

13
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Court No.2

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.1261 of 1987

(W.P. No.6062 of 1983)

R.K. Gupta Applicant

Versus

Union of India & Others Respondents.

Hon.Mr. P.S.Habeeb Mohd., A.M.

Hon.Mr. J.P. Sharma, Member(J)

(By Hon.Mr.J.P.Sharma, J.M.)

Shri R.K. Gupta, who was earlier an employee under the Ministry of Rehabilitation since 2.1.1957 and worked as a Legal Inspector. The Ministry of Rehabilitation which was performing the function of settlement organisation set up temporarily for settlement of the claims of the displaced persons from West Pakistan as a result of partition of India. The employees working therein ultimately needed rehabilitation themselves as the work of the Settlement Organisation had to be bound up. On 19.6.67 the Ministry of Home Affairs issued an Office Memorandum intimating that it had been decided to the ban to recruitment to all Govt. Departments whether to be filled by promotion or direct recruitment in Class I, II and III posts. On the basis of the Staff Inspection Unit Review, a reference was made that the re-deployment to the surplus staff scheme dated 25.2.66. It was decided that officers

holding post in officiating capacity on a long term basis from which there was no reasonable prospect of reversion in the normal course but for the measures of Administrative Reforms or study by the Staff Inspection Unit should be protected from reversion for a maximum period of six months. It required that against the reduced cadre strength, the deputationists and officers on temporary loan from other offices should first be reverted to their parent organisations. Thereafter all officiating officers in the surplus Zone were to be adjusted against short term vacancy, if any, by reverting persons holding such post on ad hoc or temporary basis. The officers who could not be adjusted were to be surrendered to the Cell immediately alongwith the posts in terms of the scheme regarding deployment of surplus staff. Such staff transferred to the Cell were to remain on the Roll of the Cell for a maximum period of six months. During this period the Cell was to endeavour to place the officiating surplus staff against equivalent post elsewhere. However, if they remained unabsorbed at the end of six months, they were to be immediately reverted to the Organization from which they were declared surplus and that organization had to be read to take them back against the lower post from which they were promoted.

2. The applicant was declared surplus with effect from 1.11.69 and appointed against the post deemed to have been transferred and created in the Central Surplus Cell. The applicant received appointment letter

1

dated 21.11.69 offering him an appointment to the post of U.D.C. which he has to join till 12.12.69. However, the applicant made representation that he should be given equivalent post and status & which, according to the applicant, is the post of Income Tax Inspector in the said Department. However, the applicant joined the post of U.D.C. at Kanpur on 16.12.69. In continuation of the other representation which the applicant is said to have given on 1.12.69, gave another representation on 16.3.70 containing that he should be given the executive post of Income Tax Inspector, as the applicant was declared surplus as Legal Inspector. The respondents' reply to the representation, Annexure-8 informing the applicant that he cannot be redeployed against the post of Income Tax Inspector as the post of Inspector carried much higher scale of pay than that one held by the applicant. This information was given on 14.4.70. Again by Annexure-11A dated 13.10.81, the applicant was informed that his case has already been considered by the Department of Personnel and rejected and so it was not possible to reconsider and accede to his request at this late stage. Aggrieved by this, the applicant filed this Writ Petition in the Hon'ble High Court in May, 1983 for the following reliefs :-

- (i) A writ, order or direction in the nature of mandamus directing the respondents to treat the petitioner on the post of Income Tax Inspector w.e.f. 16.12.69 and to grant promotions to the post of Income Tax Officer w.e.f. from the date he is entitled under law; or he be posted on a post equivalent to the
- 6

post of Legal Inspector of the Rehabilitation Department in status and his past services as Legal Inspector in the Rehabilitation Deptt. may be taken into account for the purposes of seniority.

(ii) A Writ, order or direction in the nature of mandamus directing the respondents to decide the representation of the petitioner on the basis of the principle laid down by the Hon'ble High Court of Judicature at Allahabad (Lucknow Bench) as also in accordance with the principle laid down by the Hon'ble High Court of Judicature at Delhi in Writ Petition No.710 of 1971 S.C.Sharma Vs. Union of India and Others dated 18.4.80.

(iii) Issue a Writ, order or direction in the nature of certiorari quashing the order dated 30.10.1981 received by the petitioner on 11.3.1983 (Annexure-11) and the order dated 14.4.1970 (Annexure-8).

3. The respondents contested the Writ Petition by filing the Counter Affidavit in which it is stated that the applicant was Legal Inspector in the Custodian Deptt. and was given the post which was equivalent in the same time scale i.e. of U.D.C. in the office of Income Tax Commissioner, Kanpur. Since the applicant has joined that post willingly so after a gap of 14 years he cannot now claim or lay claim to a post of a higher rank of Income Tax Inspector carrying a higher scale of pay and also the post executive in nature. The representations made by the applicant were replied immediately after

23/5

in 1970 that he cannot be considered for the post of Income Tax Inspector. The analogy drawn by the applicant from the various judgements is not applicable to the applicant. The judgement in the Writ Petition by the Hon'ble High Court of Delhi, Annexure-3 delivered on 18.4.80 does not apply to the facts of the present case where the matter concerned with certain gazetted officers of the Rehabilitation Ministry or senior Inspectors.

