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cent, as originally contained in the unamended Act, from the date of taking possession of the land acquired. Since the decision in this case has been given after one year, it is manifest that under the said Act, respondents would be entitled to interest at the rate of 9 per cent towards which they have already got 6 per cent."

In view of the aforesaid decision of the apex Court, there is no escape from holding that the claimants to the compensation for the land acquired under the Land Acquisition Act shall be entitled to claim enhanced solatium and interest in terms of sub-section (2) of section 30 of the Amending Act, notwithstanding the fact that at the time envisaged by the said provisions, there is pending in the High Court or the Supreme Court only an appeal on behalf of the State Government or the Union of India, as the case may be,—in the present case on behalf of the Union of India.

(8) In the light of above view, we hold that the judgment *Lila Wati v. State of Haryana* (supra) does not lay the correct law.

(9) Accordingly, we direct that the claimant—respondents, shall be paid 30 per cent solatium on the entire amount of compensation instead of 15 per cent and interest at the rate of 9 per cent instead of 6 per cent for the first year from the date of taking possession and 15 per cent per annum there after till the payment of the amount of compensation.

(10) The Civil Misc. Application No. 1671-CII of 1986 in F.A.O. No. 48 of 1978 is allowed. No costs.

S.C.K.

Before H. N. Seth, C.J., and M. S. Liberhan, J.

TILAK RAJ BHALLA,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 961 of 1987

April 21, 1987.

... Punjab District Attorneys Service Rules, 1960—Rules 3 and 14—District Attorney—Transfer of—Posts of Law Officers in the Prosecution and Litigation Department of the Police created—District Attorney transferred and appointed as such Law Officer against his

will—Post of Law Officer—Whether falls outside the cadre of District Attorneys Service—Transfer of government servant from one cadre to another without consent—Whether permissible—State Government—Whether competent to transfer a member of District Attorneys Service to a post outside his cadre—Power to increase or reduce the number of posts in the District Attorneys Service—Mode—Whether State Government can effect such change by executive order without formally amending the Rules.

Held, that Rule 14 of the Punjab District Attorneys Service Rules, 1960, merely enables the State Government to transfer a member of the District Attorneys Service anywhere within, or if the exigencies of service so requires outside the state. There is nothing in Rule 14 or in any other rule which permits the State Government to transfer a member of the service to a post outside the cadre against the will of the member of the service. The post of Law Officer in the office of Inspector General of Police, C.I.D., has been created for a specific purpose and nothing has been brought on the record to show that the duties connected therewith are to form part of the usual duties of the member of the District Attorneys Service as such. Thus, a post which falls in a category different from that of the posts in the District Attorneys Service specified in Appendix A to the Rules cannot be said to form a part of District Attorneys Service. The post, which does not form part of the service would certainly fall outside its cadre and hence the transfer of a District Attorney to the post of a Law Officer without his consent cannot be sustained.

(Paras 6 and 16)

Held, that the number of posts of District Attorneys specified in Appendix 'A' can be increased without formally amending the Punjab District Attorneys Service Rules, 1960. Sub rule (2) of Rule 3 permits such change. Inasmuch as the power to increase or reduce the number of posts specified in Appendix 'A' can be exercised within the frame-work of the Rules themselves, it is not necessary to amend the rules or the appendix thereto for this purpose and it is open to the Government to increase the number of posts in the service by passing executive order. Provision in sub-rule (2) of Rule 3 preserves the right of the Government to make addition to or reduction in the cadre of service, whether permanently or temporarily, which means that the State Government can from time to time by executive order increase or reduce the number of posts specified in Appendix 'A'. However, it does not authorise the Government to pass executive orders, including new category of posts in the service. If a new category of posts is intended to be included in the composition of the service, it can be done only by formally amending Appendix 'A' to the Rules.

