



CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO.060/00594/2020
(Reserved on: 28.09.2020)
Pronounced on: 04.11.2020

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

Tushar Kanti Behera, IFS, aged 47 years, S/o Sh. Ganeswar Behera, presently working as Chief Conservator of Forests, Department of Forests and Wildlife Preservation, Government of Punjab, Forest Complex, Sector 68, SAS Nagar (Mohali)-140308 (Group-A).

.... Applicant

(BY ADVOCATE: MR. ASEEM RAI)

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Environment, Forests and Climate Change, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003.
2. State of Punjab through the Additional Chief Secretary, Department of Forests and Wildlife Preservation, Government of Punjab, Mini Secretariat, Sector 9, Chandigarh-160009.
3. Principal Chief Conservator of Forests, Department of Forests and Wildlife Preservation, Government of Punjab, Forest Complex, Sector 68, SAS Nagar (Mohali)-140308.

Respondents

(BY ADVOCATE: MR. SANJAY GOYAL, Sr.CGSC FOR R.NO.1.
MS. ANU CHATRATH, SR. ADVOCATE WITH
MR. RAKESH VERMA, ADVOCATE, FOR R.NO.2&3)



ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has approached this Tribunal for invalidation of order dated 24.08.2020 (Annexure A-5) vide which applicant has been transferred from the post of Chief Conservator of Forests (Plains) to Chief Conservator of Forests, Punjab Bureau of Investment Promotion (PBIP) on deputation, without his consent and against a non-existent/ex-cadre post and for issuance of direction to the respondent to post him against any of the existing cadre posts of Chief Conservator of Forests in accordance with Rules 8 and 9 of the Indian Forest Service (Cadre) Rules, 1966.

2. Before touching upon the issues raised, let us have a bird's eye view of the facts of this case. The applicant is a Member of Indian Forest Service (IFS) of 1999 batch of Punjab Cadre. He was promoted from the rank of Conservator of Forests (COF) to the rank of Chief Conservator of Forests (CCOF) in the pay matrix (Level 14), Rs.1,44,200-2,18,200 vide order dated 16.11.2018 (Annexure A-1) and posted against a cadre post of CCOF (Plains) vide order dated 4.1.2019 (Annexure A-2). It is submitted that as per Notification dated 16.9.2015 (Annexure A-3), there are only 6 cadre posts of CCOF. His Wife Smt. Pratima Srivastava is also an IFS Officer. Vide order dated 27.6.2019, his wife was sought to be transferred / posted against a non-existent/non-cadre post and applicant was sought to be adjusted against her place. Both of them filed O.A.No.060/73/2019 in this Tribunal and during its pendency,



the order was modified inasmuch as he was ultimately posted as CCOF (Plains) vide order dated 17.8.2019 (Annexure A-5). Against all the 6 cadre posts of (1) CCOF (Hills) (2) CCOF (Plains) (3) CCOF (Working Plan, Monitoring & Evaluation), (4) CCOF (FC Act cum Nodal Officer), (5) CCOF (IT & E Governance) and (6) CCOF (Wildlife) Sh. Saurav Gupta, Sh. T.K. Behera, Smt. Pratima Srivastava, Sh. Charchil Kumar, Sh. Harsh Kumar and Sh. Basanta Raj Kumar are working.

3. The grievance of the applicant is that hardly one year has passed after aforesaid posting that vide impugned order dated 24.8.2020 (Annexure A-5), he has been transferred from the post of CCOF (Plains) to a non-existent/ex-cadre post in Punjab Bureau of Investment Promotion (PBIP) and in his place one Sh. Basanta Raj Kumar has been given additional charge of the post of CCOF (Plains) and as such it is illegal and arbitrary, hence the O.A.

4. The applicant claims that the impugned order deserves to be invalidated primarily on two counts namely that as per Rule 8 and 9 of the Indian Forest Service (Cadre) Rules, 1966 (for short "Cadre Rules of 1966"), only a cadre officer can be posted against a cadre post and as per Rule 8 (3) thereof, even if a cadre officer is to be posted against ex-cadre post, beyond the number of posts so specified, it can be done only with the prior approval of the Central Government, which has not been done in this case. He contends that under the Cadre Rules, ex-cadre posts can be created to meet exigency of requirement of such posts based on an objective assessment of the nature of duties and responsibilities of such ex-cadre post.



Secondly, in terms of Rule 7 of the Cadre Rules of 1966, All appointments of cadre officer shall be made on the recommendation of the Civil Services Board (CSB) and as per rule 7 (4) thereof, the tenure of posting is for at least two years and as per rule 7 (5) thereof, the competent authority may transfer a cadre officer before the minimum specified period on the recommendation of the CSB. It is submitted that in this case the applicant has not completed tenure of two years and in any case before his transfer, neither permission of CSB was taken nor it was done with the approval of the competent authority. The reliance in that connection is also placed upon decision of Hon'ble Supreme Court in the case of **T.R. SUBRAMANIAN AND OTHERS VS. UOI ETC.** AIR 2014 SC 263.

