

Central Administrative Tribunal , Lucknow Bench,

Lucknow

O.A. No. 438/2005

this the 19th day of March, 2007

CORUM:-

Hon'ble Shri A.K. Singh, Member (A)

Hon'ble Shri M. Kanthaiah, Member (J)

1. Pulok Sen Gupta aged about 35 years son of late Shri S.K.Sen Gupta r/o 19, Jogendra Pathak Road, Lucknow presently posted as Section Officer on deputation in Central Administrative Tribunal, Lucknow.

..Applicant

By Advocate: Shri Raj Singh

Versus

1. Union of India, through Secretary, Department of Personnel and Training, Department of Public Grievances & Pensions, Govt. of India, New Delhi.
2. Secretary, Department of Secondary and Higher Education, Ministry of Human Resource Development, Government of India, Shastri Bhawan, New Delhi.
3. Secretary, Department of Telecommunication, Ministry of Communication, Govt. of India, Sanchar Bhawan, Ashok Road, New Delhi.
4. Chief Engineer (Electrical) Department of Tele-Communication, Ministry of Communication, Lucknow.
5. Bharat Sanchar Nigam Limited, 5th Floor, 'A' Wing, Statesman House, Barakhambha Road, New Delhi, through its Chairman & Managing Director.
6. Chief Engineer (Electrical) Bharat Sanchar Nigam Limited, 7th Floor, La-place Building, Shahnajaf Road, Lucknow.

....Respondents


By Advocate: Shri G.S. Sikarwar and Sri P.K.Srivastava for
Sri M.A. Khan

ORDER

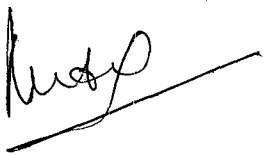
By Hon'ble Shri A.K. Singh, Member (A)

The O.A. bearing No. 438 of 2005 has been filed by the applicant Pulok Sen Gupta (address given in the O.A.) against order dated 3rd September, 2004 communicated by respondent No. 6 on the basis of directions contained in letter No. BSNL/11/SR/2003 dated 17th June, 2004 of respondent No.5. By this O.A., the applicant is claiming permanent transfer/ change of cadre from the post of cadre of Assistant in the Ministry of Human Resource Development (HRD) to the cadre of Assistant in department of Telecommunications.

2. The brief facts of the case are that applicant joined as Assistant in the Department of Education, Ministry of Human Resources Development in the pay scale of Rs. 1640-2900 (Revised Rs. 5500-9000) as per order dated 2.3.1995. The applicant joined as a regular Central Secretariat employee on the post of Assistant. The respondent No. 3, through a circular No. A-22013/1/96-Admn. II during 1996 invited applications for filling up the post of Assistants, UDCs and LDCs in the Department of Telecommunication, Govt. of India from amongst the regular employees of Central Secretariat Service/ Central Secretariat Clerical Service personnel who were willing to serve under respondent No.3 on the basis of transfer on loan basis initially for a period of one year. The applicant was duly informed about this decision by respondent

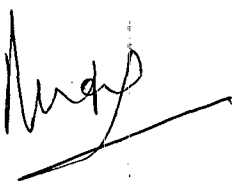
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No.2 vide letter dated 28th June, 1996. He was also directed to report for duty on the post of Assistant in the office of Chief Engineer, Electrical in the Department of Telecommunications, at Lucknow as per office order dated 4th July, 1996. The applicant reported for duty on the post of Assistant in the office of Chief Engineer, Electrical, Department of Telecommunication, Lucknow on 8th July, 1996. According to Rule 21 of Central Secretariat Service Rules, 1972, the Department of Personnel and Training in the Ministry of Personnel, Public Grievance and Pensions, Government of India, New Delhi is empowered to transfer a cadre officer of the Central Secretariat Service from one cadre to another in the same grade. In pursuance to the above rule, Sri Anil Kumar Dixit, Assistant, Sri D.K. Srivastava, UDC and Sri Anil Kumar, LDC were absorbed in the department of Telecommunications. The applicant being a similarly placed was also entitled to similar consideration. The applicant accordingly applied for permanent transfer/ change of cadre in the Department of Telecommunication, on 2nd April, 1998. He also reminded the authorities in this regard vide his representation dated 7th March, 2001. The representation of the applicant was duly forwarded to competent authority for consideration by respondent No.6. Respondent No. 3, who was the competent authority to consider and decide the case of the applicant was again reminded by respondent No. 6 for taking an early decision in the matter vide letter dated 9th



