

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI
NEW BOMBAY BENCHO.A. No. 651/87 198
T.A. No.

DATE OF DECISION 14.6.1989

Shri Ajit Singh Pall

Petitioner

Shri C.Nathan,

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri J.D.Desai(for Mr.M.I.Sethna)

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B.Mujumdar, Member(J),

The Hon'ble Mr. P.S.Chaudhuri, 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?

Yes

No



(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.651/87.

Shri Ajit Singh Pall,
Raina House, 30/10 Pilot Bunder,
Colaba, Bombay - 400 005.

... Applicant.

V/s.

1. General Manager,
Canteen Stores Department,
'Adelphi', 119, M.K.Road,
Bombay - 400 020.
2. Union of India,
Ministry of Defence,
Sena Bhavan,
New Delhi - 110 001.

... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri P.S.Chaudhuri.

JUDGMENT:-

{Per Shri P.S.Chaudhuri, Member(A)} Dated: 14.6.1989

This application was filed on 1.10.1987 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant prays that Transfer Order No.114/87 dated 22.9.1987 in terms of which he is transferred from the post of Deputy General Manager in the Head Office of the Canteen Stores Department at Bombay to the post of Regional Manager (North) at Udampur be struck down and for other consequential and connected reliefs.

2. The applicant is an employee of the Canteen Stores Department, Ministry of Defence. When he was serving in this organisation as Regional Manager, on 5.1.1982 a panel for regular promotion to the post of Deputy General Manager was drawn up by the Departmental Promotion Committee and approved by the Up Mantri, Raksha Mantralaya. This panel was published on 18.2.1982 and the applicant's name figured in it at Sl. No.4.

...2.

Am

Thereafter, the applicant was posted as Deputy General Manager (Base) from 2.11.1982 to 25.4.1984, as Deputy General Manager (LIF) from 1.5.1984 to 9.4.1986 and finally as Deputy General Manager (P & A) w.e.f. 10.4.1986. By order No.74/87 dt. 26.6.1987 the applicant was confirmed, along with 2 other persons as Deputy General Manager w.e.f. 5.1.1984. By this very order, three more persons were confirmed as Regional Managers.

3. By an order dt. 22.9.1987 the applicant was transferred from the post of Deputy General Manager (P & A) at Bombay to the post of Regional Manager. This post's headquarter is at Udhampur. The applicant was aggrieved at this order as he considered that it was a clear act of demoting him from the higher post of Deputy General Manager to the lower post of Regional Manager without following the procedure laid down for inflicting penalties. Therefore, ^{he} immediately filed this application.

4. The respondents have opposed the application by filing their written statements. We also heard Mr.C.Nathan, learned advocate for the applicant and Mr.J.D.Desai, holding the brief for Mr.M.I.Sethna, learned advocate for the respondents.

5. It is the applicant's submission that statutory rules called the Canteen Stores Department, Ministry of Defence (Group 'A' and Group 'B' posts) Recruitment Rules, 1979 were made by the President under Article 309 and published under SRO No.64 dt. 15.2.1979. These Rules, as amended, laid down that the three posts of Deputy General Manager (Stores), (Base) and (Management Services) in the scale of Rs.1500-2000 could be filled by the promotion of Regional Managers with 3 years service (rendered after appointment thereto on a regular basis) in the

...3.

Am

(14)

grade of Rs.1500-1800. These Rules also laid down that the posts of Regional Manager were to be filled by promotion from amongst Assistant General Managers/ Managers Selection Grade.

6. After these Recruitment Rules were promulgated the posts of Regional Manager and Deputy General Manager were merged into single pay scale by a letter dt. 14.4.1982. The relevant portion of this letter is reproduced below:

"I am directed to convey the sanction of the President to the merging the posts of Regional Managers in the Canteen Stores Department in the pay scale of Rs.1500-60-1800 and Deputy General Managers (Stores/Base/Management Services) in the pay scale of Rs.1500-60-1800-100-2000 into a single common cadre post designated as Deputy General Managers (Stores/Base/Management Services)/ Regional Managers, carrying a pay scale of Rs.1500-60-1800-100-2000 with immediate effect. The officers posted to appointments in the Head Office of the Canteen Stores Department will be designated as Deputy General Manager suffixed appropriately as per the branch they head, whereas the Manager of Base Depot which is a post in the grade of Deputy General Manager shall be designated as Deputy General Manager (Base) and the field appointments in each region of the Canteen Stores Department shall be designated as Regional Managers."

7. By S.R.O. No.99 dated 7.3.1988, the above mentioned Recruitment Rules of 1979 were superseded in so far as these related to the posts of Deputy General Manager (Stores), (Base) and (Management Services) and Regional Managers. The new Rules were called the Canteen Stores Department, Ministry of Defence (Group 'A' posts) Recruitment Rules, 1988. These new Rules clubbed together 9 posts, viz. Deputy General Manager (P & A), Deputy General Manager (Base), Deputy General Manager (Stores), Deputy General Manager (Liquor Imports and Stores) and 5 posts of Regional Manager. The method of recruitment is prescribed as $66\frac{2}{3}$ per cent by promotion failing which

...4.

Ph

(15)

by transfer on deputation and $33\frac{1}{3}$ per cent by transfer on deputation. It has also been stipulated that the grade from which promotion is to be made to these 9 posts is that of Assistant General Manager/Manager Selection Grade.

