

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 16th day of January, 2008

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

OA No.318/2007

1. Rajesh Kumar Sharma s/o Shri Nathu Lal Sharma r/o C-23, Archana Nagar, Murlipura, Jaipur.
2. Vimal Kumar Tanwar s/o Shri Om Prakash, aged about 42 years, r/o New Sarak, Near Bharatiyon Ka Kuwa, Churu.
3. Rawat Khan s/o Shri Ghisu Khan, r/o Village and Post Dhankoli, Tehsil Didwana, Distt. Nagaur.
4. Suresh Chand Jain s/o Shri Manak Chand Jain, r/o 17-B, Shanti Nagar, Tonk
5. Inaitulla Khan Madani r/o IV/2, Civil Lines, Kumbha Nagar, Chittorgarh.
6. Ramniwas Kapri s/o Ramjiram Kapri, r/o Prem Nagar, Morra Road, Merta City, Distt. Nagaur.
7. Inder Singh Echra s/o Mansaram r/o Q.No. B.J.P. 21, Canal Colony, Hanumangarh Junction.
8. Om Prakash Sharma s/o Shri Harlal Sharma r/o 1115, Purani Abadi, Ward No.15, Sriganaganagar.
9. Ashok Kumar Dave s/o Shri Vishweshwar Dave, r/o 1/352, Rajasthan Housing Board Colony, Sirohi.

..Applicants

(By Advocate: Shri Ashok Gaur)

Versus

1. Union of India through Accountant General (A&E), Rajasthan, Central Revenue Building, Statue Circle, Jaipur.
2. Senior Deputy Accountant General (Adm.), Office of the Accountant General (A&E), Central Revenue Building, Statue Circle, Jaipur.

3. Director, Treasury and Accounts, Vitta Bhawan, Jyoti Nagar, Jaipur.

..Respondents

(By Advocate: Shri Gaurav Jain and Shri V.D.Sharma)

OA No.338/2007

1. Devi Lal s/o Shri Isdan r/o Pachpadra City, District Barmer.
2. Vinod Kumar Joshi s/o Shri Som Dutt Joshi r/o Veer Mohalla, Nayion Ka Bar, Jodhpur
3. Vasant Kumar Joshi s/o Shri Mangi Ram r/o Joshiyona Ka Neechla Bas, Near Temple, Barmer.
4. Suresh Kumar Choudhary s/o Shri Sukh Deo Narain, r/o 73/2/4, Sipra Path, Mansarovar, Jaipur
5. Vinod Kumar s/o Shri Brij Lal Nai r/o Gaushala Bas, Sardar Sahar Churu.

..Applicants

(By Advocate: Shri Ashok Gaur)

Versus

1. Union of India through Accountant General (A&E), Rajasthan, Central Revenue Building, Statue Circle, Jaipur.
2. Senior Deputy Accountant General (Admn.), Office of the Accountant General (A&E), Central Revenue Building, Statue Circle, Jaipur.
3. Director, Treasury and Accounts, Vitta Bhawan, Jyoti Nagar, Jaipur.

..Respondents

(By Advocate: Shri Gaurav Jain and Shri V.D.Sharma)

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OA No.342/2007

Om Singh Panwar
 s/o Shri Prabhu Narain Pawar
 r/o Nath Ji Ke Mandir Ke pass,
 Kundan Nagar,
 Ajmer

..Applicant

(By Advocate: Shri V.K.Sharma)

Versus

1. Union of India through Accountant General (A&E), Rajasthan, Central Revenue Building, Statue Circle, Jaipur.
2. Senior Deputy Accountant General (Admn.), Office of the Accountant General (A&E), Central Revenue Building, Statue Circle, Jaipur.
3. Director, Treasury and Accounts, Vitta Bhawan, Jyoti Nagar, Jaipur.

