

Debesh Chandra Das

Vs

Union of India

Civil Appeal No. 2065 (NCM) of 1968

(CJI M. Hidayatullah, G. K. Mitter JJ)

08.04.1969

JUDGMENT

HIDAYATULLAH, C.J. -

1. This is an appeal against the judgment of the High Court of Calcutta dismissing a writ petition filed by the appellant Debesh Chandra Das. This appeal is by certificate against the judgment, dated September 18, 1968.

2. The appellant is a member of the Indian Civil Service. He qualified in 1933 and arrived in India in 1934 and was allotted to Assam. In 1940, he came to the Government of India and became in turn Under Secretary and Deputy Secretary, Home Ministry. In 1947, he went back to Assam where he held the post of Development Commissioner and Chief Secretary. In 1951, he again came to the Government of India as Secretary, Public Service Commission. In 1955, he became Joint Secretary to the Government of India and continued to hold that post till 1961. From 1961 to 1964, he was Managing Director of Central Warehousing Corporation. On July 29, 1964, he was appointed Secretary, Department of Social Security, with effect from July 30, 1964 and until further orders. On March 6, 1965, the Appointments Committee of the Cabinet approved the proposal to continue him as Secretary, Department of Social Security. He continued in that Department, which is now re-named as the Department of Social Welfare. On June 20, 1966, he received a letter from the Cabinet Secretary which was to the following effect :

"My dear Debesh :

For some time, the Government has been examining the question of building up a higher level of administrative efficiency. This is much more important in the context of the recent developments in the country. The future is also likely to be full of problems. In this connection, the Government examined the names of those who are at present occupying top-level administrative posts with a view to ascertaining whether they were fully capable of meeting the new challenges or whether they should make room for younger people. As a result of this examination, it has been decided that you should be asked either to revert to your parent State or to proceed on leave preparatory to retirement or to accept some post lower than that of Secretary of Government. I would be glad if you would please let me know immediately as to what you propose to do so that further action in the matter may be taken.

X X X X X Yours sincerely, (Sd.) DHARMA VIRA.###

He asked for interview with the Cabinet Secretary and the Prime Minister and represented his case but nothing seems to have come of it. On September 7, 1966, he received a second letter from the Cabinet Secretary which said inter alia as follows :

"..... I am now directed to inform you that after considering your oral and written representations in the matter Government has decided that your services may be placed at the disposal of your parent State, namely, Assam. In case, however, you like to proceed on leave preparatory to retirement, will you please let me know ?
....."

3. The appellant treated these orders as reduction in his rank and filed a writ petition in the High Court of Calcutta on September 19, 1966. According to him the order amounted to a reduction in rank since the pay of a Secretary to the Government of India (I.C.S.) is Rs. 4,000/- and the highest pay in Assam (I.C.S.) is Rs. 3,500/-. There being no equal post in the Government of Assam his reversion to the Assam Service meant a reduction not only in his emoluments but also in his rank. He also contended that he held a 5 years' tenure post and the tenure was to end on July 29, 1969, but was wrongly terminated before the expiry of five years. He also alleged that there was a stigma attached to his reversion as was clear from the three alternatives which the letter of the Cabinet Secretary gave him. The highest post in the Government of Assam being equivalent to the Joint Secretary of Government of India, his reversion to the highest post, i.e., Chief Secretary to the Government of Assam, amounted to a reduction in rank. He contended, if this was the case, the procedure under Article 311(2) of the Constitution ought to have been followed and without following that procedure the order was not sustainable.

4. When the Appellant filed the writ petition he was appointed as a Special Secretary on October 15, 1966, but under one of his juniors. It may be mentioned here that the appellant is next only to the Cabinet Secretary in the matter of seniority. He also received a letter from the Government of India, dated October 20, 1966, in which it was said that Government was considering giving him a post equal to that of a Secretary. The writ petition was dismissed by Justice A. N. Ray on May 19, 1967. The following day the appellant was again re-posted to Assam but he filed an appeal and obtained a stay. On March 21, 1968, he was appointed Secretary in the Department of Statistics in the Central Government. The appeal was heard by Justice P. B. Mukharji and Justice A. N. Sen who differed, the former was in favour of dismissing the appeal while the latter was in favour of allowing it. The appeal was then laid before Sankar Prosad Mitra, J., who agreed with Justice Mukharji and the appeal was dismissed on September 18, 1968. On September 20, 1968, the appellant was re-posted to Assam. He, however, filed the present appeal and has proceeded on leave although no orders on leave application seemed to have been passed when we heard the appeal.

