

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 768 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Pabitra Mohan Sahoo, aged about 34 years, S/o Late Maguni Ch. Sahoo, at present working as Steno Group D under Joint Registrar, CAT, Cuttack Bench, Cuttack, permanent resident of At-Parakula, PO-Pikaruli, via-Marshaghai, Dist-Kendrapara, Odisha-754213.

.....Applicant

VERSUS

1. Union of India, represented through Secretary, Govt. of India, Ministry of Labour & Employment, Srama Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. Under Secretary, Govt. of India, Ministry of Labour & Employment, Srama Shakti Bhawan, Rafi Marg, New Delhi-110001.
3. Pr. Registrar, Central Administrative Tribunal, Principal Bench, 61/35 Copernicus Marg, New Delhi-110001.
4. Joint Registrar, Central Administrative Tribunal, Cuttack Bench, 4th Floor, Rajaswa Bhawan, Cuttack-753002.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.Behera, counsel

Heard & reserved on : 8.11.2019

Order on : 03.01.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs :

- “(i) to quash/set aside the office memorandums dtd. 23.4.2015 and 6.8.2015 under Ann. A/6 & A/10 respectively;
- (ii) And to direct the Respondent No. 3 & 4 to repatriate the applicant to his parent department;
And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.
And for which act of your kindness the applicant as in duty bound shall every pray.”

2. The facts of the case as stated in the OA are that the applicant was initially appointed as Stenographer Grade 'D' under respondents No. 1 & 2 on 9.1.2012. On 7.11.2013 he submitted a representation for consideration of his transfer to any other stations outside Delhi. The respondent No.3 vide letter dated 13.11.2013 (Annexure A/1) asked for information in respect of the applicant including the application for transfer through proper channel. Thereafter, the proposal was approved by the respondent No.3 vide order dated

7.2.2014 for appointment of the applicant as Stenographer Grade 'D' under respondent No.3 by posting him at Central Administrative Tribunal (in short CAT) in the pay band of PB-I with Grade Pay of Rs.2000/-. Respondent No.1 was requested to relieve the applicant accordingly. Vide order dated 30.4.2014 (Annexure A/5) the applicant was relieved on 2.5.2014 to enable him to join Cuttack Bench of CAT under respondent No.4. The applicant joined under respondent No.4 on 5.5.2014. Thereafter, vide order dated 8.5.2014 (Annexure A/6), the following conditions as under were stipulated about the applicant's service under CAT :

"In pursuance of CAT, Principal Bench, New Delhi letter No. PB/17/9/2004-Estt.I/1214(A) dated 7.2.14 conveying the approval of Hon'ble Chairman for transfer of Shri Pabitra Mohan Sahoo, Steno Gr. D on compassionate ground from Ministry of Labour & Employment, New Delhi to Central Administrative Tribunal, Cuttack Bench, Cuttack in the same capacity in relaxation of rules in the scale of pay of PB-1 (Rs.5200-20,200, Grade Pay 2400/-) and after being relieved from his parent department w.e.f. 02/05/2014 (AN) vide their office order No. 104/2014 in File NO. A-12026/4/2011/Admn.I(Vol.II) dated 30.4.2014, Shri Pabitra Mohan Sahoo has joined the office of CAT, Cuttack Bench, Cuttack, on 05.05.2014(FN).

Shri Pabitra Mohan Sahoo will be on probation for a period of two years. His services are liable to be transferred anywhere in India and he will be assigned seniority in the grade of Steno 'D' from 5.5.2014. Shri Pabitra Mohan Sahoo is not entitled for any joining time, transfer TA etc."

3. On 25.2.2015 (Annexure A/8), the applicant submitted a representation to the respondent No.3 through proper channel, for his repatriation to the parent department i.e. for posting under respondent Nos. 1 and 2. Vide letter dated 23.4.2015 (Annexure A/7) the applicant was asked to give his willingness to be posted in Principal Bench of CAT, New Delhi. It was also stated in that letter as under :

"After considering all the facts and circumstances of the case, the request of Shri Pabitra Mohan Sahoo, Steno Gr.'D' for his re-transfer back to his previous department i.e. Ministry of Labour & Employment, New Delhi, has not been acceded to by Hon'ble the Chairman. However, his Lordship considering continuous treatment of his mother in AIIMS, new Delhi has been pleased to order that subject to willingness of the official, his request for transfer to CAT, Principal Bench, New Delhi, at his own request could be considered.

Therefore, Shri Pabitra Mohan Sahoo, Steno Gr. 'D' is hereby asked to submit his willingness in writing, within 07 (seven) days of receipt of this Office Memorandum for his transfer to CAT, Principal Bench, new Delhi at his own request, for sending the proposal to Cat, Principal Bench, New Delhi."

