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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.845 of 2010
Cuttack this the 11th day of July, 2013

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Ashok Kumar Pathy, aged about 46 year, S/o. late Suryanarayan Pathy, working as Senior Accountant, Office of Controller of Communication Accounts, Orissa Telecom Circle, 4th Floor, C.P.M.G. Building, Bhubaneswar, Dist-Khurda

...Applicant

By Advocate(s)-M/s.N.R.Routray
S.Mishra
S.K.Mohanty
T.K.Choudhury

-VERSUS-

Union of India represented through

1. The Secretary, Department of Telecommunication, Sanchar Bhawan 20, Ashoka Road, New Delhi-110 001
2. Under Secretary (SEA), Department of Telecommunication, Sanchar Bhawan 20, Ashoka Road, New Delhi-110 001
3. Controller of Communication Accounts, Orissa Telecom Circle, 4th Floor, CPMG Building, Bhubaneswar, Dist-Khurda
4. Collector, Koraput, At/PO/Dist-Koraput

...Respondents

By Advocate(s)-Mr.U.B.Mohapatra
Mr.G.C.Nayak



ORDER**HON'BLE SHRI R.C.MISRA, MEMBER(A):**

In the present Original Application, applicant has approached this Tribunal with a prayer that the order dated 21.10.2010 of the Department of Telecommunications issued in compliance of the orders of this Tribunal dated 23.9.2010 in O.A.No.300/10 refusing his prayer for permanent absorption in the Department of Telecommunications should be quashed and the Respondents should be directed to permanently absorb ^{applicant} in the said Department.

Facts of the matter, shorn of unnecessary details, are stated as below.

2. The applicant was working as Senior Clerk in the Office of the Collector, Koraput District, i.e, Respondent No.4. The Controller of Communication Accounts under the Department of telecom (Res.No.3) had issued an Office Memorandum dated 18.2.2008 calling for suitable candidates having experience for appointment to the post of Sr. Accountant on deputation basis. The applicant submitted his application to be considered for this appointment and was selected. He was appointed as Senior Accountant on deputation basis for a period of two years from the date of his joining, vide O.M. 26.5.2008. In pursuance of the O.M. dated 26.5.2008, the applicant joined as Sr. Accountant in the office of Respondent No.2 on 02.07.2008. In the above background, Respondent No.3 issued an order mentioning that his period of deputation will be up to 10.6.2010. While the matter stood thus, Respondent No.1, i.e., the Department of Telecom issued an order dated 12.8.2009 for filling up the post of Senior Accountant on



permanent absorption basis as one time measure in various offices of Controller of Accounts. Accordingly, applications were invited from the eligible candidates willing to be absorbed in the Department of Telecommunications. The applicant submitted his option in the prescribed format to Respondent No.3 for permanent absorption and also made an application to Respondent No.4, i.e., Collector, Koraput, who was his parent employer for forwarding his application along with the available ACRs. Subsequently, Respondent No.3 forwarded the application to Res.No.4 requesting that the application along with the ACRs and vigilance clearance certificates may be transmitted to the Department of Telecommunications for considering absorption of the applicant on permanent basis. While this matter was under consideration, the applicant also submitted a representation dated 14.5.2010 to Respondent No.3 requesting for extension of his period of deputation, which was expiring on 1.7.2010. Considering the fact that no decision was taken on the representations, the applicant approached this Tribunal in O.A.No.300/10 and since no interim order was passed by the Tribunal, the applicant approached the Hon'ble High Court of Orissa in W.P.(C) No.11039/10. The Hon'ble High Court disposed of the Writ Petition by an order dated 30.6.2010 giving a direction to the Tribunal to dispose of the O.A. within six weeks and also directed for maintenance of status quo in respect of continuance of the applicant in the Office of Respondent No.3. This Tribunal disposed of the O.A.No.300/10, by an order dated 23.9.2010, with a direction to Respondent No.2 to take a view on the recommendations made under Annexure-A/6, which is a letter addressed from the Controller of Communications of Accounts to the



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Collector, Koraput dated 09.09.2009 and communicate the result of this consideration within a period of 30 days. In compliance of the order of the Tribunal, Respondent No.2 passed an order dated 21.10.2010, conveying that the Respondents have refused to permanently absorb the applicant in the Department of Telecommunications. This was communicated by the Respondent No.3 to the applicant in letter dated 21.10.2010, which is annexed at Annexure-A/11 of the O.A. The order of Annexure-A/11 is the subject matter of challenge in the present Original Application.

