

Reserved.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

...

Original Application No. 405 of 2001.

this the 24th day of May'2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

Tejpal Singh, aged about 59 years, S/o late Daya Ram Singh, Member of I.A.S. of U.P. Cadre, Presently posted as Vice-Chairman, Meerut Development Authority, Meerut.

Applicant.

By Advocate : Sri I.P. Singh.

Versus.

State of U.P. through the Secretary Appointment, U.P. Shasan, Lucknow.

Respondent.

By Advocate : Sri K.P. Singh.

O R D E R

The applicant has challenged the validity of the order dated 1.4.2001 (Annexure A-1 to the O.A.) and sought his quashing by means of this O.A.

2. The applicant, who was initially recruited and appointed in Provincial Civil Service of State of U.P. , ~~was~~ was appointed in I.A.S. of U.P. Cadre on ^{of} 11.11.1994 and was allotted year of allotment 1986. It is stated that the date of birth of the applicant being 10.7.1941, he is going to attain the age of superannuation in July'2001. Presently, the applicant was posted as Vice-Chairman, Meerut Development Authority, Meerut. By means of the impugned order dated 1.4.2001

R,

the applicant was informed about the decision of respondent to post him as Officer on Special Duty (O.S.D. in short), Noida. The grievance of the applicant is that the impugned transfer order has been passed in arbitrary manner, which was just about four months prior to his retirement and the applicant was making preparations for his retirement and for settlement of his family. The applicant also made a representation dated 2.4.2001 against the aforesaid transfer order, but the respondent has direct^{ed} him to join on the new place and nothing could be done at this stage. It is contended that the impugned order has been passed in contravention of I.A.S. (Cadre) Rules 1954 (Rules of 1954 in short). It is claimed that the applicant is liable to be posted against a cadre post as provided under Rules 7 & 8 of the Rules of 1954. The applicant can also be posted on deputation to the post under local body of the State Govt. concerned provided such post carries the prescribed pay which should not be less than the pay-scale of the officer concerned and has been declared equivalent in status etc. It is also claimed that a I.A.S. Officer can be posted on deputation only with his consent.

3. It is further contended that there is no post at all of O.S.D., Noida against which the applicant is sought to be posted because there is only one post of O.S.D. at Noida, which is already occupied by one Sri Dilip Kumar, a Senior I.A.S. of U.P. Cadre. The applicant has also alleged that the total authorised cadre strength of U.P. in respect to I.A.S. cadre is 527 which includes State deputation reserve as 94 only and the State Government has already availed the said strength under item no. 5 of the Cadre Fixation Regulation. It is further pleaded that I.A.S. (Pay) Rules 1954 prohibits appointment of a member of service to a post other than the post specified in Schedule III unless the

the State Government concerned has made a declaration that the said post is equivalent in status and responsibility to the post specified in the said Schedule vide Rule 9 (1) of the Rules of 1954.

4. The respondent^x has filed Short Counter affidavit opposing the case of the applicant because the applicant has been transferred in public interest as per seniority and his skill, which is required at Noida. The impugned order is otherwise, has been passed as per Rules and the Government orders in this regard.

5. I have heard the learned counsel for the parties at length and perused the pleadings on record.

6. It may be stated ^{at the} ~~outset~~ that the learned counsel for the applicant has not brought to my notice any rule or Government order or instructions to show that a I.A.S. officer cannot be transferred at the ^e ~~far~~ end of his service for his attaining the age of superannuation within four months from the date of transfer.

7. The learned counsel for the applicant has, however, raised pertinent issues by stating that the impugned order has been passed in contravention of Rule 9 of the Rules of 1954 and also that the applicant has been transferred against a non-existing post, which is also in violation of the Rules.

8. It is not in dispute that the applicant has been transferred to a non-cadre post. The respondent has also not denied the allegation of the applicant that any declaration under Rule 9(1) of the Rules of 1954 was made in respect of the transfer of the applicant to a non-cadre post as contemplated under the aforesaid Rules. This Tribunal vide order dated 15.5.2001 has allowed time

R₁

to the learned counsel for the respondents to gather further information regarding the post position, status and creation of the post to which the applicant has been transferred as per the impugned order. In response to this direction, a copy of the order dated 20.5.2001 has been placed for perusal.

