CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.106/1999

New Delhi, this 29th day of January, 1999

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri P.K. Tuteja
WZ-300, G Block
Hari Nagar, New Delhi .. Applicant

(By Shri K.C. Mittal, Advocate)

versus

Union of India, through

1. Foreign Secretary
Ministry of External Affairs
South Block, New Delhi

2. Jt. Secretary (Personal)
Ministry of External Affairs
New Delhi

3. High Commissioner of India
Dhaka, Bangladesh

4. Dy. High Commissioner of India
Dhaka, Bangladesh .. Respondents

(By Shri A.K. Bhardwaj, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

1. Applicant, an Assistant Personnel & Welfare Welfare (AP&WO for short) in the office of High Commission of India, Dhaka, is aggrieved by A-1 order dated 9.10.98 by which he has been, as alleged, prematurely repartiated to be posted at Hqrs., New Delhi by 31.12.98. Consequently, he seeks to quash and set aside the aforesaid order dated 9.10.98 and issuance of directions to respondents to consider and permit him to complete the normal tenure of two years at Dhaka upto 15.7.99 as intended in respondents' order dated 26.2.1997.

2. Shri K.C. Mittal, learned counsel for the applicant seeks to challenge the aforesaid orders of repatriation on the following grounds.

(i) That the rules and instructions on the subject provide normal tenure of AP&WOs in High Commissions/Embassies abroad for two years at a time. Therefore, the applicant should have been permitted to complete the period of two years upto 15.7.99, but due to malafide intentions and arbitrary reasons respondents have prematurely repatriated the applicant to the Hqrs. by cutting his normal tenure to the extent of 7 months wrongly and against the normal practice. Respondents' action, therefore, attracts the provisions under principles of promisory estoppel.

(ii) That neither there is any urgency nor any administrative grounds for which the applicant could be repatriated by counting the period of 7 months spent at Karachi against two years normal tenure at Dhaka. In other words, counting the period of 7 months against the tenure of deputation at Dhaka and cutting short the normal period of two years by 7 months is an action motivated by malafide. Respondents have initiated the aforesaid action only to favour somebody by replacing the applicant.

(iii) That there are precedents where AP&WOs appointed on various Missions/Embassies have stayed beyond the normal period of two years and there are no hard and fast rules that an individual can be posted abroad only for a period of four years. Learned counsel has cited, in the rejoinder filed on 27.1.1999, the cases of three officials whose deputation periods abroad at Moscow, London and Islamabad have been allowed for more than 6-7 years since 1991-92. It is the applicant who has been forced to face hostile discrimination.

(iv) Respondents' action in repatriating the applicant in the mid-session of the academic year is against the instructions issued by the Government of India on the subject and also principles enunciated by the Hon'ble Supreme Court for effecting such transfers keeping in view the completion of scholastic session. Since the academic session of the school-going children of the applicant is to come to an end by June-July, 1999, it is difficult for the applicant to adjust schooling of the children in the mid-academic period.

3. In the counter, the respondents have controverted the claims. It has been submitted that the normal tenure for foreign posting, as per the present practice being pursued by the Ministry, is only for two years. Under the normal circumstances, it does not take away the authority of the Ministry to extend or curtail the tenure of any official in view of exigencies or other administrative considerations. The applicant has completed more than four years in Missions abroad with the only exception that in the case of the applicant these were in 3 different Missions as against two Missions in the normal course. Applicant has also completed 5 years of deputation in the Ministry and therefore has been reverted to his parent department as per rules applicable in deputation matters. The existing rules governing deputation duty does not prmit for exclusion of the period the applicant has spent at Karachi on foreign deputation. Even the normal practice of keeping officials posted abroad for a period of four years has been adhered to in the case of the applicant. The precedents cited by the applicant are not relevant as all of them are not AP&WOs and have not completed the tenure of deputation as alleged. There are no rules stipulating that on posting to a Mission abroad, the official will remain posted for a period of two years. The period can be extended or curtailed depending on the need and urgency and curtailment of the tenure need not be only as a result of closure of the Mission.

4. We have heard the rival contentions of learned counsel for both parties and have perused the records. The issue that falls for determination is -- Whether a deputationist can legally assail the orders of repatriation at any time during the deputationist's stay with the borrowing department, particularly after the agreed period of deputation is for four years?

