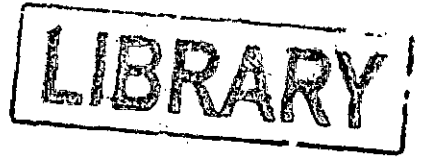


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 351/00214/2021

Date of order: 23.2.2021

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Suranjan Mukhopadhyay,
Son of Late Kanakarka Mukhopadhyay,
Aged about 49 years,
Working as Labour Inspector,
Group 'B', Non-Gazetted in the office of
Labour Commissioner & Director of
Employment and Training,
Andaman & Nicobar Administration,
Port Blair,
Presently residing at Doctor's Colony,
Bhatu Bashti, South Andaman District,
Port Blair - 744105.

..... Applicant.

-Versus-

1. Union of India
through the Secretary to the Govt. of India,
Ministry of Home Affairs, ANL Section,
New Delhi - 110001.
2. The Andaman Nicobar Administration
Through the Lt. Governor,
Andaman & Nicobar Islands,
Raj Niwas,
Port Blair - 744101.
3. The Chief Secretary,
Andaman & Nicobar Administration,
Secretariat,
Port Blair - 744101.
4. The Secretary,
Labour & Employment,
Andaman & Nicobar Administration,
Port Blair - 744101.
5. The Labour Commissioner &
Director of Employment & Training,
Labour Department,
Andaman & Nicobar Administration,

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Supply Line,
Port Blair – 744101.

6. The Under Secretary,
National Company Law Tribunal,
6th Floor, Block B,
CGO Complex,
New Delhi – 110 003.
7. The Secretary,
Department of Personnel & Training,
North Block,
New Delhi – 110 001.

.....Respondents.

For the Applicant : Mr. S.K. Dutta, Counsel
Mr. A.K. Chattopadhyay, Counsel

For the Respondents : Mr. R. Halder, Counsel

O R D E R (Oral)

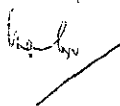
Dr. Nandita Chatterjee, Administrative Member:

The applicant, an aspirant for the deputation post of Assistant Registrar, NCLT, Kolkata, and, being aggrieved by the inaction of the respondent authorities, has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

"a) An order directing the respondent Nos. 3, 4 and 5 to release the applicant immediately to enable him to join as Assistant Registrar, NCLT Kolkata by way of appointment on deputation well before 17.02.2021 and to permit him to function as Assistant Registrar, NCLT Kolkata for the entire tenure and also directing the said respondents to issue No Objection for the purpose of absorption to the said post of Assistant Registrar in the event the NCLT considers the case of the applicant favourably for such absorption.

b) An order directing the respondents to produce/cause production of all relevant records.

c) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."



2. Heard both Ld. Counsel. Examined documents on record. This matter is taken up at the admission stage for disposal.

3. Ld. Counsel for the applicant would submit that the applicant had initially been appointed as a Labour Inspector on 2.7.1999, and, thereafter, had joined on deputation in the post of Law Officer in GSI. During his deputational tenure in GSI, an advertisement dated 16.8.2018 was issued calling for applications for filling up, inter alia, the post of Assistant Registrar of NCLT, Kolkata on deputation basis (Annexure A-1 to the O.A.).

The applicant duly applied for such post. His application was forwarded by the Andaman & Nicobar Administration and the applicant stood as selected for the post of Assistant Registrar, NCLT, Kolkata as per intimation dated 2.9.2020 (Annexure A-5 to the O.A.). The office of respondent No. 5 was requested to relieve the applicant within 15 days thereafter so as to enable him to join the post of Assistant Registrar of NCLT, Kolkata.

As the applicant had joined GSI on deputation on 7.9.2016, on expiry of his deputation period, he was released from GSI on 8.9.2020.

The applicant, however, was not released to enable him to join the post of Assistant Registrar, NCLT at Kolkata and despite his numerous representations, the respondent authorities did not issue any release orders in his favour. On his request NCLT, Kolkata extended his joining time vide Orders dated 23.9.2020, 11.12.2020 and 17.2.2021 respectively.

The applicant would aver that he was further prejudiced as because had he known that the Andaman & Nicobar authorities would

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not release him to join NCLT, Kolkata, he could have continued further on deputation as Law Officer, (Group "A" Pay Level 10) in GSI.

The applicant, therefore, being aggrieved at the fact that he was not released to join the post of Assistant Registrar, NCLT, Kolkata (on deputation), has approached this Tribunal in the instant O.A.

4. During hearing, the Ld. Counsel for the respondents would furnish before us DOP&T O.M. dated 17.6.2010 wherein, inter alia, the scope of term "Deputation"/Foreign Service, restrictions on treating of appointment as on Deputation / Foreign Service, tenure of Deputation/Foreign Service have been clarified.

Para 8.4 of the said O.M. incorporates that the tenure of each term of deputation / foreign service would be as follows:-

"8.4. There shall be a mandatory "cooling off" period of three years after every period of deputation/foreign service up to Joint Secretary level posts and one year for Additional Secretary level posts."

Ld. Counsel, would, therefore, argue that the applicant's "cooling off" period of three years since his release from GSI on 8.9.2020 is yet to be fulfilled, and, as the "cooling off" period of three years upto the Joint Secretary Level posts is mandatory, the applicant cannot be released by the respondent administration to join a subsequent deputational post.

5. We note, however, that para 10 of the said O.M. dated 17.6.2010 (supra) provides for the following relaxation:-

"10. Relaxation of conditions:

Any relaxation of these terms and conditions will require the prior concurrence of the Department of Personnel & Training."

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6. Accordingly, we infer that although there is a mandatory "cooling off" period between two deputational tenure, the Department of Personnel & Training (respondent No. 7) would be the competent authority to relax such mandatory "cooling off" period in case so approached by the respondent administration.

7. It is not in dispute that the respondent administration had forwarded the applicant's application to NCLT and, that, the applicant had preferred a number of representations to the respondent administration as evidenced at Annexure A-9, A-10, A-13, A-14 and A-16 to the O.A.

8. Accordingly, in the interest of justice and as prayed for by the applicant, we would direct the addressee respondent authority or any other competent respondent authority to forthwith refer the request of the applicant for relaxation of the "cooling off" period to the office of respondent No. 7 within a period of one week from the date of receipt of a copy of this order.

9. We would further direct the respondent No. 7, that, in the event such reference is received from the Andaman & Nicobar Administration, the respondent No. 7 shall decide in terms of Para 10 of the O.M. dated 17.6.2010 (supra) and convey his reasoned decision through a speaking order to the respondent administration within a further period of three weeks thereafter.

The applicant will be at liberty to seek further extension of his joining time from NCLT in the event no decision is conveyed to him

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within the extended period, and, in the event such prayer is made,
Respondent No. 6 may consider the same in accordance with law.

10. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP