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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO. 598/1991

DATE OF DECISION: 27.2.92

SHRI C.B. SINGH

... APPLICANT

VS.

UNION OF INDIA & ORS.

... RESPONDENTS

CORAM

SHRI I.K.RASGOTRA, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

... SHRI V.P. SHARMA

FOR THE RESPONDENTS

... SHRI M.L. VERMA

1. Whether Reporters of local papers may be allowed to see the Judgement? JS

2. To be referred to the Reporter or not? YK

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the order dt.27.2.1991 by which the applicant was reverted to the parent department by the Coast Guard Headquarters and claimed the relief that the impugned order dt.27.2.91 (Annexure A1) be quashed along with the order of the appellate authority dt.4.3.91 (Annexure A13) coupled with the declaration that the applicant was appointed to the post of Junior Design Officer (L) by way of promotion and not by way of transfer on deputation.

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2. In the year 1988, one post of JDO(L) in Coast Guard was advertised in the pay scale of Rs.2000-3500 which was to be filled up by promotion/transfer on deputation by officers under the Central Government. The applicant applied for the post in pursuance of the aforesaid advertisement dt.19.11.88 and at that time the applicant was working as Head Draftsman (L). The applicant was selected for appointment and he was relieved from Naval Headquarters on 16.3.89 and joined Coast Guard Headquarters on 17.3.89. On 27.2.91, the Deputy Director (CP) sent a letter to the Sub-Section, i.e., D(Mat), CG Headquarter that the applicant should be relieved of his duties as JDO and reverted to his parent unit. Earlier to this on 4.12.90, the Coast Guard Headquarters sent a communication for extension of deputation period of the applicant, who was completing the deputation period of 2 years on 16.3.1991. It appears that the applicant has also made a representation on 20.3.90 alleging that he was promoted and transferred as JDO(L) in Coast Guard Headquarters w.e.f. 17.3.89 praying that he may be retained against the existing permanent post of JDO(L), but to no effect. The applicant, however, subsequently joined the parent department, i.e., Naval Headquarters, New Delhi.

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3. The grievance of the applicant is that vide advertisement dt.19.11.88, he was selected and posted by virtue of the letter dt.16.3.89 on promotion and on transfer to Coast Guard Headquarters. He was not sent on deputation. Since he has gone on promotion and on transfer, so there was no question of being reverted to the parent department and for all purposes he has been promoted to join as JDO(L) in the Coast Guard Headquarter, New Delhi. It is stated in the application that the aforesaid order of reverting the applicant to the parent department is malafide to accommodate certain other person and that was arbitrary as well as illegal. It is further stated that the movement order dt.16.3.89 is clear on the point which goes to show that the applicant was promoted as JDO, a Group 'B' post and was not sent on deputation basis.

4. The respondents contested the application and stated that the applicant was appointed as JDO in Coast Guard on deputation w.e.f. 17.3.89 for 2 years in accordance with the Recruitment Rules for the post (SRO No.286 dt. 21.8.86). After completion of aforesaid period, he has been reverted to the parent organisation, i.e., Naval Headquarters and the applicant has since joined w.e.f.18.3.91.

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5. We have heard the learned counsel for the parties at length and have gone through the record of the case and also perused the departmental file. SRO No.286 are the Recruitment Rules for the post of JDO(L) issued by the Ministry of Defence on 21.8.86 amending the 1983 Rules for the post of JDO. The posts are filled up 50% by promotion/transfer on deputation, failing which by direct recruitment and 50% by transfer on deputation, failing which by direct recruitment. Consultation with the Commission is necessary except while appointing an officer on deputation. In the case of promotion/transfer on deputation, the officers under Central Government holding analogous posts on a regular basis; or with 3 years' regular service in the posts in the pay scale of Rs.550-750/900 or equivalent and (b) possessing educational qualifications as in column-8 and experience as prescribed for direct recruits under column-7. Secondly, the departmental Head Draftsman with 3 years' regular service in the grade will also be considered an in case he is selected for appointment to the post, the same shall be deemed to have been filled by promotion. The departmental officers in the feeder category, who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly deputationists shall not