5. Before we examine the legality or otherwise of the aforesaid main issue involoved, it would be apposite to indicate the terms of deputation as agreed to and accepted by the applicant. The original office order of deputation dated 5.3.93 stipulates, inter alia, that the applicant will be on deputation initially for a period of 3 years which can be enhanced or curtailed in public interest. However, the terms and conditions of deputation, as annexed in R-III, indicate that "the deputation period will for 5 years commencing from the date of joining the MEA".

6. None of the communications containing the terms and conditions as agreed to by the applicant contain a guarantee for foreign posting, much less of a specific period/tenure for being posted abroad. We find that the applicant has resisted the orders of repatriation basically on three considerations - (i) cutting short of the deputation period at Dhaka being arbitrary; (ii) the orders of repatriation being actuated by malafide and (iii) that the applicant has been discriminated in that similarly placed employees

have been allowed to continue for postings abroad much beyond the normal period of deputation. We shall now examine the legalaties of these pleas taken by the applicant.

7. It is well settled in law that a deputationist can be reverted to his parent cadre at any time and does not get any right to be absorbed or retained in the deputation post as is being claimed. If any authority is required for this proposition, it is available in the case of **Ratilal B. Soni Vs. State of Gujarat (1991) 16 ATC 857** decided by the Hon'ble Supreme Court. We find reiteration of the same views by the apex court in the case of **State of Punjab Vs. Inder Singh (1997) 8 SCC 372.** It was held therein that a deputationist is liable to be repartiated to his parent cadre/department on the expiry of deputation. Repatriation from deputation cannot be resisted by an employee that on repatriation he will have to suffer alleged inconvenience. In the background of fairly a large number of candidates being available with the respondents and awaiting postings abroad, it is only reasonable that the respondents have decided to repatriate the applicant. The applicant cannot have any grievance over this since he has not only had postings abroad for a total period of four years as a normal practice but has also completed 5 years of total deputation period with the Ministry, as per the original terms and conditions.

8. The scope of judicial interference in such matters is very limited. Tribunal can strike down such an order if it is in violation of statutory provisions or is actuated by malafide. It is true that the applicant has taken the plea of malafide. The law laid down in such matters prescribe that malafides have to be attributed to a particular individual by name and that it can only be presumed from the antecedent facts, as has been laid down by the apex court in the case of **N.Sankara Narayanan Vs. State of Karnataka (1993) I SCC 64.** It may not always be poissible to demonstrate malafide in fact with fully elaborated particulars and it is only possible in appropriate cases to draw reasonable inference of malafide from the facts pleaded and established. Such inferences may not be based on factual matrix. Unfortunately, the applicant has not brought out the antecedent facts which could establish the ulterior motive on the part of the respondents to deny the legitimate claims of the applicant. The plea of malafide, therefore, falls on the ground.

9. The applicant has also brought out allegation of discrimination against him for not favouring him with the order of extended deputation as allowed in other cases. The mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be a ground for issuance of an order/writ in favour of the applicant on the plea of discrimination. The order in favour of other persons might be legal and valid or it might not

be. That has to be investigated first before it can be directed to be followed to favour the applicant. If the order in favour of other persons is found to be illegal or not warranted in the facts and circumstances of the case, it is only justifiable that such illegal or unwarranted orders cannot be made the basis of issuing another order compelling the respondent-MEA to repeat the illegality or pass another unwarranted order in the matter. Each case must be decided on its own individual merit. The applicant can not acquiesce in a wrong and make a gain from that by comparison. If somebody else has obtained some benefit by indulging in a wrong, it is that very illegality which needs to be challenged. Without challenging the wrong, applicant cannot claim remedy therefrom. Such collateral benefits are alien to law. If one has no right, he cannot complain of any discrimination on the premise that something was given undesevedly to another person. Achieving equality in matters of illegality is not the role of the Tribunal/ Court. In holding this view, we find direct support from the judicial pronouncement of the apex court in the case of **Chandigarh Admn. & Anr. Vs. Jagjit Singh & Anr. etc. JT 1995(1) 445.**

10. We find that the respondents by their order dated 3.11.98 have indicated their willingness to continue the applicant with the HCI, Dhaka till the end of January, 1999. Applicant appears to be still working in Dhaka and may require sometime to

carry out the orders. Under these circumstances, it will be only appropriate that the applicant may not be repatriated before 15.2.1999.

10. Based on the discussions aforesaid, the OA deserves to be dismissed and we do so accordingly. While implementing the orders of repatriation, respondents shall do well to adhere to our directions in para 10 above.

There is no order as to costs.

(S.P. Biswas)
Member(A)

29.1.99.
(T.N. Bhat)
Member(J)

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