(Paras 15 and 16)

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PETITION Under Articles 226/227 of Constitution of India praying as follows :—

- (a) Record of the case be summoned.
- (b) Issuance of a writ of Certiorari quashing the order of transfer of the petitioner Annexure P. 1;
- (c) Issuance of writ of Mandamus directing the respondents No 1 and 2 not to change the cadre of the petitioner by transferring him to the Ex-Cadre post.
- (d) To dispense with serving advance notices to the respondents.
- (e) To dispense with the certified copies of Annexures P. 1 to P. 4.
- (f) the costs of this petition may also be awarded.

FURTHER praying that the respondents No. 1 and 2 be restrained from transferring the petitioner from the post of District Attorney, Amritsar during the pendency of the writ petition and implimentation of Annexure P. 1 be stayed.

S.M.L. Arora, Advocate, for the Petitioner.
with (T. R. Bhalla, Petitioner in Person).

H. S. Bedi, D.A.G., Punjab, for Respondent Nos. 1. and 2.

JUDGMENT

H. N. Seth, C.J.

(1) Petitioner, Tilak Raj Bhalla, District Attorney, Grade I, Amritsar, belongs to the service known as Punjab District Attorneys Service, constituted under the Punjab District Attorneys Service Rules, 1960, (hereinafter referred to as the 'Rules'). The Director of Prosecution, Respondent No. 2,—*vide* his letter dated 7th October, 1986, called for the option from the petitioner and other District Attorneys for being appointed as a Law Officer in the Office of the Inspector General of Police, C.I.D., Punjab. Even though, the petitioner did not indicate his willingness to join the said post, the State Government,—*vide* its order dated 14th January, 1987, purported to

promote and to appoint him as Law Officer in the office of the Inspector General of Police, C.I.D. with immediate effect. The order further directed the petitioner to relinquish his charge as District Attorney and to report for duty at his new place of posting immediately. Aggrieved, the petitioner has approached this Court for relief under Article 226 of the Constitution.

(2) The case of the petitioner is that as he belongs to District Attorney's Service, the respondents cannot transfer or appoint him against his wishes to the post of Law Officer in the office of Inspector General of Police, C.I.D., a post outside the cadre of the Service to which he belongs. The State of Punjab has put in appearance and has contested the relief claimed in the writ petition. According to it, the petitioner is not right in contending that the post of Law Officer in the office of Inspector General of Police, C.I.D., is a post outside the cadre of District Attorneys' Service, and even if it be that so, the State Government can, under Rule 14 of the Rules read with the conditions of service announced at the time of inviting applications for appointment to the Service, require the petitioner to perform the duties of the Law Officer in the office of Inspector General of Police, C.I.D.

(3) It will, before dealing with the submissions made by the learned counsel for the parties, be appropriate to notice the salient features of the Rules, under which the District Attorneys Service has been constituted. Rule 3 lays down that the said service is to comprise of the post shown in Appendix A to the Rules. According to this Appendix, the District Attorneys Service is to comprise of three categories of posts, namely:—

- (1) Eleven posts of District Attorneys, Grade-I, in the pay scale of Rs. 500—30—800/30—1,100/50—1,200;
- (2) Five posts of District Attorneys, Grade II, in the pay scale of Rs. 250—25—375/25—700/25—750, and
- (3) Ten posts of Assistant District Attorneys, in the pay scale of Rs. 300—15—450/15—480/20—540/20—600.

Sub-rule (2) of Rule 3 declares that nothing in the rules shall affect the right of Government to make addition to, or reduction in, the cadre of the service whether permanently or temporarily. Rule 14

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of the Rules, which deals with the power of the State Government to transfer a member of the service runs thus:—

“Every member of the Service shall be liable to transfer under the orders of the Government anywhere within the State of Punjab and shall also be liable to serve outside the State of Punjab.”

Further, paragraph 9 of the advertisement, (Annexure P-2 to the petition), in pursuance of which, the petitioner applied for being recruited to the District Attorney’s service in the year 1964, ran thus:—

“Duties : (a) to Conduct all civil and criminal cases of Punjab Government and Central Government in the territory of Punjab State and such other duties as the Government may assign from time to time.

