

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~Txx~~No. 125 of 1998
M.A. 259/1998

Decided on: 14.9.98

Surinder Kumar GuptaApplicant(s)

(By ~~XXXX~~ Ms. Raman Oberoi Advocate)

Versus

U.O.I. & OthersRespondent(s)


(By Shri R.P. Aggarwal Advocate)
and Shri p.h. Ramchandani

CORAM:

THE HON'BLE ~~XXXX~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not?
2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 125 of 1998

M.A. No. 259 of 1998

New Delhi this the 14th day of September, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Surinder Kumar Gupta
S/o Late Shri Joginder Nath Gupta,
R/o 14/42-B, Tilak Nagar,
New Delhi-110 018.

...Applicant

By Advocate Ms. Raman Oberoi

Versus

1. Union of India through its Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi-110 001.
2. Establishment Officer &
Additional Secretary,
Department of Personnel & Training,
North Block,
New Delhi-110 001.
3. The Secretary,
Ministry of Planning,
Sardar Patel Bhawan,
Sansad Marg,
New Delhi.

...Respondents

Shri R.P. Aggarwal, learned counsel for respondent Nos. 1
and 2.

Shri P.H. Ramchandani, learned counsel for respondent
No. 3.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Apprehending that he may be repatriated in his
parent department against rules and order in force and the
provisions of the Central Staffing Scheme, this
application has been filed by the applicant. When the
matter came up for hearing on 13.1.1998, the applicant
prayed that status quo may be maintained and stay the
operation of the order of repatriation, if issued in the
meantime. When the matter came up for hearing on

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13.1.1998, it was ordered that no interim order could be passed except to state that any further action at the instance of the respondents would be subject to the outcome of this OA. However, on the basis of the orders of the respondent No.2 dated 5.1.1998, the applicant was repatriated w.e.f. 6.1.1998 and was relieved of his duties with effect from that date.

2. Applicant belongs to the Indian Statistical Service and was appointed as Director Administration in the Films Division, Bombay, under respondent No.1 with effect from 22.2.1996 for a period of 5 years or until further orders, whichever is earlier. Applicant's grievance is that he had been prematurely repatriated by the respondents when he was duly selected for the post of Director under the respondents for a period of 5 years under the relevant provisions of the Central Staffing Scheme, under which the normal period of deputation was 5 years and he had yet to spend three years more on deputation. His grievance is that he had been divested of his normal functions by the Chief Producer and his functions were entrusted to a Joint Chief Producer who was junior to the applicant as Joint Chief Producer with lesser length of service. He avers that he was put to considerable mental distress and harassment and his repatriation was also motivated by totally perverse and mala fide consideration arising out of his attempt, as Director of Administration to bring to the notice of the High Powered Committee of which he was a Member - Secretary, the irregularities in the functioning of the Films Division. To support his contentions, he had

pointed out that by various actions of the respondents, the mala fide motive was quite evident. He refers to the circular of the Joint Controller of Production dated 25.9.1997, Anneuxre A-14 fixing the channel of submission of cases on Films Division whereby virtually no file was ordered to be routed through him. He has also alleged that the concerned Joint Chief Producer threatened the staff with punitive action in case they ventured to cooperate with the applicant. He further alleges that he was not allowed to perform his duties as Vigilance Officer in the Films Division and this action was revoked by the orders of the Ministry of Information and Broadcasting subsequently. In spite of this, the concerned Chief Producer did not implement the orders of the Ministry of Information and Broadcasting. He submits that he had brought to the notice of the Ministry of Information and Broadcasting also about the predicament he was facing in the department due to the hostile attitude of the Chief Producer and he was so frustrated that he indicated even his willingness, at one stage, for reversion to his parent department. It is stated by him that the Minister on his representation directed that he might be retained for his period of tenure. The applicant contends that inspite of that specific direction, the respondents have chosen to revert him. He, therefore, prays that he should be allowed to continue in the post of Director with the respondents or in the alternative, he may be posted in any Ministry or Department for the remaining period of central deputation.

3. Respondent Nos. 1 and 2 together and respondent No.3 have filed two separate replies. It has been contended by the respondents 1 and 2 that in terms of the appointment of the applicant on central deputation under the Central Staffing Scheme, he was appointed for a period of 5 years or until further orders whichever is earlier and, therefore, it would not be correct to say that he was appointed for a period of 5 years. They also deny the allegation made by the applicant that the direction of the respondents to the Joint Chief Producer to look after the current duties of the Chief Producer, was motivated by mala fide considerations in order to deprive the applicant from such responsibilities. They aver that the Joint Chief Producer who was given the current charge was duly selected by the Union Public Service Commission for the post of Chief Producer and it was felt that in the absence of Chief Producer it would be appropriate that persons having knowledge of various aspects of film production was given the current duty charge. They also submit that this decision was taken at the highest level in the Ministry. These respondents submit that the representation of the applicant for his posting either in the main secretariat or in some other post or for placing his service at the disposal of the Ministry of Personnel was duly considered at the highest level in the Ministry and it was decided to place the matter at the disposal of the Department of Personnel & Training (DOP&T) and the matter was taken up with the Establishment Officer. On the basis of the decision of the Department of Personnel, for repatriating the officer to his parent department, the applicant had to

