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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1)

CWP-5865-2023 (O&M)
Date of Decision:10.04.2024

ADITYA SHARMA AND OTHERS

..... Petitioners

Versus

UNION OF INDIA AND OTHERS

..... Respondents

2)

CWP-23220-2023

RAJESH KUMAR AND OTHERS

.....Petitioners

Versus

UNION OF INDIA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. R.D. Gupta, Advocate and
Mr. Raghvinder Singh, Advocate
for the petitioner.

Mr. Somesh Gupta, Senior Panel Counsel assisted by
Major Ravinder S. Bhatia,
for the responents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-5865-2023 and CWP-23220-2023 are disposed of since issue involved in the captioned petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-5865-2023.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of

(I) Order dated 25.10.2022 (Annexure P-12) whereby respondent has disbanded 1101, Railway Engineer Regiment of Territorial Army;

(II) Order dated 02.02.2023 (Annexure P-13) whereby petitioner No. 1 to 8 have been discharged from their military service on account of disbandment of 1101, Railway Engineer Regiment (T.A) based at Chandigarh.

3. The petitioners are employees of Ministry of Railways. The respondent in terms of Section 3 of Territorial Army Act, 1948 (for short '1948 Act') has constituted different Units. The Territorial Army was constituted in 1949. It is known as second line of defence. The essential aim of the organization is to provide basic military training to gainfully employed citizens so that in the event of emergency, they can play their role to meet the internal security needs. The Territorial Army is composed of Non-department (TA) and Departmental (TA) units. The Departmental (TA) units are non-combatant units and are basically technical forces. The sphere of activities of Railways TA units is confined to Railway activities.

4. The employees of Railway forming part of regiment get one month training every year and during said period, they remain posted with Territorial Army. During the said period, they get training from officials of Indian Army and its cost is borne by Ministry of Railways. In 2022, there were 6 Railway Territorial Army Regiments. The detail of those regiments is as follows:

Regiments	Location	Controlling Zonal Railway	Command Affiliation	Zonal Railways attached for recruitment/enrolment in Railway T.A.
969 Railway Engineer Regiment	Jamalpur	Eastern Railway	Eastern Command	Eastern, East Central & North East Frontier Rly
970 Railway Engineer Regiment	Jhansi	North Central Railway	Southern Command	North Central & Central Railway
1031 Railway Engineer Regiment	Kota	West Central Railway	Eastern Command	West Central & Western Railway
1032 Railway Engineer Regiment	Adra	South Eastern Railway	Eastern Command	South Eastern, South East Central & East Coast Railway
1101 Railway Engineer Regiment	Chandigarh		Northern Command	Northern, North Eastern & North Western Railway
1105 Railway Engineer Regiment	Secunderabad	South Central Railway	Eastern Command	South Central, South Western, Southern Railway

5. The Ministry of Railways constituted a committee to consider existence of aforesaid regiments. The said Committee comprising of Chairman, Railway Board & CEO and Member (Finance), Railway Board decided to disband aforesaid Units. It was further decided that the entire process would be completed by 31.03.2022. The relevant extracts of the decision dated 8/14.12.2021 (Annexure P-5) read as:

“In the light of detailed justification given by the above Committee in their Report, the Competent Authority i.e. Chairman, Railway Board & CEO and Member Finance, Railway Board, has decided as under:-

- (I) On the basis of assessment of operational requirements, the 06 Railway Engineer Regiments TA fully financed by Railways, should be disbanded and the modalities for disbandment may be worked out by DGTA.*
- (II) The modalities for disbandment may be such that the entire formalities for disbandment are finalized by 31.03.2022.”*

6. The Office of Directorate General Territorial Army vide communication dated 17.12.2021(Annexure P-6) requested Chairman,

Railway Board to confirm/intimate whether decision to disband was taken in consultation with Ministry of Defence. The relevant extracts of said letter read as:

“It is requested to confirm/intimate of this decision has been taken in consultation with the Department of Military Affairs (MoD), for it being an inter-Ministerial issue and also having strategic / operational implications at the National level.”

7. The Ministry of Railways vide communication dated 21.12.2021(Annexure P-7) decided that all the regiments financed by Railway should be disbanded and modalities for disbandment shall be finalized by 31.03.2022. The relevant extracts of the letter read as:

“In the light of detailed justification given by the above Committee in their Report, the Competent Authority i.e. Chairman, Railway Board & CEO and Member Finance, Railway Board, has decided as under:-

- (i) On the basis of assessment of operational requirements, the 06 Railway Engineer Regiments (TA) fully financed by Railways, should be disbanded.*
- (ii) The modalities for disbandment may be such that the entire formalities for disbandment are finalized by 31.03.2022.”*