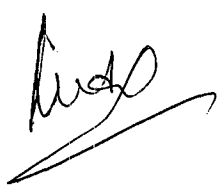
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March, 2001. The tenure of the applicant on loan basis was also expiring on 8th July, 2001 and this fact specifically pointed out in the aforesaid communication. Respondent No. 5, namely, B.S.N.L., in the meantime, issued a circular on 14th January, 2002 calling for option for permanent absorption in B.S.N.L. from all Group B officers who were transferred to Bharat Sanchar Nigam Ltd. on deemed deputation basis w.e.f. 1st October, 2000 as well as from those who were on the rolls of the department of Telecommunication/Department of Telecom Service/Department of Telecom Operation as per office memorandum dated 30th September, 2000. Since the applicant was not permanently transferred to the Ministry of Telecommunication, he was not allowed such an option. despite the fact that he had expressed his willingness to the offer of B.S.N.L. The last date for submission of applications was 15th March, 2002. Officers and employees who were on the rolls of Departments of Telecommunication /Telecom service/ Telecom operation as on 30th September, 2000 were sent on deemed deputation to B.S.N.L. w.e.f. 1st October, 2000. As the applicant was also on the roll of Department of Telecommunication as on 30th September, 2000 on a loan basis, he was also sent to B.S.N.L. on deemed deputation basis. All the persons who were sent on deputation to B.S.N.L. were allowed ad hoc payment of Rs. 2000/- per month. As applicant too was sent to B.S.N.L. on deemed deputation basis he was also



entitled for the same benefit for the period from 1st October, 2000 to 6th May, 2002 i.e. for the period he worked under the Department of Telecommunication. On the basis of these submissions, the applicant seeks the following reliefs:-

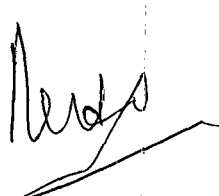
- i) To quash and set aside the impugned order dated 3.9.2004 rejecting the claim of the applicant for change of cadre from the post of Assistant in the Ministry of H.R.D. to the Department of Telecommunication.
- ii) To direct the respondent No.5 and 6 to allow payment of salary to him in the IDA pay scale of Rs. 7340-12430 w.e.f. 1.10.2000 to 6.5.2002 or in the alternative to allow adhoc payment of Rs. 2000/- P.M. to him w.e.f. 1.10.2000 to 6.5.2002.
- iii) To direct the respondents to transfer the applicant from the post of Assistant in the Secretariat cadre of Ministry of H.R.D. to the same cadre in the Department of Telecommunication and consequential absorption in B.S.N.L. on a permanent basis on the post of Assistant w.e.f. 01.10.2000 in the I.D.A. pay scale of Rs. 7830-12430/- and its upgraded pay scale of Rs. 9850-14600 w.e.f. 02.01.2003 with all consequential benefits.



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iv) To issue any other order or direction which this Tribunal may deem fit and proper in the facts and circumstances of the case.

3. Respondents on their part have opposed the Original application. They submit that the main cause of action i.e. refusal of inter cadre transfer of Shri Pulok Sen Gupta from Ministry of HRD to Department of Telecommunication and his repatriation to HRD arose on 6.5.2002 i.e. nearly 4 years back, and hence the O.A. is hit by a limitation of one year as provided under Section 21 (1)A of the Administrative Tribunals Act, 1985. O.A. is therefore, clearly time barred under the aforesaid provision of law. The applicant cannot be allowed to take advantage of his own latches by seeking condonation of the delay involved in the matter. They further submit that the applicant was appointed on the post of Assistant in the Department of Telecommunications purely on loan basis and this fact is also clearly mentioned in the O.A. Hence, he has no vested right to claim inter-cadre transfer from his parent Ministry/Department to Department of Telecommunications. The request of the applicant for absorption was duly considered by B.S.N.L. Since the existing strength in the cadre of Assistant was adequate to meet the requirements of B.S.N.L., it was decided by the authorities to repatriate the applicant to his parent Department. Accordingly, he was repatriated to his parent Ministry/Department on 6.5.2002. Respondents further



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submits that the claim of the applicant for ad hoc payment of Rs. 2000/- or in the alternative to provide him the integrated IDA pay scale of 7830-12430/- w.e.f. 01.10.2000 to 6th May, 2002 is not at all admissible to him under the existing instructions as he was not a regular employee of the Department of Telecommunications. He was working in this Department purely on loan basis. On the basis of the above, respondents submits that the O.A. in question is devoid of any merit and therefore, pray for its dismissal.

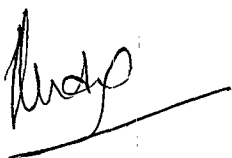
4. The applicant as well as respondents were heard on 13.2.2007 through their respective counsels. Shri Raj Singh appeared on behalf of the applicant and Sri G.S. Sikarwar and Sri P.K.Srivastava holding brief for Sri M.A. Khan appeared on behalf of the respondents. In their oral arguments, the learned counsels only reiterated their submissions as above.

5. We have given our anxious consideration to the submissions made by learned counsels on both sides and have also perused the records of the case.

6. In the first place, we find that the applicant himself has conceded in para 4.2 of the O.A. that a circular No. A-2203/1/98-Admn. II was issued by the Secretary, Department of Telecommunication, Ministry of Communication, New Delhi in the year 1996 inviting applications for the post of Assistants, UDCs and LDCs from amongst regular Central Secretariat Service/ Central Secretariat Clerical Service personnel, who were willing to

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serve under the said respondent No. 3 i.e. Secretary, D.O.T. on the basis of "transfer on loan basis initially for a period of one year." The applicant being eligible for the same, applied for the post of Assistant, and was selected for the post on merits. Accordingly, he was posted as to Assistant in the office of Chief Engineer, Electrical, Department of Telecommunications, Lucknow purely on loan basis, initially for a period of one year. Respondents also concede that the petitioner was appointed to the post of Assistant purely on loan basis initially for a period of one year. This fact is clearly recorded in the O.M. dated 28.6.96 enclosed as Annexure no. 5 to the O.A. His loan period, however, was extended from time to time and he was finally repatriated to his parent department/Ministry on 6.5.2002. After formation of B.S.N.L. w.e.f. 1.10.2000, the office of Chief Engineer (Electrical), Lucknow was allocated and transferred to B.S.N.L. Thus, on the basis of the averment made on both sides, it is clear that applicant was appointed as Assistant in the Department of Telecommunication purely on loan basis and that too initially for a period of one year w.e.f. 8.7.96 which was subsequently extended from time to time till the date of his repatriation i.e. on 6.5.2002. In view of the above, it is very clear on record that applicant having been appointed, purely on loan basis, for a specified period has no vested right either to continue beyond the period specified in the offer of appointment or for absorption in the latter

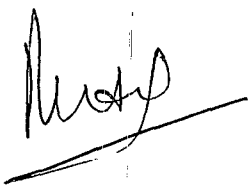


Ministry/Department. He, therefore, cannot claim absorption as a matter of right.

7. In the second place, the case of the applicant is clearly covered by the concept of "Deputation" on loan basis. The concept of 'Deputation' in service Juris-prudence has been well examined by the Apex Court in the case of **Umapati Chaudhary Vs. State of Bihar and another** [Reported in (1999) 4 SCC 659]. In the above judgment, the Hon'ble Apex Court has defined the concept of "Deputation" as under:-

"Deputation can be aptly described as an assignment or an employee (commonly referred to as "deputationist") of one department or cadre or even an organization commonly referred to as the parent department or lending authority. The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the service of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not."

