

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 88-117/90
T.A. No.

199

DATE OF DECISION 10.5.1991

Shri R. M. Agrawal,

Petitioner Applicant

Mrs. Avinash Ahlawat

Advocate for the Petitioner(s) Applicant

Versus
 U.O.I. through Secy., Miny. of
 Personnel, Pub. Grievances & Pension

Shri N. S. Mehta

Advocate for the Respondent(s)

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

The Hon'ble Mr. B. N. Dhoundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

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

A question whether an order issued in the name of the President of India, could be cancelled by a subsequent order issued in the name of the President of India on the ground that the earlier order was not issued in consultation with the Ministry of Finance, arises for consideration in this case. The point raised is important and is not covered by any decided authorities.

2. The facts of the case in brief are that the applicant, an I.A.S. Officer of the U.T. Cadre, was

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appointed as the Chief Secretary, Delhi Administration in May, 1983 and continued as such till he took over as Chairman-cum-Managing Director of the Delhi Financial Corporation w.e.f. 2.7.1986. At the time of his appointment, the post of Chief Secretary, Delhi Administration, carried the pay-scale of Rs.3,000/- fixed (pre-revised) which was equivalent to that of the pay-scale of Additional Secretary to the Government of India. He represented for the upgradation of the post of Chief Secretary and for increased pay-scale of Rs.3500/- fixed (pre-revised). He made representations to the Lt. Governor of Delhi and the Ministry of Home Affairs in this regard. This led to his appointment to the ex-cadre post of Chairman, Delhi Financial Corporation. When he was appointed as Chairman-cum-Managing Director of the Delhi Financial Corporation, the Central Government decided to permit ^{him} to draw pay of Rs.3500/- fixed (pre-revised) which was equivalent to that of the pay of a Secretary to the Government of India. This was done by the Central Govt. by passing an order dated 22.8.1986 which reads as under:-

"WHEREAS Shri R.M. Aggarwal a member of the Indian Administrative Service borne on the cadre of Union Territories has been appointed with effect from 2.7.1986 (F.N.) as Chairman-cum-Managing Director, Schedule III to the IAS (Pay) Rules, 1954.

AND WHEREAS action under Rule 9 of the Indian Administrative Service (Pay) Rules, 1954 was not taken;

AND WHEREAS the Central Government have decided to permit Shri R.M. Aggarwal to draw pay Rs.3,500/- (Rupees Three thousand five hundred only)

AND WHEREAS the Central Government is satisfied that the operation of Rule 9 of the Indian Administrative Service (Pay) Rules, 1954, would cause undue hardship to Shri R.M. Aggarwal since he can draw pay @ Rs.3,500/- p.m.

NOW, THEREFORE, in exercise of the power conferred by Rule 3 of the All India Services (Conditions of Service - Residuary Matters) Rules, 1960, the Central Government hereby dispenses with the requirement of Rule 9 of the Indian Administrative Service (Pay) Rules 1954 and orders that the said Shri R.M. Aggarwal be permitted to draw pay Rs.3,500/- p.m. (Rupees Three thousand five hundred only) in the post of Chairman-cum-Managing Director, Delhi Financial Corporation u.e.f. 2.7.1986 till he holds charge of the said post.

Sd/-
(K.B.L. Saxena)
Desk Officer".

4. The applicant has claimed that the above order was issued in consultation with the Ministry of Finance. (Vide para.9 of the rejoinder affidavit, p.47 of the paper-book).

5. On 6.6.1988, the Central Government also passed the following order whereby it decided that the pay drawn by the applicant in the Foreign Service post of Chairman-cum-Managing Director, Delhi Financial Corporation, shall be counted for the purpose of pension:-

"ORDER

WHEREAS Shri R.M. Aggarwal was appointed in the Foreign Service post of Chairman-cum-Managing Director, Delhi Financial Corporation of a pay of Rs.8000/-

AND WHEREAS under Rule 2 of the All India Services (Death-cum-Retirement Benefit) Rules, 1958, for purposes of pension pay should be reckoned with reference to entitlement in the Cadre.

AND WHEREAS the Central Govt. is satisfied that the operation of rule 2 of the All India Services (DCRB) Rules would cause undue hardship to Shri Aggarwal.

