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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2320/2003
with

OA No.2323/2003
MA No.1984/2003

New Delhi, this the 2nd day of January 2004

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

O.A.2320/2003

Shri Pradeep Bhatnagar
Section Officer, Cabinet Sectt.
Presently posted in CCA (MHA)
2/10, Jamnagar House,
Shahjahan Road, New Delhi
Resident of J-80-E, Mudit Apptt.
Dilshad Colony, Delhi-95
..... Applicant

O.A.2323/2003

1. Chetan Kumar Rajput,
S/o Shri R.L. Rajput,
R/o A-141, Moti Bagh-I,
New Delhi
2. Narinder Kumar,
S/o Shri R.S. Sharma,
R/o 102/F, Street No.5
Krishna Nagar, Safdarjung Enclave,
New Delhi
3. Anil Kumar Sharma,
S/o late Shri Ulfat Ram,
R/o H.No.2291, Gali Boripaharwali,
Chowk Raiji,
Delhi-6
4. Smt. Mamtesh Gupta,
W/o Shri A.K. Gupta,
R/o MIG Flat No.27/A-1,
Sector-5, Rohini,
New Delhi
5. Smt. Neelam Punn,
W/o Shri Rajendra Pal,
R/o 120, R.K. Puram,
New Delhi
..... Applicants

(By Advocate: Shri Sarvesh Bisaria)

versus

1. Union of India, through
Special Secretary (SR), Cabinet Secretariat,
Bikaner House, Shahjahan Road,
New Delhi.

2. Directorate of Accounts,
through Director,
Cabinet Sectt., East Block-9,
Level-VII, R.K. Puram,
New Delhi-66
3. Ministry of Home Affairs
through
Chief Controller of Accounts
PAO, SSB (MHA)
East Block-9
Level VI
R.K. Puram
New Delhi-66.
4. Controller General of Accounts
Govt. of India,
Lok Nayak Bhavan
Khan Market
New Delhi.
5. Deptt. of Personnel & Training
through Secretary
North Block
New Delhi. .. Respondents

(Shri Madhav Panikar, Advocate with
Shri M.K. Bhardwaj and Shri A.K. Bhardwaj,
Advocates)

ORDER

Justice V.S. Aggarwal

The Directorate of Accounts, Cabinet Secretariat is said to be an organised body and the department of the Government of India under the Cabinet Secretariat. It was set up in 1963 to look after the Accounts and Entitlement work of certain sensitive organisations under the Cabinet Secretariat. On 18.4.1990, an order was passed restructuring the accounts staff under the Cabinet Secretariat. The total strength of the Directorate of Accounts is 375 and for administrative purpose, the office of Directorate of Accounts is having two wings i.e. Special Wing and the Main Wing. The staff working either in the Main Wing or in the Special Wing is

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transferable from one wing to another. They are having a common seniority list. In the Main Wing, the work of Special Service Bureau, Aviation Research Centre and Special Frontier Force is looked after by the Main Wing and in the Special Wing the work of Research and Analysis Wing and Special Protection Guard is looked after. There are 44 sections. In the Main Wing there are 23 sections out of which Aviation Research Centre is looked after by 3 sections and Special Service Bureau is looked after by 20 sections. Applicant in OA No.2320/2003 (Pradeep Bhatnagar) is a Section Officer in the Cabinet Secretariat while the applicants in OA No.2323/2003 (Chetan Kumar Rajput and others) are Auditors/Senior Auditors therein.

2. On basis of recommendations of the Task Force and the Cabinet Secretariat, the applicants were transferred from the Cabinet Secretariat to the Ministry of Home Affairs. The respondents took a decision that 125 posts from the Directorate of Accounts, Cabinet Secretariat should be transferred to the Ministry of Home Affairs. The Government accorded sanction for the transfer of the 125 posts from the office of Directorate of Accounts, Cabinet Secretariat to Director General, Special Service Bureau, Ministry of Home Affairs. The transfer of the officers is stated to have been effected on "as is where is basis". By virtue of the present applications, the applicants seek quashing of the order of 19.11.2001

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transferring the services of the applicants from Cabinet Secretariat to Ministry of Home Affairs and the order rejecting their representations.

