

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI -5.

O.A. NO. 43 of 1994.
T.A. No. \

DATE OF DECISION 3.10.1994.

Shri Susanta Kr. Bhattacharjee.

PETITIONER(S)

M/S J.L.Sarkar, M.Chanda & Smt S.Deka.

ADVOCATES FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr G.Sarma, Addl.C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS (S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (A).

1. Whether Reposters of local papers may be allowed to see the Judgment? yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgment ? No
4. Whether the Judgment is to be circulated to the other Benches ? No

Judgment delivered by Hon'ble Vice-Chairman.

[Signature]

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 43 of 1994.

Date of Order : This the 3rd Day of October, 1994.

Justice Shri M.G. Chaudhari, Vice-Chairman.

Shri G.L. Sanglyine, Member (Administrative).

Shri Susanta Kr. Bhattacharjee,
Lower Division Clerk,
Ministry of Environment & Forests,
Regional Office (NER),
Shillong-3, Meghalaya.

. . . Applicant

By Advocates S/Shri J.L. Sarkar, M. Chanda
& Smt S. Deka.

- Versus -

1. Union of India (through the Secretary,
Ministry of Environment & Forest,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi-110003.

2. Chief Conservator of Forest,
Ministry of Environment & Forest,
Regional Office (NEZ), Upland Road,
Laitumkhrah, Shillong-793003;

. . . Respondents.

By Advocate Mr G. Sarma, Addl. C.G.S.C.

O R D E R

CHAUDHARI J (V.C)

The applicant was appointed as Lower Division Clerk with effect from 16.1.1986 in the North Eastern Police Academy, Borapani (Umsaw) under the Ministry of Home Affairs. His services were lent to the Regional Office in the Ministry of Environment and Forest at Shillong under Respondent No.2 and he was posted as Lower Division

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Clerk on deputation basis with effect from 15.6.1989 in that department. His period of deputation was extended from time to time. During the course of his deputation the applicant expressed his willingness to be permanently absorbed in the borrowing department. In that department he had also opportunity to officiate as Upper Division Clerk for a period of 3 months from 14.1.1992 and periodically thereafter. Not only that but on the recommendation of the Selection Committee of the Environment and Forest, N.E.R and consequent upon the approval of the competent authority he was appointed as Upper Division Clerk in the pay scale of Rs.1200-2040/- with effect from 15.12.1992 till June, 1993. That appointment however was also on deputation basis. The question of absorption of the applicant in the borrowing department was being sympathetically considered by the department but no decision was taken as the recruitment rules were under finalisation. That was the position prior to the year 1992.

2. The recruitment rules were framed in the year 1992. In the light of those rules the applicant was advised by the Regional Office to submit his willingness for absorption as Lower Division Clerk by seeking reversion to that post as it was interpreted that he being a deputationist he could be absorbed only in the post of Lower Division Clerk.

✓ According to the applicant all the ^{while} ~~rise~~ he was being given to understand that his eventual absorption in the department of Environment and Forest will be sympathetically considered. In order to facilitate that to happen he gave his willingness to be reverted as Lower Division Clerk. However, according

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to the applicant he is entitled to be absorbed in the Regional Office of Ministry of Environment and Forest at Shillong. In that connection he points out that there are two vacancies in the post of Lower Division Clerk in the Regional Office out of which one post is reserved for Scheduled Tribe candidate and the other is general post. Although the reserved post has been filled up and since the applicant is continuing to work in the post by virtue of extension of his deputation ^{submits that he} ought to be absorbed as Lower Division Clerk in the Regional Office and then considered for promotion to the post of Upper Division Clerk in due course. The deputation of the applicant which has continued ever since 15.6.89 was to expire on 31.3.94 at the end of 5th year of deputation. The applicant filed ^{the instant} his application on 9.3.1994 praying that he should be directed to be absorbed as Lower Division Clerk in the office of the Chief Conservator of Forest, N.E.R., Ministry of Environment and Forest, Shillong i.e. respondent No.2 and that he should not be released from the said office. An interim order was passed on 23.3.94 directing the respondents to allow the applicant to continue in the post of Lower Division Clerk with respondent No.2 after 31.3.94 till the disposal of the application. By virtue of that order the applicant is continuing to work in that post.

3. It is clear from the letter of the Police Academy i.e. the parent department of the applicant that initially on 14.6.1989 they had given their no objection for placing the service of the applicant with respondent No.2 on deputation beyond 3 years and to ^{be} finally absorbed in that office in any capacity and for his promotion to higher grade. The Ministry of Environment and Forest informed the applicant on 2.5.91 that the question of absorption of staff will be considered after finalisation of Recruitment

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Rules. On 30.10.91 the Chief Conservator of Forest(C) had even issued a letter that the applicant was allowed to continue on deputation with respondent No.2 till finalisation of the Recruitment Rules and eventual absorption in the service of that office as per letter of the Government of India, Ministry of Environment and Forest dated 2.5.91 and that the order was being issued after taking into consideration the no objection of his parent department as conveyed by letter dated 14.6.1989. Meanwhile the Recruitment Rules were framed in the year 1992.

