

(i)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1281/92.

Date of decision 10 Sep 93

Shri Preet Singh ... Applicant

v/s

Union of India & Ors. ... Respondents

CORAM:

The Hon'ble Shri N.V. Krishnan, Vice-Chairman (A)

The Hon'ble Shri B.S. Hegde, Member (Judicial)

For the Applicant ... Shri J.P. Verghese, counsel.

For Respondent No.2. ... Shri Ashok Aggarwal, counsel.

For Respondent No. 1. ... None.

(1) Whether Reporters of local papers may be allowed
to see the judgement. ✓

(2) To be referred to the Reporter or not ? ✓

J_U_D_G_E_M_E_N_T

[Delivered by Hon'ble Shri B.S. Hegde, Member (J)]

The applicant has filed this application
under Section 19 of the Administrative Tribunals
Act, 1985 praying for the following reliefs :-

(1) Direct the respondents to withdraw

the transfer order and to allow the
applicant to work in the office of

Respondent No. 2 and to direct them

AM

not to disturb him in his work as he is recruited for the local office only.

(2) Direct the respondents to allow the applicant to join duty as despatch rider in the office of Respondent No. 2 immediately.

(3) Direct the respondents to pay all the salaries and allowances upto date, etc.

2. He also sought interim relief to direct the respondents to pay his up-to-date arrears on account of his salary and allowances and direct them to allow the applicant to join duties in the office of Respondent No. 2 with immediate effect and to stay the operation of the letter dated 27.3.1992 and the transfer of the applicant etc.

3. The applicant is an ex-service man and he was appointed temporarily to the post of Security Guard in the office of the 2nd respondent, Special Commissioner, Government of Goa, Daman & Diu, New Delhi with effect on a temporary basis from 26th September, 1982 (Annexure 'B') against the post created by order dated 25th September, 1981. Thereafter, the applicant was appointed temporarily by respondent No. 2 as a Despatch Rider with effect from 1.3.1983 until further orders (Annexure 'C'). He was

subsequently regularised in the said post of Despatch Rider in "Goa Sadan" with effect from 16.11.1987 in the scale of Rs 950-1400 with effect from 16.11.1987 (Annexure 'E'). As Despatch Rider, he worked in Goa Sadan till 31.12.1991.

4. The Government of Goa vide their order dated 18.11.91 (Annexure A order) transferred and posted the applicant as Despatch Rider in the Secretariate, Panaji, Goa with immediate effect and also directed the Resident Commissioner of Goa Sadan to relieve the applicant with immediate effect. Though the orders of transfer have been sent by registered post to his known residential address, it was received by him, as per his submission, only on 23.3.1992. Nevertheless, he did not report for duty at Goa and filed this O.A against the transfer.

5. The respondents, in their reply, had taken a preliminary objection that this Tribunal does not have jurisdiction to entertain the petition. The question of jurisdiction has been raised stating that the applicant is an employee of the State of Goa and the Union of India had nothing to do with his appointment

BB

with regard to the employment of the applicant and in respect of persons who are employees of the Govt. of the Goa it is High Court which has jurisdiction until State Administrative Tribunal is constituted. Therefore, this O.A. is not maintainable. Hence, the relief sought cannot be granted.

6. As a matter of fact, the question regarding the maintainability of this O.A. which is obvious from the cause title and the order dated 27.3.92 against which the OA is made, should have been noticed by the Registry itself. As this objection, has however been squarely raised by the second respondent we found it necessary to hear the parties and pass an order which would also dispose of the O.A. itself. For if it is established that the applicant is an employee of the Government of State of Goa, then this Tribunal will not have any jurisdiction in the matter and the O.A. has to be dismissed as non-maintainable. If, on the contrary, it is established that the applicant is not an employee of the State of Goa, the impugned orders would, obviously, be incompetent and the OA has to be allowed. Therefore, the question for determination is whether that the applicant is now an employee of the State of Goa. We have heard Sh.J.P. Verghese counsel for the applicant and Sh.Ashok Aggarwal counsel for respondent No. 2.

BN

None appeared for Respondent No.1, though served.

7. The Goa Daman and Diu Reorganisation Act, 1987 (Act for short) received the assent of the President of India on 23.5.1987. This Act provides for reorganisation of the Union Territory of Goa, Daman and Diu - existing U.T. for short - by creating a new State of Goa - comprising the district of Goa of the existing Union Territory - and a new Union Territory of Daman and Diu - comprising the territories of the district of Daman and Diu of the existing Union Territory vide Sections 3 and 4 of the Act. The changes came into force from the 'appointed day' which was to be notified under Section 2(b). Though that notification is not produced, the appointed day appears to be 30-5-87 as can be inferred from a circumstance to which reference will be made soon.

