

Central Administrative Tribunal, Principal Bench

Anil Kumar Jain
(By Shri K.R. Sachdeva, Advocate) AP2 Applicant

vs.

Secretary, Min. of Railways
(By Shri V.S.R. Krishna, Advocate) Respondent

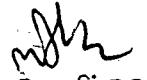
Date of Decision: 2 - 9 - 2002

CORAM:

Hon'ble Shri M.P. Singh, Member (A)

Hon'ble Shri Shanker Raju, Member (J)

Whether the judgement is to be sent to
the Reporter? .. YES


(M.P. Singh)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2658/1997

New Delhi, this the 2nd day of September, 2002

Hon'ble Shri M. P. Singh, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

(AB)

Anil Kumar Jain
Dy. Controller of Stores
COFMOW, Indian Railways
Railway Offices Complex
Tilak Bridge, New Delhi

.. Applicant

(Shri K.R. Sachdeva, Advocate)

versus

Secretary
Ministry of Railways
Railway Board
Rail Bhavan, New Delhi

.. Respondent

(Shri V. S.R. Krishna, Advocate)

ORDER (oral)

Shri M. P. Singh, Member (A)

By the present OA, applicant seeks a direction to the respondents to issue formal orders with regard to his absorption in the Indian Railways Stores Service (IRSS, for short) w.e.f. 20.3.1995 with all consequential benefits.

2. Briefly stated, the applicant joined the Indian Supply Service (ISS, for short) on 1.3.1975 and he was posted as Assistant Director (Rs. 700-1300) in DGS&D, New Delhi. He was promoted to the post of Dy. Director of Supply (Rs. 3000-4500) on 4.4.1984 and he continued in that capacity till 20.3.1989. Consequent upon his selection to the post of Dy. Controller of Stores (DCS) in Central Organization for Modernisation of Workshops (COFMOW) at New Delhi on deputation basis, applicant was posted to the said post on deputation terms initially for a period of one year and extendable upto 3 years, w.e.f. 20.3.1989. His term of deputation was extended from time to time till 20.3.1995. According to the applicant,

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Govt. of India (Department of Supply) vide OM dated 30.12.91 had decided to decentralise the purchase activities. Consequently, the procurement against ad hoc indents was transferred to the indenting Ministries for procurement along with corresponding number of officers/staff. As per para 3.6 of the said OM, it had been decided that in case of officers to Ministry of Railways, officers will be absorbed in the officers cadre. This decision was taken in consultation with Ministry of Railways and DoPT. Since the applicant had acquired sufficient experience of the working of the Railways, he had requested the respondents vide his letter dated 23.1.1992 that he may be allowed to continue in the Railways and absorbed in the cadre of IRSS. This was followed by several reminders by the applicant. The Chief Admin. Officer/COFMOW vide his letter dated 28.11.94 had strongly recommended applicant's case for absorption in the Indian Railways and that he may be allowed/in the Indian Railways like other SGS&D Officers till a final decision is taken in his case regarding his absorption. Department of Supply vide its communication dated 20.12.1994 had communicated its 'No objection' to the extension of applicant's deputation from 6th onwards year/ pending a final decision on his representation for absorption in IRSS. Respondent vide its letter dated 9.3.95 decided to continue the applicant in COFMOW on deputation beyond 20.3.1995 pending finalisation of his absorption in IRSS. Since no formal orders have been issued by the Government in this regard for a long period, applicant made another representation on 27.3.97, which was followed by one more dated 7.10.97. As no decision has yet been taken, he has filed this OA seeking the aforesaid reliefs.

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(AS)

3. By an order, passed on 12.11.97, this Tribunal directed that 'Meanwhile, parties shall maintain status quo'. That order was continued by various orders passed by the Tribunal on different dates.

4. Respondents in their reply have contested the case and have stated that as per the Cabinet decision (referred to by the applicant in the OA), some officers of ISS under the Ministry of Commerce and a number of staff were transferred to the Railways along with their work and posts for absorption. Initially these officers of ISS were to be treated as on deputation till the finalisation of their absorption. Absorption of 7 such officers of ISS into IRSS, in consultation with DoPT, is in the final stage. Applicant's name did not figure in the list of officers nominated by Department of Supply to be absorbed in IRSS. Applicant had not come to the Indian Railways along with his post but was working on deputation basis against a railway post of IRSS. Respondents have stated that applicant's requests have been duly considered but it has not been found feasible to absorb him into IRSS. As regards letter dated 9.3.95, it is their contention that this communication was not any commitment or promise to applicant that he would be finally absorbed in IRSS. This letter only conveys that pending finalisation of his absorption in IRSS, he may continue to be on deputation with COFMOW and the issue of his absorption had not been finalised till then.

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5. It is stated by the respondents that since it was considered to adjust the applicant against a post brought by ISS officers from DGS&D to the Ministry of Railways in response to Government's decision for decentralisation of DGS&D so that his absorption in IRSS can be considered on the same line as those deployed from DGS&D along with their posts, applicant was allowed to continue beyond 20.3.95. However, the proposal regarding his adjustment against any ISS post has not been agreed to by the Deptt. of Supply. 'No objection' from his parent department does not give a right to the applicant to be compulsorily absorbed into the Railways. In view of this, interim order dated 12.11.97 be revised and the OA be dismissed.

