

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 857/95

Transfer Application No.

Date of Decision 31.10.95

N.Dilip Kumar

Petitioner/s

Shri G.R.Sharma

Advocate for
the Petitioners

Versus
Union of India & Ors.

Shri R.M.S.Khandepalkar for R-1 Respondent/s
Shri V.B.Nadkarni with Sh.G.U.Bhobe
Shri S.G.Desai for R-3

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member (J)

Hon'ble Shri. P.P.Srivastava, Member (A)

- (1) To be referred to the Reporter, or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA. NO. 857/95

N.Dilip Kumar

... Applicant

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Shri B.S.Hegde, Member (J)

Hon'ble Shri P.P.Srivastava, Member (A)

Appearance

Applicant by Shri G.R.Sharma

Respondent No. 1 by Shri R.M.S.Khandepalkar

Respondent No. 2 by Shri V.B.Nadkarni with Shri G.U.Bhobe

Respondent No. 3 by Shri S.G.Desai

JUDGEMENT

Dated:

31/10/95

(PER: Shri B.S.Hegde, Member (J))

The short question involved for our consideration is whether the Respondents are justified in placing the applicant in a non-cadre post after his induction into the I.P.S. Cadre by virtue of Supreme Court's order dated 23.9.1993 in C.A.No. 564 of 1991. Respondent No. 1 the Union of India pursuant to the Judgement of the Supreme Court vide dated 23.9.1993 and in exercise of powers under Rule 9 of the Indian Police Service (Recruitment) Rules, 1954 read with sub-regulation (1) of Regulation 9 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 appointed the applicant who was working in the State Police Service Officer of Goa to the Indian Police Service on probation and allocated him to the cadre of AGMU under sub-rule (1) of rule 5 of the Indian Police Service (Cadre) Rules, 1954 vide their order dated 4.4.1995. Accordingly, on the same day i.e. on 4.4.1995 another notification was issued reverting the Respondent No. 3 to the Goa Police Service w.e.f. 13.11.1991. Despite the above, the Respondent No. 2 vide order dated 29.5.1995 (Ex. 'D') posted the applicant

as 'Deputy Commandant General' (Home Guards) which is a non-cadre post. Respondent No. 2 vide letter dated 31.3.1995 (Ex. "A") passed an order asking Respondent No. 3 who was working as a Superintendent of Police (South) shall look after the duties of the post of Inspector General of Police of Goa in addition to his own duties until further orders. Again they issued corrigendum dated 6.7.1995, stating that the Government of Goa is also pleased to delegate him the statutory and financial powers attached to the post of Inspector General of Police.

2. The learned counsel for the applicant Shri G.R. Sharma vehemently urged that the order passed by the Respondent No. 2 directing the Respondent No. 3 to look after the additional charge of Inspector General of Police is not in accordance with the rules and the Respondent No. 2 had flouted the direction of the Central Government, the Union of India. It is a well known fact that the Judgement of the Central Administrative Tribunal has been quashed by the Supreme Court vide its Judgement dated 23.9.1993. Pursuant to that, the Respondent No. 1 had reverted the Respondent No. 3 to the Goa Police Service and on re-consideration by the Review D.P.C. the applicant has been inducted into the Indian Police Service Cadre. Therefore, he should have been posted in a cadre post and not in an ex-cadre post. Further, it was urged by the counsel for the applicant, that the Respondent No. 2 had taken a plea that they had not received the Notification issued by the Union of India, i.e. Respondent No. 1 and the order of posting of the Applicant was made prior to the issuance of the Notification by the Union of India is not based on facts. As a matter of fact, since the fax message was sent to the State Government the contents

is said to have been received by the State Government and despite the same they have filed a false affidavit stating that they have not received the order of the Central Government which amounts to perjury on the part of the Respondent No. 2. In this connection, he drew our attention to Section 57 of the Evidence Act, and in support of his contention he cited two decisions of the Supreme Court in State of Bombay v/S. F.N. Balsara (A.I.R. 1951 SC 319) and Unkar Nath and Ors. v/s. The Delhi Administration (A.I.R. 1977 SC 1108) wherein the Hon'ble Supreme Court has held that in the eye of the law, the notification has the force of law as if made by the legislature itself. Therefore, the Respondent No. 2 cannot contend that the notification issued by the Union of India is not within their knowledge. In the instant case, on the other hand, the Respondent No. 2 intentionally dis-obeyed the order of the Union of India and posted Respondent No. 3 despite the order of the Supreme Court, as well as, the Review D.P.C. recommendation. Further, he contends that the applicant being inducted to the I.P. cadre which is an All India Cadre this Tribunal has got jurisdiction to entertain the same in accordance with Section 14 of the Act. Regarding the contention that he has not exhausted the remedial measures, such contention is not tenable as he has made representations and that has not been answered by the Respondents. In so far as, Goa Police Service Personnel is concerned, one can hold at the most maximum the post of Additional

Superintendent of Police and unless he is inducted to the I.P.S. cadre he cannot occupy any of the cadre post. Since the cadre post has not been filled completely by the State Government even the additional charge will have to be held by I.P.S. cadre officer in accordance with the Rules 8 and 9 of the Indian Police Service (Cadre) Rules, 1954 which reads as follows:

"8. Cadre posts to be filled by cadre officers. - (Cadre and ex-cadre posts to be filled by cadre officers:-

- (1) Save as otherwise provided in these rules, every cadre post shall be filled by a cadre officer.
- (2) A cadre officer shall not hold an ex-cadre post in excess of the number specified for the concerned State under Item 5 of the Schedule to the Indian Police Service (Fixation of cadre Strength) Regulations, 1955.
- (3) The State Government may, with the prior approval of the Central Government appoint a cadre officer to hold an ex-cadre post in excess of the number specified for the concerned State in Item 5 of the Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 and, so long as the approval of the Central Government remains in force, the said ex-cadre post shall be deemed to be an addition to the number specified in Item 5 of the said Schedule);

9. Temporary appointment of non-Cadre officers to Cadre Posts - (1) A cadre post in State shall not be filled by a person who is not a cadre officer except in the following cases, namely:-

Am

- (a) if there is no suitable cadre officer available for filling the vacancy:
Provided that when a suitable cadre officer becomes available, the person who is not a cadre officer, shall be replaced by the cadre officer:
Provided further that if it is proposed to continue the person who is not a cadre officer beyond a period of three months, the State Government shall obtain the prior approval of Central Government for such continuance;
- (b) if the vacancy is not likely to last for more than three months:

Provided that if the vacancy is likely to exceed a period of three months, the State Government shall obtain the prior approval of the Central Government for continuing the person who is not cadre officer, beyond the period of three months.

(2) A cadre post shall not be filled by a person who is not a cadre officer except in accordance with the following principles, namely:-

(a) if there is a select List in force, the appointment or appointments shall be made in the order of the names of the officers in the Select List;

(b) if it is proposed to depart from the order of names appearing in the Select List, the State Government shall forthwith make a proposal to that effect to the Central Government together with reasons therefor and the appointment shall be made only with the prior approval of the Central Government;

(c) if a Select List is not in force and it is proposed to appoint a non-Select List Officer, the State Government shall forthwith make a proposal to that effect to the Central Government together with reasons therefor and the appointment shall be made only with the prior approval of the Central Government.")

(3) Where a cadre post is likely to be filled by a persons who is not a cadre officer for a period exceeding six months, the Central Government shall report the full facts to the Union Public Service Commission with the reasons for holding that no suitable officer is available or filling the post and may in the light of the advice given by the Union Public Service Commission give suitable directions to the State Government concerned:

In view of the above, the counsel for the applicant submitted, that since the applicant is the seniormost I.P.S. Officer in the cadre officer category, he ought to have been posted in the cadre post and despite knowing the orders issued by the Union of India, the respondents ^{No. 2} have intentionally posted the applicant to a non-cadre post which is not permissible under the rules.

