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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. . . . 38 of 1998.

DATE OF DECISION . . . 12.12.2000.

Shri Kuldipak Kumar

PETITIONER(S)

Sri B.K.Sharma, S.Sarma.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Sri B.C.Pathak, Addl.C.G.S.C.


ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE MR M.P.SINGH, ADMINISTRATIVE MEMBER.

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

Judgment delivered by Hon'ble Vice-Chairman.



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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 38 of 1998.

Date of Order : This the 12th Day of December, 2000.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr M.P.Singh, Administrative Member.

Shri Kuldipak Kumar,
Assistant Director (Handicraft),
Marketing and Service Extension Centre,
Itanagar,
Arunachal Pradesh. . . . Applicant

By Advocate S/Shri B.K.Sharma, S.Sarma.

- Versus -

1. Union of India
represented by the Secretary to the
Govt. of India,
Ministry of Textiles,
New Delhi.
2. The Development Commissioner (Handicrafts),
West Block 7,
R.K.Puram,
New Delhi.
3. The Regional Director (NER),
Office of the Development Commissioner (Handicrafts)
Ganeshguri, Guwahati-6. . . . Respondents.

By Advocate Sri B.C.Pathak, Addl.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C)

The controversy relating to the repatriation of the applicant to his parent department. The applicant was working as Junior Field Officer (Carper) in All India Handicrafts Board. Later on the said post was redesignated as Carpet Training Officer with effect from February 1978. The applicant applied for transfer on deputation to the post of Assistant Director (Handicrafts) in the office of the Development Commissioner (Handicrafts). The applicant was selected for the post of Assistant Director (Handicrafts)

on transfer on deputation basis through the Union Public Service Commission (UPSC). By order dated 11.1.1993 the applicant was appointed as Assistant Director(Handicrafts). Alongwith the applicant 3 other persons were also appointed on the recommendation of the UPSC on deputation basis initially for a period of one year on usual terms and conditions with effect from their date of assumption of the charge of the post. The applicant accordingly joined as such on 22.2.93 and his deputation period was subsequently extended from time to time till the impugned order was passed on 20.2.98 as communicated by the Regional Director(NER) vide No. NER/1/88/Admn./97-98/477. By the aforesaid order the applicant Shri Kuldipak Kumar, Assistant Director(H), MSEC, Itanagar was released from his present assignment consequent upon his repatriation to his parent post of Carpet Training Officer and he was directed to report for duty to Regional Director, Northern Regional Office, New Delhi for further posting. The aforesaid order was passed on the basis of the order dated 17.2.98 issued by the Headquarter. The said Headquarter order bearing No. 3/4/90-Admn.I/413 to 423 dated 17.2.98 is reproduced below :

"In continuation of this office order of even number dated 19th March, 1997 and consequent upon completion of his present term of deputation of five years to the post of Assistant Director(Handicrafts) in the M&SEC, Itanagar, Shri Kuldipak Kumar is hereby repatriated to his parent post of Carpet Training Officer, with effect from 21.2.1998 (A/N).

2. Consequent upon repatriation Shri Kuldipak Kumar is directed to report to Regional Director, Northern Regional Office, New Delhi for further posting.

3. This issues with the approval of the Development Commissioner(Handicrafts)."

The legitimacy of the said order is challenged as arbitrary and discriminatory and also on the ground that the applicant's

representation for permanent absorption was not fairly considered.

2. Mr B.K.Sharma, learned Senior counsel appearing for the applicant submitted that the recruitment rules of 1982 under which the applicant was recruited provided for appointment by promotion and (2) by transfer on deputation and therefore it was incumbent upon on the part of the respondents to consider his case for absorption. Mr Sharma submitted that in due course he submitted his representation for absorption in the department instead of repatriating him to his parent department and in fact when the respondents had earlier absorbed such deputationist. Instead in a most illegal manner and without considering his case the applicant was repatriated to his parent department.

3. The respondents contested the case and submitted its written statement. According to the respondents 4 persons including Shri R.N.Kaul, T.Locachari and K.Padmanava Rao were selected for appointment to the post of Assistant Director(H) on the basis of the Recruitment Rules of 1982. Four officers were accordingly appointed by the respondents and offered posting in respective field offices. One of those 4 persons, namely, Shri T.Locachari did not join in his place of posting. They were appointed on deputation basis initially for one year. However the terms of deputation was extended from year to year basis for 5 years. By order dated 17.2.98 the aforementioned 3 officers were repatriated on completion of their fifth year of deputation by orders dated 9.2.98, 17.2.98 and 12.1.98 respectively. Out of those three officers one Shri K.Padmanava Rao has already joined in his parent department on 9.2.98. The respondents disputed the claim of the applicant for absorption. The absorption

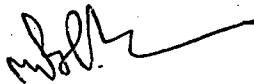
of the applicant was not feasible as per the recruitment rules. There were 51 sanctioned post of Assistant Director(H) and presently the department have 51 incumbents including the applicant. The respondents also referred to some of the Development that affected the vacancy position in view of the directions rendered in connection with some Court cases. The respondents also stated that the Recruitment Rules of 1993 (the rules prevalent) did not provide for absorption of the deputationist. According to the Recruitment Rules of 1993 75% post are to be filled by promotion and 25% post by transfer on deputation. The respondents also mentioned in its written statement about the objections raised by the All India Handicrafts Staff Welfare Association in this extent.

4. Mr Sharma, learned counsel submitted that as per the Recruitment Rules 1982, under which the applicant was appointed provided for absorption. The post against which the applicant has sought for absorption is a vacancy prior to the new rules came into operation. In the circumstances Mr Sharma submitted that the rule provided for absorption of the applicant. The contention of Mr Sharma cannot be accepted in view of the facts that old rules are no longer in existence and new rule came into force in 1993. The new rules does not provide any scope for absorption so much so that the rules made provision for recruitment 75% by promotion and 25% by transfer on deputation. Even otherwise the borrowing department which borrowed the service of the applicant, was not in need of his service. By way of a judicial review the Tribunal is not in a position to order for absorption in derogation of the recruitment rules. The allegation of mala fide or malice in law was also not established, nor could we discern any impropriety in the decision making process. We also could not

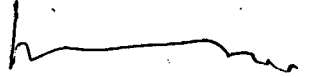
find any illegality or arbitrariness in the exercise of its discretion by the Respondents. Mr Sharma submitted that the applicant was holding a higher post with higher emolument will now have to join in a lower post in the parent department on his repatriation. It is a condition of service, that will only regulate the affair. It will now be for the parent department to take care of the situation and fit the applicant in the right position in order of seniority etc. We are confident that the parent department will grasp the state of affairs and pass necessary order as per law. Subject to observations made above the application stands dismissed.

The interim order dated 27.2.1998 stands vacated.

There shall, however, be no order as to costs.



(M.P.SINGH)
ADMINISTRATIVE MEMBER



(D.N.CHOWDHURY)
VICE CHAIRMAN