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Union of India Vs. K. Narasimha

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Court : Delhi

Decided On : Jan-27-2015

Judge : Kailash Gambhir

Appellant : Union of India

Respondent : K. Narasimha

Judgement :

$~36 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of hearing and Order:

27. 01.2015 W.P.(C) 736/2015 UNION OF INDIA Through ..... Petitioner Mr. Anurag Ahluwalia, CGSC with Mr. Satyajit Sarna, Adv. versus K. NARASIMHA Through ..... Respondent Mr. Malaya Kumar Chand, Adv. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MR. JUSTICE I.S.MEHTA

ORDER
KAILASH GAMBHIR, J (ORAL) CM No.1308/2015 Exemption allowed, subject to all just exceptions. Application stands disposed of. W.P.(C) 736/2015 & CM No.1307/2015 1. By this petition filed under Article 227 read with Article 226 of the Constitution of India, the petitioner seeks to challenge the impugned order dated 28.07.2014 passed by the learned Administrative Tribunal, Principal Bench, New Delhi in O.A. No.1913/2014. Mr. Anurag Ahluwalia, learned Standing Counsel appearing for the petitioner has strongly contended that the learned Tribunal has

wrongly placed reliance on an earlier decision of the Tribunal in the case of Shankarsan Dash, which is not applicable to the facts of the present case as in that case, the Tribunal was seized with the issue of transfer of the officers but not with the matters pertaining to disciplinary proceedings or vigilance cases. Counsel further submits that the earlier decision of the CAT dated 11th July, 2014 in the case of J.K. Sharma vs. Union of India & Ors. in O.A. No.4293/2012 wholly attracts the facts of the instant case however it went unnoticed by the CAT while deciding the present O.A. No.1913/2014. Counsel further submits that having not taken into consideration the point of law as decided by the CAT itself in the case of J.K. Sharma case, the decision in the present O.A. has infact become per inquiriam. Counsel also submits that in J.K. Sharma case, the learned Tribunal has taken authoritative view that matters pertaining to vigilance cases/departmental proceedings are to be dealt with at the central level under AIS (D&A) Rules of 1969 read with the minutes of meeting dated October, 1989.

2. Notice. Mr. Sagar Saxena, Advocate accepts notice on behalf of the respondent and states that respondent filed O.A. No.1913/2013 feeling aggrieved by major penalty charge-sheet which was issued against him by the order of the Ministry of Home Affairs dated 07.07.2010. The principal contention raised by the respondent before the Tribunal was that he belonged to AGMUT Cadre and therefore in view of the notifications dated 28.12.1988, 11.01.1989, 03.04.1989 and 25.04.1995, the said charge memo could not sustain as the same has not been issued by the competent authority, in the light of the judgment of the Tribunal in Shankarsan Das vs. Union of India (O.A. No.2602/2012 decided on 13.12.2013). Placing reliance on the decision of the Shankarsan Das case, the learned Tribunal took a view that it has been conclusively held that it is the joint cadre authority and not the home department which is competent to take decisions in respect of service matters including disciplinary proceedings, transfer, etc. of IAS, IPS and IFS of AGMUT Cadre. While taking this view, perhaps the attention of the CAT was not invited to its own decision in the case of J.K. Sharma, which was decided just few days prior to the date of decision in the present matter. In J.K. Sharma case, the Tribunal took a view that even if the Joint Cadre Authority is competent to discharge the functions of State in respect of member of AIS of Joint Cadre, the vigilance cases/departmental proceedings will be governed by AIS(D&A) Rules read with

the resolution passed in October, 1989. The relevant para of the said judgment is reproduced as under:

10. As far as the AGMU (Arunachal Pradesh, Goa, Mizoram and Union Territories) is concerned, the cadre was constituted in exercise of the powers conferred by subsection (1) of Section 3 of All India Services Act, 1951 (61 of 1951) read with sub-rule (1) of rule 3 of Indian Administrative Service (Cadre) Rules, 1954 by the Central Government in consultation with the Government of Arunachal Pradesh, Goa and Mizoram vide notification No.11031/35/88-AIS (II)-1 dated 28.12.1988 (page 80). In terms of notification No.13013/1/89-AIS (1) dated 11.01.1989 (page 81), consequent on the abolition of the Indian Administrative Service cadre of Union Territories and the constitution of the Indian Administrative Service Joint Cadre of Arunachal Pradesh, Goa, Mizoram and Union Territories, the Central Government in exercise of its power conferred under rule 5(1) of Indian Administrative Service (Cadre) Rules, 1954 allocated all the members borne on the erstwhile IAS (UT cadre) to the newly constituted Indian Administrative Service Joint Cadre of Arunachal Pradesh, Goa, Mizoram Union Territories w.e.f. 28.12.1988. Subsequently in terms of the notification F.No.11026/2/94-AIS (II) dated 25.04.1995 (page 82), in exercise of the powers conferred by sub section (1) of Section 3 of All India Services Act, 1951 read with sub-rule (1) of rule 4 of All India Services (Joint Cadre) Rules, 1972, the Central Government constituted a Joint Cadre Authority for Indian Administrative Service, Indian Police Service and Indian Forest Service Joint Cadres of Arunachal Pradesh, Goa, Mizoram Union Territories. The notification read as under:G.S.R In exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951 (61 of 1951), read with sub-rule (1) of rule 4 of the All India Services (Joint Cadre) Rules, 1972, the Central Government in consultation with the Government of States concerned hereby constitutes the Joint Cadre Authority for the India Administrative Service, Indian Police Service and Indian Forest Service Joint Cadres of Arunachal Pradesh-GoaMizoram-Union Territories, as below:1. Secretary, Ministry of Home Affairs (representing Union Territories in respect of the Indian Administrative Service and Indian Police Service).

