

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE ³⁰ DAY OF SEPTEMBER, 2004

Original Application No.927 of 2003

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.

HON.MR.D.R.TIWARI, MEMBER (A)

Smt.Alka Sharma, wife of
Shri Arvind Kumar Srivastava,
R/o C-4,Hathibarkala Estate,
Dehradun(Uttaranchal)

.. Applicant

(By Adv: Shri Arun Bhardwaj)

Versus

1. The Union of India,
Through the Secretary,
Department of Science&Technology,
Ministry of Science&Technology,
Govt. of India,
New Delhi.
2. The Surveyor General of India,
Surveyor General's Office,
Hathibarkala Estate,
Dehradun(Uttaranchal)

.. Respondents

(By Adv: shri Shyamal Narain)

O R D E R

JUSTICE S.R.SINGH,V.C.

The applicant, a member of the Indian Defence Accounts Service to which she was inducted in 1988 on the basis of Civil Services Examination conducted by the Union Public Service Commission in the year 1987, was recommended/approved by the Department of Personnel and Training, Ministry of Personnel, and Training, Ministry of Personnel, Public Grievances and Pensions, Govt. of India

as per Office Memorandum No.23/95-EO(MMOII) dated 5.11.1998 issued by the Director, Department of Personnel and Training for appointment to the Ex-cadre tenure post of Director(Admn&Finance), Surveyor General of India, Dehradun under the Department of Science&Technology at the level of Deputy Secretary for a period of 4 years from the date of taking over charge of the post or till further orders, which ever event was to take place earlier. The OM was addressed to the office of the Controller General of Defence Accounts(Shri Amar Chand, Jt.C.G.D.A(A.N) requiring that the applicant be relieved immediately to enable her to take up her new assignment. The Jt.C.G.D.A(A.N) by his letter dated 22.12.98 requested the CDA(R&D), New Delhi to relieve the applicant on 31.12.1998. The applicant was thereafter relieved on 31.12.1998(AN) and assumed the charge of Director(Admn&Finance) in the forenoon of 1.1.1999. Copy of the Office Memeorandum dated 5.11.1998 was endorsed also to the Ministry of Science and Technology,(Department of Science&Technology), the borrowing department of the applicant. The appointment notification dated 4.2.1999, however, came to be issued by the Ministry of Science & technology tthereby appointing the applicant to the post of Director(A&F) in Survey of India, Dehradun at the level of Deputy Secretary for a period of 4 years w.e.f. 1.1.1999 or till further orders which ever event was to take place earlier. Copy of the notification was forwarded to Surveyor General of India, with reference to his letter dated 5.1.1999 as also to the office of Controller General of Defenc e Accounts and the DOP&T with reference to their letter dated 5.11.1998.

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It appears that the Surveyor General of India by means of his letter No.E-1-8814/PF(Alka Sharma) dated 28.8.02 requested for extension of the period of deputation of the applicant by one year beyond the normal term of 4 years which expired on 31.12.02. By means of her letter dated 27.8.02 the applicant had expressed her willingness to continue on the post of Director(Admn&Finance) in the office of Surveyor General of India for further period of one year. The lending department namely, CGDA, New Delhi also gave its concurrence to the extension of deputation sought for. The term of deputation was then extended by one year beyond 31.12.02 vide letter dated 7.2.03. The extension of term of deputation was admittedly granted with the approval of the Minister of Science&Technology, Department of Science&Technology, Government of India. A copy of the letter dated 7.2.03 conveying the approval of the Competent Authority to the extension of the period of deputation by one year beyond 31.12.02 was forwarded to DOP&T and another copy to the Asstt.Controller General of Defence Accounts(Admn) with reference to their letter dated 11.10.02 conveying clearance for the extension of period of deputation of the applicant for one year beyond 31.12.02.

However, before expiration of the extended term of deputation, the applicant came to be repatriated to her parent department by means of impugned letter dated 7.8.03 whereby the Under Secretary to Government of India, Ministry of Science&Technology, Department of Science&Technology conveyed to the Surveyor General of India, Survey of India, Dehradun the approval of the 'Competent Authority' to revert the applicant from the post of Director(Admn&Finance), to her parent cadre with immediate effect. The letter dated 7.8.03 purports to have been

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issued with reference to letter No.C-5/SG's/DST dated 30.7.03 of Surveyor General of India, Survey of India, Dehradun for repatriation of the applicant to her parent cadre. Aggrieved the applicant has instituted the present Original Application for declaration that the order dated 7.8.03(AnnexureA-1) is null and void.