4. The applicant has since been promoted from the post of U.D.C. as Income Tax Inspector in due course.

5. We have heard the learned counsel at length and perused the law relied on by the applicant, Annexure-3, Annexure-15 and the various provisions referred to by the applicant.

6. According to the applicant who argued in person, the applicant was entitled to an equivalent post as well as the same status. In this connection, the Retrenchment Procedure and deployment of surplus employees have been referred to by the applicant and at page 380 of Item 'B' Clause 8 Sub Clause 'B' have been relied upon which reads keeping in view of the experience gained by the surplus employees, it will be for the organization concerned to fix the pay of the employees concerned in accordance with the Rules on the subject. It is a direction and only gives a direction for fixation of pay according to Rules. At page 386 of the said Retrenchment Procedure at the bottom, it has been pointed out that in case of permanent post corresponding supernumerary post permanent

will be deemed as created in the pool by the competent authority with effect from the date of transfer on the same date and designation and with the same scale of pay and conditions and further the person transferred to the pool will be deemed to have been appointed on transfer but this does not give any boost to the applicant's case that a Legal Inspector in the Custodian Department is equal as per scale of pay or in any other manner equivalent to that of Income Tax Inspector of Revenue Department. What the applicant presses emphatically is of absorption at page 388 of Retrenchment Procedure which lays down "....an Equivalent temporary post on the same scale of pay and conditions deemed as created in the Central Pool with effect from the date of transfer of the officiating Govt. servant to the Central (Surplus Staff) Cell." The applicant also referred to at page 394 of the Retrenchment Procedure "against equivalent post elsewhere" mentioned in Clause (c) of Clause IX and also Clause (e) at page 398 of Clause (c) which lays down " in that event if the pay scale of the recipient post is lower, the individual should be allowed facility or carrying any previous pay scale alongwith him, even if he was officiating in it". By this the learned counsel referred to the fact that equivalent post means both equal in pay and status. It is admitted to the applicant that the pay scale for the post of Income Tax Inspector is Rs. 210 - 485 while the post of While the post of Legal Inspector is Rs.130-300. In the reported case of Delhi High Court, Annexure-3

there are certain relevant observations regarding adjustments of the officials or employees posted in the surplus Cell. Redeployment, according to the Webster Dictionary, means a reallocation or reassigning of men or equipment. The object of the transfer to the Central Pool Cell was to facilitate placement of personnel in other Govt. organizations equally and efficiently. In the judgement at page 15, Annexure-3 it would appear that the "intention was not only to protect the pay scale but also the status and position that the incumbent was holding. There appears to be a clear distinction between "an equivalent post" and "a matching pay scale". An equivalent post will indicate a post of equal status in the sense of duties and classification. It is therefore apparent that a post with a matching pay scale in class III (non gazetted classification) be an equivalent post but one with the same pay scale". These observations equally apply to the applicant as he belongs to Class III(Non Gazetted) post of Legal Inspector. The contention of the applicant therefore cannot be accepted that since he is an Inspector then for all purposes he should be designated equivalent to Income Tax Inspector.

7. References have been made by the applicant to the authority ⁽¹⁾Shyam Lal Vs.State of Rajasthan in W.P.No.1943/83, ⁽²⁾Tarsem Kumar Sehgal Vs.State of Punjab & Another in W.P.No.1034 of 1985. These cases do not apply to the present case in hand. (3) The case of Maj.K.D.Gupta Vs.Union of India and Another 1984 SCC(L&S) 93 relates to reduction in rank of an Army Officer and that too therefore does not apply.

8. The learned counsel for the applicant also referred to a decision of Lucknow Bench of Allahabad High Court 1979 LAB IC 376. This also does not apply in the present case. The grievance in this reported cases was that the applicants were appointed as Head Clerk in the Income Tax Department while their juniors got higher promotion as the first promotion from Head Clerk is Supervisor and then Inspector. In this case, the petitioner was Senior Accountant in the substantive capacity and carrying a higher scale than that of Legal Inspector.

9. The learned counsel for the respondents as placed reliance on the following cases :

(A) W.P.No.4831 of 1982 of Madras High Court. K.Kalyanaraman V The Director of Inspection(Income Tax)Central Board of Direct Taxes & Another, (B) W.P.No.5019 of 1983 and (C) W.P.11648 of 1983 K.Kalyanaraman Vs. Min.of Fin.Deptt. of Rev & Others ^{(same parties as (A))} These cases also do not apply to the present case.

43
8

- 8 -

10. Having gone through the whole of the arguments and the record of the case, we are of the opinion that the post of U.D.C. is equivalent to that of Legal Inspector both in pay scale and status and both are class III non-gazetted post having the same scale of pay Rs.130 - 300 and the applicant could not have been deployed for the post of Income Tax Inspector carrying the scale of pay of Rs. 210 - 450. The Writ Petition/Transfer Application is therefore de void of merits and is dismissed with costs on parties.

J. Manu
Member (J)

[Signature]
Member (A)
18/5

Dated the 21st May, 1990.

RKM

Just pronounced by me...
Chamber at 2.30 PM on 21.5.90

J. Manu
21.5.90