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UNION OF INDIA

v.

SURESH KUMAR NAYAK
(Civil Appeal No. 231 of 2005)

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NOVEMBER 25, 2010

[DALVEER BHANDARI AND H.L. GOKHALE, JJ.]

Service law:

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Cadre – Trifurcated cadres – Four units of Directorate General of Security comprising of joint cadres – Administrative control of two units of Directorate General of Security transferred from Cabinet Secretariat to Ministry of Home Affairs – Trifurcation of Directorate General of Security into three units – Apportionment of staff on “as is where is” basis – Challenged by respondent-employee on the ground that he was denied the right to seek allocation to unit of his choice – Held: Challenge not tenable – There was no infringement of any fundamental right or any other right of the respondent – The entire two units were shifted to the Ministry of Home Affairs and, therefore no individual option was given – Constitution of India, 1950 – Articles 14, 16.

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Merger of dissimilar cadres – Factors to be taken into consideration in determining the equation of posts – Re-iterated.

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Promotion – Right to be considered for promotion is a term of service, but mere chances are not – Reduction in chances of promotion does not tantamount to a change in the condition of service.

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The Special Service Bureau, the Aviation Research Centre, the Special Frontier Force and the Chief Inspectorate of Armaments (CIOA) were the four units of the Directorate General of Security under the Cabinet

Secretariat. These four units had a common and combined Directorate General of Security (Secretarial) Service comprising of four cadres, namely Secretarial, Ministerial, Accounts and Stenographers Cadres with inter-se seniority and inter unit transfer liability.

The Union of India took a policy decision on 15.1.2001 to transfer the administrative control of the Special Service Bureau and the Chief Inspectors of Armaments from the Cabinet Secretariat to the Ministry of Home Affairs and merged the ministerial staff of the Chief Inspectorate of Armaments with that of Special Service Bureau. As a consequence of transfer of Special Service Bureau and the Chief Inspectorate of Armaments, on 23.8.2001, two units of the Cabinet Secretariat were transferred to the Ministry of Home Affairs. Thereafter, the Office of Directorate General of Security (Secretarial) Service was trifurcated into Special Service Bureau (including Chief Inspectorate of Armaments) (Secretarial) Service; Aviation Research Centre (Secretarial) Service; and Special Frontier Force (Secretarial) Service. The Secretarial/Ministerial Staff of the Directorate General of Security (Secretarial) Service was apportioned on "as is where is" basis.

The respondent who was working in Special Service Bureau filed an original application before the Central Administrative Tribunal challenging the validity of the trifurcation orders of the Directorate General of Security (Secretarial) Service on the ground that no opportunity was provided to the staff of erstwhile Directorate General of Security (Secretarial) Service to exercise option for choosing an organization out of the three organizations which violated his fundamental right under Articles 14 and 16 of the Constitution. The Tribunal allowed the OA. The Union of India filed a writ petition before the High

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A Court. The High Court dismissed the writ petition holding that an opportunity to exercise the option had to be granted to the respondent.

B The questions which arose for consideration in the instant appeal were whether the High Court was justified in setting aside the policy decision of the Government of India of trifurcation of the Directorate General of Security (Secretarial) Service into three organisations on the principle of "as is where is" basis only on the ground that the said decision did not provide opportunity to the staff of erstwhile Directorate General of Security (Secretarial) Service to exercise option for choosing an organisation of their choice; and whether the High Court was right in relying upon the circular issued by the Ministry of Personnel, Public Grievances and Pension, in May, 1994 at the time of bifurcation of Ministry of Communication, which provided for an opportunity to the staff concerned to exercise option for choice between the bifurcated cadres.

E Allowing the appeal, the Court

F HELD: 1. The High Court was not justified in relying on the Circular issued by the Ministry of Personnel and Public Grievances and Pension on 18.5.1994 in which the resultant units (after bifurcation) still remained part and parcel of the parent Ministry. In the instant case, the entire two units were shifted from the Cabinet Secretariat to the Ministry of Home Affairs and it was, therefore, decided not to give individual option. The Central Administrative Tribunal erroneously held that the respondent's fundamental rights were infringed. The High Court was not justified in affirming the judgment of the Tribunal because there was no infringement of any fundamental right or any other right of the respondent. [Paras 19, 20] [669-C-E]

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2. In **Pipal case* and in ***Chandrakant case*, this Court had laid down that when different cadres are merged, certain principles have to be kept in mind which are (1) where there were regularly constituted similar cadres in the different integrating units, the cadres will ordinarily be integrated on that basis but (2) where there were no such similar cadres, the following factors will be taken into consideration in determining the equation of posts:- (a) Nature and duties of a post; (b) Powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged; (c) The minimum qualifications, if any, prescribed for recruitment to the post and; (d) the salary of the post. [Para 25] [671-B-F]

S.P. Shivprasad Pipal vs. Union of India and Ors. (1998) 4 SCC 598*; *State of Maharashtra and Anr. vs. Chandrakant Anant Kulkarni and Ors. (1981) 4 SCC 130* – relied on.