NOW, THEREFORE, in exercise of the powers conferred by rule 3 of the All India Services (Conditions of Service - Residuary Matters) Rules, 1960, the Central Government hereby dispenses with the requirement of rule 2 of the AIS (DCRB) Rules and orders that the pay drawn by Shri Aggarwal in said foreign service post shall be counted for the purpose of pension.

BY ORDER AND IN THE NAME OF THE PRESIDENT

Sd/-
(N. Sanyal)
Under Secretary to the Govt. of India"

6. The aforesaid order dated 6.6.1988 was issued by order and in the name of the President. According to the applicant, this order is a consequence of the earlier order and hence there was no need to consult the Finance again.

7. The applicant retired on attaining the age of superannuation on 31st July, 1988. The Pay & Accounts Officer of Delhi Administration released to him the pension on the basis of lower pay drawn by him earlier, i.e., Rs.3,000/- (pre-revised) per month in the cadre post. The applicant gave a representation to the Chief Secretary, Delhi Administration, on 23rd May, 1989, which did not yield any result.

8. The present application was filed in the Tribunal on 18.1.1990. It was during the pendency of the application that the respondents issued the impugned order dated 14.12.1990, whereby the aforesaid order dated 6.6.1988 was cancelled without giving any reasons. Thereafter, the
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Applicant

has amended the application wherein he has challenged the validity of the impugned order dated 14.12.1990 and sought for a direction to the respondents to release his pension in terms of the order dated 6.6.1988 and also keeping in view the latest order dated 17.7.1990.

9. The order dated 17.7.1990 was issued by the respondents, whereby the pay of the Chief Secretary, Delhi Administration, was fixed at Rs.8,000/- (revised) which is equivalent to the pay of a Secretary to the Government of India.

10. The respondents have stated in their counter-affidavit that at the time of retirement, the applicant was holding the post of Chairman-cum-Managing Director, Delhi Financial Corporation and was drawing a pay in the scale of Rs.8,000/-. The average emoluments for computing pension when a member of the Service is on foreign Service, prior to retirement, is provided for in clause (aa) of Sub-Rule (1) of Rule 2 of A.I.S. (DCRB) Rules, 1958 which, inter alia, stipulate that in a case where a member of the Service deputed to any foreign service during the last ten months of his service, the pay should be reckoned with reference to his entitlements in the cadre. For this purpose, the certificate given by the State Govt.,

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on whose cadre the member is borne regarding the pay the member of the Service would have drawn in the Cadre had he not gone on foreign service, would be treated as sufficient.

11. It has been further pointed out that in the Union Territory Cadre, there was no post in the scale of Rs.8,000/- at the time of retirement of the applicant. Hence, it was not possible for the Cadre controlling authority to issue a certificate that had he been in the Cadre, he would have drawn pay of Rs.8,000/-. Hence, by invoking the provisions of Rule 3 of the All India Services (Conditions of Service - Residuary matters) Rules, 1960, the Department of Personnel issued an order on 6.6.1988 dispensing with the requirement of Rule 2 of the All India Services (DCRB) Rules, and ordered that the pay drawn by him in the foreign service post, shall be counted for the purpose of pension.

12. Subsequently, it was brought to the notice of the Department of Personnel & Training that such a relaxation of policy requires approval of the Ministry of Finance, which was not obtained in this case. In this view of the matter, the respondents issued the impugned order dated 14.12.1990, whereby they cancelled their earlier order dated 6.6.1988. It has been stated in the counter-affidavit that this step was taken so that an officer does not get an unintended benefit due to his fortuitous posting on foreign service to a non-Govt. body. Any dilution of this basic principle will have serious repercussions.

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13. We have carefully gone through the records of the case and have considered the rival contentions. The earlier order passed on 6.6.1988 was cancelled by the respondents on 14.12.1990 solely on the ground that the Ministry of Finance had not been consulted before the passing of the order dated 6.6.1988. The question arises whether an order validly passed in the name of the President of India, could be cancelled merely on the ground that the Ministry of Finance had not been consulted before passing the earlier order. In our view, the requirement of consultation with the Ministry of Finance before passing an order by the Central Government is only a matter of the internal working of the Government and the transaction of its official business. In case, a decision has been taken by the Government which is not strictly in compliance with the rules for the transaction of Government business, the decision will not become invalid on that ground alone. In the instant case, the earlier order dated 6.6.1988 must have been passed with the approval of the Minister concerned as it has been issued "by order and in the name of the President". The subsequent order issued on 14.12.90 is also issued "by order and in the name of the President", i.e., with the approval of *Q~*

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the Minister concerned. Will the change in the incumbency of the Minister concerned, if there was any change, affect the decision taken earlier in any manner? To our mind, the answer is clearly in the negative.

