

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 1st day of September, 2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

ORIGINAL APPLICATION No. 29/2008

1. Rajesh Kumar Sharma s/o Shri Nathu Lal Sharma r/o C-23, Archana Nagar, Murlipura, Jaipur, presently working as Divisional Accountant in the office of Executive Engineer, PHED Division, Behror, Alwar.
2. Vimal Kumar Tanwar s/o Shri Om Prakash r/o New Sarak, Near Bharatiyon Ka Kuwa, Churu, working as Divisional Accountant in the office of Exe. Engineer PWD, N.H.Division, Churu.
3. Rawat Khan s/o Shri Ghisu Khan r/o Village and Post Dhankoli, Tehsil Didwana, District Nagaur, working as Divisional Accountant, Office of Exe. Engineer, PHED Division, Nagaur.
4. Suresh Chand Jain s/o Shri Manak Chand Jain, r/o 17-B, Shanti Nagar, Tonk working as Divisional Accountant, office of Exe. Engineer, Construction Div. III, Bisalpur Project, Deoli, Tonk.
5. Inaitulla Khan Madani r/o IV/2 Civil Lines, Kumbha Nagar, Chittorgarh working as Divisional Accountant, Office of Exe. Engineer, PWD Division, Nimbahera, Chittorgarh.
6. Ramniwas Kapri s/o Ramjiram Kapri r/o Prem Nagar, Morra Road, Merta City, District Nagaur working as Divisional Accountant, Office of Exe. Engineer, PWD Division, Merta City.
7. Inder Singh Ichra s/o Shri Mansaram r/o Q.No.B.J.P.21, Canal Colony, Hanumangarh Junction working as Divisional Accountant, Office of Exe. Engineer, PHED Division, Hanumangarh Junction.

8. Om Prakash Sharma s/o Shri Harlal Sharma r/o 1115, Purani Abadi, Ward No.15, Sriganganagar working as Divisional Accountant, O/o Exe. Engineer, PHED Division, Anupgarh.
9. Ashok Kumar Dave s/o Shri Vishweshar Dave r/o 1/352, Rajasthan Housing Board Colony, Sirohi working as Divisional Accountant, O/o Exe. Engineer, PHED Division, Sirohi.
10. Devi Lal s/o Shri Isdan r/o Pachpadra City, District Barmer working as Divisional Accountant, O/o Exe. Engineer, PWD Division-II, Babtra, Barmer.
11. Suresh Kumar Choudhary s/o Shri Sukh Deo Narain r/o 73/2/4, Sipra Path, Mansarovar, Jaipur working as Divisional Accountant, O/o Exe. Engineer, PWD-Highway Division, Dausa.

.. 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: S/Shri Gaurav Jain and V.D.Sharma)

ORIGINAL APPLICATION No. 119/2008

Kalu Ram Suthar
s/o Shri Heera Ram Suthar

r/o B-158, Sector-6,
Hanumangarh Junction,
presently posted as Divisional Accountant
in the office of Executive Engineer,
PHED Division, Nohar,
Hanumangarh (Raj.)

...Applicant

(By Advocate: Shari Pyare Lal)

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)

ORIGINAL APPLICATION No. 121/2008

Khem Raj Maheshwari
s/o Shri Govind Narayanji,
r/o Plot No.55, Raghunathpuri I,
Sheopur Road, Sanganer, Jaipur,
working as Divisional Accountant
In the office of Executive Engineer,
PWD, National High Way Division,
Tonk.

... Applicant

(By Advocate: Shri Pyare Lal)

Versus

49

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)

ORDER (ORAL)

By this common order we propose to dispose of these OAs as common question of facts and law is involved in all the cases.

2. The applicants were initially appointed as Junior Accountants in the pay scale of Rs. 5000-8000 by respondent No.3 i.e. Director, Treasury and Accountants, Vitta Bhawan, Jyoti Nagar, Jaipur. After completion of 9 years of service they were given first selection grade in the pay scale of Rs. 5500-9000. While working in that grade, they were selected and appointed on deputation basis against the post of Divisional Accountant in the scale of Rs. 5500-9000 initially for one year or till the Divisional Accounts are taken by the State Government, whichever is

earlier and it was mentioned in the said order that total period of deputation will not however normally be extendable beyond three years. It was further stipulated that during the period of deputation, they will be governed by the terms and conditions as laid down by the Government of India, Ministry of Personnel, Department of Personnel and Training OM dated 5.1.1994.

