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The Judgment is pronounced
in the open Court today.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 9th day of January, 2007

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

ORIGINAL APPLICATION No.231/2006

Alok Pandey
s/o late Shri S.R.Pandey,
aged about 41 years,
r/o Type III/133, CPWD,
Nirman Vihar-1, Vidyadhar Nagar,
Sector-2, Jaipur and working as
UDC in the O/o CGIT cum Labour Court,
Jaipur.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through its Secretary to the Govt. of India, Ministry of Labour, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. The Director General (Labour Welfare), Ministry of Labour, Jaisalmer House, Man Singh Road, New Delhi.
3. Central Government Industrial Tribunal Cum Labour Court through Presiding Officer, CGIT Cum Labour Court, Kendriya Sadan, Sector 10, Vidyadhar Nagar, Jaipur.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

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O R D E R

Per Hon'ble Mr. M.L. Chauhan

The applicant has filed this OA thereby praying for the following reliefs:-

- “(i) That respondents may be directed to continue the applicant to work in the office of respondent No.3 with due benefits by quashing order dated 26/6/2006 (Annexure-A/1) with the show cause notice dated 2/3/2006 (Annexure-A/2).
- (ii) That the respondent No.3 be further directed not to harass the applicant in day to day performing his duties.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded.”

2. Brief facts of the case, so far as relevant for disposal of this case, are that the applicant while working as Junior Accountant in the office of Director General, Labour Welfare, Ministry of Labour, New Delhi was selected as Upper Division Clerk on deputation basis in the office of Presiding Officer, Central Government Industrial Tribunal (CGIT) Cum Labour Court, Jaipur where he joined on 1.6.1999. Subsequently, he was absorbed in the CGIT w.e.f. 30.1.2003 on his own request. The applicant was repatriated to his parent department vide order dated 27.1.2006 against which the applicant preferred an OA before this tribunal which was registered as OA No.52/2006. The said OA was finally disposed of vide order dated 27.2.2006 only on the short ground that no show-cause notice was issued by the respondents to the

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applicant before passing the impugned order. It was specifically observed by this Bench that the matter is not being disposed of on merits and liberty was reserved to the respondents to pass appropriate order, if any, after issuing show-cause notice to the applicant. Subsequently, the respondent No.3 issued a show-cause notice dated 2nd March, 2006 (Ann.A2) in compliance of the directions of this Tribunal and ~~opportunity~~ was given to the applicant to show-cause as to why he should not be repatriated, as according to respondent No.3, his absorption in the CGIT, Jaipur was erroneous and void-ab-initio in view of the statutory recruitment rules and policy decision taken by the Ministry of Labour vide circular dated 21st January, 2003. The applicant submitted a reply and after considering his reply and copies of documents sought by the applicant, respondent No.3 passed the impugned order Ann.A1 thereby rejecting representation of the applicant and the applicant was ordered to be repatriated w.e.f. afternoon of 26th June, 2006 to his substantive cadre post held by him in his parent department. It is this order which is under challenge.

3. This Tribunal on 30.6.2006 while issuing notices to the respondents, however, granted stay till 12.7.2006 and it was also made clear that interim stay shall not automatically continue on the next date and shall be regulated by fresh order which may be passed

this Bench after hearing both the sides on the next date. However, the said stay was continued from time to time. It is on the basis of these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

4. Notice of this application was given to the respondents. The respondents have filed reply thereby justifying their action. In sum and substance, the plea taken by the respondents in the reply is that the post of UDC can be filled up 100% by way of promotion from the Lower Division Clerk with five years service in view of the statutory recruitment and promotion rules and there is no provision for permanent absorption against the said post. As such, permanent absorption of the applicant was void-ab-initio and contrary to the provisions contained in the statutory rules and as such, he has got no right for absorption.

