

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May 11/2003
On
HMA
6/6
Tee.

O.A. No. 110/2002 & MA 187/2003
T.A. No. in OA 110/2003.

200

DATE OF DECISION 6.6.2003

RAJESH KUMAR TIWARI

Petitioner

MR. R.D. RASTOGI

Advocate for the Petitioner(s)

Versus

UNION OF INDIA AND ORS.

Respondent

MR. V.S. GURJAR

Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. G.C. Srivastava, Administrative Member

G.C.S.
(G.C. Srivastava)
Adm. Member

G.L.G.
(G.L. Gupta)
Vice Chairman

1. Whether Reporters of local papers may be allowed to see the Judgement?

✓ 2. To be referred to the Reporter or not ?

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 ?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

.....

Date of Order : 06.06.2003.

1. O.A. No. 110/2003
2. M.A. No. 187/2003
(O.A. No. 110/2003)

.....

Rajesh Kumar Tiwari S/o Shri B.K. Tiwari, aged about 44 years, resident of 4-LA-26, Jawahar Nagar, Jaipur, at present working as Accounts Officer, Navodaya Vidyalaya Samiti, Regional Office, Shastri Nagar, Jaipur.

.....Applicant.

versus

1. Union of India through Secretary, Department of Education, Ministry of Human Resource Development, Shastri Bhawan, New Delhi.
2. Navodaya Vidyalaya Samiti, through its Commissioner, Administrative Block, Indira Gandhi Stadium, IP Estate, New Delhi - 110 002.
3. Commissioner, Navodaya Vidyalaya Samiti, Administrative Block, Indira Gandhi Stadium, IP Estate, New Delhi - 110 002.
4. Dy. Director (P&E), Navodaya Vidyalaya Samiti, Administrative Block, Indira Gandhi Stadium, IP Estate, New Delhi - 110 002.

.....Respondents.

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CORAM :

Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
Hon'ble Mr. G.C. Srivastava, Administrative Member

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Mr. R.D. Rastogi, Advocate, present for the applicant.

Mr. V.S. Gurjar, Advocate, present for the respondents.

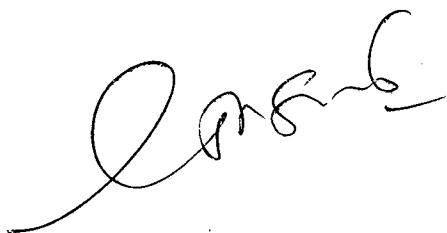


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ORDER
[PER MR. JUSTICE G.L.GUPTA]

The applicant seeks directions to the respondents to consider his case objectively for absorption in Navodaya Vidyalaya Samiti (NVS) and absorb him on the post of Accounts Officer with consequential benefits.

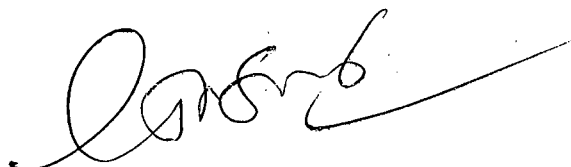
2. The facts. The applicant was appointed as Assistant Manager (Fin) / Assistant Accounts Officer in Madhya Pradesh Urja Vikas Nigam, an undertaking of Government of Madhya Pradesh. In June 1994, he was selected as Accounts Officer in NVS on deputation basis. He joined on 29.7.1994. The period of deputation was extended from time to time. The last of the recommendation for extension of the period of deputation was for the period from 1.10.2001 to 30.9.2003. The period of deputation of the applicant was extended up to 30.9.2003. However, on 21.1.2002, an order came to be issued by the respondents repatriating the applicant to his parent office i.e. Urja Vikas Nigam. The applicant challenged the action of the respondents by filing O.A. No. 104/2002. The said O.A. was disposed of vide order dated 24.5.2002 giving directions to the respondents to consider the case of the applicant for his absorption in NVS in terms of the Notification dated 21.6.2001. The order of the Tribunal was challenged by the respondents by filing Writ Petition No. 3584/2002. At the same time, an order was issued by the NVS rejecting the case of the applicant for his permanent absorption. When this fact was stated before the High Court, the Writ Petition was dismissed. The applicant thereafter, filed Contempt Petition No. 74/2002 contending that the order dated 24.5.2002 passed by the Tribunal was not complied with. The respondents counsel undertook to consider the case of the applicant in terms of the Notification dated 21.6.2001. He also undertook not to relieve the



applicant till the order was passed. The Contempt Petition was dismissed. Thereafter, on 4.12.2002, the order impugned in this O.A. rejecting the claim of the applicant for permanent absorption, was passed. Hence, this O.A.