(b) the person selected can be posted anywhere within or outside the State of Punjab.”

(4) The first question that arises for consideration is, whether Rule 14 of the Rules read along with Paragraph 9(b) of the Advertisement (Annexure P-2) empowers the State Government to transfer and appoint a member of the District Attorneys Service to a post not in the cadre of such service.

(5) In the case of *Prem Parveen v. Union of India and others*, (1) petitioner Prem Parveen had been transferred from a post occupied by him in the Directorate of Extension, Ministry of Agriculture, to the office of the Regional Station on Forage Production, Dhamrod, and the Court was called upon to consider the question whether the Government could transfer, a permanent Government servant, against the latter’s will, outside his cadre. On behalf of the Government, reliance was placed on fundamental Rule 15(a), which empowered the President to transfer a Government servant from one post to another and it was urged that the President has the blanket power of transferring a Government servant from one post to another, including transfer to a post outside the cadre. The learned Judge did not accept this submission. He concluded that

Fundamental Rule 15(a) merely postulates transfer of a Government servant from one post to another post in the same cadre. In this connection, the learned Judge went on to observe thus:—

“Normally it is to be expected that the Government employees who join a particular cadre would have the range of their transferability determined within that cadre. Logically by it does not stand to reasons that a person who is recruited to a particular cadre should be compelled against his wishes to serve outside the cadre even when the permanent post to which he holds a lien exists within the cadre. At least F.R. 15 is not capable of this interpretation as suggested by Mr. Chadha. All that F.R. 15 means is that even if a government employee holds a lien on a particular post he has no vested right to continue to remain in one particular post all the time and could be transferred to another post, of course within the same cadre, because his lien is only the title to hold substantively a permanent post, to which he has been appointed substantively.”

(6) In the case before us, the transfer of a member belonging to District Attorneys Service is governed by Rule 14 of the Rules, which, merely enables the State Government to transfer a member of the service any where within or if the exigencies of service so require, outside the State of Punjab. It does not, like F.R. 15, make a reference to transfer of a member of the service from one post to another. If F.R. 15 does not countenance transfer of a Government servant outside the cadre/service to which he belongs, certainly such an Authority cannot flow from the wordings of Rule 14.

(7) In the case of *Upendra Chandra Sarangi v. State of Orissa and others*, (2) a Division Bench of the Orissa High Court was called upon to consider the question whether under Rule 54 of the Orissa Service Code, which like Rule 15 of the Fundamental Rules, adverted to in *Prem Parveen's case* (supra), enabled the Government to transfer a Government servant from one post to another, it was held that the rule applied only to cases where a person was

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appointed to a service or to a cadre and that under it a person appointed to a specific post outside a cadre could not be transferred to a cadre post against his wishes.

(8) In the case of *Prakash R. Borkar v. Union of India and others*, (3), a Division Bench of Bombay High Court cited with approval the decision of the Delhi High Court in *Prem Parveen's case* (supra). It also relied upon the observations made by D. A. Desai J. of the Gujarat High Court in *Bhagwatiprasad v. State of Gujarat*, (4) and observed thus:—

“The importance of the concept of cadre arises on account of several reasons. A person when appointed to a particular post in a cadre has the future career before him charted in one sense. He knows what is the strength of the cadre in which he has been appointed; he knows the post to which he can reasonably aspire in due course of time and the prospects of the aforesaid vertical promotion on the basis of the list of seniority prepared from time to time. The rules of appointment to the said cadre will also tell him as to how many people will be entering the cadre from different sources, if appointments from different sources are provided for in the rules. If he is transferred from one department to another in the same cadre, he is not deprived of the benefits which he has acquired till such transfer by service in the same cadre. He will also not lose his place in the seniority list which will invariably be prepared on the basis of the cadre. A person cannot be transferred from one cadre to another because such a transfer will necessarily affect the other persons in the seniority list.....”

