

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 276 of 1993
~~TAXNO:~~

DATE OF DECISION 19th May, 1993.

Shri S.C.John Petitioner

Party in Person. Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.R. Kolhatkar : Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Shri S.C.John,
C/o.Suhasini John,
47/1 Sector- 21,
GANDHINAGAR.

...Applicant.

(Party in Person)

Versus

1. Union of India,
through
Secretary,
Ministry of Personal
Public Grievance & Pension
Department of Personnel &
Training,
North Block,
New Delhi.
2. The Chairman,
Central Administrative Tribunal,
Principal Bench,
Faridkot House,
New Delhi.
3. The Deputy Registrar,
Central Administrative Tribunal,
Ahmedabad Bench,
B.D.Patel House,
Naranpura ,
Ahmedabad - 14.
4. The Chief Post Master General,
Gujarat Circle,
Khanpur,
Ahmedabad - 1.
5. The Vice Chairman,
Central Administrative Tribunal,
B.D.Patel House,
Naranpura,
Ahmedabad - 14.

...Respondents.

ORAL JUDGMENT
O.A.NO. 276 OF 1993.

Dated : 19th May, '93

Per : Hon'ble Mr.M.R.Kolhatkar : Member (A)

This application which has been made by
Shri S.C.John, Judicial Assistant in Central Administrative
Tribunal, Ahmedabad Bench, in connection with his
repatriation to his parent department, after
completion of three years' deputation, seeks the

following reliefs :

"(i) Your Lordship be pleased to quash and set aside the orders of the repatriation dated 16.4.1993, issued by respondent 3 which is enclosed and marked as Annexure-A to this application.

(ii) Your Lordship be pleased to quash and set aside the order in form of a letter dated 16.4.93 issued by the respondent no.3 which is marked and enclosed as annexure-A-1 to this application.

(iii) Your ~~leave~~ Lordship be pleased to set aside an order dt.7.5.92 issued by respondent no.3 which is marked and enclosed as Annexure-A-5.

(iv) Your Lordship be pleased to grant any other relief as deemed proper.

(v) Your Lordship be pleased to award the cost of this application."

He further seeks the following interim reliefs.

(i) The respondent no.3 be directed to grant me leave applied for by the applicant.

(ii) The respondents be directed to pass a speaking order on the representation dated 22.4.93, (Annexure-A-4) made by the applicant and communicate to him.

(iii) The respondent no.3 be directed to keep his orders dt.16.4.93, Annexure-A in abeyance and the applicant be permitted to join and work at the CAT Ahmedabad on expiry of his leave till the representation made by the applicant Annexure-A-3 is disposed of by a speaking order of the competent authority.

(iv) The respondent no.3 be directed and be restrained from relieving the applicant from CAT during the IVth year term atleast for 15 days from the date of communicating him the outcome in form of speaking order of his representation, if the decision on representation goes against the applicant.

2. The applicant who has been repatriated with effect from 19.4.1993, and who is at present on post - Deputation leave ^{was} to be heard originally on 24th May, 1993. But at the specific request of the applicant, the hearing was advanced to 19th May, 1993. Although, Annexure-A/5 refer to his request, *inter alia*, for leave as not accepted it was brought to the Tribunal's notice during hearing that by the order dated 10.5.1993, now marked as Annexure-A-6 and received by the applicant on 18.5.1993, commuted leave for 15 days followed by earned leave for 20 days ending 20.5.1993 as a special case has been sanctioned to him. Although, the applicant has sought several reliefs, they may be broadly categorised into two namely, that the order dated 16.4.1993 Annexure-A, repatriating the applicant to the parent department w.e.f. 19.4.1993 may be quashed and secondly, the applicant may be given leave upto 31.5.1993, as per his leave application today produced ^{in the} ~~in the~~ court and marked Annexure-A/7.

3. The applicant, on receipt of the repatriation order made a representation to Vice Chairman on 22.4.1993, entitled "Premature termination of deputation without regularisation of leave", kept at Annexure-A/4, to which Annexure-A /5, dated 07.05.1993, not accepting his request is a reply. It is also a subsidiary relief claimed by the applicant that Respondent no.5 may be directed to pass a speaking order with ~~reference~~ to the representation dated 22.4.1993.

