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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


OA No. 335 of 2008


Cuttack, this the 17th day of December, 2008

Dr. Pranab Kishore Rath 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 the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Dr. Pranab Kishore Rath, aged about 45 years, S/o. Shri Nabakishore Rath, Medical Officer, Regional Institute of Education, Bhubaneswar.

.....Applicant

By Advocate: M/s.J.K.Rath, D.M.Rath, S.M.Rath,
P.K.Rout,S.Kanungo.
- Versus -

1. Union of India represented through the Secretary of Human Resources and Development Sastri Bhawan, New Delhi-1.
2. National Institute of Education Research & Training (NCERT) represented through its Secretary, At-Shri Aurobindo Marg, New Delhi-110016.
3. Regional Institute of Education represented through its Administrative Officer, Sachivalaya Marg, Bhubaneswar-11, At/PO/PS/Munsif-Bhubaneswar, Dist. Khurda.
4. State of Orissa represented through its Secretary Health and Family Welfare Department, Secretariat Building, At/PO/PS/Munsif-Bhubaneswar, Dist. Khurda.
5. Director Health Services, Orissa Bhubaneswar, At/PO/PS/Munsif-Bhubaneswar, Dist. Khurda.

....Respondents

By Advocate:Mr.A.K.Bose, GA & U.B.Mohapatra SSC.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

The Applicant who is an employee of the Health and Family Welfare Department of Government of Orissa while working as Medical Officer, District Jail Hospital, Puri, came on deputation to Regional Institute of Education, Bhubaneswar, initially for a period of two years vide order under Annexure-A/1 dated 10.6.2002. The deputation period was subsequently, extended from time to time with the terms and conditions stipulated under Annexure-A/2 dated 5.7.2002. Vide order

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under Annexure-A/18 he was relieved from his duty with effect from 05.08.2008 (A/N) so as to report in his parent department i.e. Health and Family Welfare Department of the Government of Orissa, Bhubaneswar. Under Annexure-A/19 dated 12.8.2008 applicant submitted representation requesting his continuance in the Regional Institution of Education, Bhubaneswar. Thereafter, vide order under Annexure-A/21 dated 18.08.2008, applicant was informed that as on completion of his deputation period, he has already been relieved from the Institute w.e.f. 5.8.08, he is eligible to avail the accommodation up to 20.8.08(15 days) as per Rules. After 15 days he can retain the quarters not exceeding one month on payment of rent as per rule. Accordingly, he was advised to hand over the quarters to the SO C&W Section as early as possible. Further he was advised to hand over charge of the RIE Dispensary along with instruments, records, etc. to Mrs.Pravati Pati, Lady Pharmacist of the Dispensary. Being aggrieved by the orders under Annexure-A/18 dated 5th August, 2008 and the order under Annexure-A/21 dated 18.8.2008 the Applicant has approached this Tribunal in the present Original Application on the ground that when on the specific request of the Respondent No.3, the parent department of the applicant i.e. Government of Orissa has conveyed his no objection for extension of the deputation period up to 5.8.2009, there was no reason on the part of the borrowing department to repatriate him before completion of the said period/5.8.2009 that too during the midst of current academic session of his children.

2. The stand of the Respondents in the reply filed on 5th December, 2008 is that pursuant to the offer of appointment on deputation basis initially for a period of two years, the applicant reported to his duty in the Institute on 06.08.2002. The deputation period of the applicant was extended time and again till 5.08.2008 which, as per the Rules, was the outer limit of deputation of an employee and accordingly,

the Applicant was relieved from his duty w.e.f. 5.8.2008. They have denied the assertion of applicant that the Respondent No. 3 had ever asked the applicant to give his willingness to work beyond 5.8.2008. By filing copy of the order dated 25.11.2008 as Annexure-R/1 it has been stated by the Respondents that based on the order of repatriation under Annexure-A/18, the Government of Orissa withdrew the order offering willingness to extend the deputation period of applicant till 5.8.2009 and repatriation, posting him as Assistant Surgeon at PHC Balimela, Dist. Malkangiri against an existing vacancy. Accordingly, the Respondents opposed the stand of the Applicant.

3. Applicant, by filing rejoinder has reiterated his stand taken in the OA. Further, by stating that taking his dedicated satisfactory service of six years when Government of Orissa has extended his period of deputation till 5.8.2009 the repatriation during the midst of the period is arbitrary, being opposed to the guarantee available to the civil servants under the constitution of India.

