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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1214/95

New Delhi this the 16th day of November 1995

Hon'ble Shri N.V.Krishnan, Acting Chairman

Hon'ble Shri D.C.Verma, Member (J)

Smt. Mithlesh Kumari
W/o Shri Surender Kumar,
R/o House No. 815, Pocket 6-1,
Sector-2, Rohini,
DELHI.

....Applicant

(By Advocate: Shri G.D.Gupta)

versus

1. Government of National Capital Territory of Delhi through the Chief Secretary, 5, Sharnath Marg, DELHI-54.
2. The Director of Education, Government of National Capital Territory of Delhi, Old Secretariat, DELHI-54.
3. The Deputy Director of Education, Government of National Capital Territory of Delhi, North-West District, Hakikat Nagar, NEW DELHI.

.....Respondents

(By Advocate: Shri Arun Bhardwaj)

ORDER(Oral)

Hon'ble Shri N.V.Krishnan, Acting Chairman

The applicant's husband is admittedly in the employment of the Delhi Administration. The applicant an employee of the Government of Rajasthan, Directorate of Educational Department, was taken on deputation in the Delhi Administration in 1987 because she wanted to be together with her husband. The maximum period of deputation stated to be permissible is four years. That period came to an end in May 1991.

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2. The applicant has been pressing for her absorption in the Delhi Administration on the ground that her husband is in their service. In this regard, admittedly, the consent of the applicant for such absorption was taken and admittedly, a reference was also made to the Government of Rajasthan. The Government granted a No Objection Certificate for the absorption of the applicant by the Delhi Administration by their letter dated 22-4-1991.(Annexure A-9).

3. It appears from the contentions of the Ld Counsel for the respondents, that for final absorption, the consent of the Govt. of India is necessary and that it is not within the powers of the respondents. Ld Counsel for the respondents submits that the respondents had taken up the matter with the Govt of India for further extension of deputation of the applicant. Apparently the consent of the Govt. of India has not been obtained.

4. Now the applicant has been served with the impugned order dated 31-5-95(Annexure A-I) which reads as follows:-

"Director of Education, Govt. of NCT of Delhi is pleased to repatriate Smt. Mithlesh Kumeri TGT (Hindi) to her parent department after expiry of her deputation period retrospectively from 06-05-91."

Copy of this order has also been sent to the Government of Rajasthan. The respondents have thus repatriated the applicant to her parent department in the Govt of Rajasthan retrospectively from 6-5-91.

5. It is against this order that this OA is filed seeking the following directions:-

- i) quashing the impugned Memorandum dated 31st May, 1995 (Annexure A-I) illegally repatriating the applicant to her parent Department retrospectively.

- ii) declaring that the applicant is entitled to be absorbed in the services of the Directorate of Education, Govt. of NCT of Delhi as also to continue in the said Directorate till the date of her superannuation;
- iii) directing the respondents to absorb the applicant permanently and to allow her to continue in service in the Directorate of Education, Govt. of NCT of Delhi till her date of superannuation with all consequential benefits;

6. MA 2214 of 1995 filed by the applicant to take on record a copy of the letter dated 18.7.95 of the Govt of Rajasthan. It is stated that this letter was ~~received~~ ^{received} on her. That MA is allowed and the document is taken on record. That letter addressed to the Dy. Director Education Respondent No-3 reads as follows:-

"On the subject cited above, I am directed to state that, in your previous letter No. DE.3(18) Estt-III/85/860 dated 11-4-1991 and your letter of even number dated 15-3-1989 referred to therein, "No Objection Certificate" for permanent absorption of Smt. Mithlesh Kumari, TGT(Hindi) was demanded. This N.O.C. has already been sent to you by the State Govt. vide letter of even number dated 22-4-1991. The deputation of Smt. Mithlesh Kumari had expired on 6-5-1991. Thereafter, neither you terminated her deputation nor you sought the consent of the State Govt. for extension of her deputation period. If you had to repatriate her, you should have decided and repatriated her much earlier. Why she is being repatriated now with retrospective effect. Besides this, what decision you have taken about her services for the period from 6.5.91 to 31.5.1995 rendered under your kind control. Since after issuance of N.O.C. the lien of an official stands terminated. therefore, please absorb her at your end."

7. MA 2215/95 was also filed enclosing a copy of the order dated 4.9.95 of the third respondent relieving the applicant.

8. Pending a reply to the MA, We directed on 12.9.95 that the status quo of the applicant as on that date has to be maintained.

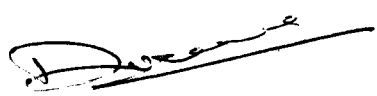
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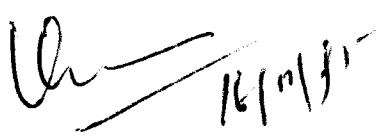
9. The OA is listed today for issue of further directions of an interim order. We have heard the Ld Counsel for the parties.

10. We notice that there is a dispute between the respondents and the Govt. of Rajasthan as to how the applicant's case should have been handled. If the Govt. of Rajasthan had agreed to take back the applicant in pursuance of the impugned Annexure -I order, we would have been required to adjudicate upon the validity of that order. However, the position is now different. The respondents have disowned the applicant and repatriated her to Government of Rajasthan. The Govt of Rajasthan have refused to take her back. We have no jurisdiction ~~over~~ the Govt of Rajasthan to pass any order to be complied by them. We cannot, for example, declare that the applicant has no right to claim absorption by respondents in the Delhi Administration as a right and therefore she shall stand repatriated with prospective effect, because we cannot pass a further order that the Govt of Rajasthan shall take her back, when that Govt has not agreed to do so. Any such order will leave the applicant in a lurch, and will be unfair to her. Therefore, we are of the view that until the dispute between the two parties, namely, the respondents and Govt of Rajasthan, is settled the respondents have to be directed continue the applicant on their roll as a deputationist, purely on a provisional basis. We do so. She shall be paid her pay & allowances as a deputationist provisionally. Her status will abide by the joint decision taken by the respondents and the Govt. of Rajasthan, which should be made self evident in any order that may be passed by the respondents. The OA is

itself disposed of accordingly.

11. We make it clear that this will not stand in the way of the applicant ^{from} challenging whatever decision is taken in the above manner, if she feels aggrieved by it.


(D.C. VERMA)
Member (J)


(N.V. KRISHNAN)
Acting Chairman

cc.