5. The contesting Respondents No.2&3 have filed a joint reply. They plead that the applicant has been transferred in the public interest and exigencies of State Government to the post of CCOF (PBIP). This post has been duly created by the State Government to facilitate one stop clearance of all the development projects in the State by taking officers of various departments to the PBIP, which is well within its power and competence, vide order dated 6.12.2013 (Annexure R-2). They submit that a number of senior officers have worked on this post in the past since 2014 onwards. This post became available on 31.5.2020 on superannuation of Sh. D.V. Ratna Kumar, IFS (Additional PCCF). There is no change of Headquarter. The applicant has been shifted from Sector 68, Mohali to Sector 17, Chandigarh. They submit that although the post does not exist in the parent department of the applicant, but the right to post an IFS officers in PBIP vests with the parent Department of



Forest and Wildlife Preservation, Punjab. They submit that CSB has not been constituted till date and all transfers are made on administrative grounds, without prejudice to the officers/applicant.

6. The respondents have also placed on record certain documents vide M.A.No.060/885/2020 to indicate that applicant has been posted as CCOF (PBIP) which is in addition to cadre posts of CCOF, as is apparent from letter dated 22.4.2014 (Annexure R-3). The applicant has also been issued a charge-sheet under rule 8 of the All India Services (Discipline and Appeal) Rules, vide letter dated 19.8.2019, as per Note dated 19.8.2020 (Annexure R-4). Sh. Basanta Raj Kumar, IFS, has assumed the charge of the post of CCOF (Plains) on 25.5.2020 as per Joining Report (Annexure R-5). It is submitted that as per rule 7.3 of All India Services Rules, consent is not required for posting of an IFS Officer against a State Deputation post. The transfer was ordered by concerned Forest Minister and as such there is no illegality.

7. We have heard the learned counsel for the parties at length and examined the material on the file with their able assistance, including the written submissions made by learned counsel for the applicant.

8. Mr. Aseem Rai, learned counsel for the applicant vehemently argued that in terms of the decision of the Hon'ble Apex Court in the case of T.R. Subramanian (supra), the respondents are under obligation to constitute a CSB and only on recommendation of such CSB transfer and posting of the IFS officers can be done by the respondents. Since the respondents



have not yet constituted any CSB, so transfer of the applicant being illegal and arbitrary is liable to be quashed and set aside. He then argued that even otherwise the post against which the applicant has been posted is non-existent as it could be created only for a total period of 5 years, which period has already expired and in any case his consent has not been taken for a transfer to an ex-cadre post. He thus submits that the impugned order, Annexure A-5 be quashed and set aside. On the contrary, Ms. Anu Chatrath, Sr. Advocate, learned counsel for Respondents No.2&3 submits that the applicant has been transferred on the orders of the Competent Authority (Forest Minister) and non-existence of CSB would not make any difference at all as it is within the power and authority of the competent authority to post an officer even before the tenure of 2 years. It is also submitted that the charge of the post from which applicant has been shifted has already been given to some other officer and the post to which he has been shifted is part and parcel of the cadre strength and as such there is no illegality in order of transfer.

9. We have considered the submissions made by both sides minutely.

10. As is apparent from pleadings, two basic issues fall for our consideration in this O.A., firstly is as to whether the respondents can order transfer of the applicant without recommendation of the CSB in terms of decision of the Hon'ble Apex Court in the case of **T.R. SUBRAMANIAN AND OTHERS** (supra) and secondly, as to whether posting of the applicant is



against an ex-cadre/non-existent post and can it be done without his consent or not?

11. We proceed to deal with the first issue raised by the applicant regarding transfer of the applicant that since it was done without consultation with the CSB, so it is not tenable. It is admitted position at all hands that considering the mandate of Rule 7 of the Cadre Rules of 1966, all appointments of cadre officers are to be done on the recommendations of the CSB. As per sub rule (4) of these rules tenure of posting of IFS is for at least two years. However, sub Rule (5) provides that the competent authority may transfer a cadre officer before the minimum specified period on the recommendation of the CSB. Para 7 ©(iii) of the Cadre Rules of 1966 provides that an officer may be transferred before the minimum prescribed tenure only on the recommendation of a committee on Minimum Tenure as specified in the Schedule annexed to these rules. However, it is also more than clear that where CSB is not constituted, as is the case in hand, then in terms of the decision of Hon'ble Apex Court in the case of **T.R. SUBRAMANIAN** (supra), an officer can be transferred and posted on the directions/approval of the Competent Authority, provided reasons are recorded therefor. In this case, the transfer of the applicant has been effected by Competent Authority (Minister of Forest) for the reasons that a charge sheet was issued to the applicant. It can thus be seen that he has been shifted to a new post for lawful reason which cannot be interfered on the plea that it has been done without recommendation of the CSB. Therefore, the challenge of the applicant to his transfer on this ground that it was done without



consultation with CSB is not tenable and is, therefore, rejected being bereft of any merit.

12. Now we proceed to consider the second issue raised in this case qua posting of the applicant against an ex-cadre post. It would be useful to refer to the relevant rules in this connection. Rule 4 of the Cadre Rules of 1966, as amended from time to time deals with the strength of cadres. The same is reproduced as under :-

"4. Strength of Cadres.

-4(1) The strength and composition of each of the cadres constituted under rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Governments in this behalf.

4(2) The Central Government shall, at the interval of every five years, re-examine the strength and composition of each such cadre in consultation with the State Government concerned and may make such alterations therein as it deems fit: Provided that nothing in this sub-rule shall be deemed to effect the power of the Central Government to alter the strength and composition of any cadre at any other time:

Provided further that the State Government concerned may add for a period not exceeding two years, and with the approval of the Central Government for a further period not exceeding three years to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts."