It is also admitted case between the parties that tenure of deputation of the applicants was extended for another one year and further for third year which was the maximum period of deputation as stipulated in the original order of appointment. At this stage, it may be stated that tenure of the applicants for third year was curtailed by the respondents as the applicants have become entitled for second selection grade in the scale of Rs. 6500-10500 in the year 2006. Thus, according to the respondents, the applicants have become ineligible to work as Divisional Accountants ordinary grade of Rs. 5500-9000 on account of their entitlement/grant of higher pay scale of Rs. 6500-10500. Feeling aggrieved by curtailment of the period of deputation, the applicants filed OA before this Tribunal and this Tribunal vide judgment dated 16th January, 2008, copy of which has been placed on record in OA No.29/08 as Ann.A6, held that deputation period of the applicants could not have been curtailed even if they have become entitled for higher pay scale

of Rs. 6500-10500 in terms of Para 8.7 of the instructions dated 5.1.1994 and the reliance placed by the respondent to Para 3.5 of the aforesaid instructions is wholly misconceived as the said Para is attracted when the person is considered for the purpose of appointment on deputation basis at the initial stage. Pursuant to direction given by this Tribunal, the respondents revoked the impugned order and the applicants were permitted to work till completion of the tenure of third year. Since the applicants were not granted further extension of their deputation period, they have filed this OA thereby praying that direction may be given to the respondents to allow the applicants to continue to work as Divisional Accountants at par with other similarly situated 40 persons who were brought on deputation in January, 2005.

3. Notice of these applications were given to the respondents. The respondents have stated that the applicants have been repatriated to their parent department after completion of deputation period and they are not entitled to continue on deputation as Divisional Accountants in view of the change of their pay scale from Rs. 5500-9000 to Rs. 6500-10500. For that purpose, the respondents have placed reliance on para 8.8 of the instructions dated 5th January, 1994.

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

5. The sole question which requires our consideration is whether mandamus can be issued to the respondents to continue the applicants on deputation even if they have completed the maximum period of three years as was stipulated in the first appointment order as well as in terms of Para 8 of the OM dated 5th January, 1994. At this stage, it will be useful to quote relevant part of the OM dated 5th January, 1994 which governs the condition regarding transfer on deputation/foreign service of Central Government employees. Para 3.5 stipulates that in a case of appointment on deputation, person in a higher pay scale of pay shall not be appointed on deputation to a post in lower scale and thus reads:-

"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."

Para 8 deals with tenure of deputation/foreign service. At this stage, it will be useful to quote para 8.1 and 8.2, which thus reads:-

"8.1 The period of deputation/foreign service shall be subject to a maximum of three years in all cases except for those posts where a longer

period of tenure is prescribed in the Recruitment Rules.

8.2 the Administrative Ministry/borrowing organization may grant extension beyond this limit upto one year, after obtaining orders of their Secretary (in the Central govt. and Chief Secretary in the State Govt.). Equivalent level officer in other cases where such extension is considered in public interest."

It will also be useful to quote para 8.7 and 8.8, which thus reads:-

"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.

8.8 If during the period of deputation, on account of proforma promotion in the parent cadre under the Next Below Rule, the employee becomes entitled to a scale of pay higher than the scale of pay attached to the ex-cadre post, he may be allowed to complete the normal tenure of deputation subject to 8.7 above but no further extension of the period of deputation should be allowed in such cases."

Thus, from conjoint reading of these Paras, it is clear that a person cannot be sent on deputation on higher pay scale. Para 8.1 makes it clear that period of deputation shall be subject to maximum of three years in all cases. However, as per Para 8.2 discretion has been given to the appropriate authority to depart from the maximum tenure as prescribed under para 8.1 in public interest on the terms and conditions specified in Para 8.3. Para 8.7 deals with

the situation where while on deputation, the pay of a person has been increased and has started drawing higher pay scale than the post against which he was appointed on deputation basis may be allowed to continue the normal tenure of deputation subject to para 8.7. As per Para 8.8, persons whose cases are covered under Para 8.7, no further extension of the period of deputation should be allowed in such cases. Thus, in view of the specific bar contained in para 8.8, which is squarely applicable in the case of the applicants, the applicant are debarred from claiming extension of deputation period for further period.

6. That apart, as already stated above, in terms of Para 8, the maximum period of deputation is three years. The applicants have got no legal right to claim further extension when they have already completed the maximum period of three years. The discretion given to the authorities to grant further extension beyond the maximum period as stipulated in Para 8.2 that too in public interest does not confer a legal right on the applicants to consider their cases especially when in terms of para 8.8 no such extension can be given to a person whose case is covered under Para 8.7. Such discretionary power can be exercised in cases which are not covered under Para 8.7 and 8.8. Even on this ground, the applicants have not made out a case for

grant of relief and to issue mandamus to the respondents.

7. The discretion not to grant extension to the applicants has been exercised by the respondents for valid reasons. The vague assertion made by the applicants that the respondents have granted extension to 40 persons who are similarly situated cannot be accepted as the persons who have been granted further extension are drawing same pay scale and not like persons who are drawing higher pay scale than the pay of the posts on which they have been appointed on deputation. The respondents have further stated that even the applicants after completion of period of deputation have joined in their parent department, as such, the present OAs have become infructuous. Since we have disposed of these OAs on merit and held that the applicants have no indefeasible right to continue on deputation and that too against the instructions as contained in OM dated 5th January, 1994, as such, the present OAs are dismissed on merit instead of defeating the claim of the applicants on technical ground that no relief can be granted to the applicants in view of their joining in the parent department.

8. With these observations, these OAs are dismissed with no order as to costs.

(B. L. KHATRI)

Admv. Member

(M. L. CHAUHAN)

Judl. Member