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Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.1259/94

New Delhi this the 19th Day of May, 1995.

HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri R.K. Takhar,
Secretary,
Inter-State Council,
Ministry of Home Affairs ...Applicant

(By Advocate : Mrs Avnish Ahlawat)

VERSUS

UNION OF INDIA, THROUGH

1. Secretary,
Deptt of Personnel & Training,
Ministry of Personnel,
Public Grievances and Pension,
North Block,
New Delhi.

GOVERNMENT OF INDIA, THROUGH

2. Secretary,
Department of Food,
Ministry of Food and Civil Supplies,
Krishi Bhavan,
New Delhi.

GOVT OF JAMMU & KASHMIR, THROUGH

3. Chief Secretary,
Civil Secretariat,
Srinagar.Respondents

(By Advocate : Shri K.C.D. Gangwani)

JUDGEMENT

(HON'BLE SHRI B.K. SINGH, MEMBER (A))

This O.A.1259 of 1994 is directed against the orders dated 15.06.1993, 26.08.86, 12.11.87 and 29.11.87 rejecting the request of the applicant for grant of protection of pay which he is drawing as Chief Secretary, J & K Government.



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2. The applicant was given selection grade on 1.04.1974; Super-Time Scale in March, 1975; scale of Additional Secretary to the Government of India Rs.3000 on 12.05.1983 and as Financial Commissioner, J&K Government Rs.3500 (fixed) on 1.02.86; from this post he was appointed as Chief Secretary of J&K Government in the same year and took over the charge as Chief Secretary in the afternoon of 30.01.1986, a copy of this is enclosed as Annexure-A.

3. The Government of India vide their wireless message No.9(12)EO/86 SM dt 14.05.86 ordered appointment of the applicant on deputation to Food Corporation of India under Respondent No.2 as Zonal Manager (North) in the scale of Rs.2500-2750. This is marked as Annexure 'B' of the paper book. The consent of the applicant was not taken before posting him in the scale of Rs.2500-2750. In pursuance of the orders issued by the Government of India, applicant joined Food Corporation of India w.e.f. 4.7.86. There are averments in the O.A. that he had been given informal assurance that his pay would be protected, but the same was not done. The applicant filed representation which was rejected as indicated above and finally submitted a memorial to the President of India which also was rejected in 1993. Aggrieved by this order of rejection and the memorial this O.A. was filed in the Tribunal on 10.06.94.

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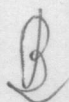
4. The reliefs prayed for are to;

- (i) quash/set-aside the orders dated 26.08.1986, 12.11.1987, 29.11.1987 and 15.06.1993;
- (ii) direct the respondents to fix the pay of the applicant in the pay scale of Rs.3500/- (fixed) (pre-revised, now revised to Rs.8000/-) for the period of deputation from 4.7.1986 to 22.01.1990 and pay the arrears with interest at the rate of 24% per annum with all consequential benefits.

5. A notice was issued to the respondents who filed the reply contesting the application and grant of reliefs prayed for. Heard the learned counsel Ms Avnish Ahlawat for the applicant and Shri KCD Gangwani for the respondents and perused the record of the case.

6. The learned counsel for the applicant relied on rule 6 of the I.A.S.(cadre) Rule, 1954 which deals with deputation. The reliance was placed on the proviso which reads as follows ;


"No Cadre Officer shall be deputed under sub-rule (1) or sub-rule (2) to a post carrying a prescribed pay which shall not be less than, or a



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pay scale, the maximum of which is not less than, the basic pay he would have drawn in the cadre post but for his deputation."

7. She vehemently argued that the second proviso to Rule (6) prohibits deputation of a Member of the service to a post carrying a scale the maximum of which is less than the basic pay he would have drawn in his parent cadre but for his deputation. It was argued that the applicant was the senior most I.A.S Officer in J & K Cadre drawing the pre-revised pay of Rs.35000/- since revised to Rs.8000/- before being brought on deputation without taking his consent to serve as Zonal Manager, Food Corporation of India (North) with Headquarters at Delhi which is generally equated with the post of Joint Secretary to the Government of India and, therefore, this deputation was clearly in contravention of rule 6 of I.A.S (Cadre) Rules 1954. It was further argued that the applicant was appointed as Chief Secretary, Delhi Administration w.e.f. 1.1.91 and his pay was again raised to Rs.8000/- and he worked as such till 21.03..94, when he was shifted as Secretary, Inter State Council with the same fixed pay. The Respondent No.1 vide order dated 15.01.93 rejected memorial filed by the applicant for upgradation of the post of Zonal Manager, FCI held by the applicant prior to his appointment as Chief Secretary, Delhi w.e.f. 1.1.1991.