2.1. The say of the applicant is that his performance althrough in the office of the respondents has been very good, and his case has been rejected in a mechanical manner. According to the applicant, he has been denied absorption because of filing of Contempt Petition against the Senior Officers of NVS and in order to take revenge, they have passed the impugned order. It is further stated that in the NVS various persons, who had got 'Good' ACRs only, have been absorbed but, the applicant has been denied absorption on the ground that he did not earn 'Very Good/Out-standing' ACRs which is against the proceedings of the Meeting dated 15.4.1991 of the NVS on the subject. It is averred that in the rejection letter, the reasons have not been disclosed, which shows that the claim of the applicant has been rejected arbitrarily and it was only an ampty formality.

3. In the counter, the respondents' case is that the claim of the applicant for permanent absorption has been considered keeping in view the various facts and as the applicant did not get 'Very Good/Out-standing' ACRs, in the relevant year, he has not been found fit for permanent absorption. It is stated that the action taken by the respondents is perfectly legal, valid and in consonance with the service jurisprudence. It is the further case for the respondents that the applicant has no enforceable right of getting a Writ of Mandamus requiring the respondents to absorb him permanently. Reliance has been placed on the various decisions of the Hon'ble Supreme Court in support of the reply.

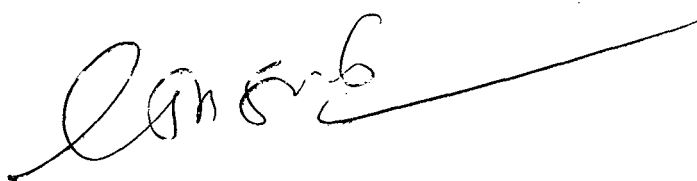


4. In the rejoinder, the applicant has come-out with the case that the ACRs of the applicant for the last two years only ought to have been seen for considering his candidature for permanent absorption. In the alternative, it is stated, even if, five years ACRs were to be seen, then, the ACR of the year 2001-2002 ought not to have been taken into consideration as it was sent during the pendency of the Contempt Petition. It is averred that if the ACR of the year 2001-2002 is ignored then the ACRs of the applicant contained 'Very Good' entries and he has a right of permanent absorption in the department in the NVS. In this connection, it is also stated that the case of the Accounts Officer is akin to the case of Senior Personal Assistant and Section Officer in the matter of absorption and if, the bench mark of 'Very Good' is not there for the Senior Personal Assistants and Section Officers, the same cannot be applied for the Accounts Officer.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. During the pendency of the O.A., the applicant filed M.A. No. 187/2003 seeking directions to the respondents to allow him to work on the post of Accounts Officer and pay him salary for the period 8.8.2000 to 22.10.2002. It is stated in the M.A. that the applicant was never relieved of the duties.

7. In the reply to the M.A., the respondents have come out with the case that the applicant stood relieved on 13.3.1993 and on the date 17.3.2003 when the status quo order was passed by the Tribunal, the applicant was not holding the post of Accounts Officer in the NVS.

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8. In the rejoinder to the M.A., the applicant has reiterated that he was not relieved on 13.3.2003 and he was very much on the post of Accounts Officer in the NVS on the date the order of status quo was passed by this Tribunal.

9. We have heard the learned counsel for the parties and perused the documents placed on record.

10. The contentions of the learned counsel for the applicant may be summarised as follows :-

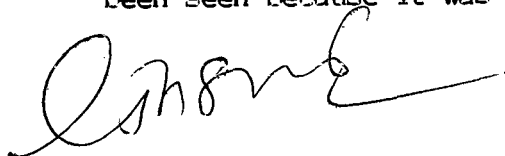
(i) The O.A. should not be heard before the applicant is re-instated on the post of Accounts Officer in view of the order dated 17.7.2003 of this Tribunal.

