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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 638 of 1992

Vinod Kumar Srivastava, and Ors..... Applicants

Versus

Union of India and Ors..... Respondents

CORAM:

Hon'ble Mr. Justice U.C. Srivastava, V.C

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicants 3 in numbers have approached this Tribunal against the telex message dated 21.4.92 and the orders dated 21.4.92, 25.4.92 and 24.4.92 and have prayed that a mandamus be issued directing the respondents not to interfere in the peaceful functioning of the applicants at their respective centres where they have already joined and a mandamus be issued to the respondents to grant all privileges of their services. The telex message is regarding the moving of applicant no.1 from the centre to Bharpar-rani, Deoria as the centre has been shifted and that the applicant no.3 who has been moved to the centre Tikamgarh as the centre has been shifted and stayed the transfer of applicant no.2 whose joining report was not accepted consequent upon cancellation of his transfer from Carpet Weaving Centre Satrikh to Newa, district Allahabad These applicants were posted as Carpet Training

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Officer at C.W.T.C, Salempur Deoria and C.W.T.C Satrikh district Barabanki and applicant no.3 was posted at Advance Training Centre Harrua district Varanasi. On 10.4.92, 11 Carpet Training officers were transferred in view of the report submitted by the Staff Inspection Unit by the Regional Director vide order dated 10.4.92. which included these three applicants.

2. According to the applicants the order of transfer was passed by the Competent Authority i.e. the Regional Director as the powers were delegated to the Regional Director by the Development Commissioner (Handicrafts) New Delhi to the Director Central Region Lucknow on 18.2.92 and 26.2.92 authorising him to transfer group 'C' and 'D' staff of Carpet Scheme. The order dated 18.2.92 reads as under:-

" with immediate effect, Director (Western Region), Director (Eastern Region), Director (Southern Region), and Deputy Director (Carpets) are hereby authorised to transfer group 'C' 'D' staff of Carpet Scheme under their administrative control within their own region".

another order was passed viz - - -

Vide order dated 26.2.92 in continuation of this order of even no. dated 18.2.92, Director (Central Region), Lucknow is hereby authorised to transfer group 'C' and 'D' staff of Carpet Scheme under his

administrative control within his own region. These orders will not apply to the staff transferred with the shifting of the centres."

2. The applicants have alleged that after receipt of the transfer order referred to no.1 above, the applicant/joined at the Advance Training Centre at Carpet Weaving Training Centre Issipur, district Allahabad and applicant no.2 at C.W.T.C Newa Allahabad and the applicant No.3 at C.W.T.C at Khojwan Varanasi on 20th, 21st and 22nd of April 1992 respectively in support of which they have filed the joining reports and thereafter they have started working. But vide order dated 25.4.92 issued in response of applicant no.1 and 2 and order dated 24.4.92 in respect of applicant no.3 issued by the Assistant Director Varanasi, informing them that the joining reports have not been accepted. The applicant no.3 informed that the order dated 10.4.92 was modified and his transfer to C.W.T.C Khojwan Varanasi stands cancelled. Prior to the posting of Deoria and Barabanki the applicants No. 1 and 2 was transferred to Allahabad and Barabanki vide order dated 12.4.91.

4. The applicants grivance is that they have joined at the new place of posting and after joining that order could not have been cancelled by the authority which has been passed by an incompetent authority which has no jurisdiction to cancel the transfer order. The applicants have alleged that this

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has been done because the applicant no. 1 is Treasurer and applicant No.2 is President of All India Handicrafts Board Employees Association, U.P. and applicant No.3 is the Vice President of All India Handicrafts Board Employees Association U.P. and President of Varanasi branch of Union and because of the trade union activities certain actions have been taken when they have been transferred against clear vacancy. According to the applicants that the powers have not been delegated by the Development Commissioner and as such ^{Assistant Development Commissioner} he could not ~~have~~ cancel the transfer order which has been passed by the Competent Authority and it has taken into effect. Once a transfer order has been passed in the administrative reason it could not have been cancelled and as such no administrative interest was involved therein. The cancellation could not have been passed by the authority which was not competent to do so and which has exercised the powers in this manner which is malafide and tantamount to malice in law and is calculated to penalise the applicants because of their trade union activities.

5. The respondents have tried to justify the action stating that these applicants have ~~been~~ joined at the places from where they have been transferred and they joined at Selempur, Satrikh and Varanasi, the first two in May 1991 where as the applicant no.3 was posted at Advance Training Centre, Harua, district Varanasi on 7.8.85. As the transfer order was not administratively correct and that is why it could have been

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amended, alter^v or cancel^v. As the Reviewing Authorities have full powers to check^v the irregularities or correct mistakes in orders passed by the respondent no.4. The joining report at their new place of posting without proper relieving orders from their head of offices of their respective old stations, cannot be accepted as the applicants were never relieved. According to the applicant no.1 he did not assume charge at Newa and he did not submit his Transfer allowance nor he availed the joining time. *As per case of* According to the respondents the transfer order dated 10.4.92 was passed contrary to the rules and norms covered in the policy of transfer without any justification or reason and action already taken against the Assistant Director which was cancelled as it was found to be irregular and unjustified. The reasons according to the respondents are vide order dated 20.1.92 the Carpet Weaving Centre, Salempur where the applicant no.1 was posted was transferred to Allahabad and was shifted to Bhar-par-rani district Deoria and the applicant no.1 was moved along with the entire staff and in order to avoid the order of transfer he stated that he got the order of transfer order on 10.4.92 issued by the respondent no.4 and that the same was reviewed and cancelled even before he could assume charge.

