

**Central Administrative Tribunal
Madras Bench**

MA/310/00242/2018 & MA/310/00572/2019 (in)(&) OA/310/01459/2017

Dated the 14th day of February Two Thousand Twenty

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

S.T.Balamurugan,
S/o S.Thandayutham,
Accountant,
Regional Pay & Accounts Office,
CISF, M/o Home Affairs,
Rajaji Bhawan, Besant Nagar,
Chennai 600 090. .. Applicant
By Advocate **M/s.P.Ulaganathan**

Vs.

1. The Union of India, rep. by the
Controller General of Accounts,
M/o Finance,
Department of Expenditure,
E-Block, INA, Mahalekha Niyantark Bhawan,
New Delhi-23.
2. The Principal Chief Controller of Accounts,
M/o Home Affairs,
North Block, New Delhi 110 001.
3. The Senior Accounts Officer(Admn),
O/o the Principal Accounts Office (Admn),
M/o Home Affairs,
C-1, Hutments, Dalhousie Road,
New Delhi.
4. The Senior Accounts Officer(Admn),

Regional Pay & Accounts Office,
CISF, Mha, 'D' Wing,
Rajaji Bhawan, Besant Nagar,
Chennai 600 090.

5. The Director General,
All India Radio,
Akashwani Bhawan,
Parliament Street,
New Delhi 110 001.
6. The Deputy Director (Engineering)/HOO
Doordarshan Kendra, Altinho,
Panaji, Goa 403 001.
7. The Assistant Estate Manager,
Directorate of Estates,
Shastri Bhawan, Nungambakkam,
Chennai 600 006.Respondents

By Advocate **Mr.M.T.Arunan**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OAs are filed seeking the following relief(s):-

OA 1459/2017:

“to call for the records relating to the third respondent herein in 1) 10/64 Dep/Acctt./Pr.A.O/Admn/MHA/2/2015-16/2257-64 dated 8.3.16; 2) No.10-64/Dep/Rep/Acctt/PrAO/Admn/MHA/16-17/02/9883-85 dated 28.11.2016 and 3) No.10-64/Dep/Rep/Acctt/PrAO/Admn/MHA/2017/02/950-54 dated 21.6.17 and No.100/22/PrAO(Admn)/MHA/2016-17/4335-40 dated 29.8.2017 and quash the same consequently direct the respondents to absorb the applicant with effect from the year 2013 as done in the case of similarly situated persons with all consequential benefits and pass such further or other order as this Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

2. The case of the applicant in a nut shell is as follows:-

The applicant while working as LDC in Doordarshan Kendra, Panaji, Goa, was appointed as Accountant on deputation basis in the Office of Chief Controller of Accounts (CCAS), Principal Account's Office, Ministry of Home Affairs, Chennai by order dated 11.2.2011. He joined the post on 1.4.2011. His period of deputation was extended upto 31.3.2016 and he served in the said capacity for five years. The contention of the applicant is that though the applicant had submitted his willingness for absorption in any offices of the department of CISF on 29.11.12 itself, when he was very much in the services of the CISF, and despite the fact that the Parent Department has also granted NOC for permanent absorption by letter dt. 05.12.12,

the applicant was denied absorption. Whereas the persons who were appointed on deputation in other stations and had joined much later and completed 2 years of deputation and became eligible after the applicant had become eligible in 2015 were absorbed. The applicant was repatriated to his parent department by Annexure A16 Office Order dt. 08.3.16.

3. Therefore, the applicant filed OA 1761/2015 seeking absorption. Subsequently this Tribunal by order dt. 18.4.16 disposed off the OA granting liberty to the applicant to submit a detailed representation to the respondent authority concerned and the respondents authority to submit a detailed reply and to consider the applicant's case for absorption, if the applicant is found exceptionally good. However, in compliance with this Tribunal order, the representation of the applicant dt. 2.5.16 was rejected by the 2nd respondent by order dt. 05.7.16.

