

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No. 389/2003

New Delhi, this the 29<sup>th</sup> day of October, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shri S.A. Singh, Member(A)

Shri Anil Kumar Mehra  
Senior Auditor  
PAO SSB (MHA)  
East Block IX, Level VI  
R.K.Puram  
New Delhi-66  
R/o C-5-D/78C, Janak Puri  
New Delhi

.. Applicant

(Ms. Arti Mahajan, Advocate)

versus

1. The Special Secretary (SR)  
Cabinet Secretariat  
Bikaner House (Annexe)  
Shahjahan Road  
New Delhi.
2. The Director of Accounts  
Cabinet Secretariat  
East Block-9, Level-VII  
R.K.Puram  
New Delhi-66
3. The Chief Controller of Accounts  
Ministry of Home Affairs  
Room No.127-D, North Block  
New Delhi.
4. The Controller of Accounts  
PAO SSB (MHA)  
East Block IX, Level VI  
R.K.Puram  
New Delhi-66.
5. The Controller General of Accounts  
Ministry of Finance  
Department of Expenditure  
Lok Nayak Bhavan  
Khan Market  
New Delhi.
6. The Secretary  
Department of Personnel & Training  
Ministry of Home Affairs  
North Block  
New Delhi.

7. Union of India  
 through Cabinet Secretary  
 Cabinet Secretariat  
 North Block  
 New Delhi.

.. Respondents

(Shri Madhav Panikar, counsel for Respondents 1  
 and 2, Shri M.M. Sudan with Shri A.K  
 Bhardwaj, Advocate for respondents 3 to 5)

ORDER

Justice V.S. Aggarwal

There is full-fledged accounting unit in the Ministry of Home Affairs under the overall supervision of Chief Controller of Accounts. This unit had been created in the year 1976 under the scheme of departmentalisation of accounts. This unit was responsible for maintaining the accounts of the Ministry of Home Affairs. There is an office of Director of Accounts in the Cabinet Secretariat. It is responsible for accounts and entitlement work of sensitive organisations of the Cabinet Secretariat like R&AW, ARC, SFF, SPG and CIOA. On 15.1.2001, the SSB and CIOA were transferred to the Ministry of Home Affairs on as is where is basis.

2. The applicant contends that the Director of Accounts cadre was a common cadre functioning under the Cabinet Secretariat referred to above. Initially, it consisted of two wings i.e. Main Wing and the Special Wing. However, Cabinet Secretariat vide the order of 15.1.2001 transferred the administrative control of SSB, already referred

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to above to the Ministry of Home Affairs. This was done on the recommendations of the Task Force on Intelligence Apparatus.

3. The applicant had joined the Special Wing of the office of the Directorate of Accounts in the Cabinet Secretariat as Auditor. He was promoted as Senior Auditor on 21.3.1992 and had been working in the Special Wing of the Cabinet Secretariat. His grievance is that vide the Order No.141 issued on 26.2.2002 by the Deputy Director of Accounts (Administration) from the office of the Director of Accounts, Cabinet Secretariat he was transferred to the SSB Wing and thereupon vide the order of 1.4.2002, he had been posted with the Chief Controller of Accounts in the Ministry of Home Affairs. He contends that while changing the cadre, his option had not been taken and further the order is discriminatory and illegal because the policy was to transfer the members of the staff on 'as is where is basis'. Had the policy been followed, the applicant could not have been transferred to the Ministry of Home Affairs because he had never worked in any unit of the Main Wing of Directorate of Accounts of the Cabinet Secretariat including the SSB. It is on these facts that the applicant seeks quashing of the order of 26.2.2002 transferring him to the Special Wing of Directorate of Accounts, Cabinet Secretariat and to quash his

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transfer to the Chief Controller of Accounts in the Ministry of Home Affairs.

