

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

Tr.  
ORIGINAL APPLICATION NO.: 3/99

9-8-2001  
Date of Decision :

B.B.Kulkarni Applicant.

Applicant in person Advocate for the  
Applicant.

VERSUS

Union of India & Others, Respondents.


Shri V.S.Masurkar Advocate for the  
Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other  
Benches of the Tribunal ? ✓
- (iii) Library ✓

  
(D.S.Baweja)  
Member (A)

mrj\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

Tr.A.No.3/99

Dated this the 9th day of August 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Bandopant Bhaskarrao Kulkarni,  
Ex-Office Superintendent at  
Jawahar Navodaya Vidyalaya,  
Latur, R/o Tugaon, Tal.Omerga,  
Dist. Osmanabad.

... Applicant

Applicant in person

V/S.

1. The Director,  
Navodaya Vidyalaya Samiti  
(an Autonomous Organisation  
Under Ministry of Human Resource  
Development, Govt. of India,  
Deptt. of Education.)  
A-39, Kailash Colony,  
New Delhi.

2. Deputy Director,  
Navodaya Vidyalaya Samiti  
Regional Office Pune Region,  
78, Mayur Colony, Kothrud,  
Pune.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

(Per : Shri D.S.Baweja, Member (A))

The applicant while working as Office Superintendent in the Green Fingers School, Akluj, District- Solapur applied for deputation for the post of Office Superintendent in Navodaya

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Vidyalaya Samiti on transfer as per notification in December, 1991. The applicant was selected and was appointed on deputation as per order dated 24.6.1992 in Jawahar Navodaya Vidyalaya. The initial period of deputation was for 2 years. The period was however subsequently extended on year to year basis and last extension was upto 15.7.1996 as per order dated 3.7.1995. As per revised recruitment Rules, 1995, Navodaya Vidyalaya Samiti as per Circular dated 28.7.1995 decided to absorb the persons who were working as Superintendent on deputation basis provided they are willing and put in minimum two years of service in Navodaya Vidyalaya Samiti by 30.6.1995. Since the applicant was eligible for absorption, he gave his willingness on 6.7.1995. The applicant's willingness was forwarded by the Principal, Jawahar Navodaya Vidyalaya to the Director, Navodaya Vidyalaya Samiti. However, instead of absorbing the applicant in the Navodaya Vidyalaya as per order dated 15.5.1996, he was repatriated back to his parent school. The applicant represented against the same on 20.5.1996, 19.9.1997 and 9.6.1998. However, on not getting any response, he filed Writ Petition before the High Court, Aurangabad in 1997. The same has been transferred to the Tribunal as the jurisdiction now lies with Tribunal.

2. The applicant has sought the following reliefs :-
- (a) To set aside the order dated 15.5.1996 repatriating the applicant from deputation.

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- (b) To direct Respondents No. 1 & 2 to restore the services of the applicant in Navodaya Vidyalaya and absorb there as Office Superintendent with full back wages with continuity in service.

(3) The applicant has built his case on the following grounds:-

- (a) Two other persons who were also appointed on deputation as Office Superintendent along with the applicant in 1992 have been absorbed while the applicant has been denied absorption. Thus the applicant has been discriminated.
- (b) The applicant met with the eligibility condition of two years service and also there was nothing adverse in his Annual Confidential reports and therefore applicant deserved to be absorbed.
- (c) The applicant was falsely implicated by some one sending a fake complaint to Deputy Director, Pune Region alleging that the applicant demand money from a newly appointed employee. The complaint was got investigated by the Deputy Director through the Principal, Jawahar Navodaya



Vidyalaya and complainant could not be traced. The applicant also complained to the police about this complaint. The Superintendent of Police after Investigation advised the Deputy Director that charge is false. On further representation in the matter to Collector and District Magistrate Latur also got the matter investigated and concluded that the charge was ~~false~~ <sup>false</sup> and fabricated. He also sent his report to Dy. Director as letter dated 24.2.1997. The applicant contends that the said false allegation may not seem relevant to his case as there is no mention about this in the repatriation order but he presumes that this might have been utilised as a pretext to force repatriation.

- (d) Repatriation order has been issued without any notice or opportunity to represent against the same. Repatriation was also in violation of the provisions in the letter dated 28.7.1995.

4. The respondents have opposed the OA. through the written statement. At the out set, the respondents have taken the technical grounds :- (a) OA. is beyond the jurisdiction of the Tribunal. (b) being barred by limitation and (c) suffering from delay and latches. The respondents submit on merits that the

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applicant had no vested right to continue on deputation and in terms of Condition No. 2 in his appointment order. Samiti reserved the right of repatriation of the deputationist. After initial appointment on deputation in 1992, the deputation was extended on year to year basis and the last extension was given for one year upto 15.7.1996 as per order dated 3.7.1995. Thereafter, the deputation period was not extended and he was repatriated to his parent organisation as per order dated 15.5.1996. The order of repatriation is as per the terms of deputation and is simplicitor order without attaching any stigma. Therefore, there is no illegality committed in repatriation of the applicant. As regards the claim for absorption, the respondents submit that in terms of Circular dated 9.6.1995, options of the deputationist for absorption in terms of the recruitment rules was called. This option was called for consideration of the case with clear stipulation that giving option will not confer any right for permanent absorption. The case of the applicant for absorption was considered but the competent authority did not find the applicant fit for absorption in the interest of Samiti due to the fact that the applicant did not have unblemished record and clean image and integrity. In view of these submissions, the respondents plead that the applicant has no case and OA. deserves to be dismissed.

