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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 85 of 1996

Cuttack this the 20th day of May, 1996

P.N. PANDA & OTHERS

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APPLICANTS

VERSUS


UNION OF INDIA & OTHERS

...

RESPONDENTS

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *Yes.*


(N. SAHU)

MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 85 of 1996

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C O R A M:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

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1. Panchanan Panda, aged 34 years,
Son of Late Ratnakar Panda, resident
of Village/Post :Bahudarada, P.S./
District Bhadrak, at present working
as Senior Accountant
2. Sankar Singuli, aged about 40 years,
Son of Late Jadunath Singuli, resident
of Sunabeda U.V. No.10, P.S.Umarkote,
Nawarangpur, at present working as
Accountant
3. Kirtan Dash, aged about 36 years,
Son of Late Satyabadi Dash, resident
of Sudasailo, P.O.Sailo Barbil, P.S.
Govindpur, District Cuttack at present
working as Senior Accountant
4. Prafulla Chandra Barik, aged 36 years,
Son of Late Brundaban Barik, At/Post
Tampara, P.S.Ratkura, Dist:Kendrapara
at present working as Senior Accountant
5. Keshab Chandra Baroi, aged 49 years,
Son of Shri Kalipada Baroi, resident
of MIG II 16/1, B.D.A.Colony, 1st
Phase, Post/PS:Chandrasekharapur
at present working as Assistant
Accounts Officer

(All the applicants are employed in the
office of the Accountant General (A & E)
Orissa, Bhubaneswar, District:Khurda and
at present on deputation to the Office
of Accountant General, Audit-I, 4,
Brabourne Road, Calcutta - 1)

...

By the Advocate :

VERSUS

APPLICANTS

M/s. K.C. Kanungo
S.S.Mohapatra
P.K. Patnaik

1. Controller & Auditor General of India,
Bahadur Saha Jaffar Marg
New Delhi - 1
2. Accountant General, A & R, Orissa
Bhubaneswar - 1, District:Khurda
3. Accountant General, Audit-1, Office
of Accountant General, Audit-1,
Brabourne Road,
Calcutta - 1

... RESPONDENTS

By the Advocate :

Mr. Ashok Mohanty,
Sr. Standing Counsel
(CENTRAL)

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ORDER

MR.N. SAHU, MEMBER (ADMINISTRATIVE) : Five applicants, employed in the Office of the Accountant General (A&R), Orissa, Bhubaneswar, have joined together in this application. They are at present on deputation to the Office of Accountant General, Audit-1, 4, Brabourne Road, Calcutta. The applicants 1 to 4 have been promoted to the post of Senior Accountant and have all qualified in Section Officers Grade Examination required for promotion to the rank of Section Officer. Because of this qualification they were selected on deputation as Section Officer and applicant No.5 was selected as the Assistant Accounts Officer on deputation to the Office of Respondent 3. The conditions stipulated in the order is : "deputation shall be initially for a period of one year and likely to be extended from time to time." Their deputation will be governed as per existing terms and conditions of I.A. & A.D. Annexure-2 is the standard terms and conditions of deputation to deficiency offices within I.A. & A.D. In the

instant case, it is stated that the initial period of deputation is from 12.11.1994 to 11.11.1995 and is likely to be extended from year to year. Other conditions are that the deputationists shall get his pay fixed in the deputation post under the operation of the normal rules or to draw pay of the post held by him in his parent department plus a deputation special pay. All other benefits have been spelt out. The applicants have already completed one year of their deputation and have expressed their unwillingness for further continuance. They have represented for repatriation after the terms of deputation expired. They submit that service on deputation is based on the cumulative consent of the borrowing department, lending department and the employee intending to go on deputation. It is urged at the time of hearing that the Government servant intending to go on deputation must convey his agreement and willingness on the terms and conditions as finalised by the lending and the borrowing department. In view of this background, it is submitted that Respondent 2, Accountant General, Orissa, Bhubaneswar, be directed to get the applicants repatriated to his office and direct the Respondent 3, A.G Audit-I, Calcutta, to relieve the deputationists immediately.

