**07.12.2009**

**OA No. 378/2009**
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**OA No. 402/2009**
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**OA No. 405/2009**

Mr. P.V. Calla, Counsel for applicant.
Mr. M.S. Raghav, Proxy counsel for
Mr. Sanjay Pareek, Counsel for respondents.

Heard learned counsel for the parties.

Order Reserved.

~~For the reasons dictated separately, the OAs are disposed of.~~

**(B.L. KHATRI)**
**MEMBER(A)**

**(M.L. CHAUHAN)**
**MEMBER (J)**

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 9th day of December, 2009

**CORAM:**

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

**1. ORIGINAL APPLICATION NO. 378/2009**

Jagdish Chand Sharma son of Shri Jugal Kishore Sharma, aged about 59 years, at present working as Divisional Accountant, office of the Executive Engineer PHED, District Division Sriganganagar, resident of W-8, PHED Campus, Sriganganagar.

.....APPLICANT

(By Advocate: Mr. P.V. Calla)

VERSUS

1. The Union of India through the Comptoller & Auditor General of India, 10, Bahadur Shah Jaffar Marg, New Delhi.
2. The Accountant General of Rajasthan (A&E), AG Office, Bhagwan Das Road, Rajasthan, Jaipur.
3. The Chief Engineer, Irrigation, North Hanumangarh.

.....RESPONDENTS

(By Advocate: Mr. M.S. Raghav proxy to Mr. Sanjay PareeK)

**2. ORIGINAL APPLICATION NO. 379/2009**

Harbansh Singh son of Shri Man Singh, aged about 29 years, Divisional Accountant, Office of the Executive Engineer, PWD, National Highway Division, Nagaur. Resident of 1/47 Muktha Prasad Colony, Bikaner.

.....APPLICANT

(By Advocate: Mr. P.V. Calla)

VERSUS

1. The Union of India through the Comptoller & Auditor General of India, 10, Bahadur Shah Jaffar Marg, New Delhi.
2. The Accountant General of Rajasthan (A&E), AG Office, Bhagwan Das Road, Rajasthan, Jaipur.
3. The Chief Engineer, CAD, IGNP, Bikaner.

.....RESPONDENTS

(By Advocate: Mr. M.S. Raghav proxy to Mr. Sanjay PareeK)

**3. ORIGINAL APPLICATION NO. 402/2009**

Nand Lal Sharma son of Shri Devi Prakash Sharma, aged about 59 years, Divisional Accountant, Office of Executive Engineer, PHED Division, Deedwana, District Nagaur, resident of Kot Mohalla, Deedwana, District Nagaur.

.....APPLICANT

(By Advocate: Mr. P.V. Calla)

VERSUS

1. The Union of India through the Comptoller & Auditor General of India, 10, Bahadur Shah Jaffar Marg, New Delhi.
2. The Accountant General of Rajasthan (A&E), AG Office, Bhagwan Das Road, Rajasthan, Jaipur.
3. The Chief Engineer, CAD, IGNP, Bikaner.

.....RESPONDENTS

(By Advocate: Mr. M.S. Raghav proxy to Mr. Sanjay PareeK)

4. **ORIGINAL APPLICATION NO. 403/2009**

Ram Chandra son of Shri Mesu Ram ji, aged about 56 years, Divisional Accountant Office of the Executive Engineer, PHED, City Division Jaisalmer. Resident of 1/47 Muktha Prasad Colony, Bikaner.

.....APPLICANT

(By Advocate: Mr. P.V. Calla)

VERSUS

1. The Union of India through the Comptoller & Auditor General of India, 10, Bahadur Shah Jaffar Marg, New Delhi.
2. The Accountant General of Rajasthan (A&E), AG Office, Bhagwan Das Road, Rajasthan, Jaipur.
3. The Chief Engineer, CAD, IGNP, Bikaner.

