

STATE OF ASSAM

A

.v.

P.C. MISHRA, I.A.S. AND ORS. ETC.

OCTOBER 20, 1995

[J.S. VERMA AND K. VENKATASWAMI, JJ.]

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Public Administration :

State Government—Chief Secretary applying for leave—Chief Minister ordering Additional Chief Secretary to be incharge of Chief Secretary until further orders—Government Notification giving effect to Chief Minister's order after expiry of leave - Confusion as to actual status of two officers resulting in conflict and Government's comments on conduct of one of the officers leading to litigation before Central Administrative Tribunal—Tribunal passing adverse remarks against Chief Secretary—Held, government should have clarified position to avoid conflict which jeopardised proper functioning of State Administration—Adverse remarks expunged—High Officials to exercise power in public interest.

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Respondent No. 2 in Civil Appeal No. 9560/95 was Chief Secretary of the appellant State in November 1990. On 8. 11.1990 he applied for leave and the Chief Minister ordered that respondent No. 1, the Additional Chief Secretary, would be in charge of Chief Secretary until further orders. Though the Chief Secretary on 9.11.1990 had clarified that he would be on casual leave for 9.11.1990 and 10.11.1990, Government Notification dated 11.11.1990 was issued posting respondent No. 1 as Chief Secretary, who claimed to have assumed charge on 12.11.1990. Later, by order dated 28.11.1990 the Government notified the appointment of respondent No. 2 as Chief Secretary.

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Meanwhile, an incident led to the controversy about the exact status of respondent No. 1 on 12.11.1990. On that date a lady officer, in the rank of Joint Secretary, made a complaint to the Chief Secretary, against respondent No. 1. Respondent No. 2 as Chief Secretary sent the said complaint the same day to respondent No. 1 addressing him as Additional Chief Secretary, to clarify the position. The latter treating himself to be the Chief Secretary on 12.11.90 did not give clarification to Respondent No. 2.

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A The Government issued an order on 10.10.1991 conveying its displeasure to respondent No. 1 for his indecorous and uncalled for behaviour with the junior lady officer. The protest made by respondent no. 1 was of no avail and the State Government by its order dated 8.9.1992 confirmed the earlier order dated 10.10.91. Respondent No. 1 challenged the orders before the Central Administrative Tribunal, which quashed both the orders passed by the State Government and made adverse remarks against the Chief Secretary, respondent no. 2. Aggrieved, the State Government filed the appeals by special leave.

C It was agreed by the parties that adverse remarks made against the Chief Secretary, respondent No. 2, in the impugned order of the Tribunal should be quashed. In the circumstances of the case, the State did not press the appeals.

D Disposing of the appeals and modifying the order of the Tribunal, this Court

E HELD : 1.1. The mode of functioning of the State Government which led to rival claims by the respondents of holding the office of Chief Secretary on 12.11.1990, leaves much to be desired. It does appear that the situation resulted from certain ambiguous orders made by the State Government on request of respondent No. 2 on 8.11.1990 to proceed on leave in spite his clarification on 9.11.1990 of going only on two days causal leave. At any rate, some confusion having arisen soon thereafter on 12.11.1990 on the stand taken by the lady joint Secretary, Department of personnel and respondent No. 2 having purported to exercise the authority of Chief Secretary on the same day, it was essential for the State Government to have clarified the position immediately to avoid any escalation of that conflict which in turn jeopardised proper functioning of the State Administration. [520-H, 521-A-B]

G 1.2. It is even more unfortunate that some of the senior most officers of the Indian Administrative Service at the helm of administration in the State did not realise the implications of their actions which resulted from a clash of egos and percolated to the lower levels of administration. [521-C]

H 1.3. It is incumbent for each occupant of every high office to be constantly aware that the power invested in the high office he holds is meant to be exercised in public interest and only for public good, and that

it is not meant to be used for any personal benefit or merely to elevate the personal status of the current holder of that office. Constant awareness of the nature of this power and the purpose for which it is meant would prevent situations leading to clash of egos and the resultant fall out detrimental to public interest. [521-D-E] A

2. All the adverse remarks contained in the order of the Tribunal against respondent No. 2, the then Chief Secretary, are expunged. [521-G] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9560 of 1995 etc.

