

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

APPLICATION No : 690/86(T)

DATE OF DECISION: 29-8-1986

Shri A. Krishnappa : Applicant

Union of India represented : Respondents
by Secretary in the Ministry
of Communication

Shri M. Raghavendrachar : Advocate for the
applicant

Shri M.S.Padmarajaiah : Senior Standing
Counsel for respondents.

CORAM:

The Hon'ble Shri Ch. Ramakrishna Rao, Member(Judicial)

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

JUDGMENT

DELIVERED BY SHRI CH. RAMAKRISHNA RAO, MEMBER(JUDICIAL)

In this application initially filed as W.P. No.8688 of 1982 in the High Court of Karnataka and later transferred to this Bench of the Central Administrative Tribunal under Section 29 of the Administrative Tribunals Act, 1985, the applicant challenges the order dated 27-1-1982 passed by the Chief Superintendent, Central Telegraph Office, Bangalore (CSCTO for short), the third respondent, abolishing the post of Despatch Rider in the office of the CSCTO with effect from 27-1-1982 (A.N.) which the applicant was holding and directing him to report to RMS, 'Q' Division, Bangalore. The facts giving rise to the application are briefly as follows:

2. In the letter of the DG, P & T, New Delhi, dated 15-6-1972 addressed inter alia to the CSCTO, the decision of the Central Government, to introduce a Scheme : 'Scooter Service for Delivery of Telegrams' (the Scheme, for short) with effect from 8-6-1972, was conveyed. Under this Scheme, six posts of Despatch Riders were created in the office of the Central Telegraph Office, Bangalore. The applicant was appointed against one of the said posts on 20-4-1973. The scheme, which was implemented on an experimental basis was ultimately given up, as a result of which, the impugned order was passed, reverting the applicant and asking him to report to his parent unit i.e. RMS 'Q' Division, Bangalore with effect from 27-1-1982 (A.N.).

3. Shri Munir Ahmed, learned counsel for the applicant contends, that from 20.4.1973 when his client was appointed to the post of Despatch Rider, he continued to work in that capacity, without any break until 27.1.1982 when the post was abolished and during this period, his client was also confirmed in the said post. According to Shri Ahmed, the impugned order, though attributed to abolition of the post of Despatch Rider, ~~is~~ is penal in nature and is, therefore, violative of Article 311 of the Constitution of India (Constitution, for short). Shri M.S. Padmarajiah, Senior Central Government Standing Counsel, appearing for the respondents, submits, that it has been clearly stated in the letter of the DG P&T dated 15.6.72 that the scheme was an experimental one, operative for a period of one year, though it was extended from time to time, until 27.1.1982, to enable the Despatch Riders to acquire ownership over the vehicles, which were allotted to and used by them, as envisaged by the terms and conditions of the scheme; that ~~the~~ scheme was not functioning satisfactorily and a decision was taken even in 1977 to abolish it; that the Union of the Class IV officials (Union) intervened and requested that the abolition of the scheme may be withheld, as they were corresponding with DG P&T on the subject; that the scheme was thereafter extended for a few more years and ultimately abolished when it was found that the efforts of the Union had not borne fruit. According to Shri Padmarajaiah, the applicant has ^{neither a} no vested right, to continue in the post of

Despatch Rider or in any other equivalent post ~~xxxx~~ nor is it obligatory on the part of the respondents to give any opportunity to the applicant under Article 311(2) of the Constitution.

4. After giving careful thought to the rival contentions, we are satisfied that the post of Despatch Riders having been created on a purely experimental basis, there is no legal bar to the abolition of these posts, if the respondents consider^{ed} it inexpedient to continue the operation of the scheme. Experimental ~~post~~^{basis} apart, bona fide abolition of a post by the Government does not attract Articles 19(1)(g) or ~~Article~~ 311 (2) of the Constitution. As laid down by the Supreme Court of India in M. Ramanatha Pillai v. State of Kerala, AIR 1973 SC 2641:

....The power to abolish the posts is not derived from the doctrine of pleasure as embodied in Art. 310 but in inherent power of Government.

.....A simple abolition of posts leading to termination of service of Government employees does not attract the provisions of Art. 311.

.....Whether an employee holding an abolished post should be offered any other employment in the State is a matter of policy decision of the Government and the employee cannot claim alternate post as of right.

The following observations of the Supreme Court in the State of Haryana v. Des Raj Sangar, AIR 1976 SC 1199 are also apposite to the present context:

"Whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in

good faith, the same cannot be set aside by the court. It is not open to the court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished."

5. The Supreme Court has reiterated the legal position in the case of N.C. SINGHAL v. UNION OF INDIA AIR 1980 SC 1255 in the following words:

"The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the government in the interest of administration and general public. In the absence of requisite material the court cannot interpose its own decision on the necessity of creation or abolition of posts. The court would be the least competent in the face of scanty material, to decide whether the government acted honestly, in creating a post or refusing to create a post or its ~~xxxxxxx~~ decision suffers from mala fide, legal or factual."

The decision rendered by the Supreme Court later in K. RAJENDRAN v. STATE OF T.N. AIR 1982 SC 1107 and the dicta contained therein, which is reproduced below, puts the matter beyond doubt:

"The termination of service brought about by the abolition of a post effected in good faith also does not attract Article 311(2). Article 311(2) deals with the dismissal, removal, or reduction in rank, as a measure of penalty on proof of an act of misconduct on the part of the official concerned. Therefore, it cannot be said that the Act by which the village offices in the State of Tamil Nadu were abolished contravenes Article 311(2).

....The question whether a person who ceased to be a government servant according to law should be rehabilitated by giving an alternative employment is, as the law stands today, a matter of policy on which the court has no voice."

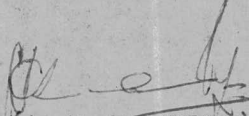
In view of the legal position enunciated by the Supreme Court in the decisions cited supra, we find no force in the contention put forth by the learned counsel for the applicant and we, therefore, reject the same.

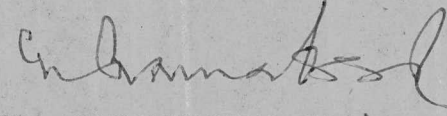
6. ~~XXXXXXXXXXXX~~ Reliance is placed by Shri Munir Ahmed on the letter dated 9.12.1981 addressed by the CSCTO to the AD (C&E), Office of the GMT, Karnataka Circle, Bangalore, wherein the necessity to absorb the Despatch Riders in some other equivalent cadre like Telegraph Assistants was mooted since they were duly selected by the DPC. According to Shri Padmarajiah, this letter does not clothe the applicant with any right for absorption in the cadre of Telegraph Assistants or in any other equivalent cadre and invites our attention to the stand taken by the respondents in paragraph 16 of the statement of objections, which is reproduced below:

".....The petitioner was at liberty and in fact had equal opportunity to compete for ^{the} higher promotional cadre as the other officials of his original ~~x~~ cadre had. But the petitioner did not utilise the opportunity and remained in the same cadre. However, the petitioner is entitled for his seniority in the previous cadre and also the consequential benefits if any. Therefore, his contention that he would lose the service of nine years does not arise."

The stand taken by the respondents, as noticed above, appears to us to be justified on the facts and circumstances of the case.

7. In the result, the application is dismissed.


(L.H.A. REGO)
MEMBER (AM)


(CH. RAMAKRISHNA RAO)
MEMBER (JM)