

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

No. OA 263 of 2019

Present: Hon'ble Mr.Swarup Kumar Mishra, Judicial Member
Hon'ble Mr. C.V.Sankar, Administrative Member

Maguni Sahu, aged about 43 years, S/o Banchhanidhi Sahu, Plot No. 1454, Mahatab Road, near Dr. Alaka Das Clinic, Bhubaneswar, Pin – 751002 (Odisha) at present working as Accountant in the O/o the Principal Chief Controller of Accounts Central Board of Direct Taxes, 5th Floor, Aayakar Bhawan, Bhubaneswar, Pin-751007, Odisha.

.....Applicant

VERSUS

1. Union of India represented through its Secretary, Ministry of Finance, Government of India, Department of Expenditure, North Block, New Delhi, Pin-110001.
2. The Controller General of Accounts, Ministry of Finance, Government of India, Department of Expenditure, Mahalekha Niyantrak Bhawan, E/Block, GPO Complex, INA, New Delhi, Pin-110023.
3. The Principal Chief Controller of Accounts, Central Board of Direct Taxes, 0th Floor, Lok Nayak Bhawan, Khan Market, New Delhi, Pin-110003.
4. Deputy Controller of Accounts, Central Board of Direct Taxes, Zonal Accounts Office, Bamboo Villa (Annexe), 169, AJC Bose Road, Kolkata, Pin-700014.
5. The Zonal Accounts Officer, O/o the Principal Chief Controller of Accounts, Central Board of Direct Taxes, Government of India, Ministry of Finance, Department of Revenue & Ayakar Bhawan, 5th Floor, Rajaswa Vihar, Bhubaneswar, Pin – 751007.
6. General Manager, Ordinance Factory, Badmal, At/PO, O.F.Badmal, Dist. Bolangir, Pin – 767070, Odisha.

.....Respondents.

For the applicant : Mr.J.M.Patnaik, counsel

For the respondents: Mr.P.R.J.Dash, counsel
Mr.S.Behera, counsel

Heard & reserved on :18.06.2021

Order on :29.06.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 praying for absorption in the borrowing department and has sought for the following reliefs :

- (a) To direct the Respondents to absorb the applicant in the cadre of accountant and grant him all consequential service and financial benefits retrospectively;
- (b) To pass any other order/order as deemed fit and proper.

2. The applicant who is an employee of the parent department i.e. Ordinance Factory (Resp. No.6) was sent on deputation to the organization of CBDT (Resp. No.5) and he had been working there since the year 2011. Interim order has been passed in his favour on 18.4.2019. He is continuing on deputation for about 10 years. The concerned department has got rules/regulations/guidelines to the effect that deputation cannot be more than 7 years. There was earlier one ban for deputation and the said ban has been lifted vide order dated 14.8.2019, which is at Annexure A of MA 722/2019 filed by the applicant on 5.9.2019. Learned counsel for the applicant has placed much stress and emphasis on the said lifting of ban order in order to press the applicant's prayer for permanent absorption in the borrowing department i.e. CBDT (Resp. No.5).

3. The lending department i.e. Ordinance Factory (Resp. No. 6) have mentioned in their Counter that there is shortage of manpower and they are not willing for permanent absorption or further continuation of deputation of the applicant in the borrowing department i.e. CBDT (Resp.No.5). The unwillingness of the lending department has been mentioned in Annexure R/5. This Tribunal is not satisfied that the said unwillingness of the lending department is solely on the basis of the ban order or pendency of the OA in

question. They have also assigned that there is shortage of manpower in the department. When the lending department is not willing for continuation of the applicant on deputation in the borrowing department i.e. CBDT (Resp. No.5.) or for his permanent absorption in the income tax or CBDT, therefore no direction can be given for his further continuation of deputation in the said department. It is immaterial whether the departments had originally agreed for deputation of the applicant since the applicant has completed over 9 years of deputation and the respondent department cannot be directed by the Tribunal to violate their own guidelines vide DOPT OM dated 17.2.2016 which reads as under :

“3. It has been decided that if the administrative Ministries / Departments and other borrowing organizations wish to retain an officer beyond 5 years, they may extend tenure of deputation covered by OM No. 6/8/2009-Estt.(Pay-II) dated 17th June 2010, where absolutely necessary in public interest, upto a period not exceeding 7 years at a stretch. This shall be done with the approval of the Minister of the borrowing Ministry / Department concerned and in respect of other organizations with the approval of the Minister of the borrowing Ministry/Department with which they are administratively concerned, keeping in view the exigencies and subject to fulfillment of all other requirements such as willingness and vigilance clearance of the Officer concerned, NOC of the lending authority, UPSC / ACC approval wherever applicable. Thus, no case of extension shall be referred to Department of Personnel & Training, New Delhi.”

4. Hon’ble Supreme Court vide its order dated 14.05.1999 in **Umapathi Choudhary vs State of Bihar & Anr** had held that:

“The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee. It also involves the consent of the employee to go on deputation or not.”

Similarly the Apex Court in **State of Punjab & Ors vs Inder Singh & Ors** [(1997) 8 SCC 372] had held:

“In the service jurisprudence, deputation resorted in public interest to meet exigencies of public service. Deputation, a tripartite agreement – principal employer to lend the services of employee and decision has to be accepted by the borrowing department and also involve the consent of employee. The moment

tripartite agreement is dissolved or vitiated or repudiated, the employee would have no legal enforceable right to continue.”

5. A perusal of the above legal observation clears the position that deputation is a tripartite agreement between lending department, employee and borrowing department. Consent of all the three parties is mandatory. In the absence of consent of any one of the parties, deputation would not be possible and none of the parties can be compelled for execution. It is the discretion of the lending department to give the consent in question. They have exercised their discretion on sound grounds and therefore the impugned order cannot be interfered with by this Tribunal. The applicant has failed to show that there has been any discrimination by the respondent department in allowing any other person similarly situated for permanent absorption for continuation of deputation period in question. Therefore this Tribunal does not find any merit in this case.

6. The OA is therefore dismissed being devoid of any merit. No order as to costs.

(C.V.SANKAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

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