

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(4)

C.A. NO. 1084/92

DECIDED ON : September 4, 1992

Giri Raj Kumar

... Applicant

Vs.

Union of India & Ors.

... Respondents

CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

1. Whether to be referred to the Reporter? *ys*
2. Whether Reporters of Local Newspapers may be allowed to see the Judgment? *ys*
3. Whether Their Lordships wish to see the fair copy of the Judgment? *No*
4. Whether to be circulated to other Benches? *No*

P. C. Jain
(P. C. Jain)
Member (A)

T. S. Oberoi
(T. S. Oberoi)
Member (J)

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THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri D. R. Gupta, Counsel for Applicant

Shri M. L. Verma, Counsel for Respondents

J U D G M E N T

By Hon'ble Shri P. C. Jain, Member (A) :

The applicant was appointed as L.D.C. in 1978 under the Ministry of Agriculture (Department of Agriculture and Cooperation), New Delhi, on the basis of the Clerks Grade Examination conducted by the Staff Selection Commission. After qualifying the Stenographer Grade 'D' Examination conducted by the Staff Selection Commission in February, 1981, he was appointed as Stenographer Grade 'D' w.e.f. 24.4.1981. He was confirmed on this post w.e.f. 1.5.1983.

2. There was a Fertilizer Division in the Department of Agriculture and Cooperation and five items of work allocated to this Division were transferred to the Department of Fertilizers under Government of India (Allocation of Business) (179th) Amendment, Rules, 1986, vide Cabinet Secretariat notification No. 74/2/1/86-Cab. dated 4.2.1986. In pursuance of the above notification of the Cabinet Secretariat, the Department of Agriculture and Cooperation

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issued on 6.3.1986 office order No. 8 of 1986 by which the posts sanctioned for the items of work transferred from the Fertilizers Division to the Department of Fertilizers, along with their incumbents were transferred from the Department of Agriculture and Cooperation to the Department of Fertilizers, with immediate effect. In para 4 of the above office order dated 6.3.1986, it is stated as below :-

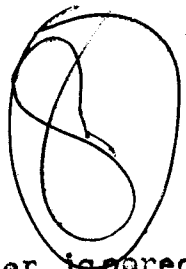
"4. The officers/staff belonging to CSS/CSSS/CSCS, etc. being transferred to the Department of Fertilisers from the Department of Agriculture and Cooperation, will, for the present, be treated as on temporary loan basis from the Department of Agriculture and Cooperation, till they are formally absorbed in the cadre of the Department of Fertilisers."

By order issued on 13.9.1990, the Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, under rule 22 of the Central Secretariat Service Rules, 1962, rule 23 of the Central Secretariat Stenographers' Service, 1969 and rule 21 of the Central Secretariat Clerical Service Rules, 1962, constituted with immediate effect, a combined cadre for the Department of Fertilizers in the Ministry of Agriculture and the Department of Chemicals and Petrochemicals in the Ministry of Petroleum and Chemicals in respect of the Central Secretariat Service, the Central Secretariat Stenographers' Service and the Central Secretariat Clerical Service. The Department of Fertilizers was notified as the nodal authority for this newly created cadre in respect of the three Secretariat Services for the purpose of coordination in respect of common matters.

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3. Between 6.3.1986 when the applicant was sent on temporary loan basis from the Department of Agriculture and Cooperation to the Department of Fertilizers vide order dated 6.3.1986 and the creation of the new cadre by order dated 13.9.1990, Stenographers Grade 'D' of the Central Secretariat Service cadre of the Department of Agriculture and Cooperation are shown to have been promoted to the higher post of Stenographer Grade 'C' on a purely temporary and short term/ad-hoc basis, w.e.f. 30.11.1988 ~~and subsequent dates~~ up to 30.1.1989 or until the appointment of regular eligible candidates nominated by the Department of Personnel and Training or until further orders, whichever is the earliest. This was done by Part I Office Order No. 126 of 1988. The case of the applicant is that nine officials promoted as above to the post of Stenographer Grade 'C' were junior to the applicant. It is his further case that the ad-hoc promotion as aforesaid including those of his juniors in the parent cadre of Department of Agriculture and Cooperation has continued since then by separate orders issued from time to time. He has also stated that he submitted a representation on 13.12.1988 to the Department of Agriculture with the request that his claim for promotion to the next higher post of Stenographer Grade 'C' should not be overlooked on account of the fact that he has been temporarily transferred to the Department of Fertilizers on loan basis but his representation was deliberately overlooked and he was superseded by his juniors. It is his contention that he made repeated representations for seeking his repatriation to the parent cadre so that by continuing on temporary

