

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.171/2011

Monday this, the 7th day of March, 2011

CORAM:

HON'BLE MR.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

A.C.Attakoya, S/o P.C.Eassa,
aged 45 years,
Motor Vehicle Inspector, Office of the Director,
Road Transport, UT of Lakshadweep, Kavaratti,
residing at Seenath Noor, Near Airtel Tower,
Kavaratti Island, UT of Lakshadweep.

.. Applicant

By Advocate: Shri M.R.Rajendran Nair, Senior
with Mr. M.R.Hariraj

vs.

1. Union of India, represented by the Secretary to Government of India, Department of Surface Transport, New Delhi.
2. Administrator, Union Territory of Lakshadweep, Kavaratti.
3. Director of Road Transports, UT of Lakshadweep, Kavaratti.
4. Secretary of Road Transports, UT of Lakshadweep, Kavaratti.

.. Respondents

By Advocate: Shri S.Radhakrishnan

The Application having been heard on 04.03.2011, the Tribunal on 07.03.2011 delivered the following :-

ORDER

HON'BLE MR.JUSTICE P.R.RAMAN, JUDICIAL MEMBER:-

The applicant is working in the Road Transport Department as Motor Vehicle Inspector in the Lakshadweep Administration on ad-hoc basis on transfer on deputation with effect from 6.3.2008. The period of ad

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hoc appointment of the applicant was extended till March, 2009 and thereafter the period of his deputation was not extended. The applicant made a request for absorption in the post of Motor Vehicle Inspector by submitting representation dated 9.3.2009 and marked as Annexure A20. Since there was no response to the representation made by him, he filed O.A.No.210/2009 before this Tribunal. This Tribunal by an interim order permitted him to continue in the post and the O.A. was disposed of finally on 6.7.2010 (Annexure A21). The Tribunal directed the respondents to consider the representations submitted by the applicant at Annexure A-18 and A-19 in that case and to pass appropriate orders therein within a stipulated time. Subsequently as directed the representation was considered and Annexure A1 order was passed rejecting his request for absorption. Impugning the same, he has filed the present O.A. It is contended that the respondents ought to have considered the fact that there are no eligible candidates available in the feeder category for promotion and the post is a substantive one. The respondents while issuing Annexure A1 did not consider this aspect. It is also contended that he is allowed to continue in the post only till 5.3.2011 subsequent to which he shall be repatriated to his parent department. According to him he is entitled to be regularly appointed to the post on completion of his training. It is also contended that as per Annexure A3 Recruitment Rules for the post of Motor Vehicle Inspector, the same can be filled up "by transfer on deputation". He having been thus appointed by transfer on deputation, it has to be considered that his appointment was a regular one and it cannot be considered as

ordinary deputation as contemplated in the general rule on deputation. According to him there is a difference between deputation simpliciter and transfer on deputation. On the aforesaid grounds, he seeks to quash Annexure A1 and direct the respondents to consider the applicant for regular absorption as Motor Vehicle Inspector.

2. When the matter came up for admission on 01.03.2011 before this Tribunal, the matter was adjourned for the respondents to get instructions. Today the applicant has filed an unnumbered M.A. seeking to amend the O.A. by incorporating a challenge to Annexure A22 produced in this case, which is a circular issued by the Lakshadweep Administration notifying one vacancy of Motor Vehicle Inspector proposing to fill up the same on promotion/transfer on deputation basis and prescribing the eligibility conditions. It is said that Annexure A22 was obtained by the applicant subsequent to the filing of the O.A. which necessitated an amendment. In ground "G" it is contended that Annexure A22 is issued ignoring the statutory provision under Annexure A2 and he reserves his right to challenge Annexure A22 separately and at the same time in paragraph 9 he has included a prayer to quash Annexure A22. Thus ground "G" and the reliefs sought for are contradictory.

