

Central Administrative Tribunal
Jabalpur Bench

OA No.482/05

Jabalpur, this the ^{28th} day of November 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

H.K. Shrivastava
S/o late M.B Lal Shrivastava
Deputy Director, Directorate of Industries
Extension Counter (Emp. Wing)
9, Civic Centre, Marhatal
Jabalpur.

Applicant

(By advocate Shri R.K.Verma)

Versus

1. Union of India
Through its Secretary
Department of Economic Affairs
Banking Division, "Jeevan Deep"
Parliament Street
New Delhi.
2. State of Madhya Pradesh
Through its Principal Secretary
Commerce, Industries & Employment
Department, Mantralaya,
Vallabh Bhawan
Bhopal.

Respondents

(By advocate Shri P.Shankaran)

ORDER

By A.K.Gaur, Judicial Member

The applicant is aggrieved by the order dated 15.2.2005 rejecting his representation for absorption as Assistant Registrar in the Debt Recovery Tribunal, Nagpur.

2. The applicant who began his career as Employment Officer in the year 1982 was twice appointed as Deputy Registrar on deputation basis in the Central Administrative Tribunal, and on completion of the respective period, he was repatriated to his parent department on both

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occasions. Thereafter he was appointed as Assistant Registrar on deputation basis in the Debts Recovery Tribunal (DRT) in the same pay scale as in his parent department. While so, the applicant applied for absorption in DRT as per his eligibility in accordance with the provisions of Recruitment Rules 2001 relating to the DRT and also on the basis of certain instructions issued by the Finance Ministry. However, his case was not considered by the DRT, as according to them, the applicant was not eligible to get absorbed in DRT under the recruitment rules and accordingly the applicant was repatriated to his parent department. Aggrieved by this, the applicant approached the Tribunal by filing OA No.464/03 which was disposed of with a direction to the respondents to absorb the applicant after obtaining the consent of the parent department (A-1). His parent department declined to give consent vide order dated 15.2.2005 (A-3), citing public interest. The applicant seeks to quash this order and for issue of a direction to the respondents to give consent for his absorption in DRT.

3. Learned counsel for the applicant argued that there is no public interest involved in the matter so as to refuse consent to the applicant for his absorption and the action of the respondents is arbitrary, unjust and unfair.

4. The respondents have vehemently opposed the claim of the applicant stating that the applicant has no fundamental or statutory right for claiming absorption in DRT. The applicant has also failed to disclose any patent illegality or infirmity in the impugned order and therefore, the original application deserves to be dismissed. They have further maintained that the contention of the applicant that there was no reason assigned in the impugned order while rejecting his application was wrong. It was specifically mentioned in the order that the applicant is a senior officer of the Department and is discharging important duties. Hence his retention was necessary in public interest. It is for the Government to decide in public interest whether to grant permission or not.

5. Applicant has filed a rejoinder reiterating the contentions raised in the OA and added that the job of the applicant is not of a specialized nature so as to warrant his retention in the department.
6. Learned counsel for the applicant has relied on Mahabir Auto Stores and others vs. Indian Oil Corporation and others – AIR 1990 SC 1031- in order to suggest that “The State acts in its executive power under Art. 298 of the Constitution in entering or not entering into contracts with individual parties. Article 14 of the Constitution would be applicable to those exercise of power. Therefore, the action of State organ can be checked under Art.14. Every action of the State executive authority must be subject to rule of law and must be informed by reason”. We have considered this in its true perspective, and according to law, we find that there is no violation of the principles of natural justice and fair play in the instant case.
7. Learned counsel for the respondents has cited the Full Bench decision in the case of Usha Narwariya vs. State of Madhya Pradesh and others – 1993 M.P.L.J. 969, and argued that “disputes relating to the recruitment stage and concerning all different steps in the process of recruitment are within the jurisdiction of the Administrative Tribunal. Section 19 of the Administrative Tribunals Act is merely a procedural provision which cannot be pressed into service for limiting down the scope of substantive provisions contained in Sections 14 and 15 of the AT Act. Provisions of the Act have to be interpreted liberally so as to be construed in favour of the Tribunal’s jurisdiction whenever it may appear to be conflicting with the jurisdiction of the Court.”
8. We have gone through the aforesaid decisions, and we are of the firm view that the Tribunal has got jurisdiction in the case, and the objection of the learned counsel for the respondents is over ruled.
9. Looking to the merit of the case, as pointed out by the learned counsel for the respondents, the applicant has no legal right that he must be absorbed in the DRT. It is for the Government to decide whether a person’s request for absorption should be considered or not. On a perusal of the impugned order, it is evident that the department

has been reluctant in giving consent for absorption of the applicant in the DRT.

10. Learned counsel for the respondents has also placed reliance on a decision of the Madhya Pradesh High Court in the case of S.M.P.Sharma vs. State of M.P. and another (L.P.A. Nos 421 and 422 of 2004 decided on 30.7.2004) wherein the Madhya Pradesh High Court, relying on a decision in Kunal Nandu vs. Union of India, AIR 2000 SC 2076, held as follows:

“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...”

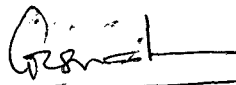
Similar view has been taken by a Full Bench of the Punjab and Haryana High Court in Sohan Singh vs. The State of Punjab, ILR 1970 (1) Punjab 468, wherein the Full Bench observed thus:

“That an officer of the State Government, while on deputation to foreign service for a specified period, continues to be an employee of the State Government during his period on deputation and remains subject to the control of the Government during his period on deputation and remains subject to the control of the Government. He is also entitled to be considered for any promotion etc. that may become available in his parent department. The fact that for all purposes he is considered to remain on the cadre in which he was included before his transfer and that he is entitled to be considered for promotion even during the period of his deputation indicates clearly that the period, if specified, is only tentative and may primarily be for the benefit of the foreign employer to have an idea of the period during which his services will be available. No contract comes into being between the State Government and its employee when is sent on deputation. Virtually he remains under the effective control of the Central Government and his legal position continues to be more one of status than of contract. He cannot be said to have any infeasible right to insist that he should not be recalled before the expiry of the specified period. Hence, the State Government having lent the services of its officer on deputation to Foreign Service of a specified period can, before the expiry of the aforesaid period, legally recall the officer unilaterally, without the consent of the officer concerned”.

11. In view of the aforesaid decision, there is no point in saying that principles of natural justice and fair play have not been followed in the instant case.

12. In view of the foregoing discussion and in light of the aforesaid observations and decisions cited, we find no merit in the OA. Accordingly the OA is dismissed. No costs.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

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पृष्ठंकन सं ओ/बसा.....जबलपुर, दि.....

पतिविरत :दिनांक:-

- (1) सचिव, जिला न्यायालय, जबलपुर
- (2) आवेदन नि/वि/.....को कार्रवाई
- (3) प्रत्यक्षी श्री/.....को कार्रवाई
- (4) बंदापान, जिला न्यायालय, जबलपुर

सूचना एवं आवेदनक कार्रवाई हेतु

उप रजिस्ट्रार


R.K. Verma
P. Han Karan
Adv. 230.

Issued
on 30/1/06