8. Provisions have been made in the Act as to services in Part VIII of the Act consisting of Sections 59 to 62. We are concerned with the services other than the All India Services and for the purpose of this OA, it is sufficient to consider subsections 1 to 5 of Section 60 of the Act as well as Sections 61 and 62. They are reproduced below:-

AB

" Provisions relating to other services.

60.(1) Every person employed in connection with the affairs of the Union Territory or the State of Goa and serving, immediately before the appointed day, in the district of Goa of the existing Union territory shall on and from that day:-

(a) continue to serve in connection with the affairs of the State of Goa ; and

(b) be deemed to be provisionally allotted to serve in connection with the affairs of the said State :

provided that nothing in clause(b) shall apply to a person to whom the provisions of section 59 apply or to a person on deputation from any State.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine whether every person referred to in clause(b) of subsection (1) shall be finally allotted for service in the State of Goa or under the Union in connection with the affairs of the Union Territory of Daman and Diu and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of subsection (2) to the State of Goa or the Union shall, if he is not already serving therein or thereunder be made available for serving in that State or under the Union from such date as may be agreed upon between the State of Goa and the Union or in default of such agreement,

bm

as may be determined by the Central Government.

(4) As soon as may be after the Central Government passes orders finally allotting an employee in terms of sub-section(2), the State of Goa or the Union shall take steps to integrate him into the services under its control in accordance with such special or general orders or instructions as may be issued by the Central Government from time to time in this behalf.

(5) The Central Government may, by order establish one or more Advisory Committees for the purpose of assisting it in regard to -

(a) the division of the services between the State of Goa and the Union; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons;

Provided that notwithstanding anything to the contrary contained in any law or rule for the time being in force, no representation shall lie against any order passed by the competent authority on matters arising out of the division and integration of services under this Act, on the expiry of three months from the date of publication or service, whichever is earlier, of such order :

AK

Provided further that, notwithstanding anything contained in the preceding proviso, the Central Government may suo motu or otherwise and for reasons to be recorded, reopen any matter and pass such orders thereon, as may appear to it to be appropriate if it is satisfied that it is necessary so to do, in order to prevent any miscarriage of justice to any affected employee!

Provisions as of continuances of officer in the same post.

61. Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing Union territory shall continue to hold the same post or office and shall be deemed, on and from that day, to have been duly appointed on the same terms and conditions of appointment and on the same tenure to that post or office by the Government of, or the other appropriate authority, in the State of Goa or of the Union, as the case may be :

Provided that nothing in this section shall be deemed to prevent a competent authority on or after the appointed day, from passing in relation to such person any order affecting his continuance in such post or office!

Powers of Central Government to give direction.

62. The Central Government may give such directions to the State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the said Government shall comply with such directions".

9. The scheme of section 60 of the Act is that a provisional allotment of employees, other than members of the All India Services, serving in the district of Goa only was made to the State of Goa - Goa for short, on an "as is where is" basis (Section 60(1)). Thereafter the Central Government is to determine (Section 60(2)) whether the persons, so provisionally allotted should be finally allotted to Goa or to the new Union Territory of Daman and Diu - new U.T., for short. It may be noted that a corresponding provision was not made in the Act for the employees serving in the district of Daman and Diu. But section 60(5) provided for an Advisory Committee(s) to assist the Central Govt. in allocation the services between Goa and the New Union Territory. The second proviso to section (5) of Section 60 gives wide powers to the Central Government to pass appropriate orders, to prevent miscarriage of justice.

10. Section 61 is important. It permits the continuance of all officials of the existing Union Territory on the same posts as they were holding before the appointed day, and they shall be deemed to have been appointed on those posts

by the Government the State of Goa or the Govt. of the new Union Territory of Daman and Diu, as case may be. While subsections 1 to 4 of section 60 limit the scope to employees in the district of Goa of the existing Union Territory, section 61 is wide enough to cover the employees posted in the liaison office at New Delhi. It follows from section 61 that the employees in the Goa Sadan at New Delhi, including the applicant, are to be deemed to be continued on the same post after the appointed day by the Govt. (or any other authority) of Goa or the new Union Territory as the case may be. The question about the Goa Sadan employees is whether the Govt. of Goa or the Govt. of the new Union Territory should be deemed to have continued them on the post held they had/immediately before the appointed day in terms of section 61 of the Act. That is the question which has to be answered to dispose of this O.A. The proviso to Section 61 empowers the competent authority to pass any order in relation to such a person - eg an order transferring him, as in the case of the applicant. The question

again is who is the competent authority viz is he an officer of Goa or of the new Union Territory.