It is further stated that absorption of the applicant was ^{also in} against the policy decision taken by the Ministry of Labour vide letter dated 21st January, 2003 (Ann.R1) whereby it was decided that there should not be permanent absorption of the staff members working on deputation into various posts contrary to the provisions contained in recruitment rules. The respondents have further stated that lien of the applicant is still with the parent department and his lien has not been terminated. It is also stated that

lien can be terminated only on account of absorption only if the applicant has resigned from the parent department and has been subsequently absorbed after his resignation. This being not the case, the applicant is still maintaining lien with his parent department. Regarding competency of respondents No.3 to pass order, the respondents have categorically stated that respondent No.3 is the appointing authority of the employees who are working in his office and as such he was competent to decide about applicant's deputation and absorption. As such, the impugned order has been rightly passed.

5. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

6. We have heard the learned counsel for the parties and gone through the material placed on record. The learned counsel for the applicant has raised the same contentions which he has raised before respondent No.3 in reply to the show-cause notice issued to the applicant which contention has been elaborately discussed by respondent No.3. At this stage, it will be useful to quote relevant portion of the impugned order where such contention has been dealt with and thus reads as under:-

"The employee has assailed the repatriation to his parent department and the main thrust of his submissions is that he was permanently absorbed to the post of UDC with the concurrence of Ministry of Labour in relaxation

of rules based on the letter of this office dated 18.12.2002. The relevant provision as to power to relax in the Central Government Industrial Tribunal Cum Labour Court Class 3 and Class 4 posts Recruitment Rules, 1976 (for short, the rules) envisages that where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons. Therefore, as per the mandate of this provision such relaxation has to be given with the reasons recorded in writing and the provision limits to the relaxation only of the existing rules. The employee has claimed his absorption on the ground that the relaxation of the rules is based upon the letter dated 18.12.2002 issued by this office to the Ministry of Labour for absorption and the concurrence accorded by the Ministry vide its letter dated 21.1.2003. But neither the letter dated 18.12.2002 nor the letter dated 21.1.2003 does speak of the relaxation in any manner. A fortiori the application of relaxation can only be effected to any provision framed under the rules, e.g., the rules postulate that the post of UDC will be filled 100 per cent by way of promotion from the LDCs having five years of service. Here the length of service, which is the existing provision, can be relaxed by the competent authority if it is deemed proper. If the submissions of the employee is accepted then it would mean that a fresh provision of absorption has been inserted by exercising the power to relax in the said rules, which is not within the domain of the relevant rules. Moreover, relaxation cannot be claimed as a matter of right and it cannot be given contrary to the rules.

The absorption of Shri Pandey is unsustainable, too, since consequent upon his absorption in this CGIT, he did not resign from his parent department and was continuing to hold lien with the parent department as per the provisions of FR 13(2) and 13(2)(5) and 14-A(a) and he has not acquired lien with the borrowing department i.e. the CGIT.

Turning to the question of absorption, there are no specific rules governing the absorption. The relevant rules do not confer any power of absorption on the concerned authority and the rules do not contemplate to fill up any post on absorption basis as well as they do not give any enforceable right to a deputationist. The method of recruitment to the post of UDC prescribed under the rules is 100 per cent by promotion from the LDCs with five year service in the grade. Contrary to it, the employee was holding ex cadre post, which renders his absorption illegal in view of the said provision. Thus, the order dated 30.1.2003 absorbing the employee was made in the deviation of the rules. A policy decision taken by the Ministry of Labour vide circular No. A-11011/2/93 CLS-II dated 21st January, 2003 wherein it has been observed that 'while the recruitment rules do not contain any provision for permanent absorption against any post sanctioned for the CGITs, the same proposition i.e. permanent absorption, is also not desirable for it blocks promotional chances of the employee in the feeder grades and when faced with the prospect of no further promotion, this may breed cynicism and decline in interest/motivation too'. Subsequently, when the absorption of the applicant, a deputationist, was found to be erroneously made by this office, the action was initiated in this direction to undo it. It appears that the concurrence dated 21.1.2003 was inadvertently issued by the Ministry of Labour. Further, this fact is strengthened by the letter of the Ministry dated 22.6.2006 whereby on reviewing the issue the Ministry has accorded

its concurrence for repatriation of the employee to his parent department. Therefore, in view of the subsequent concurrence accorded by the ministry, the earlier concurrence dated 21.1.2003 survives no more and the illegality has thus been cured.

