



Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

LUCKNOW

Original Application No. 312 of 1992

R.S. Mathur Applicant

Versus

Union of India and Others Respondents

COMAM:

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

Hon'ble Mr. K. Chayya, Member(A)

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

The applicant, Principal Chief Conservator Forest that is Head of Department having full powers privileges and functions of the Head of Department who was due to retire on 30.11.1992 has landed in this Tribunal against sudden and abrupt order dated 29.6.1992 said to be transfer cum posting order, posting him as Principal Conservator of Forest Evaluation and Working Plans, a newly created Ex-cadre post, apparently created for him 5 months before his retirement depriving him of his status, powers, functions and responsibilities apparently in order to make room for appointing Opposite party no.3 Sri Chandra Gupta in his place even before

Contd.../p2

: : 2 : :

his retirement. The Opposite Party No.3 Sri Chandra Gupta, Chief Conservator of Forest who at every stage of service was junior to the applicant has been assigned the duties of Principal Chief Conservator of Forest in addition to his own duties by the impugned order. The Opposite Party no. 3 became member of I.F.S in 1963 of which applicant became member in 1960. The applicant became Additional Chief Conservator of Forest in 1985 and Conservator of Forest in 1988 by selection, while Opposite party No. 3 was not found fit in selection for promotion as Addl. Chief Conservator in 1988 and 1989 and superseded to 3 officers and 1 officer respectively who were his juniors. It was because of 4th Pay Commission Report which merged the Pay scales of Additional Chief Conservator of Forest and Conservator of Forests, the applicant and the Additional Chief Conservators of Forest all were designated as Chief Conservators of Forest.

2. The Non Cadre post of Principal Chief Conservator of Forest Evaluation and Working Plans was created on 29.6.1992. According to Opposite parties it was done because of the demand of the Indian Forest Service Association U.P. Branch, which demanded 5 posts of Principal Chief Conservator of Forest and 9 posts of Chief Conservator of Forest vide its representation dated 16.3.1991 and gave one months time for the same. Out of the nine posts

: : 3 : :

so mentioned one post was Chief Conservator of Forest Evaluation and Working Plans. After more than one year instead of creating posts so demanded one post of Principal Chief Conservator of Forest Evaluation and Working Plans, that too Ex-cadre post was created, though as per demand an Officer of lower in rank and status and grade was asked for. Three days after creation of the said post the applicant was stripped of his duties powers and responsibilities and posted on this newly created post to perform the duties which earlier appear to form part of the duties and responsibilities of Principal Chief Conservator of Forest, the Head of Department. The applicant as per his averment could not defy the order and had to submit his joining report. He signified his disapproval and protest by applying for Voluntary retirement, the very next day and applied for grant of leave for the period 2.7.1992 to 29.9.1992 which was granted. As per notice of Voluntary retirement the applicant is to retire on 30.9.92 that is two months prior to attaining age of superannuation but as per his contention this humiliation at that stage gave him no option but to seek retirement and challenge this gross injustice that too by the State Government. The order has been challenged on the ground that the same is grossly arbitrary and patently illegal and malafide. As per contention it is Violative of Article 14 of the

Constitution of India also because of malice in law and also result of act of favouritism for respondent no.43.

3. According to the respondents, the applicant has been transferred to this newly created post which carries same emoluments and privileges in respect of car, staff and residence. This post could have been and has been created under India Forest Service (Cadre) Rules 1966 which reads as follows:-

Strength of Cadres:

- (1) The strength and composition of each of the cadre constituted under Rule(3) shall be determined by Regulation made by the Central Government in consultation with the State Government in this behalf.
- (2) The Central Government shall, at the interval of every three years, reexamine the strength and composition of each cadre in consultation with Government concerned and may make such alteration therein as:

Provided that nothing in this Sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time.

Provided further that the State Government concerned may add for a period not exceeding one year and with the approval of the

Central Government for a further period not exceeding two years, to a State Joint Cadre one or more posts carrying duties or responsibilities of a like nature to Cadre posts".

