

COMPROLLER AND AUDITOR GENERAL OF INDIA AND ORS.

v.

FARID SATTAR

APRIL 7, 2000

[V.N. KHARE AND DORAISWAMY RAJU, JJ.]

Service Law :

Fundamental Rules—Rule 22(1)(a)(3)—Applicability of—Fixation of pay—Of Senior Accountant—Voluntarily opting for junior post as condition for unilateral transfer—Fixation of pay in the junior post—Plea, that the pay drawn at the higher post has to be protected even after reversion to the lower post—CAT held, since unilateral transfer not contemplated under Fundamental Rules, the transfer is governed by the Rule, and hence entitled to draw pay at higher post—On appeal, Held, transfer not governed by Fundamental Rule, hence pay drawn at the higher post not required to be protected.

Respondent, while officiating on the post of Senior Accountant, applied for mutual transfer. Since mutual transfer was not permissible in the cadre of Senior Accountant, the respondent was advised to apply for unilateral transfer conditions for which he would have to seek reversion to the lower post of Accountant as a direct recruit, foregoing the status of Senior Accountant. Respondent applied for the unilateral transfer accepting the conditions thereof. After transfer as an Accountant, his pay scale was erroneously fixed as that of Senior Accountant. The pay scale of Senior Accountant was higher than that of Accountant. The pay scale of the respondent was refixed as that of Accountant, vide a Memorandum, after finding the mistake in fixation of his pay.

Respondent challenged the Memorandum refixing his pay, before Central Administrative Tribunal, on the ground that the pay which he was drawing as Senior Accountant has to be protected, even if he was reverted to the post of Accountant. The appellants contended that his pay was not required to be protected because the respondent was bound by the terms and conditions of the unilateral transfer and his pay was to be fixed as direct recruit. Central Administrative Tribunal allowed the application, holding that respondent's case was to be governed by Fundamental Rule 22(1) as having gone on transfer on request, since unilateral transfer is not

A contemplated by Fundamental Rules.

In appeal to this court, it was contended by the appellant that the pay of the respondent was to be fixed as per the terms and conditions of unilateral transfer, and Fundamental Rules were not applicable in this case.

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Allowing the appeal, this Court

HELD : 1. If unilateral transfer is not contemplated under the Fundamental Rule, it is not necessarily to be governed by Fundamental Rules but by the terms and conditions of such unilateral transfer. [1071-C]

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2. The pay of respondent as fixed earlier, was correctly re-fixed. Under the terms and conditions of the transfer, the pay which the respondent was drawing on higher post was not required to be protected when he joined the lower post of Accountant. [1072-B-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13020 of 1996.

From the Judgment and Order dated 20.5.96 of the Central Administrative Tribunal, Calcutta, in O.A. No. 1297 of 1995.

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K.N. Raval, Additional Solicitor General, P.P. Malhotra, Mrs. Niranjana Singh, Hemant Sharma, Anil Katiyar, C.V. Subba Rao, Raj Kumar Gupta, H.V.P. Sharma, A.N. Bardiyar, Arvind Kumar Sharma, D.P. Chaturvedi, S.N. Bhat and Ms. Anubha Jain for the appearing parties.

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The Judgment of the Court was delivered by

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V.N. KHARE, J. Farid Sattar, respondent herein, joined as an Auditor in the Office of the Accountant General (A & E), West Bengal on 16.2.1982. Consequent on the bifurcation of Audit and Accounts, the respondent was transferred to the Office of the Accountant General (A & E), West Bengal on 1.11.1985. The respondent opted for the accounts wing and as such he was retained there and subsequently promoted to the post of Senior Accountant on 4.12.1987. In December, 1990 the respondent while officiating on the post of Senior Accountant applied for mutual transfer with one Shri Paresh Ghosh, Senior Accountant, working in the Office of the Senior Deputy Accountant General (A & E), Sikkim. As mutual transfer was not permissible in the cadre

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of Senior Accountant, the respondent was advised to apply for unilateral transfer after seeking reversion to the lower post of Accountant as a direct recruit. In pursuance of the advice tendered, the respondent applied for unilateral transfer in the cadre of Accountant foregoing the status of a Senior Accountant, in the Office of the Senior Deputy Accountant General (A & E), Sikkim in July, 1992 and he was permitted to take such transfer on certain terms and conditions. The pay scale of Senior Accountant at the relevant time was Rs. 1400-2600, whereas, the pay scale of Accountant was Rs. 1200-2040. The respondent having accepted the terms and conditions of unilateral transfer was posted as an Accountant in the pay scale of Rs. 1200-2040. However, his pay was erroneously fixed at Rs. 1560, which he was drawing in the pay scale of Rs. 1400-2600 prior to his reversion to the lower post. Subsequently, it was found that the fixation of pay of the respondent at the stage of Rs. 1560 was due to some mistake and, therefore, by a Memorandum dated 8.11.1994 the pay of the respondent was directed to be re-fixed and a further direction for recovery of excess payment made to the respondent was also issued. It is at this stage the respondent filed Original Application before the Central Administrative Tribunal, Calcutta, challenging the Memorandum dated 8.11.1994 contending that the pay which he was drawing as Senior Accountant viz.. Rs. 1560 in the pay scale of Rs. 1400-2600 has to be protected even if he was reverted to the lower post of Accountant on transfer and re-fixation of his pay at a lower stage, and recovery of the alleged excess payment of salary is unwarranted. The appellants herein disputed the contentions of the respondent, *inter alia*, on the ground that the respondent was bound by the terms and conditions of the unilateral transfer and as on acceptance of such terms and conditions, the respondent was required to tender technical resignation from the post of Senior Accountant and had to join as a direct recruit on the lower post of Accountant ranking junior most in the cadre of Accountant. It was also contended that on such a transfer the pay of the transferee is not required to be protected and his pay was to be fixed as a direct recruit on the lower post in which post he was reverted. The tribunal took the view that since unilateral transfer is not contemplated by Fundamental Rules (hereinafter referred to as 'F.R') and as such, in a case like the present one the respondent has to be treated as having gone on transfer on request and, therefore, his case was to be governed by F.R.22 (1) (a) (3). In view of the provisions of above Rules, the tribunal quashed the impugned order and allowed the application of the respondent. It is against the said judgment and order of the tribunal the appellants are in appeal before us.