4. In the reply that has been filed though separately by respondents 2 to 5, the order is being justified asserting that there is no change in the cadre and in any case, it was not necessary to take the option. It is asserted that the applicant was not singled out as 9 postings were made on account of administrative requirements and in office interest as per following accepted and known principles. While 125 officers/staff were transferred on 'as is where is basis', some changes became necessary:-

- (i) Transfer as per work requirements/work load at the end of financial year
- (ii) Adjustments on account of staff proceeding on deputation.
- (iii) Reallocation/redistribution of work where one section did combine work of ARC, SSB, SFF
- (iv) Equitable distribution of CJAO (C) passed staff in both offices.
- (v) Rotation of staff amongst different units/wings was to ensure that no individual is posted in the same unit for an unduly long period.
- (vi) Ensuring that no vacancies are passed on to PAO, SSB so that they may get their full compliment of staff and work does not suffer."

A plea has further been raised that at the time of the



appointment of the applicant, he had accepted the terms and condition of service that he will be liable to be transferred and he has no lien in the Special Wing.

5. During the course of submissions, the learned counsel for the applicant had contended that:-

(a) the cadre could not be changed without his consent. In support of her contention, the learned counsel relied upon the decision in the case of **Shri Suresh Kumar Nayak v. Union of India and others** in OA No.513/2002 rendered on 13.11.2002; and

(b) the decision was to transfer the staff on "as is where is basis" and he was transferred just a month before the transfer order of 2002 in violation of the said principle.

6. To appreciate the said controversy, we refer to some of the basic facts all over again. On 15.1.2001 an order was issued on the recommendations of the Task Force on Intelligence Apparatus which reads:-

"Subject: Transfer of Special Service Bureau (SSB) from Cabinet Secretariat to Ministry of Home Affairs.

*Ms Aey*

Consequent upon the recommendations of Task Force on Intelligence Apparatus, the Prime Minister has approved the transfer of Special Service Bureau (SSB) from Cabinet Secretariat to the Ministry of Home Affairs with immediate effect.

Sd/-  
(Y. Hari Shankar )  
Special Secretary to the Govt. of India"

On 9.3.2001, a decision was taken to transfer 125 posts from Directorate of Accounts, Cabinet Secretariat (Main Wing) to SSB in the Ministry of Home Affairs. The order indicated that consequent upon transfer of Special Service Bureau and Chief Inspectorate of Armaments from Cabinet Secretariat to the Ministry of Home Affairs, the sanction was accorded to transfer the 125 posts from the office of Directorate of Accounts, Cabinet Secretariat to Director General, SSB, Ministry of Home Affairs. The Office Memorandum of 16.4.2001 regarding apportionment of staff indicates:-

"Consequent upon the transfer of Special Service Bureau (SSB) and Chief Inspectorate of Armaments (CIOA) from the Cabinet Sectt. to the Ministry of Home Affairs, the Ministry of Home Affairs vide Cabinet Sectt. 's Order No. 1/2/2001-EA.I dated 15.1.2001, the matter regarding apportionment of the DGS Secretariat Service of SSB and COA on one side and ARC, SFF, DACS & IFU on the other in accordance with their sanctioned strength within the DGS Secretariat Service is under consideration for some time.

2. In this connection, attention is invited to a meeting held on 23.1.2001 convened by Spl. Secretary with the Heads of various component Units of DGS in which it was agreed that the ministerial staff of the DGS Secretariat Service should be apportioned on 'as is where is' basis. It was further agreed that the incumbents of the apportioned posts may also be allowed to continue in their respective Units on 'as is where is'

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basis. Further, it was also agreed that the personnel of the DGS Secretarial Service who are on deputation to various outside Departments, at present, will be deemed to belong to the respective component Units of the DGS from where they had proceeded on deputation."

Subsequently on 21.12.2001 for trifurcation of DGS (Secretarial) Service, the following order had been issued:-

"Subject:- Trifurcation of DGS(Secretarial)  
into SSB (Secretarial)  
Service, ARC (Secretarial) Service  
and SFF (Secretarial) Service.

