

Central Administrative Tribunal  
Principal Bench, New Delhi.

O.A.No.1792/91

and

O.A.No.1793/91

New Delhi this the 21st Day of September, 1994.

Hon'ble Mr. Justice S.K. Dhaon, Acting Chairman  
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

OA-1792/91

Shri B.D. Kandpal,  
S/o late Shri D.D. Kandpal,  
C/o Shree Prakash Kandpal Advocate,  
5/402, Kaushalya Park,  
Haus Khas, New Delhi.

Applicant

(through Sh. Shree Prakash Kandpal, advocate)

versus

1. Union of India through  
its Secretary,  
Government of India,  
Ministry of Environment,  
Forests & Wild Life,  
C.G.O.Complex Paryavaran Bhavan,  
Lodi Road,  
New Delhi.
2. State of Uttar Pradesh through,  
Secretary Forests, Government of  
Uttar Pradesh, Civil Secretariat,  
Lucknow (U.P.)

Respondents

(through Sh. A.K. Behra, advocate)

OA-1793/91

Shri R.C. Kholia,  
S/o late Shri G.D. Kholia,  
C/o Shree Prakash Kandpal Advocate,  
5/402, Kaushalya Park,  
Haus Khas, New Delhi.

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ORDER(ORAL)

delivered by Hon'ble Mr.Justice S.K.Dhaon, Acting  
Chairman

The controversies raised in these two O.As  
are the same. They have been heard together and,  
therefore, they are being disposed of by a common  
judgement.

On or before 6.8.1991, Sh. B.D. Kandpal  
and Sh. R.C. Kholia (the applicants in the two O.As)  
were in the Indian Forest Service (U.P. Cadre). Sh.  
Kandpal was holding the post of Conservator of Forests  
Siwalik Circle whereas Sh. Kholia was holding the post  
of Conservator of Forests Garhwal Circle. By a common  
order dated 6.8.1991 Sh. Kandpal was posted on  
deputation as Head, Silviculture Division, Deciduous  
Forest Management Research Institute, Jabalpur and Sh.  
Kholia was posted as Joint Director Forest Operation  
Division, Nagpur. They felt aggrieved by the same order  
and, therefore, came to this Tribunal by means of  
separate O.As.

Separate interim orders were passed in both  
the O.As to the effect that the impugned order shall not  
be given effect to. Those interim orders are continuing  
even now.

The contention advanced in support of these  
applications in the forefront is that the impugned order  
has been passed without complying with the provisions of  
Rule 9 of the Indian Forest Service (Pay) Rules, 1968  
(hereinafter called the 'pay rules'). Sub-rule(1) of  
Rule 9 is relevant and the same may be extracted:-

"No Member of the Service shall be  
appointed to a post other than a post  
specified in Schedule III, unless the

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State Government concerned in respect of posts under its control, or the Central Government in respect of posts under its control, as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule.

we have seen the third Schedule to the rules. As apparent, there is nothing in the Schedule to indicate that the posts to which the applicants have been sent on deputation are equivalent in status to the posts held by them on the date of the passing of the impugned order.

These applications were allowed to be amended and the applicants have filed amended O.A.s. Time was given to the respondents to file a reply to the amended O.A. However, they have failed to do so. In fact, Shri Behra, learned counsel for the respondents has made a statement that the respondents do not propose to file any reply to the amended O.A.s.

Paragraph 17 of the amended O.A., inter alia, contains the averments that the respondents before passing the impugned order did not make the mandatory Declaration of Equivalence under Rule 9(1) of the Pay Rules in respect of the said two posts which was a pre-requisite for passing the impugned order.

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We may now consider the Indian Forest Service (Cadre) Rules, 1966(here-in-after referred to as the 'Cadre Rules'), under which the impugned order has been purportedly passed. Rule 6 is relevant. In substance, it lays down the power of the Central Government to send on deputation, a member of the Indian Forest 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. The second proviso to sub-rule(2) of Rule has been relied upon by the learned counsel for the respondents, in opposition to the contention advanced by the applicant, and, therefore, it is necessary to extract the same:-

Whereas it is 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.