3. The claim of respondent that his chances of promotion were reduced by transferring his unit to the Ministry of Home Affairs is set aside. Although a right to be considered for promotion is a term of service, but mere chances of promotion are not. Reduction in chances of promotion does not tantamount to a change in the condition of service. In the instant case, even according to the appellant, the chances of promotion have in fact been increased. The respondent was not able to make out that his case fell in any of the four criteria laid down in **Pipal case*. The judgments of the Tribunal and the High Court are set aside. [Paras 21, 26-29] [669-E; 671-G-H; 672-A-B]

Case Law Reference:

- (1998) 4 SCC 598 relied on Para 23, 25
- (1981) 4 SCC 130 relied on Para 25, 26

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 231 of 2005.

From the Judgment & Order dated 6.11.2003 of the High Court of Delhi at New Delhi in W.P. No. 3000 of 2003.

B Binu Tamta, Sadhana Sandhu, Samridhi Sinha and S.N. Terdal (for Sushma Suri) for the Appellant.

K.L. Bhandula and Ashwani Bhardwaj for the Respondent.

C The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. This appeal is directed against the judgment and order dated 6.11.2003 passed by the High Court of Delhi in Civil Writ No.3000 of 2003. Brief facts which are necessary to dispose of this appeal are recapitulated as under:

2. The Directorate General of Security (for short 'DGS') under Cabinet Secretariat had four units.

E	(1)	(2)	(3)	(4)
F	Special Service Bureau (SSB)	Aviation Research Centre (ARC)	Special Frontier Force (SFF)	Chief Inspectorate of Armament (CIOA)

These four units had a common and combined DGS (Secretarial) Service with inter-se seniority and the inter unit transfer liability having 4 cadres:

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- (1) Secretarial
 - (2) Ministerial
 - (3) Accounts
 - (4) Stenographers

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3. The respondent was directly recruited as Assistant in the year 1995 in the Special Service Bureau. In 1996, he requested for his transfer to another unit Aviation Research Centre but he could not be transferred for administrative reasons.

4. It may be pertinent to mention here that the Union of India took a policy decision in January, 2001, to transfer the administrative control of the Special Service Bureau and the Chief Inspectors of Armaments from the Cabinet Secretariat to the Ministry of Home Affairs vide Cabinet Secretariat Order No.1/2/2001-EA-1 dated 15.1.2001 and merged the ministerial staff of the Chief Inspectorate of Armaments with that of Special Service Bureau. As a consequence of transfer of Special Service Bureau and the Chief Inspectorate of Armaments, two units of the Cabinet Secretariat were transferred to the Ministry of Home Affairs, vide Cabinet Secretariat Order NO.1/2/201-EA-1-3483-A, dated 23.08.2001.

5. The office of Directorate General of Security (Secretarial) Service was trifurcated into:

- (i) Special Service Bureau (including Chief Inspectorate of Armaments) (Secretarial) Service;
- (ii) Aviation Research Centre (Secretarial) Service; and
- (iii) Special Frontier Force (Secretarial) Service.

6. The Secretarial/Ministerial Staff of the Directorate General of Security (Secretarial) Service was apportioned on "AS IS WHERE IS" basis with the approval of the Directorate General of Security (Secretarial), Home Secretary and the Cabinet Secretary and the incumbents of the appointed posts were made to continue in their respective units on "AS IS WHERE IS" basis at the time of trifurcation on 23.1.2001.

7. The respondent challenged the validity of the Cabinet

A Secretariat Order dated 23.8.2001 and the Special Service Bureau Directorate's order dated 21.12.2001 containing the trifurcation orders of the Directorate General of Security (Secretarial) Service before the Central Administrative Tribunal, Principal Bench, New Delhi.

B 8. The order was assailed on the ground that the said orders did not provide opportunity to the staff of the erstwhile Directorate General of Security (Secretarial) Service to exercise option for choosing an organisation of their choice out of the three organisations.