(ii) The respondents have illegally withheld the salary of the applicant from 8.8.2002 to 22.10.2002 and the Court should direct them to make payment.

(iii) The case of the applicant ought to have been considered fairly and the Bench Mark of 'Outstanding/Very Good' could not be applied in view of the Minutes dated 15.4.1991 of the NVS.

(iv) The applicant's case should have been considered keeping in view only the last two years ACRs.

(v) In case, the ACRs of last five years were to be considered, the ACR for the year 2001-2002 should not have been seen because it was communicated to the applicant during



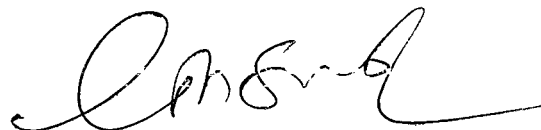
the pendency of the Contempt Petition.

(vi) The conduct of the respondents in rejecting the claim of the applicant on the basis of 1995 Rules and thereafter, insisting on rejecting the claim is relevant to hold that the respondents did not have fair consideration and have acted malafidely.

(vii) The applicant had already been granted extension up to 30.9.2003 and, therefore, he could not have been repatriated before that date.

10.1. In support of his contention, Mr. Rastogi, learned counsel for the applicant cited the following cases :-

- (a) Rameshwar Prasad versus Managing Director, UP Rajkiya Hirmal Nagam Limited and Others (1999)
8 SCC 381,
- (b) Sri Anusuya Prasad Pokhariyal versus The Union of India and Others, OA No. 354/2001 decided on 27.3.2001 by the Guwahati Bench,
- (c) Sumant Pandey Versus The Union of India and others, (Writ Petition No. 8207/1991) decided by the Single Judge of the Hon'ble High Court on 27.9.1995 and



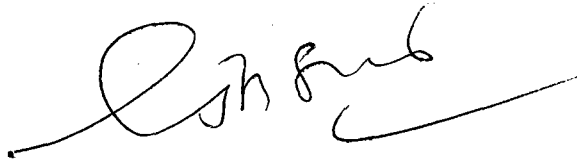
(d) Indranath Chakrabarti versus Calcutta
Metropolitan Development Authority and others,
1991 (8) SLR 435 (Calcutta High Court).

11. On the other hand, the learned counsel for the respondents contended that a deputationist does not have enforceable right of permanent absorption and he has only a right of consideration which has been done in the instant case. Relying on the case of Mahesh Kumar Parmar and others versus SIG of Police and others 2002 (9) SCC 485 and Kunal Manda versus Union of India and Another 2000 (5) SCC 362, Mr. Gurjar contended that the applicant does not have any case in his favour and the application should be dismissed.

11.1. ^{Further} The contention of Mr. Gurjar was that the applicant stood relieved on 13.3.2003 and that he has no right of permanent absorption in the respondents office.

12. We shall consider the contentions of learned counsel for the applicant one by one.

13. The first contention of Mr. Rastogi was that on 17.3.2003, the Court had ordered for the maintenance of the status quo and as the applicant had not been relieved by that date, the respondents be directed to treat the applicant on duty even after the order of repatriation of the applicant was issued. According to Mr. Rastogi, the applicant could be relieved only in the manner stated in Rule 78 of General Financial Rules (GFR) and in accordance with the Form 33 Appendix and as no handing over and taking over of the charge was made in this case, the applicant should be deemed to be continued on the



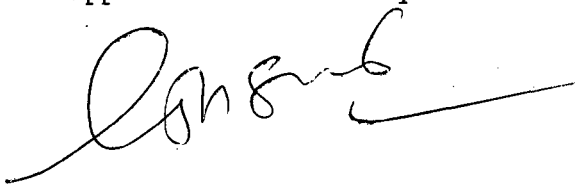
post of Accounts Officer.