Sub-rule (2) of Rule 9 of the Pay Rules provides that the pay of a member of the Service on appointment to a post other than a post specified in Schedule-II shall be the same as would have been entitled to had he been appointed in the post to which the said post is declared equivalent. Based on the said provision, the contention on behalf of the respondents is that the Cadre Rules form a complete code in the matter of deputation and, therefore, Rule 9 of the Pay Rules cannot be looked into at all. It is true that the contents of sub-rule(2) of Rule 9 of the Pay Rules and the contents of the afore-quoted proviso to sub-rule(2) of Rule 6 of the Cadre Rules are analogous. However, we

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must not ignore that Section 3 of the All India Services

Act empowers the Central Government to regulate the recruitment and conditions of service of the members of the All India Service. Under that provision, different sets of rules have been made by Central Government. Each set fall under the canopy of "recruitment and the conditions of service" and, therefore, the rules so framed can not be kept in water tight compartments. If and when necessary, one set of rules may be read so as to supplement the other set of rules. In fact, one set of rules can even complement the other set of rules. If there be any apparent conflict between two rules, the principle of harmonious constructions should be invoked.

We do not find any apparent conflict or inconsistency between the second proviso to sub-rule (2) of Rule 6 of the Cadre Rules, the contents of which are analogous to the contents of second proviso to rule 9 of the Pay Rules. It may be noted that the Cadre rules were framed in the year 1966 and the Pay rules were framed in the year 1968. It may be that the rule making Authority has repeated the contents of the second proviso to sub-rule (2) of Rule 6 in the second proviso to sub-rule (2) of Rule 9 by abundant caution.

In E.P. Royappa versus State of Tamil Nadu and Another (1974(4) SCC P.3), the controversy before their Lordship was somewhat similar. Rule 96(1) of the Indian Administrative Service (Pay) Rules of 1954 was under consideration. The majority of the learned Judges took the view that if the State Government wants to appoint a member of the Indian Administrative Service to a non-Cadre post created by it, it cannot do so unless

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it makes a declaration setting out which is the Cadre post to which such non-Cadre post is equivalent in status and responsibility. The making of such a declaration is a sine quo non of the exercise of power under sub-rule (1). It is not an idle formality which can be dispensed with at the sweet will of the Government. It has a purpose behind it and that is to ensure that a member of the Indian Administrative Service is not pushed off to a non-Cadre post which is inferior in status and responsibility to that occupied by him. The object of this provision clearly is to ensure that the public services are, in the discharge of their duties, not exposed to the demoralising and depraving effects of personal or political nepotism or victimisation or the vagaries of the political machine.

The determination of equivalence is, therefore, made a condition precedent before a member of the Indian Administrative Service can be appointed to a non-Cadre post under sub-rule(1). It is mandatory requirement which must be obeyed. The Government must apply its mind to the nature and responsibilities of the functions and duties attached to the non-Cadre post and determine the equivalence. Pay attached to the non-Cadre post is not material.

We see no difference in principle between the proviso of sub-rule (1) to Rule 9 of the Pay rules and the provisions of Rule 9 which their Lordship were considering. This Tribunal (Chandigarh Bench) in the case K.L. Manhas versus Union of India and Another (1993(23) ATC 685 has taken a similar view.

The learned counsel for the respondents has strenuously urged that neither the judgement of the Supreme Court in E.P. Royappa's case nor the judgement of this Tribunal in Manhas's case has any application to the fact of this case. According to him, the case of deputation is different from the case of transfer. We are unable to appreciate this submission. The term used in sub-rule (1) of Rule 9 of the Pay rules is "appointment". Judicial notice can be taken to the effect that one of the methods of the appointment is deputation basis. We see no reason as to why a restricted meaning should be given to the expression "appointment". The contents of sub-rule(1) of Rule 9 are wholesome and are in the public interest.

The learned counsel next urged that the contents of Sub-rule(4) of Rule 9 of the Pay Rules relax the rigour engrafted sub-rule(1) of Rule 9 of the Cadre Rules. The said provision inter alia stated that the State Government or the Central Government, as the case may be, may for sufficient reasons, to be recorded in writing, where equivalence is not possible, make appointment in service without making a declaration of equivalence. He urges that there may be some order on the file and, therefore, he may be given time to produce the record. We are unable to accede to this request. We have already stated that the respondents had due notice of the contention which was to be advanced by the applicants as contended in the amended O.A.s. Therefore, the respondents did not avail of the chance given to

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them to controvert the averments made in the applications. The question of production of the record can arise if there is any ~~controvert~~ relating to the contents of the order. By necessary implication the respondents have admitted that no order had been passed at all.

We may here take note that there is evidence on record to show that the competent authority in the State of U.P. urged that the State Government should draw the impugned order as the same has been passed erroneously.

This application succeeds and allowed and the impugned order is quashed.

No costs.

(B.N. Dhoundiyal)

(S.K. Dhaon)

Member(A)

Acting Chairman

Attested  
true copy  
J. H. Sheen  
(S. H. Sheen)  
P. S. 4/1944