5. In this appeal also, it is contended that the reversion of the appellant to the Assam Service amounts to a reduction in rank. This is on the ground that he held a higher post in the Government of India and there is no post equal to it under the Assam Government. The post of the Chief Secretary in the Assam Government is equal to the post of a Joint Secretary in the Government of India and his reversion would therefore indirectly mean a reduction in his rank and also in his emoluments because the highest post in Assam does not carry a salary equal to that of a Secretary in the Government of India. He also contends that under Article 311(2) an enquiry had to be made and he had to be given a chance of explaining his case if the reduction in rank amounted to a penalty. He contends that the members of the Cabinet Secretary speak for themselves and clearly show that he was being offered a lower post even in the Government of India if he was to continue here denoting thereby a desire to reduce him in rank. The letters also speak of his unsatisfactory work and,

therefore, case a stigma on him and therefore his reversion must be treated as a penalty and if the procedure laid down under Article 311(2) is not followed, the order of the Government of India could not be sustained. This, in short, is the case which he had put up before the High Court and has now put up before us.

6. The Government of India contends that he was on deputation and the deputation could be terminated at any time; that his orders of appointment clearly show that the appointments were "until further orders" and that he had no right to continue in the Government of India if his services were not required and that his reversion to his parent State did not amount either to any reduction in rank or a penalty, and, therefore, the order was quite legal.

7. Prior to 1946, the members of the Indian Civil Service were in a Civil Service of the Secretary of State. As a result of a conference between Chief Ministers and the Government of India an All India Administrative Service was constituted in October, 1946. This agreement was entered into under Section 263 of the Government of India Act, 1935. The Indian Administrative Service was common to the Centre and the Provinces. On January 25, 1950, rules were framed under Sections 241(2) and 247 of the Government of India Act, 1935. These rules were known as the Indian Civil Administrative (Cadre) Rules, 1950. Under these rules cadres were constituted. A 'cadre' is defined in Fundamental Rule 9(4) as the strength of a service or a part of a service sanctioned as a separate unit. In these rules 'cadre officer' meant an officer belonging to any of these categories specified in Rule 4 and 'cadre post' meant any duty post included in the Schedule to the Rules. In Rule 4, it was provided that every cadre post shall be filled inter alia by an officer who is a member of the Indian Civil Service. In the Schedule Assam was to have 20 senior posts under the Provincial Government, 6 senior posts under the Central Government and 37 posts for direct recruitment, and junior posts and certain reserves. After 1954 a number of rules were framed and we are concerned in this case with the Indian Administrative Service (Cadre) Rules, 1954, Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955 and Indian Administrative Service (Pay) Rules, 1954. Under the Pay Rules were shown the posts carrying pay above the time-scale pay in the Administrative Service under the State Governments. In Assam there were four such posts. Chief Secretary (Rs. 3,000), Member, Board of Revenue, Commissioners and Development Commissioners (Rs. 2,500-125/2-2,750). These four were the only posts above the time-scale and the highest pay possible was that of a Chief Secretary carrying Rs. 3,000/- per mensem [vide, All India Services Manual (1967) p. 248]. The lower posts in Assam were : Secretaries, Additional Secretaries, Joint Secretaries etc., who were on a time-scale with ceiling of Rs. 2,250/- per mensem [ibid, p. 263]. As against this the posts carrying pay above the time-scale or special pay in addition to pay in the time-scale under the Central Government when held by Indian Administrative service men were Secretaries to the Government of India with a pay of Rs. 3,500/- (Rs. 4,000 for Indian Civil Service men) and so on in a downward position. There was no separate cadre in the Government of India as defined in the Fundamental Rule mentioned above. There were only cadres in the States. Posts beyond the State cadre limit were only to be found in the Government of India. The Indian Administrative Service (Cadre Rules), 1954, provided an elaborate machinery for getting persons to fill the posts in the Government of India. Similarly, the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955, provided for these matters. Rule 3 of the Indian Administrative Service (Cadre) Rules provided as follows :

"3. Constitution of Cadres -

(1) There shall be constituted for each State or group of States an Indian Administrative Service Cadre.

(2) The cadre so constituted for a State or a group of states is hereinafter referred to as a 'State Cadre' or, as the case may be, a 'Joint Cadre'."