5. The applicant in rejoinder reply has controverted the submissions of the respondents and <sup>has</sup> reiterated the averments made in the OA. The applicant has contested the technical objections

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stating that the OA. is filed within the limitation period and is maintainable before the Tribunal. The applicant has also stated that at no stage any adverse remarks were conveyed to the applicant and in fact the Principal of the Vidyalaya has certified that the performance of the applicant was satisfactory.

6. The respondents have filed the additional written statement to counter the submissions made in the rejoinder reply.

7. We have heard the applicant in person and Shri V.S.Masurkar for the respondents.

8. The first relief prayed for by the applicant is that the order dated 15.5.1996 repatriating the applicant from deputation be set aside. The respondents have stated that the applicant has been repatriated to his parent organisation on the expiry of the deputation period which was last extended as per order dated 3.7.1995 upto 15.7.1996 in accordance with the terms of deputation. It is further stated by the respondents that repatriation order is simplicitor with no stigma attached. The defence of the applicant is that repatriation has been done without any issue of show cause notice to give him opportunity to represent against the same. He has also contended that repatriation was in violation of provisions of letter dated 28.7.1995 since he had already opted for permanent absorption in the Samiti. After careful consideration of the rival

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contentions, we do not find merit in the contention of the applicant. The deputation appointment is with the consent of the employee and therefore he is aware of the terms and conditions of the deputation. In the present case, the applicant was on deputation as per order dated 24.6.1992 (Exh. 'A-4'). On going through this order, it is noted that as per para 2 (ii) it is provided that Samiti reserves the right to repatriate the deputationist at any time before the completion of normal deputation period on one month's notice. Therefore, the employee can continue on deputation only with the consent of the parent organisation and at the discretion of the Department where the employee is appointed on deputation. In the present case, the applicant has been repatriated only after the expiry of period of deputation and therefore the question of giving any show cause notice did not arise. The applicant was aware of the ending of the period of deputation. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of State of Punjab & Ors. vs. Inder Singh & Ors., 1998 SCC (L&S) 34. In this judgement, while discussing the concept of the term 'deputation', their Lordships have observed as under in para 18:-

" 18. The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words "deputation" means service outside the cadre or outside the parent



department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be."

As held above by the Hon'ble Supreme Court, the deputationist has no right to continue on deputation in case the department does not require or the parent department does not give consent for further deputation. Deputationist has no choice but to go back to parent department as soon as the deputation period is terminated. As regards the contention of the applicant that repatriation is in violation of order dated 28.5.1975, we do not find any substance in the same. Though in this letter, it is mentioned that those who get their option for permanent absorption should not be repatriated but these instructions cannot over-ride the terms of deputation as per the initial appointment order. It is the discretion of the concerned department whether to continue an employee on deputation or not.



In view of the law laid down by the Hon'ble Supreme Court and the facts of the case, we are unable to find any merit in the relief of the applicant that repatriation order should be set aside and he should be restored back in Samiti on deputation.

9. The second relief pertains to absorption of the applicant in Samiti as per his option. The applicant has submitted that he met with the conditions laid down for permanent absorption in respect of two years of service and also did not have anything adverse in his confidential reports. It is further stated that two of his colleagues who were also appointed on deputation along with him have been permanently absorbed while the applicant has been denied absorption and therefore discriminated. The respondents have submitted that the case of the applicant for absorption was considered along with the others as per his option but competent authority did not find him fit for absorption keeping in view his performance. Therefore the respondents contend that no discrimination has been caused to the applicant as the other two deputationist were found fit for being permanently absorbed in Samiti. The respondents have also contended that a Samiti while considering a deputationist for permanent absorption has to ensure that a person with clean record and good performance is taken on the cadre of the Samiti. The applicant has, however, contested this submission of the respondents stating that no adverse remarks have been given to him at any time. He further states that perhaps a fake complaint

made against him has been taken into account while denying the permanent absorption. He has stated that the alleged complaint was got investigated by Deputy Director, Pune Region, Superintendent of Police as well as Collector, Latur but the same was without any substance as the complainant could not be identified. The respondents have, however, denied that the complaint referred to by the applicant is the basis for denial of the permanent absorption. The respondents have made available one of the confidential report of the year 1992-93 which shows adverse entries. For permanent absorption in an organisation of a deputationist, the decision lies with the competent authority. The competent authority has to determine the suitability of the employee based on his evaluation of performance of his work. No interference on such a decision can be made in a judicial review until and unless it is alleged that such a decision is malafide or colourable exercise of power or in violation of rules. None of these grounds have been alleged by the applicant. He has not named the authority who has not approved his proposal for absorption <sup>and</sup> has acted with malafide intention. The applicant has also not indicated any violation of extant rules. The applicant cannot seek absorption in an organisation where he is on deputation as a matter of right. If number of employees seek absorption, it is for the department to assess and decide who are to be absorbed keeping in view the number of vacancies. In this view of the matter, we do not find any reasons to interfere with the decision of the competent authority that the applicant is not fit for absorption. Therefore, there is no merit in this relief also.

10. As regards the technical objections raised by the respondents in opposing the OA., namely, lack of jurisdiction, OA. is suffering from delay and laches and being barred by limitation are not sustainable. The applicant has promptly agitated the matter before the High Court. The High Court has transferred the Writ Petition to the Tribunal as soon as the jurisdiction was vested with the Tribunal as per the Notification. We, therefore, find no merit in these objections raised by the respondents.

11. In the result of the above, we find that the OA. is without merit and the same is dismissed accordingly with no order as to costs.

*S.L. Jain*  
(S.L.JAIN)  
MEMBER (J)

*D.S. Baweja*  
(D.S.BAWEJA)  
MEMBER (A)

mrj.