

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 182/94
~~O.A. No.~~

90

DATE OF DECISION 16/10/95

Shri: V.P. Goswami

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(Dr. A. Vedavalli)

Member(J)

16/10/95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

CAO. No. 182/94

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Dated this the 16 Day of October, 1995.

Hon'ble Shri N.V. Krishnan, Acting Chairman.
Hon'ble Dr. A. Vedavalli, Member(J).

Shri Vijay Puri Goswami,
S/o Shri Mohan Puri Goswami,
R/o L-113, Sarojini Nagar,
New Delhi. ...Applicant.

By Advocate: Shri Shyam Babu.

versus

1. Union of India through
Secretary to the Government of India,
Ministry of Human Resources Development,
Department of Culture, Shastri Bhavan,
New Delhi.
2. The Director-General,
National Museum,
Janpath, New Delhi.
3. The Director of Estates,
Nirman Bhawan, New Delhi. ...Respondents.

By Advocate: Shri V.S.R. Krishna.

O R D E R
(By Hon'ble Dr. A. Vedavalli)

The applicant Shri Vijay Puri Goswami is aggrieved by his repatriation to his parent organisation by an order issued by the respondent No.1 ie. Union of India, dated 6.1.94 (Annexure A1) and also his relief from the post he was occupying by an order issued by respondent No.2 dated 7.1.94 (Annexure A-2). He has challenged the aforesaid orders in this original application before us.

2. The facts of this case briefly are as under:-

The applicant, a documentation officer in the West Zone Cultural Centre, Udaipur, was appointed as a Deputy Keeper (Jewellery) in the National Museum, New Delhi on 15.6.88 by respondent No.1 w.e.f. 16.5.1988



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for a period not exceeding one year purely in a temporary capacity on adhoc basis (Annexure A6). It was also stated therein that the said appointment shall not confer any right on Shri V.P. Goswami for appointment to the post on a regular basis. The vacancy of the aforesaid post had been circulated by a circular dated 28.12.87 issued by respondent No.2 calling for application from eligible candidates (Annexure A3). The applicant's application for the said post was forwarded by his parent organisation ie. West Zone Cultural Centre, Udaipur stating that he would be relieved immediately in case he is selected for the post of Deputy Keeper (Jewellery) in the National Museum, New Delhi (Annexure A-4). The applicant was selected by a selection committee constituted by respondent No.1 on 14.4.88 and got an offer of appointment on 22.4.88 (Annexure A5). He was appointed by the order dated 15.6.88 (Annexure A-6) for one year on the above terms as stated above. While so, another notification dated 30.6.89 was issued by respondent No.1 extending the applicant's appointment from 16th November 1989 for a further period of three months on deputation on adhoc basis or till the post is filled in accordance with the recruitment rules, whichever is earlier. It was again reiterated therein, that this appointment shall not confer any right for appointment on regular basis (Annexure A-13 colly). Further, extensions were given from time to time with same terms. The applicant in the meanwhile, was submitting representations to respondent No.1 for regularisation of his services (Annexure A-19 colly). The letter issued by

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respondent No.2 forwarding one such representation mentioned the applicant is not holding any lien in any lower post as he was appointed in the West Zone Cultural Central, Udaipur as a Documentation Officer on contract basis (Annexure A-20). Though one of his representations was rejected by respondent No.1 (Annexure A-21), the applicant continued to make further representations.

3. The recruitment rules for the post of Deputy Keeper (Jewellery), National Museum, New Delhi were notified in the Government of India Gazette dated 24.2.92 (Annexure A-18). Respondent No.2 advertised the said post in the employment news dated 25th April to 1st May 1992 (Annexure A-22). It was also circulated to various museums etc. The applicant applied for the said post and was selected for the same by a selection committee. He was appointed to the aforesaid post by a notification dated 13.10.92 (Annexure A-23), wherein it was stated that Shri V.P. Goswami who was working as Deputy Keeper (Jewellery) on adhoc basis is appointed to the said post on deputation basis for a period of three years w.e.f. 29.9.92 on the recommendation of U.P.S.C. However, before the expiry of the said terms of three years, the respondent No.1 issued the first impugned order dated 6.1.94 (Annexure A-1) reverting the applicant to his parent organisation and the second impugned order dated 7.1.94 (Annexure A-2) relieving him from the post which he was occupying. The applicant submitted a representation dated 12.1.94 to respondent No.2 (Annexure A-25) stating inter alia that he did not

receive the aforesaid two orders as he was on medical leave from 4.1.93 (sic) and requested permission to join duty on his recovering from illness till final decision is made on the representation. He did not get any reply for his representation and thereafter he filed the present OA.

