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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NOS. 845, 961, 980 & 1049 OF 2002

New Delhi, this the 14th day of February, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

OA-845/2002

Harsh Vardhan
s/o Shri D.S.Bhatnagar
r/o 2159-A, Sector-6
House Board, Karnal, Haryana

...Applicant

(By Advocate: Shri Balraj Dewan)

Versus

1. Govt. of NCT of Delhi
through Chief Secretary
Govt. of NCT of Delhi
5th Level 'A' Wing
Delhi Sachivalaya
New Delhi

2. Union Public Service Commission
through its Secretary
Shahjan Road, New Delhi

3. Principal Secretary (Home)
Govt. of NCT of Delhi
5th Level 'C' Wing
Delhi Sachivalya, New Delhi

4. Director
Forensic Science Laboratory
Madhuban (Karnal)
Haryana

..Respondents

(By Advocates: Smt. Avnish Ahlawat with Shri Mohit Madan for respondent Nos. 1, 3 & 4

Smt. B.Rana with Ms. Manu Lall for respondent No.2)

OA-961/2002

Suresh Kumar Singla
s/o Late Shri Lakhi Ram Singla
185, Pocket 23, Sector-24
Rohini, New Delhi-85

..Applicant

(By Advocate: Shri Balraj Dewan)

Versus

1. Govt. of NCT of Delhi
through Chief Secretary
Govt. of NCT of Delhi
5th Level 'A' Wing
Delhi Sachivalaya
New Delhi

2. Union Public Service Commission
through its Secretary
Shahjan Road, New Delhi

3. Principal Secretary (Home)
Govt. of NCT of Delhi
5th Level 'C' Wing
Delhi Sachivalya
New Delhi

4. Director, CBI
through Director CFSL
Block 4, CGO Complex
Lodhi Road, New Delhi-3

..Respondents

(By Advocates: Smt. Avnish Ahlawat with Shri Mohit Madan for respondent Nos. 1, 3 & 4

Smt. B.Rana with Ms. Manu Lall for respondent No.2)

OA-980/2002

Ms. Kamlesh Miglani
(Ex.Sr. Scientist Officer)
154-A, Sector-2, Rohini, Delhi

Presently working at National Plant
Quarantine Station, Rangpuri, Delhi

..Applicant

(By Advocate: Shri Balraj Dewan)

Versus

1. Govt. of NCT of Delhi
through Chief Secretary
Govt. of NCT of Delhi
5th Level 'A' Wing
Delhi Sachivalaya, New Delhi

2. Union Public Service Commission
through its Secretary
Shahjan Road, New Delhi

3. Principal Secretary (Home)
Govt. of NCT of Delhi
5th Level 'C' Wing
Delhi Sachivalya, New Delhi

4. Plant Protection Adviser
Govt. of India
Directorate of Plants Protection
Quarantine and Storage
Deptt. of Agriculture &
Cooperation, Ministry of Agriculture.
NH-IV, Faridabad (Haryana)

..Respondents

(By Advocates: Smt. Avnish Ahlawat with Shri Mohit Madan for respondent Nos. 1, 3 & 4
Smt. B.Rana with Ms. Manu Lall for respondent No.2)

OA-1049/2002

Shri A.K.Gupta
s/o Shri Gopal Krishna Gupta
r/o R12-A (Second Floor)
Hauz Khas, New Delhi

(By Advocate: Shri Balraj Dewan) ..Applicant

Versus

1. Govt. of NCT of Delhi
through Chief Secretary
Govt. of NCT of Delhi
5th Level 'A' Wing
Delhi Sachivalaya
New Delhi

2. Director
Forensic Science Laboratory
Madhuban (Karnal)
Haryana

3. Principal Secretary (Home)
Govt. of NCT of Delhi
5th Level 'C' Wing
Delhi Sachivalya
New Delhi

(By Advocates: Smt. Avnish Ahlawat with Shri Mohit Madan for respondents) ..Respondents

O R D E R

Shri Govindan S. Tampi:

This combined order seeks to dispose of the four OAs, all challenging the repatriation of the applicants, who were deputationists with Govt. of NCT of Delhi to their parent Organisations.

2. All the OAs were heard together when Shri Balraj Dewan, learned counsel appeared for the applicants, Smt. Avnish Ahlawat with Shri Mohit Madan represented the respondents-Govt. of NCT of Delhi and Smt. B.Rana with Ms. Manu Lall represented the UPSC.

