

CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2118/89
T.A. No.

199

DATE OF DECISION 8.6.1990.

Shri B. M. Nayyar

Petitioner

Shri J. P. Verghese

Advocate for the Petitioner(s)

Versus

Union of India through

Respondent

Secy., Min. of Surface Transport

& Others

Advocate for the Respondent(s)

Shri P. P. Khurana,

Counsel for the Respondents

CORAM

The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judi.)

The Hon'ble Mr. D. K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by Hon'ble
Mr. P. K. Kartha, Vice-Chairman)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have challenged the orders issued by the respondents recalling them from their deputation with the Inland Waterways Authority of India, placing them temporarily on the strength of the Ministry of Surface Transport, declaring them surplus and thereafter transferring them to Surplus Staff Establishment of the Ministry of Surface Transport, and placing their services at the disposal of other ministries/departments for redeployment pursuant to the revised scheme for redeployment of surplus staff prepared by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, in April, 1989.

2. The Union of India through the Ministry of Surface Transport has been impleaded as the first respondent, the Chief Engineer-cum-Administrator, Inland Water Transport Directorate is the second respondent, and the Director, Department of Personnel & Training, is the third respondent.

3. The Inland Waterways Authority of India Act, 1985 (hereinafter referred to as 'the Act') was enacted to provide for the constitution of an Authority for regulation and development of Inland Waterways. This Act was brought into force on 27.10.1986. Under Section 11 of the Act, all properties, assets of the Central Government for the purpose of Inland Water Transport Directorate and all debts, obligations and liabilities incurred in connection with the purpose of Inland Water Transport Directorate shall vest in the Inland Waterways Authority of India w.e.f. 27.10.1986. The Act envisaged transfer of the entire work of the Inland Water Transport Directorate to the said Authority.

4. The contention of the respondents is that the Inland Water Transport Directorate ceased to exist from 27.10.1986, while this has been disputed by the applicants. The applicants have also contended that the impugned orders issued by the respondents are tainted with arbitrariness and discrimination.

5. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. Section 11(f) of the Act which deals with the employees of the erstwhile Inland Water Transport Directorate, reads as follows:-

"As from such day as the Central Government may appoint by notification in the Official Gazette -

xxxx xxxx xxxx xxxx xxxx

(f) every employee holding any office under the Central Government immediately before such day solely or mainly for or in connection with such affairs of the Inland Water Transport

DR

....3...

Directorate as are relevant to the functions of the Authority under this Act shall be treated as on deputation with the Authority but shall hold his office in the Authority by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement or other terminal benefits as he would have held such office, if the Authority had not been constituted and shall continue to do so until the Central Government either on its own motion or at the request of the Authority, recalls such employees to its service or until the Authority with the concurrence of the Central Government, duly absorbs such employees in its regular service, whichever is earlier;

Provided that during the period of deputation of any such employee with the Authority, the Authority shall pay the Central Government in respect of every such employee, such contribution towards his leave salary, pension and gratuity as the Central Government may, by order, determine:

Provided further that any such employee, who has, in respect of the proposal of the Authority to absorb him in its regular service intimated within such time as may be specified in this behalf by the authority his intention of not becoming a regular employee of the authority, shall not be absorbed by the Authority in its regular service."

6. It will be seen from the aforesaid provision that [redacted] the employees who were working with the Inland Water Transport Directorate, stood transferred to the said Authority by operation of law.
7. The applicant, along with 23 other employees, did not opt for being absorbed in the said Authority.
8. The Inland Waterways Authority of India had sought for the repatriation of these employees at an early date. In the letter of the Chairman of the said Authority dated 10th April, 1989 addressed to the Secretary, Ministry of Surface Transport, it has been stated that as directed by the Ministry in their letter dated 30.3.1989, the concerned employees were asked to furnish their option for Surplus Cell for redeployment elsewhere. They were specifically informed that such of the persons for whom suitable vacancies

Q

were available in the subordinate office of the Ministry of Surface Transport, can be considered for absorption and in the remaining cases, they are liable to be surrendered to the Surplus Cell and their cases will be dealt with in accordance with the Central (Surplus Staff) Cell scheme contained in the DOP&T's O.M. dated 30.11.1987. A copy of the said scheme was made available to each of the concerned employees. The employees were also informed that the persons who do not wish to be absorbed in the Service of the said Authority and also do not opt for their willingness to go to the Surplus Cell for redeployment elsewhere, shall be terminated. The employees concerned did not give their option. The Chairman of the said Authority concluded by saying that the continuance of these employees would adversely affect the efficiency of its working. (Vide Annexure V to the counter-affidavit, page 95 of the paperbook).