4. The impugned orders (Annexure A1 and A2) have been challenged by the applicant on several grounds and he prayed, briefly stated, for:

- (i) quashing of the said orders (Annexures A1 and A2);
- (ii) quashing of the order of appointment dated 13.10.92 to the extent it described the appointment of the applicant on deputation basis (Annexure A-23);
- (iii) declaration that the appointment of applicant from 1988 onwards was on regular basis even if it is on adhoc basis;
- (iv) declaration that he is deemed to have been appointed as direct recruit from 16.5.88 to 28.9.92 pending finalisation of the recruitment rules;
- (v) declaration that he is deemed to have been appointed as direct recruit from 29.9.92;
- (vi) direction to the respondents to treat the appointment as having been made by way of direct recruitment from 1988 onwards on regular basis/or to regularise the same even if the appointment is on adhoc basis;

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5. The respondent No.1 and 2 have opposed the OA and have filed their short reply as well as the detailed counter. The respondent No.3 ie. Directorate of Estates, New Delhi has filed comments on para-9(ii) of the OA. The applicant has filed his rejoinder generally denying the contents of the reply filed by the respondents and has reiterated, the grounds raised in the OA.

6. The learned counsel for the parties have been heard at length and the relevant documents and materials placed on record have been perused. The original record made available by the respondents have also been perused carefully.

7. The first main contention urged by the applicant is that his appointment throughout has been by way of direct recruitment on regular basis. In support of his contention, it was submitted that:

(a) the circular dated 28.12.87 (Annexure A-3) inviting applications for the post of Deputy Keeper (Jewellery) did not say that the appointment would be on deputation. It was stated therein that the applicant would be temporary and adhoc though the offer of appointment used the word "appointment on deputation".

(b) The term "appointment on deputation" is a misnomer and is of no relevance. There is no question of "deputation" as the applicant was working in the parent organisation on contract basis which came to an

end when he was appointed to the present post in the National Museum. He has no lien in the parent organisation.

(c) The recruitment rules 1992 required the post to be filled up by transfer on deputation, failing which, by direct recruitment. The applicant had to apply for the post in accordance with the pending representation and he must be treated as a regular incumbent from the date of his initial appointment in 1988.

8. Re. the first submission of the applicant, the respondents have submitted that, at that time of initial appointment of the applicant in 1988, there were no recruitment rules for the post of Deputy Keeper (Jewellery) in the National Museum, New Delhi. He was selected by a departmental promotion committee of the Department of Culture which met on 14.4.88. He was selected purely on adhoc and temporary basis. This was done on the basis of the draft recruitment rules which provided for only direct recruitment. The terms of offer of appointment to the applicant are clear regarding the post being temporary on short term deputation for a period of not exceeding one year etc.

9. The respondents (at running page 173 of the paper book) further submitted that the recruitment rules were not finalised and appointment was an interim arrangement to fill up the post in accordance with the Exemption and Consultation (Regulation),

1958, whereby, the competent authority is empowered to make adhoc arrangement against the temporary post for a period of six months extendable by one year. They have contended that in view of the above position, it is clear that the applicant was not initially selected as a direct recruit. The term "deputation" is not a misnomer.

10. Regarding the appointment of the applicant in 1992, in pursuance of the selection made after the final recruitment rules were published, it was submitted by the respondents that the said appointment was also on "transfer on deputation basis". On receipt of the report/information from the parent organisation of the applicant regarding his performance and integrity and after selection by UPSC on the basis of the said recruitment rules, the applicant was appointed for a period of three years w.e.f. 29.9.92 on the aforesaid basis.

