

S.K. RATTAN

v.

UNION OF INDIA & ORS.

(Civil Appeal Nos. 1921-1922 of 2010)

NOVEMBER 28, 2013

[H.L. GOKHALE AND J. CHELAMESWAR, JJ.]

Service Law – Transfer – Of appellant from CBI to NCRB by executive order – Subsequently, appellant came to know that he was not given revised pay scale as received by his batchmate who remained at CBI – Application of appellant for grant of pay scale at par with his CBI batchmate – Dismissed by Tribunal – Order upheld by High Court – On appeal, held: When appellant was transferred from CBI to NCRB, he had no option but to join wherever he is placed – Until appellant retired from service, no separate service rules were framed for officers in NCRB – He continued to be governed by the rules framed for officers of CBI – Tribunal ignored the basic principles that where an employee is transferred to another organization, although he has to join over there, he cannot be made to suffer in his service conditions as well as in continuity of his service without framing rules under Article 309 of the Constitution – It would amount to discrimination for no justifiable reasons – Direction given that pay of appellant be appropriately corrected as sought by him and his pension and other service benefits also be corrected on that basis.

The appellant was a Deputy Superintendent of Police in the Central Bureau of Investigation (CBI). By an executive order, he was transferred to National Crime Records Bureau (NCRB). When the appellant was transferred to NCRB his pay, as it was in the CBI, remained protected. However, subsequently, the appellant found out that he was not given revised pay-

- A scale as received by his batchmate who remained at CBI. Representation made by appellant in this regard before the NCRB was rejected. The appellant eventually retired from service whereafter he preferred an application before the Central Administrative Tribunal which was also rejected. The order was upheld by the High Court, and therefore the instant appeals.

Allowing the appeals, the Court

- HELD: 1.1. Until the appellant retired from his service, no separate service rules were framed for the officers in the NCRB. The appellant continued to be governed by the rules framed for the officers of the CBI. When he was transferred from the CBI to NCRB he had no option but to join wherever he is placed. Having joined over there, there was no occasion for him to protest until 1996-97 when he came to know that his salary was lesser as compared to his colleagues of the same batch in the CBI. It is at that stage that he made a representation and the representation having been rejected, he had no option but to approach the Central Administrative Tribunal. The Central Administrative Tribunal ignored the basic principles that where an employee is transferred to another organization, although he has to join over there, he cannot be made to suffer in his service conditions as well as in continuity of his service without framing rules under Article 309 of the Constitution. It would amount to discrimination for no justifiable reasons. [Para 13] [751-D-G]

- 1.2. As far as the appellant is concerned, inasmuch as a wrong has been done to him, it is required to be corrected. The Central Administrative Tribunal and the High Court have failed in doing so. In the circumstances, it is directed that the pay of appellant will be appropriately corrected as sought by him and his pension and other

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service benefits will also be corrected on that basis. A
[Paras 14, 15] [752-A-B, C]

K. Madhavan and Anr. vs. Union of India and Ors. (1987)
4 SCC 566: 1988 (1) SCR 421; *State of U.P. and Ors. vs.*
Gobardhan Lal (2004) 11 SCC 402: 2004 (3) SCR 337 – B
cited.

Case Law Reference:

1988 (1) SCR 421	cited	Para 10	
2004 (3) SCR 337	cited	Para 10	C

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.
1921-1922 of 2010

From the Judgment and Order dated 21.05.2009 in Writ
Petition (Civil) No. 2080 of 2003 and dated 31.07.2009 in
Review Petition No. 277 of 2009 of the High Court of Delhi at
New Delhi. D

P.P. Rao, Rajesh Rattan, D.S. Chauhan, Akshat
Kulshrestha for the Appellant. E

K. Radhakrishnan, Kiran Bhardwaj, B.K. Prasad (for
Shreekanth N. Terdal) for the Respondents.

The Judgment of the Court was delivered by F

H.L. GOKHALE, J. 1. Leave granted.

2. These appeals by special leave seeks to challenge the
judgment and order dated 21st May, 2009 rendered by a
Division Bench of the Delhi High Court in Writ Petition (Civil) G
No.2080 of 2003 and subsequent order dated 31.7.2009
passed by that Court in Review Petition No.277 of 2009
dismissing both of them. The aforesaid Writ Petition (Civil)
No.2080 of 2003 sought to challenge the judgment and order
rendered by the Central Administrative Tribunal on 1st October, H

- A 2001 in O.A. No.1436 of 2000 by which the Original Application filed by the appellant herein was dismissed.

B 3. The short facts leading to these appeals are this wise. The appellant joined his services as Sub Inspector of Police in the Central Bureau of Investigation ("CBI") in 1964 and was subsequently promoted to the post of Inspector of Police in 1966. He was eventually promoted to the post of Deputy Superintendent of Police in CBI with effect from 18th April, 1984.