Challengeto the validity of repatriation is four fold: Firstly, since the applicant was appointed on deputation as Director(Admn&Finance) office of Surveyor General of India under the Ministry of Science & Technology with the approval of DOP&T, her repatriation sans approval by DOP&T was impermissible in law; secondly, the impugned order of repatriation has been passed in flagrant violation of rules regulating repatriation; thirdly, the impugned order read with letter No.C-5/SG's/DST dated 30.7.03 is stigmatic and, therefore, ought not to have been passed without affording opportunity of showing cause to the applicant; and fourthly, the impugned order suffers from the vice of malafides and is founded on a forged letter dated 30.7.03.

In Re:Ground No.1-Competence:

The applicant was appointed to the post of Director(Admn&Finance), Survey of India, Dehradun, by the Department of Science&Technology at the level of Deputy Secretary on deputation for a period of 4 years from the date of her taking charge of her post or till further orders which ever was to take place earlier. The period of deputation was extended by one year beyond 31.12.02 as per letter dated 7.2.03 by the Ministry of Science & Technology, Government of India with concurrence of the lending department. Approval of DOP&T was, however, concededly not obtained for premature repatriation. The

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question that arises for consideration is whether approval of DOP&T was necessary for premature repatriation of the applicant to her parent department. It has been submitted by the applicant and her counsel that since the applicant was appointed to the post of Director(Admn&Financ e), Survey of India, Department of Science&Technology with the approval of DOP&T, it was incumbent on the part of the respondent no.1 to have approached the Ministry of Personnel, Public Grievances&Pension, Department of Personnel&Training and obtained its approval for premature reversion of the applicant to her parent cadre(IDAS). The submission cannot be countenanced. Appointment was made by DST vide notification dated 4.2.1999 and, therefore, it was competent to order repatriation. Even otherwise power of reversion is deducible also from Para 8.3.of Government of India, Department of Personnel&Training, OM No.2/29/91-Estt(Pay-II), dated the 5th January,1994(Appendix-5 to FRSR Part-1 General Rules) which clearly empowers the borrowing Ministries/Departments/Organisations to extend the period of deputation for the fifth year, or the second year in excess of the period prescribed in the Recruitment Rules, where absolutely necessary, subject to the conditions enumerated therein and it was on the basis of this provision that the objection raised by the DOP&T vide letter dated 7.3.03 to the extension of the period of deputation in the instant case was explained away by the Department of Secience&Technology vide DO letter No.SM/01/025/98 dated 20th March,2003. We are of the view that ~~the~~ the authority empowered to extend the period of



deputation would be deemed to be vested with the power to repatriate the deputationist before expiration of the extended period of deputation. There was thus no dearth of power in the borrowing Ministry/Department to revert the applicant before expiry of the extended period of deputation. The applicant has herself placed reliance on the above OM dated 5.1.1994 in the context of her plea regarding the reversion being contrary to rules of repatriation as contained in paras 8.5. and 9 of the OM dated 5.1.1994. A view contrary to the view we are taking will nullify the extension of the period of deputation granted to the applicant beyond 31.12.02 and that will demolish the very foundation on which the applicant is challenging her repatriation.

It was contended that appointment was not made under the Survey of India, Director(Admn&Finance) Recruitment Rules, 1977 which rules have since been superseded by the Survey of India Director(Admn&Finance) Recruitment Rules, 2003 made in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, but under 'Central Staffing Scheme' the provision of which were not followed in repatriation. The Recruitment Rules visualised that appointment to the post in question would be made on deputation for a fixed term which term is extendable in the manner provided by law. The office of Survey of India is an office Subordinate to the Department of Science&Technology under the Ministry of Science&Technology. The post of Director(Admn&Finance) is a Non-Secretarial post for the selection and appointment of which, the procedure, according to the applicant, is prescribed under the 'Central Staffing Scheme' which applies to Secretarial posts of and rank of Under Secretary to the Govt.of India and certain important non Secretarial posts: The Central 'Staffing Scheme' circulated

