsibility.

These considerations do not obtain in the present case, and accordingly there was no case for payment of deputation (duty) allowance. Again the term deputation in terms of paragraph 3.1 of Department of Personnel and Training O.M. No.2/12/87-Est.Pay-II dated 29th April, 1988, covers appointments made by transfer on a temporary basis to other posts in the same or other department of the Central Government provided the transfer is outside the normal field of deployment. The question whether the transfer is outside the normal field of deployment is to be decided by the authorities which control the service or the post from which the employee is transferred. The learned counsel submitted that the case of the applicants is not attended by any of the above circumstances or considerations.

5. We have heard the learned counsel for both the parties and perused the records very carefully. The facts of the case are that the applicants were transferred from Planning Commission to the Ministry of Programme Implementation in 1985. It was towards the end of 1987, when the applicants represented to the

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Planning Commission for protecting their avenues of promotion. On reconsideration of the matter by the Planning Commission, it was decided to treat their transfer on temporary loan basis instead of outright basis, implying that they would be repatriated to the Planning Commission as soon as possible. In this way, their promotional prospects have already been protected. The only issue for decision is whether they are eligible for drawing deputation (duty) allowance. The deputation (duty) allowance is defined in the Civil Services Regulation 23 A, which reads as under:-

"Deputation (duty) allowance is an allowance given, in addition to pay or salary, to an officer deputed on special temporary duty when such duty involves a decided increase of work or responsibility in comparison with the duties of his regular appointment."

The deputation (duty) allowance is akin to special pay being an addition to pay for compensation and increase in work and responsibility, though it is not defined as pay. The applicant on their transfer to the new Ministry were doing the same work which they were handling earlier in the Planning Commission. Thus, their duties were similar/identical to those which they were handling in their regular line of work. The transfer has not transformed their duties and work either qualitatively or quantitatively. Their deployment also cannot be said to be outside the normal field of deployment as they carried their work and posts with them. Even if, they are deemed to be on deputation to the Ministry of Programme Implementation, the nature and

content of work in the newly formed Ministry do not justify the payment of deputation (duty) allowance. In such cases, deputation can be without payment of any deputation allowance. No material has been brought to our notice which envisages payment of deputation (duty) allowance when there is no qualitative or quantitative change in the work content.

6. Accordingly, we are of the view that the claim for payment of deputation (duty) allowance, in the facts and circumstances of the case, is not justified. The application is, therefore, dismissed without any order as to the costs.

*I. K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER (A) 10/7/90

*T. S. Oberoi*  
10-7-90  
(T.S. OBEROI)  
MEMBER (J)