

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 162 of 2008

Friday, this the 29th day of August, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

Jaison K. Jose,
S/o. (Late) K.M. Joseph,
Accountant, Office of the
Pay and Accounts Officer,
Central Excise & Customs,
ICE Bhavan, Press Club Road,
Trivandrum, Residing at :
Koipurambath House,
Neervilakom, Via. Chengannur.

... **Applicant.**

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by
The Secretary to the Government of India,
Ministry of Finance, New Delhi.
2. The Controller General of Accounts,
Ministry of Finance, Department of
Expenditure, Lok Nayak Bhavan, New Delhi.
3. The Principal Chief Controller of Accounts,
Central Board of Excise & Customs, 1st Floor,
ACGR Building, IP Estate, New Delhi : 110 002
4. The Pay & Accounts Officer,
Office of the Pay & Accounts Officer,
Central Excise & Customs, ICE Bhavan,
Press Club Road, Trivandrum : 695 001



5. The Director,
 Central Tibetan Schools Administration,
 Ministry of Human Resource Development,
 Government of India (Department of School
 Education & Literacy), Ess Ess Plaza,
 Plot No.1, Community Centre, Sector-3,
 "Rohini", Delhi : 110 085 ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

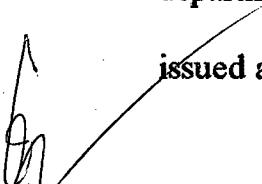
The Original Application having been heard on 12.08.08, this Tribunal on ~~29.08.08~~ delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant was initially appointed as a Lower Division Clerk in the Central Tibetan Schools Administration (CTSA) and he earned promotion to the post of UDC in the scale of Rs 4,000 – 6,000/- w.e.f. 20-01-2003. The third respondent had issued one notification in connection with filling up of vacancies of Accountants in the scale of Rs 4,500 – 7,000 on deputation basis and the applicant was successful in being appointed on deputation basis, vide Annexure A-1. Conditions attached to the said deputation inter alia included, "*The appointment of the official is purely on deputation basis and he has no right to claim for permanent absorption in this organisation.*"

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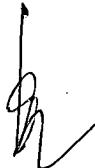
2. Vide Annexure A-2, there appears a proposal for absorption of the deputationists and the second respondent called for details of various deputationists and have asked the authorities to obtain willingness from the concerned deputationists working under them. Fourth Respondent under whom the applicant has been functioning had communicated to the second respondent of the willingness expressed by the applicant for absorption and strongly recommended his case for such absorption, vide Annexure A-3 communication dated 24th March, 2006. The applicant also had requested for such absorption, vide Annexure A-4. As one of the drills involved in processing the cases for absorption is to have no objection certificate from the parent department, Respondent No. 4 sought for the same from the Central Tibetan Schools Administration, vide Annexure A-5 communication dated 05-05-2006. A sum of Rs 38,418/- was also remitted to the parent department on account of Leave Salary and Pension contribution in respect of the applicant. The CTSA had accordingly, vide Annexure A-6 communicated dated 10th April, 2006 expressed its No Objection to the proposal of the respondents for such absorption of the applicant. Respondent No. 2 had, by Annexure A-7 communication dated 28-01-2008 advised the fourth respondent to get the proforma filled by the deputationists in the grade of Accountants' grade and send the same before 03-02-2008. It was at this juncture that the parent department i.e. the CTSA by a communication dated 7th February, 2008, had issued a posting order to the applicant, posting him at CST, Mundgod. As such,



the fourth respondent has requested the 2nd respondent to take up the matter at higher level with the CTSA for cancellation of their order dated 7th February, 2008. Annexure A-8 refers. The applicant has through this OA prayed for a direction to the respondents to complete the process of absorption under the 3rd respondent on regular basis with all consequential benefits arising therefrom. Meanwhile, as an interim measure, he had prayed for a direction to the respondents to allow the applicant to continue as an accountant under 3rd respondent.

