

INTERIM ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560038

Tuesday, the 10th June, 1986

Present

The Hon'ble Member(J)

The Hon'ble Member (A)

Shri Ch. Ramakrishna Rao

Shri L.H.A. Rego

IN

APPLICATION NO 666 of 1986 (F)

N.P. Venkita Subramanian,
C/O Shri M. Narayanaswamy,
Advocate, No 844,
(Upstairs), V Block,
Rajajinagar, Bangalore-10

... Applicant

Versus

1. The Union of India,
Rep. by its Secretary,
Govt. of India, Ministry of Urban
Development, 'A' Wing, Nirman Bhavan,
New Delhi.
2. The Director of Printing,
'B' Wing, Govt. of India,
Nirman Bhavan, New Delhi.
3. The Manager
Government of India Text Books Press,
T. Narasipur Road, Mysore.

... Respondents

In the above application this Tribunal has passed the following orders:-

Shri M. Narayanaswami appears for the Applicant. None present for the Respondents. It is observed that despite service of notice of the Application and compliance with other measures as envisaged by Section 24 of the Administrative Act 1985, on the Respondents, they have not chosen to enter appearance either through their Counsel or through an authorised representative. In view of this, the stay already granted by this Bench on 27.5.86 is continued until further orders.

Given under my hand and the seal of this Tribunal, this 11th day of June 1986.



Shri M. Narayanaswami
R

REGISTRAR

o/c

1930/10/10

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE.

DATED THIS THE TENTH DAY OF SEPTEMBER, 1 9 8 6.

Present: Hon'ble Shri Ch. Ramakrishna Rao, Member(J)
and

Hon'ble Shri L.H.A. Rego, Member (A).

APPLICATION NOS. 666 & 667 of 1986.

Between:

1. N.P. Venkita Subramanian,
U.D.C.,
Government of India Text Book Press,
Mysore. ...Applicant in
A.No. 666/86.

2. Krishna Ramakrishna Rao,
Section Holder (Binder),
Government of India Text Book Press,
Mysore. ...Applicant in
A.No. 667/86.

and

1. The Union of India,
rep. by its Secretary,
Govt. of India, Ministry of
Urban Development, A-Wing,
Nirman Bhavan,
NewDelhi.

2. Director of Printing,
B-Wing, Nirman Bhavan, NewDelhi.

3. The Manager,
Govt. of India Text Book Press,
T.Narsapur Road, Mysore. ...Common respondents in
both applications.

The applications having come up for hearing before this
Court, the Member (J) made the following:

O R D E R

These two cases are disposed of by this common order as they
involve similar question of fact and law. For the sake of conve-
nience, the applicant in the first application is referred to as
the first applicant, and in the second, as the second applicant.

Shri M. Narayanaswamy, learned counsel for the applicants submits that the first applicant who was working as a Lower Division Clerk (LDC) in the Government of India Press, Coimbatore (Coimbatore Press for short) was transferred on deputation to the post of Upper Division Clerk (UDC) in the Government of India ^{Text Book} Press, Mysore (Mysore Press for short) ~~on deputation~~ for a period of two years from the date of his joining the Press at Mysore; that the second applicant was transferred from the Government of India Press, Nasik (Nasik press for short) where he was working as a Binder Grade II to the Mysore Press in the same capacity on deputation basis for a period of two years; that after serving in the Press at Mysore for over two years they exercised their option for permanent absorption in the strength of the Press at Mysore which they were entitled to do as per Memo dated 24-9-1966 ^(Memo in short) issued by the Chief Controller of Printing and Stationery ^{New Delhi} (CCP & S); that the option exercised by the applicants were not accepted to by the Manager of the Mysore Press (Manager for short) respondent No.3; that the action of the Manager is repugnant to the Memo and is therefore liable to be set aside.

Shri M. Vasudeva Rao, learned counsel for the respondents submits that the Memoranda under which the applicants were transferred from the Coimbatore Press and the Nasik Press to the Mysore

Press make it clear that they have only been transferred in public interest; that the Memo relied upon by the applicants is mainly concerned with transfers of Class III and Class IV staff from one unit to another within the Printing & Stationery(P & S) Department and the exercise of the so-called option by the applicants does not confer on them any right for absorption in the strength of the Mysore Press.

After giving careful thought to the rival contentions we are satisfied that the Memo has to be read as a whole and so read the Memo is relevant for considering the case of the applicants by the Mysore Press for absorption in the posts in which they are currently working. The relevant portion of the aforesaid Memo reads thus:

Subject: Transfer from one Unit to other
of the P & S Department - Instructions regarding.

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(i)

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(ii) In case any applicant for a post in another unit wishes to be absorbed permanently in that unit, the same will be allowed. However, he would be treated in the new Press as having been appointed through "Transfer" method and his seniority there determined in accordance with the instructions contained in the Ministry of Home Affairs O.M.No.9/11/55 RPS dated 22-12-1959.

