

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C)3487/2008**

Date of Decision: 18.01.2010.

SPORTS AUTHORITY OF INDIA (SAI) & ORS. ...PETITIONERS
Through: Mr. Anil Grover, Advocate

Versus

VIJAY KUMAR ...RESPONDENT
Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

: **MOOL CHAND GARG, J.**

1. The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the order passed by the Central Administrative Tribunal (CAT) dated 03.12.2007 in O.A. No.1332/2007 whereby the Tribunal has been pleased to allow the Original Application filed by the respondent, Sh. Vijay Kumar by giving following directions to the petitioners:

9. In the light of above though the merger has to be done on comparison on functional requirement, yet a decision of the Government once taken after taking cognizance of the then in vogue Govt. of India's instructions and allowed the applicant to work on the merged post, de-merger at this stage would not be in consonance with law. As the decision of Chandigarh Bench of this Tribunal in

principle, i.e., in its ratio decidendi, in on all fours, covers the issue, applicant's erstwhile service as Assistant Director should not be obliterated in any manner for computing as an eligibility for next promotional post.

10. We also note that one of the contentions raised before us is that one Shri Rajinder Kumar, who was working as Assistant Director in Hindi Section, has been promoted as Deputy Director (Hindi), the same treatment is to be meted out to the applicant, failing which it would be an invidious discrimination violative of Articles 14 & 16 of the Constitution of India.

11. As we find that a proposal has gone to the Government for creation of post of Deputy Director to consider the claim of the applicant for promotion, we direct disposal of this OA with a direction to the respondents to consider the claim of the applicant either by creation of post or otherwise in the light of the recruitment rules on deeming the service from 1991 to 1999 having rendered in general cadre for promotion to the post of Deputy Director, within a period of two months from the date of receipt of a copy of this order. Consequences and methodology would be in accordance with rules and instructions. No costs.

2. The aforesaid directions had been passed in favour of the respondent, who was working as Sr. Hindi Translator on an isolated post with the Sports Authority of India (SAI) and whose post was merged into the general cadre in 1999 in accordance with the guidelines issued by the authorities concerned. He was allowed to work on the said post till 1999 but thereafter a decision was taken to de-merge the said post w.e.f. 31.03.1999 and which decision was informed to the respondent on 03.05.2007. He challenged the aforesaid action of the petitioners by contending that the petitioners having taken a decision to merge the post could not de-merge the post without any rationale as it would amount to approbating and reprobating and because the said action of the petitioners was contrary to the order of Chandigarh Bench of Administrative Tribunal in the case of Salil Bhatnagar Vs. Union of India & Ors. (OA 306/PB/2000) decided on 08.05.2003. It was also pleaded

that during the interregnum period, i.e., from 1991 to 1999, the petitioner performed the duties of merged post on which he was allowed to work after the merger of the post of Sr. Hindi Translator, and considering his performance on the general post, the petitioner was also promoted to the post of Deputy Director in the general cadre. He has, however, been not promoted further which was also one of the grievances raised by him before the Tribunal.

3. The petitioners have assailed the impugned judgment on the ground that while implementing the directions given in the Office Memorandum dated 11.03.1986 issued by the Department of Personnel for reduction of cadres and isolated post, by specifically stating that the essential requirement for merger is that the functions and responsibilities of the posts should be similar to that of post in the organized cadre and that the duties of the posts could be performed by any officer belonging to the service cadre on transfer to the post, they committed a mistake in merging the post of Sr. Hindi Translator which was a technical post in the general cadre and, therefore, after the issuance of the Office Memorandum dated 23.05.1990 clarifying the guidelines supplementing the instructions issued by O.M. dated 11.03.1986 despite having promoted the respondent to the post of Assistant Director from the post of Sr. Hindi Translator they decided to de-merge the said post on 31.03.1999 after issuing a show cause notice to the respondent. It was stated that the post of the respondent was demerged from that of the general administrative cadre as the post of the Sr. Hindi Translator held by him was an isolated post requiring specific job responsibilities. It was further mentioned in the office order that the

respondent would be designated as Assistant Director (Hindi) thereafter and his name was deleted from the general administrative cadre. The pay scale drawn by him was made personal to him. It was further submitted that a representation has already been made by the authority to the Minister of Youth Affairs and Sports for creation of various posts of Hindi Cadre as per the guidelines of Official language but no decision has been taken. Despite that the petitioners have challenged the directions given in the OA by the Central Administrative Tribunal inter alia on the following amongst other grounds :

