

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2702/92

Date of decision: 24.03.1993.

Shri Jai Prakash

...Petitioner

Versus

Union of India through the
Chief Secretary, Delhi
Administration and Others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. C.J. Roy, Member (J)

For the petitioner

Shri Rishi Prakash, Counsel.

For the respondents

Miss Ashoka Jain, Counsel for
Respondents No.1-3.

Shri D.R. Gupta, Counsel for
Respondent No.4.

(Judgement of the Bench delivered by Hon'ble
Mr. I.K. Rasgotra, Member (A))

We have heard Shri Rishi Prakash, learned counsel for the petitioner, Ms. Ashoka Jain, learned counsel for official respondents No.1-3 and Shri D.R. Gupta, learned counsel for respondent No.4.

2. The case of the petitioner is that he was appointed on deputation from Border Security Force (BSF for short) as Swimming Coach vide Directorate General, B.S.F. letter dated 28.2.1989 in Delhi Administration. He joined duties on 17.3.1989 on the terms and conditions as contained in the Ministry of Personnel, Public Grievances and Pensions OM dated 29.4.1988 (page 25 of the paperbook). According to paragraph-11 of the conditions governing deputation the petitioner could not have been pre-maturely reverted to his parent department without giving reasonable notice to the parent department and the employee.



3. The learned counsel for the respondents Ms. Ashoka Jain at the threshold submitted that the case of the petitioner is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985, as the petitioner was repatriated to his parent department in July, 1990 vide order dated 11.7.1990. The petitioner as well as all the concerned authorities were suitably advised by endorsing copy of the said order to them. Thereafter his parent department, i.e., Directorate General of B.S.F. vide order dated 17.8.1990 has issued his posting order to 56 Bn., B.S.F. It cannot, therefore, be the case of the petitioner that neither he nor his parent department were given notice of the action of the respondents about his repatriation. The condition contained in paragraph-11 of the terms of deputation relied upon by the learned counsel for the petitioner, therefore, has no relevance. The learned counsel further submitted that the petitioner's repeated assertions in the O.A. that he was not allowed to resume duty after his leave and that he was not aware of the orders of his repatriation is belied by the letter dated 7.8.1990 which appears to have been written at his instance by the Member of Parliament to the then Lt. Governor, Delhi with a view to influence the administration. A copy of the said letter is placed at Annexure R-1. If the petitioner was not aware of the repatriation order there was no occasion for him to have got the letter regarding his repatriation etc. issued by the MP addressed to the Lt. Governor. The learned counsel further submitted that the said letter was replied by the Lt. Governor on 1.10.1990, expressing his inability to interfere in the matter. It will, therefore, be observed from the conduct of the petitioner that he was fully aware of the orders of repatriation. The cause of action, therefore, arose on 11.7.1990 whereas he has approached the Tribunal by filing this O.A. on 5.10.1990.

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4. The learned counsel for Respondent No.4 Shri D.R. Gupta referred us to the repatriation order of the petitioner filed alongwith the MP-4053/92 and the orders issued by the parent department of the petitioner, posting him to 56 Bn. B.S.F.

5. We have considered the matter carefully and perused the record. We are of the opinion that the deputation does not give any right to a person to continue in the deputation post. He can be repatriated to his parent department on completion of his tenure or earlier after giving suitable notice to the employee and to the lending department. The extension/continuance on deputation has to be strictly in public interest. If the public interest does not demand the continuance of the petitioner the deputation can be terminated. There is clear evidence on record that the parent department of the petitioner had no objection to his reversion, as they posted him vide order dated 17.8.1990 to 56 Bn. B.S.F without any demur. We are also not persuaded to accept the position that he was unaware of the order of re- patriation and that he was not allowed to join duties when he reported after availing of sick leave.

6. The learned counsel for the petitioner had contested that the case was time barred. According to him the respondents' memorandum dated 22.9.1991 rejecting the petitioner's representation dated 4.9.1991 stating that his continuance as Swimming Coach on deputation "was sympathically considered but not accepted" brings the limitation to start from only 22.9.91. We are, however, of the considered view that the cause of action in this case had arisen on 11.7.1990. This fact was known to the petitioner as is apparent from Annexure R-1 annexed with the

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counter-affidavit of the official respondents. He should have then made a representation to the respondents directly and waited for six months and thereafter approached the Tribunal within one year. Even assuming the limitation starts from the date of rejection of the representation dated 22.9.1991 the petitioner should have approached the Tribunal by 22.9.1992. He, however, filed the O.A. only on 5.10.1992. He has also not filed any application for condonation of delay. In this view of the matter, the O.A. is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Even on merits the petitioner has no case as in accordance with the terms and conditions of deputation, the deputation can be terminated if the public interest so requires. Similarly the deputation can be extended within the limits prescribed if the public interest requires. The only restriction on pre-mature reversion of a deputationist is that a reasonable notice should be given to the lending authority and the employee. In this case no objection has been raised by the lending authority. In fact they have promptly posted him to 56 Bm B.S.F. vide order dated 17.8.1990. If the petitioner had any difficulty, the proper course for him would have been to represent to the competent authority to allow him to continue on deputation for 3/6 months after this order of repatriation was issued to enable him to get over difficulties, if he had any, before going back to the parent department. He, however, did not do so. Continuance on deputation is not a legal right. The Supreme Court in **Rati Lal B. Soni v. State of Gujarat 1991 (15) ATC 857** observed that:-

"The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation

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post. We see no infirmity in the judgment of the High Court and as such we dismiss the appeal."

There are also some vague allegations of malafides in the O.A. but these were not pressed by the learned counsel for the petitioner.

7. In the facts and circumstances of the case, we are not inclined to grant reliefs as prayed for by the petitioner. The Application being first barred by limitation and secondly wanting in merit is dismissed. No costs.

[Signature]
(C.J. ROY)
MEMBER(J)

24/3/93

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(I.K. RASGOPIRA)
MEMBER(A)

24/3/93

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