

In the Central Administrative Tribunal

Principal Bench: New Delhi

OA No. 74 of 1987

Date of order: 28.07.1992.

Shri M.V. Kotnis

...Applicant

Versus

Union of India & Others

...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

For the Applicant

Shri B.B. Raval, Counsel.

For the Respondents

Shri P.P. Khurana, Counsel.

Judgement (Oral)

(Mr. Justice V.S. Malimath, Chairman)

The applicant has sought the following reliefs in this Application:-

- i) To quash the impugned notification dated: 16th January 1986 as ultravires and arbitrary.
- ii) A revised notification regarding the Initial Constitution strictly according to the R&AW (RCS) Rules, 1975 be issued.
- iii) Separate lists of officers included in the Initial Constitution and those who joined subsequently at the Maintenance Stage be prepared and circulated.
- iv) Applicant be given his due place at No.1 in the revised cadre initially constituted as the only one available and eligible for the same.

v) To undo the damage to the applicant by allowing him the promotions which would have legally and logically accrued to him as holding position No.1 at the Initial Constitution stage.

vi) Payment of arrears of pay and allowances that would have accrued to the applicant had he been shown at Serial No.1 and promoted with his seniority from the date he is eligible for the subsequent promotions till date.

2. It is clear from the reliefs claimed by the applicant in this Application that his principal challenge is to the notification, produced as Annexure-D dated 16.1.1986. The said notification is in two parts. The first part is a formal one which says that enclosed please find a copy of Cabinet Secretariat's Order No.14/4/84-DO-II dated: 16.9.85. The second part is the actual order of the Cabinet Secretariat dated 16.9.85. For the sake of convenience, we extract the same as follows:-

"The President is pleased to appoint the following officers in substantive capacity at the stage of initial constitution in the grades of Foreign Language Examiner and Deputy Foreign Language Examiner of the Language Cadre of R&AW with effect from 1.1.84 as indicated below:-

AS FOREIGN LANGUAGE
EXAMINER

S/Shri

1. V.P. SAKHUA
2. K. Ayyadurai
3. A.S. Rajaram
4. K.S. Rao
5. Thomas Alexander
6. K.G. Rajan
7. G.P. Saxena
8. B.L. Kaul
9. S. Santhanam
10. M.V. Kotnis

AS DEPUTY FOREIGN
LANGUAGE EXAMINER

S/Shri

1. L.N. Malhotra
2. S.K. Kapoor

S/Shri S.K. Bahl, T.N. Chogtu, FLES and P.N. Bhattacharya DFLE already confirmed in the IB in their respective grades prior on 21.10.75 are also appointed in a substantive capacity at the stage of initial constitution of the cadre under Rule 60(2) of R&AW Rules 1975.

Sd/-

(G.P. Chadha)
Director(SR)"

3. It is clear from this order that the persons named therein have been appointed in a substantive capacity at the stage of initial constitution in the grades of Foreign Language Examiner and Deputy Foreign Language Examiner in the cadre of R&AW with effect from 1.1.1984.

The name of the applicant is found at serial No.10. There are 9 persons above him in the category of Foreign Language Examiners. The basic grievance of the applicant is in regard to this order, which, according to him, has denied him the privilege of claiming rightful seniority in the said notification on the ground of the wrong choice of the date of 1.1.1984 for initial constitution of the cadre. According to him the initial constitution should have been made with reference to the year 1975 and not with reference to the year 1984. It is his case that 9 persons placed above him would have found place below in the order of confirmation if the date for initial constitution was taken with reference to the year 1975. In other words, he has lost his place in the cadre on account of the wrong choice of the date for initial constitution of the cadre and the consequent order of confirmation with effect from that date. What is of substance to be noticed is that 9 persons placed above the applicant in the cadre of Foreign Language Examiner have acquired rights superior to the applicant who is placed on the bottom of that list. The applicant seeks to deprive them of this benefit which the said 9 persons have earned. It is on this ground that the respondents have taken a preliminary objection regarding maintainability of the Application on the ground of non-joinder of the persons, shown above the applicant in the impugned order, as their

rights would be affected by our interfering with the said order. Such an objection was raised in the reply filed by the respondents in the year 1987. The applicant has filed a rejoinder, maintaining that the Application is not liable to be fail for not impleading the said persons as respondents in the Application. In the rejoinder the stand taken by the applicant is that they are not at all necessary parties. In support of this contention he has relied upon the principle laid down by the Supreme Court in the decision quoted by him between **State of U.P. Vs. Ram Gopal Shukla 1981 (2) SLR (3)**

wherein it is observed:-

"Non-joinder of persons who were affected on account of readjustment of seniority as a result of declaring the rules as ultra vires is not fatal to the writ petition."

Shri Raval, learned counsel for the applicant relied upon the said decision and contended with considerable force that as the applicant is challenging the action taken regarding confirmation as having been made to the contrary to the statutory rules he is not bound to implead the beneficiaries of an illegal act. He submits that the aforesaid decision of the Supreme Court is an adequate authority in support of his contention. We find it difficult to agree with the submissions of the learned counsel for the applicant. The decision of the Supreme Court says that whenever a rule is challenged as being ultra vires it is not necessary to implead persons who are the beneficiaries of the Rule which

is challenged. If the rule is declared as ultra vires consequent directions can be issued without impleading the persons who are the beneficiaries of the rule which has been struck down. That is the salient principle laid down by the Supreme Court which no doubt is binding on us. The said principle cannot be pressed into service in the present case for the obvious reason that the applicant has not challenged any rule as being ultra vires. It is not the case of the applicant that 9 persons have been the beneficiaries of the order of confirmation on the strength of a rule which is ultra vires. The contention of the applicant is not that the action has been taken under an ultra vires rule. The contention of the applicant is that action taken by the authorities is in contravention of the statutory rules. There is a world of difference between an action which is contrary to the statutory rules and an action taken under a rule which is ultra vires or void. The principle laid down by the Supreme Court applies to the latter case where action is taken under a rule which is struck down or declared ultra vires and void. We, therefore, have no hesitation in holding that the principle laid down by the Supreme Court in the case relied upon by Shri Raval has no application to the present case. As the 9 persons who are the beneficiaries of the impugned order have secured certain rights and privileges, we cannot interfere in these proceedings until and unless they are impleaded as respondents in the present Application. They are entitled to an opportunity of being heard before their rights or privileges are taken

away. The applicant should have, therefore, impleaded those persons as parties. Even when objection was raised in the year 1987 no steps were taken to implead them. All other reliefs which have been claimed by the applicant flow from the first relief claimed by him. If the applicant is not entitled to secure the first relief, no other relief can be granted in his favour. That being the position, we are inclined to accept the preliminary objection taken by the respondents regarding the maintainability of the Application for non-joinder of persons, likely to be affected by our interference. Hence we consider it not necessary to examine the several other contentions taken by Shri Raval in support of his Application.

4. For the reasons stated above, this Application fails and is dismissed. No costs.


(I.K. Rasgotra)
Member (AO)


(V.S. Malimath)
Chairman

July 28, 1992.

skk