

CONSTITUTIONAL WRIT
PRESENT: The Hon'ble Justice Pranab Kumar Chattopadhyay
And
The Hon'ble Justice Pranab Kumar Deb
Judgment On: 10.02.2010
W.P.C.T. 301 of 2008
Union of India & Others
Versus
Asit Kumar Biswas

Point:

Curtailment of right: On the basis of apprehension whether the legitimate right of the private respondent can be curtailed- Constitution of India-Art 226

Fact: Petitioners are aggrieved by a judgment passed by Administrative Tribunal, whereby the order of repatriation issued to the respondent No. 1 was quashed and the respondent No. 1 was allowed to work in the EDP centre on ex-cadre basis.

Held: On the basis of the apprehension, legitimate right of the respondent No. 1 to work in the ex-cadre capacity under the existing policy and guidelines framed by the authorities cannot be curtailed. Para 13

For the Petitioners : Mr. C. R. Bag
Mr. Dilip Kumar Chatterjee
For the Respondent No. 1 : Mr. Kashi Kanta Moitra
Mr. B. C. Sinha
Mr. C. Sinha
For the Respondent Nos.
2 to 9 : Mr. Asit Banerjee
Mr. Jasojeet Mukherjee

PRANAB KUMAR CHATTOPADHYAY, J.

1. Petitioners herein are aggrieved by and dissatisfied with the judgment and order dated 8th July, 2008 passed by the learned Central Administrative Tribunal, Calcutta Bench in O.A. 864 of 2007 whereby and whereunder the said learned Tribunal quashed the order of repatriation issued to the respondent No. 1 herein and allowed the said respondent No. 1 to work in the EDP centre on ex-cadre basis.
2. From the records we find that the respondent No. 1 herein

worked in the EDP centre from 16th July, 1989 to 20th January, 1996 and thereafter, the said respondent No. 1 joined the EDP centre afresh on 13th May, 2005. It is not in dispute that in terms of the circular dated 27th March, 2007 issued by the Senior EDP Manager of the South-Eastern Railway, respondent No. 1 herein opted for absorption in the same grade of Sr. Console Operator. The senior EDP Manager of the South-Eastern Railway issued the aforesaid circular dated 27th March, 2007 following the instructions of the Railway Board.

3. Even though the respondent No. 1 opted for absorption in the same grade of Sr. Console Operator, the prayer for retention in the I.T. Department was rejected by the Senior EDP Manager of the South-Eastern Railway on the ground that the said respondent No. 1 was not eligible to apply for I.T. cadre since he did not hold excadre post in the EDP centre on 1st April, 2005 and accordingly, the respondent No. 1 was repatriated to the parent cadre of Senior Personnel Inspector, Group I.

4. Mr. Bag, learned Counsel representing the authorities namely, the petitioners herein submitted that the respondent No. 1 herein was not at all eligible to apply for absorption in the I.T. cadre as the said respondent No. 1 did not join in any post of the EDP on regular basis before 1st April, 2005. According to the petitioners, the claim of the respondent No. 1 for retention in the EDP centre even on ex-cadre basis could not be considered since the said respondent No. 1 was not on the roll of the EDP centre on the cut off date i.e. on 1st April, 2005.

5. The Railway authorities issued a circular on 22nd January, 2007 relating to reorganisation of staffing pattern of EDP centres. In the said circular, following instructions have been specifically issued in relation to absorption/deployment of existing staff in new I.T. cadre:

Absorption /deployment of existing staff in new IT cadre:

(a) Selection test for D.E.O.:- the DEOs working in grade Rs. 4500-7000 will be considered for absorption/placement in the post of JE(IT) Grade-II (Rs. 5000 – 8000) through the modified selection procedure based on scrutiny of service records/confidential reports. Those found suitable will be granted proforma benefit of promotion from 1/4/05 and actual payment will be admissible from the date they physically start discharging duties of the higher grade post.

(b) Minimum service condition:- Minimum service for the existing staff for eligibility for absorption in the reorganised cadre has been revised as 5 years. However, staff willing for absorption in reorganised cadre but having less than 5 years service, will be allowed to work in ex-cadre capacity upto 5 years and considered for absorption after completion of 5 years.

6. The respondent No. 1 requested the competent authority to allow him to work in ex-cadre capacity for future absorption in reorganised cadre after completion of five years service as per the instructions mentioned in the aforesaid circular dated 27th January, 2009.

7. Mr. Bag, learned Counsel of the petitioners, however, submitted that the respondent No. 1 herein cannot get the benefit of the aforesaid condition mentioned in the circular dated 22nd January, 2007 since the said respondent No. 1 was not on roll on 1st April, 2005 which, according to Mr. Bag, was the cut off date. Mr. Kashi Kanta Moitra, learned Senior Counsel representing the respondent No. 1 invited our attention to the office order dated 27th March, 2007 issued by the Senior EDP Manager of the South-Eastern Railway wherein the principles of absorption/deployment of existing staff in the new I.T. cadre have been mentioned. Para 5(ii) & (iii) of the aforesaid office order dated 27th March, 2007 are very much relevant for the purpose of deciding the issues raised in this application. The said Para 5(ii) & (iii) are reproduced hereinbelow:

“5.....
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(i).....
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(ii) Option to join the IT Cadre : Staff willing for absorption in the reorganised cadre but having less than 5 years of service would be allowed to work in the ex-cadre capacity up to 5 years and considered for absorption after completion of 5 years.

