

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration O.A. No. 391 of 1994

S.B. Saxena Applicant.

Versus

Union of India
and others Respondents.

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Hon. Mr. S. Das Gupta, Member (A)
Hon. Mr. T.L. Verma, Member (J)

(By Hon. Mr. S. Das Gupta, Member (A))

Under challenge in this Original Application filed under Sec. 19 of the Administrative Tribunals Act, 1985 is an order terminating the deputation of the applicant to the responding department and his repatriation to his parent department.

2. The facts of the case are that the applicant is an employee of the Government of U.P. State and he was working as Senior Assistant in the office of the Executive Engineer Building Construction Division, P.W.D. Bareilly. The respondents were in the need of trained personnel to work as Divisional Accountant on deputation for a limited period and the heads of department of P.W.D., Irrigation Department, Rural Engineering Services and Minor Irrigation Department of the State of U.P. were requested to submit a select list of willing Accounts Clerk having experience of public works accounts to be posted as Divisional Accountant on deputation basis. The name of the

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applicant was among those who were sponsored by his department for such appointment. The applicant was accordingly appointed by the respondents on deputation for a period of one year on terms and conditions of deputation on the post of Divisional Accountant vide order dated 5.3.1991, a copy of which is at Annexure- A 3. The applicant accepted the terms and conditions offered to him and joined in the office of the respondent no. 3 on 1.4.1991, a copy of the joining report is at Annexure- A 5. Since then, the applicant had been performing the duties of the Divisional Accountant until the impugned order dated 15.10.1993 was issued, a copy of which is at Annexure -A 1 in which it was stated that his period of deputation was being extended ^{by} 2 years more and on completion of three years period on 31.3.1994, he will stand reverted to his parent department. This was followed by the impugned order dated 18.1.1994 by which the respondent no.3 was directed to release him on completion of 3 years period on deputation, a copy of the same is at Annexure- A 2. The applicant is stated to have submitted representations on 11.11.1993 and 12.12.1993 to the respondents against these orders but since these were invain, he has approached this Tribunal for the relief of absorption of the applicant permanently as Divisional Accountant and quashing the orders dt.15.10.93 & 18.1.1994.

3. The applicant's case is that the action of the respondent no.2 is purely arbitrary

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and illegal in issuing the impugned orders which are in colourable exercise of official powers. He claims that there are number of ^{vacancies of} Divisional Accountants still lying vacant in the office of the respondent Nos. 1 & 2 and there is no administrative reason for sending the applicant back to his parent department after he has served for a long period of 3 years. Moreover, he contends, his consent was not obtained for working on deputation after the initial period of one year expired. He was granted the same scale of pay as applicable to the Divisional Accountants and he has been working very efficiently and honestly to the entire satisfaction of the respondents and therefore, there should be no reason for sending him back to his parent department instead of absorbing him as Divisional Accountant in the responding department. In his rejoinder affidavit, he has taken another plea that he was duly selected for the post of Divisional Accountant and his lien was automatically terminated on the day he joined the services on the new post under the Central Government. It thus, tantamounts to removal from service from the post of Divisional Accountant.

4. The contentions of the applicant have been repelled by the respondents. In their counter affidavit they have stated that the applicant's appointment to the post of Divisional Accountant was purely on deputation basis for a limited

period. The cadre of Divisional Accountants is a separate cadre under the Indian Audit and Accounts Department in the Central Government. This cadre has been constituted to provide one trained Accountant in each division of Public Works Department, Irrigation Department, Rural Engineering Service and Minor Irrigation Department. Enclosing a copy of the Indian Audit and Accounts Department (Divisional Accountants) Recruitment Rules, 1988 as Annexure- C.A.7, the respondents have contended that this rule provides that the posts of Divisional Accountants are to be filled by direct recruitment on the basis of an entrance examination conducted by the authority as specified by Comptroller and Auditor General of India. However, the vacancies caused by the existing incumbent being away on transfer, on deputation, on long leave or on other circumstances for a duration of one year or more can be filled on transfer on deputation. The applicant's services were borrowed under terms and conditions of deputation in accordance with the recruitment rules. The terms of deputation were exhaustively set out in the enclosure to the letter dated 5.3.1991 offering him appointment on the post of Divisional Accountant on deputation (Annexure- C.A. 2). These terms and conditions clearly specified that the applicant shall be on deputation for one year extendable at the discretion of the Senior Deputy Accountant General (works) ^{but} ^{to be} ^{beyond} not extended three years in any case.

