

Central Administrative Tribunal, Principal Bench

Original Applications Nos.59 & 157 of 2000

New Delhi, this the 11th day of May, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman
Hon'ble Mr. V.K. Majotra, Member (Admnv)

(1) Original Application No.59 of 2000

Sh. A.K. Sharma, S/o late Sh. S.L. Sharma,
C-5/4, D.D.A. S.F.S. Flats, Saket, New
Delhi-110017. Last held post: Director
General of Investigation and Registration
with the office of DGIR, New Delhi. - Applicant

(By Advocates Shri Arun Bhardwaj, Ms. Sujata
Kurdukar, and Shri Manish Sharma)

Versus

Union of India through Under Secretary,
Department of Company Affairs, Government of
India, Ministry of Law Justice & Company
Affairs. - Respondents

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

(2) Original Application No.157 of 2000

Sh. A.K. Sharma, S/o late Sh. S.L. Sharma,
C-5/4, D.D.A. S.F.S. Flats, Saket, New
Delhi-110017. Last held post: Director
General of Investigation and Registration
with the office of DGIR, New Delhi. - Applicant

(By Advocates Shri Arun Bhardwaj, Ms. Sujata
Kurdukar, and Shri Manish Sharma)

Versus

1. Union of India through Under Secretary,
Department of Company Affairs, Government
of India, Ministry of Law Justice &
Company Affairs.
2. R.D. Joshi, Joint Secretary, Department of
Company Affairs, at present Director
General in the office of Director General
of Investigation and Registration,
Bikaner House, Shahjahan Road, New Delhi - Respondents

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

Common Order (Oral)

By Mr. V.K. Majotra, Member (Admnv) -

The applicant has assailed order dated
30.11.1999 (Annexure-A-1) in OA 59/2000 whereby he has
been prematurely repatriated from the post of Director

General of Investigation and Registration ('DGI&R' for short) and his services have been placed at the disposal of his parent office i.e. the Office of the Comptroller & Auditor General of India. By the same order he stood relieved from the post of DGI&R with effect from 26.11.1999 and the proposal for repatriation was approved by the ACC.

2. In OA 157/2000 the applicant has challenged order dated 10.1.2000 (Annexure-A-1 in that OA) whereby respondent 2 in that OA has been appointed to the post of DGI&R which was previously held by the applicant.

3. The applicant is an officer of the 1976 batch of the Indian Audit and Accounts Service. In response to an advertisement issued by respondent no.1 for the post of DGI&R the applicant's appointment to the post of DGI&R was approved by the ACC on 8.11.1995 by transfer on deputation for a period of 5 years with effect from the date he assumed charge of the post or until further orders whichever is earlier. He assumed the charge as DGI&R on 5.2.1996. On 1.10.1999 and 3.10.1999 a news article was published in various newspapers inter alia stating that two women, who were mother and daughter, committed suicide in their residence. It was alleged that one of the deceased, namely, Shiela was applicant's wife. It has been pleaded that the repatriation order is punitive in nature and has been issued without

affording him a chance of hearing. No reason has been assigned for his premature repatriation and he should have been continued as DGI&R till February, 2001 i.e. till completion of five years of his deputation. The applicant has sought quashing of the impugned order dated 30.11.1999 and a direction to the respondents to allow him to continue in the post of DGI&R.

4. As per OA 157/2000 respondent 2 has been appointed to the post of DGI&R on 10.1.2000 (Annexure-A-IX) and he has also taken over the charge of the post of DGI&R on 10.1.2000. The applicant has submitted that the appointment of respondent 2 is not by transfer on deputation as per the requirement of the recruitment rules. No specific period of respondent 2's tenure has been mentioned, which is violation of the recruitment rules. It has been alleged that the appointment of respondent 2 on the post of DGI&R has been made against the prescribed procedure under the recruitment rules. The applicant has sought quashing of order dated 10.1.2000 and a direction to respondent 1 to allow the applicant to hold the post of DGI&R.