14. In Shri R.R. Verma & Others Vs. Union of India & Others, 1980 (2) S.L.R. (SC) 335, the Supreme Court has observed that the Central Government is bound to exercise the power under Rule 3 of the All India Services (Conditions of Service - Residuary matters) Rules, 1960 with a view to securing civil servants of efficiency and integrity and only when undue hardship is caused by the application of the rules, the power to relax is to be exercised in a just and equitable manner, but only to the extent necessary for dealing with the case. The exercise of the power of relaxation like all other administrative actions affecting rights of parties, is subject to judicial review. The Supreme Court observed that any Government must be free to alter its policy or its decision in administrative matters. However, they are bound to observe the principles of natural justice where rights of the parties may be affected. If administrative decisions are reviewed, the decisions taken after review are subject to judicial review, on

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all grounds on which an administrative decision may be questioned in a Court.

15. An administrative decision may be challenged in a Court of law on a variety of grounds. One such ground is that it cannot over-ride a statutory rule. All India Services (Conditions of Service - Residuary matters) Rules, 1960 which have been made in consultation with the States, are statutory in nature and the same cannot be over-ridden by administrative instructions issued by the Government. That apart, the applicant was the seniormost officer in his cadre and officers junior to him had been promoted as Secretaries. The Government considered the merits of the case and exercised their powers of relaxation under Rule 3 of the All India Services (Conditions of Service - Residuary matters) Rules, 1980, so that undue hardship to the officer may be avoided and passed order dated 6.6.1988. The said order was cancelled by order dated 14.12.1990 without giving any reasons.

16. No show-cause notice was issued to the applicant before cancelling the earlier order dated 6.6.1988, under which the applicant was entitled to a higher pension.

17. The contention of the learned counsel for the respondents is that it is not necessary

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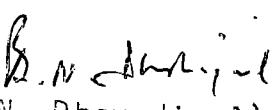
to give a pre-decisional hearing in a case of this kind and that it would be sufficient if the aggrieved party is given a post-decisional hearing. The learned counsel ^Q relied upon the decision of the Supreme Court in ~~Swadeshi Cotton Mills Vs. Union of India, A.I.R. 1981 S.C. 818.~~ In our view, the decision of the Supreme Court in ~~Swadeshi Cotton Mills~~ is clearly distinguishable. The question of passing of an order in violation of the Business Rules of the Central Government, was not in issue in that case. The reasons for cancellation of the earlier order dated 6.6.1988 have been disclosed in the counter-affidavit filed by the respondents. It will hardly serve any purpose in giving a post-decisional hearing to the applicant in the instant case.

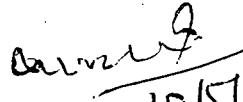
18. In our opinion, mere non-compliance with the Business Rules would not invalidate a decision taken by the Government. Apart from this, the case of the applicant has also to be considered on the ground of equity. In this context, it is pertinent to mention that the post of Chief Secretary, Delhi Administration, was upgraded to that of a Secretary to the Government of India on 17.7.1990 with the pay-scale of Rs.8,000/- fixed, ^Q

during the pendency of the present proceedings. In view of the said upgradation, a person who has functioned as Chief Secretary, Delhi Administration, would enjoy higher pensionary benefits from 17.7.1990, but not the applicant. In our view, this is against the principles of justice, fairness and equity.

19. In the conspectus of the facts and circumstances of the case, we hold that the cancellation of the order dated 6.6.1988 by the impugned order dated 14.12.1990, is not sustainable in law or equity. We, therefore, set aside and quash the impugned order dated 14.12.1990 and direct that the respondents shall release the pension and retirement benefits to the applicant in accordance with the order dated 6.6.1988. The requirement of a certificate for fixing the pension on the basis of the last pay of Rs.8,000/- the applicant would have drawn, had he not been deputed to a foreign posting, shall be deemed to have been waived. The respondents shall issue the necessary orders in this regard within a period of two months from the date of receipt of this order.

There will be no orders as to costs.


(B.N. Dhoundiyal)
Administrative Member


10/5/91
(P.K. Kartha)
Vice-Chairman (Judl.)