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/Memo No.36/77/94-EO(SN-1) dated 5.1.1996 Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Ministry of Personnel & Training, New Delhi, according to the respondents, is inapplicable. The Scheme provides the functions of the Cabinet Committee of Appointment known as the ACC constituted under Rule 6(1) of the Government of India (Transaction of Business) Rules, 1961. It also provides for the Constitution of Civil Services Board and Central Establishment Board and their functions which include the duty to make recommendation for appointments to certain posts including non secretarial posts carrying pay scales given in the Scheme. The case of the applicant is that she was appointed to the post of Director (Admn & Finance), Survey of India under the Scheme aforesaid. Respondents on the other hand have come out with the plea that the appointment of the applicant on deputation was referable to Recruitment Rules and not to the Scheme. They have placed reliance on the letter dated May 15, 2003 of Shri S.K. Lohani, Dy. Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training specifically stating therein that the applicant's appointment to the post of Director (Admn & Finance), Survey of India was not made under the Central Staffing Scheme and was rather made under the Recruitment Rules. We, however, do not consider it necessary to dilate on the said issue for the reason that there is nothing in the OM dated 5.1.1996 i.e. the 'Central Staffing Scheme' which may run counter to the view we have taken on the power of the borrowing department to repatriate a deputationist to his/her parent cadre before expiry of the extended period of deputation. Under clause 17.11 of the OM, the Establishment Officer is empowered to order for premature reversion to the parent cadre of officers

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serving under the 'Central Staffing Scheme' only in two eventualities; first where the officer wants to avail the promotion in his parent cadre; and second, cases of compassionate/personal grounds where the officer has a balance tenure of six months or less left. In the later eventuality, the order of reversion is required to be passed by the Establishment Officer with the approval of the Cabinet Secretary. The present case however, does not come under any of the two eventualities visualised by paragraph 17.11 empowering the Establishment Officer i.e. DOP&T to order premature repatriation of a deputationist to his/her parent cadre. We, therefore, find no merit in the first ground of challenge to repatriation.

In re:violation of repatriation rules:

It has been submitted by and on behalf of the applicant that the impugned order of repatriation has been issued in violation of clauses 8.5. and 9 of DOP&T OM dated 5.1.1994 which are extracted below for ready reference.

8.5.

"When extension of period of deputation/foreign service for the first and the second year in excess of period prescribed in the Recruitment Rules is considered by the borrowing Organisation under powers delegated to them, the period for extension may be so decided upon so as to ensure that officer concerned is allowed to continue on deputation till the completion of academic year in cases where the officer has school/college going children. No proposal for further extension beyond the second year in excess of period prescribed in the Recruitment Rules shall be forwarded to this Department on the consideration that the Officer

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has school/college going children. Extension beyond this period will be considered only if it is strictly in public interest.

9. Premature reversion of deputationist to parent cadre:

"Normally, when an employee is appointed on deputation/foreign service, his services are placed at the disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving advance intimation of reasonable period to the lending Ministry/Dept. and the employee so concerned"

So far clause 8.5 of OM dated 5.1.1994 is concerned, suffice to say that it is to be taken into consideration at the stage of grant of extension of the period of deputation for it requires that the period of extension should be so decided upon as to ensure that officer concerned is allowed on deputation till the completion of academic year in case the officer concerned has school/college going children. This provision is for the guidance of the authority empowered to grant extension of the period of deputation and is no doubt intended to protect the interest of the school/college going children of the deputationist but it does not in any way restrict the exercise of power of premature repatriation if it is required in larger interest of administration. In case, therefore, repatriation of the applicant is not vitiated on any other ground, it will not be liable to be set aside merely because it was ordered in mid academic session likely to disrupt the study of the school going child of the applicant.

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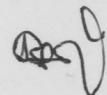
As regards clause 9 of the OM dated 5.1.94, it would be clear from the language employed therein that "normally" a deputationist is required to be placed at the disposal of his/her parent Ministry/Department at the end of the tenure. If, however, a situation arises, for premature reversion to the parent cadre, as provided in clause 9 of the OM dated 5.1.1994, repatriation may be ordered after giving advance intimation of reasonable period to the lending Ministry/Department and the officer concerned. This provision has been observed in its breach in the present case for advance intimation was given neither to the lending Ministry/Department nor to the applicant. Legal principle well settled is that where procedure is prescribed for doing a thing, the thing must be done in the manner prescribed or not at all.