8. The Ministry of Railways vide letter dated 08.02.2022 requested Directorate General Territorial Army to initiate process of disbandment. The Directorate General Territorial Army vide communication dated 08.03.2022 intimated that matter has been deliberated upon and Directorate has endorsed disbandment of five and retention of one Railway Engineer Regiment. In the said letter, it was also observed that a collegiate be organized to discuss further course of action. The said authority expressed its reservation with respect to uninterrupted rail communication. The relevant extracts of letter dated 08.03.2022 read as:

“The subject case has been deliberated upon and the concerned Directorate has endorsed disbandment of five and retention of one Railway Engineer Regiment (TA). Accordingly, it has been directed that 969 Railway Engineer Regiment (TA) be retained for the operational role along route NJP-Siliguri-Newmal-Alipurdur- Rangiya (361 Kms). This Regiment would cover the critical rail link through Siliguri corridor and further up to Rangiya. The concerned Directorate while endorsing disbandment of five Railway Engineer Regiments (TA) have sought an assurance from the Ministry of Railways (Railway Board) that uninterrupted rail communication will be maintained towards Northern and Eastern Borders at all times, which may please be confirmed.

4. Being an inter-Ministerial issue with many stakeholders, a collegiate will be organized shortly to discuss further course of action on the subject and the date/time for the same will be intimated separately.”

9. Pursuant to aforesaid communication, a joint meeting of officers from Railway Board and Ministry of Defence, Directorate General Territorial Army was held on 21.04.2022. In the said meeting, it was finally decided to disband five out of six regiments. It was observed that willingness for discharge or continuance with Territorial Army would be taken from existing Railway T.A. personnel and willing Railway T.A. personnel will be considered against existing vacancies in functional establishment of 969, Railway Engineer Regiment, Jamalpur and remaining would be kept in reserved list. The Ministry of Railways assured uninterrupted rail communication towards Northern and Eastern borders at all times. The relevant extracts of the decision taken in the meeting held on 21.04.2022 (Annexure P-11) are reproduced as below:

“As conveyed by DGTA vide their letter dated 08.03.2022 regarding the concurrence of concerned Directorate of Ministry of Defence for retention of one Railway Engineer Regiment at Jamalpur and disbandment of remaining five Railway Engineer Regiment, it was mutually agreed that only one Regiment at Jamalpur will be retained. It was also agreed that disbandment of the remaining five Railway Engineer Regiment will be completed within the shortest

possible time and the maximum time limit for completion of entire process will be nine months.

Willingness for discharge or continuance with TA will be taken from the existing Railway TA personnel of all Railway TA Regiments and willing Railway TA personnel will be considered against the existing vacancies in the present Functional Establishment of 969, Railway Engineer Regiment, Jamalpur and the balance will be kept in the Reserve List.

Representatives from DGTA and DGMO were informed that the concerned Directorate in the Ministry of Railways has given an assurance that uninterrupted rail communications will be maintained towards Northern and Eastern borders at all times, as asked for by DGTA in their letter dated 08.03.2022.”

10. Pursuant to aforesaid joint meeting of different Ministries, the Ministry of Defence, Department of Military Affairs vide communication dated 25.10.2022 (Annexure P-12) ordered to disband five out of six Railway Engineer Regiments. For the ready reference order dated 25.10.2022 is reproduced as below:

“I am directed to convey the sanction of the President of India for disbandment of the following five Railway Engineer Regiments (T.A):-

SI. No.	Units/Regiments	Location	Date of Raising	TA HQs	Gp	Affiliated to
(a)	970 Railway Engineer Regiment (TA)	Jhansi(IP)	15.02.2005	Southern Command		Bombay Engineer Group, Kirkee
(b)	1031 Railway Engineer Regiment (TA)	Kota (Rajasthan)	31.03.1975	Dir, South Western Command	DSC	Madras Engineer Group Bangalore
(c)	1032 Railway Engineer Regiment (TA)	Adra (West Bengal)	15.02.2005	Eastern Command		Bengal Engineer Group, Roorkee
(d)	1101 Railway Engineer Regiment (TA)	Chandigarh (UT)	31.03.1975	Western Command		Bengal Engineer Roorkee
(e)	1105 Railway Engineer Regiment (TA)	Secundrabad (Telengana)	21.03.1975	Southern Command		Madras Engineer Group Bangalore

2. 969 Railway Engineer Regiment (TA) located at Jamalpur is to be retained. The existing Functional Establishment (FE) of this unit is valid upto 22.11.2022. The FE of this Regiment to be revised in consultation with Ministry of Railway (Railway Board).

3. The disbandment of above mentioned five Railway Engineer Regiment (TA) will commence from the date of issue of this letter and will be completed within six months.

4. On disbandment, the manpower of the disbanded units will cease to exist in that:-

(a) Regular Army personnel will revert to CT-I strength and will be adjusted against vacancies available. The units will retain the authorized strength of Regular Army personnel as given in the Functional Establishment till completion of disbandment to cater to the requirements of audit and final disposal of assets.