4. It is not in dispute that the applicant's case is covered by statutory orders of the Department of Personnel and Training O.M. NO./2/12/87-Est. (Pay-II), dated the 29th April, 1988, on the subject of "Transfer of Central Government employees on deputation to ex-cadre posts under Central Government", vide pages 421 to 428 of Swamy's Compilation of F.R.S.R. Part-I, (eleventh edition-1992).

also
It is not in dispute that the applicant had completed three years of deputation on 17.4.1993. The rule applicable in this case of completion of three years of deputation is Rule-no.8 of which para-8.1. and 8.2. are relevant which are reproduced below :

"

8.1. The period of deputation shall be subject to a maximum of three years in all cases except for those posts where a longer period of tenure is prescribed in the Recruitment Rules.

8.2. The Administrative Ministries may grant extension beyond this limit up to one year, after obtaining orders of their Secretary, in cases where such extension is considered necessary in public interest.

5. The contention of the applicant in regard to para 8.2. is that whether the Recruitment Rules applying to him prescribe a longer period of tenure, is not known to him since they were not made available to him inspite of an application made by him in this regard. Since the applicant has not made any positive averment about a longer prescribed period of tenure, the maximum period has to be taken necessarily as three years. So far ^{as} para-8.2. is concerned

the applicant places reliance on Annexure-A/2, which is a memo dated 24th November, 1992, issued by the Registry of Ahmedabad Bench of Central Administrative Tribunal, which states as below :

"He is requested to submit his option in writing within seven days whether he is willing to be on deputation for one more year i.e. for the 4th year or he wants to go back to his parent department after completing his 3rd year in this office."

The applicant states that in reply to this memo he has sent Annexure-A/3, dated 14.12.1992, admittedly not within seven days, by which he exercised his option with willingness to be on deputation for one more year i.e., 4th year. According to the applicant, in the circumstances, it is beyond doubt that the case was contemplated for extension of 4th year term in public interest, for approval of the concerned Ministry/Department. If his option was not to be considered and it was intended to repatriate him, contrary to the expectation raised the action of asking the option is the action should have been taken well in advance giving an opportunity to the applicant to represent to higher authority. Instead, order dated 16.4.1993, repatriating him were issued which are patently illegal.

6. The applicant states that if a speaking order was passed on his subsequent representation dated 22.4.1993, many of the issues which he had raised with in the representation

would have been clarified. In particular, in para-6 of his representation, he has alleged that his repatriation to the parent department was ordered by Respondent no.3, (Deputy Registrar) as he was prejudiced against him, for the reasons mentioned in para-6 of the representation. According to him the letter dated 16.4.1993, was clearly issued mala fide because it was issued late in the evening almost after office hours and got delivered through a clerk (U.D.C.) of the office at about 20 hrs in the night at the residence ^{officers of} of one of the L applicant's parent department.

7. In the representation, the applicant had also pointed out vide para-5.6. that leave upto two months is to be granted by the borrowing department even on expiry of the term of deputation and these statutory and mandatory orders had been violated by the respondent no.3.

8. The orders of the department of Personnel and Training quoted above are admittedly mandatory. Before issuing notice to respondents, the applicant was, therefore, asked to cite any authority for the proposition that an officer on deputation who has completed three years ~~of~~ service has a right to be retained on his giving willingness to continue in the department for the fourth year. The applicant was however, not able to show any such authority. On the other hand, there are numerous and cogent authorities to the contrary. Some of the well known rulings of the Supreme Court are briefly referred to below : -

(i) In State of M.P. and Ors. V. Ashok Deshmukh and Another - A.I.R. 1988 SC 1240 the Supreme Court held that in case of repatriation to parent department by Administrative Order made in the exigencies of administration and if no material placed to support the allegation of bias and ^{is} mala fide, the court cannot quash such administrative order unless bias is proved.

(ii) In Rati Lal B. Soni and Ors. vs. State of Gujarat and Ors. AIR 1990 SC 1132, it was held that Government Servant on deputation can be reverted to his parent cadre at any time and he gets no right to be absorbed on deputation post.

(iii) In Shambhu Nath Lal Srivastava Vs. State of U.P. and Ors. 1984 (2) SLR 34 (All.), it was held that although maximum period of Deputation ^{may be for} three years, still the borrowing authority can terminate that deputation at any earlier point of time.