(2) The above instructions should be brought to the notice of all the staff.

(3) While inviting applications, the applicants should be asked to give their option in writing

as to whether they would like to serve in the new unit on "Deputation" or on "Transfer".

The justification for absorbing in principle of the staff working in one unit when he is transferred to another unit is that all the units have the same identity though they are scattered and located at different places of the country. In other words one unit cannot be treated as wholly different from another since they are ~~of~~ all under the umbrella of the P & S Department. We therefore see nothing wrong in principle in absorbing in Mysore Press the applicants borne on the staff of the Coimbatore Press and the Nasik Press.

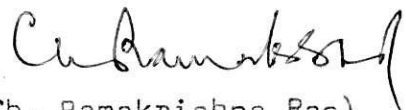
In the case of the first applicant he had given an undertaking in his application that he would exercise a final option either to revert to his parent office or for permanent absorption in the Mysore Press after the expiry of two years and he exercised his option accordingly. Though no such undertaking was given by the second applicant he too exercised his option after the expiry of two years while he was still on deputation/transfer. In view of the option exercised by the applicants it was incumbent on the Manager to have considered the same in the light of the procedure outlined in the Memo and the instructions of the Ministry of Home Affairs referred to therein. The Manager of the Mysore Press seems to have laboured under a misapprehension that the absence of a provision in the recruitment rules for absorption of the

applicants in the strength of the Mysore Press disabled him from accepting the option exercised by the applicants. In so doing he seems to have overlooked the procedure and instructions set out in the Memo.

We therefore direct the respondents to consider the option exercised by the applicants in the light of the foregoing and pass necessary orders for their absorption within one month from the date of receipt of this order.

In the result the applications are allowed.


(L.H.A. Regu)
Member (A)
10-9-1986


(Ch. Ramakrishna Rao)
Member (J)
10-9-1986

enumerated in schedule 'B' to the plaint in the present suit. It is very clear from his evidence that in the suit brought by defendant 2, the properties which he enumerated as those yielding income to the family are the immovable properties enumerated in Schedule 'B'.

It is true that in their own plaint the plaintiffs stated that the income from the family properties represented only 725 muras of rice and so there is something in the argument advanced by Mr. Vittal Rao that the finding of the Subordinate Judge that the family was deriving an income of 855 muras and 10 seers of rice along with other items is unsupportable. But the fact that we are able to say so does not mean that we can to any extent modify or disturb the decree made by the Subordinate Judge, by which he awarded 50 muras of rice a year to each of the plaintiffs for a period of two years preceding the suit. It is not disputed before us that each of the twelve parties to the suit, namely, the ten plaintiffs and the two defendants, had the right to share the family income equally. That being so, even if we take it that the family income did not exceed 725 muras of rice, each of the ten plaintiffs and the two defendants would be entitled to not less than 60 muras of rice towards his or her share of maintenance. The recital in the plaint and the evidence of P.W. 1 make it clear that 725 muras of rice represent the net income and so that would be the true position. But, since the Subordinate Judge has awarded to plaintiffs 1 to 4 only 50 muras of rice a year and the maintenance so awarded is less than the maintenance that they could have rightly claimed even on the supposition that the income did not exceed 725 muras of rice, there is little justification for our disturbing the decree made by the Subordinate Judge even in this respect even though we felt persuaded that he wrongly placed dependence upon the finding recorded in Exh. A-1 overlooking the smaller estimate of the income given in the plaint.

So, we dismiss this appeal with costs.

IN THE HIGH COURT OF MYSORE

21st November, 1966.

SOMNATH IYER & KALAGATE, JJ.

K. R. RAMASANJEEVIAH—Petitioner

v.

THE STATE OF MYSORE & Another—Respondents

Mysore Civil Service Rules—Opting to remain in transferee department—Effect of.

Once option is made available to a Government servant to remain in the transferee department on his relinquishing his right to promotion in the original department and the Government servant opted to remain in the transferee department forgoing his promotion, there is a permanent transfer to the transferee department removing any antecedent lien which he might have had in the original department. It is no longer possible for the Government to exercise the power of repatriation to the original department.

Sri H. B. Datar for Petitioner.

Sri P. K. Shyam Sundar for Spl. Govt. Pleader for Respondent.

WP. 1271/64 to quash G.O. No. BAD. 295 ASA. 63 dt. 6-6-64.

SOMNATH IYER, J. delivered the following:

JUDGMENT

An order made by Government on June 6, 1964 repatriating the petitioner to the Secretariat from the Department of Civil Supplies, is the subject matter of challenge in this writ petition.

