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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: --- 199
T.A. NO: 101/86

DATE OF DECISION 7-4-1992

R.C.Mirchandani Petitioner

Mr.G.K.Masand Advocate for the Petitioners

Versus

Union of India and ors. Respondent

Mr.V.M.Bendre Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr.M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Y
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

U.C.Srivastava

(U.C.SRIVASTAVA)

MD

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Tr. Appln. No. 101/86

R.C. Mirchandani,
 Superintending Engineer (Retd.),
 Block No. 5,
 Satyam Shivam Sundaram,
 Kukund Nagar,
 Pune - 37.

.. Applicant

vs.

1. Union of India
 through
 Director General,
 Central Public Works Department,
 Nirman Bhavan,
 New Delhi.
2. Director General,
 (Posts and Telegraph),
 Ministry of Communication,
 P&T Board,
 New Delhi. .. Respondents

Coram: Hon'ble Shri Justice U.C. Srivastava,
 Vice-Chairman.

Hon'ble Shri M.Y. Priolkar, Member (A)

Appearances:

1. Mr. G.K. Masand
 Advocate for the
 Applicant.
2. Mr. V.M. Bendre
 Advocate for the
 Respondents.

JUDGMENT:

(Per U.C. Srivastava, Vice-Chairman)

Date: 9.4.92

This is a transferred application under Section 29 of the Administrative Tribunals Act. The applicant who retired from service in the year 1981 prays that it may be declared that he is entitled to deputation allowance for the period from 1.7.1963 till 27th August, 1969 as he was deputed to the P&T department along with interest @ 18% and a writ of mandamus may also be issued directing them to pay the deputation allowance forthwith.

2. Prior to 1st July, 1963 all civil construction work relating to Posts and Telegraphs

Department was being undertaken and carried out by the Department of Central Public Works. A decision was taken to separate the work and created a civil wing for the Posts and Telegraphs Department. As a consequence of this decision the Ministry of Works and Housing issued a memorandum dated 26th June, 1963 stating that all posts and incumbents of the said posts from the Central Public Works Department in charge of Building works of the Posts and Telegraphs Department would also be transferred to the Post and Telegraphs Department along with the works in hand with effect from 1st July, 1963. The posts and the units thus transferred under the said memorandum formed a part of Post and Telegraph Department w.e.f. at that time 1-7-1963. The applicant who was working as in the grade of Executive Engineer (Civil) was also transferred. As per the averments made by the respondents he was transferred along with the works and from the said date he was attached to the ~~post~~ Posts and Telegraphs Department which position is not denied. The applicant was repatriated to the parent department on 26th August, 1969 before the Department took any decision on the ~~post~~ options which were given to the officers concerned for their absorption in the Posts and Telegraphs Department. A decision in this behalf was taken on 10th December, 1971. On 20th August, 1969, it was decided by the Posts and Telegraph Department to obtain options from all such officers holding the transferred post from the Central Public Works Department as to whether they would like to get themselves absorbed in the Post and Telegraph Department or would they like to get themselves repatriated to their parent department. The optees of permanent

absorption were selected on 10-12-1981. The applicant did not exercise any such option. By this application the applicant states that during the period the applicant worked in this department, and he is entitled to deputation allowance which was even sanctioned to S/Shri G.G.Gujar, Joseph Cherian and M.V.Kulkarni, Asstt.Engineers.

3. According to the respondents the applicant is not entitled to any deputation allowance as he came on transfer along with the work discharging the same type of duties. As such there was no question of being sent on deputation and cannot claim any deputation allowance as claimed by him. As far as the case of S/Shri Gujar, Kulkarni and Cherian is concerned it has been stated that ~~themselves~~ their case is different from the case of the applicant and rather there is fundamental difference in two set of cases. ~~to which he was placed~~. The applicant never initiated any proceedings in ~~a~~ Court of Law for absorption permanently in the Post and was he Telegraph Department nor empanelled as an optee for which he did not apply and as such selected for absorption hence he was bound to go back to his parent department, which he himself chose.

4. On behalf of the applicant it was contended that the appointment of the applicant was nothing but on deputation which is also evident from their own letter of the department. In this connection he has made a reference to letter from Department of Communication, P&T Board dtd. 30th July, 1969 by which one Shri S.K. Agrawal, Asstt.Executive Engineer, was promoted on adhoc basis as Executive Engineer vice the applicant on being repatriated to CPWD vide their letter dtd. 29th July, 1969. In the order dtd.