(iv) In Mrs. G.I. Singh vs. Union of India and Ors., and Gurdev Singh vs. Union of India and Ors. and Om Parkash Kaushal vs. Union of India and Others, 1989 (5) SLR 748, (C.A.T., Chandigarh), it was held that, a deputationist has no right to the deputation post and can be repatriated at any time.

9. In the face of these authorities, it is difficult to hold that the Applicant has a *prima facie* case so far as his repatriation to his parent department is concerned, unless bias is proved.

10. So far as the contention of *mala fides* is concerned, the same are alleged against respondent no.3, namely, Deputy Registrar. It is also the contention of the applicant that the decision of repatriation ought to have been taken by the Hon'ble Vice Chairman, i.e. Respondent no.5, but the same has been illegally taken by the Deputy Registrar i.e. Respondent no.3. In this connection he has pointed out that the order dated 10.5.1993, Annexure-X/6, which is the order of sanction of leave upto 20th of May, 1993, has specifically mentioned that "this issue has an approval by the Hon'ble Vice Chairman," he therefore, infers that wherever such **remark** is absent, the order is deemed to have made by the authority signing the order, i.e. Deputy Registrar. The presumption and inference by the applicant is against the normal administrative procedure. It is well known that by virtue of provisions relating to **authentication** of Govt. orders, office orders are issued by the Desk Officers in the Government of India. Absence of recital does not mean that the decision in-corporated in the office order is made by the Desk Officers. All Govt. orders are taken ~~to be~~ to have been issued in the normal course with the approval of the competent authority, unless there is positive proof and not merely inferences and presumptions to show that the competent authority had not

approved those orders. The above quoted Rules (8.2) themselves make it clear that extension of deputation beyond three years is required to be approved by Secretary of the Administrative Ministry. It follows that the decision regarding not approaching Administrative Ministry and terminate deputation would be taken with the approval of Hon'ble Vice Chairman, who is the head of the office of the Ahmedabad Bench, of C.A.T. This is also clear from the fact that the Annexure A-2 regarding option is signed by Section Officer who could not have taken a view in such a matter and Annexure A-5 which is a letter dated 7-5-1993 to the representation dated 22-4-1993, talks of the Deputy Registrar being "directed to inform, etc., " Therefore, taking an over all view of the rules and perusal of the Annexure filed by the applicant with the application and taking account of normal administrative procedure it is evident that the orders though signed by the Deputy Registrar have in fact the approval of the competent authority.

11. There is no allegation in the application that the competent authority namely, the Vice Chairman of the C.A.T., respondent no.5 is prejudiced against the applicant or has displayed any malafide. Since the allegation of bias has been made against Deputy ~~xx~~ Registrar who undoubtedly deals with the case officially, the matter may as well be disposed of. There is no material to support the alleged bias. However, the applicant states that he had occasion to write against respondent no.3 in connection with what he alleged were irregular appointments, that he had emphasised the need to follow the practice of visiting Principal Bench every year for betterment of the

Bench and that Respondent no.3, is alleged to have shown undue favour to an officer junior to the applicant vide para 6-11 of the application. These are ~~xxxx~~ mere allegations from which an inference of bias is drawn which is shown to be demonstrated in the repatriation order of the applicant allegedly issued by Respondent no.3 on his own authority. Thus, the applicant bases his allegations of bias on unsupported statements and inferences drawn therefrom without any cogent material. The SC in the case of State of M.P. Vs. Ashok Deshmukh earlier referred to made the following observations on this point.

" The High Court overlooked that the allegations of bias and mala fides are easily made but when it comes to the question of proof of such allegations very often there will be no material in support of them. This is one such case. If mere existence of some allegations against any officer which on inquiry had been found to be untrue is to be treated as the basis for quashing any order of transfer or repatriation made in respect of any officer then almost every such order of transfer or repatriation would have to be quashed because there would ^{always} be some complainant by some party or other against every officer. Unless the Court is sure that the impugned order is really based upon such allegation it should not proceed to quash administrative orders which are made in the exigencies of the administration."

12. What the say of the applicant amounts to is that considering several circumstances enumerated by him in the application, his extension in service for the fourth year is considered by the applicant himself to be in public interest. These circumstances are :

(i) Several Staff members had been taken on deputation in the past for five years.

(ii) Respondent no.3, had personally requested him to agree to remain on deputation for the ~~third~~ year.