Consequent upon the transfer of Special Service Bureau and Inspectorate of armaments from Cabinet Sectt. to Ministry of Home Affairs vide Cabinet Sectt. Order No.1/2/2001-EA-I dated 15.1.2001, the DGS (Secretarial) Service has been trifurcated into SSB (Secretarial) Service, ARC (Secretarial) Service and SFF (Secretarial) Service has been trifurcated with effect from 23.8.2001 vide Cabinet Sectt. Order No.1/2/2001-EA-I-3483-A dated 23.8.2001 (Copy enclosed).

2. After the trifurcation, the ministerial staff of the erstwhile DGS (Secretarial) Service will be considered as a part of the unit where they were serving at the time of trifurcation and will be borne on the strength of the unit(s) on the basis of "As is Where is" as on 23.8.2001. The ministerial sanctioned posts of armaments have been merged with the sanctioned ministerial posts of SSB and the incumbents holding the post will be borne on SSB strength."

7. The first and foremost issue that comes up for consideration is as to whether there is any change in the cadre or not. The expression "cadre" has been defined under Fundamental Rule 9(4) in the following words:-

"F.R. 9. Unless there be something repugnant in the subject or context, the terms defined in this chapter are used in the rules in the sense here explained-

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(4) Cadre means the strength of a service or a part of a service sanctioned as a separate unit."

It clearly shows that the cadre means the strength of a service or a part of a service sanctioned as a separate unit. Fundamental Rule 15 further provides that the President can transfer a Government servant from one post to another on account of inefficiency, misbehaviour or on his own request. But a Government servant should not be transferred or appointed to a post carrying less pay than the pay of the post on which he holds a lien. When there is trifurcation of the service, necessarily, it would imply that the cadre was changed.

8. On behalf of the respondents, reliance was placed on a decision of the Supreme Court in the case of **P.U. Joshi and Others v. Accountant General, Ahmedabad and Others**, (2003) 2 SCC 632. The Supreme Court held that the rules can be amended to change the conditions of service, cadres and bifurcation of departments. The Government servants only have a right to safeguard the rights or benefits already earned. Keeping in view the observations made by the Supreme Court, it becomes unnecessary, therefore, to ponder over this argument of the applicant.

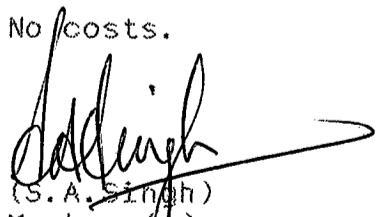
9. However, it was the second contention which was strenuously pressed. We have already referred to above that the decision had been taken in April 2001 that the ministerial staff of the DGS Secretarial Service should

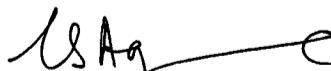


be apportioned on 'as is where is basis'. It was decided that the incumbents may be allowed to continue in their respective units on 'as is where is basis'. So far as the applicant is concerned, it is not in dispute that he was in the SSB unit. He was transferred to the SSB unit a month before the order in question and thereafter sent to the Ministry of Home Affairs. That indeed would be in violation of the decision that the staff is transferred on 'as is where is basis'. No person in this round about manner can be transferred to another unit or as in the present case to the Ministry of Home Affairs in the circumstances referred to above. The applicant was just transferred to the SSB unit about a month before the order of 1.4.2002. A decision to transfer the staff on 'as is where is basis' was taken on 9.3.2001. The transfer on 'as is where is basis', therefore, should be taken from that date. This may create a situation requiring transfer of somebody from the SSB unit. On that count we find, therefore, that the impugned order cannot stand scrutiny.

10. For these reasons, we allow the application and quash the impugned order. Necessary consequence of the same should follow. The applicant, therefore, should be sent back to his parent unit in the Cabinet Secretariat.

No costs.

  
(S.A. Singh)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

/sns/