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

+ W.P.(C) No. 3844/2015

Date of Decision : 20th March, 2017

SANSAR CHAND Petitioner
Through Mr. Sudarshan Rajan and Mr. Arjun
Gadhoke, Advocates

versus

UNION OF INDIA & ANR Respondents
Through Mr. Vikas Mahajan, CGSC and Mr.
S. S. Rai, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

This is second round of litigation.

2. The petitioners had earlier filed OA No. 2091/2010 which was disposed of by the Principal Bench of the Central Administrative Tribunal vide order dated 29.03.2011 with the following observations and directions:-

“Two things stand out in the facts of this case. First, in effecting the 10% cut, the respondents had abolished the vacant posts of DFO (10), AFO (48) and SFA(8). Once the cut was restored by order dated 07.05.2003, it would stand to, reason that the vacant posts, as mentioned above, would

also be restored. If those posts were not restored, it would be against the order dated 07.05.2003, by which 10% cut in sanctioned strength was withdrawn for the SSB. It would, in effect, mean that there had been no compliance of the directions restoring the 10% cut. Second, there has not been any amendment of the Recruitment Rules, which would show that the posts of AFO and DFO still remained in existence. There was no need for the respondents to pass an order to restore the posts of AFO and DFO, because these will stand revived by the order dated 07.05.2003 and the Recruitment Rules, which has not been amended. There is no basis for the contention of the respondents that the posts of AFO and DFO have ceased to exist. The only reason for abolition of the posts of AFO and DFO was the 10% cut imposed by the Government of India in the sanctioned strength of the departments of the Government. There was no other reason for that. Once the Respondent-SSB has been exempted from the cut, status quo ante will be revived. The respondent would have to pass a fresh order abolishing these post, if in their view it was not unreasonable to abolish the posts meant for promotion and make the SFA's post an isolated one.

It is clear, therefore, from the above discussion that the contention of the respondents that the posts of AFO and DFO do not exist any more has no force. The applicant will be eligible for consideration for promotion to these posts,

from the date of his eligibility for the same. It was wrong for the respondents to have given the applicant the benefit of AGP scheme, instead of promoting him in the normal channel of promotion.

In the light of the above discussion, the OA succeeds. The respondents are directed to consider the applicant for promotion to the posts of AFO and DFO from the date of his eligibility and, if found fit by the DPC, promote him retrospectively on notional basis to these posts. He would not be eligible for back wages, but the promotion would count for the purpose of seniority and calculation of increments. These directions would be complied with within three months from the date of receipt of certified copy of this order. No costs.”

3. The Union of India had challenged this order in W.P. (C) Nos. 8510/2011 before the High Court raising various contentions including the order dated 25.08.1999 and clarification issued by the Ministry Home Affairs dated 20.10.2003 and that the posts already surrendered cannot be revived in terms of order dated 20.05.2003.

4. The High Court disposed of the writ petition (C) No. 810/2010 on 27.08.2013, with an order of remit for fresh adjudication. The reasoning and directions given by the High Court in the order dated 27.08.2003 are as under:-

“24. From the facts noted above, it is apparent

that on May 20, 1999, the Cabinet Secretariat issued an order for abolition of 10% posts (590 posts) in SSB. Significantly, the order dated May 20, 1999 prescribed as follows: - (i) the posts which were lying vacant were to be abolished with immediate effect and (ii) the posts which were occupied were to be abolished on promotion, transfer, retirement, death etc of the incumbents holding the posts.

25. At that time, there were 157 sanctioned posts in the Homeopathy cadre in SSB, all of which were required to be abolished. There were 90 occupied posts (which were to be abolished in due course of time) and 67 vacant posts (which were to be abolished with immediate effect) in Homeopathy cadre in SSB. It is not in dispute that all 48 and 10 posts of Assistant Field Officer (Homeopathy) and Deputy Field Office (Homeopathy) were lying vacant and thus required to be abolished with immediate effect.

26. Now, started the problem. SSB did not abolish the posts in Homeopathy cadre in accordance with the order dated May 20, 1999, in that it sought to abolish all 89 posts of Senior Field Assistant (Homeopathy) with immediate effect including 81 occupied posts by transferring the incumbents holding said 81 posts to their parent units/cadre. The aforesaid action of SSB was challenged by some of the holders of 81 posts before the Central Administrative Tribunal, Chandigarh Tribunal. The Tribunal rightly frowned upon the „manner of abolition of posts“ by SSB inasmuch as occupied posts were to be abolished in due course of time and quashed the order issued by SSB transferring the holders of said 81 posts to their parent cadres/units.

27. On May 07, 2003 Ministry of Home Affairs granted exemptions to SSB from cutting/abolishing 10% posts.

28. Now, the question which arose was what happens to

the (vacant) posts which were already abolished in terms of the order dated May 20, 1999? SSB sought a clarification from Ministry of Home Affairs in this regard. On May 20, 2003 Ministry clarified by way of a (file) noting that the posts already surrendered (abolished) would not be revived.

29. This is the problem in the instant case. The Tribunal has glossed over said clarification given by Ministry of Home Affairs despite there being a specific reference to the same in the reply filed by SSB/Ministry before the Tribunal. This was a most vital document having material bearing on the controversy involved in the present case but the Tribunal ignored to note said document inasmuch as there is no reference to the same in the impugned judgment dated March 29, 2011 passed by the Tribunal. 30. In that view of the matter, we have no option but to remand the matter to the Tribunal for re-adjudication by taking into account the clarification dated May 20, 2003 given by Ministry of Home Affairs.

