

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD.

Allahabad This The 21st Day of July, 2000
Original Application no. 513 of 2000

CORAM:

Hon'ble Mr. S. Biswas, A.M.

R.C. Malik son of Sri B.D. Malik
Resident of D-2, N.A.P.P. Township,
Narora, District Balandshahr.

..... Applicant

(By Adv: Sri K. Murari)

VERSUS

1- The Union Of India, through Secretary
Department of Atomic Energy, Government of
India, Anu Shakti Bhavan, C.S.M. Marg,
Mumbai- 400 039

2- The Chairman and Managing Director,
Nuclear Power Corporation, 12th Floor, Vikram
Bhavan, Anu Shakti Nagar, Mumbai- 400 094.

3- The Deputy General Manager, H.R.D.
Nuclear Power Corporation, 4th Floor, Plot no.-6
Sector- II, Belapur Bhavan, C.V.D. Belapur,
Navi, Mumbai- 400 0614.

4- Station Director, Narora Power Atomic Power
Station, Narora, District Balandshahr.

..... Respondents

(By Adv: Sri C.S. Singh)

S. B. —

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O R D E R

(By Hon'ble S. Biswas, A.M.)

The applicant has sought the following reliefs:

i) Quashing of order dt. 20-4-2000 issued by the respondents no. 3 transferring the applicant from Narora Atomic Power Station to Headquarter, Nuclear Power Corporation of India Ltd.

ii) Direction to the respondents to permit the applicant to continue to work on the post of S.O.F. at Narora Atomic Power Station, Balandshahr till he is reverted back to his parent department i.e. the department of Nuclear energy.

2- The transfer order dt. 20-4-2000 has been challenged by the applicant stating that he was appointed on the basis of All India Competition to the department of Atomic Energy, Government Of India. He was posted on 15-8-71. In the year 1989, the applicant was transferred to Narora Atomic Power Station. In the year 1990, he was again transferred to Bombay. In the year 1993, he was transferred to Narora Atomic Power station again. In other words, he served in Narora for 6 years. After 1990 and in Bombay for 3 years ~~of~~ after 1993 and again posted back to Narora in 1993.

3- In the mean while, in 1987 w.e.f. 17th Sep. The Atomic Power Energy Department was converted into a Corporation and the same was named as Nuclear Power Corporation. At this time, he was posted ~~as~~ Narora.

4- The Atomic Energy Department sought option from the employees on deputation under memo dt. 24-12-97. The option was required to be exercised by 16-2-99. This was done with a view to permanently absorb them in the Nuclear Power Corporation of India or remain on deputation to the Corporation as may be the option. Alternatively, they may revert to the Department of Atomic Energy (statedly by enclosing memorandum dt. 24-12-97). The learned counsel for the applicant has not attached the clarification regarding how to exercise the option. The applicant has clarified that as per this clarification if one fails to give one's choice for either absorption, reversion or continuous for deputation, it should be deemed that he has opted in favour of ^{res}~~res~~ ^{re}reversion to the

Department of Atomic Energy. Since the clarificatory memorandum has not been attached, this remains only a presumption. This conclusion does not follow from the default automatically as the specific option for reversion is required to be exercised in writing.

5- From this, it becomes clear that the applicant did not exercise his option. The presumption has been adopted after defaulting to exercise the option.

6- Vide order dt. 20-4-2000, the applicant has been transferred from Narora to Bombay Headquarter office of the Corporation alongwith the post for administrative exigency. All admissible allowances have been granted to the applicant.

7- The learned counsel for the applicant further contends that in case no. M.C. Goel Vs. Union of India and others, similar issue has been decided in favour of the applicant.

8- In this case, the Allahabad Bench of C.A.T. has decided a similar transfer case where a corporation instead of reverting the applicant back to the parent department transferred him for Administrative Exigencies. It was held that the transfer of the petitioners by the Corporation after they opted for reverting back, was without any authority. The same was not sustainable. The Bench of the Hon' C.A.T., therefore, quashed and set aside the same.