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A Learned counsel for the appellants urged that the tribunal fell in error in applying F.R.22 (1) (a) (3) in the present case. The argument is that the pay of the respondent was required to be fixed in accordance with the terms and conditions which were accepted by the respondent. Learned counsel then referred to the terms and conditions of the unilateral transfer of the respondent.

B Learned counsel for the respondent urged that unilateral transfer not being contemplated in F.R., the transfer of the respondent necessarily has to be governed by F.R. and in the present case it is F.R. 22 (1)(a) (3) which is applicable, and on an application of the said rule, the judgment and order of the tribunal has to be affirmed.

C In order to appreciate the arguments of the learned counsel for the parties, it is necessary to refer F.R. 22 (1) (a) (2) (3) and the relevant portions are extracted below:

D “FR 22 (1) (a) (2) : When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in response of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:

E FR 22 (1) (a) (3) : When appointment to the new post is made on his own request under sub-rule (a) of Rule 15 of the said rules, and the maximum pay in the time-scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial Pay- ”

F The relevant terms and conditions of unilateral transfer, as accepted by the respondent, are extracted below:

“The transfer will be not in public interest and as such he will not be entitled to any joining time, joining time pay or T.A.

G He will be assigned junior to the junior most Accountant on the date he reports for duty in this office for all intents and purposes.

He shall have to submit his technical resignation from the post of Senior Accountant in the Office of the A.G.(A & E), West Bengal, Calcutta, in order to join Accountant’s post in the Office of the Senior Dy. Accountant General (A & E), Sikkim, Gangtok.

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He shall have no right to seek re-transfer to his parent office or to any other office.

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On unilateral transfer he is required to pass whatever departmental examination as prescribed by the relevant recruitment rules.

His pay shall be regulated in accordance with the relevant rules in force in his U.T. as Accountant”

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It is no doubt true that unilateral transfer which is said to be coined by the appellants is not contemplated under the Fundamental Rules. What is contemplated is the transfer on written request under Fundamental Rule 15. But if such a transfer is not contemplated under the Fundamental Rule, it is not necessarily to be governed by the Fundamental Rule, but by the terms and conditions of such unilateral transfer. Fundamental Rule 22 (1) (a) (2) provides that, when an employee is transferred to a new post, which does not involve assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis. Thus F.R. 22(1)(a)(2) would be applicable where there is an ordinary transfer which is not by way of reversion to the lower post and in such a case, the pay of an employee on transfer to a new post has to be protected. Fundamental Rule 22(1)(a)(3) is applicable where an employee is transferred to a new post on his own request under sub-rule (a) of Rule 15, and further in such a transfer no reversion is involved. In such a transfer to a new post if the maximum pay in the time-scale of the transferred post is lower than his pay in respect of the old post held regularly, he is required to draw that maximum as his initial pay. For illustration - an employee working in a pay scale of Rs. 1400-2600 was drawing pay at the stage of Rs. 2040 and he is transferred on his own request not involving reversion to a post which carries pay scale of Rs. 1200-2040, in such a case, the maximum pay which he was drawing viz.. Rs. 2040 has to be protected on the transferred post which carries a pay scale of Rs. 1200-2040. It is not the case here. Here, what we find is that the respondent on his own volition sought transfer on certain terms and conditions accepted by him. The terms and conditions of unilateral transfer are very clear and there is no ambiguity in it. The terms and conditions provided that the respondent on transfer would be appointed to a post which is lower to the post which he was occupying prior to his transfer and he was also required to tender technical resignation from the post which he was holding with a view to join the lower post as a direct recruit and was to rank junior to junior most employee in the cadre of

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A Accountant. He was further required to forego any benefit of passing any departmental examination while working in the higher post. In such a situation, the pay of the respondent had to be fixed with reference to the lower pay scale and not with reference to the pay drawn by him in the higher post since he was to be considered as a direct recruit in the lower post.

B Under the terms and conditions of the transfer, the pay which the respondent was drawing on higher post was not required to be protected when he joined the lower post of Accountant.

C For the foregoing reasons, we are of the view that the pay of the respondent, as fixed earlier, was correctly re-fixed by Memorandum dated 8.11. 1994. We, therefore, find that the judgment and order of the tribunal is not sustainable in law and the same deserves to be set aside. We order accordingly. The appeal is allowed. There shall be no order as to costs.

K.K.T.

Appeal allowed.