

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA NO. 71 OF 1996

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman
Hon'ble Mr. M. S. Mukherjee, Member (A)

1. Rajat Mukhopadhyay
2. Rathindra Nath Das
3. Sankar Kumar Das
4. Pradip Kumar Das
5. Parimal Chowdhury
6. Satyanarayan Ghosh
7. Jogananda Bagani

.....Petitioners

VS

1. Union of India through Secretary to
Govt. of India, Ministry of Commerce,
Dept. of Supply, 'C' Wing,
Nirman Bhavan, New Delhi-1
2. Director General of Supplies & Disposal,
Dept. of Supply,
New Delhi-1
3. Director of Supplies & Disposal,
6, Esplanade East, Calcutta-69
4. The Secretary, Govt. of India,
Ministry of Defence, New Delhi-11
5. Chief of Naval Staff, Naval Headqrs.
New Delhi-11
6. Chief of Airstaff, Air Hqrs (VE)
New Delhi-11

..... Respondents

For the petitioners : Mr. S.K.Dutta, Counsel
Mr. T.K.Biswas, Counsel

For the respondents : Ms. Uma Sanyal, Counsel

Heard on : 20.2.97 : Order on : 10.3.97

O R D E R

M.S.Mukherjee, A.M.:

This is a joint petition u/s 19 of the Administrative Tribunals Act, 1985, by 7 petitioners holding permanent lien in posts like Stenographer, Gr.III, UDC, LDC, Duftry etc. as the case may be, in the office of Director General of Supply & Disposal (DGS&D for short), Calcutta, but having been sent on deputation to Naval Headquarters and Airforce Headquarters, are being threatened with termination of their

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lien in their respective parent cadres and absorption in the Defence Ministry much against the rules and option of the petitioners concerned.

2. The facts which are mutually admitted by both the parties are that the petitioners are all employees of DGS&D, ^{they} Calcutta, but stand transferred to INS Subhas, Calcutta of the Indian Navy and Airforce Station, Barrackpore of the Indian Airforce consequent upon decision taken by the Govt. of India in 1991 to transfer the work of procurement against ad hoc indents from DGS&D and its regional offices to various indenting Ministries/Departments including Defence along with corresponding number of officers and staff. The scheme for such transfer is provided in the Ministry of Commerce, Deptt. of Supply, OM dt. 30.3.92 (Annexure-A1 to the petition) which laid down the terms and conditions of such transfer. According to this, Officers of Indian Supply Service will continue to be borne on the cadre of Indian Supply Service and the cadre will be controlled by the Deptt. of Supply even after such transfer. But "other officers and staff will be transferred on deputation. They will have an option to get absorbed in the receiving Ministry/Dept. including their field units, if they so desire."

2. Under the said policy decision, corresponding number of officers and staff had to be transferred along with the purchase function and their posts and that their initial transfer was ^{to be} treated as on deputation from the Deptt. of Supply. According to the scheme, the petitioners were given chance to exercise option to get absorbed in the units where they have been transferred but none of them is reported to have exercised such option for absorption.

3. Against the above mutually admitted facts, the petitioners contend that the Ministry of Defence have decided

and prepared a scheme for absorption of the petitioners along with others in the Ministry of Defence by merger of cadres and this is evident from certain note of the Ministry of Defence dt. 18.7.95 (Annexure-A5 to the petition). The petitioners contend that this step by the recipient Ministry of Defence is against the petitioners' unwillingness to be absorbed therein and the petitioners made a number of representation for their repatriation to their parent department but to no effect. The petitioners further add that some of such transferees, viz. Smt. Subhra Das, UDC has been transferred back to the office of DGS&D by an order dt. 3.5.94 (Annexure-A7). The petitioners' grievance is that by pick and chose method, some of the transferees are being repatriated while they are being discriminated in the matter of such repatriation and instead they are being considered for permanent absorption in the Ministry of Defence against their clear option on ground of their being declared as surplus.

4. The petitioners have, therefore, prayed a declaration that any absorption or decision for absorption of the petitioners under the Ministry of Defence is bad and illegal and that they should be repatriated to their parent department, wherein they should be considered for promotion to the next higher grade and pending repatriation of the petitioners, none of the petitioners' junior should be promoted in the parent deptt. The petitioners have also prayed for quashing of the Memos dt. 10.10.95 and 30.10.95 as shown in Annexure-A6 collectively regarding settlement of their terms and conditions for such permanent absorption in the Defence Ministry.