3. We have heard the Sr.Counsel Shri M.R.Rajendran Nair appearing on behalf of the applicant and the Standing Counsel Mr.S.Radhakrishnan appearing on behalf of the respondents. In fairness the Sr.Counsel



submitted that in the case of a deputationist, he cannot as of right insist for continuing beyond the period of deputation. But, according to him, in this case, the applicant was appointed "by transfer on deputation" and further since there was no eligible candidates in the feeder category for promotion and he having expressed his readiness to continue, the respondents-Administration ought to have considered absorption of the applicant as he satisfies all the requisite qualifications for the post. According to him the representation of the applicant has not been disposed of after considering this aspect of the matter. It is also contended that even beyond 3 years period the authorities have got discretionary power in the matter of extending the deputation period and this should be an appropriate case where such power ought to have been exercised and should have extended the period of deputation.

4. The respondents on the other hand would contend that the applicant has no right as such to continue beyond the period of deputation, that he was appointed on specific terms on similar condition as laid down in the new notification which would clearly show that he was appointed on a specific term and he having accepted the terms and applied for the post and he having been appointed thereafter, he is estopped from raising any contention against the terms and conditions of his appointment especially when he availed the benefit under the order and continued to serve the respondents in terms of the appointment order. Reliance is placed on the decisions of the Apex Court reported in *Kunal Nanda vs. Union of India and Another*; (2000)5 SCC 363,



State of Punjab and Others vs. Inder Singh and Others; (1997)8 SCC 372 and P.K.Sandhu(Mrs.) vs. Shiv Raj V.Patil; (1997)4 SCC 348, in support of his contention. It is also contended that the prayer is to quash Annexure A1 order disposing of his representation which was issued strictly following the order passed by this Tribunal. It is also pointed out that there is no provision under the rules for absorbing an employee on deputation and even for extending the period of deputation, the proper authority is the concerned Ministry. It is submitted that on the applicant being completing his term of office as deputationist they have already issued notification for fresh appointment in accordance with law and in terms of the conditions prescribed thereunder. He prays that the O.A. be dismissed.

5. Going by the admitted facts, the applicant was appointed pursuant to a notification issued similar to the one produced as Annexure A22 along with the amendment application. The applicant has not chosen to produce a copy of the appointment order issued. But it is admitted that he was appointed on ad-hoc basis on transfer on deputation on 3.3.2008. He was directed to undergo training from 1.6.2008 and he completed the course successfully. Meanwhile, the appointment was extended for another six months with effect from 2.12.2008. Though his request for regular appointment and absorption was not considered, which led to the applicant filing O.A.No.210/2009. Annexure A1 is a copy of the final order passed in the said O.A. The specific stand taken by the respondents as revealed in paragraph 3 of

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the judgment would show that the applicant is to be repatriated to his parent department on completion of his deputation period. As per the Recruitment Rules, the applicant cannot be continued beyond the deputation period and he is to be repatriated to his parent department and that as per the Recruitment Rules, the method of filling up of the post is only by promotion or by transfer on deputation. As the applicant was appointed on transfer on deputation, he has no right to continue beyond the period of deputation.

6. After referring to the rival contentions, the question posed and considered was as to whether the applicant is entitled for absorption/regular appointment as Motor Vehicle Inspector or not? In paragraph 5 of the order in O.A.No.210/2009 decided on 6th July, 2010, it is held as follows:-

"It is an admitted case that the applicant was on deputation and the deputation was for a definite period. Though the applicant was sent for the training for MVI, it cannot be construed as a right to continue in the service. In this context, we may consider the points raised by the Senior counsel appearing for the applicant that there are no eligible candidates available in the feeder category for promotion and the post is a substantive one. If so, the question now raised by the applicant has to be considered by the respondents in that context. As far as the applicant is concerned, he is appointed on transfer on deputation basis



and he has to quit the office on completion of the deputation period. However, we feel that the question whether the applicant could be appointed afresh as MVI or to be absorbed in the post under the circumstances that there was no candidate available in the feeder category for promotion and the post being a substantive one, can be considered only by the authorities. In view of the above, without going into the merits of the case, we direct the respondents to consider the representations submitted by the applicant at Annexure A-18 and A-19 dated 26.12.2008 and 9.3.2009 respectively and to pass appropriate orders therein within a reasonable time, at any rate, within 45 days of the receipt of a copy of this order. We further direct that the applicant may be allowed to continue in his present post until final orders are passed on these representation as stated above. With the above direction, the O.A. stands disposed of without any order as to costs."