(3) The counsel for the Union of India Shri R.M.S.Khandepalkar at the time of hearing filed a short affidavit, copies of which was given to the parties stating that Respondent No.3 had filed O.A. No.386/86 in the CAT Bombay Bench challenging the seniority list prepared by the Government of Goa. The CAT disposed of the said O.A. vide its Order dt. 3.1.1991. Pursuant to the said order the Government of Goa modified the seniority list and the Respondent No.3 was assigned No.1 position. Accordingly, he was appointed to the I.P.S. from the Goa segment. In the meantime, the present applicant filed a Civil Appeal No.564/91 in the Supreme Court against the CAT's Judgment. The Supreme Court in its final orders dt. 23.9.1993 set aside the Judgment of the CAT dt. 3.1.1991. Pursuant to the Supreme Court's orders, the Respondent No.3 became ineligible to be considered for promotion to IPS in the year 1991. A review Selection Committee meeting was held on 21.12.1994 to review the Select List of 1990-91. The Committee selected the applicant for promotion to IPS and the notification appointing the applicant to IPS w.e.f. 13.11.1991 was issued vide Ministry of Home Affairs Notification dt. 4.4.1995. Simultaneously, Respondent No.3 was reverted from Indian Police Service to Goa Police Service w.e.f. 13.11.1991. The said communications was published in the Gazette of India on 6.5.1995. A copy of the said notification was sent to the Government of Goa for taking further action in the matter on 4.4.1995. The learned counsel for Respondent No.1 urged that the order passed by the Respondent No.1

dt. 21.6.1995 has no relevance to the issue involved in this case. There, in that order they have posted one Shri R.S.Gupta a Cadre Officer as I.G.P. on promotion and one Shri P.R.S.Brar a cadre Officer for appointment as D.I.G., till now both of them have not assumed their charge. Therefore, in the circumstances, since Respondent No.1 has complied with the directions of the Hon'ble Supreme Court's Orders and inducted the applicant into I.P.S. cadre they have nothing further to state in the matter.

4. Shri V.B.Nadkarni, Advocate General along with Shri G.U.Bhobe appeared on behalf of Respondent No.2. He started with the proposition that this Tribunal ~~do~~ not have jurisdiction to go into the dispute involved between the State Government and the applicant. He drew our attention to Article 323A(2)(d) which reads as under:

"exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);".

He also relied on section 131 read with section 28 of the Administrative Tribunals Act. He also urged that this Tribunal cannot go into the issue between the State Government and the applicant concerned and drew our attention to Section 4(1) of the Administrative Tribunals Act. He further urged that Inspector General of Police is the affairs of the State Government and not an affairs of the Union, hence section 14 of the Administrative Tribunals Act is not applicable. Further, he stated that after the applicant's induction into I.P.S. cadre it is not made clear by the Respondent No.1 whether he has been allocated to State of Goa. As per Rule 5 of the Indian Police Service (Cadre) Rules, 1954 allocation of Members to various cadre is a pre-condition

such allocation can be made by the Central Government in consultation with the State Government or the State Governments concerned, such a procedure has not been adopted in this case. He also drew our attention to Section 15, and urged that till a State Tribunal is constituted, only High Court has jurisdiction to determine and not the Tribunal.

