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Regn. No. O.A. 895/88.

Shri Suraj Prakash                      ...                      Applicant

Vs.

Union of India & Ors.

CORAM:

Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant: Shri V.V. Bagga, counsel.

For the respondents: Shri Dinesh Agnani, counsel.

6.6.1988

(Oral) The applicant, Shri Suraj Parkash, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act'), with the prayer that the transfer order dated 11th May, 1988 passed by the National Airports Authority (for short called 'the Authority') (office of the Co-ordinating Director, Delhi Region), New Delhi, be set aside as it is arbitrary, discriminatory and mala fide. The respondents arraigned by him, inter alia, include Union of India, through the Secretary, Ministry of Civil Aviation, the Authority through its Secretary and Director of Aerodrome, etc. When the matter came up for admission before the Single Bench comprising Shri Birbal Nath, A.M., a point was raised that this Tribunal has no jurisdiction to hear and try this case inasmuch as the applicant is, at present, on deputation with the Authority - Respondent No. 2, and in the absence of any notification issued

under Section 14(2) of the Act, this Tribunal cannot take cognizance of this matter.

2. The submission of the learned counsel for the applicant, however, is that the applicant will be deemed to be a Central Government employee, even though on deputation with Respondent No. 2, by virtue of provisions contained in Section 13(3) of the National Airports Authority Act, 1985, which runs as under:-

"Every employee holding any office under the Director-General of Civil Aviation immediately before the commencement of this Act solely or mainly for or in connection with such affairs of the Directorate-General of Civil Aviation as are relevant to the functions of the Authority under this Act as may be determined by the Central Government shall be treated as on deputation with the Authority but shall hold his office in the Authority by the same tenure and upon the same terms and conditions of service as respects remuneration....."

(emphasis supplied).

3. To be precise, the learned counsel for the applicant has canvassed that there being no change/alteration in the service conditions of the applicant, he is entitled to seek redress from this Tribunal like any other Central Government servant. However, on a consideration of the matter, we are unable to accede to this contention.


4. Evidently, even according to Section 13(3) of the National Airports Authority Act, 1985, the applicant is on deputation with the Authority. It is implicit in every deputation that the deputationist does not lose his lien and does not forgo his other terms and conditions of service in the parent Department so long the deputation continues and he is not eventually absorbed in the statutory body or any other Government body etc. That way, Section 13 (3) of the aforesaid

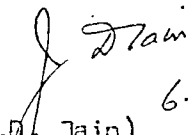
Act is in perfect harmony and conformity with the general provisions of law on deputations and the mere fact that the applicant continues to be a Central Government employee on account of his lien being retained there or that he is entitled to the same terms and conditions as before, would not detract from the fact that as at present, he is on 'foreign service' as a deputationist with a statutory body like the Authority. So, for all intents and purposes, the Authority has overall control and supervision over the applicant so long as he continues there on deputation. The Authority as such is competent to transfer the applicant in due course of its business and can also initiate disciplinary proceedings etc. if and when there is an allegation of misconduct against the applicant. The mere fact that rules and regulations have not yet been framed by the Authority would not detract from this legal position. It may be pertinent in this context to advert to Section 10 of the National Airports Authority Act which provides that 'for the purpose of enabling it efficiently to discharge its functions under the Act, the Authority shall, subject to the provisions of Section 13 and to such rules as may be made in this behalf, appoint (whether on deputation or otherwise) such number of officers and other employees as it may consider necessary'. No doubt, this provision is subject to Section 13 of the said Act, but the fact remains that the applicant has been employed by the Authority by virtue of powers conferred under Section 10 (1) of the Act, on deputation.

5. It is pointed out by the learned counsel for the applicant that no appointment letter as such has been issued by the Authority to the effect that he will be treated on deputation. This contention is, however, controverted by the learned counsel for the respondents who contends that such a letter has, in fact, been issued. All the same, we need not go into this aspect of the matter because by virtue of the statutory provision contained in Section 13(3) of the National Airports Authority Act, 1985 itself, the applicant has to be treated on deputation and coupled with the provisions of Section 10, adverted above, there can be no manner of doubt that at present, the controlling authority/disciplinary authority of the applicant is the Authority and not the Central Government. It is in consonance with the general principles of deputation.

Certainly, the Authority is not amenable to the jurisdiction of this Tribunal and in the event, the impugned order is found to be vitiated by any illegality, impropriety or malafide etc., this Tribunal will not be in a position to give any relief to the applicant as against the Authority, whose order is under challenge in this application. Surely, the Central Government cannot be directed by this Tribunal to cancel the impugned order of transfer because as at present, he is under the control of the Authority. Looked at from this angle, therefore, there is no escape from the conclusion that this Tribunal has no jurisdiction over the Authority or employees of the Authority, as in the instant case.

6. Under the circumstances, we direct that this Application be returned to the applicant for presentation to any forum of competent jurisdiction. However, we allow the applicant a week's time to report on duty at the place of transfer. This application stands disposed of accordingly.

  
(Birbal Nath)  
Member (A)

  
(J.D. Jain)  
Vice-Chairman.

6.6.88