4. A reference has also been made in the Counter Affidavit to Rule 9(4) of I.F.S. (Pay) Rule 1968 for justifying the creation and shifting of the applicant from the post of Head of Department to this particular work said to be on same scale of applicant, but confined to table work and with no control and supervision over the Department, its officers and their functioning or that of offices at District, Regional, or State level. The rule reads.....

"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 ".

At this stage it will be relevant to make reference to Rule 9(1), (2) and (3) of the said I.F.S (Pay) Rule.

: : 6 : :

Pay of members of the service appointed to
Posts not included in 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, of the Central Government in respect of posts under its control, as the case may be, make 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 in the post to which the said post is declared equivalent.
- (3) For the purpose of this rule 'post other than a post specified in Schedule III' includes a post under a body incorporate or not which is wholly or substantially owned or controlled by the Government.

The impugned order which is in the nature of composite order. There appears to be no declaration that the ex-cadre post so created is equivalent in status and responsibility to the cadre post held by the applicant. There is no averment in this behalf by the respondents

: : 7 : :

in their Counter affidavit to the effect that any such declaration was given at any point of time. There is no statement by the State Government in its Counter affidavit that the two posts are equivalent in status & responsibilities. The Counter affidavit is also silent on the point as to how the duties so assigned to applicant who was Head of Department which apparently were part of his supervisory and controlling functions will be equivalent.

5. The Provisions of Indian Forest Service(Cadre) Rule 1966 and the Indian Forest Service(Fixation of Cadre Strength) Regulation 1966, Indian Forest Service Pay Rules 1968 are in Pari Materia with the provisions of Indian Administrative Service(Cadre) Rules and Indian Administrative Service(fixation of Cadre Strength) Regulation and Indian Administrative Service Pay Rules 1954 and all these Rules and Regulations have been framed in exercise of power under All India Service Act 1951. The post of Principal Chief Conservator of Forest was created in 1983 and was added in the Schedule to Indian Forest Service(fixation of Cadre Strength) Regulation. The Cadre Rule or Regulation which provide for temporary addition to the cadre or inclusion of non-cadre officer to 'Cadre' under certain circumstances and condition do not provide for transfer or decaderisation of a 'Cadre' Officer. But the 'Pay' Rules referred to which are para materia with each other make reference to do posting of 'Cadre' Officer to Non- Cadre post/ This matter came

Rule 9(4)

: : 8 : :

up for consideration before the Constitution Bench of the Supreme Court of India in the famous case of "E.P. Royappa Vs. State of Tamil Nadu and another" (1974) 4 SCC 3, which was a case of transfer of a Cadre officer of Indian Administrative Service to a non Cadre post so created. It was observed with reference to Sub-rule (1) of Rule 9 of Indian Administrative Service (Pay) Rule 1954:

" If the State Government wants to appoint a member of the Indian Administrative Service to a non Cadre post created by it, it can not do so unless it makes a declaration setting out which is the Cadre post to which such non-Cadre post is equivalent in status and responsibility. The making of such declaration is the sine qua non of the exercise of power under Sub-rule (1). It is not an idle formality which can be dispensed with at the sweet will of the Government. It has a purpose behind it and that is to ensure that a member of the Indian Administrative Service is not pushed off to a non Cadre post which is inferior in status and responsibility to that occupied by him. The object of this provision clearly is to ensure that the public services ^{are in} the discharge of their duties ~~are~~ ^{not} exposed to the demoralising and depriving effects of personal or political nepotism or victimisation, vagaries of the

: : 9 : :

political machine. The determination of equivalence is therefore made a condition precedent before a member of the Indian Administrative Service can be appointed to a non Cadre post under Sub-rule(1). It is mandatory requirement which must be obeyed. The Government must apply its mind to the nature and responsibilities of the function and duties attached to the non- Cadre post and determine ^{the} equivalence. ^{There the} Pay attached to the non Cadre post is not material.

" The only exception to rule(1) is to be found in Sub-rule(4) and that applies where the non cadre post is such that ~~it is~~ it is not possible to equate ~~it~~ it with any Cadre post".