4. Thereafter, on 11.6.2015 (Annexure A/8) the applicant submitted another representation to respondent Nos.3 & 2 for his repatriation to his parent department. Vide letter dated 29.6.2015 (Annexure A/9), the respondent No.2 requested respondent No.3 to repatriate the applicant at the earliest. Thereafter, the order dated 6.8.2015 was passed by respondent No.3 (Annexure A/10), by which the request of the applicant for repatriation to his parent department under the respondent Nos. 1 and 2 was rejected in terms of the letter dated 15.7.2015 of the Principal Bench of CAT.

5. The applicant, being aggrieved by the order dated 23.4.2015 and 6.8.2015, has challenged these orders in this OA on the following grounds :

(i) As per the OM dated 26.12.2013 (Annexure A/3) of the Department of Personnel and Training (in short DOPT), the lien of the applicant on transfer will be maintained for a period of two years and the same can be extended for one more year and the lien will be terminated on acquiring lien on a permanent post. The applicant is entitled for the benefit of para 5 and 6 of the Annexure of the OM dated 26.12.2013 (Annexure A/3) as per the order dated 30.4.2014 (Annexure A/5). The applicant was also continuing on probation for two years, when he submitted representation dated 29.6.2015 (Annexure A/9) for his repatriation.

(ii) The parent department of the applicant (respondent No. 1 & 2) on receipt of his letter dated 29.6.2015 requesting for repatriation, requested respondent No. 3 to repatriate the applicant, which shows that his lien was available under respondent No. 1 & 2.

(iii) Although it is mentioned in the impugned orders dated 23.4.2015 (Annexure A/7) and dated 6.8.2015 (Annexure A/10) that applicant has been permanently absorbed as a stenographer Group D against a permanent post, no such order has been received by the applicant.

6. Contentions in the counter filed by respondents No. 1 & 2 are as under :

(i) Paragraphs 5 & 6 of the DOPT OM dated 26.12.2013 (Annexure A/3) will be applicable to the lien of the applicant, who had joined under respondents No.4 on 5.5.2014 (FN) vide order dated 8.5.2014.

(ii) The applicant on 11.6.2015 submitted a representation for repatriation to his parent department. Accordingly, respondents No. 3 & 4 have been requested to repatriate the applicant. Respondent No.4 vide letter dated 6.8.2015 (Annexure A/10) informing that applicant's lien has been terminated on his appointment in Cuttack Bench of the Central Administrative Tribunal (in short CAT).

7. The Counter filed by the respondent No.3 and 4 stated the following vide paragraphs 7, 8, 11 & 13 as under :

"7. That in response to para 4.6 of the OA the respondent Nos. 3 & 4 submit that the applicant has referred to letter of Respondent No.3 dated 7.2.2014 which inter alia refers to letter of Respondent No.2 dated 16.1.2014 and 30.1.2014. Copy of the letter dated 16.1.2014 and 30.1.2014 issued by the Respondent No.2 as referred to in letter No. dated 7.2.2014 are not annexed by the applicant. In short, the applicant's request for transfer on compassionate ground was forwarded by his Parent Department i.e. Respondent no.2 and the lending department i.e. Respondent No.3 has finally accepted his candidature for joining on transfer on compassionate ground in the same capacity in the scale of pay of Rs.5200-20,200 (PB_I) with GP of Rs.2400/-. The relevant portion of letter dated 7.21.2014 are reproduced hereunder :

The transfer of Shri Pabitra Mohan Sahoo, Steno Gr.D was approved by the Competent Authority (Respondent No.3) on compassionate ground

from the Ministry of Labour & Employment to CAT, Cuttack Bench in relaxation of rules in the same capacity w.e.f. his taking over the charge of the post at Cuttack Bench of the Tribunal. On his joining in CAT he will be kept on probation for a period of two years. Further his transfer in CAT is subject to the conditions that his services are liable to be transferred anywhere in India and he will be assigned seniority in the grade of Stenographer Gr. D from the date of his joining in the post of CAT. Respondent No.2 was accordingly requested to forward the original dossier of the official to the authority at Respondent No.3 with duly completed service book and LPC to Cuttack Bench directly. The copy of the LPC received by Respondent No.4 is relevant and annexed herewith.'

8. That in response to para 4.7 of the OA the Respondent Nos. 3 & 4 submit that the applicant has relied upon the provisions in para 5 & 6 of Annexure to DOP&T OM No. 28020/1/2010-Estt.(C) dated 26.12.2013. para 5 of the said OM stipulates that :

'If a permanent employee is selected on the basis of his application for posts in other Central Government his lien may be retained in the parent department for a period of 2 years. If the employee concerned is not permanently absorbed within a period of 2 years from the date of his appointment in the new post. He should immediately on expiry of the period of 2 years either resign from the service or revert to his parent cadre.'