- i) That the order of the CAT is liable to be set aside in view of the judgment delivered by the Supreme Court in S.P. Shivprasad Pipal Vs. Union of India & Ors. 1948 (4) SCC 598 which admittedly is a judgment regarding merger and not a case dealing with de-merger.
- ii) That the de-merger was made by the petitioners in 1999 in accordance with the guidelines issued by the department of Personnel and the O.A. filed by the respondent against the said order was hopelessly time barred.
- iii) That the post, which was being held by the respondent, was an isolated post having specific job requirement/responsibilities and could not have been inter-changed with any person from the general administrative cadre.
- iv) That the reliance placed by the Tribunal on the judgment of the Chandigarh Bench of Administrative Tribunal in the case

of Salil Bhatnagar (supra) is misplaced for the reason that the said judgment is under challenge before Punjab & Haryana High Court and is distinguishable on facts and on law.

- v) That the direction given by the Tribunal to the petitioners to create a post was contrary to the judgment of the Supreme Court given in the case of Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd. 2007 (1) SCC 408.

4. The respondent has contested the writ petition by filing the counter affidavit. At the outset, it has been stated that the impugned judgment was delivered by the Principal Bench of CAT, New Delhi on 03.12.2007 but was not willfully implemented by the petitioners and, therefore, the respondent had filed a contempt petition on 08.04.08 when he was due to retire on 31.08.2008. In these circumstances, the CAT passed an order on 16.05.2008 directing the petitioners to comply with the orders forthwith.

5. On merits, the respondent has stated that the present writ petition has been filed by the petitioners only to harass the respondent who retired on 31.08.2008 so as to deny his legitimate claim of promotion even though he worked for almost a period of 16 years as Assistant Director in General Cadre in different divisions as AD(Media), AD(Monitoring Cell), AD(Coaching) and AD(Equipment Support) while as per the recruitment rules, the eligibility criteria for the post of Deputy Director is 5 years of service as Assistant Director. He submitted that with *mala fide* intentions the juniors of the respondent were promoted on

02.08.2007 before the retirement of the petitioner. On merits, it has been stated that respondent has worked in general cadre for about 19 years in different divisions and for 17 years as Assistant Director and for 2 years in House Keeping Section and Media Directorate prior to his promotion as Assistant Director and as an officer of General Cadre he was looking after the work of Hindi Division from time to time.

6. It has been submitted that it is only to give promotion to the juniors of the respondent, three Assistant Directors have been promoted on officiating basis purely on temporary basis vide Personnel Division office order No. 280/2008 dated 28.01.2008, whereas the petitioners were reluctant to give respondent his due promotion before retirement in spite the orders of CAT and have filed the present writ petition to further delay compliance of the order of the Tribunal.

7. We have heard the submissions from both the sides and have gone through the impugned order passed by the Tribunal. At the outset, we may like to take note of the two memorandums on which reliance has been placed by the petitioner for justifying the merger and demerger of the post. The first memorandum is dated 11th March, 1986, which reads as under:

Office Memorandum

Subject: Simplification of procedures for framing of recruitment rules Recommendation of Study Terms Isolated posts.

1. The undersigned is directed to say that on the directions of the appointments Committee of the Cabinet (ACC), the Department of Administrative Reforms & Public Grievances have conducted a study and made certain recommendations to streamlining the procedures for framing the recruitment rules. One of these relates to reduction in the number of

isolated posts. Relevant extract from the study Report is enclosed.

2. The above recommendation has been accepted. As already directed in para 3.12.3 of the Guidelines issued vide this Department's O.M. No. 14017/24/76-Estt. (RR) dated 22.5.1979 the efforts of the Ministries should be in the first instances, to have the isolated posts included in one of the organized services wherever the duties of the posts have relevance to those of the service in which it is proposed to be encadred. Where on such a review, it has not been possible to bring the posts under any of the services, Ministries should take an overall view of all the isolated posts existing in the Ministry including those in Attached/Subordinates office to see if it is possible to make any of these feeder posts to the other(s). As this kind of exercise often involves more than one Division/Wing of the Ministry, it is obvious that it should be undertaken, preferably by a committee of officers presided even by the Secretary/Addl. Secretary so that an optimum organizational advantage and effectiveness is achieved and the conclusions reached also take sufficient care of the interest of the persons holding such posts.
3. All Ministries are accordingly requested to conduct a review of the isolated posts existing in the Ministry proper and in the attached and subordinate offices under their control. The result of action taken kindly be reported to this Department by 30.8.86.