2. Chief Secretary, Arunachal Pradesh.

3. Chief Secretary, Goa 4. Chief Secretary, Mizoram 5. Chief Secretary, Delhi 6. Inspector General of Forests, Ministry of Environment and Forests (representing Union Territories in respect of the Indian Forest Service) 7. Joint Secretary (Union Territories Division) Ministry of Home Affairs (Convenor in respect of the Indian Administrative Service and Indian Police Service)/Joint Secretary (in charge of Indian Forest Service Cadre Management), Ministry of Environment and Forests Convenor in respect of Indian Forest Service). In view of the said Notification dated 25.04.1995, it does not lie in the mouth of the respondents to say that All India Services (Joint Cadre) Rules, 1972 are not applicable to the AGMU Cadre. Earlier the UT cadre was not Joint Cadre, but when AGMU cadre was created, the same was Joint Cadre and AIS (Joint Cadre) Rules, 1972 would become applicable to it. Had the said rules been not applicable to AGMU cadre, the Notification dated 25.04.1995 could not have been issued.

19. Now we come to the issue as to what relief, if any, can be provided to the applicant. In this regard, we clearly held two things: (1) the transfer order of the applicant had been made at a time when there had been no post of IGP and (2) the argument of the respondent no.1 that it had the authority to create the post has been considered and conclusively rejected. We, therefore, hold that the impugned transfer order has been made by the incompetent body, i.e., Ministry of Home Affairs, as the Joint Cadre Authority is the only competent authority. We accept all the rulings in respect of the fact that transfer is a prerogative of the employer and a necessary condition of service. It is only the employer, who knows the best where to place the officer. However, we further hold that in the instant case, the impugned order of transfer dated 17.9.2012 is ab initio illegal as it has not been made by the competent body. Therefore, the respondents are directed to consider the transfer of the applicant against a vacancy legally provided by the competent body. However, though from the aforementioned it is evidently clear that only Joint Cadre Authority is competent to discharge the functions of the State in respect of a member of AIS of Joint Cadre, but as has been mentioned in AIS (D&A) Rules (ibid), the State Government concerned in relation to a Joint Cadre means the Government of all the States for which the joint cadre is constituted and includes the Government of a State nominated by the Government of all such States to represent them in relation to a particular matter. In terms of the resolution passed

in October, 1989, in the interest of morale of the service officers as well as to maintain uniformity in decision making matters pertaining to vigilance cases/departmental proceedings, it was considered desirable as well as necessary that the matters are dealt with at the Central level. For easy reference, Para (B)(ii) of the resolution is extracted hereinbelow:In the interest of the morale of the service as well as to maintain the uniformity in decision making on matters pertaining to vigilance cases/departmental proceedings, it was considered desirable as well as necessary that such matters are dealt with at Central level though the recommendations of the constituent units are to be given due consideration. It is therefore advisable to leave this matter with MHA (UT Division). In the circumstances, once the Joint Cadre Authority has nominated the Central Government to represent them in relation to disciplinary proceedings, the competence of the Central Government/ Ministry of Home Affairs to initiate disciplinary proceeding against the applicant cannot be questioned. The plea of the applicant that only State of Arunachal Pradesh and not the Central Government was competent to initiate proceedings against him is rejected.

3. Manifestly in Shankarsan Das case, the Court was not dealing with the issue of disciplinary proceedings but was concerned with the transfer of the officers of AGMUT Cadre while in J.K. Sharma case the Court was dealing with disciplinary proceedings.

4. In the light of these facts, we find it appropriate to remand this matter back for fresh consideration so that the learned Central Administrative Tribunal, Principal Bench can take a considered view in the matter after appreciating its own decision in J.K. Sharma case. Parties are directed to appear before the Registrar, Central Administrative Tribunal on 11 th February, 2015. Both the parties will have liberty to urge all the legal pleas before the CAT.

5. W.P.(C) 736/2015 & CM No.1307/2015 stand disposed of in the above terms. KAILASH GAMBHIR (JUDGE) I.S.MEHTA (JUDGE) JANUARY27 2015 km

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