

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

04.

O.A. No. 191 of 2011

Hav Pratap Chandra Sahu

.....Petitioner

Versus

Union of India & Anr.

.....Respondents

With O.A. Nos. 192, 193, 194, 196, 197, 198, 199, 200, 391, 392, 393, 394,
395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406,
407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418,
419, 420, 421, 448, 449, 450, 451, 452 and 453 OF 2011

For petitioner: Mr. K. Ramesh, Advocate.

For respondents: Mr. R. Balasubramanian, ASG.

Mr. V.S. Tomar, Advocate. (OA Nos. 191, 406, 448,
/2011)

Ms. Sangeeta Tomar, Advocate. (OA Nos. 192, 400,
419/2011)

Mr. Satya Saharawat, proxy for Mr. Ankur Chhibber,
Advocate (OA Nos. 193, 194, 391, 404 414, 452/2011)

Mr. Rohit Pratap, proxy for Mr. Mohan Kumar, Advocate.
(OA Nos. 196, 394, 412 /2011)

Ms. Jagrati Singh, Advocate. (OA Nos. 197, 399, 420,
392, 416/2011)

Mr. Anil Gautam & Mr. S.K. Sethi, Advocates. (OA Nos.
198, 199, 411, 413, 415, 393, 408 /2011)

Mr. J.S. Yadav, Advocate. (OA No. 200, 395, 417/2011)

Mr. Ajai Bhalla, Advocate. (OA No. 396/2011)

Dr. S.P. Sharma proxy counsel for Mr. Ashwani
Bhardwaj, Advocate. (OA No. 397/2011)

Mr. Akash Pratap, Advocate. (OA No. 401 of 2011)

Dr. S.P. Sharma, Advocate. (OA No. 398, 418/2011)

Ms. Shilpa Singh, Advocate. (OA No. 402/2011)

Maj Alifa Akbar (OA No. 403, 450/2011)

Maj. Alifa Akbar, (OA Nos. 405, 421/2011)

Mr. Vishwendra Verma, Advocate. (OA Nos. 407, 409, 449/2011)

Ms. Deepakashi Jain, Advocate. (OA No. 410/2011)

Ms. Sandhya Kohli, proxy for Ms. Veronica Mohan, Advocate (OA No. 451/2011)

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

19.03.2012

1. These petitions involve common question of law, therefore, these are disposed of by the common order. For convenient disposal of all these petitions, facts given in the case of Hav. Pratap Chandra Sahu (OA No. 191/2011) are taken into consideration.

2. Petitioner vide this petition has prayed that directions be issued to the respondents to quash and set aside IHQ (Army) AG's Branch Policy Letter dated 05 Jan 2009, read with IHQ (Army) E in C Branch Letter dated 15 March 2011, only qua the MES Militarised Cadre personnel is concerned and that status quo be maintained for continuity in MES (Military Engineering Service) as hitherto-fore OR issue directions to the respondents to promote all these 250 MES Militarised Cadre personnel exactly as on the date their immediate junior was promoted in their Engineer Group ante dated seniority unaffected by this en masse reversion back to their respective Engineer Group.

3. Petitioner was enrolled on 28 June 1995 in the Corp of Engineers. Thereafter he was transferred to MES on 25 March 2002 in the rank of Naik with seniority of 01 March 2000. He got promoted to the post of Hav on 01 March 2010 while serving in MES. Thereafter on 05.01.2009 the aforesaid policy laid down to repatriate all the personnel to go back to their respective Engineering Group. This has given rise to these petitions.

4. The policy dated 05.01.2009 deals with rationalisation of trades in respect of Personnel Below Officer Rank (PBOR). There are 194 trades in the Army. In order to rationalise the trade structure keeping in view similarity in job content and duplication a 'trade rationalisation study' was conducted to reduce the number of trades by way of regrouping/merger/deletion. The details of trades merged/deleted/re-designated are given at Appendix A and B. As a result of re-grouping, merger and deletion, certain action was sought to be initiated and the first step in that direction was to re-muster maximum persons of such trades to other suitable trades and, the cases requiring sanction of the Adjutant General in terms of Army Order 4/2008/MP, will be forwarded by Line Directorates in a consolidated manner to this Branch, duly recommended by Head of Arm/Service. Where the same is not feasible, such persons will be retained in these trades till they superannuate. Inter-fixing of seniority between merged trades in the same Army/Service, will be done by taking the date of by taking the date of seniority as date of enrolment in respect of Sepoys. In respect of individuals who have received one or more promotion i.e. Naik upwards, the date of seniority will be taken as the date of promotion to the last substantive rank. In case the date of promotion to the