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transfer he may not suffer as he had been earlier ignored and overlooked in the matter of promotion to the grade of Stenographer Grade 'C'. He was informed by letter dated 13.11.1991 of the Department of Fertilizers, Ministry of Chemicals and Fertilizers that the Ministry of Agriculture (Department of Agriculture and Cooperation) after examining his representation in consultation with the Department of Personnel & Training, had informed that since he was transferred to the Department of Fertilizers on permanent basis, there was no question of his retaining lien with the Department of Agriculture and Cooperation and that lien was transferred along with the person in case of transfer from one cadre to another CSSS cadre. He was also informed that promotion can have only prospective effect and retrospective promotion on ad-hoc basis cannot be allowed on the consideration that a vacancy was available. Accordingly, he was informed that his request could not be acceded to. This reply from the Department of Fertilizers was based on the office memorandum dated 8.10.1991 sent to them by the Department of Agriculture and Cooperation. He preferred a representation to the Department of Fertilizers on 17.12.1991 against the above reply of 13.11.1991. He was informed by office memorandum dated 6.1.1992 by the Department of Fertilizers that his representation dated 17.12.1991 had been sent to the Department of Agriculture and Cooperation. No further reply is said to have been received. It may be stated here that apart from the representation dated 13.12.1988 and representation dated 17.12.1991 against the reply dated 13.11.1991, copy of no

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other representation has been filed by the applicant along with his O.A. It is in this background that the applicant has filed this O.A. praying for setting aside the communication dated 3.10.1991 from the Department of Agriculture and Cooperation and dated 13.11.1991 from the Department of Fertilizers; for a direction to the Department of Agriculture and Cooperation to issue necessary orders for his repatriation from the Department of Fertilizers to the cadre of Department of ~~Department~~ Agriculture and Cooperation; and for a direction to the Department of Agriculture and Cooperation to consider the applicant for promotion to the post of Stenographer Grade 'C' from the date his immediate junior was promoted and to grant him consequential benefits for payment of arrears of pay and allowances and other service benefits accruing therefrom. An interim order was passed on 22.4.1992 directing the respondents that if any promotion is made upto 5.5.1992, that should be in accordance with the rules and should be subject to the decision of the present O.A. This interim order has continued since then.

4. As the pleadings in this case were complete, it was decided with the consent of the parties, to finally dispose of this case at the admission stage itself. Accordingly, we have perused the material on record and have also heard the learned counsel for the parties.

5. The case of the respondents, briefly stated, is that the applicant having been transferred from the Department of Agriculture and Cooperation to the Department of

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Fertilizers along with the post, he was not entitled either to be considered for ad-hoc promotion in the Department of Agriculture and Cooperation or repatriation from the Department of Fertilizers to the Department of Agriculture and Cooperation. The respondents have also taken the plea that the claim of the applicant is barred by limitation inasmuch as the promotions of the juniors as alleged were made in 1987 and 1990 but the O.A. has been filed only on 16.4.1992.

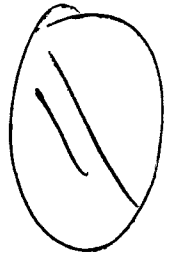
6. Taking the question of limitation first, the applicant in his rejoinder has stated that the decision of the respondents on his representation was communicated only on 13.11.1991 and as the O.A. has been filed within the prescribed period of one year from that date, the same is within limitation. He has also referred to sub-clause (a) of sub-section (1) of Section 21 of the Administrative Tribunals Act, 1985, which is extracted as below :-

- "21. Limitation — (1) A Tribunal shall not admit an application,—
- (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;"

Clause (a) of sub-section (2) of Section 20, is extracted as below :-

- "(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or"

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From a reading of the above two clauses, the contention of the applicant that his O.A. is within limitation has to be upheld. The respondents have not been able to show that any order had been passed by them on his representation prior to the impugned order dated 13.11.1991. As such, the objection of bar of limitation raised by the respondents cannot be upheld.

