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Court : Supreme Court of India

Decided On : Feb-27-1990

Reported in : AIR1990SC1098; [1990(60)FLR738]; 1990(1)SCALE336; 1990Supp(1)SCC701; [1990]1SCR604

Judge : M.H. Kania and; R.M. Sahai, JJ.

Acts : Constitution of India - Articles 309 and 136; Military Land and Contonment Service Rules, 1951 - Rules 4, 5 and 11; Military Land and Contonment Service (Amdndment) Rules, 1964; Military Land and Contonment Service (Amdndment) Rules, 1976 - Rule 3; Central Civil Services (Temporary) Rules, 1965

Appeal No. : Civil Appeal Nos. 4397-98 of 1989

Appellant : Union of India;s.K. Arora and Others

Respondent : M.P. Singh and Others;m.P. Singh and Others

Advocate for Def. : D.K. Garg, ; R.P. Oberoi and ; D.B. Vohra, Advs.

Advocate for Pet/Ap. : L.M. Singhvi,; N. Wazir and; D. Bhandari, Advs

Prior history : From the Judgment and Order dated 30.11.1988 of the Central Administrative Tribunal at New Delhi in O.A. Nos. 838 of 87 and 1502 of 1987

Judgement :
ORDER

R.M. Sahai, J.

1. Seniority in services is usually irksome. But the nature of dispute amongst officers in Class 'A' of Indian Defence Estates Service, who were promoted from Class 'B' of Military and Cantonment service where they were working as Assistant Military Estates Officers (AMEO) and Assistant Military Estates Officers (Technical) (AMEOT), is slightly, unusually. That is why apart from correctness or otherwise of directions issued by the Tribunal (Central Administrative Tribunal, New Delhi) for re-determining seniority one of the issues debated was if this Court in exercise of its powers under

2. Article 136 of the Constitution of India should interfere with orders of Tribunal if substantial justice has been done between parties. To this may be added, yet, another, namely, if the Union of India should have approached this Court by way of Special Leave Petition not for sake of justice or injustice, legality or illegality of any provision but because it may have to pay few thousands, may be few lakhs more.

3. But, first, manner of appointment of two group of officers and rules by which they were governed from time to time may be noticed as even though initially posts of both AMEO and AMEOT were sanctioned and created by the President in 1962 and they were governed for some time by different set of rules but were brought in common stream in 1976 and were promoted in Class 'A' before fresh rules were enforced in 1983 and 1985, yet entire thrust of attack to justify differential treatment to AMEOT was founded on difference in method of their selection. AMEOS were included in Class II of Military Land and Cantonment Service (Class I and II) Rules, 1951 for the first time in 1964. Relevant amendment by notification issued in 1964 was incorporated in 1951 Rules when it was amended in 1968. Amended Rule 4(v)(c) read as under:

Class II of the Service shall consist of Executive Officers Class II, Assistant Military Estates Officers and such other posts, as may, by order of the Government be declared to H be included in Class II cadre of the Service.

Manner of appointment to this class was provided by Rule 5(b) which is extracted below:

(b) Appointment to Class II Cadre of the Service shall be made in the following manner, namely:-

(1) up to 20% of vacancies in Class II, by promotion from among the serving Class III staff of the Military Lands and Cantonments Service having service and educational qualifications specified in Sub-rules (c) and (e);

(2) upto 20% of vacancies by direct recruitment made by a selection from among serving employees of Cantonment Boards having service and educational qualifications specified in Sub-rules (d) and (e);

(3) the remaining vacancies from among the candidates who qualify at the Examination and are recommended by the Commission but who fail to secure Class I appointment in any of the Central Services.Provided that (i) for a period of five years commencing from the 29th January, 1966, 30 per cent of the permanent vacancies to be filled by direct recruitment in any year shall be reserved for being filled in by the Emergency Commissioned Officers of the Armed Forces of the Union who were commissioned on or after the 1st November, 1962, and who were released at any time thereafter.

In 1981 service known as Military Lands and Cantonment Service (Group A) was constituted. 75% of the substantive vacancies, in this Group 'A', junior scale, were to be filed by direct competition and 25% by promotion from a panel prepared on the basis of selection on merit in ratio 1:1 from amongst Cantonment Executive Officer Group 'B' and Assistant Military Estates Officer Service (Group B) who had not rendered less than 3 years regular service.