The first occasion on which the petitioner was appointed as a second division clerk in the Secretariat was on September 8, 1953, and by an order made on March 12, 1958 he was appointed as an Assistant Inspector of Civil Supplies in the grade Rs. 75/- rising to Rs. 180/-. Mr. Government Pleader says that this was not an appointment but amounted to a deputation and it is just now not necessary to advert to that controversy.

On May 17, 1961 the petitioner's name was included in the provisional inter-State seniority list in the Department of Civil Supplies.

Thereafter, the petitioner was promoted as an Assistant from the post of a second division clerk in the Secretariat, and in consequence of correspondence between the Controller of Civil Supplies and Government, a communication was addressed on 29/31-1-1964 by the Chief Secretary to the Controller by which the Controller was informed that the petitioner should, if he does not revert to the Secretariat immediately, forego his promotion as an Assistant. The copy of this communication was forwarded to the petitioner for his acceptance, by the concerned Assistant Director of Industries and Commerce. On March 3, 1964 the petitioner expressed his choice to remain in the Civil Supplies Department and to forego his promotion as an Assistant in the Secretariat. This choice was communicated by the Controller to Government on March 30, 1964.

One should have thought that this was the end of the matter. But on 4/6-6-1964 a letter was addressed by Government to the Controller that the choice of the petitioner to remain in the Department of Civil Supplies did not affect the power of Government to repatriate the petitioner to the Secretariat, and so his repatriation was ordered.

Many submissions have been made before us both by Mr. Datar appearing for the petitioner who calls in question this order of repatriation and by Mr. Government Pleader who supports it. One of the submissions made to us related to the question whether the appointment of the petitioner in the Department of Civil Supplies in 1958 was in the nature of a deputation which preserved for the petitioner his lien in the Secretariat. Mr. Datar asserted that notwithstanding the petitioner himself referring to the transfer of the service of the petitioner from the Secretariat to the Department of Civil Supplies as in the nature of a deputation, there was no such deputation in fact and in truth. His submission was that if really there was any such deputation, the petitioner would have been paid his deputation allowance and that no such allowance was ever paid. He also asked attention to the order made on March 12, 1958 in the course of which it was stated that the petitioner was 'appointed'. That order does not allude to any deputation. Dependence was also placed for the petitioner upon the fourth Note appearing underneath rule 20(f) which contains provisions in regard to preservation of lien in the case of a Government servant volunteering to serve in another Department.

We think that it unnecessary for us to investigate the validity of the two postulates placed before us by each side. Whether the petitioner went on deputation or whether there was an antecedent absorption of the

petitioner in the Department of Civil Supplies in a question, which, having regard to subsequent events, ceases to have any relevance or importance. The important landmark in the official career of the petitioner was the option made available to him by Government on 31-1-1964 to remain in the Department of Civil Supplies on his relinquishing his right to promotion in the Secretariat. Once that option was made available to the petitioner and the petitioner opted to remain in the Department of Civil Supplies foregoing his promotion as an Assistant in the Secretariat, the matter became concluded and there was a permanent transfer of the petitioner to the Civil Supplies Department which brought about a removal of any antecedent lien which he might have had in the Secretariat. It is this event which happened in 1964 which dispenses with the necessity of investigating the exact nature of the appointment which was made in 1957. It would be enough to point out that on and from the 3rd March 1964 when the petitioner chose to exercise his right to remain in the Civil Supplies Department on depriving himself of the promotion which was made in the Secretariat, the petitioner became a permanent employee in the Civil Supplies Department. It was no longer possible for Government in that situation to exercise the power of repatriation. It is on this short ground that this writ petition succeeds and on which we set aside the impugned order of repatriation.

No costs.

IN THE HIGH COURT OF MYSORE

23rd November, 1966

HONNIAH, J.

B. NANJUNDASWAMY—Petitioner

v.

THE VILLAGE PANCHAYAT, KUDERU—Respondent

Mysore Village Panchayats and Local Boards Act, (10 of 1959) S.2(9)—Plastering and flooring—If amount to erection or re-erection.

Plastering of walls and cementing the floor do not amount to erection or re-erection or enlargement of the building as defined in S.2(9) of the Act. The various clauses of S.2(9) show, whether it is a case of alteration, conversion, addition or covering, it has reference only to some structure or building.

Sri V. Tarakaram for Petitioner.

Sri K. Jagannatha Shetty for Respondent.

The Court made the following:

ORDER

An interesting question of law under the Mysore Village Panchayats and Local Boards Act, 1959, hereinafter referred to as the "Act", whether the plastering of walls and the flooring work amount to 'erection' or 're-erection', or 'enlargement' of a building, as defined in S.2(9) of the Act, arises for consideration in this petition.

The trial Court has come to a finding that the petitioner was plastering the walls and cementing the floor when the Chairman of the village

Crl.R.P. 171/66 against order of Munsiff-Magistrate, Chamaraajanagar in CC. 427/65 dt. 12-4-66.