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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.889 of 1993

This 10th day of June, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

S.M.H. Naqvi,
R/o 16, New Brij Puri,
Delhi - 110051

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Applicant

By Advocate: Shri A.K. Behera *with*
Sh. Prashant Mathur.

VERSUS

1. Lt. Governor, Delhi
Delhi Administration,
Raj Niwas,
Delhi-54
2. Chief Secretary,
Delhi Administration,
5, Sham Nath Marg,
Delhi-54
3. Secretary (AR).
Delhi Administration
5, Sham Nath Marg,
Delhi - 54
4. Secretary Services/Admn.),
Delhi Administration,
5, Sham Nath Marg,
Delhi - 54

By Advocate: Mrs. Avnish Ahlawat

O R D E R

(By Hon'ble Mr. B.K. Singh, Member (A):

The application is made against the ~~xxxxxxxxxx~~ repatriation of the applicant from the Administrative Reforms Department, Delhi Administration from the post of Deputy Director (AR) to the post of Urdu Translator in the Language Department of Delhi Administration.

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2. The material averments in the OA are these. The applicant joined the Administrative Department of Delhi Administration as Research Assistant on deputation basis from the post of Urdu Translator in the Language Department of Delhi Administration. The applicant has been working on deputation in various capacities and enjoying the fruits of promotions also in the Administration Department for the last more than a decade. The applicant was appointed as Urdu Assistant in the pay-scale of Rs.168-300 in the Directorate of Public Relations, now called as the Directorate of Information & Publicity in Delhi Administration on 30th June, 1965. Subsequently he was selected and appointed as Urdu Translator in the pay-scale of Rs.210-425 in the Delhi Administration Secretariat on 15.1.1968. He was appointed as Research Assistant in the pay-scale of Rs.550-900 in the Administrative Reforms Department of Delhi Administration w.e.f. 18.8.1978. In the seniority list issued on 25.2.82 the applicant's name did not figure and on his representation a corrigendum was issued for along with others on 4.8.1984 /including the name of the applicant/ in the said seniority list. These are annexures A-1 and A-2 of the paper-book. In the corrigendum dated 4.8.84 the following three names have been mentioned:

1. Shri Madan Lal
2. Shri S.M.H. Naqvi (present applicant)
3. Shri K.C. Sharma

3. The applicant was promoted as Assistant Director (A.R.) in the pay-scale of 650-1200 in the Administrative Reforms Deptt. on 1.10.80. The appointment was an ad-hoc one on deputation basis as contained in the letter received from UPSC. This ad-hoc appointment to the post of Asstt. Director (AR) was further extended in pursuance of the letter of the UPSC till 7.4.1982. *The a*

4. The recruitment rules for the post of Research Assistant in the Administrative Reforms Deptt. in Delhi Admn. were issued vide notification No.F.2(86)/73.S.II dated 1.12.1975 as amended from time to time. The mode of recruitment shown is transfer on deputation. Another notification was issued on 30th October 1976 regarding method of recruitment and qualifications for filling up of the post of Assistant Director (AR) in the Delhi Administration. This superseded the recruitment rules issued vide notification No.F-2(16)67-Services-II dated 30.5.69 published in Delhi Gazette Part-IV dated 19th July 1969. The recruitment rules for the post of Deputy Director also were issued vide this notification. The post of Assistant Director is group 'B' gazetted non-ministerial post. The post of Research Assistant was to be filled on the basis of transfer on deputation and it was laid down that the period of deputation ordinarily shall not exceed six years and that selection will be made in consultation with the UPSC.

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5. The hierarchical structure of the Administrative Reforms Department of Delhi Administration consists of Secretary (AR), Joint Director (AR), two Deputy Directors (AR), five Assistant Directors (AR) and six Research Assistants (AR). The Administrative Reforms of Delhi Admn. does not have a regular cadre and as per recruitment rules almost all the posts are filled up on deputation basis. As stated above, as per the recruitment rules, a person can work on transfer on deputation ordinarily for a period of 6 years only. It is admitted that the applicant joined as Research Assistant in the pay-scale of Rs.550-900 (pre-revised) on 18.8.78 on deputation basis (annexure R-1 of counter affidavit). Copy of recruitment rules have been annexed as annexure R-2 of the counter affidavit).