The Government of India's instructions under Rule

4 (2) are also reproduced as under :-

1.1 Under Second Proviso to sub- rule 2 to Rule 4 of the cadre rules, the State Government is competent to add for a period not exceeding two year, and with the approval of the Central Government for a further period not exceeding three years to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts. Doubts have been raised whether such posts are to be considered as cadre posts or as ex-cadre posts against the State Deputation Reserve. It is hereby clarified that the posts which are created in exercise of the powers of the State Governments under the second proviso under sub-rule 2 of rule 4 of the cadre rules are to be counted as temporary cadre posts added temporarily to the cadre schedule and as such, they are not to be counted against the State Deputation Reserve. However, only such posts which are created for increasing the number of posts with a particular designation already included in the cadre schedule would be counted in this category.

1.2. On the other hand, if a post with a particular designation does not figure in the cadre schedule, it cannot be created by invoking this power. It can be created as per necessity by the State Government under their inherent powers and the members of the All India Services cannot be deployed to such a post unless a declaration is made that the post is equal in status and responsibility to a post mentioned in Schedule III to the respective Pay rules under Sub-Rule



1 of rule 9 of the same Rules. However, for sufficient reasons to be recorded in writing such a declaration may be dispensed with vide sub-rule 4 of rule 9 of the respective Pay Rules.

1.3. Neither a post which is declared equivalent in status and responsibility to a post included in the pay schedule, nor a post in respect of which such a declaration has been dispensed with, is a cadre post. Such a post is to be counted against the State Deputation Reserve. Apart from these posts, the other kinds of posts which are to be counted against the State Deputation Reserve are as follows:-

(i) Posts under the Government of a State other than the one on the cadre of which the officer is borne.

(ii) Posts under a Company, Association or a body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or a State Government or a Municipal Corporation or a local body, other than the cadre post of a State Cadre on which the officer is borne.

1.4. Central Deputation Reserve will continue to be constituted of the posts under the Central Government.

1. 5. To this extent, the orders of Government of India vide DOP&AR letter no. 4/12/70-AIS(I), dated 26.5.71 stand modified.

1.6. These instructions may be brought to the notice of all members of the service. [DOPT letter no.11033/1/98-AIS(II), dated 23.4.1999]

2.1. Reference this Department's letter dated 23rd April 1999 on composition of Central and State Deputation Reserve - posts in the international organisation or autonomous bodies not controlled by the Government or a private body were decided to be counted against the State Deputation Reserve in Para 3(iii) of the above mentioned letter, whereas vide letter dated 16th April, 1975, it was decided, at the instance of the State Government, that such posts would be counted against the Central Deputation Reserve as it led to overutilization of the State Deputation Reserve and the deputation of member of the All India Service to these posts in arranged by the Government of India and accordingly officers holding posts in such organisation should be counted against the Central Deputation Reserve.

2.2. It is, therefore, decided that posts under international organisation or autonomous bodies not controlled by the Government of India or a private body would continue be counted against the State Deputation Reserve as stated vide letter dated 16th April 1975.

2.3. To this extent, even number letter of Government of India issued on April 23, 1999 stands modified. [DOPT letter no. 11033/1/98-AIS(II), dated 6th August 1999.]

3. The undersigned is directed to Ministry of Environment and Forest's O.M. No.12026/5/98- IFS.I dated 2nd June 1999 on clubbing of deputation tenure against posts in Autonomous bodies and forestry posts under the Central Staffing Scheme of Ministry of Environment and Forests and to state that vide letter dated 16th April 1975, it has been decided that posts under international organisation or autonomous bodies not controlled by the Government or a private body counted against Central Deputation Reserve. Accordingly, the provisions of "cooling off" over all ceiling of 7 years outside the State for CSS and non CSS posts shall not come for these posts as well."

Rule 8 of the Cadre Rules of 1966 reads as under :-

"8. Cadre and ex-cadre posts to be filled by cadre officers

(1) Save as otherwise provided in these rules, every cadre post shall be filled by a cadre officer.



(2) A cadre officer shall not hold an ex-cadre post in excess of the number specified for the concerned State under item 5 of the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966.

(3) The State Government may, with the prior approval of the Central Government, appoint a cadre officer to hold an ex-cadre post in excess of the number specified for the concerned State in item 5 of the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 and for so long as the approval of the Central Government remains in force, the said ex-cadre post shall be deemed to be an addition to the number specified in item 5 of the said Schedule."

13. Rule 2 of the IFS (Cadre) Amendment Rules, 2014 being relevant is also reproduced as under :-

"2. In the Indian Forest Service (Cadre) Rules, 1966,-

(a) for rule.7, the following shall be substituted, namely:—

"7. Postings.—(1) All appointments of cadre officers shall be made on the recommendation of the Civil Services Board as specified in the Schedule annexed to these rules.

(2) All appointments to cadre posts referred to in sub-rule (1) shall be made—

(a) in the case of a State Cadre, by the State Government; and

(b) in the case of a Joint Cadre, by the State Government concerned:

(3) A cadre officer, appointed to any cadre post shall hold the office for at least two years unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months.

(4) A cadre officer, appointed to any ex-cadre post shall hold office for such period as may be specified by the State Government for that post, unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months.

(5) The Central Government or the State Government as the case may be, may transfer a cadre officer before the minimum specified period on the recommendation of the Civil Services Board as specified in the Schedule annexed to these rules:

Provided that the Competent Authority may reject the recommendation of the Civil Services Board by recording the reasons therefore."

Provided that the Competent Authority may reject the recommendation of the Civil Services Board by recording the reasons therefor.