3.1 OA-845/2002 - the applicant (Shri Harsh Vardhan) holding M.Sc. Degree along with Diploma in Document Examination from the National Institute of Criminology

and Forensic Science (NICFS), who joined as Scientific Assistant (Document) in the Forensic Science Laboratory (FSL), Madhuban, Karnal Haryana, became a Senior Scientific Assistant in April, 1986 and came over on deputation basis as Senior Scientific Officer (Document), with Forensic Science Laboratory (FSL), Delhi on 3.11.1995. He applied for absorption in the borrowing Organisation, in view of the Circular dated 20.3.2002 circulating the vacancies. On 5.9.2001, Haryana Govt. had communicated their 'No Objection' to the GNCT, Delhi for his absorption, whereafter whereafter his case was sent to UPSC for considering his permanent absorption. In the meanwhile, a Criminal Writ Petition No.388/99 (Kamla Vs. The State) came up before the Hon'ble High Court of Delhi wherein the working of FSL had come for criticism and the High Court had directed that the regularisation of the staff working in FSL should be taken up and completed. However, on 13.11.2001, the applicant was suddenly repatriated to his parent Organisation in Haryana by the impugned order, which was totally non-speaking in nature and highly arbitrary.

3.2 In the reply filed on behalf of the respondents, following preliminary objections have been taken:-

i) The applicant, who has already been repatriated to his parent Organisation, has no right to claim absorption as of right in FSL Delhi.

ii) The applicant was seeking a relief which has been denied by the High Court of Delhi in Criminal Misc. No.1110/2001 in CWP-338/99 and which was upheld by the Hon'ble Supreme Court.

iii) The applicant had not exhausted the Departmental remedies before approaching the Tribunal.

3.4 It is pointed out that the applicant cannot have any grievance at all for redressal, as being a deputationist once his deputation period has been over, he has been correctly repatriated. It was true that a proposal relating to permanent absorption eligible persons working on deputation in FSL was sent to the UPSC, but the applicant was, however, repatriated. UPSC had been duly informed that the applicant stood repatriated to his parent Department w.e.f. 13.11.2001 and this has been done with the approval of the competent authority, i.e., Govt. of NCT of Delhi, who had correctly exercised the power vested in them. The applicant has incorrectly stated that he was the senior-most individual and even otherwise it was for the competent authority to decide whether a deputationist should be considered for absorption or not. It is also not clear as to how the repatriation of the applicant was impermissible. The respondents-authority have taken a decision to repatriate the individual concerned to the parent Organisation and the same cannot be questioned. The grounds raised by the applicant that the action of the respondents was mala fide and arbitrary, were wrong. Merely because the lending authority had accorded their 'No objection' for the absorption of an individual, he does not get any vested right for absorption, irrespective of the borrowing authority's wishes. In this case, as the applicant was repatriated, UPSC was informed about the decision. A deputationist has no automatic right of absorption in a particular post and he cannot continue on

deputation if the borrowing Department is not willing to retain him. In fact, the applicant having rejoined his Organisation on 12.11.2001 much earlier than the filing of this OA, it has ceased to be of any relevance. On behalf of respondent No.2, UPSC, it is pointed out that following the decision of the Delhi High Court in Criminal Writ Petition No.388/99 and Criminal Writ No. 1013/99 (Munne Khan Vs. State), the State Govt. was directed to take up the question of absorption of officers working on deputation in FSL. In accordance with the Recruitment rules, the officers of the other Organisations could be absorbed in FSL, Delhi only in consultation with the Commission, as they were not originally appointed in consultation with the Commission. Proposal on the issue, including those of the applicant, was accordingly received in the UPSC. He was also found to have fulfilled the necessary eligibility conditions of the Recruitment Rules for absorption but before his permanent absorption could be considered, he was repatriated by Govt. of NCT of Delhi. The Commission had been informed by the Govt. of NCT of Delhi that the applicant had been repatriated due to administrative reasons and that he need not to be considered for regularisation.

4.1 OA-961-2002 - the present applicant (Shri Suresh Kumar Singla), who holds the Degree in M.Sc. (Forensic Science), was a Junior Research fellow in Punjab University, Patiala in 1977 and worked with various Organisations till June, 1977 when he joined CFSL, CBI, New Delhi as Senior Scientific Assistant (Serology). He was taken on deputation for the post of Senior Scientific

Officer (Biology) by the FSL, Delhi on 18.5.1999. He was appointed on deputation for a period of one year with a stipulation that he will be repatriated at the end of that period. On 10.5.2000, he applied for absorption through the Department against the existing vacancies and on 20.11.2000, the Director, CFSL/CBI, New Delhi responded to Delhi Government's letter dated 28.7.2000 stating that they had no objection to his permanent absorption in FSL, New Delhi. On 5.9.2001, his case was also sent to UPSC for obtaining concurrence for his permanent absorption. On 29.10.2001, UPSC informed that the issue was under consideration, but on 2.10.2001, without waiting for the results of selection to be conveyed by the UPSC, Govt. of Delhi repatriated him to his parent Organisation by the impugned non-speaking order. This was totally mala fide and called for interference by the Tribunal, pleads the applicant.