Sd/-
(K.S. Krishna Rao)
Dy. Secy to GOI

8. The second memorandum is dated 23.05.1990 and reads as under:

Office Memorandum

Subject: Guidelines relating to isolated posts in Group 'A' in various Ministries/ Departments of the Government of India.

Attention is invited to this Department's O.M. No. AB.14017/10/86-Estt.RR dated 11th March, 1986 (copy enclosed) in which Ministries/ Departments were requested to carry out a detailed review of the isolated posts existing in the Ministries proper and in the attached and subordinate offices under their control with a view to examining whether such isolated posts could be encadred in any of the existing organized services.

1. The personnel Research Division of the Department of Administrative Reforms and Public Grievances recently conducted a detailed study on the position of isolated Group 'A' posts in various Ministries/Departments of the Government of India. A number of measures were suggested by them for reduction in the number of such posts. Keeping in view the proposals made in the study, the following guidelines are suggested with regard to the isolated posts existing in various Ministries/Departments including attached and subordinate offices:
 - i. Wherever the Ministries/Departments have already initiated action for including the isolated posts into the existing cadres on the basis of the instruction issued by this Department earlier, the process of encadrement may be expedited.
 - ii. A review may be carried out impeately, wherever it has not been done and isolated posts which have duties and responsibilities similar to the posts which form part of any of the existing cadres may be encadred in those organized cadres.
 - iii. It may be possible to combine isolated posts in Ministries/Departments and their attached and subordinate offices having similar duties and responsibilities to form available new cadre. The feasibility of forming such new cadre may please be examined.
 - iv. Even after the review as proposed in (ii) & (iii) above is carried out some isolated posts may still remain which cannot be included in any organized cadre. As far as possible, direct recruitment should not be prescribed for recruitment to such posts which are without any promotion avenue. Wherever possible transfer on deputation and/or short term contract may be prescribed for recruitment to such posts. The recruitment rules of all such isolated posts may be and amicably amended wherever necessary on the lines proposed above.
2. All ministries/departments are accordingly requested to conduct a review of the isolated posts existing in the Ministry/Department proper and in the attached and subordinate offices under their control and take necessary action accordingly. The result of such review may be intimated to this Department by 31.12.1990.

(M.V. Kes/V/N)
Director

9. A reading of these two memorandums does not show that any direction had been given to the petitioners to demerge the isolated post of Sr. Hindi Translator 9 years after merger. No other document has been placed on record giving any such direction to the respondents. The CAT

in the case of *Salil Bhatnagar (Supra)* has considered both these circulars. The contention of the petitioners/respondents in that case has been considered by the Tribunal in the following words:

The major contention of the respondents is that the merger could have been made only in accordance with certain policy guidelines issued by the Department. It has been claimed that the merger could have been made to the administrative cadre only if the duties and responsibilities of the merged post could also have been carried out by those in the general administrative department. It has been contended that the applicant in the first case i.e. Assistant (Publication) as well as the applicant in the second case i.e. Assistant (Statistical) were holding technical posts and that officials from the administrative cadre could not hold these posts and, therefore, they could not be merged into the general administrative cadre. In their defence, the respondents have referred to Annexures V & VI attached with their written statement. Annexure V dated 11th March, 1986 gives certain guidelines for merger of posts and Annexure VI dated 22nd May, 1990 gives further clarification and guidelines relating to isolated posts in Group 'A' in various Ministers and Departments.

The learned counsel for the applicant has strongly rebutted these claims on the ground that Annexure V is meant only for Group 'A' posts and since the merger of Assistant or Office Supdt. in the administrative cadre is not a merger of Group 'A' posts that circular cannot be applied.

We have heard the learned counsel for the parties and also perused the material on record.

The circular dated 11th March, 1986, first of all, is not a Rule or a binding order. It is simply a set of guidelines. Further the guidelines nowhere state that the merger which has already been effected should be reviewed and set aside, if it is felt that the merger was incorrect, in fact, general tenor of the circular clearly is to ensure that where people are holding isolated posts with no chances of promotion, they should be merged with the general cadre to achieve greater effectiveness. The circular at Annexure V goes on to state:

“As this kind of exercise often involves more than one Division/ Wing of the Ministry, it is obvious that it should be undertaken, preferably by a small committee of officers presided even by the Secretary/Addl. Secretary so that an optimum organizational advantage and effectiveness is achieved and the conclusions reached also take sufficient care of the interest of the persons holding such posts.”

