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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.559/89

Date of decision:23.01.92

Shri Bhim Singh & ors.

....

Applicants

Versus

Union of India & ors.

....

Respondents

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THE HON'BLE MR.JUSTICE RAM PAL SINGH, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K.CHAKRAVORTY, MEMBER(A)

For the Applicants

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Shri S.C.Gupta, Senior
Counsel with Shri L.R.
Goel & Shri Mukesh Gupta,
Counsel.

For the Respondents

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Shri P.P.Khurana,
Counsel.

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR.D.K.CHAKRAVORTY, MEMBER)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, by 100 applicants who were working in the Directorate of Agricultural Aviation under the Ministry of Civil Aviation as Group B,C & D employees variously designated as Senior Radio Mechanic, Helicopter Mechanic, Store Supervisor, Welder, Fitter Grade II, etc., have challenged the notification dated 18.1.1988 declaring them to be on deputation without their consent and notification dated 1.3.1989 whereby the same illegal deputation was extended. The applicants have inter alia sought for the following reliefs:-

- (i) to declare impugned notifications dated 18.1.1988 and 1.3.1989 as illegal and quash the same.

(ii) to direct the respondents to place the applicants back to their original department.

(iii) in the alternative, to direct the respondents to grant the applicants reasonable amount as deputation allowance with effect from 18.1.88 or to grant the applicants pay at par with the pay drawn by the corresponding level of regular employees in M/s. Vayudoot Limited.

2. The brief facts of the case are as follows. The Directorate of Agricultural Aviation, whose functions are mainly locust control and aerial spraying of crops against pests and diseases on requests from the State Governments and other agencies and undertaking aerial seeding and development work, was transferred from the Ministry of Agriculture to the Ministry of Civil Aviation with effect from 27.4.1987. In terms of the impugned notification dated 18.1.1988, these functions were transferred to M/s.Vayudoot Limited with immediate effect. Under the same order, the services of the officers whose particulars were given in the statement attached thereto, were placed at the disposal of M/s.Vayudoot Limited on deputation, without deputation allowance with immediate effect and for a period of one year. The applicants have contended that an officer cannot be sent on deputation without his consent and if he is sent on deputation, he is entitled to receive the deputation allowance. No option was given by any of the applicants, nor were they ever informed at any time that there was any likelihood of their ~~services~~ being placed at the disposal of M/s.Vayudoot Limited. The applicants protested against this notification but they were told that as the deputation was to be for a period of one year only, it will be in the interest of the Government if they did not agitate the matter. However, instead of placing ^{back} the applicants with their

parent department on 18.1.1989, the Ministry of Civil Aviation issued another notification dated 1.3.1989 which was in continuation of the earlier impugned notification dated 18.1.1988, whereby the period of the illegal and invalid deputation had been further extended by one year. The applicants immediately protested against the said impugned extension and several representations were made to all concerned. The grounds on which the applicants have sought the reliefs are that the action of the respondents in treating the applicants to be on deputation without ^{obtaining} their consent and against their will is patently illegal and violative of the principles of natural justice; not granting of any deputation allowance is illegal; extension of the period of deputation by one more year without their consent and against their will is liable to be quashed; and that the denial of higher salary, as is available in M/s.Vayudoot Limited for the same level of posts and the same kind of work, was violative of the principle of **equal pay for equal work**.

3. In the Misc.Petition moved on behalf of the Respondent No.3(M/s.Vayudoot Ltd.), it was prayed that they are not covered within the purview of the Administrative Tribunals Act, 1985 and their name may be ordered to be deleted from the array of the respondents. The Misc. Petition was allowed.

4. In the reply filed by the Union of India and Directorate of Agricultural Aviation(Respondents 1 and 2), it has been contended that under letters dated 18.1.1988 and 11.4.1989, 187 officers and staff were transferred to M/s. Vayudoot Limited 'on notional deputation' (without deputation allowance) as interim administrative arrangement under FR 110 for an initial period of one year and thereafter for another one year or till the terms and conditions of the permanent transfer/merger of the Directorate and its employees are finalised. The terms and conditions relating to fixation of pay

in appropriate scales of pay, allowances and other benefits admissible to its employees on absorption were under finalisation and the employees of the directorate will be free to convey their option of acceptance or otherwise to these terms and conditions and those not accepting the same will be put in the Surplus Cell of the Department of Personnel/Ministry of Civil Aviation. They will also be entitled to receive appropriate pensionary benefits. It has been contended that the notifications do not violate any settled principles of law and natural justice or any fundamental rights of the applicants being an interim administrative arrangement made by the Government under the provisions of Fundamental Rule 110(a) for carrying out the functions of Agricultural Aviation by M/s. Vayudoot Limited who have been entrusted with such duties under the decision of the Cabinet. Transfer to foreign service without any deputation allowance ^{in consonance} is also entirely ⁱⁿ with the provision of FR 110(b). For such deputation on foreign service to an organisation substantially controlled by Government of India, no prior consent is required to be taken, nor any option has to be obtained, nor any advance information is required to be given before sending on notional deputation when the entire organisation is being merged with another agency ⁱⁿ accordance with the decision of the Cabinet. The employees on notional deputation are being paid normal remunerations on the same terms and conditions as were applicable to them before such transfer and they cannot be paid salary on equal footing with other regular employees of M/s. Vayudoot whose pay structure is in fact different from that of the Government employees.

5. We have heard Shri S.C. Gupta, ^{learned} / Sr. Counsel for the applicants and Shri P.P. Khurana, learned counsel for the respondents. We have also carefully gone through

the records of the case.

6. The learned counsel for the applicants relied upon the judgement of the Delhi High Court in the case of Shri Prem Praveen Vs. U.O.I & ors (1973(2) SLR 659) wherein it has been held that a Government servant who has been recruited to a particular cadre, cannot be compelled against his wish to serve outside his cadre. He also relied upon the judgement of the Gujarat High Court in the case of Bhagwati Prasad Gordhandas Bhatt Versus the State of Gujarat & ors. (1977(2) SLR 551) wherein it has been held that it is inconceivable that deputation can be ordered without the consent of the concerned employee. He strongly rebutted the contention of the respondents that a Government servant can be transferred to foreign service without his consent under proviso to FR 110(a). He contended that FR 110 has to be read together with FR 111 along with definition of foreign service and local fund as given in FR 9(7) and FR 9(14). The relevant FRs are reproduced below:

" F.R. 110(a) No Government servant may be transferred to foreign service against his will: Provided that this sub-rule shall not apply to the transfer of a Government servant to the service of a body, incorporated or not, which is wholly or substantially owned or controlled by the Government.

(b) Transfer to foreign service outside India and in India may be sanctioned by the Central Government subject to any restrictions, which it may deem fit to impose by general or special order.

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F.R.111. A transfer to foreign service is not admissble unless-

- (a) the duties to be performed after the transfer are such as should, for public reasons, be rendered by a Government servant; and
- (b) the Government servant transferred holds, at the time of transfer, a post paid from General Revenues, or holds a lien on a permanent post, or would hold a lien on such a post had his lien not been suspended.

F.R.9(7) Foreign Service means service in which Government servant receives his pay with the sanction of Government from any source other than the Consolidated Fund of India or the Consolidated Fund of a State or the Consolidated Fund of a Union Territory.

F.R.9(14) Local Fund means-

- (a) revenues administered by bodies which by law or rule having the force of law come under the control of Government, whether in regard to proceedings generally or to specific matters, such as the sanctioning of their budgets, sanction to creation or filling up of particular posts, or the enactment of leave, pension or similar rules; and
- (b) the revenue of any body which may be specially notified by the President as such. "

According to the learned counsel for the applicants, proviso to Fundamental Rule 110(a) is not applicable in the instant case as M/s. Vayudoot Ltd. is neither a body wholly or substantially owned by Government, nor is it a local fund as defined in FR 9(7) administered by Government. He also contended that the provision

of FR 110(a) is not applicable in the case of the applicants as the duties entrusted to them by M/s.Vayudoot Ltd. cannot be considered such as should, for public reasons, be rendered by a Government servant.

