

CFNTRAI ADMTNSTRATIVF TRTRUNAI
PRTNCTPAI BNCH : NFW DEIHT

O.A. NO .1638/2003

NFW DEIHT 12TH DAY OF SEPTMBR 2003

HON'BLE SHRT SHANKER RAJU, MEMBER (J)

1. Ansuya Prasad S/o Amar Dev aged 58 years
Or No. 312, Sadiq Nagar New Delhi
2. Data Ram Khuksal S/o P.R. Khuksal,
aged 58 years,
T-932, Sarojini Nagar, new Delhi
3. Mahipal Singh Yadav S/o Shri Ram Karam Singh Yadav,
aged 58 years,
Village: Bhamkarka,
PO Bas Padmka (Pataudi)
Distt. Gurgaon
4. Kuldeep Raj Gangahar S/o Sh. Tilak Ram,
58 years,
DA 70 F, DDA Flats, Hari Nagar,
New Delhi - 64.
5. Tswar Singh Mahalidna S/o Sh. Chaman Lal,
aged 58 years, 690 Sahibabad,
Daulatpur, Delhi 42
6. Thakuri S/o Sh. Baragna, aged 59 years
C-55 Phase TT
Shiv Nagar, Karawal Nagar, Delhi.
(All working as Senior Accountant in the O/o Chief
Controller of Accounts, DGS&D, Ministry of Commerce,
New Delhi)

.....Applicants

(By Shri S K Vyas, Advocate)

VERSUS

Union of India through

1. Controller General of Accounts,
Department of Expenditure, Ministry of Finance,
Loknayak Bhawan,
Khan Market, New Delhi 110003

2. Chief Controller of Accounts,
Director General of Supply & Disposal,
Department of Commerce,
Akbar Road, New Delhi 110011.

.....Respondents

(By Shri M M Sudan, Advocate)

O R D F R (ORAI)

In the amended OA applicants have impugned respondents' OM dated 28.5.2003 transferring the applicants in public interest.

2. Applicants who were aged above 58 years and are to attain the retirement on superannuation within two years had been working as Senior Accountants in the Office of Chief Controller of Accounts , DGS&D as per Central Civil Accounts Service (Group 'C') Recruitment Rules, 2000. As per Rule 6 of Rules Accountants as well as Senior Accountants are liable to serve in any part of India and if a satisfaction is arrived at by the Controller General of Accounts that it is necessary and expedient in public interest to do so by an order for reasons to be recorded in writing an Accountant or Sr. Accountant may be transferred from one Ministry to other in the same grade.

3. As a result of restructuring surplus Accountants/Sr. Accountants were redeployed in PAO Offices and other Ministries/Departments.

4. By an order dated 28.5.2003 enblock 20 Accountants/Sr. Accountants belonging to higher age group of 50 to 60 years have been subjected to transfer to other Ministries/departments.

5. This has been objected to by the All India Civil Accounts Employees Association. The applicants had submitted detailed representation. On no response, applicants filed OA 1638/2003 before this Court. By an order dated 30.6.2003 respondents were directed to dispose of the representations.

6. In pursuance of the above by an order dated 9.7.2003 requests of the applicants against transfer were rejected.

7. The stand taken by the respondents is that as on re-deployment on being declared surplus and following the rule the junior-most Accountants have been transferred which created an imbalance as after two years there would be no Accountant left. In view of the Accountants attaining the age of superannuation and with a view to correct the imbalance the persons of higher age group have been shifted to other Ministries/Departments and younger groups were brought from other Ministries/Departments in their places. The aforesaid transfer of the applicants would not entail any effect over their service conditions including seniority and action is in accordance with Rule 6(2) of the Recruitment Rules ibid.