11. The crucial issue to be considered first now is whether the appointment of the applicant as Deputy Keeper (Jewellery) in the National Museum, New Delhi, is on "transfer on deputation basis" or by way of "direct recruitment". For this purpose, it would be necessary to go through and analyse the relevant documents placed on record which would be pertaining to the aforesaid issue in question together with the factual position in the present case.

12. The process of selection for the post of Deputy Keeper (Jewellery) in the National Museum, New Delhi, it appears, was initiated by issuing a circular dated 28.12.87 inviting applications for the said post "purely on adhoc basis" and it was stated therein that the post at present is temporary but is likely to continue indefinitely (Annexure A-3). When the applicant applied for the said post, he was working in the parent organisation ie. West Zone Cultural Centre, Udaipur as Documentation Officer from 15.9.86 on a consolidated salary and the said organisation in their letter forwarding his application have stated that he will be relieved from that office immediately on selection (Annexure A-4). There is no mention in the said letter regarding the execution of any contract between that organisation and the applicant and its duration. There is not even a whisper about the retention of any lien by the applicant. The same is the position in the certificate dated 19.2.88 issued by the organisation enclosed with the application submitted by the applicant (Annexure A4) at page 37 of the paper book. In the said application, I notice that there is no indication about any contract with the parent organisation. The offer of appointment dated 22.4.88 (Annexure A5) by the Ministry (respondent -1) clearly states that the post is being offered "on purely adhoc and temporary basis" for a period not exceeding one year and the other terms and conditions specified therein also indicate the nature of the post and appointment thereof. It was stated therein, inter alia that the appointment will not confer any right for appointment

on regular basis. There was a request to the parent organisation to relieve the applicant to take charge of the post on deputation basis. The appointment order dated 15.6.88 issued by respondent No.1 (Annexure A6) also shows that the said appointment is w.e.f. 16.5.88 for a period not exceeding one year purely in a temporary capacity or on adhoc basis. It was also stated therein that the said appointment will not confer any right on the applicant to that post on regular basis. However, for the first time, it was taken note of by respondent No.2 (Director, National Museum) in the office order dated 5.8.88 (Annexure A7) issued by him that the applicant was working in the parent organisation earlier on contract basis but it was reiterated that the appointment was purely temporary on adhoc basis and it shall not confer any right to the post on regular basis. However, by another office order dated 16.8.88 (Annexure A-8) issued by respondent No.2, the Annexure A7 order was superceded. The only change made is that reference to the earlier post of Documentation Officer in the West Zone Cultural Centre, on contract basis was omitted. The terms relating to adhoc temporary nature of the appointment etc. were retained unchanged. On a reference from respondent No.2 dated 5.7.88 (Annexure A9) relating to the relieving order, last pay certificate, service book, leave accounts etc. the parent organisation (West Zone cultural Centre) in their letter dated 18/21.7.88 (Annexure A-10) have stated in their letter at last that the applicant was appointed as Documentation Officer on contract basis earlier on consolidated salary etc. No relieving

order as such by that organisation is placed on record. Further, the concerned letter extending the term of appointment of the applicant from time to time till his selection in 1992 for the post in question under the final recruitment rules also reiterated that the said extension is on deputation on adhoc basis etc. and until the expiry of the term or till the post is filled in accordance with the recruitment rules, which ever is earlier. The position which emerges from the above discussion is that, so far, as the initial appointment to the post in 1988 before the recruitment rules were to be concerned, there cannot be any doubt about the said post being temporary and the appointment being made on purely adhoc basis for a limited period. The term "deputation" occurring in the concerned orders may not also be capable of being termed as misnomer till the date of initial appointment ie.15.6.88 (Annexure A6) since it is evident that there is no clear and specific indication from the papers placed on record that the respondents were ever informed of the contractual appointment of the applicant in the parent organisation.

13. In view of the above, I am of the opinion that the contention of the applicant that he should be treated as direct recruit and that the initial appointment is to be treated as on regular basis is not based upon any valid grounds and is, therefore, untenable, so far as the initial appointment is concerned.