As a legal consequence, the employee undisputedly is only a deputationist so far as this CGIT is concerned and his parent department is only the O/o the DGLW, Jaisalmer House, New Delhi and his substantive position and appointment is only in that department. Moreover, Ministry of Labour, Government of India vide communication dated 22nd June, 2006 has informed that lien of the employee still exists with DGLW as he did not tender his technical resignation from his substantive cadre post and there is no objection to repatriation of Shri Alok Pandey to the parent department. There are no merits in his representation/reply and his claim of permanent absorption in relaxation of rules is frivolous. His response is illusive and indistinct. He has no vested right to absorption and for all these reasons, the absorption of Shri Alok Pandey is found to be void ab initio and de hors the rules which cannot be sustained. My view is fortified by the observations made by the Hon'ble Apex Court in the decisions JT 2000 (Suppl.1) SC 247 and (2000) 5 SCC 362.

It is noted here that the employee has motivatedly made some allegations of bias against the undersigned, which having no truth are denied in toto. They are false, frivolous, fabricated and have no relevance with the issue at hand.

Resultantly, for the foregoing reasons, the representation/reply of Shri Alok Pandey stands rejected and he is hereby repatriated with effect from the Afternoon of 26th June, 2006 to his substantive cadre post held by him in his parent department with direction to report to the O/o the DGLW, Jaisalmer House, New Delhi."

We have perused the reasoning given by respondent No.3 in the impugned order which has been extracted above. We see no infirmity in the order passed by respondent No.3. At this stage, it will be useful to quote a letter dated 21st January, 2003 issued by the Government of India, Ministry of Labour which is addressed to Presiding Officers of all CGITs regarding absorption of some staff members working on deputation into various posts in CGITs, which is in the following terms:-

"Subject: Permanent absorption of some staff members working on deputation into various posts in CGITs.

Sir,

This Ministry has been receiving from time to time representations from CGITs for permanent absorption of some staff members working on deputation into various posts. While the recruitment rules do not contain any provision for permanent absorption against any post sanctioned for the CGITs, the same proposition i.e. permanent absorption, is also not desirable for it blocks promotional chances of the employees in the feeder grades and when faced with the prospect of no further promotion, this may breed cynicism and decline in interest/motivation too. Therefore, it has been decided by this Ministry that CGITs should be asked to initiate action well in advance when it comes to filling in a vacancy on deputation before it is likely to arise and not to resort to filling in a vacancy on ad-hoc basis or by absorbing one permanently."

At this stage it will also be useful to quota relevant provisions of the recruitment rules, copy of which has been placed on record by the respondents as Ann.R2 which thus reads:-

Name Of the post	No. of posts	Classification whether Gazetted or non-Gazetted	Scale of pay as recommended by the Pay Commission as accepted by GOI	Whether selection or non-selection post	Age limit	Educational & other qualifications required for direct recruits	Whether age & education qualifications prescribed for direct recruit will apply in the case of promotion
1.	2.	3.	4.	5.	6	7.	8.
Upper Division Clerk		General Central Class-III Ministerial non-Gazetted	Rs.330-10 380-ED-12 500-ED-15 560	Non-selection	Not applicable	Not applicable	Not applicable

Period of Probation/ Trial, if any	Method of recruitment, whether by promotion/deputation/or transfer and percentage of the vacancies to be filled... various methods	In case of recruitment by promotion deputation/ transfer grades from which promotion/deputation/ transfer to be made	If Departmental promotion committee exists, what is its composition	Circumstances in which Union Public Service Commission is to be consulted in making recruitment
9.	10.	11.	12.	13.
.....	3			
2 years	100% by promotion	By promotion from the Lower Division Clerk with 5 years service in the grade	Class-III Departmental Promotion Committee	Not applicable