6. We have carefully gone through the various records produced by the respondents and a careful perusal of the files will show that the applicant was appointed on deputation as Asstt. Director (AR) in the pay-scale of Rs.650-1200 (PR) on purely ad hoc basis for a period of 3 months w.e.f. 1.10.82 or till such ^{time} /a regular appointment is made, whichever is earlier (annexure R-3). Notings of the files indicate that his services were extended from time to time by the AR Deptt. in which he himself was working on one pretext or the other. The files also indicate that there is some kind of manoeuvring and manipulation. The files also indicate that on one hand the AR Deptt. of Delhi Admn. had been seeking extension on monthly basis on the ground that the matter was

pending before the UPSC for appointment on regular basis and on the other hand, it appears from the files that no sincere efforts were made to fill up the post on regular basis. From the notes on the files it is abundantly clear that at one stage when fresh proposal for extension was put up on 30.9.1981, the then Chief Secretary, clearly mentioned that no further extension to the applicant should be allowed. He also mentioned that the file about proposal of extension should have been put up to him in time i.e. before 30.5.1981 when the earlier extension expired.

7. The order of the previous Chief Secretary that no further extension should be allowed was practically suppressed, maybe at the behest of the applicant who was working in the same department and JD (AR) did not have the courtesy to indicate this in his noting on the file. This ad-hoc appointment continued till 8.4.1982. Thereafter the applicant was appointed as Assistant Director (AR) on deputation vide order dated 8.4.82 (annexure R-4). This appointment also, as would be evident from notification, was also on transfer on deputation basis for a period of one year in the first instance. The applicant continued on this post on transfer on deputation basis though he was a regular incumbent of the post of Urdu Translator.

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8. These are the uncontroverted facts on the basis of pleadings. The applicant managed to continue in the A.R. Deptt. as would be evident from a perusal of the record/files filed by the respondents and he also managed to get promotion even to the rank of Deputy Director (AR) and he was holding that post till he was ordered to be repatriated vide order dated 17.4.93 which was served on him on 26.4.1993. This application was filed by the applicant on 23.4.93 in this Tribunal and on 27.4.93 he got an interim stay restraining the respondents from repatriating the applicant on the basis of the impugned order dated 17.4.93. It was also made clear in the interim order that it shall have no effect if the applicant has already been repatriated before 26.4.93.

9. The applicant has filed an M.P. No.1796/93 in which he has sought the following reliefs:

- (i) stay the operation of the memorandum dated 17.5.93 at annexure MP-II;
- (ii) direct the respondents to allow the applicant to continue as Dy. Director (AR) without any hinderance ;
- (iii) direct the respondents to release salary of the applicant as Dy. Director (AR) for April and May 1993.

Reliefs sought in the OA and the MP are practically the same. A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for.

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10. We heard the learned counsels, Shri A.K. Behera for the applicant and Mrs. Avnish Ahlawat for the respondents and also perused the record of the case and the relevant departmental files produced by the respondents before us.

11. The admitted facts have already been mentioned in the foregoing paragraphs. In 1987 2 posts of Deputy Director (AR) in the pay-scale of Rs.1100-1600 (PR) were sanctioned in the Administrative Reforms Department for proper implementation of the 20-Point Programme. The proposal was put up to the Secretary (AR) for ad-hoc appointment of the applicant in the AR Deptt. The proposal was examined and during discussion as well as in the notes, the Services Department of the Delhi Administration held the view that the applicant was holding the post of Assistant Director (AR) purely on transfer on deputation basis and his tenure of deputation to the post had already expired on 7.4.88. The notings in the file indicate that an officer who was holding the post of Assistant Director on transfer on deputation basis could not be considered for promotion to the higher post on adhoc basis or on officiating basis according to rules in existence. Just to accommodate the applicant the AR Deptt. moved the Services/ for amendment in the recruitment rules. A perusal of the departmental files

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indicate that the applicant himself at many stages handled the proposals and the proposals were mooted in a manner so that the interest of the applicant may be served.

The notings on the files also indicate that the applicant was not eligible for appointment to the post of Dy. Director since he had no chance of being regularised against that post and the Lt. Governor, Delhi, had already notified the rules for recruitment to the post of Dy. Director in 1976 which were in force at the time of considering the proposal for ad hoc promotion of the applicant to the rank of Dy. Director. The files also indicate that a suggestion was made to appoint a suitable Dani Civil Service Officer by transfer on deputation till regular appointment was made by UPSC. It is evident from the departmental files that the Secretary (AR) again mooted a proposal for appointment of the applicant to the post of Dy. Director (AR). The following departmental files were produced before us:-

i) No.4/11/87-AR

Filling up the post of Dy. Director (AR)

ii) F.34(1)/79-SI

Filling in the post of Asstt. Director (AR), apptt. of Shri SMH Naqvi.

iii) F.17/2/93-SAD Vol. 4/11/87-AR

Filling up the post of Dy. Director (AR)

iv) F-34/3/80/SI

F/file of Shri SMH Naqvi, Research Asstt.