4. This OA was filed by the Applicant on 2nd September, 2008 and moved on 4.9.2008. Considering the submission of the Learned Counsel for the Applicant, this Bench of the Tribunal while ordering notice to the Respondents directed ad interim stay of the order under Annexure-A/18 and A/19 for a period of one month which has been continuing till date. Challenging the ad interim order granted by this Tribunal, the Respondents filed W.P (C) No. 13897 of 2008 before the Hon'ble High Court of Orissa. In order dated 30.10.2008, Their Lordships disposed of the matter with the following direction:

“After hearing the learned counsel for the parties at length, we are of the view that expression of any opinion on merits of the case may cause prejudice to either parties. Since the matter is pending before the Tribunal, we direct that the aforesaid original application be disposed of by 15th of

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December, 2008. The Tribunal may pass orders, if it feels proper for extension of interim order till disposal of the OA.”

5. Based on the pleadings supported by materials placed on record, Learned Counsel for the applicant heavily persuaded us for the relief claimed in this OA. By referring to the order under Annexure-R/1, Learned Counsel for the Respondent submitted that as the order of the Government of Orissa based on which the Applicant claims his right to continue on deputation is no more in existence; this Original Application is liable to be dismissed. Having given thoughtful consideration to various submissions made by the parties perused the materials placed on record.

6. We may note here that the concept of ‘deputation’ is well understood in service law and has a recognized meaning. In simple words deputation means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside the cadre, that is to say, to another department on a temporary basis. After expiry of the period of deputation, the employee has to come back to his parent department to occupy the same position. It is a tripartite agreement between borrowing, lending departments and the person concerned. Unless this is complied with there can be no deputation. Further, the rule making authority is competent to frame rules laying down terms and conditions of service on deputation. In the instant case, as the applicant had completed the maximum period of deputation provided in the Rules, he was repatriated to his parent department and therefore, possibly the applicant ought not to have raised any objection to this. However, it is seen that he has raised his grievance for continuance based on the letter of the Government of Orissa. But after the order under Annexure-R/1, withdrawing the letter extending the period of deputation till 5.8.2009, the applicant cannot have any grievance regarding his continuance. As to whether a Government servant has any right to claim to continue on deputation basis or for that

matter absorption, has received consideration of the Hon'ble Supreme Court of India, Hon'ble High Courts and of this Tribunal on many occasions and it would suffice to quote some of the decisions and they are as under:-

1. AIR 1990 SUPREME COURT 1132 – Ratilal B. Soni and others VRS. State of Gujarat and others:

“The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post. We see no infirmity in the judgment of the High Court and as such we dismiss the appeal”.

2. VOLUME-146 2000 (4) SLR-609 Kunal Nanda VRS. Union of India and Another:

“It is well settled that unless the claim of the deputations for permanent absorption in the department where he works on deputation is based upon any statutory Rule Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle under lying 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”.

3. VOLUME 183 2005 (1) SLR-629(HC)-Gurinder Pal Singh and others VRS. State of Punjab and others:

“12. In service jurisprudence, “deputation” is described as an assignment of an employee of one department or cadre to another department or cadre. The necessity for sending on deputation arises in “public interest” to meet the exigencies of “public service”. The concept of deputation is based upon consent and voluntary decision of the employer to lend the services of his employee, corresponding acceptance of such service by the borrowing employer and the consent of the employee to go on deputation. A deputation subsists so long as the parties to this tripartite arrangement do not abrogate it. However, if any one of the parties repudiate the agreement, the other two have no legally enforceable right to insist upon continuance of the deputation...”

“Deputation per se being a contractually made ad hoc arrangement, seldom confers any right upon a deputationist, either for completion of the term of deputation or regularization of such stop gap arrangement”.

This was also the view of the Tribunal, Madras Bench rendered in the case of V.Ramakrishnan vrs. Union of India and others -2005 (2) ATJ 590.

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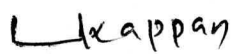
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7. Mid-academic session cannot be a ground for extending the period of deputation. We find no distinguishing material so as to take any other view in the present case. In view of the above, we find no merit in the prayer of the applicant for quashing the order under Annexure-A/18 which is hereby maintained.

8. However, according to the Applicant his children are prosecuting their study at Bhubaneswar. Annexure-R/1 shows that the applicant has been given posting by the Government of Orissa to Balimela in the District of Malkangiri and certainly it would be difficult for him to take his family to Balimela especially due to non-availability of the scheme of education now available to his children. In the circumstances, ends of justice would be met in case the Respondents allow the Applicant to remain in the quarters on payment of normal rent till the end of the current academic session. We direct accordingly.

9. So far as treating the period from 05.08.2008 till date is concerned, it is seen that the Applicant was relieved from his duty w.e.f. 5.8.2008 whereas he approached this Tribunal on 02.09.2008 and this Tribunal vide order dated 4.9.2008 granted ad interim stay for one month. According to the Applicant he has been continuing in his deputation post whereas according to the Respondents w.e.f. 5.8.2008 he is no more an employee of the Institute. In order to get out of this controversy, the Respondents are hereby directed to release his salary and allowances for the period from 5.8.2008 till the date of this order.

10. In the result, in terms of the observations and directions made above, this OA stands disposed of by leaving the parties to bear their own costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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