5. The question to be seen here is whether the issue relates with the affairs of the Union or the State. In this connection, he drew our attention to the order passed by the Respondent No. 2 on 31.3.1995 which was passed prior to the alleged notification was issued by the Respondent No. 1 and some one has already been posted pursuant thereto. Since the applicant has not asked for quashing of the posting order dated 29.5.1995, it is not open to him to seek for posting according to his choice because until the concurrence of the State Government is obtained, the Central Government cannot allocate cadre officer of their choice. Therefore, in the absence of any prayer seeking for quashing of the order dated 29.5.1995 this Tribunal does not have jurisdiction to go into the matter. Further, he contended, that the prayers made in the OA. are plural in nature which is contrary to Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. As a matter of fact, consequential reliefs prayed by the applicant is independent of the main relief which cannot be done under the Rules. His main contention is that he cannot be posted to a non-cadre post because being an All India Officer he should be considered for the cadre post. He further stated that Rule 9 of the I.P.S. Rules is an exception to Rule 8. In so far as the Respondent No. 3 is concerned, he has not been appointed to the post of I.G.P. but he was only asked to take additional

charge of the post of I.G.P. Rule 8 and 9 speaks of appointment, therefore, in the circumstances, it has to be seen whether the impugned arrangement can said to be an appointment in accordance with the Rules 8 and 9 of the Indian Police Service (Cadre) Rules 1954. The learned Advocate General's contention is that, it is not an appointment and thus it is the prerogative of the State Government keeping in view of public interest to make suitable arrangements as they deem fit. Even the order passed by Respondent No. 2 on 31.3.1995 is not an appointment. In this connection, he relies upon the decision of the Supreme Court in R.S.Sinai Advalpalkar vs. Union of India & Ors. (AIR 1991 SC 1145) wherein the Hon'ble Supreme Court has held that an Officer holding lower post if asked to discharge duties of higher post it cannot be treated as promotion. With due respect to the learned Advocate General though the ratio is found to be correct, however, in the facts and circumstances of the present case the same is not applicable and not relevant to the issue to be decided. Further, he contended that even assuming for the sake of argument Rule 8 would apply, in that case also in view of Rule 9 the order passed by the Respondent No. 2 is not invalid because the Notification issued by the Respondent No. 1 is subsequent to the order made by the Respondent No. 2 i.e. 31.3.1995, pursuant to this order, Respondent No. 3 has already been posted. Therefore, since it cannot be treated as an appointment, the question of seeking extension or approval from the Union of India does not arise in view of Rule 9. In this connection, he made reference to a decision of the Supreme Court in Syed Khalid Rizvi and Ors. V/s. Union of India & Ors. (1993 Supp(3) SC 575). On a perusal of the same, we find, that the said decision has no relevance to the facts of this case. The learned Advocate General also contended that the Notification issued by the Respondent No. 1 has

not been received by the State Government which we find **on record is patently an incorrect statement.**

6. Shri S.G.Desai appeared on behalf of Respondent No.3 ~~had~~ raised the same plea as has been urged by Respondent No.2. He contended, that his client is holding only an additional charge and it is incorrect to state that Rule 8 and 9 referred to by the applicant would have any relevance to the facts of this case because he has not been appointed to the said post. He also refers to Rule 5 of the I.P.S. (cadre) Rules, 1954 that no consultation of the State Government has been obtained before allocating a cadre officer. He further stated that he has not been allocated to the Goa cadre subsequent to the Supreme Court's order. Any person allocated to Goa cadre without consultation of the State Government is violation of Rule 5 of the I.P.S. (Cadre) Rules, ¹⁹⁵⁴ therefore, the notification issued by the Union of India Respondent No.1 dt. 4.5.1995 is in violation of rule 5. Therefore, unless there is an allocation under Rule 5 and in consultation with the State Government, it cannot be treated as an appointment.

7. We have heard the arguments of the learned counsel for the parties and also perused the records. The learned counsel for the applicant Shri G.R.Sharma drew our attention that even assuming that it is not an appointment under Rule 8, even for stop-gap arrangement ^{under of the IPS(Cadre) Rules, 1954} Rule 9 is very clear which states that the cadre post of the State shall not be filled in by a person who is not a cadre officer except when there