.....RESPONDENTS

(By Advocate: Mr. M.S. Raghav proxy to Mr. Sanjay PareeK)

5. **ORIGINAL APPLICATION NO. 404/2009**

Jagdish Rai son of Shri Faquir Chand, aged about 55 years, Divisional Accountant, Office of Executive Engineer, PWD Division Suratgarh, District Sri Ganganagar, resident of PWD Colony, Suratgarh, District Sri Ganganagar.

.....APPLICANT

(By Advocate: Mr. P.V. Calla)

VERSUS

1. The Union of India through the Comptoller & Auditor General of India, 10, Bahadur Shah Jaffar Marg, New Delhi.
2. The Accountant General of Rajasthan (A&E), AG Office, Bhagwan Das Road, Rajasthan, Jaipur.
3. The Chief Engineer, CAD, IGNP, Bikaner

.....RESPONDENTS

(By Advocate: Mr. M.S. Raghav proxy to Mr. Sanjay PareeK)

6. **ORIGINAL APPLICATION NO. 405/2009**

Babu Lal Sharma son of Shri Prabhu Dayal, aged about 57 years, Divisional Accountant, Office of Executive Engineer, Narbada Canal Project, Division-IV, Sanchor, District Jalore, resident of Mahaveer Guest House, Near Bus Stand, Sanchor, District Jalore.

.....APPLICANT

(By Advocate: Mr. P.V. Calla)

VERSUS

1. Union of India through the Comptoller & Auditor General of India, 10, Bahadur Shah Jaffar Marg, New Delhi.
2. Accountant General of Rajasthan (A&E), AG Office, Bhagwan Das Road, Rajasthan, Jaipur.
3. The Chief Engineer, CAT, IGNP, Bikaner

.....RESPONDENTS

(By Advocate: Mr. M.S. Raghav proxy to Mr. Sanjay PareeK)

**ORDER**

**PER HON'BLE MR. M.L. CHAUHAN**

By this common order, we propose to dispose of these OAs as common question of facts & law is involved.

2. Briefly stated, facts of the case are that the applicants were selected and appointed as Divisional Accountants in the year 2005 and they were posted in the office of Executive Engineer for performing the duties of Divisional Accountants. Vide impugned order dated 12.06.2009 (Annexure A/1); they were repatriated to their parent department after completion of four year of deputation period, which has been mentioned against their names in the order. It may be stated that vide impugned order No. 573 dated 12.06.2009 (Annexure A/1), 39 persons were repatriated to their Parent Departments. The grievance of the applicants in these cases is that despite the fact that they have made representations for extension of their deputation period for further period of one year and the matter is under active consideration before Respondent no. 1, it was not permissible for Respondent no. 2 to pass the impugned order dated 12.06.2009 (Annexure A/1) thereby repatriating the applicants to their Parent Department after completion of four years of deputation tenure. The applicants have also pleaded that one Shri Braham Prakash Gupta, whose name find mentioned at sl. 8 in the impugned order dated 12.06.2009 (Annexure A/1) and was similarly situated to that of applicants, has been granted further extension, although he was also repatriated to his Parent Department w.e.f. 07.08.2009 vide impugned order whereas no such extension has been granted to the applicants despite the fact that in some cases, the Executive Engineer, under whom the applicants are working, had requested respondent no. 2 to grant further extension to the applicants in order to cope with the Audit Inspection, which will be conducted by the Audit party in near

future. It is on these basis, the applicants have prayed that the impugned order dated 12.06.2009 (Annexure A/1) issued by respondent no. 2 be quashed and set aside and appropriate relief to which the applicants may be entitled may be passed in the facts & circumstances of these cases.