4. Aggrieved by the said rejection order, the applicant filed OA 773/2017 and this Tribunal by order dt. 13.7.2017 held that the impugned order passed by the respondents is in violation of the earlier order of this Tribunal and therefore, quashed the rejection order dt. 05.7.16 and directed the respondents to pass a speaking order strictly in compliance of the directions of this Tribunal in OA 1761/2015 dt. 18.4.16. The applicant's representation dt. 01.9.16 was rejected by the 3rd respondent by Annexure A26 order dt. 28.11.2016 and Annexure A46 order dt. 29.8.17 which are impugned in the present OA. However, finally, in compliance of the order of this

Tribunal dt. 18.4.2016, the earlier representation of the applicant dt. 2.5.16 was re-examined by the respondents and passed Annexure A46 impugned speaking order dt. 29.8.17 rejecting the claim of the applicant stating that “the case of the applicant could not be considered for absorption at Chennai station only due to the fact that vacancy of Accountant under “DRQ” was not available at Chennai station when similar placed deputationists (5 were posted at Delhi station & 1 at Kolkata station) were considered for absorption in DAO, MHA due to fact that vacancies of Accountant under “DRQ” were available at Delhi/Kolkata station where these 6 deputationists were posted prior to absorption.” Aggrieved by the above said denial of his claim he has filed the present OA seeking the aforesaid relief.

5. It is submitted that pursuant to the interim order of this Tribunal dt. 06.11.17, permitting the applicant to join the parent department without prejudice to his claim to be absorbed in the office of the R2 and subject to the outcome of the OA, the applicant joined his parent department on 13.11.17 and he vacated his residential accommodation. The grievance of the applicant is that the R7 initiated action to recover penal rent for the period of occupation of the residential accommodation by the applicant beyond the approved deputation period and by letter dt. 26.2.18, R6 sought to recover a sum of Rs.133199/- treating his retention of quarters beyond the permissible period of retention after repatriation as unauthorised. Hence he filed MA 242/2018 seeking a stay of the proposed recovery. This Tribunal by order dt. 25.4.18

granted stay and it was extended till the respondents filed their reply statement on MA.

6. When the matter stood thus, it is submitted that the 1st respondent by OM dt. 14.8.19 circulated his decision to relax the ban imposed on permanent absorption of deputations as Accountant in CCAS department in force, as a one time measure for the deputationists appointed on deputation as Accountant on the basis of existing recruitment rules of the post, except for those who have filed court case for permanent absorptions and the matter is already sub-judice and subject to ceiling of number of deputationists not more than 10% of vacancies reported for Combined Graduate level Examination (CGLE)-2017 or minimum of one deputationist and subject to certain conditions and procedure mentioned therein. Hence, the applicant filed MA 572/2019 for interim direction to the 1st respondent to consider the case of the applicant for absorption as Accountant in the light of of the OM dt. 14.8.19.

7. The respondents have filed a reply contesting the claim of the applicant on the ground that the OA is barred under “Res judicata”. The applicant had earlier filed OA 1761/15, 773/2017 seeking directions for absorption in the post of Accountant in CCAS cadre, MHA. Now he has filed OA 1459/2017 on the same subject with different grounds seeking his absorption in CCAS Cadre, MHA.

8. It is submitted that in the first instance, the office of CGA has taken a policy decision in the year 2014 vide their OM dt. 21.10.14 to stop considering absorption of

deputationist, as sufficient number of fresh candidate sponsored by SSC are available for appointment as Accountant in CCAS cadre. Therefore, by OM dt. 23.7.15 it was decided not to consider absorption of the deputationist in CCAS cadre and that all deputationist on completion of their term would stand repatriated to their parent department. Accordingly, the office had not considered any case of deputationist for absorption after December 2013. Absorption of the applicant at this stage may be in violation of extant rules governing deputation and absorption as well as policy decision.

9. Secondly, the applicant was selected as Accountant purely on transfer on deputation basis and needs to report back to his parent cadre on completion of sanctioned period of deputation. The applicant had completed mandatory 2 years of deputation on 31.3.2013 only. On the basis of the willingness submitted by the applicant, as well as the NOC given by his parent department for permanent absorption of the applicant in RPAO(CISF) MHA particularly at Chennai station, the applicant's case was not sent to Screening Committee for consideration at other stations. When the cases of 6 other deputationists were initiated and sent to Screening Committee for considering their absorption, some dossiers of Accountant sponsored by SSC were pending at Chennai Station and the office submitted "Nil" vacancy of Accountant under Direct Recruitment Quota at Chennai Station to SSC. Among the above said 6 deputationists, 5 were absorbed at Delhi Station and 1 at