2. In their counter affidavit filed by the respondents, it is explained that deputation is a transfer on temporary basis to another post either in the same department or in another department in the Central Government in public interest. The **tenure** of deputation

is subject to maximum of three years in all cases except for those posts where longer period of tenure is prescribed in the recruitment rules. A further extension of one year can be granted subject to the exigency of public interest. It is urged on behalf of Respondents by the Senior Standing Counsel Shri Ashok Mohanty that even under the standard terms and conditions deputation can be extended beyond a period of one year. The applicants having agreed to go on deputation, it implies that they have agreed to the extension of that period also. It is not open to them to seek repatriation immediately after the end of one year when the employer wants them to continue beyond that period for some more time. The stand taken by the respondents is that the lending authorities make a stop-gap arrangement for a period of three years in the vacancy caused on account of deputation. It is submitted that deputationists older to the applicants, who have already completed three years have to be repatriated first and the applicants must wait their own turn.

3. I have carefully considered the rival submissions. The Supreme Court has held in the case of Ratilal B Soni & Others vs. State of Gujarat and Others reported in 1990 (Supplementary) SCC 243 that a deputationist does not acquire any right over the post and can be reverted to the parent department at any time. It is for the parent authority, subject to rules, to

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consider whether an employee should be retained on deputation. In considering this the utility of the employee to the parent department, the inter-actions of such retention in the administration etc. are relevant considerations. A deputationist has no right either for absorption or for continuation.

4. After careful consideration I find that the respondents have a genuine grievance that repatriation before completion of a three-year period will affect the working arrangement made in the office of the lending authority. The rules definitely prescribe deputation for a maximum period of three years - one year at a time (Appendix 5 of the F.R.). Mere consent to go on deputation, does not mean that they shall be automatically repatriated after completion of one year. The employer has a right to continue them for some more time upto a maximum period of three years. The extension clause is as much important as the initial terms of one year. The borrowing authority has a problem of finding a substitute. The lending authority has the problem of looking after the interests of repatriated employees and finding a proper place and post for them. Finally, they have to think of repatriating ^{more} ~~most~~ senior persons than the applicants. The applicants have not suffered adversely because they were given the promotion post of Section Officers when no such posts were available in the parent department. They were also given

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all facilities and allowances as per the standard terms and conditions. When the Supreme Court had held that there are no rights of deputationists - it means that deputationists do not have any right whatsoever to force a repatriation as much as to prevent a repatriation. When in Ratilal's case the Supreme Court had granted a right to the borrowing authority to revert the deputationist to his parent cadre at any time, it impliedly gave a right also to continue him till his extended deputation period expires. A deputationist no doubt consents to a deputation because of monetary benefits and the benefit of working a promotional post as in this case. In this case the applicants want to come back because Section Officers' posts are available at Bhubaneswar parent office and if they do not get back in a hurry, such posts will be filled up by others. It is true that they want to get back to their own native place and their point of view also deserves to be considered. The point that is missed here is : Are there no interests of the Organisation to be safeguarded ? Transfers and deputations are not merely and necessarily viewed as a calculus of convenience for the employee. The prime object is public interest and the interest of the Organisation. There is scant regard shown for this in the pleadings of the applicants.

5. It is another matter if individual difficulties are considered and the borrowing department and the lending department agree to repatriate the

applicant. The grounds for repatriation are ill-health of the dependant members and unsuitability of the climate. These are individual difficulties which the Respondents 2 and 3 shall consider and depending on the exigencies of needs in the administrative office, they shall dispose of the representations. But on the facts in this case, I hold that the deputationists have no enforceable right to go back to their parent department simply because they completed the initial term of one year. The respondents can extend their deputation upto a period of three years.

The application is dismissed. No costs.

Parasuramhasan
(N. SAHU) 20/5/96.
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//