Therefore, it is quite clear that the circular was issued

keeping the interests of such persons in mind. Even the circular at Annexure VI does not state that the merger which has already been done should be reviewed and altered. In fact, a plain reading of this circular shows that wherever such merger has not been made, a quick decision should be taken. The basic principle enshrined in both these circulars is that if a person cannot easily get promotion to the next higher grade and if he can perform the duties of a general administrative cadre where such posts are available, he should be merged in the general cadre.

During the course of arguments, the respondents tried to stress the fact that the posts of Assistant (Publication) and Assistant (Statistics) could not have been manned by the general administrative cadre and, therefore, such officials could not have been allowed in the general administrative cadre. We fail to see the reasoning of this argument, especially in the first case mentioned above, it is not the case of Assistant (Publication) which was merged in the general administrative cadre; but it was the post of Office Supdt. to which the applicant had been promoted which was merged. The applicant also performed his duties as OS successfully and thereafter he was promoted as Assistant Director, the post which he held for more than 7 years and did solely administrative work. In the second case as well, the Assistant (Statistics) was promoted as Assistant Director and on such promotion, he was merged with the administrative cadre. He, thereafter successfully performed the functions of a Hostel Manager in the administrative wing. In both these cases applicants who were in so called "technical" posts were no promotion not only merged with the administrative cadre but made to function as Administrative officer and successfully for over 7 years. Thereafter, merely in order to appease certain sections of administrative wing, their so called demerger seems absolutely arbitrary and illegal. We cannot agree with the reasoning that since nobody from the administrative wing can be made Assistant in their place, they could not be promoted into the administrative wing.

10. In the present case also the respondent who was working as Sr. Hindi Translator at the time of merging of this post had been working in the general cadre for a period of more than 16 years till the date of his retirement, yet no justification has been given by the petitioners to demerge the said post. No justification or decision taken to demerge that post in the Department by the competent authority has been placed on record.

11. In the case in hand also the CAT has discussed all the facts of the case including the circulars which have been relied upon by the

petitioners including the judgment delivered in the case of *Salil Bhatnagar (supra)*. The relevant observations made in this case are reproduced hereunder:

As discussed above, the policy circulars at Annexures V and VI do not give any power to the respondents to undo the action of having merged the post of Assistant and having taken work for over 5 years as administrative Assistant Directors.

We are, therefore, of the firm opinion that the action of the respondents in demerging the applicant's merger as well as further promotion is absolutely illegal and withdraws a benefit already granted without any rhyme or reason. The applicants contention that by keeping them away from the administrative wing, the respondents seek to deny them further promotions to the cadre of Deputy Director seems to be correct. We, therefore, set aside the orders of demerger and direct the respondents to consider the applicants for further promotion as Deputy Director, as and when a vacancy arises, as if the impugned orders of demerger had never been passed.

12. The argument addressed on behalf of the petitioners that the order of demerger passed in 1999 could not have been challenged before the CAT has no justification. The CAT has rightly said that such an order could not have been passed after a period of 9 years, more so, when the respondent had been working in the general cadre for a number of years not only as a Hindi Translator but also in the Coaching Division where there was no work of Hindi Translation. We have also noticed that not only in the Coaching Division but in other Divisions also, the respondent had been working. The Tribunal specifically observed that the order was not in consonance with the circulars relied upon by the petitioners.

13. We find substance in the reasoning given by the Tribunal in giving the directions to the petitioners though the petitioners are trying to make it redundant by lapse of time in having allowed the respondent to retire from service.

14. We do not find any infirmity in the order passed by the Tribunal

and hold that the benefits of the promotion for which the respondent would have been entitled has been denied by the petitioners by not complying with the directions given by the Tribunal. In these circumstances, while dismissing the writ petition filed by the petitioners, we direct them to implement the judgment of the Central Administrative Tribunal by notionally promoting the respondent to the next higher post and granting him all financial benefits for the post of Deputy Director within a period of 3 months from today. The petitioners would also be liable to pay a costs of Rs. 10,000/- to the respondent.

15. With these observations, the writ petition filed by the petitioners is dismissed with costs of Rs.10,000/-

MOOL CHAND GARG, J.

ANIL KUMAR, J.

JANUARY 18, 2010

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