Kolkata station, as there were enough vacancies under DR Quota at these stations. Moreover, all these 6 deputationists had joined much earlier than the applicant and none of them superseded the applicant. Therefore, the applicant cannot claim for absorption since no junior deputationist was absorbed as Accountant in the office of DAO, MHA ahead of applicant and the contention that he was discriminated is not correct. The applicant cannot claim parity with officials absorbed in other Ministries in the year 2014, 2015 since every Ministry has its own separate cadre. Therefore, there is no illegality in the order dt. 08.3.16 repatriating the applicant on completion of sanctioned period of deputation.

10. Further, the applicant changed his earlier option to Chennai and submitted another willingness for absorption in any office at DAO, MHA, whereas the “NOC” issued by his parent department was for Chennai. Pursuant to the direction of this Tribunal the applicant submitted representation dt. 02.5.16 reiterating to consider his case for absorption at Chennai station only instead of any other station. Thus, it is clear that the applicant intended to be absorbed at Chennai station only where there was DR Quota vacancy related problems at that time. Therefore, the respondents prayed for dismissal of the OA with cost on the ground of non-impleading of 12 persons, filing 3 cases on the same facts prohibited under “resjudicata”.

11. We have carefully gone through the matter and perused the materials available on record. The applicant mainly rely on the order passed by the Principal Bench of

this Tribunal in ***OA 3478/2016 dt. 27.3.17 [Ms.Sarita Kapoor v. UOI through Secretary, M/o Finance & Others]*** which was allowed and the said order of the Tribunal was confirmed by the Hon'ble High Court of Delhi in ***W.P.(C) 11008/2017 & CM Nos.45004/2017 for stay), 45005/2017 (for exemption)*** and which was implemented by the department by Office Order dt. 28.9.2018.

12. On a perusal of the pleadings, it can be seen that the applicant was appointed on deputation and he joined the post on 01.4.2011. His period of deputation was extended periodically after obtaining NOC from Parent Department. The applicant was taken on deputation as per Notification produced as Annexure A1.

13. According to the applicant, the schedule of Central Civil Services (Accountant & Senior Accountant Group C Posts) Recruitment Rules, 2010, the method of recruitment to the post of Accountant reads as follows:-

“Direct Recruitment:

- i) 70% by direct recruitment through Staff Selection Commission;
- ii) 25% by promotion on seniority basis;
- iii) 5% by promotion on the basis of limited departmental competitive examination.

Column 12:

Deputation:

- 1) Vacancies remaining unfilled by direct recruitment through Staff Selection Commission in manner specified in item (I) of column 11 may be filled by the deputation by taking persons of appropriate grade from other Organised Accounts Services, Central Government, state Government or Autonomous Bodies which are fully funded by the Central or State Government subject to terms and conditions laid down by the Central Government from time to time in this regard.

2) A deputationist with an exceptionally good performance; on completion of two years of deputation may be considered for absorption in public interest subject to the prior concurrence of the parent cadre and the Controller General of Accounts and subject to the fulfilment of the following conditions as on 1st January in the year of consideration.

a) Pay Band in the parent cadre: A deputationist who exercises an option for absorption should hold any of the following Pay Band in the parent cadre:

i) Pay Band – 1 Rs.5200-20200 Grade Pay 2800; or equivalent grade or

ii) Pay Band – 1 Rs.5200-20200 Grade Pay 2400 with not less than five years service in this pay band; or equivalent grade or

iii) Pay Band – 1 Rs.5200-20200 Grade Pay 1900 with not less than nine years service in this pay band; or equivalent grade or

iv) Combined service of nine years in the parent cadre in the pay band/equivalent grade (ii) and (iii) above.

b) Educational qualification: As prescribed for direct recruits in Column (8)

c) Upper age limit: 50 years (relaxable at the discretion of the cadre controlling authority in exceptional cases);

Provided further that orders issued by the Central Government from time to time regarding reservations for Schedule Castes/Schedule Tribes/Other Backward Classes/Ex-Servicemen/Physically Handicapped persons, etc. and other orders issued by Central Government which are required to be followed while filling up a vacancy by direct recruitment shall also be followed while considering cases of absorption of deputationist.