3. Notices of these OAs were given to the respondents. The respondents have filed their reply. The facts that the applicants were selected and posted as Divisional Accountants in the year 2005 and were sent on deputation in the different divisions is not disputed by the respondents. It is, however, stated that after completion of four years of deputation period, repatriation order was issued vide office order NO. 573 dated 12.06.2009 for 39 UDCs working on deputation as Divisional Accountants. It is, however, stated that out of 39 UDCs working on deputation as Divisional Accountants, two persons have requested for further extention of deputation to the office of Respondent no. 2. It is stated that the office of respondent no. 2 has only recommended the case of Shri Braham Prakash Gupta for further extension of deputation for a period of six months and the matter was considered by CAG i.e. respondent no. 1. It is categorically stated that case of Shri Braham Prakash Gupta was recommended to Respondent no. 1 after considering the request of Executive Engineer as made vide letter Nos. 1232 dated 15.07.2009 & 1487 dated 03.08.2009 and the Additional Chief Engineer, PWD Zone, Bikaner vide letter No. 96 dated 02.07.2009. After approval of the competent authority, the deputation period of Shri Braham Prakash Gupta was extended for a further period of six months vide letter No. 1536-38 dated 07.08.2009. The

respondents have further stated that applicants stood already relieved. On merit, it has been stated that as per instructions contained in Para No. 8.3 of the Government of India OM dated 05.01.1994, extension for the fifth year, or the second year in excess of the period prescribed in the Recruitment Rules, the directive issued for rigid application of the tenure rules should be taken into consideration and only in rare and exceptional circumstances such extension should be granted. According to respondents, since the respondent no. 2 has neither received request for extension of deputation period for fifth year nor any case was recommended except Shri Braham Prakash Gupta, as such, it was considered appropriate to issue repatriation order in respect of all persons in terms of provisions contained in Para No. 8.3 of OM dated 05.01.1994. According to respondents, the applicants have got no legal & vested right for further extension of deputation period as a person on deputation can always be repatriated in his substantive position.

4. The applicant in OA No. 378/2009 has filed rejoinder. Alongwith the rejoinder, the applicant has also annexed copy of letter dated 16.06.2009 (Annexure A/4), which was signed by as many as 14 persons including Shri Braham Prakash Gupta, whose name has been incorporated at sl. no. 10. This is a joint application where 14 persons have requesfed for extension of deputation for a period of one year. According to the applicant, this joint application was signed by the 14 persons and was given to respondent no. 2 personally when she came to Bikaner on tour. Thus according to the applicants, the respondent no. 2 has not acted fairly and the case of only one person, Shri

Braham Prakash Gupta has been recommended whereas the names of 13 persons have not been recommended for further extension in terms of the joint application (Annexure A/4) signed by the 14 persons.

5. The respondents were granted opportunity to rebut this allegation of the applicant taken by him in OA No. 378/2009. The respondents have filed reply to the rejoinder. In the reply, the respondents have stated that the requests of two persons, S/Shri Braham Prakash Gupta and Harzeet Singh was received and only the case of Shri Braham Prakash Gupta was recommended for further extension of deputation period for six months whereas the case of Shri Harzeet Singh was not recommended. It is, however, stated that respondent no. 2 has not received the copy of application (Annexure A/4) for further extension of deputation period. Besides this, the respondents have also reiterated the submissions made in the reply.

6. We have heard the learned counsel for the parties and have gone through the material placed on record. From the material placed on record, it is evident that as per impugned order dated 12.06.2009 (Annexure A/1), 39 Divisional Accountants who were sent on deputation were repatriated to their parent department after completion of four years' maximum period of deputation. It is an admitted case between the parties that out of 39 persons who were repatriated, the extension was granted only to Shri Braham Prakash Gupta. It is also an admitted fact that Shri Braham Prakash Gupta has been granted extension only for a period of six months. Thus the sole question which requires our consideration is whether the applicants are

entitled to relief solely on this ground and whether it is a case where this Court should interfere with the discretion exercised by the authorities in the matter of recommending the case of one person for further extension for six months? At this stage, we wish to reproduce Para No. 8.3 (i) of the instructions dated 05.01.1994, which find mentioned in Appendix 5 of Fundament Rules and thus reads as under:-

> "8.3 The borrowing Ministries/Departments/Organisations may extend the period of deputation for the fifth year or for the second year in excess of the period prescribed in the Recruitment Rules where absolutely necessary, subject to the following conditions:-
>
> (i) While according extension for the fifth year, or the second year in excess of the period prescribed in the Recruitment Rules, the directive issued for rigid application of the tenure rules should be taken into consideration and only in rare and exceptional circumstances such extension should be granted."

