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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

DATED THIS

5th June 1992

Present:

Hon'ble Justice Shri Ram Pal Singh ..Vice-Chairman(J)
Hon'ble Shri P.S. Habeeb Mohamed ..Member (A)

APPLICATION No.3024/1991

R.S. Sapra, .. Applicant
S/o Shri C.L. Sapra
R/o 16/453,
Lodi Road,
New Delhi.

(Shri G.D. Gupta, Advocate)

v.

1. Union of India .. Respondents
through the Secretary to the
Government of India,
(Department of Personnel, Public
Grievances & Training),
6th Floor, Nirvachan Sadan,
New Delhi.
2. The Secretary to the Govt. of India
Ministry of Civil Aviation &
Tourism,
Sardar Patel Bhavan,
Parliament Street,
New Delhi.
3. The Secretary to the
Government of India,
Ministry of Defence,
Defence Research & Development
Organisation (Directorate of
Personnel), 'B' Wing,
Sena Bhavan,
New Delhi.

(Shri P.H. Ramchandani, Advocate)

This application having come up for orders
before this Tribunal today, Hon'ble Shri P.S.
Habeeb Mohamed, Member (A), made the following:

O R D E R

In this application Shri R.S. Sapra who is
working as Administrative Officer in the Ministry
of Civil Aviation and shifted to the Surplus Cell

in the Civil Aviation has filed this application under Section 19 of the Administrative Tribunals Act for issue of directions by the Tribunal declaring that he is entitled to a posting at Delhi in a lower post and for posting him at Delhi in a post in the lower grade of Rs. 1640-2900 and for allowing incidental relief.

He has been allowed to continue at Delhi by virtue of the interim orders passed by the Tribunal on 19/12/1991.

The case of the applicant is he was initially appointed as UDC in the Directorate of Plant Protection Quarantine and Storage under the Ministry of Agriculture. He was posted as Superintendent in the Directorate of Agricultural Aviation in September 1977 and promoted to Administrative Officer in this Directorate in November, 1985. This Directorate was transferred from the Ministry of Agriculture to Ministry of Civil Aviation in 1987 but by virtue of orders dated 18-1-1988 the functions of the Directorate of Civil Aviation were transferred to the Vayudoot Ltd. and the employees were sent to Vayudoot Ltd. in 3 batches, the first batch consisting of 171 employees. Later on options were called from the employees along with the applicant and other senior officers in the Agricultural Aviation Division. The applicant who was holding the post of Administrative Officer in the Directorate of Agricultural Aviation in the pay scale of Rs.2000-3500 was informed vide the authority's notice dated 3/12/1990 that they had decided to abolish the post of Administrative Officer held

✓

...3/-

in the Civil Aviation Ministry, ^{they had} also declared, the post surplus and transferred it to the Surplus Cell of the said Ministry of Civil Aviation from 1/7/1990 (Annexure A.8). Letter No. AV.18014/11/90-AC dated 3rd December 1990 is the letter informing him that the post of Administrative Officer held by him had been declared surplus and transferred to the Surplus Staff Establishment of the Ministry in accordance with the revised scheme of disposal of surplus staff circulated by the Department of Personnel w.e.f. 1/7/1990. He requested (vide Annexure A-14) to be adjusted in a lower post in a lower scale of pay (Rs.1640-2900). His representation dated 8th April 1991 was forwarded by the Department of Civil Aviation to the Department of Personnel and Training. ~~But he~~ represented for a posting on medical grounds at Delhi; He received an order of appointment No. 15125/07/RD/Pers-5 dated 14th October, 1991 for posting as Store Officer at Bangalore, but he wanted to continue in New Delhi in a lower post. Being aggrieved by the new posting as Store Officer he has come up with this application mentioning the reliefs as detailed earlier.

In the reply filed by the respondent ^d it is stated that the applicant was working as Administrative Officer in the scale of Rs. 2000-3500. As per Rule ⁵⁰⁽¹⁾ ~~145~~ of the 1990 Surplus Cell Rules he was to be redeployed in a post in a pay scale matching his current pay scale. His name was sponsored to the UPSC and the UPSC after considering his candidature recommended him for the post of Store Officer and he has been offered appointment vide their letter

dated 14/10/1991 which ^{post} has an all India service liability. The rules clearly says that only where a suitable vacancy in a post in the matching scale of pay is not available the surplus employee may redeployed in a post carrying a non-matching scale. In the present case this is not so and the relief sought for by him is contradictory to the provision ⁱⁿ to the revised scheme.

✓ According to the reply filed by respondents it is the responsibility of the concerned Department to relieve him immediately. His continuance in the surplus establishment is causing avoidable burden to the exchequer.