3. The letter dated 21.10.2010 addressed from the Under Secretary (SEA) in the Department of Telecommunications to the applicant mentions as to how Annexure-A/6 has been considered as per the directions of the Tribunal in O.A.No.300/10. It further mentions that the decision regarding the applicant's candidature as also Annexure-A/6 had to be taken into consideration by the Controller of Communication Accounts, Orissa who is the competent authority in this matter. The Department of Telecom obtained a report from the Controller of Communication Accounts in this matter and the report received from the CCA indicated that a minor penalty was imposed on the applicant by his parent department for negligence of duties during the last 10 years. Secondly, the applicant was alleged to be of doubtful integrity, because he claimed HRA for the deputation period in the office of CCA, Orissa from 11.6.2007 to 31.7.2009 by suppressing the fact that he retained the State Government quarters No.NG-9-DNK Colony at Kraput, Orissa. The Department of Telecommunications basing

on the said report, agreed with the decision of the CCA, Orissa refusing the permanent absorption of the applicant. From the annexures attached to OA at Annexure- A/11 series, there is a statement showing that a departmental proceedings against the applicant was initiated for negligence of duties and the same was finalized vide order No.730 dated 20.2.2001 with the punishment that the "delinquent official is censured for his omissions and commissions". Another letter dated 25.6.2010 has been placed in which Controller of Communication Accounts has sent a letter to the applicant pointing out irregular drawal of HRA for the period from 2.7.2008 to 31.7.2009 during deputation in the office of CCA, Orissa, by suppressing the fact of retaining State Government quarters at Koraput. In this letter, the applicant has also been asked to deposit the excess receipt of HRA for this period. These two papers are available to indicate that minor penalty was imposed on the applicant for his negligence of duty and also his alleged doubtful integrity for drawal of undue claim of HRA during the deputation period.

4. The counter reply filed by Respondent No.s.1, 2 and 3, i.e. Union Government and the Controller of Communication Accounts, Orissa Telecom Circle, has made a mention of the fact that the applicant had joined first in the Office of the Controller of Accounts, Karnataka Circle, Bangalore on 11.6.2007 and later on, ~~he~~ ^{he} joined the Office of res.No.3. Counting from 11.6.2007, his three years deputation period deputation expired on 10.6.2010. The Respondent No.1 issued a letter dated 12.8.2009 for appointment on permanent absorption basis



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of certain Group-C employees as one time measure. It was clearly mentioned in the said letter that absorption will be at the sole discretion of the Department of Telecommunications both in terms of selection time and the number of persons to be absorbed. Res.No.3 had requested the Respondent No.4 to forward the attested copies of last five years' ACRs, vigilance clearance certificate and statement showing major/minor penalties in respect of the applicant, to the Department of Telecommunications . According to papers forwarded by Res.No.4 to Res.No.3, there was an imposition of minor penalty on the applicant in the form of censure during the previous 10 years. A show cause notice regarding irregular drawal of HRA was also issued to the applicant by Res.No.3 through his parent department, i.e. Res.No.4. Based upon these facts, it was decided not to absorb the applicant on permanent basis since he was found to be of doubtful integrity. He had been relieved on 10.6.2010 on completion of his period of deputation. Therefore, he was not entitled to any further relief from the Respondents. In course of hearing, a very interesting fact was brought to the notice of the Tribunal. The Tribunal in its order dated 23.09.2010 in O.A.No. 310/10 had directed the Respondents to take a decision on the recommendation made under Annexure-A/6 and communicate the result thereof ^{to} the applicant. It was found that Annexure-A/6 is a letter dated 09.09.2009 addressed from the Controller of Communication Accounts to the Collector, Koraput. In this letter there is one sentence which reads as follows.



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"Appointment of Shri A.K.Pathy Sr.Accountant in this office on permanent absorption basis in the Department of Telecom is duly recommended".

5. Occurrence of this sentence raises a grave doubt since it is not understood why the Controller of Communication Accounts would write to the parent employer, i.e., Collector, Koraput that permanent absorption of the applicant in the Department of Telecom is duly recommended since the latter is not the authority to take such a decision in this regard. It was submitted by the learned counsel for the Respondents that the letter which was approved to be issued is at Annexure-R/2, which did not contain this line. By mistake or by mischief the letter was issued incorporating this sentence which was not approved for issue.

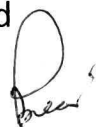
6. In order to verify the facts of this case, Personal File of the applicant was called for from the Office of the Controller of Communication Accounts. In the Note Sheet portion of this file, it is found that at Page-6, a note was put up on 09.09.2009, in which it was proposed that the application of Shri A.K.Pathy may be forwarded to his parent office, i.e., Collector, Koraput for consideration as per a fair letter put up at page-34(Correspondence). The correspondence which has been placed at page -34/© does not contain this controversial sentence. It is, therefore, believed that either by mistake or by mischief such a discrepancy has taken place. This issue is rested here since this has no bearing on the issues raised by the applicant in this case. In any case, Controller of Communication Accounts was not supposed to recommend the case of the applicant for permanent absorption to the Collector, Koraput, who is the parent employer.



7. Respondent No.4, Collector, Koraput, has also filed his counter affidavit in this case. This counter reveals that the applicant's papers were forwarded to Res.No.2 for considering his permanent absorption in the Department of Telecom vide office letter dated 17.9.2009, while by another letter dated 15.10.2009, it was intimated that no vigilance case of inquiry was pending against the applicant. It has been also mentioned in the counter that vide Office Order No.730 dated 20.2.2001, the delinquent officer was censured for his omissions and commissions as a result of a departmental inquiry. No further departmental proceeding was initiated against him since the year 1999.

