

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI  
NEW BOMBAY BENCH

O.A. No. 185/88

198

~~TAAX No.~~

DATE OF DECISION 31.5.1989

Shri D.B.Joshi,

Petitioner

Shri Ashok Sutavane

Advocate for the Petitioner(s)

Versus

Union of India &amp; Ors.

Respondent

Shri V.S.Masurkar

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.S.Chaudhuri, Member(A).

The Hon'ble Mr. -

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

(8)

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

Original Application No.185/88.

Shri Dilip Balkrishna Joshi, LDC,  
Office of the Executive Engineer,  
Pune Central Division,  
Central PWD, Mukund Nagar,  
Pune - 37.

... Applicant.

V/s.

1. Union of India through  
Superintending Engineer,  
Bombay Central Circle No.III,  
Central P.W.D., Ghatkopar(West),  
Bombay - 400 086.
2. The Executive Engineer,  
Pune Central Division,  
Central P.W.D.,  
Mukund Nagar,  
Pune 411 037.
3. Shri V.R.Suryawanshi,  
LDC, Office of the  
Executive Engineer,  
C.P.W.D., Mukundnagar,  
Pune - 411 037.
4. Shri P.B.Hire,  
LDC, Office of the Executive  
Engineer, C.P.W.D.,  
Mukund Nagar,  
Pune - 411 037.

... Respondents.

Coram: Hon'ble Member (A), Shri P.S.Chaudhuri.

JUDGMENT:

(Per Shri P.S.Chaudhuri, Member(A))

Dated: 31.5.1989

This application was filed before this Tribunal on 11.3.1988 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant prays that the order dated 27.1.1988 in terms of which he is posted to the Planning Branch and Shri V.R.Suryawanshi respondent No.3 (for short, R-3) is posted to Sub-division No.III and Shri P.B.Hire, respondent No.4 (for short, R-4) is posted to Sub-division No.IV be set aside and that, instead, the earlier order dated 30.12.1987 in terms of which the applicant is posted to sub-division No.III and R-3 is posted to the Planning Branch be implemented. He has also prayed for other interim and ancillary reliefs.

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2. The applicant was appointed in the Pune Central Division of the Central Public Works Department (for short, CPWD) as a Lower Division Clerk on 5.3.1971. He thereafter, worked in this Division as under:

5.3.1971	to 4.8.1975	- Correspondence Branch
5.8.1975	to 17.10.1980	- Sub-division No.II
18.10.1980	onwards	- Correspondence Branch

3. On 13.10.1987, Executive Engineer, Pune Central Division, respondent No.2 (for short, R-2) wrote to the Superintending Engineer, Bombay Central Circle No.III, Respondent No.1 (for short, R-1) regarding interchange of Upper and Lower Division Clerks from the Accounts Branch to the Correspondence Branch and vice-versa. In this letter R-2 mentioned, inter alia, that the applicant had been working in the Correspondence Branch for a long time (since October, 1980) and that he needed a change, and suggested that the applicant be transferred from the Correspondence Branch to Sub-division No.III. R-2 also suggested that R-3 be transferred from Sub-division No.III to the Planning Branch. Acceptance of this proposal dated 13.10.1987 of the Executive Engineer, Pune Central Division was communicated by a letter dated 18.12.1987 from the Executive Engineer (H.Q.), in the office of R-1. Posting orders covering, inter alia, the applicant and R-3 were accordingly issued on 30.12.1987. It is this order dated 30.12.1987 that the applicant wants implemented.

4. Immediately thereafter, on 7.1.1988, R-3 submitted a representation to R-1. It may be noted that this representation was sent through proper channel, but an advance copy was sent directly to R-1. In it, R-3 mentioned that he had already worked in the Planning Branch

for more than 10 years previously, but he had now once again been posted to the Planning Branch. He therefore, requested for a posting anywhere other than the Planning Branch.

5. R-4 also submitted a representation to R-1 on 7.1.1988. This representation, too, was sent through proper channel with an advance copy being sent directly to R-1. In it, R-4 mentioned that he had completed more than 3½ years in the Correspondence Branch but his name had not been proposed for the Accounts Branch or a Sub-divisional Office. He, therefore, requested for a posting in either the Accounts Branch or a Sub-divisional Office.

6. It is the contention of the applicant that R-3 and R-4 and some other staff members also made an oral representation-cum-request to the Executive Engineer (H.Q.) in the office of R-1 for changing the transfer orders dated 30.12.1987. Thereafter, the Executive Engineer (H.Q.) in the office of R-1 wrote to R-2 on 8.1.1988. As this is important it is quoted below:

"Sub: Transfer of Clerical Staff from A/B to C/B and vice versa.

Ref: Your O.O. No.9/2/PCD/87/2138 dt. 30.12.1987.

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This office has received today an advance copy of two representations from S/Shri V.R.Suryavanshi and Shri P.B.Hire, L.D.Cs of your Division. It is seen that Shri P.B.Hire is working in Correspondence Branch for the last 3½ years and has not been posted in Accounts Branch or Sub-division. His name was perhaps omitted in the proposal sent vide your letter No.9(2)/87/PCD/1947 dated 13.10.1987. His claim for posting in A/B or Sub-division is therefore genuine and it is requested that he be posted to Sub-division office immediately by suitably modifying your order dated 30.12.1987.

It is also seen that Shri V.R.Suryavanshi, LDC who had worked more than 10 years in Planning Branch has again been posted to the same branch (i.e. P/B)

after completing his tenure of 3 years in Sub-division. He should be given a chance to work in Accounts Branch so that he can learn the work of A/B. It is also learnt that he has passed the examination for promotion from L.D.C. to U.D.C. He therefore should gain the experience of Accounts Branch which will help him in discharging his duties. This will be advantageous to the Department also. It is therefore requested that his posting order may be modified.

It is therefore suggested that the following modifications may be done in your order No.9/2/PCD/2138 dated 30.12.1987.

- (1) Shri V.R.Suryavanshi, LDC be shifted to A/B in place of Ku.Bina Angadi, LDC and Kum.Bina Angadi LDC be posted to C/B against Shri P.B.Hire.
- (2) Shri P.B.Hire, LDC should be posted to Sub-Divn. IV in place of Shri S.P.Aranke, LDC and Shri Aranke be posted to Sub-Divn.III against Shri D.B.Joshi.
- (3) Shri D.B.Joshi, LDC be posted to Planning Branch against Shri Suryavanshi, LDC.
- (4) Mrs.J.N.Bhagchandani, LDC be posted in C/B against Shri D.B.Joshi, LDC.

Necessary amendment may be made to your O.O. No.9/2/PCD/2138 dt. 30.12.1987 so that the staff is satisfied and also no harrassment/injustice is caused to any one.

The original representations may be furnished with comments to this office about such ommissions etc."

7. On receipt of this letter, R-2 passed orders on it as under:

"Please issue revised orders"

Thereafter, the earlier order dated 30.12.1987 was amended by R-2 by the issue of the impugned order dated 27.1.1988. Being aggrieved this order dated 27.1.1988 the applicant filed this application.

8. Respondents No.1 and 2 have opposed the application by filing their written reply. I heard Mr.A.M.Sutavane, learned advocate for the applicant and Mr.V.S.Masurkar, learned advocate for respondents No.1 and 2. Respondents No.3 and 4 were neither present nor represented even though notices had been served on them.

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9. Mr.Sutavane's first submission was based on Volume I (1975 Edition) of the C.P.W.D. Manual which deals with Staff, Establishment, Organisation and Office Procedure. Chapter V thereof deals with administration and section 9 of this Chapter deals with Transfers. Paragraph 17 of this section reads as under:-

"Interchange of staff between Accounts and Correspondence staff:

Upper Division Clerks and Lower Division Clerks, including Cashiers, serving in a Divisional office shall be interchanged every 3 years. The period of 3 years stay in Accounts seat shall be reckoned from first April and first October of a year. Transfer should be completed by first May and first November of the year. Such transfers shall be effected by the Superintending Engineer of the Circle concerned. The Superintending Engineers are empowered to grant exemption from transfers under this rule up to a maximum period of one year where exceptional circumstances exist.

The Interchange of staff between the Accounts and Correspondence Branch is not to be treated as transfer of office which is changed every 5 years. The Superintending Engineers will, however, ensure while transferring the Clerks from one Division to another that if the individual was previously working in Accounts Branch of a Division, he is posted in the Correspondence Branch of the new Division and so on.

The Lower Division Clerks, who are imparted training in Accounts under a scheme of training in accounts introduced by the Department, fail to pass the examination held at the conclusion of the training shall not be posted to Accounts Branch till they pass the examination held under the training scheme subsequently on another attempt!"

10. Mr.Sutavane further submitted that in C.P.W.D's Memorandum No.9(49)/63-ES II dated 18.10.1963 it had been clarified that:

"iv) After how long rendering service in the correspondence Branch the Clerk can be selected for appointment as Cashier."	No limit is intended. The Superintending Engineer, while making the selection of the cashier will no doubt consider whether the person concerned has been recently transferred from the Accounts Branch to the Correspondence Branch. Ordinarily transfer to
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Accounts Branch whether as Cashier or as Accounts Clerk will be made in order of length of service in the correspondence branch i.e. the person who has worked longest in the correspondence Branch will be moved first.

- v) Whether service rendered in the Sub-Divn. as Accounts Clerk or as Lower Division Clerk, where there is only one post of L.D.Clerk, should be treated to have been rendered in the Accounts Branch.
- Yes. In a sub-Division, with two Lower Division Clerks, if the second Clerk is employed exclusively on general correspondence not connected with contracts and accounts, he will be treated as a part of Correspondence Branch otherwise he too will be treated as if in the Accounts Branch."

11. It was Mr.Sutavane's submission, and it is not disputed,that Sub-divisions II, III and IV had only one clerk each. It was his contention that, therefore, based on the clarification dated 18.10.1963, a posting to any one of these Sub-divisions was a posting to the Accounts Branch. It was his contention that, therefore, the order dated 30.12.1987 posting him to Sub-division III posted him to an Accounts Branch post, to which category of post he was due a posting.