(iii) Those not exercising the option : Those who do not opt for the new IT Cadre would be repatriated to their cadre in due course. As they vacate the posts, new incumbent would be inducted against the vacant posts through promotion or direct recruitment as applicable based on the scheme contained at para 3 above.”

8. There is no dispute that the respondent No. 1 herein is willing for absorption in the reorganised cadre but having less than five years of service. Therefore, the respondent No. 1 requested the authorities namely, the petitioners herein to allow him to work in the ex-cadre capacity so that he can be considered for absorption after completion of stipulated five years period. Furthermore, the said respondent No. 1 exercised option for absorption in the same grade of Sr. Console Operator and for this purpose he had also qualified himself in the aptitude test.

9. Mr. Moitra, learned Senior Counsel representing the respondent No. 1 submitted that the order of repatriation could be made only in respect of those staff who did not exercise the option in view of the specific condition mentioned in Para 5(iii) of the office order dated 27th March, 2007.

10. Mr. Bag, learned Counsel of the petitioners further submitted that the respondent No. 1 was posted at the EDP centre afresh on 13th May, 2005 on tenure basis and can be repatriated to the parent post on expiry of the tenure period in view of the specific undertaking given by the said respondent No. 1 before joining the said EDP centre.

11. On examination of the undertaking of the respondent No. 1 we find that the said respondent No. 1 herein can be repatriated to the parent post on expiry of the tenure or even before it if the administration finds it to be in public interest. In the present case, however, the authorities concerned did not repatriate the respondent No. 1 in public interest as would appear from the order of repatriation issued by the concerned authority. Furthermore, the Chief Works Manager, Kharagpur Workshop by the written communication dated 18th August, 2007 informed the FA & CAO, South-Eastern Railway that due to repatriation of the experienced technical staff from the EDP centre, a shortage of man power to the extent of around 50% would arise and, therefore, requested to depute support staff from the headquarter to avoid disruption of work and also to carry on the existing work.

12. Mr. Bag repeatedly urged before this court that the claim of the respondent No. 1 cannot be considered in view of the fact that the said respondent No. 1 was not on the roll on the cut off date

i.e. on 1st April, 2005, but no circular was produced before us to the effect that unless anyone is on roll as on 1st April, 2005, cannot be considered to be eligible for absorption in the reorganised cadre or for retention in the ex-cadre capacity for future absorption. The respondent No. 1 herein admittedly, worked for a considerable period of almost 7 years in the EDP centre before 2005 and again was deputed in EDP centre in view of exigency of service on 13th May, 2005 i.e. only a few days after 1st April, 2005.

13. The authorities herein by issuing a circular on 22nd January, 2007 made specific provision for the staff willing for absorption in reorganised cadre to work in ex-cadre capacity upto five years in order to be considered for absorption in future after completion of five years of service. Furthermore, as mentioned earlier in terms of the office order dated 27th March, 2007 [Para 5(ii)], those who did not opt for the new I.T. cadre can be repatriated to their cadre whereas in the present case, the respondent No. 1 being a willing staff opted for absorption in the reorganised cadre and since did not complete the requisite five years of service, has rightly prayed for allowing him to work in the ex-cadre capacity as per the policy of the authority, which The learned Counsel representing the added parties also urged before this court that their future promotional prospect will be affected in the event, the respondent No. 1 is allowed to be absorbed. In our opinion, the aforesaid apprehension is speculative one since the respondent No. 1 herein only requested the authority concerned to allow him to work in the ex-cadre capacity in order to fulfill the eligibility condition for future absorption in the reorganised cadre whereas the private respondents have already been absorbed in the cadre. On the basis of the apprehension, legitimate right of the respondent No. 1 to work in the ex-cadre capacity under the existing policy and guidelines framed by the authorities cannot be curtailed.

14. Having heard the learned Counsel of the respective parties and considering the records available before this court and further considering the impugned judgment and order passed by the learned Tribunal we find that the learned Tribunal considered the issues raised before it in an appropriate manner and rightly upheld the claims of the respondent No. 1 to continue on ex-cadre basis for future absorption as per the specific circular issued by the Railway authorities. We do not find any error and/or

irregularity and/or illegality in the findings of the learned Tribunal.

15. For the aforementioned reasons, we affirm the judgment and order passed by the learned Tribunal and dismiss this petition as we do not find any merit in the same.

There will be, however, no order as to costs.

Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

[PRANAB KUMAR CHATTOPADHYAY, J.]

PRANAB KUMAR DEB, J.

I agree.

[PRANAB KUMAR DEB, J.]