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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 137 of 1986

198

~~ExAxxMox~~

DATE OF DECISION 1-5-1987

Mr. R.D. Tamhane Petitioner

Mr. S.N. Mazgaonkar Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

J.D. Ajmera & Anil Dave Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

The Hon'ble Mr. P.M. Joshi : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

J U D G M E N T

(9)

OA/137/86

1-5-1987

Per : Hon'ble Mr P H Trivedi : Vice Chairman

The petitioner Mr R.D.Tamhane belongs to Indian Police Service and was deputed to Ahmedabad Municipal Corporation since 16/7/1980 when he was drawing basic pay of Rs.1800/- as he was in the selection grade. He was repatriated from it and was deputed to Gujarat State Road Transport Corporation (G.S.R.T.C.) as Deputy General Manager (D.G.M.) from 15-4-1982. That post was not then equated under Rule 9(1) of the IPS(Pay) Rules, 1954 with any of the cadre posts of the IPS when his immediate junior V.S.Ghuman was promoted as D.I.G. vide orders dated 27-4-1982 in the Super Time Scale of IPS. The applicant who was found fit by the Selection Committee for Super Time Scale on 30-9-1981 considered himself due for it when no orders were issued along with those appointing Ghuman to Super Time Scale. After prolonged correspondence, Respondent No.1 by a resolution dated 5-11-1982 (Annexure 'C') treated the post of D.G.M., G.S.R.T.C. as equivalent in status and responsibility to that of cadre post of D.I.G. from 21-10-1982. Respondent No.1 Govt.of Gujarat approached the Govt.of India to regularise the period of deputation of the petitioner from 16/4/1982 to 25/4/1982 with the cadre post of Senior Time Scale of the IPS and from 26/4/1982 to 20/10/1982 with cadre post in Super Time Scale of IPS in exercise of the powers vested in respondent No.2 under Rule 3 of the IPS regulation (Conditions of Services Residuary matters) Regulations 1960. Two more junior officers were promoted in August, 1983 as D.I.G. and they were drawing pay of Rs.2000/- per month as selection grade was given a Time Scale of Rs.1800-2000. The applicant sent a letter dated 5-10-1985 to the Government in the Home Department to step up the pay of the applicant to

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Rs.2125/- per month from August, 1983 and Rs.2250/- from August, 1985 and for formal orders of promotion from 26-4-1982. The respondent has not filed a reply and has sought adjournment stating that the matter is under consideration. Although 3 months' time was allowed to the respondent to decide the matter, neither has a decision been reported nor has reply been filed. In the circumstances we are obliged to hear the learned advocates without the benefit of a reply from the respondent.

2. During the hearing the right of the Government to depute an IPS Officer was not challenged. The contention of the petitioner is that he should be given the same pay and grade as is due to him and for which he is found fit in his service and cadre. It has not been disputed that on the relevant dates i.e. 16-2-1980 the petitioner was in the selection grade drawing time scale in the IPS, that on 16-7-1980 he was drawing a basic pay of Rs.1800/- in the selection grade, that his juniors were drawing Rs.2150/- per month since 1983 that the petitioner was found fit for Super Time Scale by a selection committee on 30-9-1981 that his junior

Mr. Ghuman was appointed in the super time scale of D.I.G. of Police by an order dated 27-4-1982 and that the Respondent No.1 by a resolution has treated the post of D.G.M. G.S.R.T.C. as equivalent to the status and responsibility to that of cadre post of D.I.G. Police Range w.e.f. 21-10-1982. Now there is no question that the authority which equates the post of G.S.R.T.C. as equivalent in status and responsibility to the post in IPS is entirely in respondent No.1 and in the Corporation which is clearly not under the control of the Central Government.

3. Under the IPS (Cadre) Rules, 1954 the deputation of a cadre officer to a corporation is regulated under Rule 6 as Follows :-

"6. Deputation of cadre officers.-(1)A cadre officer may, with the concurrence of the State Govt.or the State Government concerned and the Central Govt., be deputed for service under the Central Government or another State Government or under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government.

(2) A cadre officer may also be deputed for service under-

- (i) a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by a State Government, a Municipal Corporation or a Local Body, by the State Government on whose cadre he is borne, and
- (ii) an international organisation, an autonomous body ~~not~~ not controlled by the Government, or a private body by the Central Government, in consultation with the State Government on whose cadre he is borne;

Provided that no cadre officer shall be deputed to any organisation or body of the type referred to in item (ii), except with his consent:

Provided further that no cadre officer shall be deputed under sub-rule (1) or sub-rule (2) to a post carrying a prescribed pay which is less than, or a pay scale, the maximum of which is less than, the basic pay he would have drawn in the cadre post but for his deputation."

The pay of the members of the service appointed to the post not included in Schedule III which is the post to which the petitioner had been deputed is governed under Rule 9 which is reproduced below :-

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"9. Pay of members of the Service appointed to posts not included in the Schedule III.(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, makes 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 to the post to which the said post is declared equivalent.

(3) For the purposes of this rule 'post other than a post specified in Schedule III' includes a post under (a body incorporated or not, which is wholly or substantially controlled by the Government).

(4) Notwithstanding anything contained in this rule, the State Government concerned in respect of any posts under its control, or the Central Government 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.

(5) A member of the Service on appointment to a post referred to in sub-rule (4) in respect of which no pay or scale has been prescribed, shall draw such rate of pay as the State Government, in consultation with the Central Government in the case of a post under the control of the State Government, or as the Central Government, may, after taking into account the nature of duties and responsibilities involved in the post, determine.