(b) Part time Departmental staff as authorized in the Functional Establishment (FE) will be discharged from Military service on issue of Government Sanction Letter less one Officer, two JCOs and five Other Ranks per unit, who will be embodied on as required basis for coordination & completion of disbandment related issues with respective Railway Zones.

(c) Non Railway Territorial Army personnel (tradesmen) may be transferred to other Non-Departmental and Ecological TA units under TA Act Rule 13(1), if willing and would be on probation for a period of one year.”

11. The respondent vide communication dated 02.02.2023(Annexure P-13) has discharged petitioner No. 1 to 8 from TA service. The petitioners are feeling aggrieved from decision dated 25.10.22 and 02.02.2023, hence present writ petition.

12. Mr. R.D. Gupta, Advocate submits that decision of disbandment of five Units is bad in the eyes of law on account of following counts:

i) The initial decision of disbandment was unilaterally taken by Ministry of Railways whereas Ministry of Defence was equal stakeholder in the constitution of Territorial Army;

ii) The Ministry of Railways was having no knowledge about need

and working of Territorial Army still Ministry of Railways decided to disband all the Regiments;

iii) The Territorial Army had expressed its concern about uninterrupted railway communication and in the joint meeting of officers of different Ministries, the Railway has assured to make uninterrupted railway communication, however, said assurance is on paper. There is nothing disclosing that Railway would provide uninterrupted railway communication;

iv) The respondent in terms of Section 3 of Territorial Army Act, 1948 has power to constitute and disband any Unit, however, there is no prescribed procedure to disband a Unit. The respondent has not disclosed procedure which was followed prior to disbanding aforesaid five Regiments;

v) The Ministry of Defence was in need of Regiments, however, on account of unknown reasons has acceded to decision of Ministry of Railways;

vi) In the final decision, it was decided that persons who are willing to continue with T.A would be kept in reserved list, however, petitioners have been discharged.

13. Per contra, Mr. Somesh Gupta, Counsel for the respondents, submits that petitioners are permanent employees of Indian Railways, thus, disbandment of regiment is not going to affect their employment. Government has discretion to constitute and disband any regiment. In view of changed facts and circumstances and to avoid unnecessary cost, it was decided by Ministry of Railways and Ministry of Defence to disband 5 out of 6 units and during the pendency of present petition, it has been

further decided to disband 6th unit. It is immaterial that step was initiated by one or another Ministry. There is no prescribed procedure to disband a unit, thus, petitioners cannot claim that there was violation of procedure or in the absence of procedure, unit could not be disbanded. It is subject matter of Defence and Railways to ensure uninterrupted railway communication. It is not subject matter of members of Railway (TA). Indian Army, in view of available sources and manpower is competent to face any adverse situation.

14. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

15. It is a settled proposition of law that scope of interference in the executive decisions/policy matters is very limited. The persons who are making policy are more competent to know needs of the people as well as needs of the organization.

16. Hon'ble Supreme Court has time and again adverted with scope of judicial interference in executive decisions including decisions relating to policy matters. In ***Union of India v. Harjeet Singh Sandhu, (2001) 5 SCC 593***, Supreme Court has adverted with scope of judicial review of administrative action. The Court has held that if two views are possible, court shall not interfere by substituting its opinion for the opinion of authority. The relevant extracts of aforesaid judgment read as:

42. Exercise of power under Section 19 read with Rule 14 is open to judicial review on well-settled parameters of administrative law governing judicial review of administrative action such as when the exercise of power is shown to have been vitiated by mala fides or is found to be based wholly on extraneous and/or irrelevant grounds or is

found to be a clear case of colourable exercise of/or abuse of power or what is sometimes called fraud on power i.e. where the power is exercised for achieving an oblique end. The truth or correctness or the adequacy of the material available before the authority exercising the power cannot be revalued or weighed by the court while exercising power of judicial review. Even if some of the material, on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material available on which the action can be sustained. The court would presume the validity of the exercise of power but shall not hesitate to interfere if the invalidity or unconstitutionality is clearly demonstrated. If two views are possible, the court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power.

17. Recently, a Constitutional Bench in ***Vivek Narayan Sharma Versus Union of India; 2023 LiveLaw (SC) 1***, while adverting with question of legality of demonetization of currency of denomination of Rs.500/- and Rs.1,000/- has considered scope of judicial review. The Hon'ble Supreme Court has considered its judicial precedents and concluded that it is not function of the Court to sit in judgment over matters of economic policy and they must necessarily be left to Government of the day to decide. The Court emphasised on its earlier decision in ***Tata Cellular vs. Union of India (1994) 6 SCC 651***. The relevant extracts of the said judgment read as:-

“Scope of Judicial Review

215. The law with regard to scope of judicial review has been very well crystalized in the case of Tata Cellular (supra). In the said case, it has been held by this Court that

the duty of the court is to confine itself to the question of legality. Its concern should be whether a decision making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal would have reached or abused its powers. The Court held that it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken.