In the end, learned Judges quashed the order by which the Government of Goa, Daman and Diu in so far as it effected the transfer of the petitioner from the Directorate of Transport to the Directorate of Civil Supplies and Price Control.

(9) In the case of *Dr. D. R. Thakur v. Himachal Pradesh Krishi Vishva Vidyalaya Palampur and others*, (5) one of the questions that arose for consideration was as to whether the transfer of the petitioner from the post of Dean of College of Agriculture to the

(3) 1983(3) S.L.R. 725.

(4) (1979)3 S.L.R. 805.

(5) 1980(3) S.L.R. 89.

post of Dean of Post-graduate Studies a post outside the cadre. It was held that it being so, the petitioner could, amongst other reasons also not be transferred to the post of Dean of Post-graduate studies for the reason that the post of Dean of Post-graduate Studies was an ex-cadre post.

(10) We are in respectful agreement with the observations made by the learned Judges in afore-mentioned cases and are of the opinion that neither Rule 14 of the Rules nor any other rule, permits the State Government to, against his wishes, transfer a member of the District Attorneys Service to a post outside the cadre of the said service.

(11) Paragraph 9 of the advertisement which mentions that the selected candidates can be posted within or outside the State of Punjab, does nothing more than informing the candidates, applying for recruitment to the District Attorneys Service, about the legal position flowing from Rule 14 (supra).

(12) The question that, therefore, survives for consideration is as to whether the post of Law Officer to which the petitioner is being transferred against his wishes, is a post within the cadre of the District Attorneys service.

(13) On 10th August, 1984, the President of India passed the following order :—

“The President of India is pleased to accord sanction to the creation of the following posts of law Officers in the cadre of Prosecution and Litigation Department for the office of the Inspector General of Police, CID, Punjab with effect from the date of issue of order and upto the 28th February, 1985:—

Sr. No.	Designation	Scale of Pay	No. of Posts.
1.	Law Officer,	Rs. 1775-75-2000 /100-2100 with special pay of Rs. 200/- per mensem.	1
2.	District Attorney.	Rs. 1200-50-1400/60-1700/ 75-1850.	2
3.	Assistant Distt. Attorney Gr. 1.	Rs. 825-25-850-30-1000/40- 1200/50-1400-60-1580.	4

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According to the learned Advocate General, who appears for the State, aforesaid order has the effect of creating one post of Law Officer, two posts of District Attorneys and four posts of Assistant District Attorney Grade I, in the cadre of District Attorneys Service (It is not disputed that the pay-scale of District Attorneys Grade I and Assistant District Attorneys as mentioned in Appendix A to the Rules have since been revised to the grades equivalent to the grade of District Attorneys and Assistant District Attorneys Grade I specified in the order). In the instant case, we are not concerned with the question as to whether the two posts of District Attorneys and four posts of Assistant District Attorneys Grade I mentioned in the Government order go to augment a corresponding cadre of District Attorneys Grade I and Assistant District Attorneys specified in Appendix A to the Rules and whether these six posts also form part of the District Attorneys Service. The question that we have to consider is as to whether the post of the Law Officer in the grade of Rs. 1,775—75—2,000/100—2,100 with special pay of Rs. 200 per mensem specified in the Government order, forms part of the service/cadre of District Attorneys constituted under the 1960 Rules.

(14) The petitioner contends that Punjab District Attorneys Service Rules, 1960 are statutory rules framed under Article 309 of the Constitution. Rule 3 read along with Appendix A thereof also form part of the same statutory rule. Accordingly, if any alteration is to be made either in the nature of posts or in their number as specified in Appendix A, the same can be done only by exercising power under Article 309 of the Constitution by formally amending the Appendix. The order of the President of India, dated 10th August, 1984, Annexure R-1, does not purport either to amend the rules or the appendix.

