

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1716/90
~~F.A. No.~~

1990

(42)

DATE OF DECISION 3.10.92

Sri K.B. Rajoria Petitioner

Sri G.D. Gupta Advocate for the Petitioner(s)

Versus

Union of India Respondent

Sri P.H. Ramchandani Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Dr. Jose P. Verghese, VC (J)

The Hon'ble Mr. S.P. Biswas, M(A)

1. To be referred to the Reporter or not? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal?

(Dr. Jose P. Verghese)
VC (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA No. 1716/90

New Delhi, this the 3rd day of October 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S. P. Biswas, Member (A)

1. Shri K.B. Rajoria;
Son of Late Shri B.B. Mathur,
Chief Engineer (Valuation)
CBDT, Rohit House,
Tolstoy Marg,
New Delhi-110 001.
2. Shri A.K. Sarin,
Son of Late Shri Y.P. Sarin,
Superintending Engineer
Circle-III, ODA,
Vikas Minar, I.P. Estate,
New Delhi-110 002.
3. Shri Anil Kumar,
Son of Late Shri Brij Ratan Lal,
Superintending Engineer,
Civil Coordination Circle,
CPWD, I.P. Bhawan,
New Delhi-110 002.
4. Shri S.P. Banwait,
son of Late Shri S.S. Banwait,
Superintending Engineer,
Yamuna Bridge Project Circle I,
PWD (DA), New Delhi-110 002. Petitioners

(By Advocate: Shri G.D. Gupta)

-Versus-

1. Union of India,
through Secretary to the
Government of India,
Ministry of Urban Development,
Nirman Bhawan, New Delhi-1.
2. The Secretary,
Department of Personnel & Training,
Pensions & Public Grievances,
North Block, New Delhi-11.
3. Director General of Works,
Central P.W.D.,
Nirman Bhawan, New Delhi.
4. Shri Krishnan Keshwan,
Superintending Engineer,
Central Stores Circle,
CPWD, Metaji Nagar,
New Delhi.

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5. Shri M. Muthurajan,
Superintending Engineer,
Electrical & Coordination Circle,
CPWD, I.P. Bhawan, New Delhi.
6. Shri S.P. Baranwal,
Superintending Engineer (Coordination),
East Zone CPWD,
234/4, Acharya J.C. Bose Road,
Calcutta-700 020.
7. Shri S. Gopal,
Superintending Engineer (Coordination),
140 Marshall Road,
Egmore,
Madras-600 008.
8. Shri A. Choudhry,
Superintending Engineer (Coord.),
West Zone, CPWD,
Gr. No. 981-963, S.M. Plot, Koliwara,
Bombay-400 037. Respondents

(By Advocate: Shri P.H. Ramchandani)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The four petitioners in this case all belongs to the Central Engineering Service Group 'A' and the main grievance in this petition is that the respondents by a Cadre Review Order dated 15.11.1935 rendered ten senior level posts as common posts available to the members of both the Central Engineering Service Group 'A' as well as Central Electrical and Mechanical Engineering Services Group 'A'.

2. The Ministry of Urban Development, Government of India, had constituted two services viz., Central Engineering Services Group 'A' (CES. in Short) vide SRC No. 1841 dated 21.5.1954 and the Central Electricity and Mechanical Engineering Services Group 'A' (CEMES in short), vide SRC No. 1843 dated 21.5.1954. It is pertinent to mention that the Members to these Services

AB

are recruited through a combined Engineering Services Examination conducted by the Union Public Service Commission.