3. By this common order, we propose to dispose of both the applications, namely OA No.2320/2003 and OA No.2323/2003 together.

4. The applications as such have been contested. It is admitted that on the recommendations of the Special Task Force on intelligence apparatus as approved by the Prime Minister of India, the Government of India transferred Special Service Bureau and Chief Inspector of Armament from Cabinet Secretariat to Ministry of Home Affairs. It was in national interest for doing Indo Nepal Border Patrolling. On account of the transfer of the said posts from the Cabinet Secretariat to the Ministry of Home Affairs, it became necessary to transfer 125 officers/staff doing Accounts and Entitlement work. This was done on 9.3.2001, but since the Special Service Bureau Budget/ Chief Inspector of Armament for 2001-2002 was not borne by the Ministry of Home Affairs but by the Cabinet Secretariat, the office of the Director of Accounts, Cabinet Secretariat was asked to continue doing Accounts and Entitlement work through these 125 officers/staff. The office of the Controller General of Civil Accounts was carved out of the office of Comptroller and Auditor General of India and is the largest accounts department. It is denied that there is

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any illegality in transferring the applicants referred to above.

5. The main argument advanced by the learned counsel for the applicants in this regard was that while transferring the applicants from the Cabinet Secretariat which was a separate cadre, their options had not been taken and, therefore, the order so passed must be taken to be illegal.

6. During the course of submissions, our attention had been drawn towards the decision that had been taken and on basis of the same, it was contended that the decision, in fact was to take the options of the concerned officers. It appears that before the decision could be taken, there were different meetings that were held and at one time, it was decided that the options should be called from the concerned members of the staff. However, on the last date of hearing when the arguments concluded, the learned counsel for the respondents had shown to the Bench, the last decision that had been arrived at whereby it was decided that the options were not required to be taken and, therefore, this particular contention that they had been transferred to the Ministry of Home Affairs contrary to the decision cannot be accepted.

7. In OA No.2323/2003, the plea offered was that on earlier occasion, these applicants had preferred OA No.936/2003 and the subsequent application now filed,



therefore, would be barred by the provisions of Order 23 Rule 1 of the Code of Civil Procedure because the same had been withdrawn.

8. Admittedly earlier OA No.936/2003 had been filed and disposed of on 11.9.2003. The operative part of the said order reads:-

V "5. OA is dismissed as withdrawn with liberty to file a fresh one, subject to payment of cost of Rs.1000/- to the CAT Bar Library within four weeks from the date of receipt of a copy of this order."

It was not disputed that the cost has since been paid. These facts show that the permission was granted to the applicants (Chetan Kumar Rajput and others) to file the subsequent application subject to the condition referred to above which has since been satisfied. This plea of the respondents, therefore, necessarily being without merit has to fail.

9. The learned counsel for the respondents in that event had drawn the attention of the Bench towards the decision of this Tribunal in the case of **Anil Kumar Mehra vs. The Special Secretary and Others** in OA No.389/2003 rendered on 29.10.2003 to contend that such a plea has since been rejected. We have carefully gone through the said order passed by this Bench. It clearly reveals that the application had been allowed on the ground that therein the policy of "as is where is" had been violated.

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So far as the question as to whether options must be taken while changing the cadre, this Tribunal had observed:-

" 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."

Perusal of the same clearly shows that in fact no decision had been arrived at as to if the options had to be taken or not. The matter obviously had been left open after considering the decision of the Supreme Court in the case of P.U.Joshi (supra). It is well-known that a decision which will bind this Tribunal would be after the final finding in this regard is arrived at. In fact, no such final finding had been arrived at and, therefore, it was rightly pointed by the learned counsel that the matter can be agitated or it requires reference to a Larger Bench.