Rule 4 next provided :

"Strength of cadres -

(1) The strength and composition of each of the cadres constituted under Rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Governments in this behalf and until such regulations are made, shall be as in force immediately before the commencement of these rules.

(2) The Central Government shall, at the interval of every three years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit :

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time :

Provided further that the State Government concerned may add for a period not exceeding one year and with the approval of the Central Government for a further period not exceeding two years, to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts."

Rule 6 then provided for deputation of cadre officers. It reads as follows :

"6. Deputation of cadre officers -

(1) A cadre officer may, with the concurrence of the State Government or the State Governments concerned and the Central Government, be deputed for service under the Central Government, or another State Government or under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government.

(2) A cadre officer may also be deputed for service under :-

(i) a Municipal Corporation or a Local Body, by the State Government on whose cadre he is borne, or by the Central Government with the concurrence of the State Government on whose cadre he is borne, as the case may be; and

(ii) an international organisation, an autonomous body not controlled by the Government, or a private body, by the Central Government in consultation with the State Government on whose cadre he is borne :

Provided that no cadre officer shall be deputed to any organisation or body of the type referred to in item (ii) of this sub-rule except with his consent."

8. It may be pointed out here that 'permanent post' is defined by the fundamental Rules as a post

carrying a definite rate of pay and sanctioned without limit of time; a 'temporary post' is defined as a post carrying definite rate of pay sanctioned for a limited time and a 'tenure post' means a permanent post which an individual Government servant may not hold for more than a limited period. All cadre posts were to be filled by cadre officers (Rule 8), but temporary appointments of non-cadre officers to cadre posts were possible under certain circumstances (Rule 9).

9. Under the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955, Assam was to have a total of 117 cadre posts. Of these, 55 were under the Government of Assam and 22 senior posts were to be under the Central Government. Nineteen were promotion posts and 58 were to be filled by direct recruitment. There were certain reserved posts for leave reserves, deputation reserves, training reserves and finally there were junior posts. By the agreement which formed an annexure to the Indian Civil Administrative (Cadre) Rules, 1950, Assam was to have 20 senior posts under the Provincial Government and 6 senior posts under the Central Government with some provision for direct recruitment posts, junior posts and reserves. These posts denoted combined service between the Central Government and the Assam Government. The arrangement allowed an officer to go from one post to another whether under the Centre or the State but not to a lower post unless the exigency of the case so demanded. The posts in the Government of India were held in the ordinary course and were not deputation posts. They were not as a part of the deputation reserves.

10. Under Article 312, these services must be considered common to the Union and the State. Under Section 4 of the All India Services Act, 1951, all rules in force immediately before the commencement of the Act and applicable to an All India Service were continued, thus the Indian Civil Administrative (Cadre) Rules, 1950, continued to remain in force.

11. The position that emerges is that the cadres for the Indian Administrative Services are to be found in the States only. There is no cadre in the Government of India. A few of these persons are, however, intended to serve at the Centre. When they do so they enjoy better emoluments and status. They rank higher in the service and even in the Warrant of Precedence of the President. In the States they cannot get the same salary in any post as Secretaries are entitled to in the Centre. The appointments to the Centre are not in any sense a deputation. They mean promotion to a higher post. The only safeguard is that many of the posts at the Centre are tenure posts. Those of Secretaries and equivalent posts are for five years and for lower posts the duration of tenure is four years.

12. Now Das held one of the tenure posts. His tenure ordinarily was five years in the post. He got his Secretaryship on July 30, 1964 and was expected to continue in that post for five years, that is, till 29th July, 1969. The short question in this case is whether his reversion to the Assam State before the expiry of the period of his tenure to a post carrying a smaller salary amounts to reduction in rank and involves a stigma upon him.

13. Reversion to a lower post does not per se amount to a stigma. But we have here evidence that the reversion is accompanied by a stigma. In the first letter issued to him on June 20, 1969 by Mr. Dharma Vira (Cabinet Secretary) it was said that Government was considering whether the persons at top level administrative posts were capable of meeting the new challenges or must make room for younger men. The letter goes on to say that he may choose one of three alternatives : accept a lower post at the Centre, go back to a post carrying lower salary in Assam or take leave preparatory to retirement. The offer of a lower post in Delhi is a clear pointer to the fact of his demotion. It clearly tells him that his reversion is not due to any exigency of service but because he is found wanting. The three alternatives speak volumes. This was not a case of reverting him to Assam at the end of a deputation or tenure. He can be retained in the Central Services provided he accepts a lower post,

and the final alternative that he may retire clearly shows that the Government is bent upon removing him from his present post. In the next letter this fact is recognised because on September 7, 1966, he is offered only two alternatives. The alternative of a lower post is advisedly dropped because it discloses too clearly a stigma. If any doubt remained it is cleared by the affidavit which is now filed. Paragraphs 7 and 10 of the affidavit read as follows :

