

B

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Assignment
of work of
other cadre

O.A. No./514/92

~~TAX NO.~~

DATE OF DECISION 26.4.1993

Mr. L.K. Parmar & Other two. Petitioner

Mr. R.V. Deshmukh Advocate for the Petitioner(s)

Versus

The Union of India & Ors. Respondent

Mr. Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt : Member (J)

The Hon'ble Mr. V. Radhakrishnan : Member (A)

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 ?

1. Mr. L.K. Parmar (U.D.C.)
2. Mr. D.N. Dantani (L.D.C.)
3. Mr. B.J. Datania (Peon)

Applicants

Vs.

1. Union of India,
Through:
The Secretary,
Ministry of Health &
Family Welfare,
Nirman Bhavan,
New Delhi- 110 001.
2. The Regional Director,
Health & Family Welfare,
Anand Estate, Bapunagar,
Ahmedabad.
3. The Chief Controller of Accounts,
Government of India,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi- 110 011.

Respondents

J U D G M E N T

O.A./514/92

Date: 26.4.1993

Per : Hon'ble Mr. V. Radhakrishnan, Member (A).

1. This application under Section 19 of the Administrative Tribunals Act, 1985, is directed against the action of the respondents, challenging the change of cadre of the applicants from Ministerial Staff to Accounts/Audit cadre against their willingness, even though they have given their un-willingness. The applicants joined in the service with the Regional Director, Health and Family

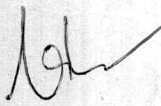
Welfare, Ahmedabad, in various capacities. It is their contention that their appointment was as general ministerial staff in the office of the respondent no. 2, The Regional Director, Health and Family Welfare, Anand Estate, Bapunagar, Ahmedabad. According to the applicants in the year 1968, the Ministry had created posts for Audit team in the Regional Office at Ahmedabad. It appears that from 1968 to 1974, the work of Audit team was carried out by inducting the persons on deputation from the office of the Accountant General and Central Excise Department. This team was required to do the internal audit work ⁱⁿ various offices located in of five States/ Union Territory and the applicants were being asked every time to go on tour to various place as per the programme and assist the audit party, even though, the applicants have requested the authorities not to send them for audit purpose. As far as back in November, 1988, the Deputy Controller of Accounts, New Delhi, wrote a letter that consequent to the departmentalised Accounts Organization headed by the Chief Controller of Accounts of the Ministry, the existing holder of posts UDC/IDC, Groupe D may be asked their option. It is contention of the applicants that even though, they were not holders of posts of the internal audit party, they were asked to give their option. The applicants submitted a representation asking for clarification on 28.11.1988. No reply was received to this representation but the applicants were being sent on tour

for audit purpose. By order dated 1.5.1989, the posts which were created at Ahmedabad for audit team were transferred to the administrative control of the Departmentalised Accounts Organisation. The applicants further stated that Head- quarter of the audit party has been shifted from Ahmedabad to Bombay in July 1992. Even though, the applicants had not received any clarification from the higher authority refer option, they gave their un-willingness to be transferred to the audit party in October, 1992, to respondent no. 2.

2. The applicants stated that, they were never the holders of posts in audit party and therefore, the such action of assigning accounts/ audit work against the willingness is illegal, and violative of Articles 14 and 16 of the Constitution of India.

(B) The control of posts in audit team has been transferred from the Regional Office to the Controller of Accounts.

(C) They are employees of the Regional Office and their salaries being paid by the respondent no. 2 is also the appointing, disciplinary and controlling authority. After 1.5.1989, the administrative control of the audit party had been transferred to the authority of Controller of Accounts.



(D) The applicants are generally ministerial staff who are submitted that options of un-willingness to be posted for audit work in the month of October, 1992, and hence, they can not be shifted to audit work and sent out of Head- quarters. The applicants also apprehend that as the Head- quarters of audit had been shifted to Bombay, they may also be transferred to Bombay in future which will adversely affect them.

3. They also state that the service condition are altered in the accounts cadre as they have to pass an Examination which was not a condition ^{their} in/_ present post. Accordingly the applicants submitted ~~that~~ they be treated as staff of office of the Regional Director, Ahmedabad, ^{to be sent} are not/_ them on tour for account/ audit work, pending the final order. Interim relief was also prayed for ~~restraining~~ the respondents from assigning any work of audit party and accounts and not to send them on tour.

4. The respondents have filed their reply. They have denied ~~that~~ the contention of the applicants, they have stated that the Accounts Officer and Accountant were taken on deputation from other Accounts Offices. In respect of groupe C and D posts, the applicants were sent to the audit party which according to them was - a function of the office of the Regional Director, Health and Family Welfare. It is

also stated that due to non-availability of Accounts Officer and Accountant on deputation basis, financial, administrative and technical control of the internal audit party are given to the Regional Director. The Administration and Finance Control of the applicants is still with the Regional Director, Health and Family welfare.

5. This Tribunal has granted interim relief to the applicants by the order dated 13.12.1992. The case was heard finally on 29.3.1993. The learned advocate for the applicants pointed out that after departmental is action of accounts the posts intended for internal audit party were to be filled in and so far as no action was taken. The applicants recruited originally as Ministerial Staff in the Office of the Regional Director, they have clearly indicated their un-willingness for transfer to the accounts/ audit cadre under the Chief Controller of Accounts, New Delhi, and hence, the work of internal audit should not be given to the applicants. The learned advocate for the respondents Mr. Akil Kureshi has contended that the Regional Director of Health and Family Welfare, who is the Head of the Office under whom the applicants are working has the authority to send the applicants to work in the internal audit party.

6. After the hearing of both counsels, we ^{are} satisfied that as the applicants have originally been recruited in the office of the Regional Director, Health and Family Welfare, as ministerial staff, ^{and} since the work of accounts

and audit has been seperated after the creation of posts of Controllor of Accounts to deal with exclusively with accounts and ^{audit}work, it forms a separate cadre. It is not clear as to why the posts in the audit party created specifically for accounts/ audit were not filled in.

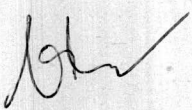
It is also not known as to whether any general circular was issued calling for volunteers amoungst the staff of the office of the Regional Director who may be willing to be considered for these posts. In any case it does not seem fair to entrust the account/ audit including extensive touring to the applicants who form part of the ministerial staff of the office of the Regional Director especially when they have indicated their un-willingness to do the accounts/ audit work. Hence, we pass the following order:

7.

ORDER

The application is allowed. It is declared that the applicants are the staff of office of Regional director, Ahmedabad and hence, the order passed by Regional Director (H & FW) Ahmedabad, Dated 23.11.1992 vide Annexure is A/11/ quashed and set aside and the respondents are directed not to assign the work pertaining

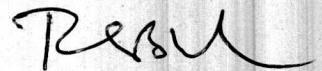
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to audit and accounts of audit party to
the applicants. Interim relief granted
earlier is confirmed and Rule is made absolute.
No orders as to costs. Application is
disposed of.



(V. Radhakrishnan)
Member (A)



(R.C. Bhatt)
Member (J)

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