C 9. According to the respondent, allocating staff to other units in the cadre on the basis of "AS IS WHERE IS" is arbitrary and violative of Article 14 and 16 of the Constitution. The respondent prayed that the aforesaid orders dated 23.08.2001 and 21.12.2001 be quashed.

D 10. The respondent also prayed that the appellant Union of India be directed to provide an opportunity to the incumbents of the erstwhile Directorate General of Security (Secretarial) Service to opt any of these trifurcated services in a fair and just manner.

E 11. The Central Administrative Tribunal ("Tribunal", for short) by its order dated 13.11.2002 allowed the original application filed by the respondent and held that the order dated 9.9.1993 by which the joint cadre has been done away with is clearly violative of the rights of the respondent under Article 16 of the Constitution.

F 12. The Tribunal also observed that once a joint cadre is created under the orders of a competent authority, it can only be dismembered if the fundamental rights of the public servants are not infringed. The Tribunal further observed as under:

G "In this case we find that earlier these were four units which were trifurcated in three units. One unit is under the Ministry

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of Home Affairs and the other two remain under the Ministry of Communication. This fact does not affect the right of the applicant to seek allocation to a particular unit. The infringement of the fundamental right of the applicant would definitely affect this service conditions. Thus, we find that the impugned order cannot be sustained. While allocating the cadres we hope the direction of DOPT as followed in the case of Ministry of Communication, will be taken into consideration. The OA is allowed in the aforesaid terms. No costs." A B

13. The appellant Union of India aggrieved by the order dated 13.11.2002 passed by the Tribunal, filed a writ petition before the Division Bench of the Delhi High Court. The Division Bench relied on the Circular dated 18.5.1994 issued by the Ministry of Personnel, Public Grievances and Pension when the two separate cadres in the Ministry of Communications were created and came to the conclusion that an opportunity to exercise the option had to be granted to the respondent. The writ petition filed by the Union of India was dismissed by the High Court by the impugned judgment. C D

14. The appellant aggrieved by the impugned judgments of the Tribunal and Delhi High Court has preferred this appeal on the following questions of law: E

(a) Whether the High Court is justified in setting aside the policy decision of the Government of India of trifurcation of the Directorate General of Security (Secretarial) Service into three organisations on the principle of "AS IS WHERE IS" basis only on the ground that the said decision did not provide opportunity to the staff of erstwhile Directorate General of Security (Secretarial) Service to exercise option for choosing an organisation of their choice? F G

(b) Whether the High Court is right in relying upon the circular issued by the Ministry of Personnel, Public H

A Grievances and Pension, in May, 1994 at the time of bifurcation of Ministry of Communication, which provided for an opportunity to the staff concerned to exercise option for choice between the bifurcated cadres?

B 15. The appellant submitted that the circular of 1994 related to bifurcation of the Ministry of Communication and in that case the resultant units still remained part and parcel of the parent Ministry i.e. Ministry of Communication even after the bifurcation. While the organisation of the Directorate General of Security (Secretarial) Service trifurcated into three different and independent departments under the Ministry of Home Affairs under the Cabinet Secretariat.

D 16. It was also submitted that the object of bifurcation in the case of former is the classification of the two cadres on the basis of different functions to be performed by them for better command and control, whereas in the present transfer case, the trifurcation was related as a consequence of transfer of administrative control of the Special Service Bureau to the Ministry of Home Affairs from Cabinet Secretariat, in the interest of national security i.e. to guard international border all along Indo Nepal border.

F 17. Special Service Bureau, Aviation Research Centre, Special Frontier Force and the Chief Inspectorate of Armaments (CIOA) were four units of the Directorate General of Security under the Cabinet Secretariat. These four units had a common and combined Directorate General of Security (Secretarial) Service comprising of four cadres, namely Secretarial, Ministerial, Accounts and Stenographers Cadres with inter-se seniority and inter unit transfer liability as notified under the Recruitment Rules vide Cabinet Secretariat Notification No.EA/SE-115/70 dated 04.11.1975.

H 18. According to the appellant, the policy decision of the Government of India taken at the highest level in the interest of national security ought not to have been interfered with by which

two units, namely, Special Service Bureau and Chief Inspectorate of Armaments were transferred from the Cabinet Secretariat to the Ministry of Home Affairs. On transfer, the entire staff of the Special Service Bureau enblock was also transferred to the Ministry of Home Affairs. When the entire unit was transferred, there was no question of giving an option to the respondent and similarly placed other employees.