3. The respondents by an order dated 5.11.1985 brought forth a cadre review of both CES and CEMES services by creation/upgradation/abolition of additional/existing posts in both the services and the said order was implemented w.e.f. 28.2.1986; para 2 of the said order shows that the net effect of posts now being sanctioned in the grade of Superintending Engineer ((Civil)) will be 21 additional posts. Similarly in the grade of Engineering (Civil) Executive Engineer the number of additional sanctioned posts would be 29 and in the grade of Executive Engineer (Electrical) 16. But by para 3 of the said order the Government also declared that certain posts will be common to both the service; para 3 is reproduced herebelow:

"Para. The following posts shall be common to both the services namely the Central Engineering Service and the Central Electrical and Mechanical Engineering Service:-

1. Additional Director General (Works).
Central P.W.D.
2. Chief Engineer (Vigilance)
3. Chief Engineer (Works)
4. Chief Engineer (Training)
5. 5 Newly created posts of Superintending

Engineers (Coordination)

3. 1 newly created post of Superintending Engineer (Stores)"

The grievance of the petitioner is that the CES being comparatively much larger than the CEMES, para 3 of the said cadre review Order has adversely effected the career prospects of the Members of the CES including that of the petitioner. One of the petitioners is a Chief Engineer and the remaining are all Superintendent Engineer at the time when this OA was filed. Para 2.5 of the petition gives the comparative strength prior to Cadre Review in both the Services.

		<u>CESA</u>	<u>CEMA</u>
1.	CE	1	0
2.	Chief Engineer	10	2
3.	Supdt. Engineer	70	19
4.	Executive Engineer	355	105
5.	Asstt. Executive Engineer	123	32
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		567	148
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It was specifically averred that the action of the respondents in abolition of certain posts in CES viz., 5 Assistant Executive Engineers, for the creation of 5 common posts of Superintendent Engineer ((Coordination)) and the abolition of the posts of Assistant Engineer in CES to create common posts of Superintendent Engineer

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(Stores) is arbitrary. It was also stated that the post of Chief Engineer (Vigilance) and Chief Engineer (Training) were pre-existing in CES which have now been converted as common posts. It was further stated that the posts of DG (Works) is to be filled up by appointment from the posts of additional DG (Works) and the posts of Additional Director General (Works) were made common posts, the DG (Works) could be manned even by an incumbent from CEMES. The petitioner also has alleged disparity and inequality and stated that the same would amount to discrimination and therefore violation of Article 14 of the Constitution of India.

The petitioner also argued that one of the main purposes of Cadre Review now undertaken, is to find a solution to the problem of stagnation in CES, the present Cadre Review Order has in fact only advanced the solution to the problem of stagnation by converting certain posts, otherwise eligible senior officers, as common, even to include the members of CEMES as eligible. It was also submitted by the petitioner that the interest of the Members of the CES have seriously eroded and the principle of "career advance" has now become a dead letter. The petitioner relied upon the decision of the Hon'ble Supreme Court in the matter of Council of Scientific and Industrial Research and another V. K.G.S. Shett reported in (1939)2 SCALR 3, wherein it was stated that an organisation public or private cannot hire a hand rather they engage the whole man. When a person is recruited by an organisation it is not just for a job rather for a career. Therefore, it is duty of the employer to give such person a fair opportunity to

advance and the requirement of such opportunity for advance is also a pointer towards the progress of an organisation.

The respondents, on the other hand, stated that the main purpose of cadre review is not only the career advance of the Members of the CES rather it is the career advance of both CES as well as CEMES. More than the purpose of career advance, a cadre review is always done in larger public interest, looking into various other factors and such decisions being a decision by way of a policy, the same cannot be challenged on the ground of some possible heartburning that may arise while implementing such policies. Such sort of give-and-take is always a necessary incident of such large scale cadre review proposal in all cases. Similarly, in this case also no serious allegation of arbitrariness or discrimination has been advanced by the petitioner against this policy decision, except certain minor incidence of heart-burning.

