IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.15498 of 2017
Reserved on : November 28, 2018
Date of decision: January 14, 2019

Union Territory, Chandigarh and others --Petitioners

Versus

Central Administrative Tribunal and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Sanjiv Sharma, Sr. Advocate with
Mr. Sourabh Goel, Jr. Panel Counsel
Mr. Sanjeeva Kumar Uppal, Advocate
Mr. Abhinav Singh, Advocate
for the petitioners.

Mr. Puneet Bali, Sr. Advocate with
Mr. Ranjeet Saini, Advocate
for the caveator-respondents.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of 11 cases, namely Civil Writ Petition Nos.15486, 15496, 15497, 15498, 15499, 15500, 15501, 15502, 15503, 15625 and 15918 of 2017, which arise out of common judgment and order of the Central Administrative Tribunal Chandigarh dated 07.04.2017 whereby 11 Original Applications were disposed of.

Identical questions are involved in all these cases. However, the facts are being referred to from CWP No.15498 of 2017 for the purpose of deciding the petitions.

Respondents No 2 to 83 (private respondents) filed Original Application No. 060/00140/2017 impugning the `Inter-Departmental

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Transfer Policy' dated 13/18.5.2015 and the order dated 31.1.2017 passed pursuant thereto whereby they were transferred from their posts in their parent department to different departments of Chandigarh Administration by the order of the Secretary Personnel, Chandigarh Administration. By the order dated 31.1.2017, a total of 289 employees of the Chandigarh Administration were transferred. The connected Original Applications were filed by other employees so transferred assailing the `Inter-Departmental Transfer Policy' and their transfer orders.

The Inter-Departmental Transfer Policy reads:

"The Administrator, Union Territory, Chandigarh is pleased to frame the Inter-Departmental, Transfer Policy in respect of Group A, B, C & D Officers / officials (Ministerial / Technical) of Chandigarh Administration in public interest subject to the following conditions :-

i. *That the Secretary Personnel shall be the competent authority to order inter-departmental Transfer in respect of Group A and B officers / officials.*
ii. *That the Special Secretary Personnel shall be the Competent Authority to order Inter-departmental Transfer in respect of Group C and D officials.*
iii. *That the employee so transferred shall be on the cadre strength of his / her parents (original) department for the purpose of seniority, promotion and all other benefits.*
iv. *That the officer / official will be transferred to another department on the same post / designation on which he / she is working in parent (original) department.*
v. *That the pay & allowances of the transferee shall remain the same as admissible in his / her parent (original) department and shall continue to draw the same from his / her parent (original) department.*
vi. *That the appointing / disciplinary authority of the transferee will remain the same / unchanged.*
vii. *That the transferee shall not be entitled for any allowance for being posted in other department.*

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viii. That the transferee can be re-transferred to his/her parent (original) department at any time without assigning any reason/any notice.

ix. That the terms and conditions contained in the original offer of appointment shall stand modified to the extent of Inter-Departmental Transfer only.

Chandigarh, dated the 13 May, 2015 *(By Order and in the name of Administrator, Union Territory, Chandigarh"*

The case of the applicants before the Tribunal was that they were appointed on their respective posts in different departments of Chandigarh Administration pursuant to different statutory recruitment rules. They were working on different Group-B and C posts in different departments. The Administrator, Union Territory, Chandigarh has framed the impugned Inter-Departmental Transfer Policy in respect of Group-A, B, C and D officers/officials (Ministerial/Technical) of Chandigarh Administration in public interest. As per this, the Secretary Personnel shall be the competent authority to order inter-departmental transfer in respect of Group-A and B officers. The Special Secretary (Personnel) shall be the competent authority for inter-department transfer in respect of Group-C and D officials. It was argued that as the service conditions of the applicants were governed by separate specific rules pertaining to their separate cadres and their posts were not inter-transferable under the recruitment rules and they had not consented for such transfer orders, the action of the Chandigarh Administration in transferring them outside their cadre was not legally sustainable.

The Chandigarh Administration defended the `Inter-Departmental Transfer Policy' and the transfer of the applicants contending

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that continuity of a person on a single seat/post for long results in the development of vested interests, promotes the culture of nepotism leading to corruption, which hinders good governance and adversely impacts the public interest. It was contended that the transfer of officials from time to time to different seats, in fact, promotes transparency and efficiency. It is for this reason that transfer is an essential component in all important services including Civil Services, Defence, Para-Military and other Central Government Services. As per the guidelines dated 11.9.2013 of the Central Vigilance Commission, circulated by the Union Territory Administration vide letter dated 4.12.2013, a person should not remain posted on a sensitive post for more than three years. The Department of Personnel and Training, Government of India has also issued instructions dated 14.9.2015 regarding rotational transfers. It was accordingly contended that the `Inter-Departmental Transfer Policy' which had been framed to implement various guidelines and instructions was not contrary to the conditions of the service of the employees and was framed in public interest.

It was also contended that as per the 'Inter-Departmental Transfer Policy', the employees transferred by the impugned order shall remain on their parent/original department for purposes of seniority, promotion and other benefits. Their pay and allowances would also remain the same and would be drawn from their parent department. No prejudice would be caused to them by the impugned transfer orders. Even otherwise, the transferee departments are all located within Chandigarh.