19. In the impugned judgment, the High Court was not justified in relying on the Circular issued by the Ministry of Personnel and Public Grievances and Pension on 18.5.1994. In the instant case, the entire two units were shifted from the Cabinet Secretariat to the Ministry of Home Affairs. It was decided not to give individual option.

20. The Central Administrative Tribunal erroneously held that the respondent's fundamental rights were infringed and accordingly it quashed the order dated 9.9.1993. In the impugned judgment the High Court was not justified in affirming the judgment of the Central Administrative Tribunal because, in our considered view, there has been no infringement of any fundamental right or any other right of the respondent.

21. The respondent has claimed that his chances of promotion have been reduced by transferring his unit to the Ministry of Home Affairs. According to the appellant, even this is not factually correct. The appellant filed an additional affidavit before the High Court in which it was mentioned that as per the combined common seniority of Assistants in the Directorate General of Secretarial Service, as it stood on 23.8.2001 i.e. before trifurcation, respondent Suresh Kumar Nayak was placed at Serial No.116 out of 176 Assistants shown in the seniority list, excluding the Assistants on deputation. After trifurcation of the Directorate General of Secretarial Service in 2001, taking his continuation in the Special Service Bureau as Assistant, his placing in the seniority list of the said unit is at Serial No.65 out of 112 Assistants. Similarly, he was allotted/ transferred to Aviation Research Centre on trifurcation of

- A Directorate General of Secretarial Service and is borne on Aviation Research Centre's strength and his placing in the the seniority list would be at Srl. No.28, out of 46 posts of Assistants allotted to the Aviation Research Centre. Suresh Kumar Nayak, Assistant was not interested to be transferred/ allocated to
B Special Frontier Force on trifurcation.

22. According to the learned counsel for the appellant, if the chances of promotion are affected, even then it would not be a case where the Court would be justified in allowing the original application on the ground of infringement of the
C respondent's fundamental rights under Articles 14 and 16 of the Constitution.

23. Learned counsel for appellant placed reliance on a judgment of this Court in *S.P. Shivprasad Pipal vs. Union of India and Ors.*, (1998) 4 SCC 598. In this case, by notification dated 3.2.1987, the Central Labour Service was created by
D merging the following three cadres:

(a) Central Industrial Relations Machinery consisting of Assistant Labour Commissioner (Central), Regional Labour Commissioner (Central), Deputy Chief Labour Commissioner (Central, Joint Chief Labour Commissioner (Central) and Chief Labour Commissioner (Central).
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(b) Labour officers (Central pool) consisting of Labour Officers and senior labour Officers.
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(c) Labour Welfare Commissioners' cadre consisting of Assistant Welfare Commissioner and Welfare Commissioner.

G 24. This Court observed as under:

"A decision to merge such cadres is essentially a matter of policy. Since the three cadres carried the same pay scale at the relevant time, merging of the three cadres
H cannot be said to have caused any prejudice to the

members of any of the cadres. The total number of posts were also increased proportionately when the merger took place so that the percentage of posts available on promotion was not in any manner adversely affected by the merger of the cadres." A

25. This Court laid down that when different cadres are merged, certain principles have to be borne in mind. These principles were enunciated in the case of *State of Maharashtra and Anr. vs. Chandrakant Anant Kulkarni and Ors.*, (1981) 4 SCC 130 and have been approved subsequently in the case of *S.P. Shivprasad Pipal* (supra) and they are reproduced as under: B C

(1) where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis but D

(2) where there were no such similar cadres, the following factors will be taken into consideration in determining the equation of posts:-

(a) Nature and duties of a post; E

(b) Powers exercised by the officers holding a post the extent of territorial or other charge held or responsibilities discharged;

(c) The minimum qualifications, if any, prescribed for recruitment to the post and; F

(d) the salary of the post.

26. In the *Chandrakant Anant Kulkarni* (supra) this Court has laid down the principle that mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not. H

A 27. In the instant case, even according to the appellant, the chances of promotion have in fact been increased.

B 28. Mr. K.L. Bhandula, learned counsel appearing for the respondent has not been able to make out that his case falls in any of the four criteria which have been laid down in the case of Shivprasad Pipal (supra).

C 29. In this view of the matter, we are constrained to set aside the impugned judgment dated 13.11.2002 of the Tribunal as well as the judgment dated 6.11.2003 passed by the High Court of Delhi in Civil Writ Petition No.3000/2003.

D 30. Consequently, this appeal is allowed. The original application filed by the respondent stands dismissed. In the facts and circumstances of the case, we direct the parties to bear their own costs.

D.G.

Appeal allowed.