5. The respondents in their counter have stated that the applicant did not attend office for a period of more than a fortnight (i.e. from 29.09.1999 to 15.10.1999) without any intimation or application for leave. He ^{did} ~~has~~ not established any contact with the department during this period. In the meantime on 1.10.1999, prominent daily newspapers in Delhi carried a report about the suicide of one Smt. Sheila Sharma and

her mother Smt. Indra Devi, allegedly the second wife and monther-in-law of the applicant. The Delhi Police registered a case against the applicant under Sections 498A/304B/306 of IPC under FIR No.701 dated 30.9.1999. According to the respondents in the interest of smooth functioning of the office of DGI&R, the department made arrangement for discharging the duties of the post of DGI&R by giving additional charge of the post to an officer of the Senior Administrative Grade level. ^h ~~in the Indian Company Law Service.~~ It has been stated that the applicant had absented himself unauthorizedly and was not responding to the advice from the department. In order that all important and urgent enquiries pending in the office of DGI&R and in the MRTPC were properly attended to and completed with expedition, the Government proposed to repatriate the services of the applicant to his parent department. His repatriation was approved by the Government on 26.11.1999. Orders of repatriation of the applicant were issued on 30.11.1999 (Annexure-R-VI). The cadre controlling authority was kept informed. The repatriation order came into effect from the date of applicant's repatriation by the respondents' letter dated 26.11.1999. The applicant had not been attending to his duties since 29.9.1999. The afore-stated orders were sent to the applicant's residential address by speed post and the same were received ^{back} undelivered with the remarks of the postal authorities that in spite of intimation, the addressee was not found and hence returned. The cadre controlling

h

authority of the applicant did not raise any objection and showed willingness to accept the applicant consequent to his repatriation to his parent cadre. The respondents have maintained that under the recruitment rules the period of deputation does not exceed five years but it can be less than that. The applicant does not have a vested right to hold the post. The borrowing department can repatriate the deputationist to his parent office even before the expiry of the tenure in terms of the appointment order. Similarly, the lending department can recall the deputationist before the expiry of the term or the deputationist can himself seek for repatriation. The respondents have also contended that since the applicant had not submitted requisite medical certificate, the leave applied for was refused and leave is not a matter of right. In view of the continuous absence of the applicant and his default in not intimating his whereabouts to the office, the respondents found it necessary to have a regular incumbent instead of the applicant and thus, they proposed repatriation of the services of the applicant to his parent department on 26.11.1999. Whereafter the relevant orders were issued on 30.11.1999. Ultimately, the respondents have stated that the order of repatriation is strictly in accordance with the terms and conditions of the appointment and is not as a punitive measure necessitating any personal hearing and also is in the interest of smooth and efficient functioning of the office of the DGI&R.

6. As regards the appointment of Shri R.D.Joshi, respondent 2 in OA 157/2000, the respondents have stated that Shri Joshi was working as Joint Secretary in the Department of Company Affairs and on repatriation of the applicant to his parent cadre in view of the attendant circumstances the Government decided to fill up the post of DGI&R by appointing Shri Joshi, who was found suitable on account of his experience in that department as Joint Secretary. Since the applicant has no vested right on the post of DGI&R, he has no locus standi to question the appointment of respondent 2 who has been appointed after following the prescribed procedure. The recruitment rules for the post of DGI&R provide that the post should be filled up by deputation. However, it is competent for the Government to fill up the post by relaxing ~~of~~ the recruitment rules. If the normal procedure of filling up the post is followed it involves advertising the post, calling for applications, getting confidential reports of the candidates etc. The entire procedure would have taken quite some time. In the normal course the recruitment action for selecting a successor has to be initiated in advance of expiry of the period of deputation of the existing incumbent. In the emergent circumstances where the applicant had to be repatriated suddenly, the normal course could not have been followed and, therefore, by relaxation of the recruitment rules, the Government appointed Shri R.D.Joshi, Joint Secretary in the Department of Company Affairs to the post of DGI&R.