substantive rank is same then provisions of Record Office Instructions will apply. This one time measure will be taken alongwith merger of trades and will be monitored at the level of respective Record Offices. So far as the promotion of persons re-mustered is concerned, it will be governed by the Qualitative Requirement of the new trade. In respect of centrally controlled categories, the promotability numbers in each rank will be re-worked by Arms/Services based on new trade strength, as per ratio/percentages laid down in our letter dated 25.02.2005. Promotions in respect of trades other than centrally controlled trades, will be regulated in terms of the new rank wise authorisation formed as a result of merger of trades in the WE/PE. It will be ensured by the Record Offices/units that no surplus promotions are carried out.

5. As a result of this policy dated 05.01.2009, petitioner and like him all other petitioners who were serving in the MES were sought to be sent back to their respective parent units. This policy gave rise to these petitions because as a result of sending the petitioners back to their parent cadre, the grievance is that all their career is going to suffer as many persons there in units have been promoted to the higher post and petitioners will be reverted back to their post and they will be given a lower position, therefore, the present petitioner along with other petitioners filed the present petition challenging the validity of this policy and rationalisation of trades and merger and re-mustering of armed personnel.

6. Learned counsel for the petitioner submitted that this policy dated 05.01.2009 is arbitrary and violative of Article 14 and 16 of the Constitution of

India. So far as the framing of policy is concerned, this is the prerogative of the Government. The policy can only be struck down if it is discriminatory, arbitrary, illegal and violative of Article 14 and 16 of the Constitution of India. Therefore, petitioner has prayed that either this policy dated 05.01.2009 may be struck down being violative of Article 14 and 16 of the Constitution of India or in the alternative he has prayed that rights of the persons who are sought to be sent back to their parent unit may be protected.

7. So far as the policy is concerned, it has a bonafide purpose of rationalizing the trades. There are many trades in the Army which have become superfluous and are not required, therefore, whole study was undertaken to rationalise all these trades and after rationalising all these trades, this policy decision was taken and the trades are sought to be rationalized as given in Appexdix A and B. Therefore, we do not find any illegality in rationalizing the trade and consequences thereof like to arise. The Government can always laid down a policy looking to the exigencies of service and can amend it from time to time.

8. In this connection, learned counsel for the respondents has invited our attention to a decision of Hon'ble Supreme Court passed in the case of **All India ITDC Workers Union Versus ITDC and Others (2006) 10 SCC 66** in which one of the Hon'ble Member of this bench (Justice A.K. Mathur, Chairperson) was party to judgment. In that case, an identical question arose that in pursuance of disinvestment policy, certain personnel working in the ITDC hotels were sought to be transferred to the new undertaking. As a result of this policy decision, petitioners who were workers of ITDC made a

grievance that their seniority and the promotion chances are likely to be seriously affected, therefore, this petition was filed by the workers of ITDC challenging the policy of this disinvestment.

9. In that connection, it was observed that;

"We have given our thoughtful consideration to the rival submissions made by the respective counsel appearing for the respective parties. In our opinion, the present writ petitions filed by the employees merit to be dismissed since disinvestment was a policy decision of the Government of India. This Court also has held that the said policy decision should be at least interfered with in judicial review and that the government employees have no absolute right under Articles 14, 21 and 311 of the Constitution of India and that the Government can abolish the post itself. In the present case, the petitioners are not government servants and are merely employees of a public sector undertaking. This apart, the service conditions of the petitioners are being protected under the new management on the disinvestment of the Hotel and the fact that other hotels are also in an advanced stage of disinvestment in pursuance of the policy decision taken by the Government of India for disinvestment of the hotel units. We see no reason to interfere with the aforesaid decision. In case ultimately the petitioners are aggrieved by any aspect of terms of reference and formalisation of agreement and completion of disinvestment it is always open to the petitioners to approach the courts for redressal of their grievances".