In this case, the applicant has joined CAT on immediate absorption basis with effect from 5.5.2014 and acquired a lien against a permanent post of Steno Gr.D in CAT as held by R/3 vide letter dated 15.7.2015. Copy of the letter dated 15.7.2015 is annexed herewith. Accordingly, operation of para 5 of the order referred to above cases.

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11. That in response to para 4.10 & 4.11 of the OA, the Respondent Nos. 3 & 4 submit that the applicant again requested for repatriation to his earlier department i.e. R/2. The representation was addressed to R/2 so also to R/3. Respondent No.3 vide communication dated 15.7.2015 denied the request of the applicant on the ground that he has been appointed in this Tribunal against a permanent post of Steno Gr. D on transfer (immediate absorption) basis and not on transfer on deputation basis and that his candidature for such transfer was accepted by Respondent No.3 only after receipt of request duly forwarded by his earlier department i.e. Respondent No.2 and upon acceptance of specific condition of transfer regarding fixation of his seniority. It was further informed that his joining in the Tribunal was effected on immediate absorption basis w3.e.f. 5.5.2014 and his lien automatically ceases from Respondent No.2 on his joining permanent post in CAT w.e.f. 5.5.2014 and the applicant has acquired lien in the present department i.e. under Respondent No.3 in terms of provision contained in para 4 with para 10 & 11(i) of the DOPT OM No. 28020/1/2010-Estt.(C) dated 26.12.2013.

.....
13. That in response to para 4.13 of the OA the Respondent Nos. 3 & 4 submit that it is relevant to mention that the provision of lien referred to by the applicant per se do not give right to the applicant to seek repatriation to his earlier department i.e. Respondent No.2 at his wish and sweet will. In this case the applicant join on tr5ansfer on permanent basis as per his own request with permission of his then parent department i.e. R/2. Therefore, the service of the applicant is at the disposal of R/3. The applicants' request for repatriation to his earlier department is a subject dealing with transfer to another department and is a matter for consideration under the relevant provision of Rule/Law and that applicant has failed to establish his right seeking for such repatriation."

8. It is also stated by the respondent No. 3 & 4 in their counter that quashing of orders at Annexure A/6 & A/8 as prayed for in the OA would not automatically invalidate the orders passed by the competent authority in this matter. Hence, it is stated that the OA is liable to be dismissed in the light of the following judgments, cited in support of the contentions in the counter filed :

- i) Bharat Amratlal Kothari -vs- Dosukhan Samadkhan Sindhi & Others [AIR 2010 SC 475]
- ii) State of Madhya Pradesh -vs- UOI [AIR 2011 SC 1989]
- iii) U.P.Financial Corporation -vs- Gem Cap (India) Pvt. Ltd. [AIR 1993 SC 1435]
- iv) Suraj Prakash Gupta -vs- State of Jammu & Kashmir [2000(7) SCC 561]

9. It is further stated in the counter as under :

“17.The provision of the OM confer right on the employee concerned, if not permanently absorbed in the lending department within a period of two years from the date of his appointment, should on expiry of period of two years either resign from the service or revert to his parent cadre. Whereas, in the instant case, the applicant sought to be repatriated before completion of two years which was considered but rejected in public interest? But the rule is conspicuously silent how by such rejection, the applicant was prejudiced and his right was affected.

18. That the stand taken in paragraph 5(D) is of no help to the applicant because it is trite law the date of first appointment would mean the date of first substantive appointment, meaning thereby the date of permanent appointment or the date of first appointment, on probation on a clear vacancy [**Suraj Prakash Gupta -vs- State of Jammu & Kashmir** reported in 2000(70 SCC 561)]. In the instant case, the appointment of the applicant against a clear cut regular vacancy and thus, he cannot claim as a matter of right to be repatriated to his parent department at his sweet will and fancy.

Thus, the argument advanced by the Applicant is erroneous and that the reference drawn by it to para 5 to 6 of OM No. 28020/1/2010-Estt.(C) dated 26.12.2013 is not relevant on the consideration of the followings :

- (i) The applicant has himself declared that he had requested to his parent department that is Respondent No.2 for an NOC seeking transfer to any other Department in Odisha;
- (ii) That the applicant has not responded to any advertisement by Respondent No.3 and not applied for transfer on deputation basis, rather has joined on permanent transfer with effect from 5.5.2014.
- (iii) The applicant in his own application dated 7.11.2013 had requested to respondent No.3 for consideration of his transfer to an Establishment outside Delhi referring to respondent No.2 OM No. A-12026/4/2011-Admn.I(Vol.II) dated 25.4.2013;
- (iv) That the applicant has accepted the terms of transfer conveyed by the Respondent No.3 vide communication dated 13.11.2013;
- (v) That the applicant has tendered Technical Resignation to his earlier Department i.e. Respondent No.2.”