6. So far as the case of applicant no.2 *concerned* whose transfer order was also considered to be irregular and unjustified. The applicant no.3 was transferred to Tikamgarh along with the Centre as such he could not have been continued at Varanasi and it has been admitted that the applicant no.3 was already joined at Tikamgarh. The contention on behalf of the respondents is that xxx

in view of the subsequent order dated 26.2.92 the powers which was conferred upon the Director who has to transfer C.W.T.C employees contrary to the rules and norms covered in the policy of transfer without any justification or reason and the applicants were transferred to the shifting centres because of the shifting of the centres, as such he was without any power to pass the transfer order. In the supplementary counter affidavit it has been pointed out that the Development Commissioner (Handicrafts), New Delhi has been vested with the power of the head of the department and as admitted by the applicants in the petition he is vested with the powers to transfer group 'C' and 'D' employees of the Carpet Scheme and vide order dated 26.2.92 and as such the Additional Development Commissioner (Handicrafts) had delegated only limited powers to the Directors, Central Region Lucknow to transfer group 'C' and 'D' staff in the Carpet Scheme ^{under} his administrative control within his own region but the said order will not apply to the staff transferring with the shifting of the centres and the Director, Central Region Lucknow being the Controlling officer of the entire Carpet Scheme in U.P. his region is confined to be of Uttar Pradesh. The order dated 26.2.92 which has been placed on the record is similar to the order which has already been referred to above.

7. From the perusal of the order dated 13.12.91, it would be clear that the powers of Administration-I, II, III & IV Sections were conferred on the Additional Development Commissioner, Smt. Chitkala Zutshi and the powers relating to the Carpet..../p7

Policy Scheme Sections were conferred on the Additional Development Commissioner, Sri Khushi Ram and again an order was passed on 3.2.92 re-allocating the portfolios due to Smt. Chitkala Zutshi being away on foreign tour. The order dated 3.2.92 would show that the powers relating to Administration-II, III & IV were allocated to the Additional Development Commissioner (Handicrafts) Sri Khushi Ram, the respondent no.3. Vide order dated 7.10.92 re-allocating portfolios and the powers of Administration-II, III & IV Sections and the entire Carpet Policy Sections were allocated to Sri Khushi Ram, the Additional Development Commissioner (Handicrafts). The order dated 26.9.89 also indicates that the powers under Administration-I Section relates to group (A) and group (B) posts including those in the Carpet Scheme. Administration-II Section relates only to all Administrative matters relating to Group (B), (C) and (D) posts in the Carpet Scheme only. It is further clarified that Administration-II Section exercises the entire administrative powers relating to group (B), (C) and (D) posts of the Carpet Scheme in the entire country over and above the Directors and Regional Directors of the various regions. Thus from the above, it will be clear that the entire powers relating to Carpet Scheme and relating to administration thereof were conferred on the respondent no.3 and as such the respondent no.3 was fully competent to issue the telex cancelling the order of transfer of three applicants. The order dated 3.2.92 under which the

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said Khushi Ram, Additional Development Commissioner is said to have exercised the powers of cancellation reads as under:-

"Allocation of Portfolio amongst Additional Development Commissioners(Handicrafts) and Joint Development Commissioner(Handicrafts) had been made under this office order No.4/3/91(Admn-1) dated 13.12.91. As Smt. Chitkala Zutshi, Additional Development Commissioner(Handicrafts) will be away on foreign tour from 4th February 1992 onwards, the subjects allotted to her are being reallocated as follows:

These subjects were allotted not to one person but to two persons Sri Khushi Ram and Sri D.K. Mukhopadhyaya. The question as to whether the person to whom in the absence of the Competent Authority who was to exercise the administrative powers whose work was distributed among two persons and some powers were assigned to one Deputy Director. It was mentioned in the order that this order should be imposed until Smt. Chitkala Zutshi resumes her charge on return from her foreign tour. It is not the case of the respondents that these Assistant Development Commissioners were ~~then~~ ~~also~~ also Additional Development Commissioners and they became Additional Development Commissioner in place of Smt. Chitkala Zutshi. As a matter of fact from the order it appears that in addition to the duties some of the duties of Smt. Chitkala Zutshi, Additional Development Commissioner ^{were} ~~were~~ assigned to certain officers