13.1. On the other hand, the contention of the learned counsel for the respondents was that the applicant stood relieved when the order Annexure R/2/A dated 13.3.2003 and Annexure R/2/B of the same date were issued. In this connection, it was pointed out that the order was sent at the residence of the applicant but, the wife of the applicant refused to accept the envelop and hence, a copy of the order was again sent by registered post which was delivered to him on 18.3.2003 (Annexure MA-1).

13.2. The facts indicate that on the date the order dated 13.3.2003 were issued, the applicant was not present in the office. However, in the order Annexure R/2/A, it was clearly stated that the applicant was repatriated to the parent department with immediate effect and he was to report to the Managing Director, Urja Vikas Nigam, Bhopal for further posting. In the order Annexure R/2/B, it was stated that the applicant stood relieved in the afternoon of 13.3.2003 with instruction to report to his parent department. Admittedly, the copies of these orders were not delivered to the applicant on 13.3.2003.

13.3. The question for our consideration is, whether on the ground of non delivery of the orders Annexure R/2/A and R/2/B, the applicant should be deemed to be in the service of the respondents on 17.3.2003 when the order of status quo was passed.

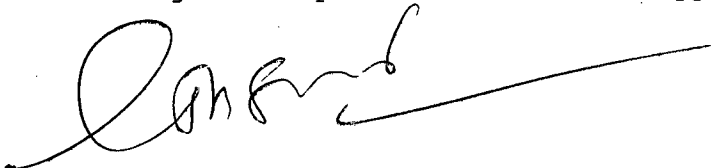
13.4. It is relevant to point out that on 17.3.2003, the applicant's counsel's stand was that the applicant had not been relieved while the contention of the respondents' counsel was that the applicant had already been on dated 13.3.2003. It was also stated by



Mr. Gurjat that a copy of the relieving order was sent to the applicant's address, but, his wife refused to take the copy of the order.

13.5. Rule 78 provides that report of transfer of a Gazetted Government servant should be signed by both the relieved and the relieving Government servants. There is a reference of Form GFR 33 in Rule 78. This provision will apply only where both the relieved and the relieving officers are present. The instances are not un-common where the successor in the office may not be available and in that case, the transfer of charge is made only by way of relinquishment of charge. It is not always necessary that the charge should be handed over and taken over in Form GFR 33 only. In the Form GFR 33, it is provided that this form should be used when transferring the responsibilities of cash and stores is involved. It is not the case for the applicant that he was having the charge of the cash or the stores. He was the Accounts Officer, and as such, he was not required to handle cash and the stores himself.

13.6. In our opinion, simply because the charge was not taken from the applicant in Form GFR 33, it cannot be said that the applicant was in service of the respondents on 17.3.2003. The applicant had been relieved of his duties vide order dated Annexure R/2/B, as he was not available in the office. The relieving order could not be delivered to the applicant, therefore, the respondents were perfectly justified in sending a copy of the order to the applicant by a messenger to his home address. It is not the case for the applicant that the address stated in the order Annexure R/2/B of the applicant, was not correct address of his residence. If the applicant was not found there and the messenger attempted to deliver the copy of the order to the wife of the

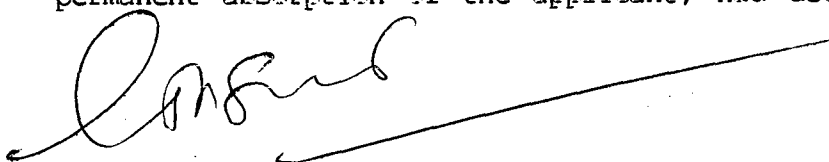


applicant, it was perfectly in order. Even on assuming that the applicant was not aware of the order Annexure R/2/B till 17.3.2003 it has to be accepted that he had stood relieved of the post of Accounts Officer on 13.3.2003 when the orders Annexure R/2/A and R/2/B were issued. It is not material that the applicant had not filled up the Form 33 of the GFR. That being so, the respondents cannot be ordered to re-instate the applicant on the post of Accounts Officer. As a matter of fact, there is no legal impediment in hearing the O.A. without reinstatement of the applicant on the post of Accounts Officer.