9. The learned counsel for the applicant in support of his contention that the respondent has issued impugned order in contravention of Rule 9(1) of the Rules of 1954, has placed ^{reliance on} a Five Judges decision in the case of E.P. Royappa Vs. State of Tamil Nadu (AIR 1974 SC 555). The question before the apex court was of the similar nature. It is for the sake of convenience that the relevant part of the decision is extracted as under :-

"82. The petitioner is, however, on firmer ground when he bases his challenge under R.9, sub-r.(1) of the Indian Administrative Service (Pay) Rules 1954. Rule 9, in so far as material provides as follows:

(1) No Member of the Service shall be appointed to a post other than a post specified in Schedule III, unless the 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.

(2) The pay of a member of the Service on appointment to a post other than a post specified in Schedule III shall be the same as he would have been entitled to, had he been appointed in the post to which the said post is declared equivalent.

(3) xxx xxxxx xxx

(4) Notwithstanding anything contained in this rule, the State Government concerned in respect of any posts under its control, or the Central Govt. in respect of any posts under its control, may for sufficient reasons to be recorded in writing, where equation is not possible, appoint any member of the service to any such post without making a declaration that the said post is equivalent in status and responsibility to a post specified in Schedule III."

This rule is intended to provide a safeguard for the protection of a member of the Indian Administrative Service. Sub-r.(1) enacts that no member of the Indian Administrative Service shall be appointed to a post other than a post specified in Schedule III, or in other words, to a non-cadre post unless the Government makes a

declaration that such non-cadre post is "equivalent in status and responsibility" to a post specified in the said Schedule, i.e. to a cadre post. 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 it makes a declaration setting-out which is the cadre post is equivalent in status and responsibility. The making of such a declaration is a sine qua non of the exercise of power under sub-r. (1). It is not an idle formality which can be dispensed with at the sweetwill 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. So far as cadre post are concerned, their hierarchy would be known, but a non-cadre post created by the Govt. would be stranger in the hierarchy and that is why sub-r(1) requires that before appointing a member of the Indian Administrative Service to such non-cadre post, the Government must declare which is the cadre to which such non-cadre post is equivalent in status and responsibility so that the member of the Indian Administrative Service who is appointed to such non-cadre post, would know what is the status and responsibility of his post in terms of cadre posts and whether he is placed in a superior or equal post or he is brought down to an inferior post. If it is the latter, he would be entitled to protect his rights by pleading violation of Art.311 or Arts. 14 & 16 of the Constitution. whichever may be applicable. That would provide him effective insulation against unjust or unequal or unlawful treatment at the hands of the Government. The objects 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 repotism 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-r(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. There the pay attached to the non-cadre post is not material. As pointed out by the Government of India in a decision given by it in MHA letter no. 32/52/56-AIS (II) dated 10th July, 1956 the basic criterion for the determination of equivalence is "the nature and responsibilities of duties attached to the post and not the pay attached to the post." Once the declaration of equivalence is made on a proper application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post shall be the same as he would have been entitled to, had he been appointed in the cadre post to which such non-cadre post is declared equivalent. He is thus assured the pay of the equivalent cadre post and his pay is protected. Now this declaration of equivalence, though imperative is not conclusive in the sense that it can never be questioned. It would be open to a member of the Indian Administrative Service to contend, notwithstanding the declaration of equivalence that the non-cadre

