

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

(14)

BOMBAY BENCH

CAMP : NAGPUR

R.P. No. 5/95 (N) in O.A. 479/92

Shri R.D. Atulkar ... Applicant

v/s

Union of India & Ors. ... Respondents

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)

2) Hon'ble Shri M.R. Kolhatkar, Member (A)

Tribunal's order

Dt: 12.1.96

(Per: Hon'ble Shri B.S. Hegde, Member (J)).

1. Heard Miss S. Kumbhare, counsel for the Applicant and Shri A.K. Gaur, counsel for the Respondents. The Respondent Department filed this R.P. seeking review of the order passed by the Tribunal on 13-12-1994. The Tribunal on the basis of the statement made by the learned counsel for the Respondents stating that the Applicant would be repatriated to his parent department and would be posted as Senior Clerk and the apprehension of reversion is without substance, decided the matter. In view of the statement made by the learned counsel for the Respondents, the Applicant withdrew his petition stating that the Applicant/Respondents would carry out the impugned order of transfer by 10-1-1995 unconditionally.
2. Though the order^{is} passed by the Tribunal on 13-12-1994, the same were despatched to the Applicant only on 20-12-1994 which has been received by the Applicant on 20-1-1995

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and R.P. was filed on 15-3-1995 thereby involving delay of one month and 20 days. The Respondents have given sufficient reasons for filing the belated R.P. It is not on account of laches on the part of Department that they could not file the R.P. earlier but on account of inaction on the part of the Respondents' earlier counsel who could not intimate the Tribunal's directions in time and subsequent difficulties encountered by Respondents in engaging Legal help thereby in our view, the delay in filing the R.P. by the Respondents is justified on perusal of the correspondence.

3. When the matter came up on 8th of this month at Nagpur, after hearing the counsel for both the parties, we had pointed out to the learned counsel for the Applicant whether she would be able to produce the initial order of transfer/deputation of the Applicant to the Railway Electrification Project on deputation against ex-cadre post. To this, the learned counsel for the Applicant submitted that she would submit it on the next day. When the matter was called on the 9th of this month, both in the morning and in the afternoon, neither the Applicant nor the counsel for the Applicant was present and failed to produce the order of transfer/deputation as promised, and the counsel for the Respondents who came from Allahabad to argue the matter after completing his argument sought permission of the Tribunal to go back to Allahabad on the same day which request was acceded to in the facts and

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circumstances of the case.

4. This case has a chequered history. On perusal of the records, we find that the Applicant has not placed before the Tribunal correct facts right from the beginning; equally the counsel for the Respondent has made a statement without the proper authority of the Department and without knowing the full facts of the case. It is clear from the above, that the O.A. was withdrawn mainly on the basis of the statement by the learned counsel for the Respondents who is not otherwise authorised to make such a statement nor any correspondence to indicate that he is allowed to make such statement. The Applicant obtained ex-parte-interim order granted by the Single Bench on 16-7-1992 which was confirmed by Single Bench on 19-1-1993 and placed in sine die list. The Tribunal vide its order dated 16-3-1993 proceeded on the basis that the applicant had severed his connection with the Western Railway and was transferred to Railway Electrification Organisation and in this view of the matter, he could not repatriated to his parent department. Accordingly, the impugned order was quashed and set aside and the Respondents were directed to absorb him in the Railway Electrification Organisation from the date on which he was initially transferred to the Electrification organisation together with all consequential benefits. Again, the matter was placed in the sine die list on 2-11-1993. Later on, the matter was disposed vide Tribunal's order dated

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13-12-1994 on the basis of the statement made by the learned counsel for the Respondents.

5. The Respondents filed condonation petition on 10-7-1995. In the absence of the coram/Bench sitting at Nagpur, the matter could be considered earlier; in the meanwhile, one of the members who passed the order on 13-12-1994 has superannuated, thereby new Bench was to be constituted, comprising of myself and the Hon'ble Shri M.R. Kolhatkar, Member (A) and therefore, we placed the matter for preliminary hearing on 8-1-1996. In the circumstances, we condone the delay in filing the R.P. for the reasons stated above.