14. It is stated in the M.A. that the respondents have unauthorisedly retained the salary of the applicant for the period 8.8.2002 to 22.10.2002. At para No. 7 of the M.A. it is averred that the salary of the applicant has been illegally with-held. In reply to para No. 7 of the M.A., the respondents have not assigned any reason as to why the salary of the applicant for the period 8.8.2002 to 22.10.2002 has not been paid. Therefore, the applicant is certainly entitled to get the salary of this period.

15. The contention of the learned counsel for the applicant was that the Bench Mark of Outstanding or Very Good could not be applied while considering the case of absorption of the applicant in view of the Minutes Dated 15.4.1991 of the NVS.

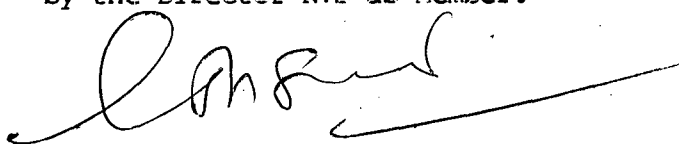
15.1. The contention of the learned counsel for the respondents was that 1991 Minutes decision was not applicable to the case of the applicant and a decision was taken by the selection committee to absorb the officers in the respondents' office only if their performance was Very Good. The Committee which was constituted to consider the permanent absorption of the applicant, had decided that officers not



below of very good performance, shall be absorbed and it rated the over all performance of the applicant as Good only which was below the Bench Mark of Very Good.

15.2. As to the Minutes of the year 1991, it may be pointed out that it was in respect of the absorption of Section Officers, Senior Personal Assistants and Personal Assistants. It was decided that only those officers whose performance was found Very Good or Good should be recommended for absorption and cases of Average performance should be rejected. The name of the post of the Accounts Officer is not stated in the Minutes of 15.4.1991. Therefore, the criteria of the minutes was not applicable to the case of the applicant.

15.3. In this connection, the contention of Shri Rastogi, was that the criteria of the Section Officers and Senior Personal Assistants, should be adopted in the case of the Accounts Officer because the promotion committee and the selection committee for the post of the Accounts Officer comprise of the same persons which is for Section Officers and Senior Personal Assistants. In this connection, he drew our attention to Appendix 1(A) and Appendix 1(E) of the Revised Recruitment Rules of 1995. The composition of the D.P.C. for the purpose of Appendix 1(A) for recommending the promotion is not relevant to decide the matter. In Appendix 1(E), the composition of the selection committee has been stated. This selection committee considers the candidates for the posts of Section Officers, Senior Personal Assistants, Junior Systems Analyst and Accounts Officers. The Committee comprises of the Joint Director/Internal Financial Adviser & Chief Accounts Officer, as Chairman and Dy. Director-In-Charge or the Deputy Director, to be nominated by the Director NVS and one nominated by the Director NVS as Member.

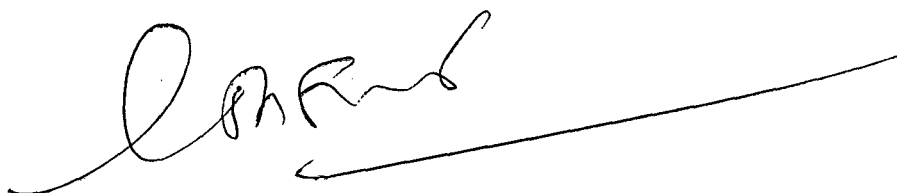


15.4. The Appendix 1(E) cannot apply to the matter of the permanent absorption of the officers of other department/offices on the ground that the committees for promotion and selection of the Section Officers, Senior Personal Assistants, Personal Assistants and Accounts Officers, are the same. It cannot be accepted that the composition of the committee for permanent absorption should also be the same, much less that the criteria to be adopted for permanent absorption on the post of Accounts Officer shall be the same as for the selection and promotion to the posts of Section Officers and Senior Personal Assistants.

15.5. The respondents were perfectly justified in constituting a committee to consider the case of permanent absorption and the committee was well within its powers to formulate its own criteria for permanent absorption. The Committee constituted for the purpose formulated the criteria that for the post of Accounts Officers, performance must be the Very Good. It cannot be said that the respondents have not acted fairly when the applicant's case was considered keeping in view the criteria of Very Good.