14. Regarding the appointment of the applicant to the post of Deputy Keeper (Jewellery) dated 13.10.92 (Annexure A-23), after the recruitment rules were published in 1992 it is noticed that the relevant advertisement (Annexure A-22), mentions specifically that the post is proposed to be filled up by transfer on deputation (including short term contract) from officers and Central/State Governments etc. The letter of the UPSC dated 18.9.92 selecting the applicant also proceeds on the specific fact that the appointment is on deputation basis (Annexure R7). The aforesaid appointment order also states that the appointment is on deputation for a period of three years w.e.f. 29.9.92 on the recommendation of UPSC.

15. I find that the recruitment rules themselves (Annexure-F) provide for recruitment by transfer on deputation including short term contract, failing which only by direct recruitment. On the wording of the recruitment rules and the basis of the entire procedure adopted by the UPSC for selecting the candidate, there was no mention of recruitment being made through direct recruitment at that time. Ex-facie, it will appear that any direct recruitment could be made only if the method of deputation failed to get a suitable candidate. Therefore, I am of the view that the contention of the applicant that the said appointment has to be considered as a regular appointment as a direct recruit is not supported by any tenable grounds and is, therefore, unsustainable in law.

16. The other main contention urged by the applicant is that his repatriation to the parent organisation and his relief is vitiated by illegal, invalid, unconstitutional, unfair and unreasonable action on the part of the respondents. He has submitted inter alia that he had been working for five years on the same post without any break and he has been reverted to the parent organisation without ascertaining any reason and before the expiry of the term of three years. He was not given an opportunity of being heard. Even if he is not treated as a direct recruit, his appointment cannot be terminated in this arbitrary and illegal fashion.

17. In this regard, the respondents have replied that during June 1993, the applicant submitted a representation for his regularisation to the post of Deputy Keeper (Jewellery) and also sought promotion to the post of Keeper (Decorative Arts/Keeper Display). In that connection, it was stated that there was a letter from the parent organisation dated 28.8.92 (Annexure J) purporting to issue integrity certificate which was found to be forged (Annexure L). Moreover, it was submitted that the applicant has suppressed several facts in his application against the substantive posts and he cannot even be appointed to the said post. It is submitted that since he has also furnished false information, disciplinary action can also be taken against him. Taking into account all these factors, a decision was taken to revert and send him back to the parent department as he was on deputation.

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18. It is not for the Tribunal to sit in judgement in the present proceedings over the reasons which prompted the respondents to cut short the period of deputation, the genuiness or otherwise of the letter dated 28.8.92 from the parent organisation (Annexure R-10) and the culpability of the applicant in that regard which are outside the scope of this application. Be that as it may, the respondents have now taken a conscious decision to cut short the applicants period of deputation. Such a decision, in our view, cannot be legally faulted. I am also of the view that it is not necessary on the facts of this case to hear the applicant before deciding to terminate the deputation.

19. It may, no doubt be true that on repatriation, there was no post available in the parent organisation. For this situation, the applicant himself is not entirely free from blame. He could have sought regularisation in the parent organisation at the appropriate time when his contract was to expire. It appears from the letter dated 11.6.93 from the respondent No.1 (Annexure R-11) that, although almost all the staff on contract basis of the said organisation had been regularised, the applicant had not even cared to implead that organisation in the OA. Therefore, it is not possible to speculate as to why he could not be regularised there.

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20. In view of the aforesaid discussion, I am of the opinion in the facts and circumstances of the case, the applicant has not been able to establish any valid and tenable grounds to allow the application as prayed for. The application is, therefore, dismissed. No costs.

A. Vedavalli
16/10/95
(Dr. A. Vedavalli)
Member(J)

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

21. I agree with the conclusion of my learned colleague. However, I wish to add a few paras supplementing her decision.

22. The main grievance of the applicant is that he is being repatriated to his socalled parent department viz. the Western Zone Cultural Centre, Udaipur, assuming that he has been appointed on deputation on the post of Deputy Keeper (Jewellery) in the National Museum under the second respondent, from that parent department- I am of the view that if anybody is to be blamed in this regard it is the applicant himself. The Annexure A-22 advertisement which appeared in the Employment News of 25.4.92 relating to filling up the post of Deputy Keeper (Jeweller) in the National Museum, New Delhi (i.e. the very post which the applicant was already holding on an ad hoc basis) made it clear that it was proposed to fill up that post by "transfer on deputation (including short term contract) from officers under