7. Thus, from reading of the provisions contained in the recruitment rules, as quoted above, and also in view of the policy decision taken by the Government that no permanent absorption of the staff members working on deputation in CGITs should be done, it was not permissible for the respondent No.3 to absorb the applicant by subsequent order dated 30.1.2003 contrary to the provisions contained in recruitment rules, as also contrary to the policy decision taken by the Government as circulated vide letter dated 21.1.2003. Thus, the absorption of the applicant was void ab initio and the applicant cannot draw any assistance from the circular dated 21.1.2003 which has been issued by the Ministry of Labour contrary to its policy decision of the same date i.e. 21.1.2003 and

recruitment rules on the basis of which respondent No.3 passed order dated 30.1.2003 thereby absorbing the applicant.

8. That apart, as can be seen from the impugned order, relevant portion of which has been extracted above, the matter has again been reviewed by the Ministry vide letter dated 22.6.2006 and the Ministry has accorded its concurrence for repatriation of the employee to his parent department. Thus, the applicant cannot base his claim on the basis of the concurrence granted by the Ministry vide letter dated 21.1.2003 on the basis of which order dated 30.1.2003 absorbing the applicant was made in violation of the provisions of the statutory rules and also the policy decision taken by the Government in that behalf, more particularly, when the matter has again been reviewed and fresh decision has been taken by the Ministry to accord its concurrence for repatriation of the applicant. Further, the plea taken by the applicant that respondent No.3 was not competent to pass the impugned order is without substance inasmuch as the earlier order of absorption dated 30.1.2003 was also passed by respondent No.3 and subsequent order of repatriation has also been passed by respondent No.3 who is appointing authority for the post of UDC especially when the impugned order has been passed by him on the basis of concurrence given by the Ministry vide letter

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dated 22.6.2006 whereby the matter of the applicant regarding repatriation was considered and concurrence was given to the effect that the applicant be repatriated to his parent department.

9. At this stage, it will be useful to quote some of the decisions of the Apex Court which deals with the matter. The Apex court in the case of G.Muniyappa Naidu vs. State of Karnataka, (1976) 4 SCC 543 which is 3 Judge decision has held that the absorption of all candidates into permanent service of the corporation contrary to statutory rules is not permissible. That was a case where the appellants were Senior Health Inspectors in the Karnataka State Civil Service were taken on deputation by the City of Bangalore Municipal Corporation which was the practice prevalent with the Corporation prior to March, 1971 when the City of Bagalore Municipal Corporat Services (General) Cadre and Recruitment Regulations came into force. While the appellants were working as Senior Health Inspectors on deputation under the Corporation resolution dated December 30, 1974 was passed approving the report of the Commissioner that sixteen Senior Health Inspectors, including the appellants, who were working under the Corporation on deputation should absorbed in the interest of work if they are willing on their own pay and accept their seniority as junior to the Senior Health Inspectors of the

Corporation. The said resolution of Corporation was also accepted by the State Government. However, the administrator requested the State Government to defer implementation of the proposal contained in the resolution dated December 30, 1974 since the permanent officials of the corporation were considerably disturbed by this proposal as it prejudicially affected their chances of promotion by reason of the absorption of sixteen deputationist Senior Health Inspectors from the Karnataka Civil Services. The State Government on the basis of the communication addressed by the Administrator in this behalf passed another order dated August 25, 1975. The appellants being prejudicially affected by withdrawal of the sanction preferred writ petitions in the High Court of Karnataka contending that as soon as the State Government gave its sanction on May 6, 1975 to the resolution of the corporation dated December 30, 1974 they were absorbed as permanent employees of the corporation and they ceased to be government servants and the State Government thereafter had no authority to withdraw the sanction granted by it under the earlier order dated May 6, 1975 and the subsequent order dated August 25, 1975 was invalid and inoperative. The Writ petitions filed by the appellants were dismissed by the Single Judge. Further appeal preferred before the Division Bench also failed and as such the matter was further carried