15.6. Admittedly, the applicant had earned only 'Good' entry in the relevant year and, therefore, the respondents cannot be said to have faulted when they rejected the claim of the applicant for permanent absorption.

16. The contention of the learned counsel for the applicant was that as per the amendment²¹ made in the Rules in the NVS, the absorption is permissible after putting in two years service and, therefore, the applicant's ACR for only two years were relevant and ACRs of more years

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should not have been considered. This contention is not acceptable. There is no rule which envisages that the ACRs of the eligibility period should only be seen.

17. As per the averments made in the reply, the applicant's five years ACRs have been considered and in the year 2001-2002, the applicant had earned only Good entries. The contention of the learned counsel for the applicant was that this ACR should have been ignored while considering the case of the applicant for permanent absorption. This argument is without any substance. The entry recorded in the year 2001-2002 has not been challenged. As long as the entry stands it was bound to be considered. There is no basis of contending that the Good entry has been recorded because of the pendency of the Contempt Petition. As a matter of fact, if the Reporting Officer or the Reviewing Officer had not been fair to the applicant, the entry of Average could have been recorded. When the applicant has been rated as Good in that year, it shows that fair treatment was given to the applicant althrough.

18. Learned counsel for the applicant ^{might} pointed out that earlier the respondents rejected the claim of the applicant on the basis of the unamended Rules and when this fact was brought to the notice of the respondents in the Contempt Petition, the respondents' counsel accepted that there was a mistake and he under-took to re-consider the case of the applicant with reference to the amended rules, contended that since the respondents ^{ve} had already rejected the claim of the applicant, it should be presumed that the respondents were bent upon to reject the claim of the applicant and thus they have acted mala fide.

18.1. There is no substance in this contention. The respondents

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have reconsidered the case of the applicant taking into consideration the relevant factors and the notification dated 21.6.2001. There is no cause to believe that the consideration of the applicant's case was an empty formality and there was no proper application of mind.

18.2. In the administrative orders, detailed reasons are not required to be given. In the order Annexure A/16 dated 4.12.2002, it was clearly stated that the case of the applicant was examined keeping in view of the relevant factors and the Notification dated 21.6.2001. In the reply, the respondents have come-out with the reasoning as to why the applicant was not found fit for permanent absorption by the selection committee. It is stated that the applicant's performance was found to be Good only. He was below the Bench Mark of Very Good, as decided by the selection committee, keeping in view the nature of the post of Accounts Officer.

18.3. The applicant was not the employee of the respondents' department. The respondents had a right to formulate ^{a/b} ~~its own~~ policy for permanent absorption of the persons working on Deputation. It is not the case for the applicant that the Members of the Board bore ill-will against the applicant and they had cause to harm the applicant. There are no facts on which it can be presumed that the act of the respondents in rejecting the claim of the applicant was mala fide exercise of power.

19. The applicant had been granted extension up to 30.9.2003. There cannot be any objection in re-patriating the applicant before 30.9.2003. It is the sweet-will of the employer to allow a deputationist in his office or not, for further period. It is not the case where the applicant has been re-patriated in the minimum period



for which the deputation was initially ordered.

20. For the reasons stated above, there is no merit in any of the contentions of the learned counsel for the applicant for permanent absorption.

20.1. As to the case of Rameshwar Prasad (supra) relied on by Mr. Rastogi, it may be stated that the facts situation in that case was very different. In that case, the applicant was the employee of U.P.Small Industries Corporation Limited, Kanpur. He was a civil Engineer. Rule 4 of the U.P.Absorption of Government Servants in the Public Undertaking Rules, 1984, provided that deputation in public undertakings would not be allowed to exist except for five years. The deputation of the applicant, therein, came into effect from 19.11.1985. In 1987, the appellant therein, expressed his willingness for permanent absorption in the U.P. Rajkiya Nirman Nigam Limited. The matter remained pending for considerable period. On 19.11.1990, the appellant completed the statutory period of five years on deputation. He was not repatriated to his parent organisation. Not only that, the deputation allowance which was being paid to him was stopped. Further, on the expiry of five years' period when the applicant was not re-patriated, his lien in his parent organisation was terminated vide order dated 31.3.1994. It is in these circumstances, their Lordships held that the applicant was deemed to have been absorbed w.e.f. 19.11.1990, the date from which the deputation allowance of the applicant was stopped. It was observed that if the appellant was not to be absorbed, he ought to have been repatriated in the year 1990, when he completed five years service on deputation and by not doing so, the appellant was seriously prejudiced.