7. We have heard the learned counsel on both sides and carefully examined the material available on file. The learned counsel of the applicant contended that the applicant had been on leave while it was decided by the Government to remove him from the post of DGI&R and repatriate him to his parent cadre, which amounts to a punishment to a lower post and is stigmatic in nature. He relied on the decisions of the Hon'ble Supreme Court in the cases of Debesh Chandra Dass Vs. Union of India and others, 1969 SLR 485 and State of Bihar and others Vs. Shiva Bhikshuk Mishra, 1970 SLR 863. In the first case, an ICS officer of the Assam State Cadre serving under the Central Government and holding a tenure post in the scale of the Secretary to Govt. of India was reverted to a post carrying lower pay in Assam State. It was held by the Supreme Court that it amounted to reduction in rank. The incumbent in that case was reduced in rank by pressure of denying him the Secretaryship. In the second case, it was held by the Hon'ble Supreme Court that the incumbent was reverted by way of punishment. The present is a case of repatriation at the same level to the parent cadre and not of reversion to a lower post. Deputation allowance etc. attached to the post of DGI&R would not place ^{it} ~~him~~ in the category of a superior or higher post than the one which the applicant is entitled to hold in his parent department on repatriation. The order of repatriation is innocuous and does not attach any stigma or any aspersion on the applicant and, therefore, it

:: 8 ::

would not attract the procedure laid down in Article 311(2) of the Constitution of India.

8. The applicant had made two leave applications - first for the period 4.10.1999 to 15.10.1999 and a month thereafter i.e. upto 15.11.1999 and another on 15.11.1999 for a period of two weeks. The respondents have pointed out that the applicant had not furnished any medical certificates and it became difficult to manage the functioning of the Office of the DGI&R, which is a public office dealing with important enquiries and investigations into the affairs of companies. They have further pointed out that repatriation of the applicant has been in accordance with the terms and conditions of his appointment dated 8.11.1995 (Annexure-A-II). The applicant had been appointed on the post of DGI&R by transfer on deputation basis for a period of five years with effect from the date he assumed charge of the post or until further orders whichever is earlier. According to the respondents the applicant had remained absent continuously and had not intimated his whereabouts. He had not submitted his medical certificates in respect of his alleged illness. Communications sent to his residential address were returned ~~back~~ undelivered. The respondents maintained that the repatriation order of the applicant does not cast any aspersion ~~of the~~ ^h ~~respondents~~ on his reputation and was also in accordance with the terms and conditions of his appointment to the said post. The applicant had been appointed vide Annexure-A-2 dated 8.11.1995 to the post of DGI&R and he

h

assumed the charge of the said post on 5.2.1996. If he was allowed to stay on for the entire period of five years, the same would expire on 4.2.2001. It means that the period of applicant's deputation was terminated prematurely by a period of about one year.

9. There is no denial to the fact that the Office of the DGI&R is an important public office. The applicant had remained absent with effect from 4.10.1999 onwards without prior sanctioned leave. He had not submitted any medical certificate along with his leave applications. The applications were sent by him in ordinary format without any mention about the nature of leave applied for. An experienced officer like him holding the responsible position of the post of DGI&R is supposed to provide complete information, if possible, in the prescribed format about the previous leave and the leave applied for and if the leave happens to be the medical leave, he is supposed to provide medical certificate to the authorities. In the present case, when the period of absence has been pretty long, we are inclined to agree with the respondents that the smooth functioning of the office of the DGI&R was obstructed by the absence of the applicant. In the present case when the absence of the applicant was continued, his whereabouts were not known, medical certificate ~~was~~ not provided, and repeated advice of the department was not ~~headed to~~^e, it was difficult for the department to make a long stop gap arrangement. We agree with the respondents that it was necessary to have a regular

U

-17-

:: 10 ::

arrangement in place of the applicant to run the office of the DGI&R. The applicant has failed to prove any malafide action of the respondents in repatriating him to his parent department before the expiry of the term of his deputation.

