

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

CALCUTTA

No.O.A.775 of 96

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

KRISHNA NARAYANA ROUT

VS

1. UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF CIVIL AVIATION, NEW DELHI, RAJIV GANDHI BHAVAN, SAFDERGANJ AIRPORT, NEW DELHI - 3.
2. THE SECRETARY, MINISTRY OF PERSONNEL DEPTT. OF PUBLIC GRIEVANCES AND P.W., NEW DELHI.
3. THE DIRECTOR GENERAL OF CIVIL AVIATION, GOVERNMENT OF INDIA, CIVIL AVIATION DEPTT., NEW DELHI.
4. PAY AND ACCOUNTS OFFICER, REGIONAL PAY AND ACCOUNTS OFFICER, CIVIL AVIATION DEPTT., CALCUTTA REGION, CALCUTTA AIRPORT, CALCUTTA - 52.
5. DIRECTOR OF AIRWORTHINESS, CIVIL AVIATION DEPTT., CALCUTTA REGION, CALCUTTA - 52.

For the applicant : Mr. S.R. Kar, counsel

For the respondents : Mr. S.K. Dutta, counsel

Heard on: 27.01.99

Order on : 27.01.99

O R D E R

The substantial question involved in this case is *as to* whether the applicant being transferred on deputation to the National Airports Authority from the department of Civil Aviation, is entitled to get deputation allowances in view of the provisions of Section 13(3) of National Airports Authority Act, 1985. According to the applicant he was holding the post of Assistant Communication Officer under the Deptt. of Civil Aviation at Calcutta and he has been transferred on deputation to Nat-

01.06.86 by an order dated 30th May, 1986 (annexure A-I to the application). He retired from service with effect from 31.12.87. Thereafter he filed representation to the Civil Aviation Department claiming deputation allowance for the period between 1.6.86 to 31.12.87. But the said representation has not been considered by the respondents properly till 14.12.95. It is stated by the applicant that the respondents intimated him by a letter dated 14.12.95 that his representation dated 30.10.95 addressed to the Joint Secy., Deptt. of C.A. was rejected on the ground that the deputation duty allowance was not admissible as per rules in his case as that was a case of mandatory deputation under section 13(3) of the National Airports Authority Act, 1985. So, he was not entitled to get any deputation allowance for the period spent on such deputation. Feeling aggrieved by the said order dated 14.12.95 (annexure A-3 to the app.) the applicant has filed this O.A. before the Tribunal seeking directions upon the respondents to set aside the <sup>said</sup> order issued by the Director General of C.A. and to direct the respondents to grant deputation allowance for the period as said for.

2. The case of the applicant has been resisted by the respondents by filing written statement. It is stated by the respondents in their reply to the O.A. that the application is hopelessly barred by limitation and that belated claim cannot ~~be entertained to be heard~~ be entitled by the Tribunal after lapse of 10 years. It is also stated by the respondents that under Section 13(3) of the National Airports Authority Act, 1985 the applicant was not entitled to get such deputation allowance and thereby the

3. Mr. Kar appearing on behalf of the applicant strenuously argued before me contending inter alia that the applicant was sent on deputation to the National Airports Authority, Calcutta from the Civil Aviation Deptt. without his consent and he was allowed to continue in the said department of National Airports Authority, Calcutta till the date of retirement on superannuation i.e. 31.12.87. Mr. Kar also submits that since the authority treated such transfer as deputation, the applicant is entitled to get deputation allowance under the existing rules and that has been denied by the authority without any valid reason.

4. Mr. Das appearing on behalf of the respondents submits that the applicant did not challenge the provisions of Section 13(3) of National Airports Authority Act, 1985 and in view of the said Section 13(3) of the said N.A.A. Act, 1985 the applicant is not entitled to get any allowance other than the remuneration which he had drawn from the Civil Aviation Deptt. before proceeding to National Airports Authority on deputation. So, the application is devoid of merit and is liable to be dismissed.

5. I have considered the submissions of ld. counsel of both the parties and perused the records. It is found that before sending deputation of the employee of Civil Aviation to the National Airports Authority, the Central Govt. made a legislation which is known as National Airports Authority Act, 1985. Section 13 Sub-section (2) of the said N.A.A. Act, 1985 runs as follows:-

"If any dispute or doubt arises as to which of the

properties, rights or liabilities of the Central Government have been transferred to the Authority or as to which of the employees serving under the Director General of Civil Aviation are to be treated as on deputation with the authority under this Section, such dispute or doubt shall be decided by the Central Government in consultation with the authority and the decision of the Central Govt. thereon shall be final."