"7. With reference to the allegations made in Paragraphs 13 to 23 of the said application, I make no admission in respect thereof except what appears from relevant records. I further say that the performance of the petitioner did not come to the standard expected of a Secretary to the Government of India."

"10. The allegations made in Paragraph 26 of the said application are correct. I further say that the said representation was rejected by the Prime Minister in view of the standard of performance of the petitioner."

14. Now it has been ruled again and again in this Court that reduction in rank accompanied by a stigma must follow the procedure of Art. 311(2) of the Constitution. It is manifest that if this was a reduction in rank, it was accompanied by a stigma. We are satisfied that there was a stigma attaching to the reversion and that it was not a pure accident of service.

15. It remains to see whether there was a reduction in rank. There is no definition of reduction in rank in the Constitution. But we get some assistance from Rule 3 of the All India Services (Discipline and Appeal) Rules, which provides :

"3. Penalties. - The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on a member of the Service, namely :-

X X X X X X(ii) reduction in rank including reduction to a lower post or time-scale, or to a lower stage in a time-scale; X X X."##

16. We have shown above that he was holding a tenure post. Nothing turns upon the words of the notification 'until further orders' because all appointments to tenure posts have the same kind of order. By an amendment of Fundamental Rule 9(30) in 1967, a form was prescribed and that form was used in his case. These notifications also do not indicate that this was a deputation which could be terminated at any time. The notifications involving deputation always clearly so state the fact. Many notifications were brought to our notice during the argument which bear out this fact and none to the contrary was shown. Das thus held a tenure post which was to last till July 29, 1969. A few months alone remained and he was not so desperately required in Assam that he could not continue here for the full duration. The fact that it was found necessary to break into his tenure period close to its end must be read in conjunction with the three alternatives and they clearly demonstrate that the intention was to reduce him in rank by sheer pressure of denying him a Secretaryship. No Secretary, we were told, has so far been sent back in this manner and this emphasises the element of penalty. His retention in Government of India on a lower post thus was a reduction in rank.

17. Finally we have to consider whether his reversion to Assam means a reduction in rank. It has been noticed above that no State Service (the highest being Chief Secretary's) carries the emoluments which Das was drawing as a Secretary for years. His reversion would have meant a big drop in his emoluments. Das was prepared to go to Assam provided he got his salary of Rs. 4,000/-

per month but it was stated before us that that was not possible. Das was prepared to serve at the Center in any capacity which brought him the same salary. This too was said to be not possible. This case was adjourned several times to enable Government to consider the proposal but ultimately it was turned down. All that was said was that he could only be kept in a lower post. If this is not reduction in rank we do not see what else it is. To give him a Hobson's choice of choosing between reversion to a post carrying a lower salary or staying here on a lower salaried post, is to indirectly reduce him in rank.

18. Therefore, we are satisfied that Das was being reduced in rank with stigma upon his work without following the procedure laid down in Article 311(2). We say nothing about a genuine case of accident of service in which a person drafted from a State has to go back for any reason not connected with his work or conduct. Cases must obviously arise when a person taken from the State may have to go back for reasons unconnected with his work or conduct. Those cases are different and we are not expressing any opinion about them. But this case is clearly one of reduction in rank with a distinct stigma upon the man. This requires action in accordance with Article 311(2) of the Constitution and since none was taken, the order of reversion cannot be sustained. We quash it and order the retention of Das in a post comparable to the post of a Secretary in emoluments till such time as his present tenure lasts or there is an inquiry against him as contemplated by the Constitution.

19. Before we leave this case we are constrained to say that the attitude in respect of this case was not very happy. Das offered to take leave preparatory to retirement on the 29th July, 1969, if he was retained in Delhi on this or other post. This coincided with his present tenure. But vast as the Delhi Secretariat is, no job was found for him. This confirms us in our view of the matter that he was being sent away not because of exigency of service but definitely because he was not required for reasons connected with his work and conduct.

20. The appeal is thus allowed with costs here and in the High Court.

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