9. The impugned orders under challenge in these applications were issued thereafter. On 7.6.1989, the respondents issued an order in pursuance of clause (f) of Sub-section(1) of Section 11 of the Act, whereby 24 officers and staff of the erstwhile Inland Water Transport Directorate on deputation with the Inland Waterways Authority of India were recalled and they were placed temporarily on the strength of the Ministry of Surface Transport w.e.f. 1.6.1989. On 17.11.1989, the respondents issued an office order in continuation of their earlier order dated 7.6.1989, whereby the services of 23 employees of the erstwhile Inland Water Transport Directorate were transferred to the Surplus Staff Establishment of the Ministry of Transport w.e.f. 1.8.1989/7.9.1989 till they are redeployed ~~in accordance with the revised scheme issued by the Department of Personnel & Training~~, in accordance with the revised scheme issued by the Department of Personnel & Training vide their O.M. dated 1st April, 1989.

10. The respondents have relied upon the decision of this Tribunal dated 28.5.1987 in CA-347/87 (Shri B.L. Chauhan & Others Vs. Union of India & Others). One of the contentions raised in the application was as to the validity of the transfer of 12 posts of I.W.T. Directorate along with the existing incumbents to the Ministry of Surface Transport. The Tribunal observed that the explanation given by the respondents in the counter-affidavit was convincing. The retransfer was necessitated consequent upon the merger of the Inland Water Transport Directorate in the Inland Waterways Authority of India and shifting of the Authority's office to NOIDA and with a view to dealing with the I.W.T. work in the Ministry. The Tribunal also upheld the selection of the employees retained in the Ministry for that purpose.

11. The learned counsel for the applicants drew our attention to an order dated 26th March, 1987 issued by the Ministry of Surface Transport whereby the respondents have taken 12 posts along with the incumbents of the Inland Water Transport Directorate on the strength of the Ministry of Surface Transport w.e.f. 20.2.1987. This is the same order the validity of which was upheld by this Tribunal in its judgement dated 28.5.1987 in Chauhan's case, mentioned above. It is also mentioned in para.3 of the order dated 26th March, 1987 that the incumbents of these posts shall continue to be on the strength of the Ministry of Surface Transport until they are absorbed in the Inland Waterways Authority of India.

12. In our opinion, the retention of a nucleus of staff in connection with the winding up of Inland Water Directorate cannot, be faulted. Ans

13. The Central Government has recalled the employees of the Authority who expressed their unwillingness to be absorbed in the regular service of the Authority. Their recall is legally permissible in view of the provisions of Section 11(f) of the Act. Though they were initially taken on the temporary strength of the Ministry of Surface Transport, the respondents have transferred them on the Surplus Staff Establishment with a view to redeploying them to the offices where vacancies exist. The concept of deemed deputation of employees, their absorption in the Authority on voluntary basis, and their recall from the Authority are in-built in the legislative scheme of things. Neither mala fides nor arbitrariness can be attributed to such legislative action. In our opinion, it will not, therefore, be appropriate for the Tribunal to interfere with the implementation of the policy underlying the legislation in question.

14. The sole question which required to be adjudicated upon in the present case is whether the redeployment of the applicants is being made strictly in accordance with the scheme prepared by the Department of Personnel & Training.

15. The salient features of the scheme for redeployment are the following:-

- (i) The scheme applies, inter alia, to Central Government Civil Servants who have been rendered surplus along with their posts as a result of abolition or winding up (in whole or in part) of an organisation of the Central Government.
- (ii) On transfer to the Surplus Staff Establishment, the surplus employees will continue to receive pay and allowances in their previous scales if they are relieved either to join another post or on their retirement, resignation, etc., whichever is earlier.

A

(iii) Every employee, as soon as he is declared surplus, should be informed of the availability of the facility of seeking voluntary retirement under the provisions of the C.C.S. (Pension) Rules, 1972 and FB-56. If a request for retirement under any of these rules is received, it should be processed expeditiously and orders for retirement should be issued as early as possible.

(iv) Every surplus employee will, while borne on the Surplus Staff Establishment, keep attending office and report to the officers designated for the purpose by the Ministry/Head of Department, regularly, except when he has been granted leave. While awaiting redeployment, a surplus employee may be given by his Head of Department/organisation or other superior authority, alternative duties or charge of work which he can be expected to perform conveniently, keeping in view his position, qualifications and experience.

(v) The past service rendered prior to redeployment, should not count towards seniority in the new organisation/new post which a surplus employee joins after he is redeployed.

(vi) A surplus employee who is permanent, will enjoy the protection of lien when redeployed/readjusted in a new organisation.

(vii) If a surplus employee is offered alternative placement but refuses to join such post, or wilfully fails to join the said post, within the period specified by the Appointing Authority of the new post, without showing adequate cause

On

for such failure and timely applying for extension of time for joining, his surplus post in the Surplus Staff Establishment should be abolished and further action for his redeployment may be closed. His services may be terminated after serving upon him a notice of termination in accordance with the relevant rules.