4.2 In the reply filed on behalf of respondent No.1, the points already made in the case of Harsh Vardhan (OA-845/2002) have been repeated with indication that the individual has already been repatriated and joined his parent Organisation in November, 2000 itself. Respondent No.2, UPSC has indicated that though the present applicant fulfilled the eligibility conditions, his case was not considered by the Commission as he has already been repatriated by the respondents before the said consideration arose.

5.1 OA-980/2002 - Smt. Kamlesh Miglani (applicant) holding Degrees of M.Sc. (Organic Chemistry) and M. Phil (Organic Chemistry) was working from 10.1.1986 to

25.4.1993 as a Senior Assistant in FSL, Madhuban, Karnal, Haryana, whereafter till January, 1999, she worked as Junior Scientific Officer (Chemistry) with Directorate of Plant Protection Quarantine and Storage Department of Agriculture at Faridabad, wherefrom she joined as Senior Scientific Officer (Chemistry) in FSL, Govt. of NCT of Delhi. On 27.3.2000, she applied for absorption at FSL, Delhi. On 19.9.2000, the Ministry of Agriculture conveyed to Govt. of NCT of Delhi their 'No objection' for her permanent absorption of the latter. However, on 26.2.2001, she was suddenly repatriated to her parent Department without assigning any reason and in a mala fide manner. According to her, this repatriation was illegal, arbitrary and against the Rules and deserved to be quashed and set aside.

5.2 In the reply filed by the respondents, it is pointed out that the applicant has already been repatriated on 26.2.2001, i.e., nearly one year prior to the filing of the present OA. According to respondent No.2, i.e., UPSC, this applicant's case for permanent absorption has not been referred to the UPSC.

6.1 OA-1049/2002. The applicant (Shri A.K.Gupta), who worked as Assistant Central Intelligence Officer, Grade-I under Intelligence Bureau from 1964 to 1968, and functioned as Assistant Govt. Examiner of Questioned Documents in the office of GEQD, Shimla/Hyderabad from 22.4.1968 to 18.1.1982. From 1982 to 1984, he worked as Assistant Director (Documents) in FSL, Madhuban, Haryana, from 1986 to 1992 in NICFS, Govt. of India, New Delhi and from 1992 to 1994 once again in Madhuban. On

13.4.1994, he came over on deputation to FSL, Govt. of NCT of Delhi and he was also appointed as Director (Incharge). He performed his duties successfully. During 1995 to 1998, correspondence took place between the Govts. of NCT, Delhi and Haryana about absorbing the individual permanently and on 1.3.2000, Haryana Govt. agreed for the permanent absorption of this individual in Delhi. In between the Criminal Writ Petition No.388/99 was disposed of by the High Court of Delhi. The applicant was repatriated on 31.8.2001 and was relieved immediately. His repatriation was improper and not in public interest and hence this OA.

6.2 In the reply, respondent No.1 points out that this applicant has already been repatriated on 31.8.2001 and has rejoined the parent Department. He had been repatriated just seven months before his ~~date~~ of superannuation and he has already retired.

7. During the oral submissions, it has been strongly urged by Shri Balraj Dewan that the applicants, all of ~~whom~~, have been taken to the FSL Delhi keeping in mind their qualifications and competence and they have served the borrowing Organisation to the fullest satisfaction of all concerned. Cases of two of them (S/Shri Harsh Vardhan and Suresh Kumar Singla) had been referred to the UPSC for permanent absorption, but before a decision could be taken by the UPSC, they were repatriated. Names of Smt. Kamlesh Miglani and Shri A.K.Gupta were, however, not sent to UPSC. According to these applicants, their repatriation, without any reason or justification, was against ~~all~~ the cannons of administrative

law and was at variance with the principles laid down by the Hon'ble Supreme Court in the case of Umapati Choudhary Vs. State of Bihar & Another [AIR 1999 SC 1948]. In that case, the Hon'ble Apex Court had held that deputationist could be treated as permanent employee of the borrowing Department. On the basis of the same, these applicants could also be considered as having become permanent employees of FSL Delhi and could not, therefore, have been repatriated. Shri Balraj Dewan, learned counsel arguing on behalf of the applicants very forcefully reiterated the above plea.

8. On the other hand, Smt. Avnish Ahlawat and Shri Mohit Madan appearing for the respondents, pointed out that the applicants have no case at all. Firstly, the repatriations have taken place long before they have approached this Tribunal. They do not have any vested right for absorption in the Organisation where they have been posted on deputation and when the competent authority has taken a decision after examining the circumstances, to repatriate the individuals, they cannot claim that they should have been absorbed even against the wishes of borrowing Department. Once a decision has already been taken by the borrowing Department that they would not like to have the services continued of deputationists, they (the deputationists) would have to be repatriated. Smt. B.Rana, appearing for respondent No.2, UPSC pointed out that their role was limited inasmuch as they were only to consider the cases of candidates whose names were placed for consideration for absorption, which they have done.