..Respondents

(By Advocate: Shri Gaurav Jain and Shri V.D.Sharma)

OA No.369/2007

Kailash Chand Gupta
 s/o late Shri Chiranji Lal Gupta,
 r/o Plot No.363, Basant Vihar,
 Scheme No.3, Alwar,
 at present working on the post of
 Divisional Accountant
 in the office of Executive Engineer,
 Drilling Division,
 Public Health Engineering Department,
 Alwar.

..Applicants

(By Advocate: Shri V.K.Sharma)

Versus

1. Union of India through Accountant General (A&E), Rajasthan, Central Revenue Building, Statue Circle, Jaipur.
2. Senior Deputy Accountant General (Admn.), Office of the Accountant General (A&E), Central Revenue Building, Statue Circle, Jaipur.
3. Director, Treasury and Accounts, Vitta Bhawan, Jyoti Nagar, Jaipur.

..Respondents

(By Advocate: Shri Gaurav Jain and Shri V.D.Sharma)

O R D E R

Per Hon'ble Mr. M.L.Chauhan, M(J)

By this common order, we propose to dispose of the aforesaid four OAs as common question of facts and law is involved.

2. Briefly stated, facts of the case are that the applicants were initially appointed as Junior Accountant under respondent No.3 in the pay scale of Rs. 5000-8000. On completion of 9 years of service, the applicants were given benefit of first selection grade in the pay scale Rs. 5500-9000. The respondent No.1 and 2 needed certain persons as Divisional Accountants on deputation basis in the pay scale of Rs. 5500-9000. Accordingly, the applicants were selected and appointed on deputation basis vide different orders of the same date dated 17.1.2005 on the post of Divisional Accountant in the scale Rs. 5500-9000 initially for one year or till the cadre of

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the Divisional Accountants is taken over by the State Government, whichever is earlier. It is also mentioned in the said order that total period of deputation will not exceed 3 years. The tenure of deputation period of the applicants were extended for another one year vide office order No. 250 dated 12.1.2006. It may be relevant to stated here that all the applicants on completion of 18 years of service became entitled to second selection grade in the scale of Rs. 6500-10500 in the year 2006 and consequently some of the applicants were given such benefit. Term of deputation of the applicants were further extended for third years vide common order No.611 dated 18.1.2007 till January/February, 2008 as indicated in the said order, copy of which has been placed on record. The respondents have summarily passed the order dated 29.8.2007 (Ann.A1) whereby tenure of 18 persons out of 57 persons who were given extension for third year vide order dated 18.1.2007 was curtailed thereby repatriating them to their parent department without completing their full tenure on the ground that they have either been granted or have become eligible for selection grade in the higher pay scale Rs. 6500-10500.

The grievance of the applicants is that other persons who were working in the higher scale of Rs. 7450-11500 and yet they have been working on deputation basis and were allowed to continue, whereas

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the applicants who are also similarly situated have been repatriated.

Initially when OA No. 318/07 was taken up for consideration on 6.9.2007, short notices were issued returnable on 13.9.2007. However, on the next date of hearing i.e. on 13.9.2007 when none appeared on behalf of the respondents, this Tribunal passed the following order:-

"The grievance of the applicants is that vide order No.611 dated 18.01.2007 (Annexure A/12), the tenure of deputation of the applicants was extended up to January, 2008 but vide impugned order, they have been repatriated with immediate effect. Learned counsel for the applicant has drawn our attention to the decision of the Apex Court in the case of Union of India vs. Ramakrishnan, 2005 AIR SCW 5147 whereby the Apex Court has held that when the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on just grounds.

In this case, the respondents have not put in appearance. Learned counsel for the applicants argued that in case interim relief is not granted to them, the present OA will become infructuous as the respondents will relieve the applicants as the applicants have not been relieved so far.

In view of what has been stated above, the respondents are directed to maintain status quo qua the applicants till the next date."

The said stay order was continued from time to time.