The respondents counsel has, however, contended that the requirement of giving advance intimation of reasonable period to the lending Ministry/Department and the deputationist in case of premature reversion to the parent cadre, as contained in OM dated 5.1.94, is in the nature of guide line of a non-statutory and non-mandatory character and its breach would not invalidate ~~the~~ reversion to the parent cadre in that the deputationist does not have an indefeasible right to continue on deputation for the full term against the wishes of the borrowing department; and that its breach would not necessarily invalidate the order of reversion irrespective of administrative necessity warranting premature reversion. The executive power of the Union, as visualised by ART.73 of the Constitution, extends to the matters with respect to which Parliament has the power to make laws. Executive instructions traceable to Article 73 with respect to matters in List 1 of the 7th Schedule of the Constitution, shall have the force of law of binding efficacy to the extent they are not inconsistent

with any statutory rules.

Having framed the guide lines regulating exercise of discretionary power with respect to repatriation of deputationists, the respondents cannot be permitted, in a polity governed by rule of law, to say that they are not bound by these guide lines which are part of Fundamental Rules and Supplementary Rules (Appendix-5 of FRSR) Part I General Rules. The period of deputation initially fixed as per Recruitment Rules was extended for full one year beyond 31.12.02 and the applicant like any other reasonable person could legitimately expect that the extended period of deputation would last its full term. It is noteworthy that unlike the initial appointment, clause "or till further orders" was not added to the one year period of extension granted beyond 31.12.02. Instructions contained in the OM dated 5.1.94 being supplemental to the Recruitment Rules are binding as held in Union of India & Ors Vs Somasundaram Vishwanath & ors, (1989) 1 SCC 175. It may be observed that Recruitment Rules only provide that appointment shall be made on deputation from amongst the given category of officers besides prescribing the maximum period of deputation which under the superseded Rules, 1977 was four years while under the Recruitment Rules, 2003 it is five years. The Recruitment Rules are silent as to other conditions of deputation including premature repatriation which are regulated by the supplemental provisions contained in OM dated 5.1.94.

True, right to continue on deputation for the full term statutorily prescribed is not an absolute/indefeasible right and the word "Normally" with which clause 9 begins, by necessary implication, gives discretion to borrowing department to revert the deputationist to the parent cadre at any time. But it is equally true that in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms. Ordinarily, a bonafide exercise of discretion in this regard shall not be open to judicial review by the Tribunal. If, however, pre-mature reversion is tainted with malice or ill-will-factual or legal, or based on extraneous consideration,



premature reversion would be vitiated by error of law liable to be set aside by Courts/Tribunals vested with the power of judicial review. Every state action, it cannot be gain said, must conform to the requirement of Art.14 of the Constitution and, therefore, premature reversion from a tenure post sans legitimate justification having reasonable nexus with the object sought to be achieved by premature reversion, would be hit by Art.14 of the Constitution. In administrative/executive sphere, there is a general duty of fairness for every executive/administrative power is subject to implied qualification of good faith.

Legitimacy of justification for premature reversion, in the instant case, would depend on whether complaint made against the applicant by the Surveyor General in his letter dated 30.7.03 was bonafide and was not actuated by malice or ill-will. Formation of opinion as to legitimacy of justification was not a matter of pure judgment or opinion in the instant case for question whether the applicant was unworthy of retention for the full term due to reasons disclosed in the letter dated 30.7.03, could be decided objectively on consideration of material *prima facie* supporting the allegations made against her in the letter dated 30.7.03. We will examine this aspect of the matter while dealing with the third and fourth grounds.

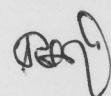
In re:ground No.3:

The third ground of challenge is that the letter dated 30th July, 2002(Annexure CA-1) referred to in the impugned order was the basis of premature reversion of the applicant and since the contents of the letter are stigmatic, the impugned order of premature reversion cannot but partake the character of a punitive and stigmatic order liable to be quashed. The letter, it is alleged, is in the nature of a complaint in that it contains certain accusations against the applicant and, therefore, reversion order based on the letter dated 30.7.02 is bound to derive its colour and texture from the said



letter. The letter dated 30.7.02, it is alleged, "suffers from a numerous infirmities which create doubts in the mind of a reasonable person as to whether this letter produced in the court is the same which was actually written on 30th July,03 by the Surveyor General sitting in his Dehradun office". The alleged infirmities are cited in clauses (a) to (e) of sub para (i) of para 6 of the rejoinder affidavit.