7. The first question which falls for determination in this case is whether the applicant was entitled to be considered for ad-hoc promotion to the post of Stenographer Grade 'C' in his earlier cadre of Department of Agriculture and Cooperation till 13.9.1990 when the new cadre was constituted. We have already extracted above para 4 of office order No. 8 of 1986 dated 6.3.1986 according to which the applicant who undisputedly belongs to the Central Secretariat Stenographers' Service, was to be treated as on temporary loan basis from the Department of Agriculture and Cooperation till he was formally absorbed in the cadre of Department of Fertilizers. It is not in dispute that the applicant had been confirmed on the post of Stenographer Grade 'D' w.e.f. 1.5.1983 in the aforesaid cadre of the Department of Agriculture and Cooperation. As such, he had a lien on the post of Stenographer Grade 'D' in the cadre of the Department of Agriculture and Cooperation and until his lien is transferred to another cadre, he had a right to be considered even for ad-hoc promotion to the higher post of Stenographer Grade 'C'. The material on record before us shows that there is no averment on behalf of the respondents that he was so considered. Sub-rule (2) of

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Rule 12 of the Central Secretariat Stenographers' Service Rules, 1969 provides as below :-

"(2) Temporary vacancies in Grade C of the Service in any cadre shall be filled by the appointment of persons included in the Select List for the Grade in that cadre. Any vacancies remaining unfilled thereafter shall be filled by the temporary promotion on the basis of seniority, subject to the rejection of the unfit, of officers of Grade D of the Service in that cadre who have rendered not less than five years' approved service in the Grade and are within the range of seniority. Such promotions shall be terminated when persons included in the Select List for Grade C become available to fill the vacancies."

From the above provision of Rule it is clear that even temporary/ad-hoc arrangement is to be made on the basis of seniority subject to the rejection of the unfit provided the prescribed minimum approved service in the lower grade has been put in by those who are to be considered. The applicant having been confirmed as Stenographer Grade 'D' w.e.f. 1.5.1983, he had obviously put in the minimum prescribed approved service of five years in Grade 'D' of the Service before his juniors were promoted vide office order dated 19.12.1988. Thus, we have no hesitation in holding that if any of the applicant's juniors was promoted even on a purely temporary and short term/ad-hoc basis to the higher post of Stenographer Grade 'C' in the cadre of Department of Agriculture and Cooperation between 1.5.1983 and 12.9.1990, i.e., the date when the new cadre was duly constituted, the applicant's case was also required to be considered and if found fit he was required to be given such promotion from the date his junior was so promoted and for the period the junior was given the promotion from time to time. The contention of the respondents that at the time of ad-hoc promotion to the post of Stenographer Grade 'C'

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in the Department of Agriculture and Cooperation, the applicant was working on deputation on the post of Junior Accountant would not make any difference to the conclusion arrived at by us as above, particularly in view of the fact that the applicant in his rejoinder has stated that his deputation post was in a lower scale than the scale prescribed for the post of Stenographer Grade 'C'.

8. The other question which remains for adjudication in this case is whether or not the applicant was entitled to be given any option for purposes of absorption in the new cadre of the Department of Fertilizers in the Ministry of Agriculture and the Department of Chemicals and Petrochemicals in the Ministry of Petroleum and Chemicals. The case of the respondents on this point is that in terms of the instructions in the Department of Personnel & Training O.M. No. 10/11/70-CS-II dated 18.8.1970 which inter alia states that staff actually handling the items of work made over to the new Ministry/Department should be automatically transferred along with the work and in such cases no option should ordinarily be given to the staff, the request of the applicant was rejected. The applicant in his rejoinder on this point ^{has} stated that in the subsequent instructions issued by the Department of Personnel & Training in the year 1974 in continuation of the instructions dated 18.8.1970, it has been clarified that the transfer of the applicant will be on loan basis till his absorption in the cadre of concerned Ministry/Department. It is further stated that in an identical case all the persons transferred from the Department of Agriculture and Cooperation to the Ministry

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of Food Processing Industries the colleagues of the applicant had been given option to repatriate to their parent cadre and non giving of such option to the applicant is totally arbitrary and discriminatory. The applicant has enclosed copies of orders issued by the Ministry of Food Processing Industries in this respect (Annexures A-5 and A-6 to the rejoinder), and issued by the Department of Agriculture and Cooperation (Annexure A-7 to the rejoinder). However, he has not placed on record a copy of the instructions said to have been issued by the Department of Personnel and Training in the year 1974 allegedly in continuation of the instructions dated 13.8.1970, which have been relied upon by the respondents. O.M. dated 29.4.1990 (Annexure A-5 to the rejoinder) issued by the Ministry of Food Processing Industries states that "it has been decided in consultation with the Department of Personnel and Training that Ministry of Food Processing Industries will constitute a participating unit of the CSS Cadre of the Department of Industrial Development with effect from 23.2.1990" and that "Consequent upon the said merger, all the incumbents in MFPI belonging to the Central Secretariat Service, Central Secretariat Stenographers' Service and Central Secretariat Clerical Service are required to exercise an option as to whether they would like to remain in the Ministry of Food Processing Industries (which now constitutes a Cadre Unit of the Department of Industrial Development) or repatriate to their parent cadre from where they were transferred to Ministry of Food Processing Industries. The option is available also to the persons who have joined Ministry of Food Processing Industries on loan/transfer basis." In pursuance of the option given in this O.M., certain persons