29th July, 1969 against the name of the applicant it is mentioned that on termination of his deputation with P&T Bombay. Learned Counsel then contended that the department itself treated the earlier period on deputation and that is why it was mentioned that he ~~is~~ has been posted on termination of his deputation. The question of deputation or deputation allowance is not decided by any description in a transfer or posting order and the same is governed by relevant rules and orders. Learned counsel made a reference to the judgment of the Bombay High Court in the case of Govardhan Govinddas Gujar and Ors. v. Union of India (Special Civil Application No.1045 of 1974) decided on 20th June, 1979. In the said case the applicants prayed for their absorption also before the High Court. The High Court observed that subject of deputation allowance is governed by the fundamental rules. In the said case on behalf of the Union of India it was not disputed that the transfer of the petitioners from C.P.W.D. to the Post and Telegraphs Department would be covered by the terms "deputation" and if the fundamental rules were applied they would be entitled to the deputation allowance. With reference to the undertaking contained in transfer order of all such employees which ^{was} also obviously given by applicant, the Court observed that though it was expressly stated in the letter dtd. 22nd June, 1963 that the persons who will be transferred in accordance with that letter will not be entitled to any deputation allowance but the entire letter dealing with the question of transfer of the petitioners or the Assistant Engineers to the

Post and Telegraphs Department has to be read as a whole. The Court held that the clause relating to non-entitlement of deputation allowance has to be read in the light of the fact that the petitioners were purported to be permanently transferred alongwith their posts. If the result has not been able to ^{be} achieved for reasons which are not material for deciding the claim of the petitioners, the Union Government can not ~~not~~ rely on the recital in the letter by which the petitioners were told that they would not be entitled to any deputation allowance. In the instant case it has been disputed that it will amount to deputation and further on behalf of the respondents it has been contended that of the applicant there has been no permanent transfer and the applicant even before the options were taken got himself repatriated to the parent department and never liked to face the situation wherein he was to exercise option one way or the other.

5. On behalf of the respondents a reference has been made to the case of similarly placed employees who approached the Kerala High Court in the case of Gangadharan v. Union of India and others, O.P.No.302 of 1975. The High Court held that in view of the fact that as per the decision of the Ministry of Works, Housing and Rehabilitation dated 22-6-1963 that the officers and staff including the work charged staff belonging to the C.P.W.D. cadres then working in the P&T Wing of the C.P.W.D. shall until further orders work under the P&T Department on the same scale of pay and allowances it is also not possible to hold that the petitioner is entitled to any deputation allowance for the period he worked

or may work in the P&T Department. The document is a policy decision and the petitioner himself has understood the same. In so far as the proposal to absorb the C.P.W.D. officers working in the P&T Department was only a policy decision and the Government was competent to review the same under the authority. The court held in that case the petitioner has not ^{been} absorbed in the P&T Department and he has not become an officer of that department and his prayer for absorption was not granted.

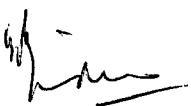
6. A reference has also been made to the decision of the High Court of Delhi, in Civil Writ Petition No.1457/74, S.N.Rai and Ors. V. Union of India, wherein similarly placed employees approached the Delhi High Court. The Court held that the prayer for absorption was accepted and the applicants cannot be repatriated. In that case the deputation allowance to similarly placed persons like the applicants was not allowed as it was held that they must be deemed to have been absorbed. It is in this light in Kerala case the deputation allowance was not granted on the ground that in the transfer order itself it was prescribed that they shall work on the same scale and allowances while before the Delhi High Court it was not disputed that if they were not repatriated they were certainly entitled to deputation allowance because they had been sent out of cadre. The condition that they would not be entitled to deputation allowance was partly not wholly because those of them who were rendered suitable were expected to be absorbed under P&T Department in course of time.

7. The transfer of the applicant and others to the department was in voluntary. The applicant was amongst those who did not like to be absorbed and even before options were taken went back to his parent department which was permitted. So long the applicant was not absorbed he was employee of the parent department and till before absorption his position was a deputationist. Under Govt. of India, Ministry of Finance O.M. No.F.1(II)E-III(B)/75 dated 7th November, 1975 issued under FR 25 it has been provided that for the purpose of drawing deputation (duty) allowance the term deputation will cover only appointment made by transfer on a temporary basis to other departments and State Governments provided the transfer is outside normal field of deployment and in public interest. In the instant case transfer took place before issuing of said G.O. The condition laid down in this involuntary transfer regarding non claiming of deputation allowance was undated in which employees had no hand and they were bound to accept it. It certainly applied to those who sought or were absorbed in new Department~~s~~ and exercised option in this behalf. Those who did not seek option and went back before they were asked to do, their position was that of deputationist who though were required to perform ~~the~~ same work were sent outside the cadre in another department which could be nothing but on deputation. In Kerala case the Ministry of Communication O.M. issued in 1974(19-1-74) in which it was decided not to give deputation allowance was also looked into. ^{This} ~~The~~ decision was taken in 1974 much after applicant left the new department. As such what was accepted on behalf of the Govt. before Madras Bench and not disputed before Delhi High Court cannot be overlooked on the ground that any

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~~legal~~ concession against legal position will have no binding effect will not apply in this case.

8. But maximum period of deputation is three years unless extended with concurrence of Finance Ministry which seems to have not been done in this case which is also contained in O.M. dated 27th January, 1970. In view of what has been said above the applicant is entitled to deputation allowance ^{the initial} but only for ~~a~~ period of three years as per rate prescribed. The application is thus partly allowed with the above direction. No order as to costs.


(M.Y.PRIOLKAR)
Member(A)


(U.C.SRIVASTAVA)
Vice-Chairman

MD