For the respondents it has been contended that the letter dated 30.7.03 written by the Surveyor General of India as Head of the Organisation to the Secretary,Department of Science & Technology is an internal correspondence based on earlier meetings, discussions and confabulations held between the Secretary,Department of Science&Technology; the Surveyor General of India; and the applicant. The contents of the letter, it has been submitted by the learned counsel, could not be read as forming part of the impugned order of repatriation dated 7.8.03 and in no case it can be construed as ~~imparting~~ colour of stigma to the impugned order. Relying upon the decision of Hon'ble Supreme Court in the case of Union of India Vs.Sri Janardan Debnath and another (AIR 2004 SC 1632), the learned counsel for the respondents has contended that whether an order is stigmatic or not would depend upon the consequences flowing from the order i.e. whether it affects any service conditions of the person concerned. In the instant case, it has been submitted by the learned counsel that there is nothing in the order which can amount to stigma, much less, a stigma affecting the service conditions of the applicant. Since the said order neither visits the applicant with any penalty, nor affects any of her service conditions to her prejudice, the same cannot, ^{be} ~~be~~ proceeds the submission, ^{be} held to be stigmatic and punitive and hence the respondents were not under any obligation to grant any prior opportunity of hearing to the applicant.



With a view to appreciating the question under consideration, it would be apt and proper to refer to the contents of the letter dated 30.7.03. In the letter dated 30.7.03, the Surveyor General of India has tried to impress upon the Secretary, Department of Science & Technology, Government of India about the problems being faced by his office due to "un co-operative and hostile attitude of the applicant; about the fact that the situation has deteriorated to the extent that there is a complete break down of communications, a continuous attempt at stalling critical modernization measures, a complete vitiation of the work environment and an attempt at spreading mistrust and suspicion about decisions taken at my level including decisions on purely technical and professional matters". It is further alleged in the letter that taking cognizance of a complaint made by Major General B.C.Roy against the promotions effected in Survey of India Group 'A' service, the applicant, as Vigilance Officer, "has tried to make a vigilance case out of it which is neither supported by facts nor does it fall in the category of vigilance case by any stretch of imagination". Apart from this, it is further alleged in the letter that "there has been numerous instances where she has deliberately flouted orders given by me and showed utter contempt for the normal office procedure to be followed for going on tour or taking leave". The applicant has been accused of going to Delhi on official trips without prior approval and of proceeding on leave without any intimation or application. The applicant has also been accused of stalling purely technical and professional" decisions taken at the level of Surveyor General of India and of harassing officers specially the Procurement Board Members" by opening "closed vigilance cases against them without any basis or without the approval of the Contempt Authority".

We have perused the original letter dated 30.7.03 which was received in the office of Secretary, Department of Science and

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Technology. It would be an exercise in futility to go into the question about the genuineness of the letter merely because it appears to have been written on a piece of paper which appears to be a photostat copy of the Surveyor General's letter head in that action ~~was~~ was taken by the Ministry on the basis of the said letter. It would be of no consequence even if it be presumed that it was written not on the original letter head but on the photostat copy of the Surveyor General's letter head.

However, the contents of the letter do reflect on applicant's style of functioning and put a question mark on her faithful devotion to duty and since the letter was made the basis of premature reversion to the parent cadre, the order dated 7.8.03 is bound to derive its colour and texture from the letter dated 30.7.03 which is specifically referred to in the impugned order of reversion to the parent cadre. In Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and Ors, JT 1999(1) S.C. 396 it has been held that:

"The material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its Annexures or in proceedings referred to in the order of termination and in such a case the order of termination would stand vitiated on the ground that no regular inquiry was conducted".

In Debesh Sharma Vs. Union of India, AIR 1970 S.C.77, the petitioner therein, a State Cadre officer of Indian Administrative Service promoted to a tenure post under Govt. of India, was reverted to state service before expiry of tenure period on the ground of "unsatisfactory performance". Reversion, it was held by the Apex court, amounted to reduction in rank with the stigma upon work without following the procedure laid down in Art. 311(2) of the Constitution.