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who were thus to look after the work of Additional Development Commissioner Smt. Chitkala Zutshi who continued to be as such in her absence. This is quite apparent that they were not appointed as Additional Development Commissioner, but were only to look after the work assigned to these Assistant Development Commissioner in addition to their own duties. Merely because some senior officers allotted duties to the junior officer, the junior officer will not become senior officer, but they will continue to hold ^{their} substantive rank but were to perform only these current duties of the Additional Development Commissioner which were assigned to them. Even if it is accepted that the Additional Development Commissioner was conferred ~~with the~~ powers of Commissioner or the powers of Development Commissioner were delegated to him the powers cannot be further sub-delegated. In any case, if ~~there is~~ ^{is} a person not appointed as Additional Development Commissioner but by way of time gap arrangement in the absence of incumbent to the office who still continued to hold the office and has not been transferred promoted or reverted ~~and~~ the officer ~~and because~~ who is given some of the charge for the time being would thereby not become Additional Development Commissioner and exercise all the powers. Day to day working can be done but the holder for the time being cannot exercise the ^{statutory and} substantive powers of the Additional Development Commissioner as he will not become Additional Development Commissioner

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The powers which can even thereafter be exercised can at best be by the Development Commissioner are not by sub-ordinate authority holding the charge though not entire of the Additional Development Commissioner. It is to be noticed that the delegator may exercise the powers delegated to sub-ordinate officer but the sub-ordinate officer cannot exercise there powers unless there is valid delegation by the competent authority itself and not by one exercising delegated or otherwise powers of competent authority. When the powers have been exercised by a competent authority rightly or wrongly, the powers if there is no other bar, the same can be reviewed by the competent authority and not by the authority ~~who~~ authority who is looking after the current duties or day to day work of the officer in his absence untill he is not appointed as such. Even if it could be said that it was a delegation of powers then Smt. Chitkala Zutshi herself never delegated the powers ~~and she~~. The powers delegated to her were not taken away and were intact.

8. In the case of Ajai Singh Vs. Gurbachan Singh, A.I.R. 1965, 2619 which was a case under the Defence of India Act and Rules under which no officer below the rank of District Magistrate

was invested, the powers of delegation. The Additional District Magistrate was invested with all powers of District Magistrate with Section 10(2) Cr .P.C. on temporary. A vacancy of District Magistrate's post exercising the powers U/s 11 of Cr.P.C. Constitution Bench held that he is not a District Magistrate nor he is in District Magistrate's rank but below that rank and detention order was passed without any authority. In the ^{said} case it was further observed that the State Government delegate a power to any officer who is lower in rank than the District Magistrate the position which arise in this case will not be substantially different as the Assistant Development Commissioner even temporary duties are assigned to him unless he is not appointed as Additional Commissioner or that the Additional Commissioner is deprived with after the powers are fully conferred upon him.

9. In Krishna Kumar Vs. Union of India, A.I.R. 1979(SC) 1912 held that since the appellant had been removed from service by an order passed by the authority who at any rate, was subordinate in rank to the Chief Electrical Engineer on the date of appellant's appointment the order of removal was in patent violation of Art. 311(1) of the Constitution. Whether or not an authority is subordinate in rank to another has to be determined with reference to the

State of affairs existing on the date of appointment.

" the subsequent authorisation made in favour of the authority passing the order of removal in regard to making appointments to the post held by the appellant cannot confer upon him the power to remove him. Besides, delegation of the power to make a particular appointment does not enhance or improve the hierarchical status of the delegate. An officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another. The Divisional Engineer did not cease to be subordinate in rank to the Chief Electrical Engineer merely because the latter's power to make appointments to certain posts had been delegated to him."

10. Thus, the legal position is quite clear that the transfer order has been passed by the respondent no.4 in compliance to the directions of the respondent no. 2 and in pursuance of staff Inspector Unit recommendation whereas by cancelling the said order, the respondent no.3 has been ignored both the staff Inspector unit recommendation as well as the direction of the respondent no. 2. The question as to whether the order passed by the Director transferring the applicants under a scheme was within the exercise of powers are not in view of the fact that powers were conferred on him is a matter which need not to be considered. The applicants were transferred along with several other persons, it

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is not known as to what happened to other 8 persons who have also transferred vide order dated ^{10.4.}~~18.2.~~1992 for them also the powers were conferred on the Directors. As the cancellation order of the applicant was passed by the respondent no. 3, who was ~~not~~ the Additional Development Commissioner, as such the Cancellation order was passed by the authority who was not competent to do so. ~~As such,~~ It is not necessary to enter into the other please, the application deserves to be allowed on this ground alone.

11. In view of what has been stated above, the cancellation order of the applicant dated 10.4.1992 which has been passed by the authority who was not competent to do so, is hereby quashed. Accordingly, the order dated ²¹~~10~~.4.1992 passed by the incompetent authority viz telex message 21.4.1992, orders dated 21.4.1992, 25.4.1992 and 24.4.1992 are hereby quashed. Consequences will follow. No order as to the Costs.

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Vice-Chairman

Dated: 15.4.1993

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