From the Judgment and Order dated 1.8.94 of the Central Administrative Tribunal, Guwahati Bench, in O.A. No. 211 of 1992. C

Kapil Sibal, S.N. Bhuyan, Ranji Thomas, N. Ganpathy for the Appellant.

P.K. Goswami, Rajiv Mehta, Vanita Sahni and Kailash Vasdev for the Respondent. D

Soli J. Sorabjee, R.K. Maheshwari, Vineet Maheshwari, Raju Ramachandran and Ms. Sandhya Goswami for the Respondent in C.A. No. 9561/95. E

The Judgment of the Court was delivered by

J.S. VERMA, J. Leave granted.

These appeals by special leave are by the State of Assam and arise out of unusual circumstances involving three senior officers of the Government of Assam, namely, the Chief Secretary H.N. Das, Additional Chief Secretary P.C. Mishra and Commissioner (Home) C.K. Das. At the hearing before us Shri Kapil Sibal, learned counsel for the State of Assam submitted that it was agreed by all concerned that the adverse remarks made by the Tribunal in the impugned order against Shri H.N. Das should be expunged and, therefore, the State Government does not press these appeals on merits even though it does not accept the correctness of the Tribunal's order. All the other counsel appearing for the different parties in these appeals supported the submission of Shri Sibal and a common prayer was made to dispose of these appeals in these terms. F
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A Ordinarily, in view of the common stand taken at the hearing of these appeals it may not have been necessary to say anything more. However, in view of the distressing facts and circumstances which have given rise to these appeals, we consider it necessary to state briefly the relevant facts and express our views which we consider expedient with the hope that it prevents such situations in future at any level of the administration, much less at the highest level.

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C Shri P.C. Mishra was posted as the Chairman of the Assam Board of Revenue at the relevant time. By the orders dated 10/10/1991 and 8/9/1992 of the Department of Personnel (A) in the Government of Assam, the displeasure of the Government was conveyed to Shri P.C. Mishra for his conduct. Shri P.C. Mishra filed O.A. No. 211 of 1992 for quashing the said orders and the O.A. has been allowed by the impugned order dated 1/8/1994 quashing the orders dated 10/10/1991 and 8/9/1992 made by the Government of Assam. While making this order, the Tribunal has made certain adverse remarks against Shri H.N. Das, who was then the Chief Secretary of the State. These appeals by special leave are by the State Government against the Tribunal's order.

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E As earlier stated, these appeals are not pressed on merits and, therefore, the State Government's orders conveying displeasure against Shri P.C. Mishra having been quashed, no grievance survives to Shri P.C. Mishra. In the process of quashing the Government orders against Shri P.C. Mishra, the Tribunal has made certain adverse remarks against Sh. H.N. Das which, it is common ground, now should be expunged. On the expunging of the adverse remarks against Shri H.N. Das, the Tribunal's order in favour of Shri P.C. Mishra would survive without the adverse remarks against shri H.N. Das.

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G The material facts giving rise to this unfortunate situation are a few. In November 1990 Shri H.N. Das was the Chief Secretary of the State and Shri P.C. Mishra was the only officer in the rank of Additional Chief Secretary of the State. On 8/11/1990 Shri H.N. Das, Chief Secretary, submitted a note to the Chief Minister, stating that he wished to proceed on leave immediately, for which he sought approval. The entire note (at pages 42-43 of the paperbook) is as follows :

"CHIEF MINISTER.

H I wish to proceed on leave immediately. Formal application will

be submitted separately.

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This may kindly be approved and alternative arrangement ordered.

Sd/-H.N. Das
8/11/1990 C.S.

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Additional Chief Secretary will be incharge of Chief Secretary until further orders.

Sd/-P.K. Mohanta
8/11/1990

C

COMMR. PERSONNEL

Sd/-H.N. Das
9/11/1990

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C.S. has not specified the nature of leave or duration. It would be difficult to issue any orders on the basis of the above. Please explain this to C.S. in person.

Sd/-S.K. Tewari.
9/11/1990

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Commissioner Personnel

I wish to apply for Casual leave for two days on 9/11/1990 and 10/11/1990 and necessary orders may please be issued. C.M. has already agreed.

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Sd/-H.N. Das"
9/11/1990

Thus it was clarified by Shri H.N. Das that his request was only for two days casual leave on 9/11/1990 and 10/11/1990.

