

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2140/99

New Delhi this the 11th day of May, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

Dr. Prabha Arora,
1-64-65, Lajpat Nagar-I,
New Delhi-110 024.

...Applicant

(By Advocate Shri Amitesh Kumar, proxy for Sh. Naveen
Prakash, Advocate)

-Versus-

1. Government of India,
Planning Commission
through Secretary,
Yojana Bhavan,
Sansad Marg,
New Delhi-110 001.

2. The Under Secy. to the Govt. of India,
Planning Commission, Admn. I,
Yojana Bhavan, Sansad Marg,
New Delhi-110 001.

3. Dr. Prema Ramachandran,
Advisor (Health),
Planning Commission,
Yojana Bhavan,
Sansad Marg,
New Delhi-110 001.

4. The Director (Admn.),
Planning Commission,
Admin. I,
Yojana Bhavan,
Sansad Marg,
New Delhi-110 001.

...Respondents

(By Advocate Shri N.S. Mehta)

O R D E R

By Reddy, J.

The applicant is a Medical Doctor with MBBS, Diploma in Dermatology and Venereology and MD in Community Health Administration. She was an employee in the Airports Authority of India (AAI) working as Senior Medical Officer. The Planning Commission issued a circular dated 11.8.95, inviting applications for recruitment to the post of Deputy Adviser (Health) on promotion/deputation basis. The

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applicant applied for appointment on deputation. The post of Deputy Adviser (Health) in the Planning Commission is higher in terms of designation as well as pay scale than that of Senior Medical Officer in the AAI. Out of several only three candidates, including the applicant were called for interview on 12.3.98 by the UPSC. The name of the applicant was recommended by the UPSC and the applicant was offered the appointment in the letter dated 17.4.98 (Annexure 'F') for a period of four years from the date of assumption of charge. The parent department, however, consented to deputation only for three years, i.e., till 14.7.2001. She joined on 15.07.1998.

2. It is alleged by the applicant that as one Dr. Ambujam Nair Kapoor (for short Dr. Kapoor) who was one of the unsuccessful candidates had been working on the said post on ad hoc basis for quite sometime that R-3 was instrumental in delaying the process of appointment to the post of Deputy Adviser (Health) from the date of advertisement in 1995 till 1998 only to see that Dr. Kapoor ~~to~~ continued in the said post on ad hoc basis.

3. After the applicant was working with the Planning Commission without any complaints against her, the respondents issued the notification dated 27.8.99, terminating the term of deputation of the applicant pre-maturely and repatriating the applicant to her parent department with immediate effect. Shocked and surprised, she made a representation against the order. As there was no immediate response, she filed OA-1891/91 before the Tribunal, which was however, disposed of, directing the

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respondents to dispose of the representation within one month. On their rejection of the representation, the present OA was filed.

4. The order of repatriation was questioned on more than one ground. As the period of deputation being 3 years, it could not be curtailed. No prior notice was issued, thus violating the mandatory institution. Malafides were also alleged against R-3. Thus it was argued that the order is void. // The case of the respondents however, is that the applicant's period of deputation was either for three years "or until further orders, whichever is earlier". Hence, it is not illegal to curtail the period of deputation. It is also stated that the period of deputation was curtailed on the grounds that she was unable to meet the job requirements of the new post being only a medical doctor and that she was also ^{not} dependable as she goes on leave without prior permission. The allegations against R-3 were stated to be false as the appointment of Dr. Kapoor was of an altogether different nature, though working in the same division.

5. We have given careful consideration of the pleadings and the arguments of the learned counsel on either side. The only question that arises in this case is whether the impugned order of premature curtailment of deputation is valid in law or not. It is contended by the learned counsel for the applicant that the applicant having been appointed on deputation for a period of four years from the date of assumption of the charge of the post, it is not permissible for the respondents to curtail the period, that too without issuing prior notice. In this connection the learned

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counsel for the applicant takes us to the terms and conditions of offer of appointment, which are said to have been enclosed to the proceedings dated 17.4.98 wherein it was intimated to the applicant that she has been selected and offered the ^{appointment} applicant for a period of four years from the date of assumption of office. But it has to be noticed that in pursuance of the willingness given by the applicant as per the proceedings dated 17.4.98, she has been appointed as the Deputy Adviser (Health), on transfer on deputation basis "for a period of three years w.e.f. the forenoon of 15th July, 1998 or until further orders, whichever is earlier." Thus, it is clear that though a period of four years was earlier contemplated, eventually she has been appointed only for a period of three years or until further orders, whichever was earlier. In accordance with that order the applicant joined in the Planning Commission. The period of deputation, therefore, even in accordance with the order of appointment, is liable to be curtailed, at any time.