31. Before bringing the curtains down, there is another thing which requires to be noted by us.

32. While deciding the OA filed by respondents Mangal Singh Rawat and Jeevan Lal the Tribunal did not consider the plea of limitation raised by SSB/Ministry on the ground that no finding regarding said plea was given by the Tribunal while deciding the OA filed by respondent Sansar Chand. Merely because the Tribunal did not consider the plea of limitation while deciding the OA of Sansar Chand who was similarly situated as respondents Mangal Singh Rawat and Jeevan Lal is not a justifiable ground for dealing with said plea raised by SSB/Ministry in case of respondents Mangal Singh Rawat and Jeevan Lal.”

5. By the impugned order dated 14.01.2015, the Tribunal has

dismissed OA No. 2091/2010 on the ground of limitation after referring to Section 21 (2) of the Administrative Tribunals Act, 1985. The impugned order records that as per case set up by the petitioner, he had become eligible for the post of Assistant Field Officer (Homoeopathy) on 02.04.1997 and that the Cabinet Secretariat on 20.05.1999 had issued the order for 10% cut in sanctioned strength and for abolishing 590 posts. The order dated 20.05.1999 had abolished the posts of Assistant Field Officer (Homeopathy).

6. The petitioner submits that permanent posts were numbered and created under the SSB (Homoeopathy) Service Rules, 1992 (Rules, for short) notified under the proviso to Article 309 of the Constitution. The abolishing of the posts specified required amendment and modification of the Rules. As the Rules were never amended, the plea of limitation was inconsequential and would not matter as the petitioner was entitled to seek consideration for promotion to the sanctioned posts at any time.

7. We have considered the contention raised by the petitioner but did not find any merit in the same.

8. Rule 5 of the Rules reads:

“Authorised Strength:

(1) The authorized permanent or temporary strength of the various grades of the service on the appointed day shall be as specified in Schedule-I.

(2) The Government shall, at intervals of every two years re-examine the strength and composition of each grade and make such alterations therein as it may

deem fit.”

The authorised permanent or temporary strength of the various grades including grade of Assistant Field Officer (Homeopathy) and Deputy Field Officer (Homoeopathy) stand specified in Schedule-I to the Rules.

9. The Rule 5 expressly stipulates that the Government has the authority to re-examine the strength and composition of each grade and make such alteration as it may deem fit. Thus, the power to amend and modify the permanent or temporary strength in Schedule-I, was conferred and vested with the Government.

10. The Government had issued order dated 20.05.1999 which reads as under:-

“

Order

In terms of Government directive for 10% cut in the sanctioned strength of posts of SSB (Excluding battalion side) and SFF, president is pleased to abolish 590 posts in SSB as indicated in Annexure-I and 870 posts in SFF as shown in Annexure-II.

2. So far abolition of posts in SSB is concerned, total number of 103 posts as shown under Col. 6 of the Annexure-I are abolished with immediate effect. The posts shown under Col. 5 of the Annexure-I (Total 487 posts) which are at present filled up will be abolished automatically on that falling vacant due to promotion, transfer, retirement, death etc. of the incumbent holding the posts.

3. As regard abolition of posts in SFF, 35 posts have already been abolished vide order No. 490011/36/04-DC-I dated 11.06.97, therefore actual 835 posts as indicated under Col. 6 against Sl. No. 1 to 5 in the Annexure-II shall be abolished with immediate effect.

4. This issues with the concurrence of Ministry of Finance (Expenditure) vide UO No. 7(7)/E.Coord/92, dated 28.4.99.”

11. The effect of this order was a 10% cut in the sanctioned posts and abolition of posts in the Shashtra Seema Bal etc. The details of the posts surrendered/abolished was enclosed with this order, included the posts of Assistant Field Officer (Homoeopathy) and Deputy Field Officer (Homoeopathy) in the Shashtra Seema Bal. Sanctioned posts of Senior Field Assistant (Homoeopathy) were reduced.

12. The aforesaid order dated 20.05.1999, would be valid and in accordance with law, for it has been issued in terms of Sub Rule 2 to Rule 5 of the Rules. The petitioner cannot contend that the aforesaid abolition vide order dated 20.05.1999 is contrary to the Rules and therefore is non est. Rule 5 (2), specifically empowers and authorises the Government to re-examine the strength and make alternations of the posts in the Schedule I.

13. Learned counsel for the petitioner, has relied on ***Dr. K. V. Prasada Rao v.. Union of India AIR 1988 SC 535, Rajasthan Judicial Service Officers Association Vs. State of Rajasthan and***

Another (2009) 14 SCC 656 and *High Court of Judicature for Rajasthan Vs. Veena Verma And Another (2009) 14 SCC 73*. These are cases where appointments were made in excess of the sanctioned strength, without amendment and following the procedure for encadrement of sanctioned posts as required by the applicable Rules. The Rule position in the present case is different. The order dated 20.05.1999, has been issued in terms of Sub-Rule 2 to Rule 5 of the Rules.

14. Learned counsel for the petitioner submits that petitioner have been working at the post of Senior Field Assistant (Homoeopathy) for about three decades without any promotion. Lack of avenues of promotion and stagnation can be demoralising and undermine the service. This is an aspect which the respondents should examine and consider. The petitioner may be entitled for financial upgradation under the Modified Assured Career Progression Scheme

15. With the aforesaid observation the writ petition is dismissed.

16. No order to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MARCH 20, 2017

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