

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 05/03/2008

O.A. No. 200 of 2007

Pravasa Chandra Patra ... Applicant

versus

Union of India & Ors. ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of CAT or not?

(C.R.MOHAPATRA)
MEMBER(ADMN.)

(M.R.MOHANTY)
VICE-CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Date of order: 05/03/2008

PRESENT:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN
AND
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER(ADMN.)

In the Matter of:

O.A. No .200 of 2007

Pravasa Chandra Patra ... Applicant

versus

Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)

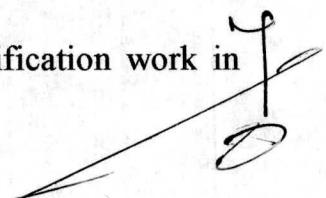
For Applicant: : M/s.Manoranjan Das, S.Pattnaik, L.Mohanty,
K.Bhuyan, Counsel.

For Respondents: Ms.S.K.Ojha, SC

ORDER

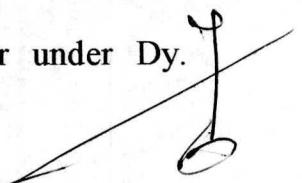
Per MR.M.R.MOHANTY, VICE-CHAIRMAN (J):

Applicant is a permanent Senior Stenographer of the Headquarters establishment of E.Co. Railways. In order to man the temporary project, under the Chief Project Manager of Railway Electrification (set up to complete the time bound electrification work in



E.Co Railways) persons were drafted, on deputation, from various Department and the Applicant is one of such employees; who came on deputation to the said project by retaining his lien in ECoRly/Hd.Qrs. When asked to be repatriated back to his parent department (vide order dated 09.03.2007), the Applicant approached this Tribunal with the present Original Application filed U/s.19 of the A.T. Act, 1985. He has prayed (a) to quash the said order of repatriation dated 09.02.2007 (Annexure-2) and (b) for a direction to the Respondents to allow him to continue in the project in question.

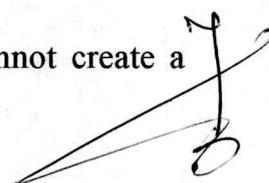
2. It has been explained by the Respondents that in order to complete the time bound electrification work of the Railways, a project office under the Chief Project Manager, (of Railway Electrification in the lines of , E. Co.Railways) was started functioning at Bhubaneswar. This being a temporary time bound project, there was no regular sanctioned posts available in any of the categories and temporary posts were being sanctioned from time to time for the Project in question. Therefore, in order to man the project work, employees were procured/drafted from various regular establishments of the E.Co. Railways on deputation basis. The present Applicant is one of such employees. It has been disclosed that, in the meantime, most of the electrification works allotted to the project have been completed that as there was no work for a Stenographer under Dy.



CEE/RE/BBSR and that since the sanction for the said temporary work charged post was extended only up-to 31.05.2007, the Applicant was relieved with instruction to report back at his parent department where his lien is maintained. It has been explained that as there is no need of stenographer in the Project in question, the Applicant was repatriated to his parent department and, as the applicant was continuing as against a work charged post, after his relief from the Project, the post automatically stood abolished. In the above premises, the Respondents have opposed the prayer of the applicant for his continuance in the Project, in question.

3. We have heard the rival submissions of the parties and perused the materials placed on record.

4. It is not in dispute that the Applicant is a permanent employee of the Railway and he was on deputation as against a worked charged post of the Project, in question. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation (ref: Kunal Nanda v Union of India and another reported in (2005) 5 SCC 362). Creation and abolition of posts and regularization are purely executive function and the Court cannot create a



post where none exists nor can issue any direction to absorb/continue the employees in service or pay them salaries of regular employees, as these are purely executive functions. Also the Courts/Tribunal cannot arrogate to itself the powers of the executive or legislature (Ref: Indian Drugs and Pharmaceuticals Ltd v Workmen reported in (2007) 1 SCC (L&S) 270 431 at pages 426-27). Deputationists have no vested right to continue in the borrowing department even till the completion of stipulated period of deputation. In Sandeep Kumar v State of UP, (AIR 1992 SC 713) it has been held by the Apex Court of India that where there was no work in the project the employees cannot claim either regularization or continuance in the project. The consistent views of the Hon'ble Apex Court, that where a project has to be closed down for non-availability of funds a direction for continuance of displaced employees of the project could not be given because such direction would amount to creating posts and continuing them in spite of non availability of work.

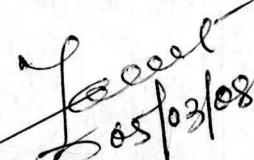
5. It is the specific stand of the Respondents that as the applicant was continuing in the work charged post (for which there is no sanction after 31.05.2007) and there was no work for a stenographer, Applicant, who was continuing in the post on deputation, was repatriated to his parent department. Therefore, any direction to allow him continue would amount to asking to create a post and interfering with the functioning of the

administration of the Respondent-Department; which is not permissible in view of the law enunciated by the Hon'ble Apex Court.

6. In view of the above, we find no irregularity/irrationality in the order of repatriation dated 09.03.2007 (Annexure-2).

7. In the result, we find no merit in this OA which stands dismissed. No costs.


(C.R.MOHAPATRA)
MEMBER(ADMN.)


(M.R.MOHANTY)
VICE-CHAIRMAN

KNM/PS.