12. Mr.Masurkar attempted to counter these submissions by contending that the provisions contained in the C.P.W.D. Manual are only a guide and are not rules. It is true that the Manual does not have the force of rules framed under Article 309 of the Constitution. It is, however, common ground that no such rules have been framed in regard to the points at dispute in this case and hence, in the absence of such rules, one has to go by the orders and instructions contained in the C.P.W.D. Manual. Besides, a specific

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directive was issued by the Deputy Director of Administration's office memorandum No.H-11017/13/87-EC VI dated 15.9.1987 requesting Superintending Engineers to ensure that the provisions of the above mentioned paragraph 17 are followed. This office memorandum was circulated by the office of R-1 under docket No.21/7/87/BCC III/2742 dated 6.10.1987 with the specific request that the UDC's/LDC's who have completed their tenure period of 3 years in Accounts Branch or Correspondence Branch should be interchanged at once. I thus do not find any force in the submissions of the respondent on this point.

13. It was Mr.Sutavane's contention based on his submissions on this point that the initial order dated 30.12.1987 posting the applicant to Sub-division III was in conformity with the orders and instructions regarding rotational transfers from the Correspondence Branch to the Accounts Branch. It was his contention that posting R-4 to such a post instead of him was arbitrary and discriminatory on two specific grounds.

14. The first ground was that the rules laid down that Lower Division Clerks who are imparted training in Accounts under CPWD's scheme of training but fail to pass the examination held at the conclusion of the training shall not be posted to Accounts Branch till they pass the examination held under the training scheme subsequently on another attempt. It is not disputed that R-4 had undergone such training but had failed. It was Mr.Sutavane's contention that the applicant had passed such an examination and that the respondents' action in waiving this requirement when posting R-4 to a Sub-division in a post which was as if in the Accounts Branch was arbitrary. The respondents attempted to counter this submission by contending that



no such course or examination had been conducted by CPWD for the last 3 or 4 years. But I find that the rules, which have been quoted in full earlier, do not provide for any such relaxation and that, too, when passed candidates are available for such a posting. I thus do not see any merit in this contention of the respondent. The next line of defence adopted by the respondents was that R-4 had not been posted to the Accounts Branch but had been posted to a Sub-division. But the clarification issued in 1963 says that a posting as the only Clerk in a Sub-division will be treated as if in the Accounts Branch. I thus do not see any merit in this stand of the respondents.

15. Mr. Sutavane's second ground was that the memorandum dated 18.10.1963, an extract of which has been reproduced earlier, laid down the principle that transfer as Accounts Clerk would be made in the order of length of service in the Correspondence Branch, i.e. the person who has worked longest in the Correspondence Branch will be moved first. It was his submission that whereas the applicant had worked in the Correspondence Branch from 1980, R-4 had worked in that Branch only from 1984 and that this position had been specifically detailed in R-2's letter dated 13.10.1987 to R-1. Mr. Masurkar attempted to counter this by submitting that these instructions are not mandatory but are required to be implemented after considering all the facts such as administrative convenience, suitability, etc. I do not see any force in the respondent's submissions as the applicant has not been advised of any shortcomings in his work and as no other explanation was forthcoming as to why they had deviated from the principle of length of service.

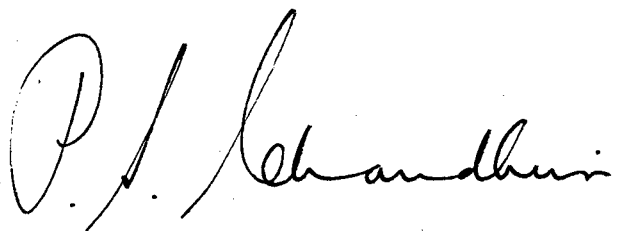
16. Mr.Masurkar then submitted that the Planning Branch is considered as Accounts Branch. He added that the applicant had been so posted to improve his prospects as he had never worked in the Planning Branch. But there are no orders or clarificatory instructions which lay down such a principle whereas such a principle has been clearly laid down in respect of a posting in a Sub-division. I therefore do not see any merit in this contention.

17. The case regarding the posting of R-3 was not pressed by the applicant. Mr.Masurkar stressed that R-3 had already worked in the Planning Branch for more than 10 years and hence that it was quite reasonable to accede to R-3's request that he should not be posted in that Branch once again. I find Mr.Masurkar's stand on this point to be quite reasonable.

18. Based on this analysis and discussion, I am of the view that the respondents have deviated from the orders and instructions relating to the rotational transfer of clerical staff between the Correspondence and Accounts Branches when issuing their order dated 27.1.1988 in so far as the posting of the applicant and R-4 are concerned.

19. In the result, the Executive Engineer, Pune Central Division,Central P.W.D's order No.9/3/PCD/88/156-H dated 27.1.1988 is quashed and set aside in so far as the applicant Shri D.B.Joshi, and respondent No.4, Shri P.B.Hire, are concerned.

20. In the circumstances of the case there will be no order as to costs.



(P.S.CHAUDHURI)  
MEMBER(A).