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10. In fact, another reason which prompts us to come to the same conclusion is that a similar question had been gone into by this Tribunal in the case of **Suresh Kumar Nayak v. Union of India and Others** in OA No.513/2002 decided on 13.11.2002. It was held clearly that the options should have been called and if they were not called, it violated the Department of Personnel Office Memorandum of May 1994. The application had been allowed. The respondents preferred Writ Petition No.3000/2003 in the Delhi High Court against the decision of this Tribunal. The petition was dismissed and the Delhi High Court held:-

"We are unable to agree with learned counsel for the petitioners. In coming to the conclusion that an opportunity to exercise the option had to be granted to the respondent, the Tribunal has relied on the circular issued by the Ministry of Personnel, Public Grievances & Pensions, in May 1994 when two separate cadres in the Ministry of Communications were created. We fail to understand why the same principle should not be applied in the present case, more so when out of the three units, sought to be carved out on trifurcation of the four units, one unit would be under the Ministry of Home Affairs and other two under the Ministry of Communication."

Therefore, it cannot be termed as noted above that the earlier decision rendered by this Tribunal in the case of Anil Kumar Mehra (supra) in any case would come to the rescue of the respondents.

11. It was not disputed that for transferring the applicants, their cadre was being changed. Fundamental

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Rules 14-B and 15 read as under:-

"F.R.14-B. Subject to the provisions of Rule 15, the President may transfer to another post in the same cadre, the lien of a Government servant who is not performing the duties of the post to which the lien relates.

"F.R.15 (a) The President may transfer a Government servant from one post to another provided that except-

(1) on account of inefficiency or misbehaviour, or

(2) on his written request, a Government servant shall not be transferred to, or except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien."

A conjoint reading of the abovesaid two provisions would show that subject to the provisions of Rule 15, the President can transfer to another post in the same cadre, the lien of a Government servant. The President can transfer a person from one post to another on account of inefficiency or misbehave or on his own request. It does not permit the transfer to be effected without the options being taken from the said persons.

12. The reliance was being placed on a decision of the Supreme Court in the case of P.U.Joshi (supra). Therein the Supreme Court held:-

"We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues



of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

A bare reading of the decision of the Supreme Court clearly shows that though the service conditions can be changed and the cadre can be bifurcated or amalgamated, but for doing so, the necessary rules have to be amended. In the present case, no such change in the rules has been made nor any such fact was brought to our notice. Therefore, in the peculiar facts, the learned counsel cannot rely on the said decision to his benefit.

13. In the case of **Prem Parveen v. Union of India**

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and Others, 1973(2) S.L.R.659, the same question had come up for consideration before the Delhi High Court. It was held that a Government servant who is recruited to a particular cadre cannot be compelled to serve outside his cadre. In the present case, the applicants are being compelled to be in another cadre. No option has been taken nor the rules in this regard have been amended. Therefore, the impugned order cannot be sustained.

14. There is another way of looking at the matter. In OA No.2323/2003, so far as applicant No.3 is concerned, it was not disputed that even if the options were not required, his transfer of the cadre would be in violation of the policy of 'as is where is' and the decision of this Tribunal in the case of Anil Kumar Mehra (supra). On parity of reasoning so far as the claim of the applicant No.3 is concerned, it has to be allowed.

15. As regards applicants 4 and 5 of the said OA No.2323/2003, admittedly they were in the mixed cadre. In such a situation, the persons who are in the mixed cadre, the policy of 'as is where is' cannot run because some of them were being retained or in any case there has to be something more than merely the policy of 'as is where is'. On that count also the application of these applicants even in the alternative is required to be allowed.

16. No other argument was advanced.



17. For these reasons, we allow the present applications, namely OA No. 2320/2003 and 2323/2003 and quash the impugned orders. No costs.



(S.A. Singh)
Member (A)



(V.S. Aggarwal)
Chairman

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