10. No rejoinder has been filed by the applicant. Learned counsels for the applicant and respondents were heard. They broadly reiterated the stand taken in the respective pleadings. Learned counsel for the applicant submitted written notes of submission stating therein as under :

“6. That, this matter was posted on 8.11.2019 under the heading Part Head. As per earlier order of this Tribunal the Counsel for the Respondents No. 1 & 2 has orally submitted that the lien of the applicant is continuing in his parent department. Moreover, the counsel appearing for Respondent No.3 & 4 though urged that the applicant has already absorbed against a permanent post, but fails to produce the so called absorption order before this Hon’ble Tribunal.

7. It is the specific case of the applicant that unless the lien is transferred the employee would retain his lien on the substantive post he was holding. Sri Sahoo was holding a substantive post in the Ministry of Labour at the time he was relieved from the Ministry to join another post in CAT on probation. There are no documents on record to indicate that Sri Sahoo was appointed on immediate absorption basis in CAT which would have created that his lien is in CAT.”

11. Learned counsel for the respondents No. 3 & 4 has also filed his written note of submission enclosing a copy of the letter dated 15.7.2015. Following contentions have been made in the said written note :

“G. The CAT, PB, New Delhi vide PB/17/9/2004-Estt.I/6273 (AO) dated 15.7.2015 intimated to the Ministry of Labour and Employment, New Delhi that Shri P.M.Sahoo has been appointed in the Tribunal against a permanent post of Stenographer Grade D on transfer (immediate absorption) basis and not on transfer on deputation basis (deputation) and, therefore, his lien stands automatically terminated with the department of Ministry of Labour on his acquiring lien on permanent post in CAT w.e.f. 5.5.2014 in terms of para 4 read with para 10 & 11 (i) of DOP&T OM No. A-28020/1/2010-Estt.(C) dated 26.12.2013. copy of letter No. PB/17/9/2004-Estt.I/6273(A) dated 15.7.2015 is enclosed herewith for kind ready reference.

This was intimated to the Applicant vide OM No.7(2)/2014-Estt. Dated 06.08.2015 (Annexure A/8). Hence he has filed the instant OA with the prayer mentioned above.

MAINTAINABILITY:

1. The applicant has intentionally and deliberately suppressed the vital facts which has cascading effect on deciding the issue that he was permanently absorbed w.e.f. 5.5.2014 and that he is having lien in the CAT w.e.f. his date of absorption in terms of letter No.PB/17/9/.2004-Estt.I/6273(A) dated 15.7.2015.

The relief claimed in this OA ignoring and suppressing this vital document is fatal and the OA is liable to be dismissed by applying the law laid down by the Hon'ble Apex Court in the cases **Bharat Amratlal Kothari -vs- Dosukhan Samadkhan Sindhi and others**, AIR 2010 SC 475 & **State of Madhya Pradesh -vs- UOI** AIR 2011 SC 1989 (paragraphs 9 & 13).

2. It is trite law that the Court while exercising its jurisdiction cannot sit as an appellate authority over the acts and deeds of the authority and seek to correct them and doctrine of fairness evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities vide **U.P. Financial Corporation -vs- Gem Cap (India) Pvt. Ltd.**, AIR 1993 SC 1435. The rejection of his request for repatriation was in terms of Rule and law, and the applicant having no right for consideration of such a request no interference in the matter is warranted.

MERITS :

- (i) The provision of para 5 & 6 of DOP&T OM dated 26.12.2013 relied by the applicant has no application to the present case as **HIS LIEN STANDS AUTOMATICALLY TERMINATED WITH HIS EARLIER DEPARTMENT ON HIS ACQUIRING LIEN ON PERMANENT POST IN CAT w.e.f 05.05.2014**, the date when he was transferred on immediate absorption basis in terms of the provisions contained in paragraph 4 read with para 10 & 11 (i) of the said DOP&T OM.
- (ii) That the Hon'ble Apex Court in the case of **Suraj Prakash Gupta -vs- State of Jammu and Kashmir**, reported in 2000 (7) SCC 561 have held that the date of first appointment would mean the date of first substantive appointment, meaning thereby the date of permanent appointment or the date of first appointment, on probation on a clear vacancy. In the instant case, the applicant was transferred on permanent basis against substantive post. Thus, his contention that his lien still exists in his parent department and, therefore, he has a right to be rejected is misnomer.
- (iii) That as stated above, the transfer of applicant to CAT, Cuttack Bench, Cuttack on permanent basis against a substantive post and acquired a lien in CAT. In such an event, his lien in his earlier department stands automatically terminated on his acquiring a lien on a permanent post in CAT as the applicant's transfer is on immediate absorption basis.