(6) A member of the Service on appointment to a post referred to in sub-rule (4), in respect of which any pay or scale of pay has been prescribed, shall draw where the pay has been prescribed, the prescribed pay and where scale of pay has been prescribed, such rate of pay not exceeding the maximum of the scale as may be fixed in this behalf by the State Government, or as the case

may be, by the Central Government.

Provided that the pay allowed to an officer under this sub-rule and sub-rule(5) shall not at any time be less than what he would have drawn had he not been appointed to a post referred to in sub-rule (4)."

There is a residuary rule for relaxation of rules and regulations in certain cases under Residuary Matters Rules 1960, Rule 3 which is relevant in this case is reproduced below :-

3. Power to relax rules and regulations in certain cases :-

Where the Central Government is satisfied that the operation of -

- (i) any rule made or deemed to have been made under the All India Services Act, 1951 (61 of 1951), or
- (ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and suitable manner."

It is not clear from the above that the question of ascertaining whether the nature of duties and responsibilities of the post of Deputy General Manager (Administration) to which the petitioner was deputed is such that it should be equated with any of the ^{cadre} ~~major~~ posts in IPS in Gujarat and, if so, at what level seniority and status. This is a matter for the Corporation Employer and the State Government to decide after mutual consultation. If a decision is taken that such an equation is possible and desirable the pay of the officer selected for deputation will be governed accordingly. It is not necessary, however, that such an equation should be ^{an} artificially contrived or should be arbitrarily changed by tying it to the

prospects of promotion of any individual officer. In fact such a practice could be regarded as objectionable. In some cases the nature of duties and responsibilities could be such that such an equation may not be feasible or even desirable. As will be seen from the above rules such a contingency has been provided for and when an officer has been deputed against a post in which such an equation has not ^rbeen or cannot be brought about and it is not therefore, possible to make a declaration that the post is equivalent in status and responsibilities to a post specified in Schedule III, the rate ^aof pay has to be determined by the State Government in consultation with the Central Government after taking into account the nature of duties and responsibilities involved in the post. A member of the service on appointment to such a post shall draw where the pay has been prescribed, the prescribed pay, and where the scale of pay has not been prescribed such rate of pay as may be fixed in this behalf provided that the pay allowed to an officer in such a case shall not be less than what he would have drawn had he not been appointed to a post of such a nature.

4. In Public Sector Corporations as in the case of G.S.R.T.C. the question of equation of status and responsibility is no doubt a matter to be ^Rdetermined by the nature and responsibility of the post. It is an un-healthy practice to go on changing this status due to the exigencies of individual circumstances of deputed officers depending upon their seniority. In this case decisions about the equation are requiring frequent changes because the deputed officer progressively qualifies for promotion. If the Corporation ties up this matter in this manner with the individual officers deputed, the resultant situation would obviously be full of anomalies. The

same post will be equated differently regarding its status and responsibility at different times. It would be proper for the competent authorities to examine the nature of the post and its duties and to determine at what level of status and seniority the officers are required in order to arrive at the decision mutually between the Corporation and the Govt. for deputation of such officers. When the deputed officer is eligible for promotion there is a clear choice of repatriating the officer and getting another, should an officer on deputation be desired of the required level of seniority and status. Rather than change the nature of the post from time to time and seek changes in the levels of seniority of the officers, it would be a more rational and healthy practice to change the officers.

5. This has not been done in this case and that could be regarded as a defect ^{or} failure of administration of personnel policies of the Corporation. The rights of the officer deputed from the Government, however, cannot be allowed to be adversely affected for this reason. Even when there is no equation regarding status and responsibilities with a cadre post, the rules provide for the concerned Government and the Corporation to mutually agree upon the pay and other terms to be allowed to the deputed officer and, while so doing, the rules provide for the consent of the deputed officer to be also obtained. The mere fact that an equation in pay and status with a cadre post has not been decided upon does not necessarily come in the way of allowing it to the deputed officer by mutual agreement.

6. The deputed officer has a right to be repatriated and considered for promotion when he is due or when his junior is promoted in the cadre. In this case the petitioner has been placed in the selection

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grade and later considered fit to be in the super time scale. The pay and increments in the selection grade and promotions to the super time scale are due to him on the dates on which his juniors have earned such increments and been appointed in such super time scale posts. He has no right regarding having the post equated for bringing this about because that is a matter which has to be decided by the Corporation and subject to considerations governing the nature of the post. To resist the claim of the petitioner, Respondent No.1 would have had to declare him unfit for promotion and then deny it to him. To resist his claim, the Corporation could repatriate or give him him/a clear notice that notwithstanding the promotion of his juniors in the cadre the rules of Corporation do not entitle him to higher pay scale in the Corporation's service.

7. In the circumstances of this case we see no alternative except allowing the petitioner the selection grade and the increments therein and the super time scale post and increments therein from the dates on which his juniors were allowed in the cadre on a proforma basis. We do not, however, lay down that the post in the Corporation has to be equated and that too differently on different occasions according to the service prospects and promotion of the deputed officer. We recognise that in fit cases the Corporation may repatriate the officers instead of changing the equation of the post or that Govt. refuses proforma promotion or alternatively without declaring equation, separately agrees to fix appropriately the pay of the officer subject to his consent.

8. We find the petition has merits and order that the pay of the petitioner be so fixed as to allow him the increments in the

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selection grade and the pay of the super time scale from the dates on which the petitioner's juniors were so allowed such increments or promotion with or without equation of his post being carried out. We direct that this be done within a period of two months from the date of this order by Respondent No.1, and reported to the Tribunal.

No order as to costs.


(P.H. TRIVEDI)
VICE CHAIRMAN


(P.M. JOSHI)
JUDICIAL MEMBER