3) Absorption of the deputationist will be within the percentage fixed for direct recruitment as specified under item (i) of column 11 above i.e. 70%.”

14. From the above, it can be seen that deputation is permitted as a method only when Direct Recruitment failed.

15. According to the applicant, there existed 3 vacancies at RPAO and 2 vacancies were filled by deputation including the applicant in this case. This fact can be seen from the order of the respondents dt.05.7.16 (Annexure A20-para 8). The impugned order in this case is produced as Annexure A46. It is stated that a speaking order was passed regarding rejection of absorption at RPAFO (CISF), Chennai due to administrative reasons as stated in its earlier order dt. 05.7.2016 (Annexure A20). As per Annexure A46, the permanent absorption of applicant at Chennai station could not be considered for the reason that there existed no vacancy at DRQ at Chennai Station, due to pendency of dossiers sponsored by SSC during the period of consideration. As per OM dt. 21.10.14, the respondents stopped considering absorption of deputationists as Accountant in CCAS Cadre.

16. The main contention raised by the counsel for the applicant is that the availability of vacancies for deputation has to be considered on the basis of vacancies that existed when the deputation was adopted. This is because, deputationists can be appointed only to vacancies that remained unfilled by Direct Recruitment. The counsel mainly relies on the decision of the Hon'ble Delhi High Court in ***Union of India & Ors. v. Mrs. Sarita Kapoor (WP 11008/2017 dt. 13.12.17)***. The facts of the above case is also similar wherein the absorption of an applicant was not done in time. The above case arose out of order of the CAT, Principal Bench in OA 3478/2016 for considering the absorption of the applicant along with other applicants

who were absorbed. The Tribunal had held that “*in as much as the availability of vacancies was to be seen at the time of filling up of the vacancies on deputation basis and not at the time of considering the cases of deputationists for absorption. This was for the reason that the rules provide that only those vacancies that remained unfilled by Direct Recruitment, were to be given to deputationists. Instead of implementing the rules, in correct perspective and processing the cases of deputationists who had become eligible for absorption. The petitioners put an embargo on the absorption of deputationists merely because by then, the dossiers from SSC for Direct Recruitment of Accountants had become available*”.

17. On a perusal of the impugned order passed by the respondents at Annexures A20, A39 & A46, it can be seen that the vacancies were considered at the time of absorption and not on the date of deputation. There is no case for the respondents that the applicant was not qualified in any other respect.

18. In view of the dictum laid down in ***Mrs. Sarita Kapoor***'s case in ***OA 3478/2016*** of Principal Bench and affirmed by the Hon'ble Delhi High Court, we are of the view that the stand taken by the respondents in rejecting applicant's absorption is not correct. The applicant ought to have been considered for the vacancies for which deputation was adopted. Accordingly, we find merit in the contention of the applicant in this case. The Order in OA 3478/2016 was implemented and the applicant therein was given absorption as per order of the Pr. Chief Controller of Accounts in

No.Admn/1(34)3/Absorption/2018-19/565 dt. 28.9.18 and it was produced before this Bench by the applicant. It is also brought to our notice that as per OM No.A.11020/1/2014/MF.CGA(A)/112 dt. 14.8.19 of the Ministry of Finance, Department of Expenditure, Controller General of Accounts, the government has decided to relax the ban imposed on permanent absorption of deputationists as Accountant (CCAS) in force vide CGA's OM dt. 23.7.15, as one time measure.

19. On the basis of the above findings, Annexure A46 impugned order dt. 29.8.17 passed by the respondents rejecting the prayer for absorption is set aside.

20. The respondents 1 to 4 are directed to consider the absorption of the applicant in the light of the discussions and pass an order in accordance with the rules within a period of 3 months from the date of receipt of a copy of this order. OA is disposed off accordingly. Consequently MA 572/19 also stands disposed off.

21. With regard to MA 242/18 seeking a stay of the order of recovery of rent by R6&7 as the dispute relating to absorption is pending. From the above discussion in the OA, it can be seen that the repatriation of the applicant without absorption was not correct. Hence we direct the respondents 6 & 7 to keep in abeyance the recovery

of penal rent till the borrowing department passes order on the absorption of the applicant. MA 242/18 stands disposed off. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

14.02.2020

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