8. It is clear from the above that the concept of deputation thus carries with it lending and borrowing with, of course, the consent of the employee. It envisages three ingredients:-

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- i) There must be a department in which a particular employee is working and the Department is willing to lend;
 - ii) There will be another department which is borrowing the services of the aforesaid employee.

iii) and the employee is willing to go on deputation to the borrowing department and has given his consent accordingly.

9. As we have already held above the case of the applicant is a clear case of transfer on deputation on loan basis from the Department of Secondary and Higher Education, Ministry of H.R.D. to the Department of Telecommunication/ B.S.N.L. As we have already held in every "Deputation" there is a period specified in the order to which all the three namely the lending and borrowing department as well as the concerned employee agree before issue of the orders. The employee or the deputationist cannot go beyond the terms and conditions of offer of appointment on deputation. Moreover, unless all the three parties agree, there is no question of absorption of an employee on deputation in the borrowing department or the Ministry as it is not covered by the terms and conditions of deputation and that too on a loan basis, as in this case. We also find that the borrowing department in this case, namely the Department of Telecommunication/ BSNL have not agreed to absorb the applicant in their cadre. In this regard Para 4.9 of the counter reply dated nil is very clear and unambiguous. "The case for permanent absorption of the applicant in B.S.N.L. was taken up with the concerned authorities in B.S.N.L. However, B.S.N.L. did not agree to permanent absorption of the applicant in B.S.N.L. Accordingly, the

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applicant was repatriated to his parent department i.e. the Department of Secondary and Higher Education, Ministry of Human Resource Development w.e.f. 6.5.2002.

10. The respondents have also contested the say of the applicant that he was subjected to hostile discrimination in as much as other similarly placed persons, namely Sri D.K.Srivastava and Anil Kumar were absorbed in B.S.N.L. while his case for absorption has been rejected by them. Respondents, contradict the say of the applicant that he was 'similarly' placed vis-à-vis D.K.Srivastava and Anil Kumar. According to them while the applicant belonged to the cadre of Assistant, D.K. Srivastava and Anil Kumar belonged to UDC and LDC cadres respectively of Central Secretariat Service, we agree with the respondents in this regard and hold that the applicant cannot be said to be similarly placed with these employees. Moreover, B.S.N.L. did not require the service of the applicant beyond the extended period of deputation as they could manage their work with the existing cadre strength in the grade of Assistant. Hence, the respondents have taken the decision to repatriate the applicant in public interest to his parent department on 6.5.2002. The applicant had no vested right to continue beyond the period of deputation or for absorption. There is also no master servant relationship between the applicant and the department of Telecommunications. Hence no court of law can thrust an employee on an unwilling master. Though, the courts of



law are vested with the authority to enforce constitutional and legal rights of a citizen, it is not vested with the authority to create a new right in favour of an employee.

11. Last of all, we also find that applicant did not register any protest against the order of repatriation dated 6.5.2002 and quietly accepted the same and repatriated to his parent department/ Ministry. He, therefore, cannot now turn around and challenge his order of repatriation or rejection of his claim for absorption after a lapse of nearly four years.

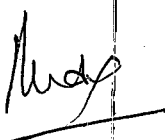
12. O.A. in question has been assailed by the respondents on the ground of limitation. They submit that this Original Application has been filed on 1.9.2005 while the cause of action had arisen on 6.5.2002, when his claim of absorption in the Department was virtually rejected and the Department of Telecommunications issued an order for his repatriation on 6.5.2002. The O.A. has been filed after a lapse of over 3 years and three months. Hence the same is barred by limitation of one year provided under Section 21 (1) A of Administrative Tribunals Act, 1985. Applicant has filed a Miscellaneous Application No. 2561 /2006 for condonation of delay on the following grounds:-

i) That on repatriation to his parent department/ Ministry, the applicant was again send on deputation to Central Administrative Tribunal, Lucknow Bench, Lucknow as Section Officer w.e.f. 27.11.2002.