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In Indra Pal Gupta Vs.Managing Committee 1984(3)SCC 384, the order of termination of probation was passed with reference o a resolution of the Managing Committee and subsequent approval by the District Inspector of Schools,Bullandshahar. Resolution of the Managing Committee referred to in the order of termination stated that the report of the Manager was read at the meeting and that the facts contained in the report of the manager being serious and not in the interest of the institute,therefore,the Committee unanimously resolved to terminate the probation. The report of the Manager was not extracted in the enclosure to the termination order but was extracted in the counter filed in the case. Hon'ble Supreme Court speaking through Venkata Ramaiah,J(as he then was), held that the Manager's report contained words amounting to stigma and the order of termination issued was merely a camouflage of an order imposing penalty of removal from service on the ground of misconduct in that the findings in the Manager's report amounted to a 'mark of disgrace or infamy' and that the appellant therein was visited with evil consequences. The Apex court has explained, in Kamal Kishore Lakshman Vs.M/s Pan AmericanWorld Air-ways, JT 1986 SC 946, as to what amounts of stigma as under:

"According to Webster's New World Dictionary,it (stigma) is something that detracts from the character or reputation of a person, a mark, sign etc.,indicating that something is not considered normal or standard. The Legal Thesaurus by Burton gives the meaning of the word to be ~~t~~ blemish, defect, disgrace,disrepute imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning as a mark of label indicating a deviation from a norm. According to yet another dictionary 'stigma' is a matter for formal approach".

The order of reversion impugned herein appears to be merely a camouflage for an order of penalty of premature reversion on the grounds of alleged misconduct of being un-co-operative and hostile etc. The order being stigmatic in nature would have been quashed but for the reason that the period of extension of deputation has stood expired on 31.12.03 by efflux of time and it would be an exercise in futility to quash the order. In that the applicant cannot seek enforcement of the right of being placed in the position of Director(Admn&Finance) Survey of India by a mandamus but, as held in A.P.State Fed.of Coop. Spinning Mills Ltd.&Anr Vs.P.V.Swaminathan, JT2001(3)SC

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530, the applicant would be entitled to all her benefits flowing from the term of the order extending her period of deputation till 31.12.03 or until she joined her parent cadre after the interim order passed by the Tribunal came to be vacated by the High Court which ever event happened earlier.

In re:ground No.4:

The 4th ground of challenge is that the impugned order of repatriation suffers from the vice of malafide. It is alleged in the OA that the applicant was appointed as Vigilance officer of Survey of India vide DST 31013/03/92-DIG/Vig.dated 19.5.99 and 2.8.99 for a period of 2 years before she left for U.K. for foreign training and again vide DST 31013/03/92-DIG/vig.dated 2.12.02 for a period of 2 years or till the end of her term as Director(Admn&Finance), which ever ^{event} had to happen earlier. It is alleged that while the applicant was away on long term foreign training, the finance and administration work being performed by the applicant was assigned to Lt.Col.Girish Kumar, the then Asstt.Surveyor General and Vigilance related work was assigned to Shri S.P.Goel, the then Deputy Director, Surveyor General's office. It is alleged that from February to March 03 the applicant was being severly pressurised to agree to huge purchase of software/hardware without establishing the requirement and without going through tender process. It is further alleged in the OA that the Surveyor General of India desired to detain huge funds under planned scheme(Capital) till the end of Financial year 03 but the applicant did not agree to either of these actions being not in the financial interest of the Government and due to this reason the Surveyor General of India, started harassing the applicant and demonstrating his hostility towards her. It is further alleged that the Secretary, Department of Science&Technology was also informed by the applicant about

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disregard by the Surveyor General of India of financial propriety. The applicant, it is further alleged did not agree with the extent of the financial powers being exercised by the Surveyor General of India under Non-plan budget that were well beyond the limits prescribed for a Head of department particularly, with reference to the huge amounts(approximately 15 crores) expended and committed on the Great Arc celebrations within India and U.K. and with this act the applicant incurred the wrath of the department of Science&Technology as all decisions pertaining to the vendor driven 'activities' and 'vendors' for the conduct of the 'celebrations' in India and U.K. were taken in meetings held at the Department of Science&Technology,Technology Bhawan, New Delhi against all financial norms. It is further, alleged that in April 03 the applicant received a complaint from the Central Pay and Accounts Officer that a supply order had been placed and payment released directly to a private firm without a tender enquiry after obtaining a letter from Kendriya Bhandar,Mussoorie which appeared to be highly irregular. After discussing the matter with Central Pay&Accounts Officer, the applicant, it is alleged, issued orders to put an end to this highly irregular practice and simultaneously began investigations with a view to unveiling what appeared to be 'a conspiracy between private firm,Kendriya Bhandar Mussoorie, and Surveyor General's office involving purchases and payments of lakhs of rupees during the last 2 years'. It is further alleged that on May,03 the applicant received a vigilance complaint against the Surveyor General's office pertaining to 'Securing Military Ranks of Colonels/Brigadiers based on false information and as Vigilance Officer of Survey of India, the applicant began a discreet inquiry/investigation but verbal orders were issued to all sections of Surveyor

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General's office by brig.Girish Kumar,Deputy Surveyor General who was holding the charge of Addl.Surveyor General not to supply any documents/files to the applicant without taking his written permission. It is alleged that even routine informations were stopped from being supplied to the applicant and subordinate staff were threatened with dire consequences if any information were supplied on the demand of the applicant.

The applicant, it is alleged, finalised her report on the complaint in re.Securing Military Ranks of Colonels/Brigadiers based on false information. The reports dated 26.6.03 and 10.7.03 were submitted to the Chief Vigilance Officer,Department of Science&Technology. The report concluded that not only obtaining higher ranks was irregular but that the Departmental Promotion Committee held were also not in order as they were not in conformity with the existing Recruitment Rules for Survey of India Group'A'officers. The report directly indicted xxxxx Brig.Girish Kumar for his role in this irregular act with a view to obtaining pecuniary benefits for self besides implicating Surveyor General of India and other Senior Officers of DST.Shri S.P.Goel, the then Dy.Director of Surveyor General's office who was appointed as Vigilance officer while the applicant was abroad on training, was, according to the report one of the beneficiaries of the irregular Departmental Promotion. It is on the above allegations that the applicant has tried to build up a case of malafide.

The respondents in the counter filed by Shri Ram Prakash Deputy Surveyor General of India, Surveyor General's office, Dehradun has stated that the applicant who was on deputation to the Survey of India, was further deputed to pursue an MBA Programme in U.K. and for that reason she was released of her duty from Survey of India on

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21.9.01 and her duties were distributed among other officers of Survey of India. However, after completion of MBA course the applicant resumed her duty in Survey of India on 1.10.02 and she expressed her willingness for extension of her period of deputation from one year beyond 31.12.02. The period of deputation, it is conceded in the counter was extended by the Ministry of Science&Technology vide letter dated 7.2.03 for a period of one year beyond 31.12.02. Thereafter, it is alleged in para 9 of the counter, the actions of the applicant as Director(Admn&Finance) and as Vigilance Officer were increasingly found not conducive to the positive growth of the Survey of India and that instead of assisting the Head of the Department, she began questioning almost all officers, some of even not under her perview and gradually her functioning became more and more 'autocratic and undemocratic'. By her intemperate actions, the applicant was often found trying to embarrass the staff officers/Surveyor General of India and generally creating an atmosphere of hindrance and intimidation through her office as Vigilance officer and ultimately finding that things were getting unmanageable and administratively dysfunctional owing to the applicant's highly individualistic style of functioning, the respondent no.2 was constrained to write to the Secretary, Department of Science&Technology, asking for the applicant's repatriation vide letter daed 30.7.03. Repatriation order ,it is alleged, in the counter has been passed bonafide, in administrative and public interest and it is neither stigmatic nor punitive in nature. It has been submitted by the learned counsel representing the respondents that the plea of malafide ought to be taken into consideration due to the reason that the concerned authorities have not been impleaded in the OA by name.

