

Central Administrative Tribunal
Principal Bench, New Delhi

OA No.468/95

New Delhi: March 10, 1995.

Hon'ble Mr Justice B.C.Saksena, Vice Chairman
Hon'ble Mr S.R.Adige, Member(A)

Jagat Singh
R/o Village Hamidpur
P.O.Khampur, P.S.Alipur
Delhi-110 036
(By Advocate: Shri Ashok) ...Applicant

Versus

1. Govt. of National Capital Territory of Delhi
through its Chief Secretary
5, Shyam Nath Marg
Delhi-110 054
2. The Commissioner of Police
Police HQs.
IP Estate
New Delhi-110 001
3. Central Bureau of Investigation
through its Director General
CGO Complex
Lodhi Road, New Delhi. ...Respondents
(None)

JUDGEMENT (oral)

Hon'ble Mr Justice B.C.Saksena, Vice Chairman

The applicant has filed this OA challenging the order dated 1.3.1995 (Annexure-I) by which his parent department has requested for the applicant's repatriation since it is indicated in the said letter that during P.E. the allegation of misappropriation and embezzlement against him has been proved and it has been decided to initiate departmental enquiry against him. The learned counsel for the applicant submitted that the applicant, by order dated 28.3.1994, was sent on deputation to Central Bureau of Investigation as Assistant Sub Inspector (ASI), for a period of 3 years in the first instance w.e.f. the date he assumed duties in the CBI. Prior to that,

Re:2

the applicant was working as Head Constable in the Delhi Police. The learned counsel for the applicant further submitted that since the applicant has not completed 3 years of deputation period, he has a right to continue till he completes the stipulated deputation period and the order of repatriation is arbitrary and discriminatory. The learned counsel, in support of his submissions, cited two decisions:

(i) Devesh Chandra Dass Vs. UOI.

AIR 1990 SC 77

(ii) A. Sankaran Vs. UOI

1992 (8) SLR page 502.

The last decision was delivered by the Madras Bench of the CAT.

2. In Devesh Chandra Dass case, the appellant was a State Cadre officer of the IAS. He was sent on a tenure post under the Government of India. Before the expiry of the tenure period, he was sought to be reverted to State service on the ground of unsatisfactory performance under the Government of India. In these circumstances, the Hon'ble Supreme Court came to the conclusion that the order was an order of reversion to a lower post. The material on record revealed that the order of reversion was accompanied by a stigma and therefore was an incorrect order.

3. The facts of the present case are wholly unidentical. The abovee referred applicant was sent on deputation for a period of 3 years, but by the order of his parent department, on the basis of preliminary enquiry, charges of misappropriation have been found proved against him. The decision of the Supreme Court in Devesh Chandra Dass case, in view of the peculiar facts of the said case does not lay down any binding principle of law, which can be applied to the facts of the present case.

4. The Madras Bench decision is also unhelpful. There, the applicant had been selected for the post of Suprintending Engineer and was posted on deputation and he was asked to be repatriated and one person who had not even applied for the said post and had not been selected was sought to replace the applicant. In these circumstances, the Madras Bench held that repatriation of the applicant before expiry of his tenure period was on extraenous considerations, and thus the court interfered with the order of repatriation of the applicant. The Madras Bench also clearly noted that deputationists have very precarious tenure and unless there are good reasons, order for repatriation before expiry of the fixed period of deputationists would be arbitrary.

4. In this context, the Madras Bench referred to the decision of the Hon'ble Supreme Court in E.P.Royappa Vs. State of Tamil Nadu. The Supreme Court in the said case held that where violation of article 14 & 16 of the Constitution are pleaded, it would not be a defence to say that the concerned official did not have any right to hold the post. Royappa's case does not concern the deputationists. It is very well settled that deputationists have a very precarious tenure and they have no legal right to claim to continue on deputation even before expiry of the period. No doubt, it is also well settled that if for good and sufficient reasons, if the period of a deputation is curtailed, for which the parent department is well within its right to do so, such action would not be construed as arbitrary and discriminatory. Learned counsel for the applicant next submitted that there is no criminal case against the applicant. In this behalf, he has drawn our attention to Annexure-B. A perusal of Annexure-B only shows that a pairokar of the Department stated that they have not to arrest the applicant in respect of offence punishable u/s 409 IPC in F.I.R. No.273/94 P.S. Kamla Market. This order passed by the Assistant Sessions Judge, Delhi does not support the contention

of the learned counsel for the applicant that there is no criminal case against him. We, however, ~~are~~ not recording any positive finding that any criminal proceedings have been instituted against the applicant. However, the fact remains, according to the Annexure 1 of the OA that departmental enquiry has been decided to be initiated against the applicant. If the applicant is permitted to continue on deputation in CBI, his parent department's decision to institute departmental enquiry against him will clearly be frustrated.

5. This Tribunal is exercising the same powers that the High Court exercises in respect of such matters under article 226 of the Constitution. Under the circumstances, we do not find ourselves be persuaded to lend aid to the applicant. The application is therefore dismissed. No costs.

Antarage
(S.R.Adige)
Member (A)

B.C.Sakse
(B.C.Sakse)
Vice Chairman

aa.