16. The apprehension of the applicants is that on their redeployment to other Ministries/Departments, wherever vacancies may occur, their service prospects will be adversely affected. In our opinion, while this may be true, the applicants have no legal right to claim that after they have been rendered surplus, they should be entitled to the benefit of the past service rendered prior to redeployment or other conditions of service which were applicable to them prior to redeployment. The scheme provides that, as far as possible, a surplus employee shall, subject to his suitability, be redeployed in a post carrying a pay-scale matching his current pay-scale. There are detailed provisions in regard to fixing of pay-scales if posts/matching pay-scales are not available. It has also been provided that normally a surplus employee will not be sponsored for appointment to a lower post within the first three months.

17. During the arguments, we have been informed that some of the persons who have been declared surplus, have joined the posts to which they have been redeployed. The applicants were brought on the Surplus Staff Establishment of the Ministry of Surface Transport w.e.f. 1.8.1989 by the office order dated 17th November, 1989. From 7th June, 1989 to 17th November, 1989, they must be deemed to have been on the

Q~

temporary strength of the Ministry of Surface Transport. The earlier scheme envisaged a grace period of six months after a person had been brought on the strength of the Surplus Staff Establishment at the end of which his services were to be retrenched by giving him notice. Under the present scheme, there is no such provision. However, we feel that a reasonable time should be given to the employees brought on the Surplus Staff Establishment to exercise their option for either accepting the posts to which they are sought to be redeployed, or to seek voluntary retirement. A reasonable period for this purpose, to our mind, would be six months from the date 17.11.1989, when the employees were brought on the Surplus Staff Establishment. By interim order dated 1.12.1989, this Tribunal had directed that the office order dated 17.11.1989 be kept in abeyance and that it will not be effective with respect to the persons mentioned therein. In the interest of justice, the applicants should be given at least ^a ~~a~~ period of six months within which they should exercise their option. The respondents shall offer to the applicants suitable jobs in which they could be redeployed during the said period of six months and in case the applicants are not willing to join the posts offered to them, they may be treated to have exercised their option for voluntary retirement without any further formalities or pre-conditions. They would also be entitled to proportionate pension, gratuity and other retirement benefits under the relevant rules.

18. In the facts and circumstances of the case, we partly allow the application and order and direct as follows:-

- (i) We uphold the validity of the impugned decision of the respondents to recall the applicants who were on deputation, to the Inland Waterways Authority of India and to place them temporarily

On

on the strength of the Ministry of Surface Transport and thereafter, to transfer them to the Surplus Staff Establishment of the Ministry of Surface Transport with a view to their redeployment in suitable posts wherever vacancies are available.

(ii) The few employees who have been retained in the Ministry of Surface Transport in connection with the ~~existing~~ complete winding up of the Directorate, should be absorbed in the Inland Waterways Authority of India, as soon as practicable. In case the respondents intend to absorb them in the Ministry of Surface Transport, the suitability of all the recalled employees who may still be in service after their redeployment, should also be considered in accordance with their seniority and length of service.

(iii) The respondents shall make fresh offers to the applicants of suitable jobs on redeployment in posts commensurate with their existing pay-scales, as far as possible, within a period of six months from the date of communication of this order. It is open to the applicants to exercise their option to accept the jobs offered to them during this period. If the applicants express their unwillingness to accept the jobs offered to them within a period of one month from the date of receipt of the offer, or if they do not exercise any option during the said period, they would be deemed to have opted for voluntary retirement. The respondents shall, in that event, process

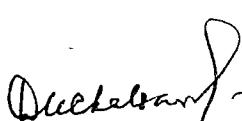
On

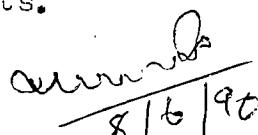
the cases of the applicants accordingly after dispensing with the usual formalities or pre-conditions to the extent possible. The respondents shall also release to the applicants proportionate pension depending on the length of service, and other retirement benefits on the basis of the last pay drawn by them while they were on deputation to the Inland Waterways Authority of India, as expeditiously as possible. They would also be entitled to the benefit of addition of period not exceeding five years to the qualifying service for the purpose of pension, as provided for in Rule 48-B of the C.C.S. (Pension) Rules, 1972, if they are otherwise entitled to the same.

(iv) In the interest of justice and equity, we direct that the respondents shall pay to the applicants pay and allowances on the basis of the last pay and allowances drawn by them for the period from 1.12.1989 to the date of passing of this judgement during which period, we had stayed the operation of the impugned office order dated 17th November, 1989. The amounts due, in this behalf should be released within a period of six weeks from the date of communication of this order.

(v) The interim orders passed in the main application are hereby vacated.

The parties will bear their own costs.


(D.K. Chakravorty)
Administrative Member
876/490


8/6/90
(P.K. Kartha)
Vice-Chairman (Judl.)