3. Respondents have contested the O.A. According to them, the main reason for not absorbing the applicant is that as per the provisions of Recruitment Rules, 2000, the posts remaining unfilled by recruitment through Staff Selection Commission may be filled up by deputation by taking persons of appropriate grades from other Organized Accounts Service; Central and State Government departments subject to terms and conditions laid down by the Central Government and from time to time. Since the applicant does not belong to Central or State Government but belongs to autonomous organization, he is not eligible absorption.

4. Applicant has filed his rejoinder wherein he has extracted column No. 12 of the Schedule – amended by notification dated 16-01-2008 which is as under:-



"(i) Posts remaining unfilled by direct recruitment though Staff Selection Commission may be filled up by deputation by taking persons of appropriate grade from other Organized Accounts Services, Central and State Government departments, subject to terms and conditions laid down by the Central Government from time to time concerning deputation;

(ii) A deputationist with an exceptionally good performance, on completion of two years of deputation may be considered for absorption in public interest subject to prior concurrence of the parent cadre and the Controller of General of Accounts and subject to the fulfilment of the following contentions as on the first of January in the year of consideration.

(a) Pay Scale in the parent cadre : A deputationist who exercises an option for absorption should hold any of the following pay scales in the parent cadre :

(i) Rs. 4500-125-7000;

(ii) Rs. 4000-100-6000 with not less than five years service in this pay scale; or

(iii) Rs. 3050-75-3950-80-4590 with not less than nine years service with pay scale; or

(iv) Continued service of 14 years in the parent cadre in pay scale (ii) and (iii) above

(b) Educational Qualification : As prescribed for direct recruitment in column 8.

(c) Upper Age Limit : Fifty years relaxable at the discretion of the Cadre Controlling Authority in exceptional cases....."

5. The applicant thus contended that at the time of initial deputation he having fulfilled the conditions, he had been taken on deputation. Now for absorption, the condition relates to the performance of deputationists and



completion of two years of service, which he fulfils and as such, he is fully eligible for being considered for absorption.

6. The applicant has filed a Miscellaneous application, annexing a few documents (MA 1 to MA 4), relating to such absorption of persons from Prasar Bharti and also absorption by the Income Tax Department of a person belonging to CTSA itself. This M.A. was returned as defective and was not re-presented till the hearing was complete. Re-presentation was only after the hearing was over.

7. We have considered the pleadings. The case was originally heard on 2nd July, 2008 and was listed subsequently as part heard. However, on 12-08-2008 when the case was listed for final hearing, counsel appearing for the respective parties sought further time but as the case is a part heard matter, instead of adjourning the case, it was reserved for orders with liberty to the parties to file their written arguments within a week. None filed their written arguments. As stated earlier, the applicant had filed the M.A. with annexed documents MA1 to MA 4.

8. The applicant was earlier working in the CTSA. He was taken on deputation. Eligibility to apply for deputation would have been certainly ascertained by the respondents before sending the offer to him vide Annexure

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A-1. Thus, the eligibility of the applicant to hold the post on deputation cannot be questioned at this distance of time. In so far as absorption is concerned, acceptance, at the time of joining the 3rd respondent's organization on deputation, of the condition that the applicant has no right to claim for permanent absorption would mean that at the time of joining on deputation, the applicant had no vested right to claim absorption. It is to be seen as to whether by any subsequent development the applicant had derived such a right to claim absorption.

9. The main thrust in the counter of the respondents is that the applicant does not belong to Central or State Government service and hence he does not fulfil the eligibility condition as per 2000 Recruitment Rules. As stated above, when the very same rules were applied and the applicant has been taken on deputation, it must be construed that the respondents have recognized CTSA as one of such Organisations from where deputationists could be taken. It is not that by mistake they had entertained the applicant. In fact Annexure A-3, A-5, A-6 would all go to show that respondents had consciously permitted the deputation of the applicant.