It is needless to state that lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed as in the case of the applicant in CAT. In view of the above,

since rejection of the request of applicant was due to public/administrative interest no interference in the matter is called for.

12. We have gone through the pleadings on record and considered the submissions of learned counsels for both the parties. The question to be decided in this case is whether the applicant's request for repatriation to the parent department within one year of his own request transfer to CAT on permanent absorption basis, is permissible in the light of the DOPT OM dated 26.12.2013.

13. Before proceeding further, the issue of maintainability of the OA as raised by the respondent Nos. 3 and 4 in their Counter as well as written note of submission needs to be considered first. It is contended that OA is not maintainable since the letter dated 15.7.2015 of the Principal Bench of CAT was not challenged by the applicant in the OA and this letter was suppressed by him by not mentioning about it in the OA. It is noticed that the respondent Nos. 3 and 4 have not enclosed a copy of the said letter dated 15.7.2015 in their Counter. It was enclosed with the written note of submission filed by the learned counsel for the respondents. It is seen that the letter dated 15.7.2015 is the reply to the respondent No.2 for his letter dated 29.6.2015, proposing that the applicant be repatriated in view of his representation. The said letter dated 29.6.2015 has mentioned as under:

"I am directed to refer to your letter No.A-12026/4/2011-Adm.I(Vol.II) dated 29.6.2015 on the abovementioned subject and to say that Shri Pabitra Mohan Sahoo, Steno Gr.'D' of your department has been appointed in this Tribunal against a permanent post of Stenographer Grade 'D' on transfer (immediate absorption) basis and not on transfer on deputation basis (deputation).

His candidature was considered in this office for Cuttack Bench of this Tribunal only after receipt of his request duly forwarded by our department and on acceptance of specific conditions regarding fixation of his seniority etc. After his relief from your department, he joined in this Tribunal on immediate absorption basis w.e.f. 5.5.2014 and acquired a lien to the post of Steno 'D' in CAT.

Thus, provisions of para-5 & 6 of DOP&T OM No.A-28020/1/2010-Estt© dated 26.12.2013 is not applicable in the instant case as his lien stands automatically terminated with your department on his acquiring lien on permanent post in CAT w.e.f. 5.5.2014 in terms of the provisions contained in para-4 read with para-10 & 11(i) of the said DOP&T OM.

In this view of the matter, the request of Shri Pabitra Mohan Sahoo, Steno Grade 'D' for repatriation to your department has not been acceded to by the Competent Authority."

It is seen that the operative part of the letter indicates the reason for non-acceptance of the applicant's request, which is same as mentioned in the order dated 6.8.2015 (Annexure A/10). It is further seen that this letter dated 15.7.2015 was addressed to respondent No.2 and copy has been marked to respondent No.4. There is nothing in this letter showing that a copy of the said letter has been marked to the applicant. The order dated 6.8.2015 at Annexure A/10 refers to the said letter dated 15.7.2015 of the Principal Bench of CAT

without enclosing a copy of this letter. The impugned order dated 6.8.2015 was communicated to the applicant and there is nothing on record to show that the letter dated 15.7.2015 has been communicated to the applicant. Hence, the contention that the applicant has suppressed this letter dated 15.7.2015, is not tenable. There was no occasion on the part of the applicant to challenge the said order dated 15.7.2015, copy of which has not been communicated to him. In addition, the contents of the letter dated 15.7.2015 with regard to the grievance of the applicant, are similar to the contents of the order dated 6.8.2015 (Annexure A/10), which has been challenged in this OA and no other ground over above the grounds in order dated 6.8.2015, has been raised in the letter dated 15.7.2015.

14. Respondents in the counter as well as written note have cited the case of Bharat Amratlal Kothari –vs- Dosukhan Samadkhan Sindhi & Others [AIR 2010 SC 475]. Since the contents with regard to the grievance of the applicant in the order dated 6.8.2015 are same as in the order dated 15.7.2015, it cannot be said that the applicant has failed to ask for all the reliefs. What aspect of the cited judgment will be applicable in this case has not been mentioned in the Counter. It is found that reliefs sought for in this OA are very specific and hence, the question of maintainability as raised by the respondents on this ground is not acceptable.