11. It has also to be added that the provision of Section 61 is intended to be transitory in nature, so that everybody continues to hold the post, he was holding before the appointed day and this is deemed to be in pursuance of an order of the appropriate Govt. - i.e. Goa or new Union Territory. For, if an employee is allotted finally, section 60(3) and 60(4) will come into play and the appropriate Govt. will then exercise full powers over such employee. In this view, perhaps, the powers can be exercised by the Govt, - or its authority - to whom an employee is allotted even provisionally.

12. Section 62 empowers the Central Government to give necessary directions to the Government of Goa for giving effect to Part VIII of the Act.

13. In exercise of the powers conferred by sub sections(2)and (5) of Section 60 and of Section 62 of the Act, the Government of India issued an order titled "Allotment for service in the State of Goa order, 1990".

on 31.5.1990 -Order for short, effective from 30-5-1987, perhaps, the appointed day mentioned in the Act. The order consists of only 2 clauses. The operative part, which is clause 2 of the order, deals with only two categories of employees. The first is employees provisionally allotted to Goa under section 60(1) of the Act. They are finally allotted to Goa or to the new Union Territory, as required under section 60(2) of the Act. The second category of employees are those who were in the district of Daman & Diu of the existing Union Territory immediately before the appointed day. These two categories of employees are dealt with in schedule I and schedule II to the order.

14. Schedule I is the list of "Persons employed in the District of Goa of the erstwhile Union Territory of Goa, Daman and Diu immediately before the appointed day and finally allotted under section 60, Sub Section(2) read with Section 62 of the Goa, Daman and Diu(Reorganisation Act, 1987 (No.18 of 1987) for service to the Union Territory of Daman and Diu". In otherwords, these are persons who were actually working in the district of Goa (i.e. the territory which became the State of Goa) but allotted to the new Union Territory of Daman and Diu(clause 2 (ii) of the order). All other persons working in the district of Goa, which has now become the State of Goa, and whose names are

not included in Schedule-I stand allocated finally to the State of Goa(Clause 2(i) of the order).

15. Likewise, Schedule-II is the list of "persons employed in the Districts of Daman and Diu of the erstwhile Union Territory of Goa, Daman & Diu immediately before the appointed day and finally allotted under section 60, sub section 2 read with section 62 of the Goa, Daman & Diu (Reorganisation) Act, 1987(No.18 of 1987 for service in the State of Goa". In otherwords these are the persons working in the district of Daman and Diu(i.e. the territory which became the new U.T. of Daman & Diu) but have been finally allocated to the State of Goa(Clause 2(iii) of the order.

16. There is no clause/ corresponding to clause 2(i) of the order pertaining to Goa which read as follows:-

" the persons who stand provisionally allotted for service to the State of Goa under clause (b) of sub-section (1) of section 60 of the said Act, and whose names are not included in Schedule I appended to this order shall be deemed to have been finally allotted for service to the State of Goa.

Instead, there is sub clause (iv) of clause 2 of the order which reads as follows:-

" all persons not covered by sub-paras(i) to (iii) of this order (and not covered by Section 58 of the said Act, shall be deemed as finally allotted for service to the Union Territory of Daman and Diu.

Kg

(30)

It could be argued that sub clause (iv) is much wider and in scope/perhaps applies to such employees of the existing U.T. who immediately before the appointed day were neither employed in the district of Goa nor in the districts of Daman and Diu, but, like the applicant, were employed in New Delhi in the Goa Sadan. The learned counsel for the applicant argued that in that event also the applicant should be treated as an employee of the new U.T. of the State of Goa has no jurisdiction over him. We are of the view that prima facie, clause (iv) cannot be interpreted in this manner, in view of the specific provision of section 60(1) and 60(2) of the Act which have been invoked in issuing the order.

17. What is important to note is that the applicant was neither provisionally allotted to the state of Goa under the provision of section 60(1) of the Act nor was he finally allotted to that State by the order dated 31.5.90. One fact, which is absolutely clear is that in terms of the order he is not allotted to Goa. Whether he stands allotted to the new U.T. - vide para (iv) of the order is a moot point on which we do not express

any opinion but prefer to leave it open, though, prima facie para (iv) cannot have that effect. Therefore, neither the Govt. of Goa nor any of its officers has any authority to transfer the applicant.

18. We, therefore, allow this application in part and declare that the order dated 18.11.91 of the Govt. of Goa (Annexure A-Call) transferring the applicant to Panaji and the consequential order dated 30.11.91 and the subsequent letter dated 27.3.92 of the second respondent are non-operative and honest and hence not enforceable against the applicant. In the circumstances of the case, Respondent No.1 has certain responsibilities and it is open to the applicant to make a representation to the first respondent, if so advised, seeking further orders/directions as may be felt necessary in the light of the observations we have made.

19. The application is disposed of as above without costs.

B.S. Hegde
(B.S. HEGDE)
MEMBER(J)

10/9/93

10/9/93
(N.V. KRISHNAN)
VICE CHAIRMAN(A)