The learned counsel for the applicant emphasised that the Civil Aviation Ministry has certified that his work is satisfactory vide letter No. AV 18014/16/90-AC/VL dated 27/8/1991. The letter reads as follows:

"The undersigned is directed to refer to the DP&T's O.M.4/7/90-CS.III dated 18.4.1991 on the subject noted above and to say that Shri R.S. Sapra, A.O., DAA is the only officer who is attending all the residual work relating to the winding up of the Organisation. He is engaged in important work relating to the transfer of assets etc. of the Directorate to Vayudoot Limited. Finalisation of G.P. Fund accounts of transferred employees, transfer and settlement of the mode of recovery of long advances of transferred employees, finalisation the cases of the employees who have since been absorbed in Vayudoot Limited. The Services of Shri R.S. Sapra are, therefore, essentially required in this Ministry. DP&T may kindly delete his name from their panel at present till all the pending cases are finalised in this Ministry.

2. Ministry of Civil Aviation will again approach DP&T to redeploy Shri Sapra in suitable post after all the pending work are finalised in this Ministry."

...5/-

According to him this letter clearly means that his services are required by the Ministry of Civil Aviation and he is not to be considered even as surplus staff whereas the learned counsel for the respondents Shri Ramchandani stated that the rules relating to surplus staff applied to him and that he has been relieved from the post that he is holding, and if he is now drawing his pay it is on the basis of interim orders issued by the Tribunal.

After perusal of the application, reply and other papers and after hearing the learned counsel, we found, that the statutory rules issued by the Ministry of Personnel and Grievances in GSR 1991 E dated 28-2-1990 under the proviso to the article 309 of the constitution will prevail and the earlier rules will be superseded even though the rules say that things done or omitted to be done before the supersession of the rules will be saved. The point taken by the learned counsel of the respondents was this is a case where the UPSC has selected him and he was offered the appointment and he was relieved on the basis of his posting as Store Officer to Bangalore on 16/1/1991 and ^{he} redeployed government servant has no right to work at a particular place and, in any case since this is a case of transfer the government servant has to join the place of posting and cannot make a grievance of his transfer. The rule 5 of the Rules (Surplus Staff) states as follows:

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"Appointment of surplus employees recommended by the Commission or Cell:

- (i) The administrative Ministry or Department shall, on receipt of the recommendation made by the Commission or nomination made by the Cell, for appointment of a surplus employee to a post or service for which a requisition had earlier been placed upon the Commission or the Cell, as the case may be, taken immediate action to issue the orders of appointment of the surplus employee concerned under advice to the Cell and, where relevant, the Commission.
- (ii) The appointing authority of the recipient organisation shall make an offer of appointment forthwith on the terms and conditions regulating redeployment of surplus staff and shall not impose any contrary conditions of its own, except where required under a law, without prior consultation with the Cell.
- (iii) The recipient organisation shall accept a surplus employee, who in the absence of a response or reaction from it within one month is relieved by the parent organisation on the directions issued by the Cell concerned.

However we notice rule 6 which states as follows in sub-rule (1):

"A surplus employee who has already been redeployed shall not be eligible to seek readjustment, except in the following cases:

- (a) when redeployed, otherwise than at his own request, -
 - (i) in a post carrying a pay-scale lower than the pay-scale on which he was borne at the time of being declared surplus; or
 - (ii) in a post carrying a lower classification than that of the post held by him at the time of being declared surplus; or
 - (iii) in the case of an employee whose maximum of pay-scale, as per the Central Civil Services (Revised Pay) Rules, 1986 did not exceed Rs. 2900/-, in a State other than the State(s) in which he had requested for his placement to be arranged while awaiting redeployment and, in the absence of such request, the State in which he was posted at the time of being declared surplus:
- Provided that he is not, in the ordinary course, eligible to seek intra-departmental transfer to such State(s) of choice or posting, as the case may be :
- Provided, further, that he does not fall under the category which have All India Transfer Liability".

(b) if his case falls into any other class of cases, as may be specified by the Central Government by an order as being eligible for seeking readjustment under these rules."

The rules clearly say the surplus-post holder may be re-deployed otherwise than on his own request.

The use of the expression "when redeployed otherwise than on his own request in a post carrying pay scale

lower than ~~lower~~ pay scale," clearly shows that a redeployment is possible at the post holder's own request and in a lower pay scale as per the rules and there is no compulsion that rule 5 can only be interpreted to mean that once he is posted on the recommendations of the UPSC, he cannot move out. The applicant has, on account of his difficulties asked for a redeployment at Delhi in a lower pay scale. This should be considered by the respondents sympathetically, a view taken and orders should be issued within two months of the receipt of a copy of this order. Till that time he will continue at Delhi. Respondents are directed accordingly. There will be no order as to costs.

PJH
5/6/92
(P.S. HABEEB MOHAMED)
Member (A)

Ram Pal Singh
5.6.92
(RAM PAL SINGH)
Vice-Chairman(J)