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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration (T.A.) No. 148 of 1987.

S.S. Srivastava Petitioner.
Versus

Union of India & others Respondents.

Hon'ble Justice A. Banerji, Chairman (J).
Hon'ble A. Johri, Member (A).

(Delivered by Hon. A. Johri, A.M.)

This Writ Petition No.3189 of 1985 has been received on transfer from the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, under Section 29 of the Administrative Tribunals Act,1985 and has been re-numbered as Registration (T.A.) No. 148 of 1987.

2. By this writ petition the petitioner, who was working under the Regional Director of Health and Family Welfare, Ministry of Health at Lucknow and who was put to work as Office Superintendent (OS) in the Central Government Health Scheme (CGHS) at Lucknow in 1981 and was subsequently re-patriated back to his parent department in 1985, has challenged his re-patriation on the grounds that when he was selected for appointment to the post of OS in CGHS, his appointment was not on deputation, but the word 'deputation' was erroneously mentioned in his appointment order and that respondent no.6, who has been posted on the post which was occupied by the petitioner, has already been on continuous deputation for a period of 9 to 10 years and it was only in 1984 that he was re-patriated back to his parent department [✓] and thus by bringing him again to the post the petitioner has been discriminated against. According to the petitioner, since he was directly appointed and selected for the post, he could not have been sent back to

accommodate another person on deputation on the same post. He has cited cases of some other persons who also got appointments in CGHS and were subsequently absorbed, but in his case his request for absorption has not been considered. The petitioner has, therefore, prayed for the reliefs that a suitable direction be issued to the respondents quashing the order dated 24.6.1985 repatriating him back to his department, and respondent no.3 be directed to permanently absorb him on the post of OS in CGHS at Lucknow.

3. In the counter affidavit, filed in opposition by the answering respondents, it has been said that the post of OS in CGHS, Lucknow is a promotional post meant for the staff working in the Organisation. Since the staff available were not eligible for promotion in terms of the rules, the post was decided to be filled on deputation basis by an outsider for a period till the staff became eligible and it was in this context that applications were invited and the petitioner was selected to fill up the post on deputation basis. They have referred to the memorandum, which invited the applications, which clearly specifies that the post was to be filled on deputation basis and not on regular basis. According to the answering respondents, the petitioner was first appointed for a period of one year, but then he continued to work till 1985 and the petitioner never objected to his appointment and he accepted the same on the terms and conditions as laid down in the appointment letter of May, 1981. The answering respondents have further said that the petitioner had opted the scale of pay of OS [✓] and, therefore, there was no question of giving him any deputation allowance because he could either get his existing pay plus deputation allowance or the pay in the pay scale of the post. It has further been said in the reply that generally deputation is allowed to continue for a period of three years with another year for which it may be extended by the Ministry and thereafter a person has to be repatriated back to his parent department. The answering respondents have denied that the case of the petitioner is similar

to other cases that he has cited. As far as respondent no.6 is concerned, it has been said that respondent no.6 was an Upper Division Clerk (UDC) of CGHS, Delhi and was brought to Lucknow on deputation on 24.6.1985 when the petitioner was reverted back to his parent department. Even respondent no.6 will have to go back to his Unit at Delhi as soon as the local UDC became eligible for filling up of the post of OS. According to the answering respondents, the petitioner has no right or lien to the post of OS and the question of direct appointment does not arise at all and the petitioner also does not belong to the cadre of CGHS. It has further been said that since the petitioner has been repatriated back to his parent department, there is no question of his being continued on the post or being absorbed on the post, which is not meant for an outsider.

4. We have heard the learned counsel for the parties. Learned counsel for the petitioner relied on Rule 3.4 of Appendix 5 of the Fundamental Rules (FR). Appendix 5 of FR deals with the Transfer of Central Government Employees to other Governments, Departments, Comanies, Corporations, Etc.-Deputation (Duty) Allowance. It consolidates the instructions issued from time to time on this subject and evidently this Appendix is in the context of payment of deputation allowance to the employees who are transferred to other departments, etc. Rule 3.4 of the Rules lays down that appointments of serving Government servants made either by promotion or by direct recruitment in competition with open market candidates, whether on a permanent or temporary basis, will not be regarded as 'deputation'. The main emphasis laid in the arguments by the learned counsel for the petitioner was on the fact that the petitioner's appointment as OS was not in the nature of a deputation, but it was as a result of a regular selection in which the petitioner had participated along with others and got selected and, therefore, his request for absorption on a regular basis could not be ignored.

5. Annexure '1' to the writ petition is a memorandum which was circulated to all the Sections and subordinate offices to

get the names of volunteers who were willing to go to CGHS, Lucknow and the memorandum of 6.12.1980 (Annexure '2' to the writ petition) clearly lays down that the person selected for the post would be on deputation for a period of one year in the first instance and will be governed by the terms and conditions of the Ministry of Finance's O.M. No. F.10(24)E.III/60, dated 4.5.1961, as amended from time to time. The appointment order, by which the petitioner was posted, is placed as Annexure '6' to the petition and it also mentions that the petitioner would be on deputation for a period of one year in the first instance. It is, therefore, clear and cannot be disputed that the post of OS had to be filled only on deputation basis from amongst the volunteers who would have offered to move to Lucknow for the short-term assignment. Even otherwise the post of OS in any office cannot be a direct recruitment post, no documents have been produced by the petitioner in this regard and the respondents' claim is that this post was meant to be filled by UDCs of CGHS, Lucknow, but since they were not eligible in terms of the total service, etc. rendered by them in the Organisation, the post had to be filled on deputation basis till such time as the local UDCs became eligible by persons, who could be drafted from other sister departments and who were eligible for the post according to the rules.

6. The petitioner has been mentioning in his representations that he was given to understand that the vacancy of OS in CGHS, Lucknow was a clear vacancy and would be filled in a permanent regular basis and that is why he had applied for the same and when he was selected he was so posted, but he was surprised to receive the appointment order which mentioned that the post will be on deputation basis. He represented against the same in 1981. Another argument put forward by the petitioner is that he was not given the deputation allowance and, therefore, he concluded that his posting was irregular posting. This is negated by his own representation, which is subsequently submitted in March, 1983, in which he had said that

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he had opted the pay scale of OS. The respondents' case is that the petitioner had opted the pay scale of the post of OS and, therefore, he was not eligible for any deputation allowance. We do not think that either Rule 3.4 in Appendix 5 of FR or the arguments put forward by the petitioner that since he was not given deputation allowance he should be considered to have been regularly appointed ~~be given any weightage~~ can be considered. These are at the most misconceived arguments and have no basis. The facts and circumstances of the case clearly proves that the post was to be filled by bringing eligible UDCs on deputation for a period till the local UDCs became eligible for the post of OS, which was actually a promotional post in the cadre of CGHS, Lucknow and was not meant for direct appointment.

7. We also do not find anything wrong in the respondents' averment that such deputations are allowed only for certain periods which they have mentioned as three years in the first instance followed by an extention of one more year after which an employee has to be repatriated back to his parent department. We do not find any force also in the plea taken by the petitioner that he should have been considered for regular absorption on this post under CGHS, Lucknow. He after all did not belong to this organisation and had no claim on this post in the regular line of his promotion.

8. In the above view, we do not find any merit in this petition and reject the same. The petition is accordingly dismissed with costs on parties.

ABP STC
MEMBER (A).

AB
CHAIRMAN (J).

Dated: January 2nd, 1989.

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