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In State of Punjab Vs. Ramji Lal, AIR 1971 SC 1228, it has been held that it is not necessary that the allegations construing malafide must be made against named official. However, by preponderance of judicial decision is that so far as factual malafides are concerned, the same cannot be examined unless the officers against whom the malafide is alleged are impleaded eo-nominee parties to the original Application. However, malice in law as distinguished from malice in fact may be examined even if the concerned authorities are not impleaded eo-nominee. "It is extremely rare for public authorities to be found guilty of intentional dishonesty: normally they are found to have erred, if at all, by ignorance or misunderstanding. Yet the courts constantly accuse them of bad faith merely because they have acted unreasonably or on improper grounds. Again and again it is laid down that powers must be exercised reasonably and in good faith. But in this context 'in good faith' means merely 'for legitimate reasons'".[✓]
HWR Wade observed herein above, the legitimacy of justification for premature reversion would depend on whether complaint made against the applicant by the Surveyor General of India in his letter dated 30.7.03 was bonafide or it was actuated by malice or ill-will.

We are of the view that the applicant cannot be blamed for bonafide exercise of her powers as Director(Admn&Finance) and Vigilance Officer of Office of Surveyor General of India. She has been vindicated in respect of objections raised by her in the matter of Great Arc celebrations and award of contracts without inviting tenders etc., as per interim report of the Comptroller & Auditor General(CAG) who has indicted the Department of Science & Technology and the Surveyor General of India for almost all the projects taken up as part of the

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bicentenary celebrations, right from the inaugural function. A staggering Rs 23 crore is reported to have been spent by the Survey of India and Department of Science&Technology on the celebrations without a sanction under the non-plan expenditure. According to the CAG's interim report, a Noida-based NGO-centre for Spatial Database Management and Solutions submitted a proposal for organising the inaugural function at a cost of Rs 30 lakh, including Rs 5 lakh as institutional fee. Various financial irregularities are pointed out in CAG's report as is evident from the 'People's Paper' Top Secret Saturday, July 24th, 04 according to which the Surveyor General of India and Department of Science&Technology have been indicted for various financial lapses. If the report of the CAG in this regard is anything to go by one can reasonably say that premature termination of the applicant's tenure appointment was not for any authorised purpose nor was it ~~based~~ ^{based} on just cause or excuse. The Surveyor General had moved for premature termination of deputation sans just and reasonable cause or excuse and the Department of Science&Technology knew it well, yet it proceeded ^{to} exercise its discretionary power of premature reversion. That being so, premature repatriation in the instant case was a fraud on power being a case of a misuse of power in breach of law as per Express New Papers Pvt.Ltd Vs.Union of India, AIR 1986 SC 872 pr 118 besides being an order suffering from the vice of legal malafide as distinguished from 'malice in fact' i.e. an act committed due to personal spite, corrupt motive or malicious intention.

It is true, as held in 'State of Haryana Vs. Rajendra, TIR 1972 Supreme Court 1004 at page 1016, that various allegation, treated separately may not lead to an inference of malafides but when all the allegations taken together are found to be established, then the inference to be drawn from those established facts may lead to the conclusion that an order has been passed malafide out of malice. The legal principle well settled is that malice in law may be assumed from doing a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause. In other words, exercise of discretionary power for an 'unauthorised purpose' suffers from the vice ~~of~~ malice in law, in that malice, in its legal sense, means "malice such as may be assumed from doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause" - See S.R. Venkataraman Vs. Union of India & Anr., AIR 1979 Supreme Court-49. Viscount Haldane, in Shearer Vs Shields, (1914) AC 808 has described malice in law as follows:

"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently".

In Dr. Bhagat Singh Vs. The Chancellor Punjab University, Chandigarh & Ors, 1981 LAB. IC 1057 premature reversion from the tenure ~~post~~ of Vice Chancellor was held to be punitive in the fact situation of that case. We are of the view that premature reversion of the applicant from

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a tenure post in the fact situation of the case suffers from the vice of malice in law and if the report of the CAG is to be believed, it defeats the public interest more than it subserves the cause thereof.

In view of the conclusions ^{or} and grounds 3 and 4, the Original Application is allowed. The applicant is held entitled to all benefits including salary and other emoluments flowing from the terms of deputation till 31.12.03 or until she joined her parent cadre after the interim order passed by the Tribunal came to be vacated by the Hon'ble High court, which ever event happened earlier. The respondents are directed to take such follow up action as may be deemed necessary to implement this order within two months. Parties shall bear their own costs.

Dhan
MEMBER(A)

Ran
VICE CHAIRMAN

Dated: Sept. 30, 04

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