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It is also stipulated therein that the period of deputation can be terminated at any time with or without assigning any reason. The respondents contend that the applicant was fully aware of these terms and conditions before he accepted appointments and in his joining report (Annexure-C.A.3) all these terms and conditions have been fully accepted by him. He cannot, at this stage, therefore, claim that he was not on deputation terms nor that he has any right to be absorbed permanently as Divisional Accountant, which in any case, not permitted under the relevant recruitment rules and it was also made clear that the general terms and conditions for deputation that he would not be entitled to appear in the Divisional Accountant Cadre Examination. They have averred that in view of the clear terms and conditions, it is certainly not a case of removal from service but only the repatriation of the applicant to his parent department on completion of the period of deputation. As regards the fixation of pay, they have contended that in accordance with the terms and conditions of the deputation, the applicant had an option either to accept the scale of pay attached to the Divisional Accountant post or to certain percentage of his basic pay which he was drawing in his original pay scale in the parent department. The applicant having opted in the pay scale of Divisional Accountant, his pay was

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accordingly fixed and this in no way confers any right on the applicant to be absorbed on that post.

5. We have heard the learned counsel for both the parties and have gone through the records of the case carefully.

6. The learned counsel for the applicant strenuously argued that at no point of time, the applicant's appointment to the post of Divisional Accountant was made out to be on deputation and the very fact that after one ^{year} order, no fresh order was passed and he continued to serve with the department was proof enough of his having been permanently absorbed in the responding department, his lien having come to an end in the parent department. He argued that despite of this, the applicant would have had no objection to go back to his parent department provided his parent department was ready to accept his services and given him proper placement.

7. We have given our careful consideration to the contentions of the applicant and also the oral argument advanced by his learned counsel, in support of his contention that he cannot be reverted back to his parent department as his lien has been cancelled. He referred us to the

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decision of the Supreme Court in the case of Triveni Shanker Saxena Vs. State of U.P. 1992(1) SLR, 356. We have carefully gone through the decision of the Supreme Court in Triveni Shanker Saxena's case. We find that the Supreme Court very clearly held that a person can be ^{held} ~~stopped~~ to acquire a lien of a post only when he has been confirmed and made permanent on that post and not earlier. This case, therefore, ^{is} ~~has~~ clearly of no assistance to the applicant's case since it is not his claim that he has acquired a lien in the responding department on the post of Divisional Accountant. Even if he had made such a claim, the same would not be tenable since he has neither been confirmed nor made permanent on that post. The lien of an employee in his parent department gets extinguished only when he gets confirmed in another department in which he is working on deputation. Since he has not been confirmed on the post of Divisional Accountant, there is no question of his lien, if any, in the parent department, having been extinguished. On the other hand, the counsel for the respondents referred us the decision of the Supreme Court in the case of Rati Lal B. Soni and others Vs. State of Gujrat and others, 1990SCC(L&S)630. In this case the decision of the Supreme Court is that the appellant being on deputation ~~could~~ be reverted

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to their parent cadre at any time and they did not have any right to be absorbed on the deputation post. There is no doubt whatever that the applicant was on deputation in the responding department. His offer of appointment dated 5.3.1991 with the enclosure setting out the terms and conditions establish beyond any doubt whatever that the applicant's services were utilized on deputation for a limited period and this period could not have been extended beyond 3 years. The applicant, therefore, has no right whatever to continue as Divisional Accountant indefinitely or being absorbed on that post. On the contrary, the respondents have every right to revert him to his parent cadre at any time. The applicant had accepted these terms and conditions before accepting the offer of appointment appointing as Divisional Accountant. It does not, therefore, lie in his mouth to say that he has a right to continue permanently on that post. There might have been a technical lacuna in not ^{expanding} accepting his period of deputation beyond one year immediately after the initial one years period expired but such omission on the part of the respondents does not confer any right whatever on the applicant to be permanently absorbed in the borrowing department in contravention of the Recruitment Rules which which do not provide for such absorption.

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8. In view of the foregoing, we find
no merit in this case and the same is dismissed,
leaving the parties to bear their own costs.

J. M. M.
Member (J)

W. E.
Member (A)

Dated: 29 July, 1994
(n.u.)