(b) 7A. Overriding effect :- These rules shall have effect notwithstanding anything contrary contained in any other notifications for the time being in force".



14. It is clear from the Rules and Regulations that under the Cadre Rules, ex-cadre posts can be created to meet emergency requirement based on an objective assessment of the nature of duties and responsibilities. These Rules have been made to restrain the State Governments from exercising any arbitrary or discriminatory power and to prevent them from transferring and posting IFS Officers as per their whims and fancies. Creation of ex-cadre posts without any objective assessment or requirement would result in humiliation of senior officers apart from this being a drain on the public exchequer. The Hon'ble Supreme Court in the case of **UNION OF INDIA VS. R.S. CHOPRA** [2002(6)SCC 381] has held that creation of excess ex-cadre posts by the State Government than permitted by rules is contrary to law and such posts do not exist in the eye of law. Therefore the holder of such a post cannot claim pay scales of the post. The State Government's action in creating a number of ex-cadre posts in an artificial manner, without getting the approval of the Council of Ministers, to favour junior officers is arbitrary and illegal violating Articles 14, 16 and 21 of the Constitution of India.

15. The Court would like to accept the plea of learned counsel for the applicant that the State Government cannot create posts for more than 2 years and with the permission of Government of India for another 3 years and the Central Government does not have the power to keep the ex-cadre posts alive for more than the stipulated period until and unless the Government of India in consultation of the State Government increases the cadre strength. In terms of Rule 4 (2) of Cadre Rules of 1966 and IFS (Fixation of Cadre Strength) Fourth

Amendment Regulation, 2015, the Schedule for State of Punjab issued on 16.9.2015 is as under :-



1	Total Seniority Duty Posts	38
2	Central deputation reserve not exceeding 20% of item 1 above	7
3	State Deputation Reserve not exceeding 25% of item 1 above	9
4	Training reserve not exceeding 3.5% of item 1 above	1
5	Leave reserve and Junior posts reserve not exceeding 16.5% of item 1 above	6
6	Posts to be filled by promotion under Rule 8 of Indian Forest Service (Recruitment) Rules 1966 not exceeding 33-1/3% of item 1,2,3 and 4 above	18
7	Posts to be filled by Direct (Item 1+2+3+4+5-6)	43
	Total authorized Strength (Item 6+7 above)	61

Admittedly, the competent authority amended the Indian Forest Service (Pay) Rules, 2007, vide notification dated 16.9.2015, subsequent to the creation of the post of CCOF (PBIP) on 5.12.2013 but strangely this indicated post does not find a mention in Notification dated 16.9.2015 in which only Six Cadre Posts are mentioned.

16. The respondents have tried to explain that as on 24.8.2020 there were 9 posts of State Deputation Reserve which includes the post of CCOF (PBIP) to which the applicant has been posted. However, it is not in dispute that the State Government is well within its power and authority to create extra posts for a limited period only and in this case the post against which applicant has been posted was created for 3 years which could be extended for a further period of two years with approval of Central Government. The record suggests that the post has been created by the State Government for one stop clearance of all the development projects in the State by taking officers of various departments to the PBIP vide order dated 6.12.2013 (Annexure R-2). First of all this post could be in existence only



for two i.e. upto 5.12.2015 and with the approval of Central Government for a further period of 3 years i.e. upto 5.12.2018. In this case the approval of Central Government is admittedly not available. Even if it is assumed for the sake of argument only that there was approval even then such post stood abolished automatically after 5.12.2018. In other words, it is a non existence post after that date and posting of the applicant in 2020 against that post is apparently void ab initio. This issue is no longer res-integra.

17. Central Administrative Tribunal, Hyderabad Bench, while considering similar issue of creation of more posts than authorized strength of IAS Cadre in the case of **MD. SHAFIUZZAMAN VS. STATE OF A.P. ETC.** OA 307/07 & MA 449/08 decided on 18.3.2009, has held that the provision was made to meet the sudden and immediate need for extra posts carrying duties and responsibilities analogous to cadre posts subject to the condition that such posts will be held by cadre officers only. In actual practice occasions for resorting to this provision will be rare and ordinarily the need for such extra cadre post is not for a period exceeding one year. If the need for such extra cadre posts is for a period exceeding one year generally the need is considered to be a permanent one unless the State Governments are certain that they will not need such post beyond a particular fixed period not exceeding three years in all. Therefore, steps should be taken for the inclusion of such post in the permanent cadre on the expiry of one year. The idea is that by including such posts in the permanent cadre, the State Government will be able to assess correctly their needs for recruitment on the basis of the competitive examination. It was



held that an extra post (carrying duties and responsibilities analogous to cadre) can be temporarily added to the cadre when a cadre officer is available to man such posts. The posts which are ex-cadre of IAS/IPS cadre are to be manned by cadre officers and to be counted against deputation reserve provided in the cadre. State Governments are not competent to exceed the number of posts specified against relevant items. It was held that the only conclusion that one can draw is that the State Governments are not competent to create ex-cadre posts beyond the limit stipulated in the schedule to IAS (Fixation of Cadre Strength), Regulations, 1955, without the prior sanction of the Central Government. On equivalency of a post, the Court has held that the Government must apply its mind to the nature and functions attached to the non-cadre post and determine the equivalence. Their pay attached to the non-cadre post is not material. Courts have held that "the nature and responsibilities of the functions and duties remaining the same, the equivalence which is a matter of objective assessment cannot vary from time to time". The Court also referred to the case of **K.L. MANHAS VS. UNION OF INDIA & OTHERS**, of this very Bench which has held that declaration of equivalence of posts in sine qua non to the making of an order appointing a member of service to a post other than a post specified in Schedule III of the Pay Rules.