Section 13 sub-section(3) of the N.A.A. Act, 1985 runs as

follows :-

"Every employees holding any office under the Director-General of Civil Aviation immediately before the commencement of this Act solely or mainly for or in connection with such affairs of the Directorate General of Civil Aviation as are relevant to the functions of the Authority under this Act as may be determined by the Central Government shall be treated as on deputation with the Authority but shall hold his office in the Authority by the same tenure and upon the same terms and conditions of service as respects remuneration leave, provident fund, retirement or other terminal benefits as he would have held such office, if the Authority had not been constituted and shall continue to do so until the Authority duly absorbs such employee in its regular service;

Provided that during the period of deputation of any such employee with the Authority, the Authority shall pay the Central Government in respect of every such employee, such contribution towards his leave salary, pension and gratuity as the Central Government may, by order, determine;

Provided further that any such employee, who has, in respect of the proposal of the Authority to absorb him in his regular service, intimated within such time as may be specified in this behalf by the Authority his intention of not becoming a regular employee of the Authority, shall not be absorbed by the Authority."

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Under normal rules, there is/dispute that a person cannot be sent from his parent department on deputation to other department without his consent. It also remains undisputed from the fact and the law that if a person is sent on deputation within the same station, he is entitled to get deputation allowance as per rules. But I find that in order to avoid the complications in respect of granting deputation, <sup>allowance</sup> the Central Government made legislation which is known as National Airports Authority Act, 1985 and specific provision has been provided

in Section 13(3) regarding status of the employee of Civil Aviation Deptt. who would be transferred to the National Airports Authority. In the said Act it is categorically mentioned that terms and conditions of the service in respect of remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office, would continue if the Authority had not been constituted or shall continue to do so until the Authority duly absorbs such employee in its regular service.

6. In view of the <sup>said</sup> provisions it is found that admittedly ~~the applicant did not apply for absorption. He kept~~ lien with the parent department with the terms and conditions laid down in the order of deputation dated 30th May, 1986 (annexure A-I to the app.). Mr. Dutta submits that the expression of the word "remuneration" includes all allowances including deputation & duty allowance. So, on perusal of the said provision of Section 13(3) of N.A.A. Act, 1985, it is clear that applicant is not entitled to get any deputation allowance from the National Airports Authority. ~~He is~~ entitled to draw the same from N.A.A. which he enjoyed in the Civil Aviation Deptt.. It is also found from the proviso under Section 13(3) of the Act that <sup>during</sup> the period of deputation of any such employee with the authority, the Authority shall pay the Central Government in respect of every such employee, such contribution towards his leave salary, pension and gratuity as the Central Govt. may by order, determine. Admittedly no order has been passed by the Authority in respect of granting any deputation allowance to any employee who has been transferred on deputation

to the National Airports Authority. Moreover, it is found that the applicant did not raise any objection in respect of his transfer from Civil Aviation Deptt. to National Airports Authority. He also did not raise any claim for deputation allowance in respect of service rendered by him in the N.A.A. before the date of retirement. I have perused the impugned order under challenge dated 14.12.95(annexure A-3 to the app.) communicated to the applicant where the reasons were disclosed for which the applicant is not entitled to get deputation allowance. It is also found that the applicant accepted the terms and conditions contained in the letter dated 30.5.86(annexure A-I to the app.).

7. Regarding limitation as raised by Mr. Dutta it is found that the applicant made the claim by filing a representation dated 3.7.88 and that has been disposed of in the year 1995. Section 21 of the Administrative Tribunals Act, 1985 deals with the point of limitation which runs as follows :-

1."A Tribunal shall not admit an application:-

- (a) in a case where a final order such as is mentioned in clause(a) of sub-section(2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
- (b) in a case where an appeal or representation such as is mentioned in clause(b) of sub-section(2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

2. Notwithstanding anything contained in sub-section (1), where—

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

3. Notwithstanding anything contained in sub-section(1) or sub-section(2), an application may be admitted after the period of one year specified in clause(a) or clause (b) of sub-section(1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

The applicant did not challenge any order passed by the Authority regarding granting of deputation allowance at the time of sending him on deputation to the National Airports Authority from Civil Aviation Deptt. His claim is that he is entitled to get deputation allowance as per normal rules. Since ~~the~~ special provision has been provided in the above mentioned Act of N.A.A., the applicant has no other alternative than to follow the provisions. The <sup>applicant</sup> ~~by~~ bypasses the provisions of the said Act on the basis of the rules framed by the Authority and the Act will prevail over the rules. In view of the above, I find that the applicant is not entitled to get relief in this case. <sup>Since it is barred by law</sup> Thereby, the application is dismissed awarding no costs.

*[Signature]* 27/1/99  
( D. PURKAYASTHA )  
MEMBER(J)

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