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before the Hon'ble Apex Court. The Apex Court held that as per recruitment rules for the post of Senior Health Inspector in column 2 the method of recruitment has been mentioned as 50 % by promotion from the cadre of Junior Health Inspectors of the Corporation and 50% by deputation from the State Directorate of Health Services. It was held that Cadre and Recruitment Regulations recognized only two modes of recruitment to the post of Senior Health Inspector, and no other mode of recruitment could be resorted to by the corporation under the Cadre and Recruitment Regulations. It was further held that on the face of such provisions it is difficult to see how this provision which has admittedly statutory in effects, the post of Senior Health Inspectors could be filled in by absorption of deputationist Senior Health Inspector from the Karnataka State Civil Service. The ratio ~~has~~ laid down by the Apex Court in the case of G.Minnyappa Naidu (supra) is fully applicable in the facts and circumstances of this case. In the instant case also there is only one method for appointment to the post of UDC, namely, 100 % by promotion from LDC with five years of service in the grade. There is no provision in the recruitment rules to fill this post by way of absorption of deputationist. As such, the applicant could not have been absorbed contrary to the statutory provisions. Further, the respondents have also taken a policy decision against permanent

absorption of the staff working on deputation basis in various posts in CGIT. On the face of these provisions, the applicant has got no right whatsoever for his absorption and we see no infirmity in the order passed by the respondents.

10. At this stage it will also be useful to quota another decision of the Apex Court in the case of Kunal Nanda vs. Union of India, (2000) 5 SCC 362 (at page 365), relevant portion of which is quoted hereinbelow:

"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. The reference to the decision reported in Rameshwar Prasad v. M.D.U.P.Rajkiya Nirman Nigam Ltd. is inappropriate since the consideration therein was in the light of the statutory rules for absorption and the scope of those Rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree needs mention, only to be rejected."

Thus the contention of the applicant that he has right to be absorbed as UDC in CGIT, Jaipur is wholly misconceived and without any substance.

11. Further the contention of the applicant that there exists a provision for relaxation, as such, he ought to have been absorbed in relaxation of the rules is also wholly misconceived. The Apex court has held that it

is only the condition of service which can be relaxed and not the eligibility to the recruitment rules. This is what the Apex Court held in the case of Syed Khalid Rizvi vs. Union of India, 1993 Supp (3) SCC 575.

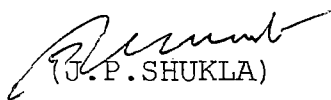
12. The reliance placed by the learned counsel for the applicant on the decision of the Principal Bench of the Central Administrative Tribunal in the case of Ram Prakash Sharma vs. Union of India and ors. (OA No.899/2004 decided on 2.2.2005) is also wholly misconceived as it is not applicable in the facts and circumstances of this case. In that case the question regarding repatriation of an employee contrary to the statutory provision was not in issue and thus the said judgment is not applicable in the facts and circumstances of this case.

13. Further contention of the applicant that he will be without lien and his lien shall be deemed to have been terminated on account of his absorption in the office of respondent No.3 cannot be accepted as the applicant before his absorption in CGIT cum Labour Court, Jaipur has not resigned from the post of Junior Accountant, which he was holding in his parent department before his posting as UDC on deputation basis with CGIT, Jaipur. As such, his lien could not have been terminated by his parent department. It is not a case where the applicant will be without lien

and his lien will be revived in the parent department the moment he joins there after repatriation.

14. For the foregoing reasons, we are of the view that the present OA is bereft of merit, which is accordingly dismissed with no order as to costs.

15. The interim direction granted on 30.6.2006 and continued from time to time shall stand vacated.


(J.P. SHUKLA)

Administrative Member


(M.L. CHACHAN)

Judicial Member

R/