

UNION OF INDIA AND ANR

v.

CENTRAL ELECTRICAL & MECHANICAL ENGINEERING
SERVICE (CE & MES) GROUP 'A' (DIRECT RECRUITS)
ASSOCIATION, CPWD AND ORS.

NOVEMBER 1, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Administrative Law—Executive Order—Re-organisation of cadre strength in terms thereof—Validity of—Held: By virtue of Office Orders amalgamation of different cadres was sought to be made beyond legal sanction as envisaged under the Rules which is not permissible—Office Orders must be passed in conformity with the Rules—Ministry of Urban Affairs and Employment (Department of Urban Development) Central Engineering (Civil) Group 'A' Service Rules, 1996—Service Law.

Central Public Works Department issued Office Orders dated 1.8.2002 and 11.3.2002 purporting reorganization of cadre strength amongst various disciplines of CPWD in the Central Engineering Service Group 'A'. Respondent challenged the validity of the Orders. Tribunal held the Orders as unsustainable. High Court upheld the order of the Tribunal. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. An executive order must be passed in conformity with the Rules. Power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise has not been covered by the existing Rules. Office Orders must be subservient to the statutory rules.

[Para 10] [868-A, B]

Sant Ram Sharma v. State of Rajasthan and Anr., AIR (1967)

A **SC 1910 and D.D.A. and Ors. v. Joginder S. Monga and Ors., [2004] 2 SCC 297, relied on.**

B **1.2. The Office Orders dated 1.8.2002 and 11.3.2003 are not statutory in character. They even ex-facie do not satisfy the requirements of Article 162 of the Constitution of India. The disciplines of Civil, Electrical and Mechanical in the Central Public Works Department are different and distinct. The said office orders provided that disciplines referred to therein including Civil and Electrical were to work under the control of the Zonal Head being either a Chief Engineer (Civil) or Chief Engineer (Electrical). It has not been denied or disputed that the post of Chief Engineer (electrical or civil), was beyond the purview of the Rules. It is beyond any cavil that there are posts of Chief Engineer in all the four wings of the Central Public Works Department. The Rules provide for posts of Civil Engineers. As by reason of the impugned orders, some sort of amalgamation of different cadres are sought to be made beyond the legal sanction as envisaged under the Rules, the same is impermissible in law. Appellants before the High Court have admitted that the Ministry had no intention to merge the civil and electrical streams which were two distinct services having separate recruitment rules. Thus, the office orders clearly interfere with the working of the statutory rules inasmuch as by reason thereof, a post would be created which would be designated as Chief Engineer either Civil or Electrical, which belongs to two different streams.**

[Para 9] [867-D, E, F, G, H; 868-A]

F **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5086 of 2007.**

G **From the final Judgment and Order dated 24.05.2006 of the High Court of Delhi at New Delhi in Writ Petition (C) No. 13604-05/2004 & CM Nos. 9506 of 2004 & 4393 of 2006.**

R. Mohan, ASG., Sunil Roy and V.K. Verma for the Appellants.

Rajiv Dutta, Uday Gupta and Dharmendra Kumar Sinha for the Respondents.

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The Judgment of the Court was delivered by

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S.B. SINHA, J. 1. Leave granted.

2. This appeal is directed against a judgment and order dated 24.5.2006 passed by a Division Bench of the High Court of Delhi at New Delhi in CM Nos. 9506/2004 & 4393/2006 and W.P.(C) No. 13604/2004 & 13605/2004 affirming an Order dated 17.12.2003 passed by the Central Administrative Tribunal, Delhi Bench, Delhi in Original Application No. 864/2003.

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3. The basic fact of the matter is not in dispute.

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4. Central Public Works Department belonging to the Central Government has its own Service Rules framed under the proviso appended to Article 309 of the Constitution of India, known as "Ministry of Urban Affairs and Employment (Department of Urban Development) Central Engineering (Civil) Group 'A' Service Rules, 1996" (Rules). The said Rules came into force with effect from 28.10.1996. Whereas Rule 3 of the Rules provides for "Constitution of the Service", Rule 4 provides for "Grade, strength and its review". The first schedule appended to the Rules provides for the posts in the Central Engineering Service, Group 'A'. The hierarchy of the officers has also been provided therein. Rules govern the field of recruitment as also the cadre strength. Despite the fact that the terms and conditions of the employees belonging to the said cadre are governed by the statutory Rules, on or about 1.8.2002, a purported office order was issued, the relevant part whereof reads as under:-

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"To maintain interdisciplinary coordination amongst various disciplines of CPWD, it has been decided that at zonal level all the 4 disciplines, viz, Civil, Electrical & Mechanical, Architecture & Horticulture of CPWD shall work under the administrative supervision and control of the zonal head, i.e. Chief Engineer. The officers of all disciplines in a zone will exercise their delegated powers and will report to the Chief Engineer who will further report to the ADG(Region). This system will function under the following guidelines:-

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(i) Each zone shall be headed by a CE(C) or CE(E) subject to

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A the conditions there will be at least one CE(E) heading a zone in each Region.”