5. The respondents have contested the case by filing a written reply. Their contention is that when a policy decision was taken to transfer the work of procurement against ad hoc

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indents from the jurisdiction of DGS&D to various indenting Ministries/Deptts., it was also decided that the corresponding number of officers/staff shall be transferred with the purchase function and their posts and that only such officers and staff were initially transferred to different Ministries who were actually engaged in corresponding functions. Thus the officers and staff of DGS&D had been transferred following the principle of 'as is where is basis' without taking into account the seniority of the transferees in the respective grades in the parent deptt. The terms and conditions for absorption of the officers and staff transferred to various Ministries including Defence Ministry are, the respondents submit, yet to be finally settled and that the process in this regard is still continuing.

6. The respondents further contend that regarding fixation of seniority of such transferred staff in the receiving organisation, the DOPT has been consulted and it has been advised that in so far as seniority of such employees who are transferred from one cadre to another along with their post, is concerned, their case will have to be treated as one of merger of cadres in which the seniority is fixed on the basis of length of service subject to maintenance of original ^{in the parent} inter se seniority within ~~each~~ cadre. It has, therefore, been decided that the benefit of the past service rendered by the officers from DGS&D will be given in the matter of seniority in the cadres in which they are merged on exercising their option for absorption in new cadre.

7. The respondents further add that the petitioners having been transferred to Defence Units and drawing salaries etc. from those organisation, they are treated for the time being as on deputation in technical sense of the term pending finalisation of the terms and conditions of their absorption in

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the respective organisations and that once the terms and conditions of their absorption in Defence Ministry are settled, they will be absorbed therein subject to their granting deputation duty allowance. The respondents have averred that the apprehension of the petitioners that they would be absorbed in the Defence Units without obtaining options from them or that they would not be considered for promotion in the next grade in the parent deptt. are baseless and unfounded. The respondents, however, contend that the petitioners cannot be repatriated to their parent deptt. since according to the policy decision, their posts along with the purchase work have already been transferred to the Defence Ministry. The respondents have, therefore, urged for rejection of the petition.

8. We have heard the learned counsel for the parties and have gone through the documents produced. On certain basic facts there is no dispute as is already indicated above. It is also clear that the Govt. of India took a policy decision ~~to decentralise~~ to centralise purchase of stores and equipments required by various Govt. departments from the DGS&D and the scheme of such decentralisation was originally contained in the Deptt. of Supply's OM dt. 30.3.93 (Annexure-A1 to the petition). In this scheme, it was decided that erstwhile functions of DGS&D relating to work of procurement and purchase against ad hoc indents made to DGS&D by various Ministries/Departments should be transferred to those Ministries/Deptts. and with the transfer of purchase function, corresponding number of staff would also be transferred to those recipient Ministries/Deptts. along with their posts. Since this is a policy decision of the Govt. nobody can have any legitimate grievance against ~~the~~ such [✓] policy decision to ventilate before any court or Tribunal.

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9. However, it has simultaneously to be seen whether in implementing the policy decision, any injustice or discrimination has been done to any employee or group of employees. While with the transfer of purchase function, corresponding number of staff has to be transferred to the indenting Ministries/Deptts, (receiving Ministry/Dept), normally what should be done was to transfer the employees of DGS&D to such recipient Ministries on the basis of last to come, first to go" principle i.e. the juniormost staff in any cadre has to be transferred first. But in the instant case, the DGS&D has transferred the staff on "as is where is basis" principle i.e. those employees who were actually working for the functions ~~under~~ transferred, had been transferred lock stock and barrel, irrespective of their position in the integrated seniority list of the concerned cadre in the parent deptt.