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iv) No.17/12/78-SAD
Recruitment to the post of Research Asstt.

v) 1B/1102/67/SAD
Personal file of Shri SMH Naqvi, DD (AR)

It is clear that the Secretary (AR) himself was interested in the ~~requested~~ continuance of the applicant dehors the rules. A perusal of the record will also show that even on the basis of the proposed amendment in the recruitment rules, the applicant's case from all angles could not be covered and it was found that the posting of the applicant against the post of Dy. Director (AR), either on promotion or on transfer on deputation basis, could not be permitted under the relevant rules and he could not derive any benefit even from the amended recruitment rules. The notings on the file also go to indicate that it was mentioned that the applicant was holding the post of Assistant Director (AR) on deputation basis and if he was again promoted as Dy. Director (AR) on deputation basis, he would be two stages above the post which he was holding in his substantive capacity. It was therefore felt that his further promotion as Dy. Director (AR) on deputation basis would not be in accordance with recruitment policy. The Services Department succumbed to the pressure of the Administrative Reforms Department which had been insisting on the appointment of the

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applicant as Dy. Director (AR) on ad hoc basis and that is how the applicant got promotion to the post of Deputy Director (AR) purely ~~on/ ad hoc basis~~ ~~xxx xxxx xxxx xx xxxxxxxxx~~ ~~xxxxxx~~ This proposal has been annexed as annexure A-5 of the paper-book. The applicant was promoted on deputation and on purely ad hoc basis for a period of six months with immediate effect. This period of 6 months got extended at the behest of the Secretary (AR) till the time the impugned order was issued.

12. The learned counsel for the applicant has filed some papers to show that the applicant was given an option at some stage for absorption to which he responded. The gist of his argument is that the applicant has acquired vested ~~right~~ to continue in the AR Deptt. of Delhi Administration due to his long stay in various capacities right from the post of Research Assistant to the post of Assistant Director and finally to the post of Deputy Director (AR). The learned counsel could not cite a single document to show that the applicant had been absorbed or had ever been regularised either on the post of Research Assistant or Assistant Director (AR) or Deputy Director (AR). A perusal of the departmental files clearly indicates that everything was being done against the recruitment rules. The extensions were not

in public interest but they were given to subserve the interest of the applicant who was working in the same Department and who was being favoured by the Secretary (AR) and the Service Department, in spite of its protest, had to fall in line because of the pressure exercised by the Secretary (AR). The learned counsel for the applicant while arguing, referred to a particular document in which the applicant had expressed his willingness to be absorbed in the AR deptt. but no such option was ever invited by the respondents and no such letter is available on their record. Therefore the very authenticity and genuineness of this letter filed under the signature of the applicant cannot be relied upon. The applicant was promoted purely on ad hoc basis to the post of Assistant Director and he was not absorbed certainly as Asstt. Director and was not eligible to be promoted as Dy. Director and his promotion both as Asstt. Director and Deputy Director were against the rules. The normal period of deputation of 6 years was extended to more than a decade because of undue favouritism shown by some of the respondents themselves not because the services of the applicant were indispensable but because the applicant had created vested interest by remaining in the Department and working with the respondents who became a party to the manipulation and manoeuvring of the


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applicant, as is vividly clear from a perusal of the departmental files.

13. The learned counsel for the applicant has cited the judgment of this Tribunal in OA No.1767/92 decided on 13.4.1993. The operative portion of the judgment is as follows:

"We direct the respondents to consider the case of the petitioner for regularisation on merits and in accordance with law as expeditiously as possible."