C 4. It so transpired that Government of India constituted an Organization, namely, National Crime Records Bureau ("NCRB") by merging four units of Central Police Organizations, including the Data Section of the Co-ordination Division of CBI. Consequent upon this decision, 10 posts of this Data Section, D including one post of Deputy Superintendent of Police, came to be transferred from CBI to NCRB on 11.11.1987 with complete Inter-state Crime Records. The Data Section of CBI was re-named as Crime Records Data Section in the NCRB. The appellant was also transferred in the NCRB in public E interest by Office Order dated 12.4.1988. As the order stated, consequent upon the transfer of the Data Section of the Co-ordination Division of CBI to NCRB, the services of the appellant were placed at the disposal of NCRB on transfer basis and he was therefore relieved of his duties from the CBI F with effect from the afternoon of 12th April, 1988. The appellant was not asked whether he wanted to join this new organization. However, in pursuance of the aforesaid order he joined over there.

G 5. When the appellant was transferred to that organization his pay, as it was in the CBI, remained protected. However, some four years thereafter when the pay of Deputy Superintendent of Police in CBI was reduced, his pay was also reduced from the pay-scale of Rs.2200-4000/- to Rs. 2000- H 3500/- with effect from 13.4.1992. When the pay-scales of

Deputy Superintendent of Police were restored, the pay of the appellant also came to be restored on 10.6.1996 and upgraded from Rs. 2000-3500/- to Rs.2200-4000/- which was equivalent to the post of Deputy Superintendent of Police at the relevant time. Thus far, there was no difficulty. It, however, so transpired that in the year 1996, a batchmate of the appellant one Shri T.N. Kapoor, who remained in the CBI and worked as Superintendent of Police, got further revision of pay-scale of 4100-5300/- with effect from 10.3.1996. Not only that, but a junior of his, namely, Shri Rajendra Prasad working as Superintendent of Police in the CBI was also given this revised pay-scale with effect from 26.3.1996. The appellant was, however, not given this higher pay-scale.

6. The appellant was subsequently promoted on 25.2.1997 to the next post of Joint Assistant Director which is equivalent to the post of Superintendent of Police in the CBI, but he was continued to be given lesser pay in the pay-scale of Rs.3000-4500/-. Therefore, he made a representation on 17.4.1997 and made some further representations in this behalf. He stated in the representation specifically that: "neither I was asked nor I gave my option to remain in the NCRB during my entire service in the NCRB from 10.4.1988 onwards." After putting in 8 years of regular service in the rank of Superintendent of Police in the CBI he was not expecting such a reduction in his pay. The NCRB however rejected his representation after a period of two years by its communication dated 2nd August, 1999. This communication reads as follows:

"1. With reference to his representation dated 11.5.99 regarding grant of pay scale of Rs.4100-5300/- (pre-revised) to him at par with the Supdt. Of Police in CBI, Sh. S.K. Rattan, JAD is informed that his case was taken up with MHA & DOPT. They have not accepted his contentions and ruled that:

'The General principle is that when work is

A transferred along with staff from one Government Office to
 another Government Office, no terms are required to be
 offered to the transferees and they will cease to be the
 employees of the former office / organization. They have
 to look forward for their career prospects in the new
 B organization.'

2. This issues with the approval of Director, NCRB."

7. The appellant eventually retired from service on
 3.2.2000 but preferred to challenge this communication dated
 C 2nd August, 1999 by filing the above referred Original
 Application which, as stated earlier, came to be rejected. So
 also the writ petition and the review petition filed against the
 order of the Central Administrative Tribunal, and hence these
 appeals.

D 8. Mr. P.P. Rao, learned senior counsel appearing for the
 appellant submitted that when an officer, governed by the
 statutory rules, is transferred in public interest to another
 organization along with the post, he continues to be governed
 E by the service rules applicable to him prior to his transfer until
 new service rules are framed and made applicable for that new
 organization under the proviso to Article 309 of the Constitution
 of India. He submitted that a transfer implies continuity of
 service and therefore it also implies same conditions of service
 F with respect to pay, allowances, promotion and seniority. He
 drew our attention to the fact that there are rules framed under
 Article 309 as far as the officers of CBI are concerned and they
 are called Special Police Establishment (Executive Staff)
 Recruitment Rules, 1963. The appellant was governed by those
 G rules. No separate rules were framed by the NCRB until the
 appellant retired from service. It is after his retirement that the
 NCRB framed rules governing service conditions of the officers
 of the NCRB which are known as National Crimes Records
 Bureau (Crime Records, Administration and Training Division)
 H Joint Assistant Director Recruitment Rules, 2000, with effect

from 15.7.2000. These rules prescribed a lower pay to the Joint Assistant Director. However, this was subsequent to the retirement of the appellant i.e. 13.2.2000 and the service or the pay of the appellant could not be said to have been governed by these rules.