We have perused the entire record and heard the counsel for both the parties and we are of the opinion that order of the respondent dated 5.11.91 is unreasonable for the reason that the said order was passed in the larger interest of all the Members of both the Services. The respondents have thereby created quite a large number of posts and by converting some of them as common posts under para 2, the respondents thereby have not acted in discrimination, by or shown any favour to a particular service. What is done in para 3 of the said order is only to convert certain senior level posts as

common posts and the Members of both the Services are eligible for consideration against the said posts. It is not the case of the petitioner that the Members of CES have been excluded from the said senior posting rather the respondents have only widened the field of selection including the Members of CEMES in the field of consideration. The grievance of the petitioner would amount to be that the cadre of CES being much larger, and the inclusion of the Members of CEMES rendering them eligible to contest these common posts, the chances of promotion of the Members of CES are comparatively less than the chance of promotion of the Members of CEMES to the said senior level posts. We are affraid that such comparative, less or more chance of promotion, can by no means be considered as discrimination or violation of Article 14 of the Constitution of India rather the same are to be considered only certain inevitable incidence of such Cadre Review Orders that may take place. Once the Cadre Review orders have been found to be in larger public interest, the proportionate reduction in chances of promotion can never be a ground to assail or set aside the order passed in larger public interest.

Hon'ble Supreme Court in the case of Mohammed Suja Ali vs. UCI (AIR 1974 [SC] 1631) has held that a rule which merely affects chance of promotion cannot be regarded as varying a condition of service.

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It was also held in the Director of Lift Irrigation Corporation Limited & Ors. vs. Parvat Kiran Mohanty & Ors. (JT 1991 [1] SC 430) that the chance of promotion or reduction is part of his right to be considered for promotion.

"Undoubtedly, in this process the respondent/writ petitioner lost some place in seniority which is consequential to amalgamation. He has not been deprived of his right to be considered for promotion, only his chances of promotion have been receded. It was not the case of the respondent that the action was actuated by mala fide or colourable exercise of power. There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with the relevant rules. (Emphasis supplied)".

In another decision namely in Union of India & Ors. vs. S.L. Dutta and Another (JT 1990[4] SC 741, the Supreme Court was considering the effect of change of policy regarding promotion of Air Vice-Marshal's in the Navigation Stream. Supreme Court was of the opinion that merely a chance of promotion as it has occurred in the present case did not affect a change in their conditions of service. Further in the case of State of Maharashtra and Another vs. Chandrakant Anant Kulkarni and Others (1981 [4] SCR 130), a Bench of three judges of the Supreme Court stated that mere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount

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a change in the conditions of service. A right to be considered for promotion is a term of service; chances of promotion are not.

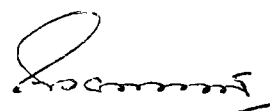
We have also proceeded to consider that the decision of the respondents in this case for merger of the two services is essentially a policy decision even though the same has been issued by Executive orders. The respondents are within their powers to lay down policies and frame Schemes by issue of executive orders. By merely having an effect of those executive orders, to reduce the chances of promotion and since the chances of promotion is not a condition of service, we are of the opinion that no illegality can be attributed to such policy decision and therefore on that count the said policy decision cannot be quashed. On the other hand, the respondents are perfectly within their competence to change a policy or re-change it or adjust the same or re-adjust it according to the compulsions of circumstances. It has been so held by the Supreme Court in the case of Col. A.S. Sangawan vs. UOI reported in AIR 1981 [SC] 1545. It has been further held in the same case that it is entirely within the reasonable discretion of the Union of India who may stick to the earlier policy or give it up on its discretion. In the case of Paryat Kiran Mohanty, cited above, the Supreme Court has held that the policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle. No such grounds have been shown or advanced against the order of merger by the parties in this case. Again in the case of Col. A.S. Sangawan, it was stated by the Supreme Court that the executive power

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of the Union of India, when it is not trammelled by any statute or rule, is wide and pursuant to its power it can make executive policy. Indeed, in the strategic and sensitive area of Defence, courts should be cautious although courts are not powerless. The Union of India having framed a policy has relieved itself of the charge of acting capriciously or arbitrarily or in response to any ulterior considerations so long as it pursued a consistent policy.

Thus a policy once formulated is not good for ever. It is perfectly within the competence of the Union of India to change it, re-change it, adjust it and re-adjust it according to the compulsions of the circumstances and the imperative of the national considerations.

In result, this OA fails and the same is dismissed with no order as to costs.


(S.P. Biswas)
Member (A)


(Dr. Jose P. Verghese)
Vice Chairman (J)

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