7. From the portion, as reproduced above, it is clear that further extension for fifth year, or the second year in excess of the period prescribed in the Recruitment Rules, cannot be claimed as a matter of right. Such extension can be given where it is absolutely necessary subject to the condition that it is given only in rare and exceptional circumstances.

8. The next question which requires our consideration is whether the respondents have exercised their discretion in a fair manner thereby giving further extension of deputation period for six months to one the persons namely Shri Braham Prakash Gupta and remaining 38 persons have been repatriated to their parent departments including

the applicants and whether it is a case where the applicant have made out a case for interference of this Tribunal? Learned counsel for the applicant has argued that it is a case of hostile discrimination and respondent no. 2 has not acted fairly thereby recommending the case of one person despite the fact that a joint application was made by 14 persons including the person namely Shri Braham Prakash Gupta whom six months' further extension has been granted whereas such discretion has not been exercised in favour of the applicants.

9. We have given due consideration to the submission made by the learned counsel for the applicant. As already noticed above, the respondents have categorically stated that no such written application (Annexure A/4) was received on behalf of 14 persons including Shri Braham Prakash Gupta. It is argued that the case of Shri Braham Prakash Gupta was recommended on his oral request and in view the letter written by the Executive Engineer as well as letter written by the Additional Chief Engineer. It was argued that it was on the basis of these specific recommendations made in favour of Shri Braham Prakash Gupta that his case for further extension of deputation period for six months was recommended taking special circumstances into consideration. Thus the applicants cannot draw any assistance from this isolated instance whereas all the 38 persons including the applicants have been treated similarly and they have been repatriated after completion of four years of maximum period of deputation. It was also argued that the recommendation made by the Executive Engineer in the case of some of the applicants was of general nature and was confined to specific period and in any case no such

recommendation was by made by the Additional Chief Engineer in favour of any of the applicants. According to us, contention as raised by the learned counsel for the respondents cannot be out right lyrejected. It is a settled position that a writ of mandamus can be issued, provided there exists a legal right in the applicant and a corresponding legal duty in the respondents. Even otherwise a Superior Court having a limited jurisdiction in this behalf would not interfere with the discretionary jurisdiction exercised by the statutory authorities unless a clear case for interference is made out subject of course to just exceptions. This is what the Apex Court has held in the case of **Union of India & Others vs. Muralidharan Menon & Another**, JT 2009 (12) SC 571 in Para No. 15. The Apex Court has further held that Article 14 of the Constitution of India providing for the equality clause is a positive concept in terms whereof, the equals, subject to certain exceptions are to be treated equally and unequals cannot be treated equally. It is further held that if relaxation has been granted in case of employee on the basis of the material available, the same by itself may not be treated to be a binding precedent so as to enable the Tribunal/Court to issue a writ of or in the nature of mandamus.

10. Thus viewing the matter on the basis of law laid down by the Apex Court, we are of the view that it is not a case where this Tribunal should interfere with the discretion exercised by respondents nos. 1 & 2. The respondents have given the reasons for exercising the discretion in favour of Shri Braham Prakash Gupta on the basis of three letters i.e. two letters written by the Executive Engineer and one

letter written by the Additional Chief Engineer whereas no such recommendation on behalf of the applicants was made by the Additional Chief Engineer. Further the respondents have made recommendation for extension of deputation period only for six months instead of one year. Thus according to us, it is not a case of discrimination where we should interfere in the matter. The fact remains that the applicants have got no legal right for extension of deputation period beyond four year. As such, it is not possible for us to issue mandamus thereby directing the respondents to give further extension in favour of the applicants where in terms of the instructions issued by the Department, extension for the fifth year or the second year in excess of the period prescribed in the Recruitment Rules has to be made in rare and exceptional circumstances.

11. For the foregoing reasons, we are of the view that the applicants have not made case for our interference. Accordingly, the OAs are dismissed with no order as to costs.

**(B.L. KHATRI)**
**MEMBER (A)**

**(M.L. CHAUHAN)**
**MEMBER (J)**

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