9. We have carefully considered the matter. In these four OAs, the applicants, who have come on deputation from various Organisations to FSL, Delhi, are aggrieved that they have not been absorbed in the borrowing Organisation. The relevant Recruitment Rules provide for transfer on deputation/transfer of persons against the post of Senior Scientific Officer (Biology, Documents, etc.), subject of course to the concurrence of the UPSC. However, it is for the borrowing Department to consider whether the deputationist was fit for absorption by them. Absorption of the deputationist in the borrowing Department is a tripartite arrangement and the same can be given effect only when all the parties agree. This does not appear to be the position in these OAs and, therefore, the applicants did not acquire any right for absorption.

10. We note in this connection that all the applicants have relied upon the decision of the Hon'ble Supreme Court in Umapati Choudhary's case (supra) in support of their case. Relevant portion of the judgment is reproduced below:-

> "9. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is concensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also

involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled. The University, the parent department or lending authority, the Board, the borrowing authority and the appellant the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the deputation of the appellant was not in public interest or it was vitiated by favouritism or mala fide. The learned single Judge in the previous writ petition had neither quashed the deputation order nor issued any direction for its termination. Indeed the learned single Judge had dismissed the writ petition. No material has been placed before us to show that between November 1987 when the Judgment of the single Judge was rendered and December 1991 when the Division Bench disposed of the writ petition filed by the appellant the petitioners of the previous case has raised any grievance or made any complaint regarding non-compliance of the directions made in the judgment of the learned single Judge. In these circumstances, the Division Bench was clearly in error in declining to grant relief to the appellant. Further, the appellant has, in the meantime, retired from service, and, therefore, the decision in the case is relevant only for the purpose of calculating his retiral benefits."

11. After perusing the above decision, we are not able to convince ourselves that the applicants can take any assistance from the above. No doubt, all the applicants have reached FSL, Delhi on deputation and have worked there for periods, long or short. No doubt, the vacancies in the cadre of SSOs also did exist against which they could have been considered for absorption. The applicants themselves were willing, may be keen to be absorbed permanently. Unfortunately for them, the borrowing Organisation, on administrative considerations, felt that the individuals' cases need not be taken up for

absorption. Therefore, the third wing of the tripartite arrangement had not acquiesced in the absorption of the applicant. They could not, therefore, be absorbed.

12. We also note that the decision of the Hon'ble Supreme Court in the case of Rameshwar Prasad Vs. Managing Director, U.P. Raikiya Nirman Nigam Ltd. [1992 (2) ATJ 635], dealing with the aspect of absorption of the deputationist, would also go against the applicants, as their case for absorption has been examined by the borrowing Organisation, who, for administrative reasons, decided against it.

13. All the applicants are found to have been repatriated in 2001 itself and joined their parent Organisations. One of them (Shri A.K.Gupta) has even retired on superannuation. It is not for the Tribunal, in the circumstances of the case, to put the clock back and order the absorption of these individuals. As pointed out earlier, the deputationists, the parent and the borrowing Organisations are concerned in this tripartite arrangement and even if any one of them is not a party to the same, the deputation or the absorption of the deputationist by the borrowing Organisation cannot be permitted. The mere fact that the cases of two of the four applicants were initially taken up for permanent absorption and were even forwarded to the UPSC, for its concurrence does not retract from the situation that the borrowing Organisation, on administrative considerations, decided not to go ahead with the absorption and informed the UPSC of their decision. The applicants do not have any automatic or vested right for absorption but only a

right for consideration in justified circumstances. In these cases, the borrowing Organisation had, on good grounds, decided against the absorption of these individuals and the Tribunal has to endorse the same.

14. We have had the benefit of perusing the relevant files in which the cases of all the above individuals were dealt with to ascertain for ourselves the reasons for their repatriation. On perusal the same, we are convinced that the respondents had just grounds to do so and that they had exercised their mind properly and on sound basis. Repatriation of the above deputationists was a decision taken by the competent authority - Govt. of NCT of Delhi-in the exigencies of administration. Executive is the best judge in the matter. In the circumstances, the general allegations of arbitrariness and/or mala fide raised by the applicants have no basis and they have to fail. The respondents' decision cannot be called in question.

15. We have no doubt in our mind that the applicants have not made out any case for Tribunal's interference. All the OAs, therefore, fail and are accordingly dismissed.

16. Let a copy of this order be placed in all the connected OAs for the purpose of completing records.

(Govindan S. Tampi)
Member (A)

(V. Sankar Raju)
Member (J)

/sunil/