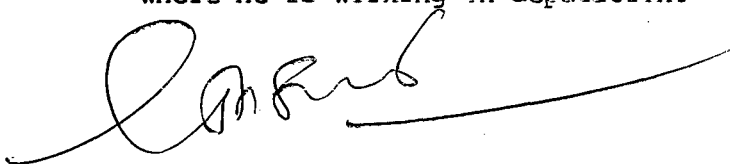
In the instant case, there is no such fact situation. It is not the case for the applicant that his lien stands terminated in his parent organisation. It is also not the case for the applicant that the respondents by their conduct treated the applicant as their own employee as was the fact situation in Rameshwar Prasad's case that the deputation allowance had been stopped or that by not absorbing the applicant has been seriously prejudiced.

20.2. So also, the case of Anusuya Prasad Pokhariyal (supra), does not help the applicant. In that case, the employer had refused the request of permanent absorption of the applicant as there was no vacancy. However, on the basis of the pleadings it was established that there was a vacancy on which the applicant therein was entitled for his permanent absorption. Not only that, it was found that the respondents vide their advertisement had notified 40 vacancies for appointment on deputation basis for the relevant period. In those peculiar facts and circumstances, the Tribunal held that the denial of the request of permanent absorption by the respondents was arbitrary and for extraneous consideration.

20.2. The case of Sumant Pandey (Supra) was decided by a Single Bench. In that case also, it was noticed by the Hon'ble High Court that the petitioner was appointed for initial period of two years on deputation, but the respondents were bent upon extending his period of deputation unilaterally and in the meantime, the lien of the applicant in the parent organisation stood terminated. It is in these circumstances, the application was allowed.

20.3. The case of Indranath Chakrabarti (supra) is altogether on different matter.

21. It has been held by Hon'ble the Supreme Court time and again that an employee on deputation has no right to be absorbed in service where he is working on deputation.

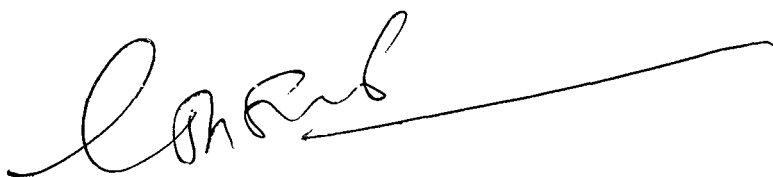


21.1. In the case of Kunal Nanda (supra) , their Lordships observed that the person concerned can always at any time be repatriated to his parent department and there is no vested right in such a person to be continued in the department. The relevant observations appearing at para No. 6 of the report are reproduced hereunder :-

It is well settled that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation."

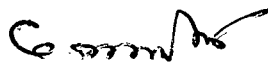
21.2. True it is though there are rules under which the applicant could be absorbed but Rule nowhere says that absorption has to be made. It is always the discretion of the borrowing department to absorb a deputationist or not.


21.3. Even in the case of Rameshwar Prasad (supra), relied on by the learned counsel for the applicant, it has been observed that to absorb or not to absorb a deputationist, is a policy matter. It is ofcourse, further observed that the rejection of request of the absorption should be on justifiable reasons. In the instant case, the respondents have assigned justifiable reasons in rejecting the claim of the applicant and, therefore, the applicant cannot succeed in seeking permanent absorption in the respondents office.



22. Having considered the entire material on record, we find no merit in this O.A. and dismiss it. We, however, direct the respondents to make payment of the due salary of the applicant without further delay. The M.A. stands disposed of.

23. No order as to costs.


(G.C. Srivastava)
Adm. Member


(G.L. Gupta)
Vice Chairman

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