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ii) That in response to applicants' representations dated 2.4.1998, 1.7.1999 and 7.3.2001, the Department of Telecommunications had informed respondent No. 6 that the case of the applicant for permanent absorption was under consideration. The applicant throughout, was under the impression that his request for absorption in the cadre of Assistant in the Department of Communication under Rule 21 of the Central Secretariat Service Rules, was under consideration. It was only after the order dated 3.9.2004 (Annexure 1 to the O.A.) that the applicant could understand that respondents were only adopting delaying tactics to frustrate his just and valid claim for absorption. As relevant papers were to be collected from concerned officer in the Department of Telecommunication, it took some time to file the O.A. The O.A. was ultimately filed on 1.9.2005. We have considered the matter, we are satisfied that the delay in filing the O.A. was due to certain bonafide reasons as explained above. Hence we condone the delay in filing the O.A in question.

13. As regards adhoc payment of Rs.2000/- allowed to other employees deputed to B.S.N.L., the same is also admissible to an employee in the cadre of an Assistant who is on the rolls of the Department of Telecommunications and is on deputation to B.S.N.L. When we examine the case of the applicant, we find that the employee came on deputation from the Department of Secondary and Higher Education, Ministry of H.R.D. to the



Ministry of Telecommunications and was deputed from there to B.S.N.L. His status whether permanent or temporary in the Department of Telecommunications, will not materially alter the merits of the case of the applicant, as he has been performing identical functions on a par with other permanent similarly placed Assistants. If other Assistants were getting the benefit of adhoc payment of Rs. 2000/- per month on the basis of "deemed deputation", the applicant, too being similarly placed, was entitled to the same benefit. His status as Assistant whether permanent or temporary is immaterial to decide the issue. An employee of the same status and performing the same functions was entitled to the same scale of pay or equal pay as per Article 39 (d) of the Constitution of India. To allow a benefit to one class of similarly placed employees, while denying the same to others, will amount to hostile discrimination and shall be violative of Article 14 and 16 (1) of the Constitution of India.

14. In the case of **K.I. Shepherd Vs. Union of India** [Reported in AIR 1988 SC page 686], the Apex Court has clearly held that people in similarly placed situations shall be entitled to the same benefit. Our learned brother of CAT, Allahabad Bench have also reiterated the same view in the case of **A.K. Khanna Vs. Union of India** [Reported in AIR 1988(2) CAT 518]

15. The applicant cannot be denied the benefit of *adhoc payment as a deputationist only* on the ground that

he had come to the department of Telecommunications on loan basis.

16. In the case of Selvaraj Vs. Lt. Governor, Island Portblair [Reported in (1989) 4 SCC 291], the Apex Court has held that even if an employee is working on a higher post on adhoc or temporary basis, as per valid orders of competent authority, he will be entitled to salary and allowances of the post in question. To quote the relevant extract of the judgment:-

"Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during the time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of Rs. 1640-2900. Consequently, on the principles of 'Quantum Meruit' the Respondent authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as regular promotee. This limited relief is required to be given to the appellant only on this ground."

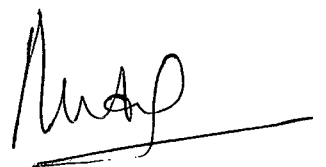
17. The applicant was on deputation to the department of Telecommunication on loan basis and hence his deputation to B.S.N.L. will be covered by the concept of "deemed deputation" He will, consequently be entitled to adhoc payment of Rs. 2000/- per month on par with other similarly placed Assistants. The applicant will not, however, be entitled to IDA pay scale of Rs. 7830-12430 as scale of pay in question is effective only w.e.f. 2nd January, 2003 as per circular dated 4th October, 2004 and 14th October,

2004 by which time the applicant had already been repatriated to his parent Department. It is clarified that the applicant was repatriated to his parent department on 6.5.2002. On the basis of the above, we pass the following order:-

- i) The applicant has no case whatsoever for permanent absorption in the Department of Telecommunication and hence his request for permanent absorption is consequently rejected as inadmissible under the law.
- ii) The applicant will however, be entitled to adhoc payment of Rs. 2000/- P.M. w.e.f. the date of his deputation to B.S.N.L. till the date of his repatriation to his parent Department i.e. 6.5.2002. The entire exercise should be completed within 4 months from the date of receipt of copy of this order. In consequence O.A. is partly allowed. Parties to bear their own cost.


MEMBER (J)

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MEMBER (A)