

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A.NO.571/2005

Date of Order : 18th May, 2006

C O R A M

**HON'BLE MR. JUSTICE P.K. SINHA, VICE-CHAIRMAN
HON'BLE DR. A.R. BASU, ADMINISTRATIVE MEMBER**

Prabhu Singh, S/O Late Kalyan Singh, resident of Kamia Niketan A-506, Sahdeo Mahto Marg, Srikrishnapuri, P.S. Budha Colony, District-Patna at present Section Officer, Debts Recovery Tribunal, Patna.

.....Applicant

-V E R S U S-

1. The Union of India through Under Secretary to the Govt. of India, Ministry of Finance, Department of Economic Affairs(Banking Division), Jeevan Deep Building, Parliament Street, New Delhi-110001.
2. Presiding Officer, Debts Recovery Tribunal 396, East Boring Canal Road, Patna-800001.
3. Bharat Wagon & Engineering Co. Ltd. through its Managing Director, 'C' Block, 5th Floor, Maurya Lok Complex, Dak Bungalow Road, Patna-800001.

.....Respondents

Case Laws referred :-

- I. 2003(1) PLJR Page 778 Amar Nath Singh Vs. State of Bihar & Others
- II. 2003(1)PLJR page 783 State of Bihar Vs. Amar Nath Singh.
- III. Order of Hon'ble Supreme Court in SLP(CC) 312/99, State of Bihar Vs. Amar Nath Singh.
- IV. Order dated 7.7.05 passed by Hon'ble CAT, Allahabad Bench in O.A.No.739/05, Satya Deo Rai Vs. U.O.I.
- V. Order passed in O.A.340/03, O.A.416/03, O.A.418/03 & O.A.419/03 by CAT, Ahmedabad Bench, B.P. Joshi Vs. Union of India & Others.
- VI. Order passed in O.A. 409/03 & O.A.417/03 by CAT, Ahmedabad Bench; Anil Kumar Sharma and others Vs. U.O.I. & Ors.

VII. 2005(1) Supreme Court Service Law Judgment page 241 Kapila Hingorani Vs. State of Bihar

VIII. 1992(1) PLJR(SC) Page 81 P.K. Chinaswami Vs. Govt. of Tamilnadu

IX. Special Civil Application No.6153,6154,6156,6157,6158 and 6444 of 2005
In case of Secretary of Govt. of India Vs. R.N. Dave

Counsel for the applicant : Sri G. Bose
 Counsel for the respondents : Sri M.K. Mishra (respondent No.1&2)
 Sri U. Choudhary,(respondent No.3)

ORDER

Per Dr. A.R. Basu, Administrative Member

This O.A. has been filed by Sri Prabhu Singh requesting for the following reliefs:-

- (a) To quash the order dated 22.8.2005 issued by the respondent No.1 in light of the observation made by Hon'ble High Court Gujrat at Ahmedabad.
- (b) Order may be passed to restrain the respondents from repatriating the applicant in his parent department.
- (c) Order may be passed that respondent No.1 is not the competent person to repatriate the applicant in his parent department.

2. The facts of the case in brief are that the applicant, in response to an advertisement published in the Employment News dated 8-14th June, 2002 applied for the post of Section Officer in the Debts Recovery Tribunal. The applicant, who was earlier posted in Bharat Wagon & Engineering Company Ltd. as Dy. Manager in the scale of pay of Rs.5400-9050/- after completion of formalities as prescribed in the selection process was ultimately selected to the post of Section Officer in the scale of Rs.6500-10500/- in Debt Recovery Tribunal(DRT). He was released by his parent department on 03.10.2002 and then joined the DRT on deputation basis. The initial deputation was for one year and subsequently it was extended from 4.10.03 to 3.10.04 and again from 04.10.04 to 03.10.2005. Subsequently, the Presiding Officer of DRT, Patna on 12.8.2005 wrote a letter to the M.D. Bharat Wagon for issuing No Objectin Certificate for getting the applicant absorbed in DRT. However, in the meantime by the impugned order dated



22.8.2005(Annexure A/20) the applicant was repatriated to his parent organization w.e.f. 22.8.2005 and by another order dated 24.8.2005(Annexure A/18) he stood relieved from DRT from the afternoon of 22nd August,2005 as per order of I/C Registrar & Head of the Office of the DRT, Patna. The applicant has alleged that his repatriation is unsustainable and the order issued by the Under Secretary of Govt. of India dated 22.8.2005(impugned order) is biased and malafide and the applicant is even now continuing in the said post. The learned counsel for the applicant has argued that as the repatriation order is biased and malafide it is subject to judicial scrutiny and also cited the decision in a similarly situated cases of the different Benches of CAT, Gujrat High Court, Patna High Court and Supreme Court.

