

Central Administrative Tribunal
Principal Bench, New Delhi.

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O. A. No. 1314/95

New Delhi this the 9th day of May, 1996.

Hon'ble Sh. B. K. Singh, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

1. Sh. Rajender Kumar,
S/o Sh. Bhagmal,
R/o W/Z 128, Nimri Village,
Shastri Nagar,
Delhi-52.
2. Sh. Jagdish Gusain,
S/o Sh. G.S. Gusain,
R/o H.P.T. 79,
Sarojini Nagar,
New Delhi-23.
3. Sh. V. Sridharan,
S/o late Sh. R. Vanamamalai,
R/o 273, Arjun Nagar,
Safdarjung Enclave,
New Delhi-29.
4. Sh. R.N. Mittal,
S/o Sh. Shivji Lal,
R/o 20/449, Kath Mandi,
Near Hindu Vidyapeeth,
Sonapat (Haryana).
5. Sh. Chander Gupta,
S/o late Sh. Ram Kishan,
R/o 5/10 (Back Portion),
Ashok Nagar,
New Delhi-18.
6. Sh. A. P. Choudhary,
S/o Sh. Ramswaroop,
R/o B-27, MIG Flats,
East of Loni Road,
Shahdara,
Delhi-93.
7. Sh. Ghure Lal,
S/o Sh. Ramji Lal,
R/o A-27, South Ganesh Nagar,
Delhi-110092.
8. Sh. Tek Singh,
S/o late Sh. Dal Chand,
H.No. B-572, Gali No. 6,
Subhash Vihar,
North Ghonda,
Delhi-53.

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9. Sh. M.H. Khan,
S/o Sh. Bashir Ahmed,
H.No.F-477, Sector-IX,
New Vijay Nagar,
Ghaziabad (UP).

Applicants

(through Sh. G.D. Gupta, advocate)

versus

1. Union of India through
the Secretary to Govt. of India,
Ministry of External Affairs,
South Block,
New Delhi.
2. The Secretary to Govt. of India,
Ministry of Communication,
Department of Tele-Communication,
Central Telegraph Office,
Eastern Court,
New Delhi-1.

Respondents

(through Sh. N.S. Mehta, Sr. Standing Counsel)

ORDER (ORAL)

delivered by Hon'ble Sh. B.K. Singh, Member (A)

Heard the learned counsel for the parties.

This O.A. has been filed by the 9 applicants against their repatriation to their parent department where they were working as Telegraphists and were brought on deputation to the Ministry of External Affairs, Government of India vide office order dated 30.07.1986 (Annexure A-1) of the paperbook.

Para-2(b) of the said order reads as follows:-

"Period of Deputation: The Officials mentioned above shall be on deputation against the posts of UDC (Telegraphists) for a period of three years. The period of deputation can be extended or curtailed in the exigencies of service."

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There is another office order dt. 29.8.1986 where the terms and conditions of deputation have been given.

Our attention was drawn to the Recruitment Rules of 1969 by the learned counsel for the applicant. Column 10 of the said rules indicates that deputation is one of the methods of recruitment and an employee when absorbed will have a berth in Ministry of External Affairs. Subsequently this rule was modified vide their letter No.48/PF/71 dated 6.8.1971. In the schedule to the UDC (Telegraphists) Rules, 1969, the following changes in the rules have been incorporated:-

- (1) For the existing entry under column (10), the following entry shall be substituted, namely:-

"By deputation or on transfer".

A person can be brought on deputation and also he can be brought on transfer and it has been clearly stated in para-2 sub-para(2) which reads as follows:-

Para-2 sub-para(2)

For the existing entries under column(11), the following entries shall be substituted, namely:-

- (i) Deputation of -
 - (a) Officers of Grade VI of the General Cadre of the Indian Foreign Service Branch(B);

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- (b) Telegraphists from the Posts and Telegraphs Department who have put in at least 3 years of service;

(Period of deputation ordinarily not to exceed 3 years); and

- (ii) Transfer of permanent Telegraphists from the Posts & Telegraphs Deptt.!

It is clear that in the case of officers of Grade VI of the General Cadre of the Indian Foreign Service Branch and also in the case of Telegraphists the period of deputation shall be three years. The word used is "ordinarily" which implies that it can be extended or curtailed by the competent authority as the case may be. It will depend upon the exigencies of public service. Para-2 sub-para(2) (ii) clearly lays down that transfer word was added in the amended rule intentionally to allow the competent authority to induct permanent Telegraphists from the Posts & Telegraphs Department to the Ministry of External Affairs. In case of deputationists, the discretion vests with the competent authority to retain them beyond three years or to repatriate them.

The learned counsel for the applicants has relied upon the ruling of the Hon'ble Supreme Court i.e. executive instructions cannot supersede the statutory rules. There is no question of superseding the statutory rules. The rules have been modified to classify the Telegraphists into two groups i.e.