(iii) There is shortage of staff.

(iv) His willingness was asked for.

(v) According to the applicant, he is hard working, devoted to duty, sincere, and has ^{an} ~~above~~ average C.R.

(vi) He did not apply for new posts in his own department since he was almost certain that he will be continued for the fourth year.

Therefore, the applicant has prayed that the Tribunal may quash the order of repatriation.

13. As the rules, make it clear, however, the decision as to whether extension beyond three years is in public interest or not is an administrative decision to be taken by the Secretary of the Administrative Ministry, undoubtedly on the recommendation of the Hon'ble Vice Chairman. The maximum period of deputation is three years and repatriation thereafter is the rule, and extension is an exception needing special justification and approval of higher authority. If competent authority has held the view that ^{the} ~~normal~~ rule should be followed, and repatriated the applicant and if the competent authority is not shown to have acted under bias, this Tribunal can not intervene.

14. The subsidiary request of the applicant is that a speaking order should have been issued in response of his representation dated 22-4-1993, Annexure A-4. This has been carefully considered. First of all, the title of the said representation viz., "Premature termination", is not factual. If applicant was repatriated prior to three years, it would be a case of premature termination, not otherwise. Secondly, although it is called an appeal, since the original order is that of respondent no.5, and not respondent no.3, as shown above, it is really a request for review. No doubt, the reply of this representation dated 7-5-1993, lumps together the twin requests of the applicant : one relating to extension and the other relating to leave and states that they have not been accepted. The reply can therefore, be said to be laconic, but it is clear enough indicating that both the requests have been negatived. As far the need for a speaking order, there is nothing in the rules to show that the repatriation after three years deputation is a punishment. As stated above, repatriation after three years is a normal incident of the administration and extension beyond three years is an exception rather than the rule. It cannot, therefore, be said that by his repatriation, the applicant was visited with any adverse consequences needing defence for which a speaking order is necessary. The order dated 7-5-1993, is serviceable as a communication intimating that the request s of the applicant have been considered and have not been accepted. The letter could have been improved upon, but for that reason cannot be termed to be illegal.

15. The request of the applicant therefore, for

15. quashing the order relating to repatriation to parent department and for quashing the reply to representation is neither supported by the rules nor by any SC judgement having binding force nor by normal administrative procedure. Nor is basis established. The request of the applicant therefore in this regard is required to be rejected.

16. I, therefore, come to the third request of the applicant namely that relating to sanction of leave. The applicant concedes that the request has since been partly met, what he wants is that his request for leave upto 31st May 1993 should be considered. In his original representation dated 22-4-1993, the applicant referred to rule no. 10, of the Deputation Rules quoted at page 427 of Muthuswamy's Compilation of F.R.S.R. The applicant however, specifically stated that he does not require leave upto 17-6-1993, i.e. two months from the date of termination of deputation but requires leave only upto 31st May 1993, for which he has applied vide Annexure A-7. The applicant's prayer that the orders relating to leave issued by the respondents are not legal and they need to be modified is supported by Rules and is reasonable in the circumstances.

17. This Tribunal therefore, passes the following order :

ORDER

The application is substantially dismissed.

The application of the applicant so far as it relates to cancellation of the order of repatriation to his parent department from 19.4.1993, and also far a speaking order in response to his representation dated 22.4.1993, and in replacement of present order dated 7.5.1993, is rejected. So far as the request of the applicant for sanction of leave up to 31st May, 1993, is concerned the same is within the frame work of rules and therefore, respondent~~s~~ no.5 is directed to consider his request sympathetically and pass appropriate orders in good time.

To the extent the request for grant of leave upto 31st May, 1993, is being accepted by this Tribunal, as being reasonable, Annexure-A/1, is clearly illegal and is hereby quashed. Annexure-A/5, to the extent it ^{the} rejects the reasonable requests of the applicant for leave is also, to that extent and to that extent only, quashed. No order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
Ahmedabad Bench

Application No. 276 of 1993.

Transfer Application No. _____ Old W.Pett No. _____

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated : 28/5/93

Countersigned :
Shelot 1/93
a/k/a

Section Officer/Court officer

ICR Shethwani
Signature of the Dealing
Assistant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD BENCH

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OF 19

NAMES OF THE PARTIES Sh. S. C. John.

VERSUS
U.S.A. & 983.

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