10. Therefore, it was observed that there is no reason to interfere with the policy decision as it was not violative of Article 14 and 16 of the Constitution of India. It was observed that Government can abolish the post and create the post. It is their absolute right. Therefore, in the present case also, the policy laid down on 05.01.2009 of amalgamation and rationalisation of trade cannot

be said to be violative of Articles 14 and 16 of the Constitution of India nor any arguments have been raised that how the policy is violative of Articles 14 and 16 of the Constitution of India. Therefore, we are of the opinion that so far as the challenge to the validity of this policy is concerned, we do not find any merit and we see no reason to declare this policy dated 05.01.2009 as violative of Articles 14 and 16 of the Constitution of India, as such, contention of learned counsel for the petitioner with regard to challenge to the validity of policy is overruled.

11. Now coming to the next question raised by learned counsel for the petitioner that as a result of repatriation of these employees/petitioners who were working in the MES when they are going back to their parent cadre then it is going to create a lot of disturbance in the existing status of the parent department. It is submitted that some people while working in the MES were not promoted while the juniors to them in their parent unit were promoted. When these employees working in MES go back to their parent unit, they will be placed below to their juniors and this action will seriously affect their further right of promotion and will create great hardships to the petitioners.

12. We realise that the persons who were working in the MES when they go back to their unit, they should get their due place in that unit without affecting their seniority or promotion. It is likely that persons in their parent unit got promotion and when persons working in MES go back to their parent unit, they will be placed below to their juniors who got promotion while working in parent unit. This will be discriminatory and violation of Articles 14 and 16 of the Constitution of India. The person junior in his cadre is promoted and

person who has been sent out of cadre in the public interest and when he is reverted back, he is placed below to his junior. This will cause a great hardship to him and this will be unfair to the person, therefore, we directed learned counsel for the respondents to seek instructions that when these persons are being repatriated to their parent unit, they must be given their dues and they should not be placed below to their juniors and create a discrimination in their parent cadre. In case a person who is junior is promoted, then the person who is being repatriated from MES to his parent unit should also be promoted in case he is eligible for promotion and if not then he may be given opportunity to acquire that qualification so as to get his promotion.

13. Learned counsel for the respondents after seeking instructions submitted that the authority will take proper care of the persons who are being repatriated to their parent cadre and if they are otherwise qualified then they will be considered for promotion from the date persons junior to them have been promoted. In case, they are not eligible then they will be promoted after acquiring necessary qualification and their seniority of unit will be maintained vis-a-vis their juniors. He also submitted that seniority of these people who are being repatriated will be looked into and they will be placed accordingly. In case any person junior to these persons is being promoted to a higher rank then the case of these persons will be considered vis-a-vis such junior person and if they are found suitable then they will be given their due promotion and their seniority will be restored.

14. We hope and trust that all these aspects will be examined by the Government and thereafter all the personnel who are repatriated to their parent department will be restored back to their original seniority and they will be given their due. In case, if one is required to pass certain eligibility test for the promotion then he will be given that opportunity. This whole exercise will be undertaken and completed within a period of six months from the date of this order. It is also observed that in case these persons who are being repatriated from MES to their parent cadre are lacking a regimental report then the report obtained by them while working the MES will be taken into consideration because they are working in the MES as a combatant.

15. Learned counsel for the respondents submitted that this order should only operate for the MES personnel and will be confined to the present situation i.e. repatriation of MES personnel to their parent cadre and will be applicable to them only.

16. It is true that we are only concerned with the MES personnel and this arrangement only pertains to the MES personnel as other issues are not before us. Therefore, we confine this arrangement to all the MES personnel whether who have filed the present petitions and not filed. It will be unanimously applicable to all MES personnel who are being sought to be repatriated to their parent unit.

17. Hence, petition is allowed as indicated above. No order as to costs.

18. Copy of this order be circulated to all regional benches of Armed Forces Tribunal all over the country.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
March 19, 2012
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