3. In the written statement, the learned counsel for the respondents have denied all the allegations made by the applicant and rebutted all the paras in the O.A. The respondent no.3 in his written reply has mentioned that for want of fund the Respondent Company is passing through severe financial crisis as a result of which the existing employees are not getting their salary for December,2004, April,2005, June,2005, July,2005 and August,2005. Even payment of retiral dues and other dues of the retired employees and salary of the existing employees of Respondent company are being paid by financial support from the Ministry of Heavy Industry. Proceeding was pending since December,2000 before the Board for Industrial and Financial Reconstruction(BIFR) under the Sick Industrial Companies(Special Provisions) Act, 1985. In the written reply the respondent No.3 has admitted to have received letter No.1/99/DRT/PAT/3485 dated 12.8.2005 relating to issue of "No Objection Certificate" for getting the applicant absorbed in the DRT but as the applicant has been repatriated on 22.8.2005, the question of issuing No Objection Certificate does not arise. He has also attached a copy of the order of BIFR. In the written statement filed by Registrar I/C, DRT, Patna on behalf of the respondent No.2 it has been admitted that the applicant who was an employee of the Bharat Wagon & Engineering Company Ltd., was appointed as Section Officer in DRT on deputation basis. In most of the paras he has mentioned that the contention made in



the O.A. are matters of record. However, it has been contended in the written statement that the Chairperson, Debt Recovery Appellate Tribunal(DRAT), Kolkata had enquired into certain complaints received by him regarding the functioning of the DRT, Patna. The President, Secretary and other senior members of the DRT Bar Association, Patna met the Chairperson on August,11,2005 and after taking into account all relevant matters for better functioning of the DRT, Patna, the Chairperson advised that Shri Prabhu Singh, Section Officer should be replaced immediately. Accordingly, the Presiding Officer, DRT, Patna was advised by the Ministry of Finance to repatriate the applicant to his parent organization and to take steps to appoint a suitable candidate as Section Officer. The Under Secretary has only conveyed the recommendation of the Ministry.

4. We have heard the ld. Counsel for the parties and have gone through the pleadings. The main points involved are that whether a deputationist has a right to continue in the deputation post and whether after or before completion of his tenure he can be repatriated arbitrarily particularly when malafide is alleged.

5. In the instant case, the applicant was sent on deputation to Debts Recovery Tribunal. In service jurisprudence, deputation means deputing or transferring an employee to a post outside his cadre that is to say to another department on temporary basis. After the expiry of the period of deputation an employee is to go back to his parent department to occupy the same post unless in the meanwhile he has earned promotion in his parent department as per recruitment rules. Moreover, in deputation there are three players, i.e. the lending authority, the borrowing authority and the individual concerned. The approval/consent of all the three are necessary before an individual is sent on deputation. It is well settled principle that a deputationist has no right to be absorbed to the post in which he is deputed. However, there is also no bar for deputationists being absorbed in the borrowing department if there is a statutory provision to that effect. As per the Recruitment Rules annexed with the O.A., it has been made clear that appointment is to be made by way of deputation. However, in the instant case it appears that though the applicant was taken on deputation and had been