18. The Court also framed questions as to whether the ex-cadre posts in excess of State Deputation Reserve can be termed illegal & Whether ex-cadre posts existing for more than 2 years without approval of Govt. of India can be termed illegal to which the answer was that the State Government's powers with regard to creation of temporary ex-cadre posts is subject to certain



limitations. There is restriction on the powers of the State Government for the creation of ex-cadre posts as the number of such posts is not to exceed the number shown against deputation reserve in the cadre. Ex-cadre posts can exceed the number shown in the fixation of cadre strength Regulations against State Deputation Reserve to the extent prior approval of the Government of India is obtained. But this sub-rule has to be read along with the proviso that no ex-cadre post can be continued beyond 5 years under any circumstances. State Government can normally create ex-cadre posts up to the permissible limit only as specified in the Regulations against the State Deputation Reserve. This number can be exceeded as per the second proviso to Rule-2 of the IAS (Cadre) Rules for 2 years without the permission of the Govt. of India and upto a maximum of 5 years with the prior approval of the Govt. of India. This provision should be used on rare occasions "to meet the sudden and immediate need for extra posts". The power to create ex-cadre posts under the second proviso to Rule-2 cannot be exercised arbitrarily and without any limit because as per sub-rule 2 of Rule-8, a cadre officer shall not hold an ex-cadre post in excess of the permissible limit and as per Rule-8(3), the State Govt., can appoint a Cadre Officer to hold an ex-Cadre post in excess of the number specified for the concerned State only with the prior approval of the Govt. of India. Ultimately, the Court directed to transfer the applicant (therein) either to a cadre post or to one of the ex-cadre posts created within the permissible limit with due regard to his seniority and rank. The *ratio decidendi* laid down in this case by co-ordinate Bench of



this Tribunal at Hyderabad would apply on all fours to the facts of this case.

19. The plea of the respondents that since an incumbent has been posted against the post vacated by applicant and in absence of his being a party, this O.A. is not maintainable is not tenable in view of the fact that giving of extra charge to an officer is not filling up of a post. In view of the ratio of law laid down in the indicated cases and considering that the Rules and Regulations qua IFS are *pari passu* with Rules and Regulations of IAS as considered in aforesaid case, it has to be and is hereby held that the post against which applicant has been posted was not in existence as 5 years period has already expired and no steps are shown to have been taken to include this post in regular Cadre Strength. Thus, it is a non-existence post. The posting of the applicant vide impugned order was against a non-existence post is not sustainable and, therefore, it is quashed and set aside.

20. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh

Dated: 04.11.2020

HC*



**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Hearing by Video Conferencing

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Order pronounced on: 04.11.2020

Order Reserved on: 28.09.2020

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. AJANTA DAYALAN, MEMBER(A)**

Tushar Kanti Behera, IFS, aged 47 years, S/o Sh. Ganeswar Behera, presently working as Chief Conservator of Forests, Department of Forests and Wildlife Preservation, Government of Punjab, Forest Complex, Sector 68, SAS Nagar (Mohali) – 140308 (Group-A).

...Applicant

(By Advocate: Mr. Aseem Rai)

Versus

1. Union of India through Secretary to Government of India, Ministry of Environment, Forests and Climate Change, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi – 110 003.
2. State of Punjab through the Additional Chief Secretary, Department of Forests and Wildlife Preservation, Government of Punjab, Mini Secretariat, Sector 9, Chandigarh-160 009.
3. Principal Chief Conservator of Forests, Department of Forests and Wild Preservation, Government of Punjab, Forest Complex, Sector 68, SAS Nagar (Mohali) – 140 308.

... Respondents

(By Advocate: Mr. Sanjay Goyal, Sr. CGSC for respdt.no.1
Ms. Anu Chatrath, Sr. Advocate with Mr. Rakesh Verma, Advocate for respdts. no. 2 and 3)

ORDER

AJANTA DAYALAN, MEMBER (A):



For the reasons given hereinafter, I do not agree with the views of Hon'ble Member (J):

1. The applicant Tushar Kanti Behera who is a Member of Indian Forest Service 1999 Batch, has approached this Tribunal for quashing transfer order dated 24.08.2020 (Annexure A-5) whereby he has been transferred from his present post of Chief Conservator of Forests (Plains) to Chief Conservator of Forests, Punjab Bureau of Investment Promotion (PBIP) against vacancy.
2. The main grounds taken by the applicant are that the post he has been transferred to in PBIP is an ex-cadre post for which his prior consent for posting on deputation is required which has not been done in this case. Besides, he has pleaded that this post is a non-existent post, having been created on 06.12.2013 and maximum period for which such post can be created as per rules and regulations, is only five years and hence, the post has ceased to exist w.e.f. 06.12.2018. He has also argued that he has completed hardly one year since his last posting whereas as per Rule 7(3) of IFS Cadre Amendment Rules, 2014, a minimum two years tenure is provided. He has also alleged element of harassment on part of respondents while effecting this transfer. Some other grounds like not giving reasons for transfer while issuing transfer order etc. have also been taken up by the applicant. The applicant has also stated that as per Rule 7 of the Cadre Amendment Rules of 2014 cited, all appointments of IFS officers can be made only on the



recommendations of the Civil Services Board and no such Board has been constituted for the State of Punjab.