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8. A perusal of the counter reply filed by the respondents has raised the question of limitation. It mentions that the application is barred by limitation. The facts mentioned in the O.A. are not denied by the respondents except raising the question of limitation and application of proviso to Rule 6 dealing with deputation. The main argument advanced by the learned counsel for the respondents was that Shri R.K Takkar was brought to work as Zonal Manager, FCI (North) when he was only in the panel of Joint Secretary to Government of India. After his empanelment as Additional Secretary w.e.f. 1.1.1988 he was appointed as Additional Secretary in the Ministry of Urban Development from 1.01.1988 till 22.01.1990. He was not eligible to draw the pay of Rs.8000/- when he was not even empanelled Additional Secretary to the Government of India and all his seniors in his own batch were working as Joint Secretaries. It was further argued that there are numerous instances where Officers working in higher posts opts for lower post to come over to Delhi on deputation or were deputed without their consent to other organisations in posts lower than the posts which they were holding in their parent cadre if their seniors are drawing only the prescribed pay as mentioned in Rule 6. It was further argued that it is the State government which made a specific request for shifting Shri Thakkar to the Centre and, therefore, the learned counsel for the respondents did not agree that Shri Thakkar would

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have continued to draw Rs.3500/- or revised pay of Rs.8000/- if he had continued in the State Government. It was further argued that he could not be accommodated in a post higher than those held by his batch-mates who are senior to him in the All India seniority list. When a man comes to the Government of India, it is All India Seniority List which is relevant and not the seniority list of the parent cadre and, therefore, when one is shifted to Delhi, one is adjusted according to his seniority in the All India Seniority List of the Cadre officers of the IAS maintained by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training.

9. After hearing the rival contentions of the parties it is clear that the application is barred by limitation and there is no application filed by the applicant for condonation of delay. The Original cause of action arose when his representation filed on 26.08.89 was rejected. The law in regard to the limitation has been clearly laid down by the Hon'ble Supreme Court in State of Punjab Vs Gurdev Singh; (1999) 17 ATC 287; "The party aggrieved by an order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him within the prescribed period of limitation since after the expiry of the statutory time limit the Court cannot give the declaration sought for." The C.A.T. is a

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self-contained act where period of limitation is already prescribed as one year where no representation or appeal is filed. This has to be read along with Section 20 of the Act. In the case of S.S. Rathore Vs State of Punjab; A.I.R. 1990 (10); "The cause of action will arise when the representation is made and the order is passed rejecting the representation and where no such order is made within six months after making representation, the cause of action would arise from the date of expiry of six months period." It has been further laid down that repeated unsuccessful representations not provided by law do not enlarge the period of limitation. It was further held by the Hon'ble Supreme Court that the repeated representations and memorials to the President etc do not extend the period of limitation. Thus the statutory period of limitation is prescribed under Section 21 of the CAT Act and this application has been filed after more than 7 years when it ought to have been filed in 1986 or latest by 1987 end, after the rejection of his first two representations.

10. Coming to the merits of the case, it is true that the applicant was appointed as Financial Commissioner and subsequently, as Chief Secretary w.e.f. 31.08.1986 but this was on the basis of parent cadre seniority which does not entitle him to claim that benefit when he comes on deputation to G.O.I. Another officer who was Chief Secretary, J&K Mr Khosla was denied and was

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given a post of only Addl. Secretary all his service batchmates were in that rank. Mr P.S. Appu was Chief Secretary Bihar in 1977-78 but he opted out and came to Centre as Addl. Secretary since his batchmates were not empanelled as Secretary to G.O.I. He was shifted on administrative grounds at the instance of J&K Govt. Taking the consent for shifting of an Officer has since been dispensed with by the Government of India in case of All India Service Officers and they can be deputed anywhere by Govt. of India at its own sweet will or on the request of State Govt. The power vests now in the government to recall an Officer from any State or to retain an Officer in public interest in Government of India even when the parent cadre wants him back. The Ministry of Personnel is Cadre controlling authority and they are vested with full powers of allotment of an Officer to any State and also to recall any Officer at any time without taking his or her consent. For deputation purposes, now no consent is required by the Government of India.

11. Secondly, the State Governments maintain separate Seniority lists for the I.A.S. Officers and the Government of India maintains a combined seniority list as published by the Union Public Service Commission and Officers are empanelled from the rank of Joint Secretary onwards and it is only after empanelment that an Officer can have a right to claim a post when he comes on