be relieved so as to enable him to join his parent department. The respondent No.2 avers that although the respondent No.3 had intimated to the Department of Personnel & Training that the applicant could be considered for posting to any department till such time he completed the remaining period of the central deputation, it was not found possible to give an alternative posting to the applicant immediately and, therefore, the proposal for his premature repatriation was processed and was approved by the ACC. The respondents also deny the other allegations of the applicant and have averred that the applicant was not able to adjust himself in the organisation, namely, the Films Division. They also contend that repatriation of an officer to his parent department will not in any way prejudice him and is not punitive in nature. In the separate reply filed by respondent No.3 it has only been stated that the action for repatriation had been taken by the DOP&T and the proposal from the Ministry of Information and Broadcasting. They have also confirmed that the DOP&T had asked respondent No.3 to intimate whether there was any objection to the premature repatriation of the applicant on account of the applicant's relation with superior officer not being cordial. Although this respondent was of the view that the applicant could be allowed to complete his full term, they had not given any specific clearance for the premature repatriation of the applicant.

4. The learned counsel for the applicant strongly argued that the applicant's case was a clear case of

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victimisation. The very fact that the applicant was not entrusted with appropriate duties and he was kept outside the channel in decision-making inasmuch as no important files were routed through him would itself go to show that the respondents had acted in a prejudicial manner. Besides, ordinarily under the Central Staffing Scheme, every officer is expected to be on central deputation for a period of 5 years and there was no reason why the applicant could not have been allowed to continue his deputation.

5. We have heard the learned counsel for the parties and have also perused the records.

6. The departmental records of the respondents relating to the applicant's case were also produced before us. From the orders of the respondents appointing the applicant as Director of Administration of the Films Division, it is seen that he was appointed w.e.f. Fore-Noon of 22.2.1996 for a period of 5 years or until further orders, whichever is earlier. (emphasis added) From this it would appear that the appointment is not for a fixed period of tenure. Under the Central Staffing Scheme, there is a provision for premature repatriation and this is done in consultation with the parent department. From the records of the respondent No.2 produced before us, we find that the question of premature reversion of the applicant from the post of Director (Administration) was considered at great length at the highest level with the Government and the proposal of

respondent No.1 was also either to post him to any other Ministry for the remaining period of tenure or if not possible, then to revert him to the parent cadre. This was also duly considered and it was felt that the proposal for his repatriation was to be processed. Since continuing the uneasy arrangement prevailing in the office of the respondent No.1 was not in public interest. It is also seen that the respondents have not found possible to provide an alternative posting to the applicant immediately under the procedure followed in the Central Staffing Scheme and till an alternative posting is given, he would have to continue in the present assignment which would not be desirable considering the circumstances of the case. It was also pointed out that the respondent No.3 had, in fact, asked for withdrawal of names of the Indian Statistical Officers who were on offer at the level of Director for the central deputation for the year 1997 on the ground that there was a shortage of officers in the cadre at the junior administrative grade level. In the circumstances, the respondent No.3 was informed about the proposal to repatriate the officer and the proposal was duly approved by the Appointments Committee of the Cabinet.

7. We are of the considered view that even under the Central Staffing Scheme, the deputationists to the Central Government do not have a vested right for the said appointments. The law is well settled in regard to the right of deputationist to continue in the deputation post with the borrowing departments. We have only to refer to

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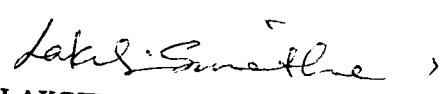
the decision of the Apex Court in **Rattilal B. Soni Vs. State of Gujarat and Others**, AIR 1990 SC 1132. While there could have been some uneasy relationship between the applicant and some senior officers under the respondent No.1, there is nothing on record to show that the act of repatriation is punitive in nature. The respondents wanted to terminate the uneasy situation prevailing in the office and in the interest of administration it was thought fit to relieve the applicant from that post. From the record of the respondent No.2 it is also seen that the respondents had in fact considered the question of providing an alternative appointment under the Central Staffing Scheme but it was not found possible to do so immediately and it was, therefore, considered at the highest level in the Government, the Appointments Committee of the Cabinet (ACC) that the officer could be repatriated. Repatriation by itself in the parent department cannot be said to be visited with any civil consequences nor can it be considered as a punishment. Taking into account the circumstances in which the premature repatriation of the applicant was decided, the ACC has specifically decided that he won't be debarred for any future central deputation which is normally imposed in cases of premature repatriation. In other words, we are satisfied that the applicant can still be offered and considered for central deputation, subject to administrative exigencies in public interest.

8. In the facts and circumstances of the case, we are of the considered view that premature repatriation of

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the applicant to his parent department cannot be said to be illegal, and therefore, there are no grounds to interfere with the impugned orders of reversion of the applicant to his parent department. The application, therefore, lacks in merit and is accordingly dismissed. In the circumstances, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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