given successive extension and was also given additional charges/higher charges it could not be made out in the absence of any contradictory document on record that his conduct had been unbecoming or there had been any complaint to that effect. However, as per the impugned order issued by the Under Secretary to Govt. of India, the applicant was repatriated to his parent department without assigning any reason. Generally the order of repatriation, which is a natural consequence of application of the relevant rules and is not penal it would be a repatriation simpliciter and is to be considered as an incident of public service. However, there may be situations where the repatriation can be matter of judicial scrutiny. The Courts have interfered and set aside the orders of repatriation when they were made (i) By way of punishment and without complying with the principles of natural justice; (ii) Contrary to statutory provision or rules; (iii) Malafide or for collateral purposes; (iv) Arbitrary or by way of discrimination; (v) By way of glaring injustice etc. In the decision of the Central Administrative Tribunal, **Allahabad Bench in O.A.No.739/2005, Satya Deo Rai Vs. U.O.I. & Ors.**, it has been held that the applicant who was working in DRT on deputation is entitled for consideration for absorption under the scheme framed by the respondents. In the instant case also, the borrowing authority had requested the lending authority for "No Objection Certificate" so that the applicant could be absorbed in DRT. This action of the borrowing authority implies that they were satisfied with the working of the applicant. Similarly, in **CAT, Ahmedabad Bench in O.A.No.340/03 and three other cases decided on 23.4.2004** it has been held that though in service jurisprudence a deputationist cannot seek, by way of right, to be absorbed in the borrowing department due to long tenure in the borrowing department but if the rules provide for such an absorption, the borrowing department cannot deny the absorption on flimsy ground if they are satisfied with the working of the employees. In the instant case though the borrowing department requested for NOC from the lending department and though as per the written statement filed by the respondent No.3, the lending department virtually had become defunct and therefore the logic for recalling back the applicant is not understood. Similarly in **CAT Jabalpur Bench order**



dated 18.5.2004 in **O.A.No.113 of 2004 & 9 other OAs**, it has been held that when the rules provide for absorption, the absorption of the deputationist can be given effect to. This decision has been taken keeping in view of the decision in **Delhi Transport Corporation Vs. DTC Mazdoor Congress & Ors.**, 1991 SCC(1) SCC 600 and **Mahendra Kumar Chaurasia Vs. State of MP & Others**, 2002(3) MPLJ 112. The learned counsel for the applicant has also referred to the decision of Gujrat High Court and decision of the Patna High Court in **CWJC No.3513 of 1994 in the case of Amar Nath Singh Vs. the State of Bihar & Ors.** as reported in **2003(1)PLJR** wherein it has been held as under:-

“Service Law - Repatriation – Petitioner repatriated to his parent department (Corporation) which has virtually ceased to exist, pursuant to certain unfounded allegations leveled against him – transfer of services of petitioner to the State Govt. was done pursuant to policy decision of the State Govt. which purported to accommodate those members of the staff who were declared surplus in various corporations - transfer of petitioner’s services to the corporation virtually amounts to his dismissals from service- order of repatriation also suffering from the vice of discrimination-impugned order being violative of Articles 14 and 21 of the Constitution, cannot be sustained.”

The Hon’ble Patna High Court has territorial jurisdiction over this Bench of CAT. This decision of the Patna High Court was upheld by a DB in LPA No.1566 of 1997 in the case of **State of Bihar & Ors. Vs. Amar Nath Singh & Ors.** as reported in **2003(1)PLJR 783**. These decisions of the Single Bench and Division Bench of Patna High Court was upheld on merit by the Apex Court in **State of Bihar & Others Vs. Amar Nath Singh & Anr. On 01.02.1999.**

6. From the arguments of the 1d. Counsel for the parties, records of the case and written statement filed by the respondents it appears that the alleged repatriation has been made on account of some complaint. However, no such complaint is on record nor it has been clarified or elaborated in the written statement of respondent No.2 & 3. The principle of natural justice demands that nobody should be condemned unheard. In the instant case though the applicant has no right to continue on deputation but his repatriation on the basis of unfounded allegation against him and for which he has not



been given any chance to controvert before passing of the impugned order is against the principle of natural justice. Though the impugned order has been issued by the Under Secretary to the Govt. of India, no written statement has been filed clarifying the position on behalf of respondent no.1. The I/C Registrar Sri Ravinder Kumar has filed a written statement on behalf of the "respondent". This reply can be said to have been filed on behalf of the respondent No.2, though it is not clear as to whether he was authorized to do so. Respondent No.3 in his written reply has explained the miserable financial condition of the Bharat Wagon and Engineering Co. Ltd.