3. Pursuant to the notice issued by this Tribunal, respondents have filed reply in all these cases. The stand taken by the respondents in the reply is that a complaint was received from Shri Ram Lal, Junior Accountant to the effect that those Junior Accountants

who are on deputation on the post of Divisional Accountant in the scale of Divisional Accountant ordinary grade Rs. 5500-9000 have been sanctioned selection grade pay scale after completion of 18 years' service as per State rules. Junior Accountants on deputation in Divisional Accountant ordinary grade either have been sanctioned selection grade pay scale Rs. 6500-10500 or have become entitled for this higher pay scale from the year 2006. But order in this regard are not being issued because of collusion with the office of Director, Treasury and Accounts i.e. respondent No.3. It is further averred that on the basis of such complaint, respondent No.3 was requested by respondent No.2 vide letter dated 4.5.2007 to intimate factual position by enclosing complaint of Shri Ram Lal. It is further stated that in response to the above letter, respondent No.3 vide letter dated 11.6.2007 provided the requisite information and intimated that Junior Accountant enlisted at serial No. 1 to 6 have been sanctioned selection pay scale of Rs. 6500-10500 from the date noted against each. Besides above, Junior Accountants enlisted at serial No. 7 to 20 have become entitled for selection grade of Rs. 6500-10500 but due to non-production of required declaration/certificates their cases are being pending but all have become entitled from the year 2006. The respondents have further stated that as per Government of India, Department of Personnel and

Training OM No. 2/29/91-Estt. (Pay.II) dated 5.1.1994 a person in higher pay scale of pay shall not be appointed on deputation to a post in a lower scale of pay. Therefore, those Junior Accountants who were granted/entitled for higher pay scale of Rs. 6500-10500 become ineligible to work as Divisional Accountant (Ordinary grade Rs. 5500-9000) on deputation. Thus, according to respondents, on this ground tenure of the applicants were curtailed vide impugned order. The fact regarding grant of selection grade after completion of 18 years service/applicants became entitled for benefit of second selection grade except applicant Rajesh Kumar, has also been admitted by respondent No.3 in the reply so filed.

4. The applicants have also filed rejoinder to the reply filed by respondent No. 1 and 2 in OA No.318/07 thereby controverting the submissions made by the respondents in the reply and has also taken additional pleas.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. We are of the view that the applicants have made out a case for our interference. From the facts as stated above, it is clear that the applicants were sent on deputation as Divisional Accountant ordinary grade Rs. 5500-9000 after due selection in the year

2005. Admittedly, at that time the applicants were in the grade of Rs. 5500-9000, as such, there was no infirmity in the selection and appointment of the applicants on the post of Divisional Accountant ordinary grade Rs. 5500-900 on deputation basis. It is also admitted fact that they were granted first extension of one year vide order dated 12.1.2006 followed by second extension (third year) vide order dated 18.1.2007. It is not in dispute that such extension could have been given in terms of instructions issued by the Government of India vide OM dated 5.1.1994 which stipulate that period of deputation can be subject to maximum of three years in all cases. The question which requires our consideration is whether it was open for the respondent No. 1 and 2 to curtail the period of deputation when admittedly the applicants have not completed the terms of deputation as extended for third year vide letter dated 18.1.2007. For that purpose the respondents have place reliance on para 3.5 of the instructions dated 5.1.1994 which have been placed on record by the applicants with the rejoinder as Ann.A16. At this stage, it will be useful to quote para 3 and 3.5 of the aforesaid instructions which thus reads:-

"3. Scope of Term 'deputation/foreign service - Restrictions on treating an appointment as on deputation/foreign service.

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3.5 In case of appointments on deputation/foreign service from Central Govt. to Central Govt., and in those cases where the scale of pay and dearness allowance in the parent cadre post and ex-cadre post are similar a person in a higher scale of pay shall not be appointed on deputation to a post in a lower scale of pay."