8. A number of oral arguments were put forward by Mr. Nathan in support of the applicant's case. The first was that the post of Regional Manager was lower than that of Deputy General Manager and hence the posting of the applicant from a post of Deputy General Manager to a post of Regional Manager amounted to a demotion. It was his contention that for this to be done the prescribed rules and procedures had to be followed and, as this had not been done, the action was violative of Article 301. Mr. Nathan sought to bolster his contention by submitting that the applicant had held the post of Regional Manager several years ago and had been specifically promoted from such a post to the post of Deputy General Manager as a result of empanelment by a duly constituted Departmental Promotion Committee and that, further, he had been confirmed in the post of Deputy General Manager by an order which made a specific distinction between confirmation as Deputy General Manager, and confirmation as Regional Manager. Mr. Desai countered this by saying that the two posts had been merged by the letter dt. 14.4.1982 and that movement from one post to another in the same grade did not amount to any demotion, whatsoever. It was Mr. Desai's submission that there was, no doubt, a distinction between the post of Regional Manager and the post of Deputy General Manager when the applicant was empanelled for the post of Deputy General Manager in January, 1982, but this distinction was totally eliminated when the two

...5.

Am

16

posts were merged into a common scale in April, 1982. It was his submission that it was well settled that transfer from one post to another in the same scale of pay cannot be construed as a demotion. We see considerable merit in Mr. Desai's submissions. We find support for these submissions in R.D. Kewalramani, I.P.S., V. State of U.P. and others (1983(1)SLJ 363, Allahabad):

"Learned counsel for the petitioner urged that the post of Director of Prosecutions was previously since held by the Deputy Inspector General of Police, the petitioner would be deemed to have been demoted by the appointment on the said post. What was done in the past is not relevant for deciding whether the petitioner had been demoted or not. It is a fact that this post now carries the same emoluments as the one which the petitioner is fighting for. Hence, by no stretch of imagination the petitioner could be said to have been demoted. We have further been referred to the Government notifications which have upgraded this post."

9. Mr. Nathan's second submission was that this was the very first time that a Deputy General Manager from the Headquarters at Bombay had been transferred as Regional Manager. Mr. Desai countered this by submitting that prior to 1982 no such case could have arisen because the post of Regional Manager was distinct from that of Deputy General Manager which was filled by promotion from amongst Regional Managers. The respondents have submitted that, thereafter, there had been occasions when Deputy General Managers had been transferred as Regional Managers. They have cited the cases of Shri K.L. Kohli and Shri S.K. Sood in October, 1983 and September, 1987 respectively. We are unable to see any force in the applicant's submission on this point.

10. Mr. Nathan's third submission was that the circular of 1982 covered only the posts of Deputy

General Manager(Stores), (Base) and (Management Services). It was his contention that it did not cover the post of Deputy General Manager (P & A), which was the post held by the applicant, and hence it could not be held that this post was also to be clubbed with Regional Managers. Mr.Desai countered this by submitting that the merger covered all posts in existence at a particular time and this was made clear in the revised recruitment rules that had been promulgated in 1988. It was his submission that the basic principle was the transfer from one post to another carrying the same emoluments did not constitute a demotion and that since the post of Deputy General Manager (P & A) was in the same grade as that of Regional Manager, the impugned order did not amount to a demotion. Based on this proposition, we are inclined to agree with Mr.Desai's submissions.

11. Mr.Nathan's fourth submission was that the applicant had already reached the age of 55 years and hence according to the norms so far followed the applicant should not have been transferred out. The applicant has sought support in this regard from circular No.4/85 dt. 28.8.1985. But on going through this circular we do not see how it helps him. This circular clearly says that the normal tenure of an officer in Headquarters would not exceed 3 years in any particular section and that the maximum tenure at Headquarters would be 5 years. The respondents contended that the applicant has already spent more than 5 years in Bombay. The respondents have also fairly brought to our notice that the circular of 1985 has been cancelled and superseded by circular No.10/87 dt. 24.10.1987. It is this Circular of 1987 which might help the applicant as it says "During the last one year of service effort will be made to post an officer to his

place of choice subject to availability of billet for which the officer has to specify well in advance giving his first, second and third choice". In this view of the matter we are not inclined to agree with the applicant's submissions on this point.

12. Mr. Nathan's fifth submission was that the impugned transfer order had been issued by the General Manager of the Canteen Stores Department even though he had not been delegated this power and hence the order was not valid. The respondents countered this by citing the Government's orders dt. 21.3.1979 laying down the duties of, inter alia, the General Manager of the Canteen Stores Department. This order gives the General Manager full powers to transfer staff within the sanctioned establishment in accordance with the prescribed regulations, orders and procedures. We do not therefore, see any force in the applicant's submission on this point.

13. Mr. Nathan's sixth and final submission was that the transfer orders were mala fide, inasmuch as these were meant to give Shri V.S. Bahri an accelerated promotion and to put hurdles in the way of the applicant who is aspiring for promotion to the post of Joint General Manager (II). Mr. Desai opposed this by submitting that Shri Bahri had been promoted from the grade of Asstt. General Manager/Manager Selection Grade to a post of Deputy General Manager which was perfectly in order. It was his submission that there was no need for Shri Bahri to have to move through the grade of Regional Manager. Mr. Desai also drew our attention to their written statement saying that "if the applicant is otherwise fit the fact that he is posted as a Regional Manager at Udampur will not in any manner affect the chances for being considered

(19)

to be promoted to the post of Joint General Manager - II".
Based on these submissions we are unable to hold that the
actions of the respondents carry any taint whatsoever of
mala fide.

14. Based on this analysis and discussion, we are
unable to find any merit in this application.

15. The application is accordingly dismissed. In
the circumstances of the case, there will be no order as
to costs.

P. S. Chaudhuri

(P.S. CHAUDHURI)
MEMBER (A)

M. B. Mujumdar
(M.B. MUJUMDAR)
MEMBER (J).

Judgment dt. 14/6/89
Send to parties on
22/6/89.

Approved
26/6/89

Judgment dt. 14/6/89
Served on R. No 2 on
dt. 29/6/89
ms
20/7/89