10. This may be alright as an initial exercise. In order to ensure that during such transitional period, there crops up minimal practical difficulty or dislocation work, the scheme of transfer through the policy circular of 13.3.92 provides that those staff who would be transferred would be treated as on deputation and that they will have to give an option regarding absorption in the receiving Ministries/departments or field units, if they so desired. This is obviously a pragmatic transitional arrangement leaving adequate scope of eventual adjustment or re-adjustment of the staff and since during the transitional period, the transferred employees are treated as on deputation, they can make up their mind as to whether they would or would not like to be absorbed in the receiving department and depending on facts and situation, the parent deptt. can repatriate them back to the cadre and send in their place a fresh batch of suitable employees to the new

deptt./organisation. Amongst the first batch of transferees, ~~it who~~ those ~~would~~ opt for absorption in the new deptt, there is no problem. But those who do not opt for such absorption, cannot be permanently transferred to the receiving Ministries/department away from the parent organisation against their will, as long as their juniors are retained in the parent deptt. In that case, their juniors in the parent ~~rather~~ deptt. have to go.

11. The transferred employees' eventual problem of seniority in the receiving deptt/organisation has since been sorted out and it has been laid down by the DOPT that in the case of such absorption, the matter will be treated as one of merger of cadre. In that case, the inter se seniority of the transferred employees will be determined on the basis of length of service subject to maintenance of their original inter se seniority in the parent organisation.

12. As part of the overall policy, as the respondents have contended, with the transfer of the previous function from the DGS&D, corresponding number of posts has also been transferred and as a result, equal number of posts in the parent organisation i.e. DGS&D are now of the nature of surplus. The respondents' express predicament is that if now any of the transferred employees refuses to be absorbed in the new Ministries/Dept. and wants to come back to the parent deptt., there is no such post available in the parent deptt. to accommodate them. Under the circumstances, according to the respondents, services of such transferred employees refusing to be absorbed in the new Ministries will have to be terminated altogether with appropriate termination benefits under the rules.

13. But in our view, the problem should not arise, if the transfer is made from the parent organisation strictly in the

spirit of the scheme. If the juniormost persons are transferred to the new deptt./organisation, and the posts in the parent deptt. are treated as surplus, their refusal to exercise option to be absorbed in the new Ministry may result in termination of their service with termination benefits ~~in that event, showing neither of the two options for absorption in the new ministry, what is to be done in the case of senior employees~~ under the rules. If, however, some senior employees have initially been transferred during the initial transitional phase because such persons were actually working in the DGS&D for functions which have been transferred, on the basis of as is where is principle and any of such senior transferred employee refuses to be absorbed in the new Deptt. it should be possible for the parent deptt. to repatriate ~~them~~ back and in ~~his~~ place send to the new deptt. junior persons. Actually, as it appears, the respondent deptt. has not applied its mind about this scope of adjustment/readjustment. Rather they are in fact trying to force the senior transferred employees to accept the new Deptt. irrespective of their options. To that extent, the practice followed by the respondents is bad in law and the same cannot be sustained. There is clear admission through the respondents' reply, that the petitioners are not the juniormost in the parent cadre before transfer and that some of such transferred employees have since been repatriated back to the parent dept. The intention of the Govt. was never to transfer employees actually working in the DGS&D for the transferred functions, but transfer "the corresponding number of employees" ~~repeat~~ the number of employees, not the particular employees irrespective of their seniority.

14. Under the circumstances, we dispose of the petition with the following orders :

- i) Only the juniormost employees in the overall seniority list of the cadre of respective category can be permanently transferred from the parent organisation and to

the extent the seniority of any of the petitioners is above the corresponding number of posts to be transferred according to the scheme, counted from bottom, they shall be repatriated, if they do not opt for absorption in the borrowing organisation. To that extent the impugned memos dt. 10.10.95 and 30.10.95 (Annexure-A6) stand modified. The respondents shall take immediate steps to repatriate such petitioners back to the parent organisation. If there is non-availability of appropriate vacancies in the parent organisation because of transfer of posts to other Ministries/Departments, the requisite vacancies have to be created by the respondents by sending corresponding number of juniormost persons of the respective cadres from DGS&D to the appropriate Defence or other organisations in accordance with the scheme and rules.

ii) The respondents shall make such adjustment within four months from the date of communication of this order and during this period, such of the petitioners, who are to continue in the receiving Ministry/Dept. pending repatriation, shall be treated technically as on deputation. However, for such deputation, no deputation allowance will be admissible to any of the employee concerned.

iii) There will be no order as to costs.

MS Mukherjee
10/3/97
(M.S.MUKHERJEE)

MEMBER (A)

A.K. Chatterjee
10-3-97
(A.K.CHATTERJEE)

VICE CHAIRMAN