In view of the above, there is no right as such for the applicant to continue beyond the period of deputation and all that is directed to be considered by the respondents is as to whether the applicant could be appointed afresh or to be absorbed in the post in the absence of an eligible candidate in the feeder category for promotion. In the Annexure A1 order disposing of the representation, as directed, it is said that the period of deputation for 6 months expired on 5.9.2008 and ad hoc



deputation period was extended for a further period of 6 months with effect from 6.9.2008 by order dated 31.05.2008. The extended period of deputation also expired by 5.3.2009 Afternoon. The post of Motor Vehicle Inspector being a Group 'B' (Gazetted) post, the appointment needs consultation with UPSC as per Col. 14 of the Recruitment Rules. That the applicants and other documents of all applicants were sent to UPSC vide letter dated 9.3.2009. Simultaneously the department requested that the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) to extend the term of ad hoc appointment on deputation with effect from 06.03.2009 based on Clause 4(1) of Chapter 21 of Manual of Establishment and Administration. But the competent authority has not extended the term of deputation beyond one year i.e. w.e.f. 06.03.2009. The representation was considered on its merit and a decision was arrived at. It is said that the Recruitment Rules does not permit for regular absorption to the post of Motor Vehicle Inspector. The method of appointment is by promotion/ transfer on deputation. Possessing of training by itself is not sufficient and relevant cause for absorption against the rules and training is mandatory which was stipulated in his appointment order also. He was continued in the deputation post on the strength of the interim order passed by the Tribunal and in the light of the decision taken his claim for absorption has no merit, being contrary to the Recruitment Rules. He has no right to continue further. However his period of deputation was extended up to 5.3.2011 for completion of 3 years from the date of his initial appointment on deputation.




7. The applicant has not been able to point out any rule under which he has any right to be absorbed. He was appointed on transfer on deputation on specific terms and conditions. He knew even at the time of his appointment that his appointment was for a term. He having accepted the post based on the terms of his appointment, he has no right to continue beyond the period to which he was appointed unless any rules intervene to support his contention, which there is none. In *Kunal Nanda vs. Union of India and Another*; (2000)5 SCC 362, the Apex Court held that the deputationist has no right to continue on deputation or to claim permanent absorption in borrowing department, unless his permanent absorption is covered by a statutory provision. A deputationist cannot assert and succeed in his claim for permanent absorption in the department where he works on deputation, unless his claim is based upon a statutory rule, regulation or order having the force of law. A deputationist can always and at any time be repatriated to his parent department, at the instance of either borrowing department or parent department. There is no vested right in such a person to continue for long on deputation or get absorbed in borrowing department. The same view was taken in an earlier decision in *State of Punjab and Others vs. Inder Singh and Others*; (1997)8 SCC 372, wherein it was held that repatriation from deputation cannot be resisted by an employee on the grounds that he has continued on deputation for a long time during which he earned promotions on ex-cadre posts, and that on repatriation he will have to work in his parent cadre on a lower post.



8. In so far as the applicant has no right to continue beyond the period of deputation, nor has any right to be absorbed or regularized in the absence of any rules, we find no merit in the contentions raised by the applicant. The order Annexure A1, is validly issued. Accordingly, we dismiss the O.A. There is no order as to costs.



(K. GEORGE JOSEPH)
MEMBER(A)



(JUSTICE P.R. RAMAN)
MEMBER(J)

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