3. The respondents have strongly contested the claim of the applicant. They have stated that as given in the transfer order itself, the transfer order has been issued 'Keeping in view the administrative exigencies and public interest'. They have also stated that there is no harassment and the order had been issued after approval by the competent authority.

4. The respondents have further stated that the post of CCF in PBIP was created vide Notification dated 06.12.2013 and the post is still continuing. The State Government is competent to transfer an IFS Officer belonging to the State Cadre to such posts on deputation/secondment basis. They have also stated that the post is clearly in the rank of Chief Conservator of Forests and have given a list of number of incumbents who have earlier manned this post right from its creation in 2013 onwards. They have also stated that the Headquarters of the applicant continues to be effectively at the same place as the officer has been shifted only from Mohali to Chandigarh.

5. During the arguments, one of the issues that came up from the applicant's side was that as per sanctioned cadre strength, only 9 State Deputation posts are allowed whereas the number of officers on ex-cadre posts already exceeds this number and hence transfer of the applicant to PBIP which is an ex-cadre post is beyond the sanctioned strength for this



purpose. The respondents have rebutted this argument and given a list of sanctioned posts and incumbents who are presently manning such posts.

6. I have gone through the pleadings and heard the arguments of both sides. I have also considered the matter carefully.

7. First of all, it is noticed that under challenge is the transfer order transferring the applicant from the post of Chief Conservator of Forests (Plains) to Chief Conservator of Forests, PBIP against vacancy (Annexure A-5). This order clearly states that the transfers/postings are being affected keeping in view 'administrative exigencies and public interest'. It is also noted that by this transfer order, the headquarters of the applicant is shifted only from Mohali to Chandigarh which are contiguous district and UT.

8. It is further seen that the applicant has been posted to a post which is of the level of Chief Conservator of Forests which is the grade in which the applicant is presently working. I also note that even after this transfer order, the applicant continues to be working with the State Government of Punjab.

9. I have also perused the Notification dated 05.12.2013 (Annexure R-1) published in Punjab Government Gazette of December 6, 2013. This is the Notification whereby the Government of Punjab has decided to provide for one stop clearance of proposals of new investments in the State. To this purpose, the Bureau has been established with its Board of



Governors, Executive Committee and Chief Executive Officer.

The constitution of the Board of Governors and the Executive Committee as well as their functions and functions of Chief Executive Officer have been specified in the Notification. Para 6.4 of this Notification spells out that the 'posts created and officers appointed by the Bureau' shall include

“(a) ...

(b)...

.....

(g) An officer not below the rank of Chief Conservator of Forests in the Department of Forests.

.....”

The purpose of the Notification and a careful reading of the whole Notification makes it abundantly clear that the post is created on a permanent basis. Nowhere it is stated that the post had been created only for a limited period of say two years. Even the purpose of the Act and the whole reading of the Notification make it clear that the establishment of the Bureau is not a temporary arrangement and is meant to be a permanent arrangement.

10. As regards the strength of the cadre and the vis-à-vis competence of the State Government and the Central Government to create posts, one has to refer to the Indian Forest Service (Cadre) Rules, 1966 (Annexure A-7). These Rules have been notified by the Central Government after consultation with the Governments of States concerned in exercise of the powers conferred under Section 3(1) of All India Services Act, 1951. Rules 4, 6 and 8 which are relevant in this regard read as follows:

“4. Strength of Cadres



4(1) The strength and composition of each of the cadres constituted under rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Governments in this behalf.

4(2) The Central Government shall, ordinarily at the interval of every five years, re-examine the strength and composition of each such cadre in consultation with the State Government concerned and may make such alterations therein as it deems fit.

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time.

Provided further that the State Government concerned may add for a period not exceeding two years, and with the approval of the Central Government for a further period not exceeding three years to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts.

6. Deputation of cadre officers

6(1) A cadre officer may, with the concurrence of the State Government or the State Governments concerned and the Central Government be deputed for service under the Central Government or another State Government or under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government.

6(2) A cadre officer may also be deputed for service under –

(i) a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by a State Government, a municipal corporation or a local body, by the State Government on whose cadre he is borne; and

(ii) an international organization, an autonomous body not controlled by the Government or private body, by the Central Government in consultation with the State Government on whose cadre he is borne.

Provided that no cadre officer shall be deputed to any organization or body of the type referred to in item (ii), except with his consent.

Provided further that no cadre officer shall be deputed under sub-rule (1) or sub-rule (2) to a post carrying a prescribed pay which is less than, or a pay scale the maximum of which is less than, the basic pay he would have drawn in the cadre post but for his deputation.

8. Cadre and ex-cadre posts to be filled by cadre officers-

8(1) Save as otherwise provided in these rules, every cadre post shall be filled by a cadre officer.

8(2) A cadre officer shall not hold an ex-cadre post in excess of the number specified for the concerned State under item 5 of the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966.

8(3) The State Government may, with the prior approval of the Central Government, appoint a cadre officer to hold an ex-cadre post in excess of the number specified for the concerned State in item 5 of the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 and for so long as the approval of the Central Government remains in force, the said ex-cadre post shall be deemed to be an addition to the number specified in item 3 of the said Schedule.”