10. In the facts and circumstances of the case, we find that the respondents have taken a decision at the level of the ACC to repatriate the applicant in the public interest and for expedient^{-tions} disposal of the work of enquiries and investigation in the Office of the DGI&R. There is one post of the level of DGI&R. It is easy in the department of a Government to make alternate arrangement by giving additional charge where there are more than one officers of the same level. The DGI&R in his office is the Head of the Department. There is no other equivalent post in that Office. In a Government department, to illustrate, where there are more than one Joint Secretaries, if one Joint Secretary happens to be absent, the other one can be detailed to look after the work of the ^{former} ~~other~~ as well. Such arrangements were not possible in the Office of the DGI&R. The continued absence of the applicant ~~in~~ created an ~~and~~ extra ordinary situation, and the steps taken by the Government in applicant's repatriation and appointment of his substitute, cannot be faulted with. In the normal circumstances, the applicant's successor would have been selected by following the prescribed recruitment rules for the post of DGI&R, where the Government would have consulted the UPSC as well. From the rules we find that

✓

:: 11 ::

respondent Shri R.D.Joshi in OA 157/2000 is qualified to man the post of DGI&R, being an officer of the Joint Secretary level. He had ^{been working as} ~~experienced~~ as Joint Secretary in the Department of Company Affairs and, therefore, was experienced enough to discharge the functions of the office of the DGI&R. The respondents have maintained that the prescribed recruitment rules were relaxed in Shri Joshi's appointment in public interest and prior approval of the ACC was obtained. The learned counsel for the applicant has, however, maintained that the approval of the UPSC in the appointment of Shri Joshi as DGI&R was not obtained. However, he has not submitted any proof in support of his contention.

11. The learned counsel for the applicant contended that it was not after a long absence of the applicant that the process of repatriation of the applicant was initiated. As a matter of fact, according to him, the action had been initiated on 12.10.1999, i.e. within about 8 days' period of applicant's proceeding on leave. However, this averment does not find a place in the OA. In any case, it may be that the alleged incident leading to registration of FIR against the applicant, as stated above, might have weighed in the mind of the Government to initiate the process of repatriation of the applicant to his parent department, but we find from the material available in the file that ultimately it was the long absence of the applicant which had weighed with the Government for applicant's

U₂

:: 12 ::

repatriation to his parent department. Most probably if the applicant had reported back on duty, as advised by the department, before the orders of repatriation were passed by the Government, the Government might have retained the applicant in the department. The applicant returned to report for duty on 1.12.1999 when the repatriation orders had already been passed on 30.11.1999 with effect from 26.11.1999 and since the whereabouts of the applicant were not known to the Government and the Government's communications were being returned without service, the service of the orders was deemed to have been completed.

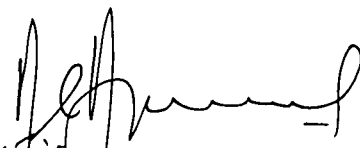
12. Having regard to the above discussion and reasons, we do not find any merit in OA 59/2000 which is dismissed accordingly, without any order as to costs.

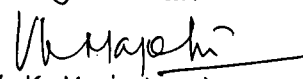
13. We have dismissed OA 59/2000 regarding challenge of repatriation of the applicant and once his repatriation to his parent cadre is upheld, we are not inclined to interfere with the appointment of respondent Shri R.D.Joshi in OA 157/2000 as DGI&R at applicant's instance, particularly, in the facts and circumstances of the case when Shri Joshi had to be appointed as DGI&R in extraordinary circumstances when the previous incumbent had been absenting for a long time and it became difficult for the Government to manage the functioning of the public office of the DGI&R in an efficient manner. We find that Shri Joshi's appointment

-20-

:: 13 ::

to the post of DGI&R is in public interest and is held to be in order. OA 157/2000 is also devoid of merit and is dismissed accordingly, without any order as to costs.


(Ashok Agarwal)
Chairman


(V.K. Majotra)
Member (Admnv)

rkv