4. AMEO (Technical) on the other hand were officers who were released from Engineering Service of Army after 1962. Since there was increase in work load and they were to be absorbed as well they were appointed on recommendation of UPSC (Union Public Service Commission) in 1964 and 1965 against posts which were created from time to time by the Military Land and Cantonments Department

as is clear from various orders issued in 1963, 1967 and 1970 which have been extracted in the order of Tribunal to demonstrate that the Director, Military Lands and Cantonment, Ministry of Defence, issued letters conveying the sanction of the President to the creation of various posts in the Military Lands & Cantonment Service which included Assistant Military Estates Officers (Technical). Although the appointment letter issued to each officer mentioned that the post was temporary yet each was appointed on probation of two years. The word 'Technical' appears to have been added because they were engineers. Otherwise there was neither difference in pay nor in work as the AMEOT were appointed to work as AMEO as well. AMEOT were thus qualified persons holding rank in Army. To say that they were lesser in merit than AMEO, only, because they had not appeared in competitive examination was being uncharitable to them.

5. To misfortune of AMEOT they were neither included in the Class II cadre of 1951 Rules nor any other rule was applied to them. Presumably because of method of recruitment. All the same it was very unsatisfactory that posts of AMEOT were being created and selections made in pursuance of advertisement issued by the UPSC yet they were not being provided any statutory basis. Realising this rules were framed under Article 309 in 1968, but these rules again did not provide for promotions, seniority etc. However, the anomoly was finally removed, when officers appointed prior to 1967 or under 1968 Rules as AMEOT were included in Class II of 1951 Rules by amending Rule 3 in 1976 which read as under:

3. The Service shall be constituted by officers appointed-

(i) in accordance with these rules;

(ii) in accordance with the Military Lands and Cantonments Service (Assistant Military Estates Officers- Technical) Recruitment Rules, 1968; and

(iii) in consultation with the Commission, as Assistant Military Estates Officer (Technical), prior to the 1st January, 1967.

6. Thus from this date officers appointed as AMEOT either under the 1968 Rules or prior to it became members of Military Lands and Cantonment Service (MLC) to whom 1951 Rules applied. On that there is no dispute. But what about 1964 to 1976? Should they be deemed to have served under no rules as claimed by AMEOS and strangely even by Union, or they were governed by Central Civil Services (Temporary) Rules 1965 (CCS Rules). And if so what was its effect on their promotion and seniority. For this one of the appointment letter issued to AMEOT containing terms and conditions is extracted below:-

MEMORANDUM

Subject: Recruitment to the post of Assistant Military Estate Officer (Technical) Military/Lands & Cantonments Service.

On the recommendation of the Union Public Service Commission, the President is pleaded to offer Shri Mahandra Pal Singh, a temporary post of Assistant Military (Estate Officer Technical) in the Military Lands & Cantonment Service Under Ministry of Defence.

XXX XXX XXXThe terms and conditions of appointment are as follows:

(i) The post is temporary. In the event of its becoming permanent his claim for permanent absorption will be considered in accordance with the rules in force.

(ii) He will be on probation for a period of two years from the date of appointment which may be extended at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority will render him liable to discharge from service or reversion to his parent department in case he is holding a permanent posts.

XXX XXX XXX(iv) The appointment may be terminated at any time on one month's notice given by either side, viz., the appointee or the appointing authority, without assigning any reasons, or by reverting the individual to his parent department, in case he is holding a lien. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him of a sum equivalent to the

pay and allowance for the period of notice or the unexpired portion thereof.

(v) He will be subject to conditions of service as applicable to temporary civilian Government servants paid from Defence Services Estimates in accordance with the orders issued by Govt. of India from time to time. He will be subject to Field Service Liability Rule, 1957.

What stands out clearly from it is that they were appointed in Military Lands and Cantonment Service (MLC) under Ministry of Defence. That is clear from the order creating the posts from time to time. Letter dated 27th April, 1963 is extracted below:

To

The Director,

Military Lands & Cantts.

New Delhi.

Subject: Establishment of the New Eastern Command Sanction of Staff.

Sir,

Consequent on the establishment of the New Eastern Command and re-organisation of the existing Eastern Command into Central Command, I am directed to convey the sanction of the President to the creation of the following posts in the Military Lands and Cantts. Services:-

1. Dy. Director, Military Lands & Cannts. 1

2. Asstt. Director, ML & C. 1

3. Military Estates Officer (Bihar & Orissa) 1

4. Asstt. Mily. Estates Officer, (Technical Class II) 2

Therefore it is too late to claim that they were not appointed to Military Land and Cantonment Service under Ministry of Defence. Was their status effected or nature of employment altered because Central Civil Service (Temporary service) 1965 Rules applied to them. These rules applied to 'service under the Government of India in the Ministry of Defence...paid out of the Defence Service Estimates'. Purpose of the rule was not to create a cadre or grade of temporary employees but to provide statutory basis to employees of different departments mentioned in it and accord them a quasi-permanent status if they fulfilled the requirements mentioned in Rule 3. Seniority, promotion etc. were to be governed by the rules under which the temporary employee was appointed. Therefore, seniority of an employee and its determination depended on service in the cadre to which he belonged or to which he was appointed.