9- The learned counsel for the respondents has submitted a short reply and both the counsels of the opposite sides want the case be disposed of at the admission stage. The contention of the respondents' counsel is briefly as follows:

i) The applicant has suppressed the facts that in pursuance of the order dt. 20th April, 2000, he was relieved on 4th May, 2000. In the background of the case, the respondents' counsel has submitted the background, aims and modalities leading to the setting up of the corporation:

(a) Under the Atomic Energy Act, 1962, the Central Government has been vested with the exclusive power to produce, develop, use and dispose off 'atomic energy'. In the year 1987, the provision of Atomic Energy, 1962 (hereinafter referred to as 'The Act')

were amended and enabling provisions were incorporation in the Act whereby the Central Government was empowered to produce, develop use and dispose of atomic energy, including the production and supply of electricity from atomic energy either by itself or through any authority or corporation established by it or by a Government company. Accordingly, in its wisdom the respondent No. 1 decided to set up Nuclear Power Corporation of India Limited company registered and incorporation under the companies Act, 1956 and wholly by the Central Government (respondent no. 1).

(b) That consequent upon the incorporation of NPCIL, all the officers and staff of the Nuclear Power Board (NPB) constituent unit of Department of Atomic Energy (DAE) i.e. respondent no. 1 were transferred on 'en masse deputation' to Nuclear Power Corporation (NPC) w.e.f. 17-9-87, vide DAE O.M. 8/3/(I) 86-PP III dt. Sep. 04, 1987. It was contemplated that on finalisation of the terms of service by the new corporation, all the employees so transferred on en masse deputation shall be given an option for permanent absorption in NPCIL.

10- The Corporation was set up in the year 1987 and the employees of the Nuclear Power Board with the construed department of the Atomic Energy under respondent no. 1 were transferred 'en masse' on deputation to the Nuclear Power Corporation. In doing so they ^{were} given necessary option for absorption by indicating the last date as per memo, cited by the applicant to the offer of absorption dt. 15th July, 1994. The deputationists were given a period of two months to exercise their option for absorption by 16th September, 1994.

11- All seven original applications were moved before Hon' Tribunal in different benches and all these applications were clubbed up and transferred to the Principal Bench, C.A.T. New Delhi and were dismissed by passing a common judgement. The same was challenged before Hon' Supreme Court. Hon' S.C. disposed of the same by extending the dt. for option finally. The time was given as second chance vide O.M. dt. 24th December, 1997. In accordance with the Hon' Supreme's directions, the last date for exercise of the option was 16th Feb. 1999. 95% of the deputationists exercised their option in favour of joining the

service of NPCIL as a corporation employee and those who did not exercise the option by this date, have been transferred by respondent no. 1 to different places of posting under the corporation.

12- It is clarified that 4 broader options were made available to the deputationists namely:

- i) To get themselves absorbed in the NPCIL employment.
- ii) To continue on permanent deputation.
- iii) To exercise option for reversion back to DAE/ surplus pool.

13- ^{clear} It is ~~treated~~ that the applicant has not exercised any of the options and consequently, the applicant's counsel has interpreted that his case ~~is~~ covered under rule that he should be reverted to DAE/ Surplus pool. The 'Borrowing Authority' was accordingly bound to revert deputationists to the parent deptt. and that the transfer is illegal ^{and} without authority.

14- I have heard both the sides and perused the projection, made by both the sides.

15- After constitution of the corporation, it is clear that adequate opportunity to the deputationists to say whether they would like to continue in the corporation ~~and~~ was ~~not~~ given. The applicant, obviously, did not exercise his option even within the extended period given by Hon' S.C. Therefore, they continues to be an employee of the corporation and hence the order of transfer made by the corporation, is maintainable. The applicant has not contested the transfer on any other ground except that he is a deputationist and not reverted to the parent organisation(AED). The facts show, he defaulted in exercising any option to go back to the parent department. This opportunity was extended by Hon' S.C. After having defaulted to exercise, the option, it does not follow that the applicant could concoct a fourth option for automatic reversion. The third ^{field} filled of option was specifically available to him to ask for reversion- which he failed to avail. The transfer and posting of the officers thus standing absorbed, is within the over all authority of the corporation.

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The case
/cited by him, is not relevant to the context.
factually and legally

16- The O.A. is dismissed as devoid of merits.

No order as to costs.

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A.M.

/Abhishek/