11. It will be seen from the above that under Rule 4(2), the State Government has been given power to add posts to State Cadre for a period not exceeding two years (and with the approval of the Central Government for a further period not



exceeding three years) for carrying out the responsibilities of like nature to the cadre posts. It is this Rule that the applicant and his counsel are relying upon and it is on this ground that they are concluding that the post in PBIP has ceased to exist w.e.f. 06.12.2018.

12. However, it is observed that Rule 4(2) is with reference to creation of cadre posts. Rule 4 states that cadre strength has to be determined by regulations and reviewed by Central Government every five years. The proviso to this Rule states that State Government may add posts for a period of two years (plus three years with the approval of Central Government). So, this proviso is obviously with reference to the posts in the cadre which are to be created on temporary basis and may later get merged into cadre strength in case they are considered necessary to be created as permanent posts. This underlines the logic of the proviso of creation of posts for two years plus three years i.e. five years by which time review of cadre strength would be due. Even within this period, Central Government may alter the strength of the cadre.

13. However, it is Rule 6 that is to be referred to in the instant case. It is because as per IFS (Fixation of Cadre Strength) Regulations, 1966, as amended vide Notification dated 16.09.2015 (Annexures R-6 and R-7), the cadre strength of IFS for the State of Punjab has been revised to 61 w.e.f. September 2015. Of these, 38 posts are Senior Duty Posts



under the State Government. The break-up of 61 posts is as follows:-

1. Senior Duty Posts	-	38
2. Central Deputation Reserve		
Not exceeding 20% of item 1 above	-	7
3. State Deputation Reserve	-	9
Not exceeding 25% of item 1 above		
4. Training Reserve	-	1
Not exceeding 3.5% of item 1 above		
5. Leave Reserve and Junior Posts Reserve		6
Not exceeding 16.5% of item 1 above		

So, Total Authorized Strength is 61.

14. I observe from the list of posts given in the Notification of 16.09.2015 that none of the Senior Duty Posts listed in the Notification are of PBIP. Hence, this post against which applicant is posted would obviously be a part of State Deputation Reserve of 9 posts. This fact is not disputed both by the respondents and the applicant.

15. It is further observed that Rule 2 (b) of IFS (Cadre) Rules, 1966 (Annexure A-7) defines 'cadre post' as follows :

“(b) ‘cadre post’ means any of the post specified under item 1 of each cadre in the Schedule to the IFS (Fixation of Cadre Strength) Regulations, 1966.”

As Senior Duty posts are under item 1 in the Regulations of 1966 as well as in Amendment Notification of September 16, 2015, cadre posts comprise of only 38 posts. As these 38 posts do not have PBIP post included, PBIP post is an ex-cadre post. Hence, this post will be covered under Rule 6 of Cadre Rules and not under Rule 4.

16. As is clear from a mere reading of Rule 6(2) as quoted in paragraph 10 above, a cadre officer may be deputed for service by the State Government on whose cadre he is



borne. Only two conditions are to be fulfilled under Rule 6(2). First is that no cadre officer can be deputed to any organization or body covered under item (ii) 'except with his consent'. In other words, no cadre officer can be deputed to an international organization or an autonomous body not controlled by Government or private body except with his consent. Secondly, cadre officer cannot be deputed to a post carrying a prescribed pay which is less than or a pay scale maximum of which is less than the basic pay he would have drawn in the cadre post but for his deputation.

17. Thus, as per Rule 6(2), the consent of the officer is required only when he is posted to an international organization or an autonomous body not controlled by the Government or a private body. This is clearly not the case here as PBIP is under complete control of Government of Punjab. Second condition is that he cannot be posted to a post carrying a pay scale or pay less than what he would have drawn in the cadre post. This is also not the case of the applicant. Thus, under Rule 6(2), the State Government is competent to post the applicant to the present post in question.

18. Another argument taken up by the applicant is that against sanctioned nine posts, there are already more incumbents working against such posts in the State of Punjab. On the direction of this Tribunal, the respondents have given the list of IFS officers presently posted on State deputation and the corresponding posts (Annexure R-8). It is seen



therefrom that the list comprises of a total of 15 posts – 7 posts in List A and 8 posts in List B. I am not able to make out the criteria on which the two separate lists have been given by the respondents. As per discussion above, all these posts have to be covered under the category of State Deputation Reserve as none of these posts in either of the two lists relate to Central Government and none of these posts are posts in the list of 38 cadre posts given in Amendment Regulation of 2015. As such, all these posts being under State Deputation Reserve, it is decided to deal with these two lists together.

19. Of these total 15 posts, one post of IWARD is shown as not required and one post of PCCF (Wildlife) is shown as not filled. Further, two posts of CF Watershed and Planning and CF Extension are held under additional charge. This leaves us with 11 posts. Even of these, 3 are not earmarked for IFS officers alone leaving a balance of only 8 posts. This is within the sanctioned strength even if we ignore the competence of State Government to create posts for two years, and for five years with the approval of Central Government, under Rule 4(2).

20. Besides, I am of the view that even if for argument sake, I concede the basic plea of the applicant that the posts, if created in excess of authorized sanctioned strength are irregular and he cannot be posted against them, the only ground for deciding which of the created posts under the authority of the State Government will be considered irregular or unauthorized can be that the posts created later can be



questioned. The posts which already exist from a prior date and were created within authorized sanctioned strength at that time cannot be said not to exist only because later some other posts were created beyond the sanctioned strength. The question of exceeding sanctioned strength will arise only when the level of sanctioned strength has reached and a post is still created thereafter beyond this limit. This means that in case of any excess beyond sanctioned strength, it is the later posts which have to be considered as unauthorized and not the posts created earlier.

21. The above argument is further buttressed by the fact that Cadre Rules and Fixation of Cadre Strength Regulations as quoted above do not anywhere speak of the period for which State Deputation posts can exist. Within the 9 posts authorized under IFS (Fixation of Cadre Strength) Regulations of 1966 and its amendment of 16th September, 2015, there is no limit of period for the posts under State Deputation. Hence, these posts can be in perpetuity or can be temporary as per requirement of the State Government. Their only limitation is that number should not exceed the authorized strength, i.e. nine. In case of any excess, it is the posts which are created later and are in excess that will have to be considered as unauthorized, and not the posts which were created earlier.

22. Once this principle is clear, it becomes obvious that there is no way that the post of CCF PBIP can be considered as unauthorized. This is clear from the fact that of the 15 posts



given in the lists, at least 5 posts are created after the said posts in PBIP and one post of IWARD is not required. This leaves a balance of maximum of nine posts created till 2013. Thus, the post in PBIB is one of the posts created quite early and cannot in any manner be said to be created in excess of the nine sanctioned posts. This is when we have included all the posts created earlier and even included the posts for which information is said to be not available about their creation in the list of posts supplied by the respondents. This is also even after ignoring for the time being power of the State Government to create posts for two years under Rule 4(2).

23. It is thus established that the State Government is competent to create the post of PBIP. The post was created on a permanent basis and in public interest, as is clear from the Notification of 2013 for creation of posts. The State Government is competent to appoint any IFS officer for services within the State and even to body, organization etc. owned or controlled by the State Government and for such deputation, the consent of the officer is not required in terms of Rule 6(2) of the Cadre Rules. The post is of the level of CCF which is the present grade of the applicant and hence it is not a post in lower grade or with lower pay. No malafide can be attributed in this case as no individual has been made a party by name.

24. I also observe that even though the star point of the applicant is that the post is a non-existent post, the maximum term of five years having expired since creation of the posts in



2013, the order dated 06.12.2013 creating the posts on permanent basis has not been challenged. Thus, no relief can be granted to the officer unless the Notification dated December 6, 2013 creating the post as permanent is quashed or set aside to this extent.

25. One of the arguments taken by the applicant's counsel is that the transfer order has been issued without recommendation of the Civil Services Board. It is also argued that these recommendations are mandatory in view of IFS (Cadre) Amendment Rules notified on 28.01.2014 (Annexure A-8). Vide these Amendment Rules, Rule 7 of the Cadre Rules has been modified to provide for a Civil Services Board. Rule 7(1) of this Notification states that 'All appointments of cadre officers shall be made on recommendation of the Civil Services Board as specified in the Schedule annexed to these rules'. The rule position is not disputed. It is also not disputed that no Civil Services Board exists in the State of Punjab. It is also not disputed that even without the Civil Services Board's recommendations, appointments are being made of the IFS officers to both cadre and non-cadre posts for last so many years. The applicant himself had been promoted and posted thereafter to a cadre post without the recommendation of the Civil Services Board. That transfer order was accepted by the applicant and he joined at his place of posting at that time without questioning the procedure. I, therefore, do not see any reasons as to why the applicant can be given the freedom to



challenge transfer orders on this ground selectively and choose to obey the ones favourable to him while questioning the others.

26. The above discussion should not, in any manner, be taken to condon the action of the State Government not to constitute Civil Services Board. During arguments, the Government did concede this point. I, therefore, direct the State Government to constitute Civil Services Board in terms of Cadre Amendment Rules of 2014 expeditiously.

27. It is also observed from the documents attached in the pleadings (Annexure R-4) that the applicant was issued a charge sheet on 19.08.2020 due to serious charges against him. An Inquiry Officer has also been appointed to enquire into the charges. It was due to serious charges against him that it was considered imperative to transfer him in public interest. In the special circumstances in this case, I do not consider that the normal tenure of minimum two years can be made applicable to him. I, therefore, do not see any reason to interfere with the transfer order on this ground.

28. I also observe that the transfer order was issued to the applicant on 24.08.2020. He made a representation to the department on 25.08.2020, but without waiting for any decision on his representation, he has filed this OA in the Tribunal on 03.09.2020. From this point of view, the OA was pre-mature and was liable to be dismissed on this ground alone. I have, however, also considered the OA on its merits in the interest of justice.



29. In any case, the law is well settled that transfer is an incident of service and courts should generally not interfere in such matters. The Apex Court has also held that the officer should first take over charge at the new place and then challenge the transfer order, if he so desires. This is most expected from a member of All India Service who has to serve anywhere in India and from whom highest level of discipline is expected. In the instant case, a senior member of All India Service is challenging his transfer when he continues to be in the same State with the same scale of pay and with almost same Headquarter (Mohali and Chandigarh being contiguous district and UT). Even after his transfer, the applicant will be assured of his pay and will continue to work at his present level of Chief Conservator of Forests. I, therefore, do not see how the applicant is adversely affected by the impugned transfer order. The applicant has serious charges against him and has been issued a charge sheet recently. The officer is now trying to take shelter of hyper technicalities and that too, on wrong grounds as shown above. The OA, therefore, does not merit consideration.

30. In view of all the above and taking into consideration the facts of this case, the OA, in my opinion, has no merit and deserves to be dismissed. Ordered accordingly.

(Ajanta Dayalan)
Member (A)

Place: Chandigarh
Dated: 04.11.2020
ND*