216. After referring to various pronouncements on the scope of judicial review, the Court has summed-up thus:

“94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative

sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

18. In the case in hand, the respondent has decided to disband all the six Regiments of Territorial Army. Initially, disbandment of 5 out of 6 units was approved and during the pendency of present petition, 6th unit is also disbanded. Section 3 of 1948 Act empowers Government to constitute and disband any unit. The petitioners are not disputing power of respondents to disband any Regiment. The petitioners have failed to point out any clause of the impugned decision which is violative of their fundamental rights guaranteed by Chapter III of the Constitution of India. The petitioners are claiming that decision is bad because it was unilaterally originated by Ministry of Railways. The petitioners have failed to notice that final decision was arrived at a joint meeting of both the Ministries and has been released by Defence. It is apt to notice that the final decision was not only made with the active participation of Ministry of Defence but also issued under the signature of an officer of Ministry of Defence. Thus, contention of the petitioners that decision to disband regiment was bad on the ground that it was initiated by Railways Ministry cannot be countenanced.

19. The petitioners are admitting that no procedure for

disbandment in the 1948 Act has been prescribed. The cost of TA unit was borne by Ministry of Railways, thus, it had every right to initiate process and participate in the process of disbandment. This ministry initiated process and final decision came to be arrived at joint meeting of officials of both the ministries. In the absence of procedure prescribed under the Act, the petitioners cannot claim that procedure as per their suitability or desire should be followed. It is not a tax matter where court can drop demand on the ground that there is no mechanism of assessment or collection though there is levy. In the 1948 Act, there is power to establish and disband a unit. In the absence of prescribed procedure, the petitioners cannot be heard to claim that respondent has not followed procedure. It is a pure executive decision, thus, in the absence of prescribed procedure, it cannot be declared faulty. Record discloses that matter moved from one Ministry to another and ultimately a joint meeting of officers of two Ministries and officers of Directorate General of Territorial Army took place which concluded the issue and decided to disband TA units.

20. The contention of the petitioner that Railway has not made arrangement for uninterrupted supply of communication seems to be nothing more than bald and wild averment. The petitioners have not placed on record any document or incident disclosing that there was interruption in the communication. In any case, it is Ministry of Defence which has to look at its needs and sources. Court neither can determine their needs nor identify or arrange sources to meet those needs. Both the Ministries are claiming that they are competent to meet their needs and handle with adverse situations. The petitioners even have no locus standi

to raise this issue.

21. The respondents as per their requirement constituted 6 units. With the passage of time and having considered prevailing conditions, the respondent found that there is need to disband all the units. It is a pure administrative-cum-policy decision. The court cannot substitute opinion of authorities. The court cannot venture into needs of the respondent organization. It is executive which in view of available sources and need of hour has to take a final call. The respondents are experts of their field and they know better than anyone else about their needs. There is no allegation or evidence disclosing mala fide, arbitrariness or violation of statutory provisions on part of respondents. The petitioners have no fundamental or vested right to claim that regiment should be retained. There is nothing unreasonable or arbitrary which can be called as violative of Article 14 of the Constitution of India. The decision could be violative of Article 14, had it been made applicable to few petitioners whereas it is applicable to entire Regiment rather all the six regiments, thus, petitioners have no right to claim that policy is violative of Article 14 of the Constitution of India.

22. Up till the filing of present petition, there was decision to disband 5 units. As per respondents, they have now decided to disband even 6th leftover unit, however, implementation is pending due to pendency of present petition. As pleaded by both sides, out of 5 disbanded unit, unit of Chandigarh is only operating because of interim order passed by this court. Complete disbandment of four units and decision of respondent to disband 6th unit indicates that no other unit member either has approached court or having approached, has failed to

get interim protection. It would be unfair and oblivious decision if Chandigarh unit is permitted to remain in force.

23. In the light of law enunciated by Supreme Court in *Vivek Narayan Sharma(supra)* and *Tata Cellular(supra)*, scope of judicial review in the impugned administrative-cum-policy decision is very limited. Setting aside of impugned decision would amount to substituting opinion of the authorities which is impermissible as per settled proposition of law. From the pleadings and arguments of both sides, this court finds no violation of procedure, arbitrariness on the part of executive and violation of fundamental rights of the petitioner.

24. In view of afore-stated facts and circumstances, this Court does not find any infirmity in the impugned decision warranting judicial interference. The present petition deserves to be dismissed and accordingly, dismissed.

25. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

10.04.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>