

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1321/95

Date of Decision : 30th May 2001

K.B.Paunikar Applicant

Mrs.V.S.Masurkar Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.K.Shetty Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.J.Jain, Member (J)

The Hon'ble Smt.Shanta Shastri, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *NO*
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1321/95

Dated this the 3rd day of May 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

K.B.Paunikar,
Upper Division Clerk,
Department of Education,
Ministry of Human Resources
Development, Industrial
Assurance Building,
2nd Floor, Veer Nariman Road,
Opp.Churchgate Rly.Station,
Mumbai.

...Applicant

By Advocate Mrs.N.V.Masurkar

V/S.

1. Union of India through
Secretary, Technical Education,
Ministry of Human Resources Devp.
Deptt. of Education, Section T,
Shastri Bhavan, New Delhi.
2. Joint Education Advisor (Tech)
Ministry of Human Resources Devp.,
Deptt. of Education,
Shastri Bhavan, New Delhi.
3. The Assistant Educational Advisor
(Tech.), Western Regional Office,
Industrial Assurance Building,
2nd Floor, Veer Nariman Road,
Churchgate, Mumbai.

...Respondents

By Advocate Shri R.K.Shetty

..2/-

P.L. Shetty /

ORDER

(Per : Shri S.L.Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking a declaration that order dated 13.10.1995 (Annexure-'A-I') is illegal, null and void being unconstitutional deserves to be quashed and set aside, para 3 of Government of India, Department of Pension and Pensioners' Welfare O.M.No.4/18/87/P&PW(D) dated 5.7.1989 is ultravirius, deserves to be quashed and set aside, in alternative, the respondents may be directed to consider the applicant for posting him in any other department or branch or office of the Ministry located at Nagpur or nearby or in any other Government department of any other Ministry at Nagpur or in its vicinity before insisting on applicant's option till prospective date of permanent absorption in AICTE is fixed. A further declaration is sought that applicant is entitled to retain his lien to his post and on reversion he is entitled to be absorbed in the said post and clause pertaining to transfer to surplus cell on date of reversion from foreign service be struck off as illegal, null and void.

2. The applicant being a permanent employee of respondents was working as Upper Division Clerk with the Western Regional Office of Ministry of Human Resources Development at Bombay. He is a Scheduled Tribe employee and selected by Staff Selection Commission as Lower Division Clerk with the then Ministry of Education and Culture in the Western Regional Office at Bombay.

M. D. 12, -

He was promoted to the post of Upper Division Clerk on 7.11.1989 w.e.f. 1.5.1993 vide Ex. 'A-III'. All India Council for Technical Education was made a statutory body as per Act of 1987. Prior to it, it was an advisory body and a part of the Ministry of Human Resources Development. An administrative decision was taken by the Ministry of Human Resources Development to transfer four Regional Offices of it to be Regional Offices of All India Council for Technical Education. The Ministry conveyed the decision vide letter dated 7.2.1995 to all Regional Offices. It was decided to transfer the staff other than Group 'A' to All India Council for Technical Education to be regulated in accordance with the direction of Department of Pension and Pensioners' Welfare O.M. dated 5.7.1989 read with O.M. dated 13.1.1986, enmass transfer of employees of 4 Regional Offices was decided to be done to Autonomous body, i.e. All India Council for Technical Education and Regional Heads for that purpose were asked to obtain consent of staff members. The Respondent No. 3 on 20.2.1995 requested the staff members to furnish their consent in order to forward the same to the Ministry vide Ex. 'A-5'. In answer, it was informed that the staff will be first transferred to All India Council for Technical Education on the terms and conditions of Foreign service initially for a period of two years which can be extended to three years within which they could be at liberty to seek permanent absorption in the All India Council for Technical Education or come back to the Government who will be deployed against suitable vacancies or if no such vacancies are available in the Office/Department/Ministry for such employees, their names will be sent to Surplus Staff Cell.

A. S. / ..4/-

3. The grievance of the applicant is that enmass transfer of staff to All India Council for Technical Education was a loss of certainty and consistency in the matter of Government service. He preferred a representation on 24.4.1995, reminder dated 13.7.1995 (Annexure-'A-11' & 'A-12' respectively). Where the functions of the Government Department are transferred to a public corporation or undertaking, the affected persons should be given an option either to be absorbed in some other department or to be transferred to the corporation or undertaking to whom activities have been entrusted. No such option was given to the applicant before transferring the employees enblock to Foreign service, no assurance regarding protection of pay, prospects of promotion and other conditions of service was given, Annexure-'A-8' & 'A-9' O.M. dated 5.7.1989 and 13.1.1986 respectively. Para 3 of O.M. dated 5.7.1989 being illegal unconstitutional. Vide Notification dated 4.9.1995, it has been decided to transfer the Regional Offices of the Ministry of Human Resources Development, Department of Education located at Madras, Bombay, Calcutta and Kanpur with all its assets to the All India Council for Technical Education, New Delhi w.e.f. 1.10.1995. A Government servant cannot be deprived of his status as Civil servant without his consent. The applicant holds a lien in his parent cadre, the order regarding Surplus Cell is illegal, null and void as the same amounts to changing terms and conditions of service for which the respondents have no power, which also amounts to removal from service. The applicant is entitled to be adjusted/absorbed in a suitable post. Hence, this OA. for the above said relief.

Ac. Dir. / ..5/-

4. The respondents have resisted the claim and alleged that the Tribunal has no jurisdiction to consider the matter as it is a policy decision taken by the Central Government in consultation with the Representatives of the employees including the applicant at the Joint Consultative Machinery meeting. It is a policy matter. The respondents further stated that the transfer of the said Unit to All India Committee of Technical Education, the conditions of service of applicant upon such transfer would not be adversely affected. Vide Notification dated 4.9.1995 which is effective from 1.10.1995, all administrative decisions/actions taken prior to that in this regard stands superseded and the final Notification clearly mentions that the transfer of staff of these Regional Offices consequent upon the transfer of these offices to the All India Council for Technical Education would be regulated by the instructions of Department of Pension and Pensioners Welfare issued from time to time. The decision is consistent with the well established policy of the Government as contained in the order of Department of Pension and Pensioners' Welfare which is applicable to all organisations of the Government of India. The transfer is in public interest. The applicant is a Government servant and would remain to be so till he exercises his option. In view of O.M. dated 5.7.1989, the consent is to be obtained at the time of absorption of the applicant in the All India Council for Technical Education. None of the Articles of the Constitution are being violated. The applicant will be given opportunity to exercise his option in accordance with the rules of the Government at the appropriate

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time. Those who opt to remain with the Government would retain the status of the Government servant. The applicant is free to opt at his will. The applicant is on compulsory deputation and he would continue to be so till he exercised the option. The transfer of officials to Surplus Cell is not illegal as on account of reduction in strength of office or abolition of a post under Govt., the same procedure is being followed in normal course. The orders are in consonance with O.M. dated 5.7.1989. It was not a unilateral decision. The staff side is also agreeable to these provisions. Hence, prayed for dismissal of the OA. along with the cost.

5. The respondents have fairly stated that the conditions of service of applicant upon such transfer would not be adversely affected and vide notification dated 4.9.1995, which is effective from 1.10.1995, all administrative decisions/actions taken prior to that in this regard stand superseded. In view of the above admission of the respondents, his grievance earlier to 4.9.1995 ^{does} now [^]not survive and the service conditions of the applicant are in no way affected.

6. It is further stated by the respondents that the applicant is a Government servant and would remain to be so till he exercises his option. The applicant will be given opportunity to exercise ⁱⁿ his option in accordance with the rules of the

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Government at the appropriate time. It is further alleged that those who opt to remain with the Government would retain the status of Government servant and the applicant is free to opt at his will.

7. In view of the above submission which amounts to admission serves the purpose and grievance of the applicant.

8. In the result, now DA. does not survive, hence liable to be dismissed and is dismissed with no order as to costs.

Shanta Shastri

(SMT.SHANTA SHASTRY)

MEMBER (A)

S.L. Jain

(S.L.JAIN)

MEMBER (J)

mrj.