(15) So far as the question as to whether or not the number of posts of District Attorney Grade I and Assistant District Attorney specified in Appendix A, could be increased without formally amending the Punjab District Attorneys Service Rules, 1960, is concerned, we are clearly of the opinion that sub-rule (2) of Rule 3 which runs thus:—

“Nothing in these rules shall affect the right of the Government to make addition to, or reduction in, the cadre of the service whether permanently or temporarily.”

clearly permits it. In as much as the power to increase or reduce the number of posts specified in Appendix A can be exercised within

the frame-work of 1980 Rules themselves, it is not necessary to amend the rules or the appendix thereto for this purpose and it is open to the Government to increase the number of posts in the service of District Attorneys by passing executive order.

(16) We now proceed to consider the question as to whether the post of Law Officer in the grade of Rs. 1,775—75—2,000/100—2,100 with special pay of Rs. 200 per mensem created under the Government order, dated 10th August, 1984, (Annexure R-1) is a post in the cadre of District Attorneys Service. The expression 'cadre' has been defined in Civil Service Regulations, Volume I, Part I, paragraph 2, 9 as meaning strength of service or a part of service sanctioned as a separate unit. According to rule 3 of the Rules, the District Attorneys Service is to be comprised only of three categories of posts mentioned in Appendix A, namely District Attorneys Grade I, District Attorneys Grade II and Assistant District Attorneys. Provision in sub-rule (2) of Rule 3 preserving the right of Government to make additions to or reduction in the cadre of service, whether permanently or temporarily, merely means that the State Government can, from time to time, by executive orders, increase or reduce the number of posts specified in Appendix A. It does not authorise the Government to pass executive orders, including new category of posts in the service. If a new category of posts is intended to be included in the composition of the service, it can be done only by formally amending Appendix A. A perusal of the Government order, dated 10th August, 1984, clearly brings out that the post of Law Officer carries time scale pay which is higher than that of the posts in District Attorneys Service. This post has been created in the office of Inspector General of Police, C.I.D., for a specific purpose and nothing has been brought on the record to show that the duties connected therewith are to form part of the usual duties of the members of District Attorneys Service as such. Thus, it is a post which falls in a category different from that of the posts in the District Attorneys Service specified in Appendix A, and cannot be said to form part of District Attorneys Service. The post, which does not form part of the service, would certainly fall outside its cadre. Accordingly, we have no hesitation in holding that the post of Law Officer in the grade of Rs. 1,775—2,100 created by the Government order, dated 10th August, 1984 (Annexure R-1) is a post which falls outside the cadre of District Attorneys Service and the transfer of the petitioner to that post, without his consent, cannot be sustained.

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(17) During the hearing, the petitioner also contended that even if it is held that the post of Law Officer forms part of District Attorneys Service, it will, being a distinct part of the service, constitutes a cadre different from that of District Attorneys Grade I and as such the State Government will not be competent to promote him to the post against his wishes. In view of our finding that the post of Law Officer is a post not comprised in the District Attorneys Service and that the transfer of the petitioner to that post against his wishes is not sustainable, it is not necessary for us to go into the question as to whether or not the State Government is competent to transfer a Government servant against his wishes from one cadre to another cadre in the same service.

(18) The petitioner also submitted that the posts of District Attorney and Assistant District Attorneys Grade I created by Government order, dated 10th August, 1984 (Annexure R-1) do not form part of the District Attorneys Service. However, this controversy is not relevant for our purposes at this stage. Accordingly, we do not propose to express any opinion in this regard.

(19) In the result, the petition succeeds and is allowed. The order, dated 14th January, 1987 (Annexure P-1) to the petition promoting the petitioner as Law Officer in the pay scale of Rs. 1,775—75—2,000/100—2,100 with special pay of Rs. 200 per mensem in the Office of the Inspector General of Police, C.I.D., against his wishes, is quashed. We make no order as to costs.

R.N.R.