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be eligible for consideration for appointment by promotion. In the advertisement issued in Employment News on 19.11.88, it is for filling up of the post of JDO in Coast Guard Headquarters, New Delhi on promotion/transfer on deputation basis. The applicant in his application in para 4.5 has clearly stated that the recruitment is firstly by way of transfer on deputation and secondly by re-employment or promotion and stating further that his case is covered by promotion. The applicant, as stated by him, was working as Head Draftsman and so his appointment is by way of promotion. The respondents have disputed this factual statement. According to the respondents, 3 years' service as Head Draftsman in the grade is applicable to both promotion as well as deputation. Only departmental candidates are eligible for consideration for promotion for the post of JDO. The applicant is not a departmental candidate, so his selection was made on deputation basis. Further it is also stated in para 4.6 that since candidates were available on deputation, the mode of direct recruitment was not resorted to. Thus the case of the applicant that he was promoted and appointed on transfer basis cannot be accepted. Moreover, the Recruitment Rules-SRO No.286 further provides that the consultation ^{with} the Commission is

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necessary, but the record does not show that the case of the applicant was referred to the Commission for promotion. The advertisement was issued by Coast Guard Headquarters, National Stadium Complex, New Delhi.

6. The second contention of the applicant is that he was not working in the grade of JDO(L), so his case cannot be treated as having gone on deputation and his case is only by way of promotion, but the 'Recruitment Rules provide that for deputation also of an incumbent with 3 years' regular service in post in the pay scale of Rs.550-750/900. So merely because the applicant was not drawing the grade of JDO(L) in the pre-revised scale will not establish that the applicant was promoted and then transferred. Normally, the persons who are also one grade below are also considered to man the post of higher grade on deputation, which is ex-cadre post. The learned counsel for the applicant further argued that since the selection has been undergone and no deputation conditions have been notified, so his case be treated as that of promotion and not of deputation. The respondents in their counter have rightly pointed out that the offer of appointment clearly stated that he was selected on deputation basis and his lien on Naval Headquarters was never terminated. This is also fortified by various communications between the Coast Guard

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and the Naval Headquarters. In this connection, even earlier to the expiry of the period of 2 years, i.e., on 4.12.90 (Annexure A3), Coast Guard Headquarters has desired recommendation with regard to the extension of the deputation period in respect of the applicant. The applicant also on 20.12.90 (Annexure 4) requested the department for permanent transfer in Coast Guard Headquarters that he be retained against the existing permanent post of JDO(L). Thus the contention of the applicant that he was not on deputation cannot be accepted in view of his own conduct and various communication addressed by him to Coast Guard Headquarters and the Coast Guard Headquarters writing to Naval Headquarters.

7. The learned counsel for the applicant also referred to terms and conditions laid down by the Government of India in the OM dt.29.4.88 (Annexure A8) and argued that the applicant was never informed about the terms and conditions of deputation. In this connection, it is material to know that the applicant was working on a lower post and joined higher post and so was granted the scale of that post. He would have either got the grade pay or deputation allowance in grade from which he was selected. He opted for the grade pay and this is the normal practice under the rules in the Government departments. Thus the applicant cannot have any grievance on that account.

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8. The applicant's lien on the post of Draftsman in the Naval Headquarters was never terminated and so the Naval Headquarters were within their power and authority to ask the Coast Guard Headquarters to revert the applicant to the parent department. The learned counsel for the respondents has relied on Reti Lal B. Soni Vs. State of Gujarat, AIR 1990 SC p-1132. The applicant, therefore, has no right to be absorbed on the deputation post or to continue as JDO(L) as a matter of right.

9. From the above facts, it is clear that the applicant was on deputation and as such the application is totally devoid of merit and, therefore, dismissed leaving the parties to bear their own costs.

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(J.P. SHARMA)
MEMBER (J)

27.2.92

AKS

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)

27/2/92