6. We have heard the learned counsel for the rival contesting parties and perused the records.

7. During the course of the arguments, the learned counsel for the applicant has contended that when a decision was taken to absorb the applicant in IRSS, one Shri N. Shanker was already working with the respondent, who also came from the Department of Supply. Shri Shanker got promotion and he was relieved from Indian Railways in March, 1995, while the decision to absorb the applicant was taken much before that date. From March, 95 to September, 97, department of Supply did not post any officer in place of Shri Shanker. However, when the Department of Supply posted another officer in place of Shri N. Shanker in September, 1997, respondent had refused to accept him vide his letter dated 31.3.1997 indicating therein that if a transferred ISS Officer is withdrawn, pending his absorption in IRSS for reasons like his having become eligible for promotion in ISS,

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the place vacated by him can not be filled by another officer of ISS. The learned counsel has also drawn our attention to Respondent's letter dated 21.4.97 / addressed to Dept. of Supply in which it has been mentioned as under :

"2. The matter has been reconsidered at the appropriate level and it has been decided that Shri A. K. Jain may be considered for absorption in IRSS against the post of ISS since vacated by Shri N. Shankar, ISS, by adjusting the Senior Scale post against JAG post. You are therefore requested to reconsider the matter and concur to the proposal of Ministry of Railways (Railway Board)."

Our attention was also drawn by the learned counsel to the letter dated 7.9.2001 of the Ministry of Commerce & Industry addressed to Railway Board requesting them to consider posting/absorption of the applicant who has been working with them (in COFMOW) on deputation basis since 1989 and whose case for absorption was once taken up.

8. As per Government of India instructions, the Administrative Ministry/borrowing organization may grant extension beyond the period of three years of deputation upto one year after obtaining orders of their Secretary and for extending the period of deputation for the fifth year, specific prior approval of the concerned Minister of the borrowing Ministry/Department is required. It is a settled legal position that a deputationist has no enforceable right for permanent absorption.

9. We are informed by both counsel that 7 officers (ISS) who were transferred from Department of Supply to Ministry of Railways alongwith the posts as a result of decentralisation have since been absorbed in the latter Ministry by the respondent. Out of the seven officers, one has sought voluntary retirement in April, 2002 while another officer has gone back to his parent department.

[Signature]

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It is therefore the contention of the learned counsel for the applicant that applicant can be absorbed and adjusted against one of these vacant posts. However, learned counsel for the respondents has contended that these 7 officers of ISS were transferred to Ministry of Railways along with their posts, while the applicant came on deputation and therefore he can not be adjusted or absorbed against one of the vacant posts. He has further submitted that once a post is transferred from Department of Supply, the same is encadred and it becomes a part of the IRSS cadre. Therefore, the Department of Supply have no say in regard to the manner in which the post is required to be filled up.

10. The learned counsel for the applicant has further drawn our attention to a catena of judgements on the question of absorption of deputationists, particularly to that of Mahesh Kumar K. Parmar & Ors. Vs. SIG of Police & Ors. JT 2002 (3) SC 92 decided by the Hon'ble Supreme Court on 8.2.2002. It was the case of Head Constables of Gujarat Police who were sent on deputation to Intelligence Bureau in the year 1991 and continued as such till 1999. The apex court in this case has held that 'though there is no enforceable right for permanent absorption and writ cannot be issued, considering that they had worked till 1999, state government is advised to consider the case for absorption as per rules'. Another judgement of the apex court, on which the learned counsel for the applicant has placed his reliance is that of Rameshwar Prasad Vs. Managing Director, UP Rajkiya Nirman Nigam Ltd. 1999 (2) SC 518, in which it was held as under :

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(A9)

'Deputation- Whether a deputationist should be absorbed in service or not is a policy matter. Once the policy is accepted and Rules are framed for such absorption there must be justifiable reason for rejecting an application for absorption. Authorities cannot act arbitrarily by picking and choosing the deputationists for absorption'.

11. In the instant case, the applicant admittedly joined the deputation post on 20.3.1989 and he has been continuing as such till now, i.e. for the last more than 13 years. Even after 20.3.95, upto which period his deputation term was extended, no formal orders either giving further extension or repatriating his services to the parent cadre have been passed by the respondent. Respondent itself has committed vide its letter dated 21.4.97 that it has been decided that the applicant may be considered for absorption in IRSS against the post of ISS since vacated by Shri N. Shankar, ISS by adjusting senior scale post against JAG post. Although the Ministry of Railway have all along taken the plea that the Department of Supply had not given concurrence for the absorption of the applicant, learned counsel for the applicant has drawn our attention to the OM dated April, 2002 of the Ministry of Commerce & Industry (Department of Commerce) addressed to the Ministry of Railways (Railway Board) on the subject of repatriation of Shri C. P. Nimje, DD(ISS), in which it has been stated that 'Ministry of Railways may call for a panel of officers for selecting one, or alternatively, they may consider absorption of Shri A. K. Jain, Dy. Director (ISS), on deputation with them (in COFMOW), which was initiated by them.'

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Therefore, since a policy decision has already been taken by the Cabinet to transfer the officers and staff of Department of Supply to Ministry of Railways along with the posts, respondent cannot act arbitrarily by picking and choosing the deputationist for absorption.

12. In the result, having regards to the judgements of the apex court in the cases of Mahesh Kumar (supra) and Rameshwar Prasad (supra) and respondent's letter dated 21.4.97 and Department of Commerce's OM dated April, 2002, coupled with the fact that vacant posts are available in IRSS with the respondent, the present OA is disposed of with the directions to the respondent to reconsider the absorption of the applicant in Indian Railways by passing a detailed and speaking order within a period of four months from the date of receipt of a copy of this order. Till then status quo as of date shall be maintained. If the applicant still has grievance, he is at liberty to approach the court in accordance with law.

There shall be no order as to costs.

S. Raju
(Shanker Raju)
Member (J)

M. P. Singh
(M. P. Singh)
Member (A)

/gtv/

Fresh MR 2666/02