

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2055/92

T.A.No.

28

Date of decision 18-8-98

Mrs. Achala Pahwa

... Petitioner

Shri G.D. Gupta

... Advocate for the
Petitioner(s)

VERSUS

GOI & Ors

... Respondents

Sh. P. H. Ramchandani,
Sr. Counsel

... Advocate for the Respondents

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The Hon'ble Smt. Lakshmi Swaminathan, Member(J)

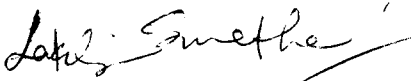
The Hon'ble Shri K. Muthukumar, Member(A)

1. To be referred to the Reporter or
not?.

Yes

2. Whether it needs to be circulated to
other Benches of the Tribunal?

No.


(Smt. Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 2055/92

New Delhi this the 18 th day of August, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

Mrs. Achala Pahwa,
W/o K.R. Pahwa,
R/o G-43B, East of Kailash,
New Delhi-65.

... Applicant.

By Advocate Shri G.D. Gupta.

Verus

1. Union of India through
the Secretary
to the Government of India,
Ministry of Welfare,
Shastri Bhawan,
New Delhi.

2. Project Director,
District Rehabilitation Centre
Scheme,
(Central Administrative and
Coordination Unit),
Ministry of Welfare,
Government of India,
4, Vishnu Digamber Marg,
New Delhi-2.

... Respondents.

By Advocate Shri P.H. Ramchandani, Sr. Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has challenged, inter alia, the validity of the order passed by Respondent 2 dated 20.4.1992 purporting to repatriate her to the parent department i.e. Institute for the Physical Handicapped, New Delhi (hereinafter referred to as the 'IPH').

2. The main contention of the applicant is that the impugned order is illegal, arbitrary and mala fide because, according to her, she was not on deputation to the District Rehabilitation Centre Scheme ('DRC Scheme' for short) but was

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appointed to the post of Training Coordinator (TC) by direct recruitment after the post had been advertised in the newspapers. The applicant states that she was appointed as TC with Respondent 2 in the DRC Scheme. Earlier she was working as Director (now redesignated as Superintendent) in the IPH from 1978. An advertisement dated 27.11.1984 had appeared in the 'Hindustan Times' newspaper for filling certain posts, including one post of TC. By O.M. dated 8.11.1985 issued by the Project Director, DRC, she was appointed as TC under the DRC Central Coordination and Administrative Cell for a period of three years subject to further extension. In this O.M. it was further mentioned that since the appointment will be under the IPH, though in the DRC Cell, the prevailing service conditions as applicable to the IPH employees would be admissible to her. The applicant states that she joined as TC on 15.11.1985. By order dated 13.1.1986, it was further mentioned that though she was selected for the post of TC in DRC Scheme, she will also continue to perform her duties as Superintendent (PTP) in the IPH. By another order dated 4.7.1986 issued by Respondent 2, it was stated that the rules and regulations applicable to the employees of IPH will also apply mutatis mutandis to the employees directly recruited in the Central Administrative and Coordination Unit of the DRC Scheme and Regional Rehabilitation Training Centres (CACU and RRTCs). Shri G.D. Gupta, learned counsel, has relied on this order which further states that in cases where the bye-laws of IPH do not extend, the Central Government Rules and regulations will apply to the employees of RRTCs and CACUs as are applicable to IPH employees.

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3. The main contention of Shri G.D. Gupta learned counsel for the applicant, is that the applicant while working in IPH had applied for the post of TC in the office of Respondent 2 in pursuance of the advertisement in which it is nowhere stated that appointment to the post is on deputation basis and the candidate will be sent back to the IPH at the end of the period of deputation. He has also submitted that by order issued by Respondent 2 dated 9.4.1987 it has been clearly stated that the applicant was appointed on regular basis as TC. By the subsequent order dated 5.1.1987 no doubt she had been given option as to whether she wants to draw pay scale of the post or the pay scale of her parent organisation together with the deputation allowance. The learned counsel has submitted that merely because the applicant had opted deputation allowance, it cannot be construed that the appointment itself was on deputation basis. He relies on the judgement of the Supreme Court in **Union of India Vs. K.S. Subramaniam** (1989 Supp. (1) SCC 331). He has very strenuously argued that the applicant may have used wrong expressions like 'permanent absorption' or 'deputation' etc. but his contention is that, that by itself should not deprive her of ^{the} legal rights. He has submitted that acceptance of the deputation allowance is only for the purposes of pay protection and should not be considered as if the applicant was on deputation and should, therefore, be sent back to her parent department i.e. IPH. He has submitted that the applicant cannot be blamed for understanding these legal expressions incorrectly when she had given the option. His submission, therefore, is that in the circumstances, applicant's repatriation to IPH by the impugned order dated 20.4.1992 is illegal and arbitrary as according to him she was not on deputation in the DRC Scheme. Learned counsel further submits that since the applicant is already a regular employee

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of the DRC Scheme which is under Respondent 1, there was no question of "absorption" in the post of TC as she has been regularly appointed in that post.