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députation to the Government of India and that too his posting will be made in his own turn as per his seniority. The seniority of a State Government and the pay drawn in the State Government, therefore, is not relevant and will be treated as given in fortuitous circumstances when one either recalled to Government of India or opts for a Central deputation because of his own personal reasons. The deputation to Government of India or its subordinate or attached Offices to autonomous bodies owned and controlled by it are made on immediate absorption basis. Except for Food Corporation of India all other Corporations now do not take I.A.S. Officers except on immediate absorption basis. The Officers in the Public Sector Undertakings go only as Executive Directors (Vigilance) and they are drawn from All India Services and also from Central Services but as regards post of Director rank Officer/CMD rank Officers except for FCI, there is no other Organisation where an Officer can go in the rank of Additional Secretary or Secretary to Government of India except on immediate absorption basis after taking voluntary retirement. The power of equating the post outside the Cadre is also vested in Government of India and they are the sole masters in this regard. It is for them to either upgrade a post on the basis of facts and circumstances of a particular case or downgrade the same. To cite an example Mr Pritam Singh Kohli (I.A.S. 1995) when he had worked as Additional Secretary, in

the Ministry of Food and Agriculture and subsequently as Addl Secretary, Ministry of Defence and had certain differences with the powers that he was shifted as Zonal Manager, Food Corporation of India (North) and the post was upgraded to the rank of Additional Secretary by the Ministry of Personnel and Training, since he had been working as Additional Secretary and had been empanelled as such long ago. It is admitted by both the parties tghat the applicant was not empanelled as Additional Secretary and since FCI is owned and controlled by Government of India, Ministry of Food and Agriculture, it appoints the Chairman from the panel of Secretaries and it appoints the Managing Director from the panel of Additional Secretaries and, therefore, if the post of Zonal Manager is upgraded to the rank of Addl Secretary or Secretary, it will create an imbalance in the functioning of the Corporation and that must be the reason why a ACC did not agree as has been pointed out by Shri M.N. Raghunathan in his letter addressed to Secretary Food and Civil Supplies Shri T.U. Vijayasekharan. F.C.I. Chairman is drawn from the panel of Secretary to Government and M.D. is drawn from the panel of Additional Secretary. The letter of Mr N. Raghunathan has already been placed as Annexure 'G' at page 22. It refers to the appointment of Mr 'R.K.' Takkar, I.A.S (J&K.61) as Zonal Manager in the (cale of Rs.2500-3000). In para 2 of the D.O. letter No.9(12)EO/86(SM) dt 26.08.86 from Shri N.



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Raghunathan, Additional Secretary and Establishment Officer addressed to Shri T.U. Vijayasekharan, Secretary, Department of Food, New Delhi. It mentions that though the Office Order purported to indicate that he would be in his grade of pay of Rs.3500/- p.m. which he was drawing as Chief Secretary. The Appointments Committee of the Cabinet had approved his appointment as Zonal Manager (North) FCI in the scale of Rs.2500-3000. It is further mentioned that the department of Food had already equated the post of Zonal Manager to that of Joint Secretary to Govt. of India under IAS rules. In view of this it was indicated that Shri Takkar would be eligible to draw pay only as Joint Secretary to Govt. of India. It seems that the decision of the ACC was a conscious and deliberate decision. Sri Takkar having been empanelled only as Joint Secretary could not be placed at par with Chairman or the Managing Director who are empanelled Officers to the rank of Secretary and Addl. Secretary. As and when Sri Takkar was empanelled as Addl. Secretary, he was brought back to work as Addl Secretary in the Ministry of Urban Development where he continued till he was posted in his own turn as Chief Secretary, Union Territory of Delhi in the rank of Secretary to the Government of India. The terms and conditions of appointment as indicated in the aforesaid D.O. letter of the Estt. Officer were also communicated to Mr Takkar vide letter No.5-6/86-FCI Govt. of India, Ministry of

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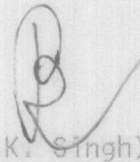
Food and Civil Supplies (Department of Food) dt 29th October, 1987. Unfortunately in the O.A. these terms and conditions of the deputation Order which ought to have been challenged have not been challenged. They have indicated that pay of Rs.2500-2750 ie. that of Jt. Secretary would be admissible to him w.e.f. the forenoon of 4th July, 1986. The letter dated 29th October, 1987 contains the detailed terms and conditions of deputation. Once these terms and conditions were accepted Estoppel operates on Mr Takkar for raising the same after accepting the same and these conditions of his deputation are not under challenge here. There was no obligation cast on Mr Takkar to accept an appointment as Zonal manager, Food Corporation of India (North) in the rank of Joint Secretary and so also there was no obligation cast on him to accept the terms and conditions as communicated to him vide letter dated 29th October, 1987. Once he had accepted his appointment as Zonal Manager and accepted the Terms and Conditions he cannot subsequently go back on it and he cannot raise a grievance about it later as has been held by the Honble Supreme Court in case of Om Prakash Shukla appellant Vs Akhilesh Kumar Shukla and Others as respondents decided by the Full Bench of Supreme Court comprising Hon'ble Mr Justice A.P. Sen, ES Venketaramaiah and Hon'ble Mr Justice A.C Ray; AIR 1986 SC 1043. It lays down that once some

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one accepts something without any howl or protest or grievance he forfeits his right to question its validity subsequently.

12. Thus on merits also the application fails. The application is dismissed on both the counts as devoid of merit and substance and also as barred by delay and laches but without any order as to costs.



(B.K. Singh)
Member (A)

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