8. It is now therefore, quite evident that the issue under consideration in this case is whether the applicant can claim to be permanently absorbed in the Department of Telecom in view of the fact that the concerned Department has rejected his candidature expressing its dissatisfaction about his service records and particularly taking into account the fact that he has already been reverted back to his parent cadre on completion of his normal period of deputation.

9. The learned counsel for the applicant has filed his written note of argument in which he has mentioned that the applicant's right for permanent absorption in DoT arises in view of the notification dated 12.8.2009 issued by Respondent No.2. Notification dated 12.8.2009 is a letter issued by the DoT to all Departments of the Government India communicating the proposal of DoT to fill up certain posts on permanent absorption basis in various offices of the Controller of Communication Accounts and accordingly, various Departments were requested



to forward applications of the eligible candidates. It has been further argued that the prayer of the applicant for permanent absorption cannot be turned down on the ground that a punishment of censure was imposed on him. It is also submitted that issuance of show cause notice dated 25.6.2010 cannot be a bar for consideration of the application since it was issued much after the issuance of letter dated 12.8.2009 and also the letter dated 09.09.2009 issued by the Controller of Communication of Accounts to the Collector, Koraput. These are the main grounds taken by the applicant's counsel in the written note of argument.

10. We have heard the learned counsel for the respective parties and perused the records in this case.

11. Collector, Koraput District is the parent employer of the applicant. He was sent on deputation to the office of Controller of Communication Accounts and during his period of deputation, the Department of Telecommunications considered a proposal of permanent absorption of certain categories of posts in the office of Controller of Communication Accounts as one time measure. The applicant applied for the same. Since he was not considered for permanent absorption and his period of deputation was going to be over, he approached this Tribunal in O.A.No. 300/10, in which the Tribunal gave a direction to Respondent No.2 to take a view on the recommendations made under Annexures-A/6 and communicate the result to the applicant. In compliance of this order, Res.No.2 communicated a decision agreeing with the decision of the Controller of Communication Accounts, Orissa and did not allow the prayer for permanent



absorption of the applicant in the office of Controller of Communication Accounts. The grounds taken for not allowing the prayer were a minor penalty of censure imposed on the applicant when he was working in the office of Collector, Koraput and his doubtful integrity because of undue claim of House Rent Allowance for his deputation by way of suppressing the fact of retention of a State Government quarters in Koraput. Whether the grounds that are cited in the order of refusal are sufficient grounds for rejecting his prayer for permanent absorption is not a question which is to be addressed by this Tribunal. The fact of the matter is that the Department of Telecom did not consider his service records to be satisfactory enough to allow him to be permanently absorbed in the office of Controller of Communication Accounts. Whether the punishment of censure and his alleged doubtful integrity because of wrong drawal of HRA are irregularities which are serious enough to debar him from permanent absorption are in our considered view, not material to the facts of the case. The claim made by the applicant that his right to permanent absorption in the Department of Telecom arises from the notification of the Department dated 12.8.2009 is thoroughly misconceived. The said notification is merely a request made to various Departments to sponsor the candidates who were eligible. It does not confer any right on anyone for being permanently absorbed just because he/she has applied or he/she has been working in the organization on deputation.

12. A deputationist normally operates for a particular period of time subject to the consent of the parent organization. The normal rule is that after the period of



deputation is over, he/she has to go back to his/her parent organization, unless the period of deputation is extended with mutual agreement of the organizations to which he/she has been deputed and the organization which has lent his/her service. In the present case, there is no doubt that the Department of Telecom requested the Collector, Koraput to forward various papers in connection with the prayer of the applicant for permanent absorption. But the fact remains that since the Collector, Koraput has sent all these papers, it does not bind the Department of Telecom in this case to take a decision in favour of the applicant for permanent absorption. It is also an admitted fact that the applicant/deputationist in this case has already reverted to his parent organization since the year 2010. It is pertinent to mention here the decision of the Honble Supreme Court of India in the case of **U.O.I. Thr. Govt. of Pondicherry & ... vs. V.Ramakrishnan & Ors. In Appeal (Civil) 6332 of 2005 decided on 7.10.2005**, which reads as follows.

“Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed”.

13. The consideration of permanent absorption will be normally done by the organization to which the services of a deputationist have been lent. On grounds of unsatisfactory services rendered by a deputationist and from his/her service records etc. if such a satisfaction is lacking, definitely a deputationist cannot claim a legal right to be permanently absorbed in the organization to which he/she has been deputed. A deputationist joins as such with full understanding that he/she is on deputation for a particular length of time and should be



prepared to be reverted to the parent organization on completion of the period of deputation. He/she cannot have any other exception unless the organization itself expresses an interest either to extend his period of deputation or to permanently absorb him/her after taking due consent of the parent employer. There is no scope by this Tribunal to intervene in this matter and give a direction to permanently absorb the applicant in the organization to which he was deputed. Viewed from the above, applicant, therefore, has no indefeasible right to claim permanent absorption in the Department of Telecom, that too after his repatriation to his parent organization.

For the reasons discussed above, the O.A. being devoid of merit is dismissed. No costs.



(R.C.MISRA)
MEMBER(A)



(A.K.PATNAIK)
MEMBER(A)

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