

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A.No. 2978/92.

DATE OF DECISION 9.7.1993SHRI HIRA LAL UPADHYAY

Petitioner

SHRI B.B. RAVAL,

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & OTHERS

Respondent

SHRI M.L. VERMA

Advocate for the Respondent(s)

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The Hon'ble Mr. B.N. DHOUNDIYAL, MEMBER (A)

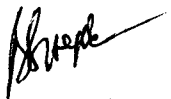
The Hon'ble Mr. B.S. HEGDE, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ?

J_U_D_G_E_M_E_N_T

[Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial)]

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the quashing of the impugned order dated 21st October, 1992 (Annexure 'A') on the ground that it is ultra-vires the Fundamental Rights of the applicant and discriminatory against the applicant vis-a-vis other similarly situated officials.



2. He also sought relief to direct the respondents to absorb and/or not to repatriate the applicant and similarly situated officials etc. and allow to continue on the same post till a final decision is taken by the Ministry regarding the remaining vacancies.
3. The applicant has also sought interim relief, pending final decision on this application, to restrain the respondents from giving effect to this impugned order (Annexure 'A') by giving an ad-interim injunction and confirm the same after putting the Respondents to notice.
4. The applicant joined the Government of India service as an Upper Division Clerk in the year 1964 under Chief Controller of Accounts, Department of Supply, Government of India, New Delhi. He was further promoted to the next higher post in his own cadre as Senior Accountant in 1981. He came on deputation to the Department of Expenditure, Ministry of Finance (Staff Inspection Unit) on 21.4.1983 and continues with them till date.
5. As per Recruitment Rules for the post of Senior Analyst, Junior Analyst, Technical Assistant and Investigator, since no feeder post exists, Ministry of Finance thought fit to appoint them on transfer-cum-deputation

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basis. Pursuant to this decision, a notification was issued vide dated 28th November, 1985 that in exercise of powers under Article 309, all applicants fulfilling all the qualifications as laid down in column 12 of the recruitment rules shall be eligible to be appointed. The contention of the applicant is that out of the 41 posts, only 24 posts have been filled up and the balance posts have not yet been filled. Since there is no feeder post for which provisions are made to the of technical assistant, all the posts are to be filled up by transfer or on deputation. He joined the Ministry of Finance in the year 1988 and continued till 1992. He further states that on account of shortage of staff, respondents initiated an exercise to some of the technical assistant and for this purpose the O.M. was issued on 3rd May, 1990 (Annexure A-5) inviting options from interested incumbents, the post of Technical Assistant in the Staff Inspection Unit from amongst those who have been appointed on deputation basis to the grade and put in not less than two years service as Technical Assistant as on date for consideration. In pursuance of this O.M. the applicant submitted his willingness

for being considered for absorption in the Staff Inspection Unit of the Ministry of Finance which is at Annexure A-6. Thereafter, the respondents issued another O.M. dated 25th May, 1990 inviting further applications for the post of Technical Assistant from the incumbents of the Staff Inspection Unit appointed on the deputation basis to the grade with not less than two years service (Annexure A-7).

6. The respondents vide their O.M. dated 21st October, 1992 relieved the applicant from his duties from the Department of Expenditure, Ministry of Finance with effect from the same date placing his services at the disposal of the Department of Supply, his parent department (Annexure A-8) which has been challenged in his O.A.

7. As against this, the respondents vide their reply have taken a preliminary objection stating that the applicant has not exhausted the departmental remedies available to him under the service law. As such, this application is premature and liable to be rejected. Further, it is contended that the applicant being a deputationists may be

reverted to his parent cadre at any time and he does not have any right to be absorbed on the deputationist post. The reversion of the applicant to his parent department does not entail punishment to a servant Government/and as such provisions of Article 311 will not be attracted even if he is repatriated to his parent department. It is true that pursuant to the circular issued by the Ministry of Finance dated 22.9.1987 (Annexure A-4) to fill up some posts in the grade of Technical Assistant in the Staff Inspection Unit on transfer/deputation basis clearly indicating that the period of deputation shall ordinarily not exceed three years based on the provisions of the recruitment rules for the post of Technical Assistant. Though it is initially agreed to send him on deputation for a period of three years at the request of his borrowing department, the deputation period was extended for one more year with the approval of the competent authority. Since His parent department, respondent No. 2, persistently requested further repatriation of the applicant vide their letters dated 19.12.1991, 18.5.1992 and 25.6.1992 (Annexures 3, 4 & 5). In the mean while, the borrowing department

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intimated to the parent department that since he was in the midst of important study, he may be allowed to continue till 20th October, 1992 which was agreed upon by the parent department. After the expiry of the last extension i.e. on 20th October, 1992 his services had been placed at the disposal of his parent department in public interest.

8. The respondents contend that the repatriation of the applicant is neither arbitrary, nor discriminatory. Continuance on deputation is subject to the requirement of the borrowing organisation and the convenience of the lending organisation. This cannot be claimed as a right.

9. We have perused the record and heard the parties.

It is clear from the records that the applicant has been given sufficient opportunities to allow him to continue in the borrowing department. When the respondent No. 1 sought the option for consideration for the post of Technical Assistant from amongst the persons who were working on deputation that made it very clear that their options should be forwarded through the proper channel vide letter dated 8th May, 1990 (Annexure A-5). It is

clear from the records that the applicant did not send his option through his parent department. He sent it directly to the Ministry of Finance for consideration. Since he is on deputation, it is but natural that his application should have been sent through proper channel otherwise he cannot be considered.

10. The main contention of the applicant in this O.A. is that similarly placed person, who are on deputation, have been absorbed and he was not absorbed. It is clear from the records that while asking for options of employees who were on deputation the applications of deputationists of 1987 batch were only entertained. Since the applicant joined in 1988 batch, he could not be considered for which he cannot claim that it is a matter of right as his application was not forwarded through proper channel. The applicant being a deputationist, he could be reverted to his parent department at any time, and he does not have any right to be absorbed in the deputation post. In this connection, respondents relied on *Rati Lal Soni vs. State of Gujarat* [1991 (50) ATC SC 857]. Further,

the learned counsel for the respondents relied upon Delhi High Court's decision in Geeta Ram Gupta vs. UOI [1979 SLJ 727] on the point of reversion of the applicant to his parent department. It does not entail any punishment on the Government servant and as such Article 311 of the Constitution is not attracted even if he is repatriated prior to the specified period.

11. Immediately after repatriation, the applicant had proceeded on leave and did not join the parent department. Having regard to the facts of this case as stated above, the applicant cannot claim the deputation post as a matter of right and it is a conceded fact that the borrowing department had absorbed only the deputationists who had joined in the year 1987 and had not taken any one who joined in the year 1988. As explained earlier, even the option had been given by the applicant suo moto conveyed the concurrence of his parent department which he is not expected to do. Therefore, in all grounds, the applicant cannot claim the deputationist post as a matter of right and we are convinced that

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this application is devoid of merits and required
to be dismissed. Accordingly, we dismiss this O.A.
with no order as to costs.

B.S. Hegde
9/7/93
B.S. HEGDE
MEMBER (3)

B.N. Dhoundiyal
9/7/93
(B.N. DHOUNDIYAL) 9/7/93
MEMBER (A)