7. The learned counsel for the applicants, however, stated that although the impugned orders dated 18.1.1988 and 1.3.1989 are patently illegal, since the applicants have already been reverted to their parent department/Surplus Cell, what is of primary importance is a finding on the prayer for grant of deputation allowance to the applicants along with arrears for the period they were on foreign service. Further, after reversion to the Department of Civil Aviation, 8 Engineers and 6 Pilots have been surrendered to the Surplus Cell although some of their juniors have been retained in the department. He contended that while surrendering officers to the Surplus Pool, the principle of **last come, first go** must be observed. As this has not been done in respect of some of the applicants, the respondents may be directed to absorb senior persons in the department in preference to their juniors.

8. The learned counsel for the respondents argued that since the entire work of the Directorate of Agricultural Aviation stood transferred to M/s.Vayudoot Ltd, the duties entrusted to the applicants, while on foreign service, are squarely what were to be performed by a Government servant and, therefore, there was nothing illegal in sending the applicants to foreign service without obtaining their consent. Further, the applicants did not have any legal right for claiming deputation allowance. He, however, fairly admitted that what was to be an interim administrative arrangement for only

one year, got extended for a longer period despite the written protests and representations from the applicants. As regards 14 applicants surrendered to the Surplus Cell, learned counsel for the respondents agreed that in case any of their juniors has been retained in the Ministry, the matter would be examined and the principle of **last come first go** would be strictly observed.

9. We note that M/s. Vayudoot Limited is not a company whose shares are directly held by the Government of India. It is owned by Air India and Indian Airlines which are statutory corporations wholly owned by the Government. The legal status of M/s.Vayudoot is, therefore, different from that of other public enterprises or bodies wholly or substantially owned or controlled by Government. The contention of the respondents that duties entrusted to the applicants, while they were on foreign service with M/s.Vayudoot Limited, were such as are to be performed by a Government servant also raises many complicated issues especially in the context of the submissions made in the additional affidavit (annexure to the application, page 617). However, we do not consider it necessary to give a finding on the legality or otherwise of the impugned orders dated 18.1.1988 and 1.3.1989 in the light of the submissions made by the learned counsel of both sides. The admitted fact is that the applicants have worked for long periods, against their will, on foreign service with M/s. Vayudoot Limited from 18.1.1988 onwards till their reversion back to the Ministry of Civil Aviation/ Surplus Cell. It will be only just and fair to allow them compensation in the form of deputation allowance, as per normal Government rules, for the period of their foreign service. The alternative prayer for granting the applicants pay at par with the pay drawn by the corresponding level of employees of M/s.Vayudoot is rejected.

10. The matter as regards retention/posting back in the Ministry of those applicants who might have been surrendered to the Surplus Cell while retaining their juniors in the Ministry should be examined afresh by the respondents and the principle of **last come first go** should be strictly followed.

11. In the conspectus of the facts and circumstances of the case, we order and direct as follows:-

- (i) The respondents shall grant deputation allowance to the applicants as per rules for the entire period during which they worked on deputation on foreign service with M/s. Vayudoot Limited; and
- (ii) The respondents shall re-examine the case of the officials, who might have been surrendered to the Surplus Cell, strictly in accordance with the principle of **last come first go** and in case any of their juniors have been retained in the Ministry, the seniors be posted back to the Ministry.

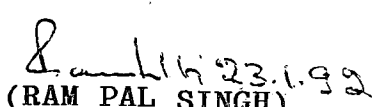
These directions shall be complied with by the respondents within a period of three months from the date of receipt of this order.

There will be no order as to costs.


(D.K. CHAKRAVORTY)

MEMBER

23/1/1992


(RAM PAL SINGH)

VICE CHAIRMAN