In para 3 of the judgment it has been held that ~~the~~ the respondents have not indicated whether the applicant was on deputation for over 15 years and as such he cannot be repatriated to his parent department. This observation and the operative part of the judgment appear to be in conflict since the absorption and regularisation are matters to be governed by the relevant recruitment rules on the subject and the UPSC along with the DOPT are are invariably party to /the framing of these RRS under the proviso to 309 of the Constitution and as such UPSC cannot be a party to the violation of the RRS which are in vogue at a particular point of time. If the matter has ~~to be~~ decided according to the law and rules then whatever be the period of deputation, one cannot have a vested right of continuance on deputation. Law of deputation has been enunciated in Civil Appeal No.1012/1987 decided on 16.2.90, AIR (1990)

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SC 1132, Ratilal B. Soni & Ors. v. State of Gujarat & Ors. The Division Bench comprising Hon'ble Kuldip Singh and Hon'ble V. Ramaswami, JJ, discussed the Art. 311 of the Constitution and its application in regard to deputationists and it was held in this judgment that "The Government servant on deputation can be reverted to his parent cadre at any time. Such Government servant does not get any right to be absorbed on the post which he is holding as a deputationist. If he is not absorbed he would be liable to be reverted any time." To this It has also been observed that even if it is assumed that the appellants gave some sort of option, and the same having not been accepted before the due date, the appellants stood finally reverted to their substantive cadre. In the present case even if we presume that the applicant gave some sort of option, as has been shown from a letter addressed by the applicant to the respondents, he will not have any right till the option was accepted and orders in this behalf were actually passed.

14. A perusal of the record produced before us clearly shows that certain posts have been created in the hierarchical structure of the Administrative Reforms Department of Delhi Administration to meet the functional requirements. The respondents did not have a regular cadre and they have been filling up the posts only on the basis of transfer on deputation and it has been stipulated that ordinarily the period of deputation will not exceed 6 years. The basic question that arises is what would be the status of the various incumbents

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holding the posts of Joint Director and Deputy Directors and Assistant Directors if a regular cadre does not exist. There is no averment in the OA or in the counter affidavit to show that a regular cadre exists where people can be recruited directly and can function as regular incumbents against the posts to which they are recruited. It is only in a cadre that people start their career from ~~the bottom~~ ^{level} ~~xx~~ the entry 1 and they get promoted. If there is regular cadre it is presumed that persons would have been recruited as Research Assistants and subsequently they would have been promoted as Assistant Director/Deputy Directors/Joint Director. Since the departmental files do not indicate that this has been happening and the recruitment rules prior to amendment or even after the amendment only envisage that the filling up of the post by ^{will be on} deputation on transfer basis in consultation with UPSC but nowhere do we find that there is any attempt on the part of Delhi Administration to create a regular cadre. The reason is that this Administrative Department is meant for implementation of 20-Point Programme and also to carry out some reforms which are time-bound and therefore the authorities never felt it necessary to have a regular cadre. Unless there is a regular cadre the question of their absorption will not arise and the various incumbents coming from different sources will continue to be only on deputation ~~in~~ ⁱⁿ consultation

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with the UPSC. Their appointments have to last either for six years or more but in the very nature of things they will never be absorbed and regularised since there is no regular cadre in existence. From this angle also the applicant does not have a case apart from the ratio established by the Hon'ble Supreme Court in the case of Ratilal B. Soni (supra).

15. The established law in case of deputation is that a man always goes on deputation to a higher post and draws emoluments much more than his entitlement in the parent cadre but on his repatriation in his parent department he would be eligible to draw the emoluments equal to a person who is immediately junior to him. On repatriation one can neither claim to draw those emoluments which he was drawing on deputation nor can he have the benefit of various promotions which he earned while on deputation. He would be always placed and fitted in the cadre on the basis of his total length of service vis-a-vis his immediate junior and his pay would be fixed accordingly.

16. As stated above, on merit the applicant has no case and he has no vested right to continue on deputation and draw emoluments two stages above his substantive rank and

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as such the application is dismissed as devoid of any merit and substantiated, leaving the parties to bear their own costs.

17. While parting with this case, we would like to refer to the judgment of the Hon'ble Supreme Court in case of R.L. Gupta v. Union of India, AIR (1988) SC 968, where it has been held that non-return of a deputationist cannot be made a ground to deprive him of his seniority in the parent department in a case where the borrowing department refuses to relieve him to rejoin his parent department. ~~Although~~ The departmental files indicate clearly that it is not the Administrative Reforms Department of the Delhi Administration which was interested in retaining the applicant but it is the applicant himself who did not want to revert to his parent department and managed to get the period of deputation extended from time to time on account of the patronage of the Secretary (AR) and certain other persons who have openly favoured him. Notwithstanding this, we would like to direct the respondents that the entire length of service of the applicant in A.R. Department of Delhi Admn. must count towards fixation of his pay and emoluments vis-a-vis his immediate junior in the Urdu

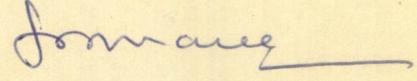
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Translators cadre of Language Department, Delhi
Administration.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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