" This declaration of equivalence though imperative is not conclusive in the sense that it can never be questioned. It would be open to a member of the Indian Administrative Service to contend, notwithstanding the declaration of equivalence, that the non cadre post to which he is appointed is in truth and reality inferior in status and responsibility to that occupied by him and his appointment to such non Cadre post is in violation of Article 311 or Article 14 and 16. The burden of establishing this would undoubtedly be very heavy and the court would be slow to interfere with the declaration of equivalence made by the Government".

: : 10 : :

" But where it appears to the court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities of the functions and duties of the two posts are so dis-similar that no reasonable man can possibly say that they are equivalent in status and responsibility or the declaration of equivalence is malafide or in colourable exercise of power or it is a cloak for displacing a member of the Indian Administrative Service from a cadre post which he is occupying, the court can and certainly would set at naught the declaration of equivalence and afford protection to the Civil Servant".

" The status and responsibility of a Non-cadre post for the purpose of determining equivalence can not depend on who is going to occupy. The equivalence in status and responsibility determined on objective assessment of the nature and responsibilities of the functions and duties attached to the post should decide which officer should occupy ".

6. In the instant case no declaration of equivalence in status and responsibility which is since qua nor of shifting a cadre officer to non cadre.

: : 11 : :

post having been made the transfer and posting order to this newly created-cadre post apparently for him manifestly illegal, arbitrary and an act which goes to the very root of matter in a country governed by Rule of law it is the law which is to prevail over illegal acts. The post so created by no stretch of imagination be said to be equivalent in status and responsibility to that of Principal Chief Conservator of Forest. The work of which was hither to under the supervision and control of Principal Chief Conservator of Forest. The defence that it was a s a result of demands of Office Association which made demand for several officers reflects only the colourable exercise of power and lack of good faith on the part of State Government in accepting one and that too not as demanded as per this post an officer of lower grade and pay scale was demanded besmears and clothes the action of the Government with arbitrariness and makes the impugned order wholly unsustainable also because it is patently illegal and manifestly unjust too.

7. The contention raised by Shri K.B. Sinha that creation of ex-post is permissible under second proviso to rule/⁽⁴⁾ Indian Forest Service (Cadre) Rules 1966 has no legs to stand. The ex cadre post has not been created for any particular period, even for one year or less than that and further it is not a temporary addition to cadre nor does it carry any duty and responsibility of a like nature to cadre posts.

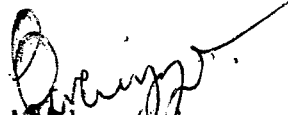
8. Shri Sinha learned counsel for the respondents contended that the applicant having accepted the post and having applied for Voluntary retirement has no right to challenge the impugned order and is estopped from doing the same. The position in 'E.P. Royappas case (Supra 1) in this behalf is different. In that case the officer had accepted the post and worked on it and made certain expressions regarding the equivalence of post himself. In the instant case the applicant had no option and maintaining the discipline took the bitter pills in his mouth but did not swallow it and exhibited his indignation and protest by not working on the post and applying for Voluntary retirement, leave and challenging the same before Tribunal without delay for upholding of his right, burying illegal acts and restoration of status and position. The objection regarding acceptance of status and estoppel putting an end of the right of the applicant to challenge fails.

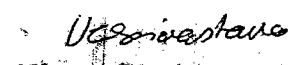
9. In view of what has been said the application is allowed and the impugned order dated ²⁹30.5.92 transferring and posting the applicant on the newly created Ex-cadre post of Principal Chief Conservator of Forest Evaluation and Working Plans is quashed and the applicant will be deemed to be continuing on the post of Principal Chief Conservator of Forest U.P. a post held by him. We make no observation regarding cancellation of leave so granted or notice of retirement given by the applicant. If the applicant joins the respondent now 3 now will automatically cease to hold charge

193
193
: : 13 : :

of the post of Principal Chief Conservator of Forest.

No order as to the costs.


Member (A)


Vice Chairman

Dated: 10th Sept: 1992:

(Uv)