15. Regarding the judgments cited by the respondents in the case of State of Madhya Pradesh –vs- Union of India & Ors. [AIR 2011 SC 1989], it is seen that the case relied on by the respondents related to a Public Interest Litigation and pertains to the disputes regarding acquisition of land for the project. It was held that “proper pleadings are necessary to meet the requirements of the principles of natural justice”. It is stated in the Counter that quashing of the impugned orders at Annexure A/6 & A/8, will not automatically invalidate the orders passed by the competent authority, which probably refers to the letter dated 15.7.2015 of the Principal Bench. As discussed earlier, there was no scope for the applicant to challenge the letter dated 15.7.2015, which was not communicated to the applicant. Since the consequential order dated 6.8.2015 (Annexure A/10), with same grounds as in the letter dated 15.7.2015, was communicated to the applicant and the said order dated 6.8.2015 (Annexure A/10) has been challenged, it cannot be said that the OA suffers from the defects like inadequate pleadings.

16. It is also mentioned regarding maintainability of the OA that the Court cannot assume the role of the Appellate Authority in the matter. In this case the judgment of U.P. Financial Corporation –vs- Gem Cap (India) Pvt. Ltd. [AIR

1993 SC 1435] has been cited. As stated at paragraph 9 of this order, the question in this case related to manner of applicability of DOPT OM dated 26.12.2013. The relevant issue here is whether the interpretation by competent authority, while passing the impugned order, has correctly applied the provisions of the DOPT OM dated 26.12.2013 while deciding the case. The existing facts will not be re-assessed or considered. Hence, the contention that this Tribunal may assume the jurisdiction of the Appellate Authority in this OA, has no basis or justification.

17. In view of the above discussions, we are of the considered view that the objections raised by the respondent Nos. 3 and 4 regarding maintainability of the OA are not tenable.

18. With regard to the merit of the case relating the application of DOPT OM dated 26.12.2013 (Annexure A/3), it is seen that the order dated 30.4.2014 (Annexure A/5) of the respondent No.2 by which the order was passed to relieve the applicant to join under the respondent Nos. 3 and 4, mentions the following :

“Consequent upon his selection for appointment to the post of Stenographer Grade ‘D’ in Central Administrative Tribunal, Cuttack Bench on transfer on compassionate grounds vide Central Administrative Tribunal, Principal Bench’s letter No. PB/17/9/2004-Estt.I dated 7.2.2014, the competent authority has accepted the technical resignation of Shri Pabitra Mohan Sahoo, Steno Grade ‘D’ (CSSS Cadre) of this Ministry, he is relieved of his duties in this Ministry w.e.f. 2.5.2014 (AN) with the direction to join Central Administrative Tribunal, Cuttack Bench, Cuttack. He will not be entitled for any joining time, transfer TA etc. as the transfer is on his own request. His lien in this Ministry will be applicable as per applicable provisions in para 5 and 6 of Annexure to DOP&T’s OM No. 28020/1/2010-Estt.(C) dated 26.12.2013.”

It is clear from the above that as per the respondent No.2 the lien of the applicant would be governed by the para 5 and 6 of the DOPT OM dated 26.12.2013. There is nothing on record to show that the respondent No. 3 has disagreed with such view of the respondent No.2 and informed him that the para 5 and 6 of the DOPT OM dated 26.12.2013 will not be applicable to the applicant’s case after passing of the order dated 30.4.2014.

19. The applicant’s case is that as per the paragraph 5 and 6 of the DOPT OM dated 26.12.2013 (Annexure A/3), his lien will be maintained for 2 years with the respondent Nos. 1 and 2 for which he can opt for repatriation before this period of 2 years from the date of being relieved from the parent department. The applicant also relies on the fact that the respondent No.2 has requested respondent No. 3 to repatriate the applicant vide his letter dated 29.6.2015 (Annexure A/9) in response to the letter dated 11.6.2015 requesting his repatriation.

20. The case of the respondents on the other hand, is that the provisions of para 5 & 6 of the DOPT OM dated 12.6.2013 are not applicable to the applicant's case as his lien automatically stands terminated with his parent department after his acquiring lien after joining in the CAT w.e.f. 5.5.2014 in terms of para 4, 10 & 11 of the said OM of the DOPT. The respondents have also cited three judgments as stated earlier in support of their contentions.

21. The decision in question framed at paragraph 12 of this order will depend on the fact whether paragraph 5 and 6 of the DOPT OM dated 26.12.2013 will be applicable as contended by the applicant; or paragraph 4, 10 and 11 of the said OM of the DOPT will be applicable to the case as averred by the respondent No. 3 and 4.