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deputationists and transferees based on an intelligible differentia and it has a nexus with the object sought to be achieved. This classification cannot be considered as arbitrary and, therefore, Article 14 is not attracted. It is true that classification is not synonymous with the doctrine of equality. The learned counsel for the applicants further relied on a ruling of the Hon'ble Supreme Court in case of State of Mysore and another Vs. H. Srinivasmurthy (AIR 1976 SC 1104). The facts and circumstances of the present case are distinguishable and there is a new dimension as a result of amendment in the statutory rules. Granted that executive instructions cannot amend the rules but in the case of K. T. Bevin Katti Vs. Karnataka Public Service Commission (AIR 1990 SC 1233) the Hon'ble Supreme Court have stated that the Government always have a right to supplement the statutory rules where they are silent by executive instructions and if such instructions are issued, they will supplement the rules. In the instant case, the rules themselves have been amended in a manner that there will be two groups one coming on deputation and the other coming on transfer. The law has been laid down by the Hon'ble Supreme Court in case of Samsher Singh Vs. State of Punjab (AIR 1974 SC 2192) that repatriation/reversion if founded either on contract or rules or effected in terms of the letter of appointment of deputation and if a person is reverted or repatriated

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by an order simpliciter. Article 311 is never attracted and there is no scope for interference by courts in such matters. Some people may be absorbed, others may be repatriated. This view had been earlier held by the Hon'ble Supreme Court in case of R.S. Sial Vs. State of U.P. (AIR 1974 SC 1317) stating that repatriation of an officer on deputation cannot be treated as a punishment if no stigma is attached to him. Here the order is an order simpliciter without any stigma attached.

There is no vested right to continue on deputation or to be absorbed in the department. The rules of 1971 have made it clear that they can induct people either on deputation or on transfer basis from the same department and also they can take people on deputation from their own cadre. Therefore, the contention of the learned counsel for the applicants that they should have been absorbed like their ~~predecessors~~ predecessors cannot be sustained in the eyes of law. This discretion vests with the executive. The amended rule supports the case of the respondents and their hands are not fettered in respect of their repatriation or their absorption. The discretion is solely theirs. The learned counsel for the respondents cited another ruling of the Hon'ble Supreme Court in case of State of M.P. Vs. Ashok Deshmukh and Another (ATC 1988 page 783.



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wherein both these points have been clarified that even if a person is reverted or repatriated to a lower post from a higher post to which he was taken on deputation. He can be reverted to his lower post in his parent department and that will not be by way of punishment.

This implies that deputation followed by repatriation even to a lower post in the parent cadre cannot be treated as a punishment and Article 311 is not attracted. It is only when stigma is attached while repatriating an officer that Article 311 is attracted. This judgement further discusses and holds the view that Article 14 of the Constitution is not attracted when a person who is on deputation is reverted to his parent department even if someone-else is absorbed in peculiar circumstances as in case of Sri Kashap who had resigned and his lien and was terminated, the respondents had no option but to absorb him. It was on a different footing altogether.

The applicants had their lien ^{intact} ~~in fact~~ in their parent department. The learned counsel has further drawn the attention of the Tribunal to the counter-affidavit filed. Para 4.12 of the reply states that a decision was taken in consultation with DOPT to revert the applicants to their parent cadre and that this policy came into force since 1986 when a decision was taken not to absorb the applicants coming from P&T department. It is further stated that Government's present policy

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is to revert deputationists after completion of their tenure. Therefore, it is stated in the reply that the Ministry's action cannot be dubbed as arbitrary or discriminatory. He has also drawn the attention of the Tribunal to para 5.2 and 5.3 wherein it has been stated that the period of deputation would not ordinarily exceed 3 years. However, the period can be extended or curtailed in the exigencies of service. Why the period of deputation was extended also has been highlighted. It was decided to give one foreign posting to the telegraphists on deputation before reverting them to their parent cadre. Approval was taken of the competent authority to extend the period of deputation. Thus extension of period of deputationists is solely the discretion of the Ministry depending upon functional requirements. The period of deputation of the applicants had to be extended by the Ministry on grounds of economy. Since all of them were posted in various Missions abroad, the Government would have been required to incur lot of expenses for recalling them in the middle of their posting. Approval of the competent authority thereafter was obtained for the extension of their tenure of deputation. The competent authority had given strict instruction for reversion of deputationists to their parent cadre after completion of their tenure in the Mission. The

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applicants were accordingly informed. It is true that options were invited from them but mere option also does not confer any right on the applicants to get absorbed in the Ministry of External Affairs.

In the light of the foregoing facts and circumstances, no case is made out for interference by this Tribunal. Application fails and is dismissed but without any order as to costs.

A. Vedavalli

(Dr. A. Vedavalli)
M(J)

B. K. Singh

(B. K. Singh)
M(A)

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