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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 669/2013, CM APPL.14192/2013

BSES RAJDHANI POWER LTD & ORS

..... Appellants

Through: Mr. Gulshan Chawla with Mr. Yuvan
Gandhi, Advocates.

versus

NAVAL SINGH

..... Respondent

Through: Mr. A.K. Trivedi, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

08.02.2016

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The question urged in this appeal is with regard to the correctness of the impugned order of the learned Single Judge dated 01.08.2013 by which he set aside the respondent/employee's transfer and posting.

The respondent was appointed on 14.11.1996 as a Junior Clerk/Telephone Operator on compassionate basis. He was later regularised to the position on 25.05.1998. It is not in dispute that on 04.06.2008, by a common Office Order several posts in the appellant's organisation were re-designated. The post of Junior Clerk/Telephone Operator was re-designated as Assistant Grade-III. Later on 04.02.2009, by a common order, time bound promotional scale benefit was granted to the employees on the condition that he

would discharge the same duties that he was hitherto perform (as Assistant Grade III) and that upon his consideration and promotion on regular basis, he would not be entitled to further or higher rank but rather continue in the said promotional pay. In these circumstances, when the appellant issued an order on 23.03.2012 posting the respondent/employee to perform the duties of Telephone Operator, he complained and approached this Court contending that the assignment to the position of Telephone Operator was beyond the terms of employment.

The employee in the course of writ proceedings highlighted that his initial appointment was to the scale and position of Junior Clerk and that given the existence of separate recruitment rules and entirely different regime for Telephone Operators, the two posts were not inter-changeable. In short, it was contended that assigning to him, the duties of a Telephone Operator detracted from his status as Assistant Gr.III. The learned Single Judge accepted these contentions relying upon *P.K. Chinnasamy v. Govt. of Tamilnadu and Ors.* (1987) 4 SCC 601, and allowed the writ petition.

The appellant contends that the impugned order is unwarranted and relies upon the employee's appointment letter and crucially, the order dated 04.06.2008 re-designating the various posts in the organisation. It is emphasised that when the employee was granted promotional scale, he accepted it unequivocally despite the condition that he would continue to discharge the same functions as he hitherto did as Assistant Gr.III (his initial appointment being Telephone Operator/Junior Clerk). Counsel also pointed out that the respondent

was in fact assigned the duties of the Telephone Operator which he ungrudgingly accepted and in respect of which he performed his functions for a year between 2004 and 2005.

Counsel for the respondent/employee submitted that no interference is called for with the impugned order. He contended that though the order of appointment is composite, in truth, the employee was appointed as Junior Clerk, which is regulated by entirely different rules as opposed to those of Telephone Operator. It was also submitted that during the course of these proceedings, the appellant issued a Circular on 31.05.2013 stating that if an incumbent did not wish to perform the duties of Telephone Operator, the advance increments granted would be withdrawn.

This Court has considered the submissions. The employee does not complain that in this case, the transfer/posting order dislocates him in any manner. No *mala fide* is attributed to say that the impugned transfer was *per se* illegal. Facially, the letter of appointment clearly states that the post to which the employee was appointed was styled as Junior Clerk/Telephone Operator. Furthermore, the respondent was undoubtedly assigned the duties of Telephone Operator which by all accounts he had no problem with for a year in 2004. The order of re-designation in no way helps the respondent - it merely changes the level of his post as it were from Junior Clerk/Telephone Operator to Assistant Gr.III. Likewise, that continuation in the promotional post only grants the increased pay scale without assigning the duties attached to the promotional post which would follow only in the event of actual promotion. In these

conspectus of circumstances, one fails to understand how the learned Single Judge could have concluded as he did that the employee was assigned duties incommensurate with his status. The reliance, therefore, on *P.K. Chinnasamy (supra)* was unwarranted. This is clearly not a case where the employee was asked to discharge the responsibilities in respect of completely unconnected post.

It has been ruled consistently by the Supreme Court in *Gujarat State Electricity Board & Anr. v. Atmaram Sungomal Poshain*, AIR 1989 SC 1433 that transfer is an incidence of public service and *sans* rare and exceptional circumstances of proven *mala fides* or illegality, the Court should not interfere with such orders. In the present case, there was no prejudice to the employee calling for interference.

Before disposing of this appeal, it is clarified that employee's representation for reversal of his promotion, even offering withdrawal of the increments already accrued shall be considered on its merits and an appropriate order made. This Court's order would not preclude consideration of such an application in terms of the appellant's extant policy.

The appeal is accordingly allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

FEBRUARY 08, 2016

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