8. Learned counsel of the applicant Shri SK Vyas vehemently opposed the impugned order by referring to CTS (Redeployment of Surplus Staff). It is contended that in case of re-deployment of surplus staff the junior-most staff have to be transferred. The respondents though followed the rules by transferring the junior-most i.e. young Accountants but their subsequent decision to bring them back under the guise of public interest is a malafide exercise and misuse of power as the Seniority of the Junior Accounts was to be

effected and they had been deprived of seniority of the past service as per DoPT OM dated 14.12.83. The applicants have been substituted for re-deployed staff and are to be treated as surplus Accountants with loss of seniority and other service conditions.

9. Learned counsel further states that mere recital of public interest would not be a sufficient compliance unless the reasons are disclosed which are justifiable. On the other hand learned counsel of the Respondents Shri M M Sudan by referring to the transfer order dated 28.5.2003, it is contended that transfer is in accordance with Recruitment Rules and in public interest. The service conditions of the applicants would not be disturbed and they would be continued in the seniority. It is stated that Applicants have All India Transfer liability and CGA had recorded the reasons which are germane. The object to be achieved while transferring the applicants to other Ministries in public interest is within the ambit and power of the transferring authority.

10. Shri Sudan states that the policy decision taken by the respondents is neither malafide nor is against the public policy. It is also not violative of Articles 14 and 16 of Constitution of India.

11. Referring to the order on representations dated 8.7.2003 it is contended that the applicants are not surplus and transfer as such is the exercise of declaration of accountants as surplus and their redeployment has already been over. Accordingly as on account of restructuring and re-deployment it has been found that the office had left with only higher age group employees. One of the category of the applicants who are numbering 20 within the age group of 50 to

60 years as such in order to correct the imbalance as after 2 years the staff would be substantially reduced ; it has been decided to shift persons of higher age group from the office and to bring younger group personnel from other Ministries. As the applicants has sufficiently experienced are expected to work in other Pay & Accounts Offices without any difficulty.

12. Referring to the transfer policy it is stated that the same has been framed for periodical rotational transfer of GOs but the present transfer is on administrative reasons in accordance with Recruitment Rules is in public interest.

13. Lastly it is contended that the present transfer do not involve change of station and their seniority and other service conditions are not to be effected .

14. I have considered the rival contentions of the parties and other material brought on record at the outset and in view of the decision of the Apex Court in State of Rajasthan Vs Tata Arun (2002 SCC 1 & 8 859) any Government policy on exercise in Judicial Review it is to be seen that where the action is fair, rational on reasonable ground ; if the decision is neither malafide nor based on irrelevant aspect and extraneous matter and does not violate Articles 14 and 16 , the policy decision is not liable to be interfered.

15. The contention of the applicants that they are transferred as surplus in substitution to redeployed staff entailing loss of seniority is unfounded. The process of declaring Accountants/Sr. Accountants as surplus as well as their re-deployment as per rules of junior most officers has

(6)

already been affected. As an after effect of re-deployment of mostly younger staff the left out staff in the Account section particularly the group of applicants who are within the age group of 50 - 60 years would create imbalance on their retirement on superannuation, there would be a sudden reduction in staff strength. To overcome this and to create a proper balance the Junior officers have been transferred from other Ministries/ Departments. The service conditions including seniority of the applicants shall not be affected. Moreover the transfers are on all India basis being experienced and seasoned officers as per terms and conditions and Recruitment Rules having All India Service liability the applicants cannot claim a choicest posting and they are bound to work wherever they are posted. The aforesaid power to transfer is well laid down in rule 6 of Recruitment Rules ibid and is to be exercised in public interest.

16. I am of the considered view that as the service conditions are not disturbed or effected in any manner, the transfer being as per rules without any malafide which could not be established on justified grounds cannot be interfered by this Tribunal. In transfers the role of Tribunal is limited in view of the decision of apex court in National Hydro Electric Power Corporation Ltd. Vs Shri Bhagwan & Shiv Prakash (2001 - 8 SCC 574).

17. In the result for the foregoing reasons I do not find infirmity in the order passed by the respondents. OA is bereft of merit and accordingly is dismissed. Interim Relief is vacated.

S. Raju
(Shanker Raju)
Member (J.)

Patwali/