22. The applicant relies on para No. 5 & 6 of the DOPT OM dated 26.12.2013 (Annexure A/3), which state as under :

“5. If a permanent employee is selected on the basis of his application for posts in other Central Government Department/Offices/State government, his lien may be retained in the parent department for a period of 2 years. If the employee concerned is not permanently absorbed within a period of 2 years from the date of his appointment in the new post, he should immediately on expiry of the period of 2 years either resign from the service or revert to his parent cadre. An undertaking to abide by this condition may be taken from him at the time of forwarding of his application to other departments/offices.

6. When a government servant has joined a department/office where he is not confirmed within a period of 2 years due to some reasons, he may, in exceptional cases, be permitted to retain the lien in the parent department/office for one more year. While granting such permission, a fresh undertaking similar to the one indicated above may be taken from the employee.”

The para 6 of the aforesaid OM is applicable when a government servant in another department is not confirmed within a period of 2 years, for which, extension of lien may be required. Since the applicant, in this case, has opted for repatriation to the parent department before two years from the date of joining under the respondent No. 3 & 4, para 6 of the above OM is not applicable. The para 5 of the OM is applicable when a permanent employee is selected for posting in other Central Government department/office/State Government office. In this case the applicant had applied to the respondent No.3 for consideration of his posting as Stenographer Grade ‘D’ under CAT as mentioned in the letter dated 13.11.2013 (Annexure A/1). It is also mentioned in the said letter that his application should be forwarded through proper channel after verifying the service particulars and vigilance certificate along with the photo copies of the CRs are to be enclosed. So clearly the application was made through proper channel by the applicant for Stenographer Grade ‘D’ under respondents No. 2 & 3. Hence, the para 5 covers the applicant's case.

23. The respondents on the other hand have stated that the paragraph 4, 10 & 11(i) of the said OM will be applicable as stated in the impugned order dated

6.8.2015 (Annexure A/10). These three paragraphs of above DOPT OM state as under :

“4. A government servant on acquiring a lien on a post will cease to hold any lien previously acquired on any other post.

Xxx

xxx

xxx

xxx

10. A Government employee's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government or a State Government) outside the cadre on which he is borne.

11. No lien of a Government servant shall be retained :

- (i) where a Government servant has proceeded on immediate absorption basis to a post or service outside his service/cadre/post in the Government from the date of absorption;

xxx

xxx

xxx

xxx”

Paragraph 4 is applicable for a Government servant acquiring a lien for a post in the new department to which he was transferred and in such case, he will cease to hold the lien in his parent department. The respondents have taken a stand that the applicant has acquired lien against the post in CAT from the date of his joining in CAT i.e. 5.5.2014. However, vide order dated 8.5.2014 (Annexure A/6), it is stated that the applicant will be on probation in CAT for a period of 2 years and his service are liable to be transferred to anywhere in India. It was further stated that he will be assigned seniority of Stenographer Grade 'D' in CAT from 5.5.2014. The DOPT OM dated 26.12.2013 (Annexure A/3) states the following under heading 'Lien' :

LIEN

Lien represents the right/title of a Government employee to hold a regular post, whether permanent or temporary, either immediately or on the termination of the period of absence. The benefits of having a lien in a post/service/cadre is enjoyed by all officers who are confirmed in the post/service/cadre of entry or who have been promoted to a higher post declared as having completed the probation where it is prescribed, or those who have been promoted on regular basis to a higher post where no probation is prescribed under the rules, as the case may be.”

24. In view of the position of the guidelines as discussed above, for holding lien, it is necessary for an employee to complete his probation. There is nothing on record in this case to show that the applicant had been confirmed after completion of the probation period or as on the date he submitted representation dated 11.6.2015 (A/8) for his repatriation. The order dated 8.5.2014 (Annexure A/6) which is based on the order dated 7.2.2014 (Annexure A/4) of the respondent No.3 clearly shows that the applicant is not confirmed in the post as he is posted on probation. **Hence, as per the definition of 'Lien' in the DOPT OM dated 26.12.2013 (A/3) as extracted above, the applicant cannot be said to have held lien against a post from the date of his posting as Steno Grade D under CAT.** In case the applicant would have been appointed substantively in the post of Steno Grade D under CAT w.e.f. 5.5.2014, then the respondents' contention that he held 'Lien'

against a post in CAT w.e.f. 5.5.2014 would have been valid. In the circumstances, we are unable to accept the contentions of the respondent no. 3 and 4 that the applicant was holding lien against a post in CAT with effect from his date of joining in CAT on 5.5.2014 on permanent absorption basis.

25. Paragraph 10 of the DOPT OM also stated that his lien in parent department will be terminated on acquiring the lien against the permanent post. In this case as discussed earlier, there is nothing on record to show that the applicant has been given substantive posting or he has been confirmed as Stenographer Grade 'D' under respondent No.3 & 4. Hence, it cannot be said that he has acquired permanent lien against a post in CAT in terms of the said DOPT OM dated 26.12.2013 (A/3). Hence, paragraph 10 of the DOPT OM dated 26.12.2013 will not be applicable to this case.