7. In view of the above facts it appears that this repatriation has been done by way of penalty. As per the ratio laid down in the case of **K.H. Phandis Vs. State of Maharashtra** reported in **1971 SC 998**, reversion of Government servant from temporary officiating post to substantive post by way of punishment attracts Article 311. The Apex Court in **Parshotam Lal Dhingra Vs. Union of India, AIR 1958 SC 36** has laid down two tests, first whether the servant had right to the post or the rank, secondly, whether he has been visited with evil consequences of the kind mentioned in that decision.

Assuming the alleged complaint against this applicant to be true, disciplinary action could have been initiated but instead of giving the applicant an opportunity to explain his stand, the impugned order has been passed. Therefore, this is really a case of repatriation by way of penalty and the ratio laid down in the case of **K.H. Phandis Vs. State of Maharashtra(supra)** clearly applies to the instant case.

8. Since neither the nature of complaint has been mentioned in the written statement of the respondents nor the applicant has been heard nor has he been given any opportunity before the repatriation, the principle of natural justice has been violated. This is more so as this violation of natural justice affects the applicant adversely as the parent organization is virtually defunct due to shortage of fund as admitted by the respondent No.3 and running in loss and is not in a position to pay salary to its staff, the



logic of the repatriation of the applicant on vague and alleged allegation cannot be substantiated.

9. In the instant case bias and malafide have been alleged. The repatriation order has been made on the basis of some allegations which seem to have been investigated into by the Chairperson of the DRAT. However, the nature of the complaint however has not been indicated to the applicant nor any show cause had been issued to the applicant before issuing repatriation order.

10. During the course of argument the ld. Sr. Standing Counsel had submitted that the order of status quo was issued by a bench of this Tribunal when for several dates written statement was not filed and since the applicant already stood relieved by office order, the order of status quo did not compel his continuance on the post, still the applicant in his capacity as Section Officer, had withheld the key and records of the DRT, Patna with him thereby not allowing the DRT to function with reference to the record so withheld. This had been submitted by the ld. Counsel verbally in the course of arguments though this point had not been placed in writing nor included in the written reply.

11. There is no dispute that though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Repatriation by itself will not be a stigma. On the other hand if there is evidence that the order of repatriation is not "pure accident of service" but an order in the nature of punishment, Art.311 will be attracted. In the instant case it has been alleged by the petitioner that no complaint had ever been brought to his notice neither the details of the complaint has been given in the written statement of the respondents. Thus the repatriation being punitive in nature is liable to be quashed as the doctrine of audi alteram partem has been violated. Since the repatriation to parent



organization, which was suffering from financial crisis was not by way of "accident of service" but by way of punishment on account of certain allegations against him, he should have been given an opportunity to explain himself by issuing show cause notice regarding the allegations against him which were so enquired into by the Hon'ble Chairperson of the DRAT, Kolkata. Thus in the present case the facts and circumstances to which reference has already been made brings out that the order of repatriation was in the nature of punishment and thus this order was not in compliance of the provisions of the Constitution.

12. In view of the facts mentioned above, the O.A. is allowed. The impugned order dated 22.8.2005(Annexure A-20) is quashed. However, the respondents if they feel that continuation of the applicant in the DRT, Patna office on deputation is not in the interest of Administration then they would be free to issue a show cause notice to him giving details of the complaints and findings of the enquiry made from lawyers and to consider the show cause reply. If the reply is found unsatisfactory, the concerned respondents may order his repatriation to his parent department irrespective of the fact that the parent department is financially sound now-a-days or not. Since from the records it appears that [Annexure-A/18] that the applicant was relieved by the order dated 24.08.2005 w.e.f. the afternoon of 22.08.2005 on the basis of the direction received from the Govt. of India, Ministry of Finance Order dated 22.08.2005, a question would arise as to when he was actually relieved by operation of that order, the order of maintaining status quo would act as mandatory injunction, effective retrospectively. If he was so relieved then, he obviously was not doing work in the Tribunal as was claimed by the respondents also. In that case the respondents would have to grant leave of the kind due to the applicant to cover that period. However, in case no leave is due to cover that period, then the rest period is to be treated as dies non. No order as to cost.


 (A.R. BASU)
 MEMBER(A)


 (P.K. SINHA)
 VICE-CHAIRMAN