post to which he is appointed is in truth and reality inferior in status and responsibility to that occupied by him and his appointment to such non-cadre post is in violation of Art. 311 or Arts. 14 & 16. The burden of establishing this would undoubtedly be very heavy and the court would be slow to interfere with the declaration of equivalence made by the Govt. The Government would ordinarily be the best judge to evaluate and compare the nature and responsibilities of the functions and duties attached to different posts with a view to determining whether or not they are equivalent in status and responsibility and when the Govt. has declared equivalence after proper application of mind to the relevant factors, the court would be most reluctant to venture into the uncharted and unfamiliar field of administration and examine the correctness of the declaration of equivalence made by the Government. But where it appears to the Court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities of the functions and duties of the two posts are so dissimilar that no reasonable man can possibly say that they are equivalent in status and responsibility or the declaration of the equivalence is mala-fide or in colourable exercise of power or it is a cloak for displacing a member of the Indian Administrative Service from a cadre post which he is occupying the court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant. The declaration of equivalence must however always be there if a member of the Indian Administrative Service is to be appointed to a non-cadre post. The only exception to this rule is to be found in sub-r. (4) and that applies where the non-cadre post is such that it is not possible to equate it with any cadre post. Where the Government finds that the equation is not possible, it can appoint a member of the Indian Administrative Service to a non-cadre post but only for sufficient reasons to be recorded in writing. This again shows that the Government is required to apply its mind and make an objective assessment on the basis of relevant factors for determining whether the non-cadre post to which a member of the Indian Administrative Service is sought to be appointed can be equated to a cadre post, and if so, to what cadre post it can be so equated. This is the plain requirement of R.9 sub-r. (1) and the question is whether the appointment of the petitioner to the non-cadre posts of Deputy Chairman, State Planning Commission and officer on Special Duty was in compliance with this requirement."

10. In the present case, I find that the State Govt. has not made any declaration setting-out which is the cadre post (the post of O.S.D., Noida) is equivalent in status and responsibility. The Government is required to apply

Ry

its mind to the nature and responsibility of the functions and duties attached to the non-cadre post and also to determine the equivalence. The pay attached to the non-cadre post is not material because Rule 9(2) of the Rules 1954 protects the pay of an I.A.S. Officer attached to a cadre post. It would be open to a member of the Indian Administrative Service to contend, notwithstanding the declaration of equivalence that the non-cadre post to which he is appointed is in truth and reality inferior in status and responsibility to that occupied by him and his appointment to such non-cadre post is in violation of Article 311 or Articles 14 & 16 of the Constitution of India.

11. As stated above, a copy of the order dated 20.5.2001 which is purported to have been issued under rule 9(1) of the Rules 1954 subsequent to the impugned order ~~xx~~ ^{indicates it} was not issued before transferring the applicant to ex-cadre post. It is ^a thus, ^a clear case in which the impugned order has been passed in contravention of Rule 9(1) of the Rules of 1954.

12. As regards declaration dated 20.5.2001, the same has not been challenged before this Tribunal. Therefore, its legality is not an issue in this case, hence no opinion is being expressed regarding its validity in the present case. But the fact remains that since no such declaration was made as contemplated under Rule 9 (1) of the Rules of 1954, which has been declared by the apex court as mandatory requirement before transferring a I.A.S. Officer to ex-cadre post, **obviously,** the impugned order was passed in contravention of the extant rule and in arbitrary manner, hence the same is liable to be quashed.

13. The learned counsel for the respondents has contended but not pleaded in the Counter affidavit that the applicant has been transferred on the basis of some complaints against

R

the applicant. It is not borne-out from the record that the applicant was transferred on account of complaints against him. Besides the transfer cannot be mis-used to punish ^{employee} an ~~an~~ for his alleged mis-conduct. In such cases, it was for the respondent to initiate a proper disciplinary proceedings against such person.

14. It is not the question of dignity of any particular officer, but as observed by the apex court in the case of E.P. Royappa (supra) that Rule 9 is intended to provide a safeguard for protection of a member of I.A.S. In other words it is the prestige of the service (IAS), which is protected under rule 9 and by shifting a senior IAS officer in this manner clearly reflects that the same has been passed in arbitrary manner, without application of mind and confirmity of the rules.

15. For the reasons stated above, the impugned transfer order dated 1.4.2001 is quashed. Since the applicant has been transferred on the basis of the illegal order, the respondents are directed to reinstate the applicant on the post on which he was holding before the impugned order was passed. The O.A. stands allowed as above with no order as to costs.

Rafiquddin
Member (J)

Girish/-