is no suitable officer is available for filling up the vacancy and when the person who is not a cadre officer, shall be replaced by the cadre officer and even for stop-gap arrangement if it is beyond a period of three months, approval of the Central Government is mandatory, which is not done in the present case. Respondent No.3 had been in charge of the I.G.P. post from March, 1995 onwards. Therefore, it cannot be treated as a stop-gap arrangement and no prior approval of the Central Government has been obtained. Further it is incorrect to state that the Respondent No.2 has not received the copy of the order issued by the Union of India. Syed Khalid Rizvi's case referred to by the Respondent No.2 has no relevance to the facts of this case. In the instant case, though five cadre posts have been allocated to State of Goa, only three cadre officers are available at the moment and ^{amongst them} ~~the is~~ the seniormost officer in the cadre officers. There is no Goa cadre officer ~~but~~ only in AGMU cadre and the applicant admittedly has been allocated to AGMU cadre, thereby the question of any consultation by the State Government does not arise as contended by the Advocate General. Prior to his induction into I.P.S. he was an officer of Goa and on induction he was allocated to AGMU cadre. The Learned Advocate General except making oral statement has not ~~brought out~~ ^{pleadings} ~~the same in their~~ the reply filed by them nor mentioned any rules under which Union of India is bound to consult the State Government before allocating cadre officer to a post. The Respondent No.2 has not filed

any affidavit to the reply regarding Rule 5 stating that the Union of India failed to consult them.

8. As stated earlier, the only question that has to be considered is whether by virtue of his induction to the I.P.S. cadre he has a right to be considered to be posted in a cadre post or not. Admittedly, State Government do not have sufficient cadre officers and only where there is an excess cadre officers, they may post the cadre officer to a non-cadre post and not otherwise. In the instant case, despite Respondent No. 3's reversion to the Goa Police Service, they have treated him as an I.P.S. personnel which is clear from their order dated 31.3.1995 which is patently an incorrect order. Further, we find that the affidavit filed by the Respondent No. 2 is rather amazing and is clearly contrary to the contentions taken by the Respondent No. 1. It is a well known fact that in so far as notifications are concerned, Respondent No. 2 are supposed to know the contents of the same and does not require any specific intimation. In the instant case, the fax message had been communicated to the Respondent No. 2 which has been contended by the applicant and Respondent No. 1 as well. Despite the same, Respondent No. 2 did not rectify their stand and modified the order issued earlier. It is apparent that Respondent No. 2 gave scant respect to the orders passed by the Respondent No. 1 as well as the decisions of the Apex Court and it is within their knowledge that pursuant to the Apex Court's Order the Respondent No. 3 had been reverted to the Goa Police Service inspite of that, Respondent No. 2 has retained him in the cadre post and posted the applicant to a non-cadre post on 29.5.1995 which is contrary to rules. Even assuming that it is only

an additional charge, and further continuation for more than three months, approval of the Union of India is mandatory, which has not been complied with in this case.

9. In the result, we find that there is considerable merit in the points raised by the applicant and accordingly, (1) we direct the Respondent No. 2 to post the applicant in a cadre post within a period of 15 days from the date of receipt of this order, (2) we hereby quash and set aside the orders passed by the Respondent No. 2 vide dated 31.3.1995, 29.5.1995 and 6.7.1995, (3) we further direct that the Respondent No. 2 would consider the candidature of the applicant along with others for ~~considering appointment~~ ^{looking after} to the post of I.G.P. till the new incumbent is posted. This should be done within a period of 15 days from the date of receipt of this order. Till then the order passed by us at (2) above is held in abeyance. The OA is disposed of with the above directions. No order as to costs.



