

\$~7

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2772/2015

Date of decision: 18th April, 2016

ASHISH KUMAR JAIN

..... Petitioner

Through: Mr. Tripurari Ray, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ruchir Mishra, Adv. for R-1 & 5
Ms. Anjana Gosain and Mr. Vishnu
Agrawal, Advs. for R-2 to 4

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

1. The petitioner – Ashish Kumar Jain at the time of his transfer from Calcutta Region to Delhi Region had furnished letter dated 19.09.2006, *inter alia*, accepting that his seniority in the Delhi Region would start from the date of his reporting for duty in the Delhi Region and his name would be placed below all the Inspectors (both permanent and temporary) in the Delhi Region on the date of his joining duty. Further, the petitioner would forfeit all claims for promotion/confirmation/regularisation in the old charge in accordance with the seniority allotted to him before transfer.
2. The said terms of transfer were in accord with the policy decision dated 14.05.1990. Earlier, the petitioner had written letter

dated 31.05.2006 referring to his letters dated 24.09.2003, 27.11.2003, 26.04.2004 and 14.10.2004 and had sought transfer from Calcutta Region to Delhi Region (Charge). The aforesaid transfer was made pursuant to the said letters giving personal reasons for transfer to the Delhi Region (Charge).

3. Perceptibly, the petitioner had accepted the said terms and conditions and his seniority position on transfer to the Delhi Region (Charge).

4. The contention of the petitioner is that the principal of estoppel would not apply as the legal right cannot be battered and the legal issue is covered by the decision in ***Radhey Shyam Singh & Ors. vs. Union of India & Ors.*** (1997) 1 SCC 60. This decision had struck down zone wise selection of Inspectors and had directed that recruitment examination and selection should be an all or pan India exercise. There should be a common select list of candidates belonging to all zones. On this basis and foundation, the petitioner had filed O.A. No. 1647/2012, which has been dismissed by the impugned order dated 05.03.2014.

5. We have considered the said contention, but do not find any reason and ground to interfere. The issue before the Supreme Court in the ***Radhey Shyam*** (supra) was whether selection should be a zone-wise exercise, and whether such exercise would violate Articles 14 and 16 of the Constitution. This is clear from the following quotation:-

8. It is needless to emphasis that the purpose and object behind holding a recruitment examination is to select suitable and best candidates out of the lot and such an object can only be achieved by making a common select list of the successful

candidates belonging to all the zones. On the other hand if zone-wise selection is made then various candidates who appeared in some of the zones and secured more marks than those who are selected from other zones would be deprived of their selection resulting into great injustice and consequent discrimination. Thus there can be said to exist no nexus between the aforesaid process of zone-wise selection and the object to be achieved, that is, the selection of the best candidates. That being so the process of selection as envisaged in paragraph 16 of advertisement in question and reproduced in the earlier part of this judgment would lead to discriminatory results because adopting the said process of zone-wise selection would result in the devaluation of merit at the selection examination by selecting a candidate having lesser marks over the meritorious candidate who has secured more marks and consequently the rule of equal chance equal marks would be violated. Such a process would not principles enunciated in Article 14 and 16 of the Constitution but it would also result in heart burning and frustration amongst the young men of the country.”

The issue raised and answered by the Supreme Court therefore related to the initial selection and appointment of Inspectors. In the zone-wise selection procedure as adopted, candidates who had secured more marks than those who are selected from other zones were deprived of their selection despite higher marks, resulting in great injustice and discrimination. It was directed that selection for each zone should be on an all India basis. The said decision and ratio does not hold that there cannot be zonal/zone-wise cadres of Inspectors, upon selection/ appointment. There were 15 zones at the relevant time. Presently, there are 18 zones and seniority list is

maintained zone wise or region wise. That being so, the contention of the petitioner, relying on the decision of the Supreme Court in the case of **Radhey Shyam** (supra) does not persuade us to take a different view. The aforesaid decision was regarding the initial recruitment and has not commented upon the maintenance of cadres zone-wise or region-wise. It is an accepted and admitted fact that cadres have been maintained zone or region-wise for long. This was the position before and post the decision in **Radhey Shyam** (supra).

6. Zone wise cadres are maintained in terms of the Income Tax Department (Inspector) Recruitment Rules, 1969. The petitioner has not challenged the constitutional validity of the first and second provisos of Rule 3 of the Income Tax Department (Inspector) Recruitment Rules, 1969, which read as under:

“3. Method of recruitment, age limit and other matters: The method of recruitment, age limit, qualifications and other matters relating to the said posts shall be as specified in columns 5 to 13 of the Schedule aforesaid:

Provided that direct recruitment against posts in an Establishment Unit, comprising one or more of the charges of the Commissioners of Income Tax, shall be made only from amongst candidates, opting for that particular Unit and recruitment by promotion against posts in an Establishment Unit shall be made only from amongst persons belonging to the cadre of that particular Unit:

Provided further that the Central Board of Direct Taxes may, if it considers to be expedient or necessary in the public interest or on compassionate grounds so to do, and subject to such conditions as it may specify having regard to the circumstances of the case and for reasons to be recorded in writing, permit a post in one Establishment Unit to be filled by transfer to that Unit of a person belonging to the cadre of another Unit.

Provided further that the upper age limit specified for direct recruitment in column 6 of the said Schedule may be relaxed in the case of Scheduled Castes, Scheduled Tribes and other categories of persons in accordance with the orders issued by the Central Government from time to time.”

The proviso in categorical terms indicates that there shall be separate cadres maintained unit-wise, and promotions will be made from the employees belonging to that cadre. Promotions etc. are therefore dependent on the seniority list zone wise and can vary zone or region wise.

7. Transfer is permitted on compassionate grounds or in public interest from one cadre/unit to another cadre. To rule out possibility of favouritism and for transparency, the policy decision dated 14.05.1990 stipulates and clarifies on seniority, when an employee is transferred from one zone/region to another. Transfer on request to another zone/ region results in loss of seniority for the transferee on joining is placed at the bottom of the seniority list. His date of joining or seniority in the parent cadre is irrelevant and unacceptable. The practice has been followed for long. Any modification would have cascading and multi-dimensional consequences.

8. The Tribunal in the impugned order has referred to the decision of the Supreme Court in ***UOI vs. Deo Narain*** (CA No.8017/ 2003) wherein LDCs belonging to Meerut Collectorate on request were transferred to another Collectorate and consequently were placed at the bottom of the seniority list in the transferee cadre. A policy identical to the policy decision dated 14.05.1990 was examined. The Supreme Court distinguished between eligibility and seniority, to hold

that an employee transferred from Meerut Collectorate would not lose his/her past service for the purpose of considering his/her eligibility, but if the transfer was voluntary and on a condition that the employee would be placed at the bottom of the seniority list in the transferee Department, the said condition would bind him/her and he/she cannot claim seniority over the employees in the transferee Department.

9. Learned counsel for the petitioner tried to distinguish the said decision on the ground that constitutional validity of the Rule itself was not questioned. In the present case also the petitioner had not challenged constitutionality and creation of separate Region/ Unit wise cadres. One all India cadre, will have repercussions and consequences which would have far reaching effect. For example, all India transfers would be possible. Further, cadre creation etc. is an administrative exercise.

10. Be that as it may, we do not find any merit in the writ petition. The same is dismissed. There will be no order as to costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

APRIL 18, 2016/acm