9. The submission of Mr. Rao is that the Central Administrative Tribunal as also the High Court have ignored these basic principles. The appellant could not have been placed and given lesser salary when he was transferred to another post and if that was to be justified, it would amount to reducing him in rank and be violative of Article 311 of the Constitution. This is apart from being treated in an unfair manner and, therefore, Article 14 would get attracted since his batchmates and his juniors who remained in the CBI got higher pay-scales. These aspects were ignored by the Central Administrative Tribunal.

10. Mr. Rao drew our attention to the two judgments of this Court, firstly in *K. Madhavan and Anr. Vs. Union of India and Ors.*, (1987) 4 SCC 566, and secondly in *State of U.P. and Ors. Vs. Gobardhan Lal*, (2004) 11 SCC 402. In paragraph 21 of *K. Madhavan* (supra), this Court has observed:

“21. We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been

A transferred. It has been observed by this Court that it is a
 just and wholesome principle commonly applied where
 persons from different sources are drafted to serve in a
 new service that their pre-existing total length of service
 in the parent department should be respected and
 B presented by taking the same into account in determining
 their ranking in the new service cadre."

11. He also drew our attention to the observations of this
 Court in the case of *Gobardhan Lal* (supra), particularly the
 following observations in paragraph 7:

C "Even administrative guidelines for regulating transfers or
 containing transfer policies at best may afford an
 opportunity to the officer or servant concerned to approach
 their higher authorities for redress but cannot have the
 D consequence of depriving or denying the competent
 authority to transfer a particular officer/servant to any place
 in public interest and as is found necessitated by
 exigencies of service as long as the official status is not
 affected adversely and there is no infraction of any career
 E prospects such as seniority, scale of pay and secured
 emoluments."

12. Mr. Radhakrishnan, learned senior counsel appearing
 for the respondents submitted that the appellant did not make
 F any grievance until 1998. He drew our attention to the
 observation of the Central Administrative Tribunal in its judgment
 where the Tribunal has observed that the service conditions of
 the two organizations could not be compared merely because
 the applicant's pay was on par with other officers in the CBI at
 an earlier date. It cannot also assist him in giving the parity in
 G pay-scales, especially after he and his post have been
 transferred by executive order of the President to another
 organization. Mr. Radhakrishnan drew our attention to the reply
 which was filed by the respondents in the Central Administrative
 Tribunal wherein it is stated that the Superintendent of Police
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in CBI and Joint Assistant Directors in NCRB are posts in two different organizations and are completely different from each other in respect of the duties and responsibilities. He submitted that the appellant ceased to be an employee of the CBI with effect from 12.4.1988, and he is governed under different recruitment rules and service conditions. It is further submitted by Mr. Radhakrishnan, learned counsel for the respondents that all administrative orders are issued in the name of the President of India and after the entire Data Section was transferred to NCRB and the appellant having joined over there, he cannot subsequently seek a parity with his colleagues in the CBI.

13. We have noted the submissions of both the learned counsel. It is very difficult to accept the submissions canvassed on behalf of the respondents as also the reasoning given by the Central Administrative Tribunal and the High Court for the simple reason that until the appellant retired from his service, no separate service rules were framed for the officers in the NCRB. The appellant continued to be governed by the rules framed for the officers of the CBI. When he was transferred from the CBI to NCRB he had no option but to join wherever he is placed. Having joined over there, there was no occasion for him to protest until 1996-97 when he came to know that his salary was lesser as compared to his colleagues of the same batch in the CBI. It is at that stage that he made a representation and the representation having been rejected, he had no option but to approach the Central Administrative Tribunal. The Central Administrative Tribunal has ignored the basic principles that where an employee is transferred to another organization, although he has to join over there, he cannot be made to suffer in his service conditions as well as in continuity of his service without framing rules under Article 309 of the Constitution. It would amount to discrimination for no justifiable reasons.

14. We may as well, however, add that the NCRB itself had made a representation before the Fifth Central Pay Commission which was considering the pay revision, that

- A injustice had been done to the officers of the NCRB but that is a separate issue. As far as the appellant is concerned, we look at it as his individual case and inasmuch as a wrong has been done to him, it is required to be corrected. The Central Administrative Tribunal and the High Court have failed in doing
- B so.

15. In the circumstances, we allow these appeals, set aside both the orders of the Central Administrative Tribunal as well as the High Court and allow the Original Application No.1436 of 2000 filed by the appellant. We direct that his pay will be
- C appropriately corrected as sought by him and his pension and other service benefits will also be corrected on that basis. We expect the respondents Central Government to clear the arrears within three months hereafter. There will however not be any
- D order as to costs.

B.B.B.

Appeals allowed.