(P.P.SRIVASTAVA)

MEMBER (A)



(B.S.HEGDE)

MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BENCH AT BOMBAY

CONTEMPT PETITION NO. OF 1996

IN

ORIGINAL APPLICATION NO. 857 OF 1995

N. Dilip Kumar

) ... PETITIONER/
) ORIGINAL
) APPLICANT

V/S

1. Mr. K. Padmanabhaiah, IAS) ... PROPOSED
and 2 Ors.) CONTEMNERS

AFFIDAVIT OF MR. N. DILIP KUMAR, IN SUPPORT OF
CONTEMPT PETITION

I, N. DILIP KUMAR, INDIAN INHABITANT, the above named Petitioner, major in age, Indian National, residing at Altinho, Panaji, Goa, do hereby state and submit on solemn affirmation as under :

1. I say that I have today filed the accompanied Contempt Petition in O.A. No. 857/95.
2. I say that the contents of the said Contempt Petition be / treated as reproduced, incorporated and set out herein as set out therein for brevity sake.
3. I say that the Respondent No.2 has committed Contempt of Court by intentionally, willfully disrespecting and disobeying the Judgement dated 31-10-1995 passed by this Hon'ble Tribunal.

4. I say that in the event Contempt Petition is not taken up, not only grave injustice shall be done, but also it shall help the unlawful cause of the Respondent No.2 who is all-out to flout and give scant respect to the Judgement dated 31-10-1995 of this Hon'ble Tribunal.

5. I say that the contents of para 1 to 4 are true to my knowledge and based on the records available.

Solemnly affirmed)
at Bombay, this 8th day)
of January 1996)

N. Dilip Kumar
PETITIONER

Advocate for the Petitioner

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI
CAMP : GOA

C.P.NO. 4/96
in
OA.NO.857/95

Dated this the 3rd day of July, 1996

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri M.R.Kelhatkar, Member (A)

N.Dilip Kumar
(By Advocate Shri G.R.Sharma) ... Applicant
V/S.

Union of India & Ors.
(By Advocate Shri R.K.Shetty) ... Respondents

O R D E R (ORAL)

(Per: Shri B.S.Hegde, Member (J)

Heard Mr.G.R.Sharma for the applicant.

Mr.R.K.Shetty appears for the respondents.

2. The short question for consideration is whether the respondents have committed a contempt against the order passed by the Tribunal dated 31.10.1995. The learned counsel for the applicant draws our attention to Para 8 of the judgement wherein the Tribunal has observed that Respondent No. 3 had been reverted to the Goa Police Service inspite of that Respondent No. 2 had retained him in the cadre post and posted the applicant to a non-cadre post on 29.5.1995 which is contrary to rules. The Tribunal has quashed and set aside the orders passed by the Respondent No. 2 vide dated 31.3.1995, 29.5.1995 and 6.7.1995 and directed the respondents to consider the applicant to a cadre post within a period of 15 days from the date of receipt of the order. Though no specific plea has been taken in the OA. regarding the order passed by the Respondent No. 2 about order dated 25.10.1995. However, the applicant in C.P. brought out the aforesaid order dated 25.10.1995 challenging

V. A. Deshpande

Court Officer,
Central Administrative Tribunal,
Bombay Bench, 'Gulistan', 3rd Floor,
Prescot Road, Fort BOMBAY-400 001

the order of respondents which according to him is contrary to the judgement.

3. The learned counsel for the applicant submitted that the findings of Para 8 of the judgement is binding on the respondents. They have not implemented the same. The order passed by the Respondent No. 2 vide dated 25.10.1995 has not been challenged by the applicant in the OA. and this is not a subject matter of this OA.

4. Learned counsel for the respondents Shri Shetty draws our attention, that the contents of Para 8 are only the observations and not findings and since the applicant has not challenged the order dated 25.10.1995 in his OA., he has no justification in bringing out in C.P., pursuant to the orders of the Tribunal, the respondents have posted the applicant in a cadre post within a specific period, thereby, they have not committed any contempt. M.P.No. 30/96 filed by the applicant has become infructuous in the light of the conclusion arrived at in C.P. In the light of the above, we do not see any merit in the C.P. and the same is dismissed.

(M.R.KOLHATKAR)

MEMBER (A)

(B.S.HEGDE)

MEMBER (J)

mrj.

S. A. Deshpande
Court Officer,
Central Administrative Tribunal,
Bombay Bench, 'Gulestan', 3rd Floor,
Prescot Road, Fort BOMBAY-400 001