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the Central/State Governments or persons working in the recognised Research Institute/Public Sector Undertakings Semi Government Autonomous or statutory organisations". If the applicant's case is that even when he joined this post for the first time on 15.6.88 in a temporary capacity on an ad hoc basis, he had severed his connections with the Western Zone Cultural Centre, Udaipur, he should not have applied for this post because it was to be filled up by deputation only. He did not qualify to be a deputationist. The respondents have annexed as Annexure R-6 with their short reply the application submitted by the applicant in response to this advertisement. In column 2 relating to the particulars of the post held at present he mentions that he is a Deputy Keeper (Jewellery) in the National Museum, New Delhi, i.e., the post for which he applied. Column 3 seeks particulars of the substantive post held by the applicant. He has stated therein that he was a Documentation Officer in the Western Zone Cultural Centre and was appointed on 15.9.86. He has nowhere mentioned that he had ceased to hold that post when he joined the post of Deputy Keeper (Jewellery) on 16.5.88. He, therefore, made it appear that he was eligible to appear for the post as a deputationist, which is entirely false. He had thus intentionally misled the Department to believe that he was eligible for consideration as a deputationist.

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23. The learned counsel, however, submits that these particulars have been certified to be correct in the endorsement dated 1.5.92 made on the application by the Head of Office in the National Museum. Therefore, the applicant is not to blame.

24. I am unable to agree. The applicant ought not to have submitted any application at all, because he was not eligible. Not holding any post in any organisation other than the National Museum, where the appointment is to be made, he did not have the status of a potential deputationist. No doubt, the Head of Office should have been more circumspect but that does not mean that if this mistake is discovered later, the respondent Ministry cannot correct the mistake.

25. The applicant alleges that his first appointment on the post of Deputy Keeper (Jewellery) on 16.5.88 was itself a regular appointment and, therefore, he cannot be repatriated. If that be so, he ought not have applied for the same post by the Annexure R-6 application in response to the Annexure A-22 advertisement issued in April, 1992. On the contrary, he should have challenged the action of the respondents in notifying the post held by him on a regular basis as a vacany post, to be filled up by deputation. Not having done that, he cannot rest any claim on the contention that his initial appointment on 16.5.88 was regular appointment. Besides this, such claim is factually incorrect, as evident from the Annexure A-5 offer of appointment which makes it clear

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that it is purely on ad hoc and temporary basis. That is confirmed in the Annexure A-6 notification dated 15.6.88, which is the order of appointment.

26. The only other point which I would like to consider is whether the impugned Annexure A-1 order repatriating the applicant to the West Zone Cultural Centre, Udaipur is proper. It is seen from the short reply of the respondents that they received the Annexure R-12 letter dated 13.8.93 from the West Zone Cultural Centre, Udaipur. The respondents were informed by this letter that the Annexure R-10 letter dated 28.8.92 purported to have been sent by that Centre certifying about the quality of the applicant's work and integrity, was not issued by that Centre and that the signature of Devinder Goel, Additional Director, appearing on that letter is a forged one. The respondents were also informed that the applicant was on contract and the question of his lien in that Centre did not arise. On the basis of this information, it could as well have been concluded that the applicant did not have a lien in that Department. Therefore, he need not have been repatriated. Instead, his services could have been terminated. In my view, this will not make any difference for, repatriation in the above circumstances will amount to a termination because, as the applicant himself admits, he will not be taken back by the Western Zone Cultural Centre.

27. In the circumstances mentioned above the applicant cannot have any grievance against the termination.

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28. I, therefore, agree that this application has to be dismissed.



(N.V. Krishnan)

Acting Chairman

Order of the Bench

For the reasons mentioned in our orders this OA is dismissed. The interim order issued on 1.2.94 directing that the applicant shall not be asked to vacate the quarter which has been continued from time to time, is vacated.

A. Vedavalli
16-10-95

(Dr. A. Vedavalli)
Member(J)



(N.V. Krishnan)
Acting Chairman

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