4. We have seen the replies filed by Respondents 1 and 2 and heard Shri P.H. Ramchandani, learned counsel. They have submitted that the DRC Scheme, CACU, was a pilot project initially started in the year 1985 and funded entirely from the Government of USA for a period of five years. This Scheme as well as CACU is headed by a Project Director/Respondent 2. They have submitted that the applicant who was employed and working in IPH, which is a society registered under the Society Registration Act, was on deputation to DRC/CACU in pursuance of the advertisement issued by Respondent 2. Shri P.H. Ramchandani, learned counsel, has submitted that the applicant worked with Respondent 2 in the post of TC on deputation basis from 1985 to 20.4.1992 when she was released with instructions to report to IPH and was not under the employment of Respondent 1, i.e. the Ministry of Welfare, Government of India. He has referred to the Office Memorandum dated 8.11.1992 and the order dated 4.7.1986 issued by the Project Director, DRC Scheme in which it has been stated that the appointment will be under IPH through the DRC Cell and the prevailing conditions as applicable to IPH employees will be admissible to her also. Learned counsel has submitted that since the applicant was on the strength of DRC Scheme, CACU and was an employee of Respondent 2, she was not a Government servant under Respondent 1. He has, however, submitted that the DRC project was under the administrative control of Respondent 1 in its initial formative stage. Respondents in their reply have also submitted that the Tribunal has no jurisdiction in the matter under Section 14(2) of the

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Administrative Tribunals Act, 1985 as Respondent 2 from whom the applicant seeks the main relief does not fall within the jurisdiction of the Tribunal. They have also clarified that the employees of Respondent 2 are not paid from the Consolidated Fund of the Government of India. In the circumstances, the respondents have submitted that the application may be dismissed on the grounds of jurisdiction and on merits.

5. In reply, Shri G.D. Gupta, learned counsel, has submitted that the DRC Scheme is not a separate body or a Society registered under the Society Registration Act but on the other hand the DRC Scheme is a part of the Government of India and, therefore, is well within the jurisdiction of the Tribunal. He has also reiterated the arguments taken in the application that the applicant who was part of the DRC Scheme, cannot be sent back to IPH by the impugned order dated 20.4.1992.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. From the documents filed by the applicant herself in the O.A. starting from the advertisement dated 27.11.1984, it is seen that the post of TC was in respect of the DRC Scheme under IPH. This was made clear in the O.M. dated 8.11.1985 by which the applicant has been appointed as TC under the DRC Scheme for a period of three years subject to further extension by Respondent 2 i.e. the Project Director, DRC. It is also clearly mentioned that the appointment will be under the IPH, though in the DRC Cell, and the conditions applicable to IPH employees were made applicable to her also. During the hearing of the case, both the learned counsel have submitted that the DRC Scheme itself operated from within the precincts of IPH. It is also relevant to note that the applicant was also allowed

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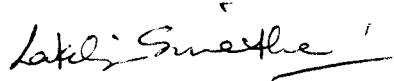
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to continue to perform her duties as Superintendent (PT) in the IPH together with her duties in the DRC. It is also noticed that by order dated 7.11.1989, it is stated that the applicant is appointed as TC for a further period of one year with the other terms and conditions remaining unchanged. All these show that she was on deputation to DRC Scheme from IPH and the contentions to the contrary have to be rejected.

8. Even if we accept the arguments advanced by Shri G.D. Gupta, learned counsel, that merely because the applicant herself has stated that she was on deputation from IPH while holding the post of TC, that should not be held against her, even then we find that on a careful perusal of the documents annexed by her from Respondent 2 shows that she is not a permanent employee of the DRC Scheme or an employee of Respondent 1. In this view of the matter, we find no legal infirmity or arbitrariness in the impugned order dated 20.4.1992. We are also unable to agree with the contentions of the learned counsel for the applicant that merely because the Central Government Rules and Regulations will apply to the employees of the Regional Rehabilitation Training Centre, which is stated to be a Unit of the DRC Scheme that will make the employees of the DRC Scheme part of the Government/Respondent 1. Therefore, whichever way the facts in this case are looked at, we do not find any good ground to interfere with the impugned order repatriating the applicant to her parent department, i.e. IPH, or other actions taken by the respondents.

9. In the result, the application fails and is accordingly dismissed. No order as to costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)