5. On or about 11.3.2003, another office order bearing No. 34/03 was issued by the Central Public Works Department stating;

B “Sub: Reorganisation of zones in New Delhi Region under ADG (S&P) for unified control.

C In pursuance of Ministry of Urban Development & Poverty Alleviation Office Order No. 28017/2/2002-EW.1 dated 1.8.2002 and in order to maintain interdisciplinary coordination amongst various disciplines of CPWD, DG(W) CPWD is pleased to reorganise the circles & divisions amongst NDZ-1 & NDZ-2 and Electrical Zone, New Delhi Region on trial basis. The Electrical Zone (NDR) thus reconstituted shall be known as New Delhi Zone-5.

D 2. The officers of all disciplines in a zone will exercise their delegated financial, administrative, technical powers and will report to the Chief Engineer of the zone, who will further report to the ADG (S&P)

E 3. The Chief Engineer either Civil or Electrical as zonal heads shall exercise his/her delegated powers for both civil and electrical works.

F 4. To facilitate technical sanction of estimates above the delegated powers of SEs, zonal CEs will have one EE(P) from the other discipline in their SE(P) unit. In exceptional cases the CE of either discipline can approach the ADG of the region for arranging technical sanction of estimates of other disciplines.”

G 6. Validity and/or justification of the said orders came to be questioned before the Central Administrative Tribunal, Delhi Bench at Delhi. The Tribunal upon considering the matter at some length, opined that the purported reorganization of the cadre strength by the appellant herein in terms of the said office orders dated 1.8.2002 and 11.3.2003 were wholly unsustainable. The original application was, therefore allowed.

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A Division Bench of the Delhi High Court affirmed the said view of the Tribunal by reason of the impugned judgment. A

7. Mr. R. Mohan, learned Additional Solicitor General appearing on behalf of the appellant in support of this appeal submitted that the Tribunal and consequently the High Court committed a serious error in passing the impugned judgments and orders insofar as they failed to take into consideration that reorganization of cadre was not necessary to be brought about by amending the Rules. It was contended that as by the said office orders, neither any change in the cadre strength nor anybody's seniority, pay packet or any other benefit having been effected, amendment to the Rules was wholly unnecessary. B C

8. Mr. Rajiv Dutta, learned senior counsel appearing on behalf of the respondent, on the other hand, submitted that the office orders are clearly *ultra vires* statutory rules framed by the Union of India inasmuch as by reason thereof, another post is created which is not contemplated under the statute. D

9. The aforementioned office orders dated 1.8.2002 and 11.3.2003 are not statutory in character. They even *ex-facie* do not satisfy the requirements of Article 162 of the Constitution of India. Indisputably, the disciplines of Civil, Electrical and Mechanical in the Central Public Works Department are different and distinct. The said office orders provided that disciplines referred to therein including Civil and Electrical were to work under the control of the Zonal Head being either a Chief Engineer (Civil) or Chief Engineer (Electrical). It has not been denied or disputed that the post of Chief Engineer (electrical or civil), was beyond the purview of the Rules. It is beyond any cavil that there are posts of Chief Engineer in all the four wings of the Central Public Works Department. The Rules provides for posts of Civil Engineers. As by reason of the impugned orders, some sort of amalgamation of different cadres are sought to be made beyond the legal sanction as envisaged under the Rules, in our opinion, the same is impermissible in law. Appellants before the High Court have admitted that the Ministry had no intention to merge the civil and electrical streams which were two distinct services having separate recruitment rules. The said office orders, thus, clearly interfere with the working of the statutory rules inasmuch as by reason thereof, a post would E F G H

- A be created which would be designated as a Chief Engineer either Civil or Electrical, which belongs to two different streams.

B 10. It is now a well settled principle of law that an executive order must be passed in conformity with the Rules. Power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise has not been covered by the existing Rules. See *Sant Ram Sharma v. State of Rajasthan & Anr.*, AIR (1967) SC 1910 and *D.D.A. and Ors. v. Joginder S. Monga and Ors.*, [2004] 2 SCC 297. Such office orders must be subservient to the statutory rules.

C 11. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. In the facts and circumstances of this case however, there shall be no order as to costs.

N.J.

Appeal dismissed.