7. That the AMEOT were appointed to MLC service cannot be disputed. Nor it can be disputed that they were appointed to posts which were created by the President and its sanction was conveyed by the Director of MLC. The only shortcoming was that there was no declaration that these posts were included in Class II Cadre. That also stood removed in 1976. Since it included every AMEOT whether appointed under 1968 Rules or even prior to it all those AMEOT who were appointed in 1964 or 1965 also become member of service to whom 1951 Rules applied. Automatic consequence of it was that seniority of AMEOT was to be determined under Rule 11 of 1951 Rules on length of regular service in the cadre. That is what the tribunal held. And rightly. Whether service rendered by the respondents between 1964 to 1976 was regular or it could be deemed to be regular as held by the Tribunal is different.

8. Assuming, the Tribunal committed error in applying 1951 Rules to service of AMEOT prior to 1976, does it call for any interference? Is the order not just and fair? Effect of Tribunal's order is that it cured the injustice perpetrated due to absence of exercise of power by the Government under Rule 4(v)(c) of 1951 Rules as it stood amended since 1964. Substantial justice being one of the guidelines for exercise of power by this Court the order is not liable to interference.

9. What is baffling is filing of the SLP by Union Government. Not because of any injustice to AMEO as that has been taken care of by Tribunal by protecting all those who are working but because if it works out seniority of AMEOT from back date it may have to pay substantial amount and creation of superanuary posts may further entail cost. Justice is alert to differences and sensitive to discrimination. It cannot be measured in terms of money. A government of a welfare state has gruelling task of being fair and just and so justice oriented in its approach and outlook. Mere rectification of its mistakes or ommissions by Courts and Tribunals should not prompt parties or it to approach this Court by Special Leave merely for taking a chance or to protect some vested interest except for sake of justice or for laying down law for benefit of Court and its guidance. Neither was in this case.

10. Injustice to respondents is apparent as admittedly these officers were promoted in Class 'A' in 1978 and are working since then uninterruptedly yet when review DPC were held in pursuance of the judgment given by Allahabad High Court and seniority list was published in 1987, they were ignored as they were working as ad-hoc resulting in pushing up AMEOS who were junior to them. AMEOS were granted seniority from the date of appointment in MLC service whereas similar benefit was denied to AMEOT as they were working as ad-hoc. To remove this irritant Tribunal directed that they shall be deemed to be holding regular posts. Officers working since 1964 without any flaw could not be treated as ad-hoc. In any case once review DPCs were held it was incumbent on it to include these persons and if necessary to evaluate their services or get it evaluated by appropriate authority regularise them and then determine seniority. But in ignoring them in 1987 even when they had become member of MLC service was arbitrary and unjustified.

11. Two other objections one about delay and other about nonjoinder raised, again, by Union Govt. may be examined. As regards former suffice it to say that the occasion to approach Tribunal arose when seniority of respondents was disturbed and panels recommended in 1972 and 1979 were redrawn in 1987 and seniority were refixed in Group 'B' with effect from March 1968. Therefore objection of claim being slate or belated cannot be accepted. Nor there is any substance in defect due to non-joinder of parties. Objection stands answered by

the ratio in Col. D.D. Joshi and Ors. v. Union of India and Ors., : (1983)IILLJ14SC ; where it was held that it was not necessary to implead all parties if challenge was to validity of rule. As regards Ranga Reddy and Ors. v. State of Andhra Pradesh., [1987] Suppl. SCC 15 relied on behalf of the appellant in support of the submission that the order passed by the Tribunal was vitiated in the absence of interested parties cannot be accepted as some of those officers who were directly affected or were immediately likely to be effected got themselves impleaded before the Tribunal. Therefore, the defect, if any, stood removed. Moreover the Tribunal protected interests of all these persons who were working at present by directing that they shall not be disturbed. Non-impleadment of these who may be effected in future could not render the petition vulnerable.

12. In the result both the appeals fail and are dismissed. The respondents shall be entitled to costs from Union of India.

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