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are shown to have opted to go back to the Department of Agriculture and Cooperation and they were taken on the strength of the Department of Agriculture and Cooperation. From these facts it is clear that in a similar case option has been given while in the case of the applicant such an option has not been given. It also needs to be emphasised that the office order dated 6.3.1986 para 4 of which has already been extracted above, states that the applicant will be treated as on temporary loan basis from the Department of Agriculture and Cooperation till he is formally absorbed in the cadre of the Department of Fertilizers (emphasis supplied). From this also it is clear that it is not enough that a separate cadre is created but what is required is that the applicant should be formally absorbed in the new cadre. If the intention was to treat the applicant as on temporary loan basis only till a new cadre was duly constituted, the order dated 6.3.1986 would not have used the term 'formally absorbed'; the term - formal absorption - connotes more than the creation of a new cadre. It is true that allocation/re-allocation of items of work of Government to a Ministry/Department in accordance with the Government of India (Allocation of Business) Rules is the prerogative of the Political Executive and cannot be questioned by the employee or interefered with in the process of judicial review, but while transferring some items of work from the Fertilizers Division under the Department of Agriculture and Cooperation to the Department of Fertilizers and also the posts created for those items of work so transferred, the Government themselves treated the transfer of services belonging to the three Services of the Central Secretariat

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to the new department along with the transfer of their post to be only on temporary loan basis until formal absorption in the new cadre. Even otherwise, it is well settled by now that a Government servant holding a lien on a post in a cadre cannot be transferred to a post outside his cadre without his consent (Prakash R. Borkar vs. Union of India & Ors. : 1984 (1) SLJ 61).

9. Learned counsel for the applicant has also referred to Rule 22 of the Central Secretariat Stenographers' Service Rules, 1969, which is extracted as below :-

"22. Inter-cadre transfers — The Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs may transfer a cadre officer of any Grade from one cadre to another cadre."

On the basis of the above provision, the learned counsel for the applicant argued that the transfer of the applicant in this case from the cadre of Department of Agriculture and Cooperation to the newly constituted cadre of the Department of Fertilizers and the Department of Chemicals and Petrochemicals has not been issued by or with the approval of the Department of Personnel and Training and as such, it is without authority. We are of the view that the provisions of Rule 22 *ibid* are *prima facie* applicable to situations other than where the work is transferred from one Ministry/Department to another Ministry/Department and in consequence the post related to that work and the incumbent of the post is also transferred along with the post. If such an order is issued in pursuance of orders issued under the Government of India (Allocation of Business) Rules by the competent

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cadre controlling authority and without the approval of the Department of Personnel and Training, provisions of Rule 22 ibid, in our opinion, would have no applicability in such a case.

10. In the light of the foregoing discussion, the O.A. is disposed of in terms of the following directions :-

- (1) The suitability of the applicant for promotion to the post of Stenographer Grade 'C' in the Department of Agriculture and Cooperation on temporary and short term/ad-hoc basis made to such post in that Department during the period from 1.5.1988 till 12.9.1990 shall be considered by the respondent No.1, i.e., the Ministry of Agriculture, Department of Agriculture and Cooperation and if the applicant is found fit for such promotion, he shall be entitled to such promotion from the date and from the periods for which Stenographer Grade 'D' in the cadre of Department of Agriculture and Cooperation and junior to him was so promoted. The difference in pay and allowances in such an event shall be paid to him within a period of four months from the date of receipt of a copy of this order by the respondents. It is made clear that this will be only upto the period 12.9.1990, i.e., the date by which the post held by him was not included in the new cadre.

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(2) The applicant shall also be given an option within three months from the date of receipt of a copy of this order as to whether he opts to continue in the new cadre of the Department of Fertilizers and the Department of Chemicals and Petrochemicals in the Ministry of Petroleum and Chemicals, and in case he opts to revert to his earlier cadre of Department of Agriculture and Cooperation, he shall be repatriated to that cadre but such repatriation shall be effective from the date of his repatriation and assuming charge of a post in the cadre of the Department of Agriculture and Cooperation.

11. On the facts and in the circumstances of the case, we leave the parties to bear their own costs.

Cec 4/9/92
(P. C. JAIN)
MEMBER (A)

Seis
(T. S. OBEROI)
MEMBER (J)

Pronounced by the undersigned in open Court.

Cec
(P. C. Jain)
Member (A)
4.9.1992