6. It is too late to contend that the period of deputation, in whatever method an officer was deputed, is liable to be curtailed at any time and that he or she is liable to be reverted back to the parent department at any time, vide Rati Lal B. Soni v. State of Gujarat, AIR 1990 SC 1132.

7. The Learned Counsel, however, relies upon para 9 of the Government of India's instructions dated 5.1.94 to contend that in case of pre-mature reversion to the parent cadre of the deputationist, advance intimation to the Ministry as well as to the employee should be given. In the



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present case, no such intimation was given. We have perused the OM dated 5.1.94 of the Government of India. In order to review and bring about rationalisation and uniformity in the instructions/orders regarding transfer on deputation/foreign service of the Central Government employees to ex-cadre posts under the Central Government/State Government/Public Sector Undertakings etc. a self contained OM incorporating the provisions of various orders with suitable modifications, was issued by the Government of India. It is not disputed that these instructions are applicable to the applicant in this case. Paragraph-9 of the OM reads as under:

"9. Premature reversion of deputationist to parent cadre."

Normally, when an employee is appointed on deputation/foreign service, his services are placed at the disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arrives for premature reversion to the parent cadre of the deputationist his services could be so returned after giving advance intimation of reasonable period of the lending Ministry/Department and the employee concerned."

8. It clearly contemplates prior ^{intimation} ~~permission~~ to be given to the lending Ministry as well as to the employee before the deputation was pre-maturely curtailed. The impugned order was, however, communicated to the applicant without any advance intimation. The learned counsel for the respondents, however, submits that as the applicant's representation was heard and disposed of after the impugned order was passed, the question of prejudice would no longer survive. We do not agree. No doubt, what is contemplated is an advance intimation to be given both to the lending Ministry as well as to the employee. We may agree that this

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is a salutary procedure which has to be invariably followed in every case when pre-mature reversion was sought to be made. But it should not be forgotten that the administrative instructions are meant only as guiding principles of the department to be followed in passing the orders of reversion. But, can it be said that any breach of the same would invalidate the orders? It will not. Law is well settled that no Writ or a direction in the nature of a writ will issue merely on the ground of violation of administrative instructions or to implement the same. In the circumstances, the impugned order cannot be invalidated only on the ground of want of advance intimation.


9. It is next contended that the impugned order is malafide. The applicant alleges malafides against R-3 who is the Adviser (Health) to whom she is responsible as Deputy Adviser (Health). R-3 is alleged to have prevailed upon the authorities to repatriate the applicant only to accommodate/continue one Dr. Kapoor, who has been working in the Division on ad hoc basis. In the reply the respondents have come forward with the stand that the applicant was adopting a casual attitude and was not able to pick up the work in the Planning Commission. The learned counsel for the official respondents Sh. N.S. Mehta also submits that as the post of Deputy Adviser (Health) being a sensitive post in the Planning Commission and an incumbent of the post has to deal with files of great urgency and as the applicant who was not taking her job seriously, the Commission was seriously handicapped. Consequently R-3 has to handle the additional burden of the Deputy Adviser (Health). Further in the reply it was also stated as under:



"In the present case, however, the applicant who is a practising doctor in her parent organisation is required to perform duties of an altogether different nature like that of scrutiny and analysis of Projects, drafting policy papers, commenting on Programmes & Performances and interacting with other Professionals etc. in the national apex planning organisation. The Planning Commission has not found her suitable for this type of work during her stay with it for over a year. Other factors such as her being on leave, irresponsible behaviour etc. are relatively minor matters and were appropriately responded to on being raised by the applicant herself."

10. From the above it is clear that the respondents 1 and 2 were not satisfied with her work. Other reasons as to her going on leave etc. appear to be wholly insignificant which did not weigh ^{with} the ^{of} respondents in passing the order.

11. The allegations made against R-3 have been refuted by the respondents 1 and 2 as well as R-3. R-3 filed a separate reply stoutly denying the allegations made against ~~her~~ ^{him}. It was stated by ^{him} that the post which was occupied by Dr. Kapoor is a different post in the Division and the continuance of Dr. Kapoor in that post has no relevance to the post of Deputy Adviser (Health). There is also no material on record in support of the allegations. Vague allegations of malafides can easily be made, but it is difficult to prove. Allegations of malafide should be proved with all exactitude. We cannot, therefore, give any weight to the allegations made by the applicant against any of the official respondents. Hence the allegations are rejected.



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12. In view of the above, we do not find any merit in the OA. The O.A. is accordingly dismissed. No costs.

Shanta Shastri

(Smt. Shanta Shastri)
Member (Admnv)

"San."

V. Rajagopala Reddy

(V. Rajagopala Reddy)
Vice-Chairman (J)

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