10. The applicant has a strong case on at least the following twin grounds:-

(a) The organization CSTA which is his parent Department comes directly under the Ministry of Human Resources Development, Department of

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Secondary and Higher Education. Annexure A-6 refers. Again, its status has been treated with that of other institutions like Kendriya Vidyalaya Samiti, as is evident from Ministry of Human Resources Development letter dated 12-08-1987 which has been cited in the Apex Court's Judgment in the case of *Union of India v. Bijoy Lal Ghosh, (1998) 3 SCC 362*, the relevant portion of which is as hereunder:-

“ I am directed to say that the National Commission on Teachers under the Chairmanship of Prof D.P. Chattopadhyay has made various recommendations concerning pay and service conditions of teachers at school level. Pending Government's decision on the report of National Commission on Teachers the Fourth Central Pay Commission only recommended the replacement scales for school teachers. Accordingly, these pay scales were implemented vide Ministry of Finance (Department of Expenditure)'s Notification No. F.15(1)/IC/86 dated 13-9-1986 and 22-9-1986. Subsequently, it was clarified that the revised scales of pay for different grades of teachers are based only on the recommendations of the Fourth Central Pay Commission, that decision on the recommendation of National Commission on Teachers is yet to be taken and that it would be done as soon as possible.

2. *In partial modification of Finance Ministry's Notification No. F.15(1)/IC/86 dated 13-9-1986 and 22-9-1986, by which replacement scales were given to school teachers, it has now been decided that the revised pay scales of school teachers in all Union Territories (except Chandigarh) including government-aided schools and organisations like Kendriya Vidyalaya Sangathan and Central Tibetan Schools' Administration etc. will be as under.*”
(Emphasis supplied)

“ The organization CSTA is one of the notified institutions in respect of jurisdiction by the Tribunal, vide serial No. 41 of the notifications of the Central Government issued under the provisions of Sec 14(2) of the Administrative Tribunals Act, 1985. ”

(b) The respondents have permitted absorption of employees working in certain other organizations like Prasar Bharti as could be seen from letter No. WRCA/Admn/Dep/76A/2007-09/848-61 dated 18th June 2008 issued by the Ministry of Water Resources, Office of the Controller of Accounts, New Delhi, vide Annexure MA-2 filed by the applicant. This letter is taken judicial note of subject to verification by the respondents.”

11. The applicant is thus, fully justified in his contention that once his deputation has been duly recognized bringing the same within the frame work of the Recruitment Rules, his entitlement or eligibility to be considered for absorption on the basis of fulfilment of the conditions of 2 years deputation and attendant conditions, which again is in accordance with the same rules, cannot be negatived. When consciously respondents had recognized the organization CSTA as one from where deputation could be possible, they cannot turn around to say that the applicant does not crystallize his further rights accrued to him on the strength of his deputation. If the respondents afforded the deputation to the applicant deeming his deputation to be within the provisions of the Recruitment Rules by creating a legal fiction, then also, they are duty bound to extend such a legal fiction for his absorption.

12. In the oft-quoted passage of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1952 AC 109) it was observed:

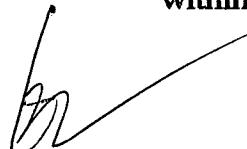
"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

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13. The aforesaid observation has been approved and followed by our own Supreme Court in a series of decisions e.g. Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111, and Raja Shatrunji v. Mohd. Azmat Azim Khan (1971) 2 SCC 200, and in a latest decision in Mohd. Akram Ansari v. Chief Election Officer, (2008) 2 SCC 95.

14. From the records, it appears that the very contention of the respondents that non absorption of the applicant is on account of his non fulfilment of the conditions as per recruitment Rules is a thorough afterthought, conceived of only after the applicant has filed the O.A. Had the same been thought of earlier, communication as at Annexure A-5 and A-8 would not have been issued. Thus, there is no merit in the contention of the respondents that the applicant is not fulfilling the conditions for deputation/absorption.

15. In view of the above, the OA succeeds. Respondents are directed to consider the case of the applicant for absorption and if other conditions for such absorption are fulfilled, they shall pass suitable orders. Till such time the decision on the above lines is arrived at and action taken, the applicant shall not be relieved from the respondents' organization. This drill shall be completed within a period of three months from the date of communication of this order.

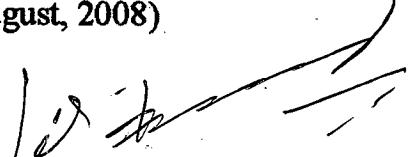


16. No costs.

(Dated, the 29th August, 2008)



(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVR.