

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 38/94
T.A. No.

199

DATE OF DECISION 26 - 7 - 94

NARENDRK KUMAR DALAL

Petitioner

Mr. M.S. Bhargava

Advocate for the Petitioner (s)

Versus

UNION OF INDIA & ORS

Respondent

Mr. K.P. Mishra

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

The Hon'ble Mr. O.P. Sharma, Administrative Member

THE HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

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 ?

(O.P. SHARMA)
Administrative Member

D.L. Mehta
(D.L. MEHTA)
Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A. NO. 38/94

Date of decision: 26/7/91

NARENDRA KUMAR DALAL : Applicant.

VERSUS

UNION OF INDIA & ORS : Respondents.

Mr. M.S. Bhargava : Counsel for the applicant.

Mr. K.P. Mishra : Counsel for the Respondents 2-4.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. O.P. S-Harma, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

Applicant, Narendra Kumar Dalal, was holding the post of Technical Officer, Pollution Department, Rajasthan, Jaipur on 4.5.1988. Under Rule 9 of the Indian Forest Service (Cadre) Rules, 1966, the applicant was appointed temporarily against the cadre post of the Indian Forest Service as no suitable cadre officer was available for filling the vacancy. There is a specific reference that the applicant has been appointed against a Cadre post under Rule 9 of the aforesaid rules of 1966. Vide Annexure A-6, dated 15.11.1988, the State Government passed the order of fixation of the salary and fixed the salary of the applicant as Rs. 3450/- w.e.f. 1.7.89 under Rajasthan Forest Service Rules. However, he was granted a special pay of Rs. 300/- as he was working temporarily on the post of Indian Forest Service Cadre. The applicant retired while holding the post of the Indian Forest Service though he was not formally placed in the Indian Forest Service Cadre. State Government served the charge-sheet (Annexure A-3) on 7.1.91 for the mis-conduct committed by the applicant when he was holding the post under the Rajasthan Government under the Rajasthan Cadre. This charge-sheet was served in exercise of the powers conferred under Rule 16 of Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958. The applicant challenged the charge-sheet issued to him before the Hon'ble

High Court in a Writ Petition No. 6244/93 on the ground that the State Government cannot issue the charge-sheet under the State Rules. The contention of the applicant was that he being the Member of Indian Forest Service though temporarily, he can only be charge-sheeted under the Central Rules or under the rules which are applicable to the services of the persons of Indian Forest Service. Hon'ble High Court vide order dated 15.10.93 returned the petition to the applicant on the ground that the applicant can only get the redress from the Central Administrative Tribunal which is the competent authority to hear such cases. Hon'ble High Court held that the High Court is having no jurisdiction to hear the petition.

2. Applicant submitted the O.A. before this Tribunal on 24.1.94 and prayed that the charge-sheet, Annexure A-3, issued by the State Government on 7.1.91 may be quashed on the ground that the State Government was not competent to issue the charge-sheet under Rule 16 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 as the applicant was holding the post of Indian Forest Service though he was not regularly placed in the said Cadre.

3. The respondents submitted that this Tribunal is having no jurisdiction to entertain and hear this petition as the applicant was not in the Indian Forest Service Cadre but on account of non-availability of a suitable person in I.F.S. Cadre, he was asked to look after the work of an I.F.S. Officer temporarily under Rule 9 of the Indian Forest Service (Cadre) Rules, 1966. Admittedly, the following undeniably facts emerge out of the pleadings of both the parties:

(i) The applicant was the member of the Rajasthan Forest Service and he was appointed/posted under Rule 9 of the Cadre Rules of 1966 to perform the duties and functions of I.F.S. Cadre post on account of non-availability of a suitable cadre officer for filling the vacancy.

(ii) The applicant has been charge-sheeted for the alleged mis-conduct which he might have committed during the financial year 1986-87 when he was holding the post under Rajasthan Forest Service cadre. There is an allegation that he conspired with truck operators and others resulting in a loss of Rs. 3,01,549.33p. There are other allegations and all the four allegations relate to the period 1986-87 during which he was holding the post under Rajasthan Forest Service Cadre.

(iii) Admittedly, the applicant retired in the year 1990 when he was holding temporarily the post of Indian Forest Service under Rule 9 of the Cadre Rules of 1966.

(iv) Admittedly, the applicant was not a selected person from the Select List and has not been appointed under Indian Forest Service Cadre as a regular appointee.

4. We have heard the rival contentions of both the parties. Rule 2(a) defines "Cadre Officer" as under:-

"Cadre Officer" means a member of the Indian Forest Service".

The appointment to this Cadre is made under the Indian Forest Service(Recruitment)Rules, 1966. One of the modes provided under Rule 4(b) is by promotion of substantive members of the State Forest Service. Thus, the Recruitment Rules do not include in their purview the temporary appointments made under Rule 9 on account of non-availability of suitable persons.

5. Applicant in the instant case had allegedly committed misconduct when he was holding the substantive appointment under Rajasthan Forest Service. He has not committed any misconduct during the period of holding temporarily the post under Indian Forest Service. Apart from that he was not a member of the Indian Forest Service.

He was only performing the duties of the Indian Forest Service on account of non-availability of a suitable Cadre Officer. This temporary arrangement cannot confer on the applicant the right that he should be served a charge-sheet, if any, under the Central Rules or the Rules which are applicable to the Indian Forest Service only. The relevant period ~~in which~~ ^{during which} the alleged misconduct was committed by him while discharging the duties under the Rajasthan Government as a Rajasthan Forest Officer. Temporary allotment of duties of the post of the Indian Forest Service cannot be considered that he ceased to be the Member of the Rajasthan Forest Service. He continued to be a Member of the Rajasthan Forest Service and he was likely to be reverted at any time whenever a suitable person might be available. Apart from that the rules which have been applied to the applicant for the grant of pension are the State Rules under which the pension has been sanctioned and pensionary benefits have been given. He has not been given the pensionary benefits under the Indian Forest Service Rules or the Central Rules. The Hon'ble Supreme Court in the case of Syed Khalid Bisvi & Others etc. Vs. Union of India & Ors, reported in 1993(1) SLP 89, was considering the case of the seniority of the persons who were holding the substantive appointments in the State Cadre but were appointed by way of temporary arrangement to perform the duties of the Indian Police Service Cadre. Their Lordships of the Hon'ble Supreme Court held:

"The order of appointment under Rule 9 of the Recruitment Rules crystallises the right of a promoted officer into the service - Seniority would be counted only from the date of select list or the date of continuous officiation after appointment whichever is latter."

6. In all Services, preparation of the Select List as per Promotion Regulations is a pre-condition for recruitment by promotion. The order of appointment under Rule 9 of the Cadre Rules of 1966 cannot confer any right to a person whose name does not find place in the Select List and who has not been appointed under the Promotion Regulations on the Cadre post.

7. Cadre Rules, thus, enjoining ~~the~~ the State Government that only a cadre officer should be appointed to a cadre post. Where the cadre officer is not available, then, temporary appointments, by operation of Rule 9 of the Cadre Rules could be resorted to and appointments are made by the State Government or its delegates to cope up with the administrative exigencies. Due to exigencies of the service, the State Government has been empowered under Rule 9 of Cadre Rules to appoint a person who is not holding the cadre post. As the applicant was not fulfilling the condition of finding his name in the Select List as per Promotion Regulations, which is a pre-condition for recruitment by promotion, we are of the view that the applicant cannot claim that he should be charge-sheeted under the Central Rules or the Rules applicable to the Indian Forest Service. Apart from that the alleged misconduct was committed by the applicant when he was holding substantively the post under the Rajasthan Forest Service Cadre. Mere appointment on temporary basis will not make him a person of an Indian Forest Service Cadre and he cannot claim right of that Cadre unless he is placed in that Cadre after following the procedure laid down in the Regulations.

8. For the reasons mentioned above, we are of the view that the State Government was right in applying the State Rules and this Tribunal is having no jurisdiction to quash the charge-sheet issued under the State Rules.

With due respect for the order passed by the Hon'ble High Court vide Annexure A-11, dated 15.10.93, we are of the view that ~~we should not entertain this application~~ ^{we should not entertain this application} ~~in consideration of~~. We cannot entertain this application for hearing for want of jurisdiction for the reasons mentioned above. The O.A. may be returned to the applicant after keeping the copy of the same with a direction that the applicant can move an application or petition, according to law and can take any step as provided under the law.

9. The O.A. is disposed of accordingly, with no order as to costs.

O.P. SHARMA
Administrative Member

P.L. MEHTA
Vice-Chairman