From bare perusal of the aforesaid paragraphs, it is clear that provision of para 3.5 will come into operation when the case of a person is considered for the purpose of appointment on deputation basis at the initial time. The restrictions imposed vide para 3.5 is that a person in the higher pay scale shall not be appointed on deputation to a post in lower scale of pay. According to us, this provision is not attracted in the facts and circumstances of this case as, admittedly, when the applicants were selected on deputation basis as Divisional Accountant they were in the pay scale of Rs. 5500-9000 and thus were not drawing higher pay scale of pay of the post on which they were sent on deputation. The respondents cannot take any assistance from this paragraph. Rather the case of the applicants is governed by the provisions contained in para 8.7 of the aforesaid instructions dated 5.1.1994. At this stage, it will be relevant to reproduce paragraphs 8 and 8.7 of the aforesaid instructions, which thus reads:-

"8. Tenure of deputation/foreign service.

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8.7 If during the period of deputation/foreign service the basic pay of an employee exceeds the maximum of the scale of pay of the post or the fixed pay of the post, on account of proforma promotion in his cadre under the next Below Rule or otherwise, the deputation/foreign service of the employee should be restricted to a maximum period of six months from the date on which his pay exceeds such maximum and he should be reverted to his parent department within the said period.

From bare perusal of the aforesaid para, it is clear that even a person who has been granted promotion in higher scale or drawing higher pay otherwise, the pay of the employee should be restricted to the maximum of the scale of pay of the post for a maximum period of six months from the date on which his pay exceeds such maximum and he can be reverted to his parent department within such period. The applicants have specifically pleaded that even on account of grant of selection scale on completion of 18 years of service in the pay scale of Rs. 6500-10500 all the applicants are drawing their basic salary from Rs. 7000 to 7500. Thus their basic salary does not exceed the maximum pay of Rs. 9000 and, as such, as per the aforesaid condition, the decision of the respondents to repatriate them is against the condition of deputation.

We see considerable force in the submission made by the learned counsel for the applicant. It is a case where the tenure of the applicants have been curtailed

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and it is para 8 which is attracted in the instant case. Thus, it was not legally permissible for the respondents to curtail the period of deputation as extended vide order dated 18.1.2007 wholly on irrelevant grounds when the period of deputation has been specified.

The matter on this point is no longer res-integra. The Apex Court in the case of Union of India Vs. Ramakrishnan, 2005 AIR SCW 5147 has held that when the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed, except on just grounds. In the instant case the term of deputation has been curtailed by the respondents wholly on untenable grounds, as such, action of the respondents is arbitrary and cannot be upheld.

Accordingly, impugned office order No. 192 dated 29.8.2007 so far as it concern to the applicants in these OAs is liable to be quashed and the applicants are entitled to be permitted to complete their tenure as per office order No. 611 dated 18.1.2007.

The learned counsel for the applicants further argued that the respondents are contemplating of giving further extension to 40 persons other than the applicants, whereas the applicants are also entitled to further extension as per rules. The applicants have also placed on record copy of the order dated

12.12.2003 (Ann.A17) whereby 5 persons sent on deputation as Divisional Accountants were given extension upto six years and also one Shri M.L.Vijay who was sent on deputation as Divisional Accountant vide order dated 31.8.1992 and who also drawing a selection grade was allowed to continue on deputation basis and argued that applicants are also entitled for further extension. Suffice, it to say that this is not the case set up by the applicants in these OAs. Shri M.L.Vijay was sent on deputation in the year 1992 when the policy dated 5.1.1994 was not in vogue and, as such, the applicants cannot draw assistance from this fact. The instructions dated 15.1.1994 stipulates the tenure of deputation for the persons who are eligible to be sent on deputation. The case of the applicants is required to be considered in the light of such instructions as already stated above. We are not inclined to give any such direction as prayed/contended by the learned counsel for the applicant and it will be open for the applicants to file substantive OA, in case they are aggrieved on account of non-extension of deputation for further period. We make it clear that we have not made any observation on merit of the case qua this aspect and it will be open for the respondents to consider case of the applicants for further extension in accordance with law.

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7. For the foregoing reasons, these OAs are allowed.
The impugned order No.192 dated 29.8.2007 (Ann.A1) so
far it relates to the applicants is hereby quashed and
set-aside. No costs.

(J.P.SHUKLA)
Admv. Member

(M.L.CHAUHAN)
Judl.Member

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