26. Paragraph 11(i) of DOPT OM states that no lien of the Government servant will be retained where the Government servant has proceeded on immediate absorption basis to a post or service outside his service/cadre from the date of absorption. In this case there is no document to show that the applicant has been permanently absorbed against the post of Stenographer Grade 'D' since he was posted on probation vide order dated 8.5.2014, which was passed based on the order dated 7.2.2014 (Annexure A/4), which states as under :

"I am directed to refer to your letter No. A-12026/4/2011-Adm-I(Vol.II) dated 16.1.2014 & 30.1.2014 on the above mentioned subject and to convey the approval of the Hon'ble Chairman, Central Administrative Tribunal for transfer on compassionate grounds in respect of Shri Pabitra Mohan Sahoo, Steno 'D' of your Ministry to Central Administrative Tribunal in the same capacity in relaxation of Rules in the scale of pay of PB-1 (Rs.5200-20,200 plus Grade pay Rs.2400/-) with effect from the date of his taking over the charge of the post at Cuttack Bench of the Tribunal.

On his joining in CAT he will be kept on probation for a period of two years. Further his transfer in CAT is subject to the conditions that his services are liable to be transferred anywhere in India and he will be assigned seniority in the grade of Steno 'D' from the date of his joining the post in CAT.

You are, therefore, requested to take immediate steps to relieve Shri Pabitra Mohan Sahoo, Steno 'D' of his duties with direction to report for duty to the Joint Registrar, Central Administrative Tribunal, Cuttack Bench, Cuttack 4th Floor, Rajaswa Bhavan, Cuttack – 753002, Orissa on or before 28.2.2014."

The above order or the order dated 8.5.2014 (A/6), by which, the applicant was appointed in the post of Stenographer Grade 'D' under CAT, does not show that his posting will be on permanent absorption basis since he was posted on probation for 2 years. Hence, this order cannot be treated as an order for posting on permanent absorption, for which, paragraph 11(i) of the DOPT OM dated 26.12.2013 will not be applicable in this case.

27. In the circumstances we are of the considered view that the paragraph 4, 10 and 11(i) of the DOPT OM dated 26.12.2013 are inapplicable to the case of

the applicant. In this regard we also take note of the letter dated 29.6.2015 of the respondent No.2 by which he has requested the respondent No.3 to repatriate the applicant to his permanent cadre. This letter stated as under :

“I am directed to say that Shri Pabitra Mohan Sahoo, Steno Grade ‘D’ of this Ministry was transferred to Central Administrative Tribunal, Cuttack Bench, Cuttack vide Ministry’s Office Order dated 30.4.2014 and he was relieved from this Ministry w.e.f. 2.5.2014 to join CAT, Cuttack Bench, Cuttack. He was a permanent employee of this Ministry and as per provisions in DOP&T’s OM No. 28020/1/2010-Estt© dated 26.12.2013, he retains his lien period of 2 years in this Ministry.

2. Shri Sahoo vide his application dated 11.6.2015 (copy enclosed) has expressed his willingness for re-patriation to his parent cadre i.e. Ministry of Labour & employment. This Ministry is also facing acute shortage of Stenographers.

3. It is, therefore, requested that Shri Pabitra Mohan Sahoo, Steno Grade D may kindly be repatriated to this Ministry at the earliest.”

This letter has not been accepted by respondent no. 3 vide letter dated 15.7.2015, based on which the impugned order dated 6.8.2015 (Annexure A/10) has been passed by the respondent No.4.

28. From the above discussions, we are of the considered opinion that the case of the applicant will be governed by paragraph 5 of the DOPT OM dated 26.12.2013, as stated by the respondent No.2 in his order dated 30.4.2014, by which, the applicant was relieved from the establishment under the respondent No.2 and hence, his lien would be deemed to have been maintained till he is not confirmed or substantively appointed or permanently absorbed in CAT. The applicant has opted for repatriation vide his representation dated 11.6.2015 (A/8) before his confirmation against a post in CAT.

29. In the circumstances, we direct the respondent No.2 to inform respondent No.3 within six weeks from the date of receipt of the copy of this order, if the lien of the applicant is continuing under respondent Nos. 1 and 2 and if so, inform the respondent No.3 if the applicant is to be repatriated as per his representation dated 11.6.2015. In case the respondent No. 2 writes to respondent No.3 for repatriation of the applicant, as stated above, then the respondent No.3 is to take necessary action to repatriate the applicant within 2 months from the date of receipt of the aforesaid letter from the respondent No.2.

30. The OA is accordingly disposed of with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