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The Chief Minister on the same day made an order directing the Additional Chief Secretary to be in charge of the officer of Chief Secretary until further orders. On 10/11/1990 the Chief Minister made an order addressed to shri P.C. Mishra directing him to take over charge as Chief

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A Secretary until further orders and to issue notifications promoting Shri P.C. Sharma, Shri S. Manoharan, Shri C.K. Das and Shri A.C. Changakati all I.A.S. Officers, to the super-time scales, for which orders in the relevant file had already been sent to the Personnel Department. Government Notification dated 11/11/1990 was issued posting Shri P.C. Mishra as Chief Secretary and he claimed to have taken charge of the office of Chief Secretary at 3 p.m. on 12/11/1990. On 12/11/1990, Smt. Sablok, Joint Secretary, Department of personnel, made a complaint to the Chief Secretary Shri H.N. Das against Shri P.C. Mishra. On the same day Shri H.N. Das as Chief Secretary sent to Shri P.C. Mishra the complaint of Smt. Sablok to clarify the position addressing Shri P.C. Mishra as Additional Chief Secretary. However, Shri P.C. Mishra did not make any comment or give clarification to Shri H.N. Das treating himself to be the Chief Secretary on that day. An order dated 28/11/1990 was then issued by the State Government notifying the appointment of Shri H.N. Das as Chief Secretary.

D On 10/10/1991 the State Government issued an order conveying its displeasure to Shri P.C. Mishra for his indecorous and uncalled for behaviour with the junior lady officer. Shri P.C. Mishra made his protest against the same. However, the State Government by its order dated 8/9/1992 confirmed its earlier order dated 10/10/1991 conveying the State Government's displeasure at the conduct of Shri P.C. Mishra.

F It is this unseemly incident which led to the controversy about the exact status of Shri P.C. Mishra on 12/11/1990 because of his claim to have assumed charge of the office of Chief Secretary on that day and it culminated in the state Government's order conveying its displeasure at the behaviour of Shri P.C. Mishra. The O.A. was then filed in the Tribunal by Shri P.C. Mishra to quash the State Government's orders dated 10/10/1991 and 8/9/1992.

G It is unnecessary, in view of the stand now taken by the State Government in its appeals before us to adjudicate on the exact status of Shri P.C. Mishra on 12/11/1990 and to pronounce on his claim that he was the Chief Secretary on 12/11/1990. However, it does appear to us that the mode of functioning of the State Government which led to rival claims by Shri P.C. Mishra and Shri H.N. Das of holding the office of Chief Secretary on 12/11/1990, leaves much to be desired. It does appear that the

situation resulted from certain ambiguous orders made by the State Government on the request of Shri H.N. Das on 8/11/1990 to proceed on leave in spite his clarification on 9/11/1990 of going only on two days casual leave. At any rate some confusion having arisen soon thereafter on 12/11/1990 on the stand taken by Smt. Sablok, Joint Secretary, Department of Personnel and Shri H.N. Das having purported to exercise the authority of Chief Secretary on the same day, it was essential for the State Government to have clarified the position immediately to avoid any escalation of that conflict which in turn jeopardised proper functioning of the State Administration. Unfortunately, this was not done. Even later the adverse effect of this omission and its contribution to escalation of the controversy, was not realised when the matter proceeded further. It is even more unfortunate that some of the senior most officers of the Indian Administrative Service at the helm of administration in the State, did not realise the implications of their actions which resulted from a clash of egos and percolated to the lower levels of administration.

It is incumbent for each occupant of every high office to be constantly aware that the power invested in the high office he holds is meant to be exercised in public interest and only for public good, and that it is not meant to be used for any personal benefit or merely to elevate the personal status of the current holder of that office. Constant awareness of the nature of this power and the purpose for which it is meant would prevent situations leading to clash of egos and the resultant fall out detrimental to public interest. It appears that this lack of perception in all concerned coupled with the failure of the State Government to issue clear orders, precipitated the situation into the unseemly controversy in the present case which must have adversely affected the State Administration. We do hope this incident serves as a warning for the future. We are constrained to make these observations since they are necessary in the context and there is increase in the frequency of such occurrences every-where.

For the aforesaid reasons, we expunge all the adverse remarks contained in the impugned order of the Tribunal against Shri H.N. Das, the then Chief Secretary. The Tribunal's order would now remain with this modification. The appeals are disposed of accordingly, in these terms.

R.P.

Appeals disposed of.