6. As stated above, the O.A. was disposed of, on the basis of the statement made by the learned counsel for the Respondents which is against the Railway Board's circular and letters issued from time to time. In fact, he was not authorised to give that concession. It is well known that Railway Electrification Organisation is a project which is run by obtaining services of the employees on deputation against ex-cadre posts. Since the project is for a limited period, there is no scope to absorb the staff against the ex-cadre post in Railway Electrification Project, and the staff so deputed was repatriated to their parent unit/department on the closure of the Project. The Project of Railway Electrification at Bilaspur is on the closure stage.

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The service of the Petitioner is no longer required by the Organisation and accordingly the Respondents vide their order dated 19-2-1992 repatriated him to his parent department. The counsel for the Respondents had no jurisdiction or authority nor any relevant permission was given to him to make such a statement before the Tribunal. It is a settled principle of law which has been held by Full Bench in the case of R.P. Upadhyaya v/s Union of India (1989) that on repatriation an employee could not seek the same pay and allowances as has been drawn by him while on deputation, ignoring the scale of pay which was applicable to him in his parent cadre which is not contemplated by the rules and regulations. Accordingly, the Tribunal has declined to grant the benefit of the status and pay of ex-cadre post on repatriation in parent department except passing the order made on the basis of the statement of the learned counsel for the Respondents that he would be repatriated to the post of Senior Clerk which in fact he was not authorised to do. The Law Officer of the Respondents filed an affidavit on 23-5-1995 stating that the applicant was transferred to Railway Electrification Project, Nagpur at his own request holding his lien under Divisional Electrical Engineer, Western Railway, Dahod. Railway Electrification and Construction organisations are purely temporary organisations made for specific works and specific period. The staff of open line organisations having their lien in the respective parent departments are drafted to these organisations and

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posted against ex-cadre posts at their willingness. The Petitioner on receiving the order of repatriation to his parent department in order to avoid repatriation order deliberately reported sick w.e.f. 24-2-1992. Since there was no post for him and there was no scope to adjust him due to shortage of work load, the Petitioner was released on 17-3-1992 and was intimated accordingly. However, the Petitioner continued to remain on sick list till 20-7-1992. During the period of sickness, he filed this O.A. and obtained ex-parte interim order. On perusal of various correspondence, we are satisfied that the applicant was on deputation to ex-cadre post and he cannot be absorbed in ex-cadre post. Hence, we are of the view, that the order passed by the Tribunal on 13-12-1994 on the basis of the statement made by the learned counsel for the Respondents which he is not authorised to do so is a clear case of error on the face of the record.

7. In the circumstances, it is competent for the Tribunal hearing the petition to dispose of the application on merits. It is true that the R.P. is by no means of appeal in disguise, whereby the erroneous decision is re-heard and corrected but lies only for patent error. In this case, without any elaborate argument, one could point to the error and say that here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it; a clear case of error apparent on the face of the record has been made out. It is well settled principle, that the review power can

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be exercised where some mistake or error apparent on the face of the record is found. It is also found that the same can be exercised on any analogous ground also. It is also equally well settled principle of law, that on repatriation, the deputationist shall join their parent department on the substantive post and not on the post on which he was working temporarily on ad hoc basis. In the light of the above, it is clear that the Tribunal has committed an error apparent on the face of the record in arriving conclusion on the basis of the statement made by the learned counsel for the Respondents which is wholly contrary to the settled principle laid down by the Courts and Railway Board's circular since the learned counsel for the Respondents had no authority to make a statement or give his consent or concession that the Petitioner would be posted as senior clerk upon his repatriation to his parent department. The learned counsel for the Respondents also brought to our notice the decision of the Jabalpur Bench in O.A. 52/95 in Smt. Padmavati v/s Union of India wherein the Tribunal has held, that the claim of the applicant to remain on deputation cannot be upheld and accordingly, the O.A. was dismissed.

8. In the facts and circumstances, we are of the view, that the order passed by the Tribunal earlier on 13-12-1994 is liable to be reversed and in the facts and circumstances

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of the case, the same is quashed and set aside and the interim order passed earlier also stands vacated. The R.P. is allowed. In the result, the Applicant is hereby directed to join the parent department on a posting given to him as per rules within a period of one month on receipt of this order. The R.P. is disposed of accordingly.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

ssp.