The Ld. Tribunal held that the impugned 'Inter-Departmental

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Transfer Policy' lacked statutory sanction. It was only an administrative policy and could not nullify the relevant statutory rules framed under Article 309 of the Constitution of India. In this regard, the learned Tribunal observed as under:-

> *"17. Thus, it would be seen that the facts of the case are neither intricate nor much disputed and fall within a very narrow compass in order to decide the real controversy, between the parties. Such being the position on record and legal provisions, now two short and significant questions arise for our consideration, in this case, are (i) as to whether, the Administrator of Chandigarh has any legal power to frame intra-departmental policy of the employees of different departments against the statutory rules? and (ii) as to whether, the impugned transfer order, Annexure A-2, passed in pursuance of the impugned policy, Annexure A-1, has any legal sanctity or not?*
>
> *xxx xxx xxx*
>
> *22. A bare perusal of the terms and conditions of the impugned inter-cadre transfer policy, Annexure A-1, would suggest that the Secretary (Personnel)/ Special Secretary (Personnel) shall be competent authority to order inter-cadre transfer and as per clause (ix), the terms and conditions contained in the original offer of appointments shall stand modified to the extent of inter-Departmental Transfer only, which cannot legally be done. It is now well settled principle of law that the terms and conditions of initial appointment of the employees, cannot unilaterally be ordered to be modified retrospectively, completely changing the competent authorities and terms and conditions, which is not legally permissible. There should be some legal power flowing either from Constitutional or statutory provisions empowering the Administrator to frame such inter-cadre transfer policy,*

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nullifying the relevant statutory rules framed under Article 309 of the Constitution of India, which is clearly lacking in the present case. Thus, the administrative policy, having the effect of nullifying the statutory rules indeed is not legally sustainable, which was framed by UT Administration, not only dehors the statutory recruitment rules, but even contrary to the opinion of its Law Department.

23. Having so derived powers under Article 309 of the Constitution of India, the different statutory recruitment rules of the different departments of the U.T. Administration, Annexure A-3 (Colly.) were framed to regulate the service conditions of the employees of the U.T. Chandigarh, containing different terms and different conditions and different hierarchy of posts and different competent authorities etc. In pursuance of the statutory rules, the applicants were appointed under different procedures of the recruitment, in different posts by the different authorities and they are governed by different terms and conditions of service.

24. Therefore, once the applicants were appointed vide different appointment letters, Annexure A-4 (Colly.), having different terms and conditions of service, different posts, and different respective competent authorities, as per the statutory rules, Annexure A-3 (Colly.) framed under Article 309 of the Constitution of India under which there is no provision for transfer of employees from one cadre to another, in that eventuality, the applicants cannot legally be transferred from one cadre to another cadre in a different department in the garb of impugned administrative policy, Annexure A-1, which has no legal sanctity and is in-operative. The Administrator, no doubt, can transfer an employee from one Department/ Cadre to different Department/ Cadre by amending recruitment rules, as contemplated under Article 309 of the Constitution of India and not otherwise.

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25. Be that as it may, as mentioned hereinabove, the applicants were appointed in pursuance of the different statutory recruitment rules, on different posts, by different competent authorities and their terms and conditions to change from one cadre to another, cannot validly be done at their back, by the impugned executive policy/ instructions, Annexure A-1, particularly when their service conditions are governed by different statutory recruitment rules framed under Article 309 of the Constitution of India. This matter is no more res-integra and is now well settled."

The Tribunal relied on *v*arious decisions of Hon'ble the Supreme Court wherein it has been held that any executive order/instruction which runs counter to or is inconsistent with the statutory rules could not be enforced.

The Tribunal noticed laudable objective of the administration in formulating the 'Inter-Departmental Transfer Policy', but emphasised that any such policy has to be legally sustainable. It further relied on various decisions of Hon'ble Supreme Court including **Kavi Raj and others vs. State of Jammu & Kashmir and others 2013 (3) SCC 526** and **Jagannadha Rao and others vs. State of A.P. and others 2001 (10) SCC 401** that an employee can only be transferred to a post within the cadre under his principal employer unless his posting is regulated by different statutory rules governing his conditions of service. In the absence of any such rules, an employee cannot be posted or transferred beyond his cadre, without his consent. Accordingly, the Original Applications were allowed. The impugned 'Inter-Departmental Transfer Policy' and the transfer orders were quashed.

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Learned counsel for the petitioner has not disputed that the 'Inter-Departmental Transfer Policy' has only been framed in exercise of executive power and not under Article 309 of the Constitution. He was not able to refer to any provision in the statutory rules governing the employees which contemplated their transfer outside their cadre. His reliance on the 'Conditions of Services of Union Territory of Chandigarh Employees Rules, 1992' as per which conditions of service of persons appointed to the Central Civil Services and Posts in Group-A, B, C and D under the administrative control of the Administrator of Union Territory of Chandigarh are the same as conditions of service of persons appointed to the corresponding posts in Punjab Civil Services and shall be governed by the same Rules and Orders to support the impugned inter-cadre transfers, also does not advance his case. The issue has been considered by the learned Tribunal, which has held that the Punjab Rules do not contemplate a transfer beyond the cadre. Admittedly, there is no provision in the statutory recruitment rules governing the respondent- employees for their inter-cadre transfer.

The order of the Tribunal is based on settled legal principles. There is no infirmity in the order.

Accordingly, these petitions are dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 14, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No

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