4. On 17.9.93 the applicant applied for reversion to the post of Lower Division Clerk on the basis ~~of~~ that he was given to understand that his absorption in that post in the Regional Office would be done if he seeks reversion to the post of Lower Division Clerk since there was no provision in the Recruitment Rules for absorption in the post of Upper Division Celrk. He was willing to accept reversion to the post of Lower Division Clerk in order to facilitate his permanent absorption in the Regional office for which he had been represented^{ing} for quite long time. Thereafter on 12.10.1993 order of his reversion to the post of Lower Division Clerk in the pay scale of Rs.950-20-1150-EB-1500/- with effect from 1.10.93 came to be issued by the Deputy Conservator of Forest(C) on 12th October, 1993. The pay of the applicant was fixed at Rs.1150/- (basic). The applicant then requested for his early absorption as Lower Division Clerk in the office of the respondent No.2 by his representation dated 19.11.93 addressed to the Chief Conservator of Forests(C). Earlier by order dated 24.10.93 the extension of deputation of

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the applicant for the 5th year with effect from 15.6.93 to 31.3.94 in the post of Lower Division Clerk in the Regional office, Shillong was approved. The net result of the aforesaid developments is that by virtue of the order dated 12th October, 1993 (Annexure-G) the applicant stands reverted to the post of Lower Division Clerk and he apprehends that on expiry of the period of deputation on 31.3.1994 he would ^{be} repatriated to his parent department. That position becomes clear from the letter of the Police Academy dated 11.11.1993 (Annexure-1 to the written statement) that necessary action was requested to be taken by respondent No.2 to repatriate the applicant as soon as his extended tenure of deputation is over on 14.6.1994. That fact seems ^{been} to have been mentioned as the 5th year of deputation would be over on that day although by order dated 24.3.93 the deputation was extended only upto 31.3.1994.

5. Mr Sarkar submitted that by reason of the no objection initially given by the parent department and at no point of time till 11.11.93 it being indicated that ^{that} department would require repatriation of the applicant and as the question of his absorption in the Ministry of Environment and Forest with respondent No.2 was being sympathetically considered and was kept in abeyance awaiting framing of Recruitment Rules a legitimate expectation ~~have~~ been created in the mind of the applicant that he would be absorbed in the office of the respondent No.2 and will not be required to go back to his parent department. The learned counsel referring to the averments of the applicant that in that hope he has made arrangement for permanent settlement at Shillong with his family

and also got married at Shillong where his wife is an employee of the Central Government Undertaking at Shillong and if he is not absorbed and repatriated to his parent department that will cause grave injustice and irreparable loss to him and submitted that the respondents are now ~~esloppe~~ ^{stoppe} state from refusing to absorb him with the respondent No.2. The learned counsel further submitted that since there is one post vacant in which he can be absorbed there is no reason for the respondents not to consider his absorption in the Ministry of Environment and Forest Regional Office, Shillong. Mr Sarkar submitted that the parent department has all along ever since 1989 gave no objection for extension of the deputation of the applicant with the respondent No.2 and that also goes to show that ^{they would have had} no objection to the absorption of the applicant in the borrowing department had it been done prior to 11.11.93. He submitted that the letter of the Police Academy i.e. the parent department of the applicant dated 11.11.93 may not therefore ^{be} taken as a legitimate ^{objection} ~~action~~ of that department to absorb the applicant in the office of the respondent No.2. Mr Sarkar also emphasised the fact that in the borrowing department the applicant was ^{has} officiated in the higher post of Upper Division Clerk and all throughout the service of the applicant has been satisfactory. For all these reasons Mr Sarkar submitted that the relief asked for by the applicant is fully justified and may be granted to him. Mr Sarkar also submitted that the applicant can be absorbed within the framework of the Recruitment Rules 1992.

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6. Mr G.Sarma, the learned counsel for the respondents reiterated the preliminary objection taken in the written statement that as the parent department i.e. the Police Academy has not been joined as a party to this application the application is not in a proper form and thus is not maintainable. On merits he submitted that the applicant cannot refuse to be repatriated on the period of deputation being over and he has no legal right of getting permanently absorbed in the office of the Ministry of Environment and Forest and consequently the relief sought by him is misconceived ^{of} fact and illconceived ⁱⁿ law and ^{it deserves} ~~this was~~ to be rejected.

7. We find that although the deputation of the applicant was with the consent of the parent department initially and continued for a period of five years without objection during which period the applicant also officiated in higher post, the applicant was always told that the question of his absorption with the respondent No.2 under the Ministry of Environment and Forest will be considered only after the Recruitment Rules were framed. Although that may have given rise to an expectation in the mind of the applicant that since the department was sympathetic and the parent department was not objecting in all probability he would be absorbed with respondent No.2, However, since the understanding given was qualified as above that ^{did not} attract the principle of promissory estoppel against respondents. It is not therefore possible to hold that as a matter of right because of that conduct of the respondents the applicant has become entitled to ^{be} absorbed in the office of the respondent No.2.

8. Turning to the Recruitment Rules, which the respondent No.2 ^{appears to have been expecting} ~~also appeared to have been accepted~~ to provide for situations like that of the applicant who belonging to Group 'C' ~~for~~ facilitating his absorption ^{however} further provide that subject to the educational qualification prescribed 75% of Lower Division Clerks in the Ministry of Environment and Forests shall be filled up by direct recruitment failing which by transfer on deputation/transfer and 25% by promotion from amongst Group 'D' employees having the requisite qualifications as prescribed on seniority basis failing which by transfer on deputation. Unless, therefore the case of the applicant falls under these criteria he would not be able to claim absorption even in the post of Lower Division Clerk in the Ministry of Environment and Forest which is not his parent department. Admittedly there were two vacant posts of Lower Division Clerk available in the department of the respondent No.2 and one of them has already been allotted to reserved candidate and ^{that} leaves only one vacancy. If the proportion of 75% and 25% is to be applied it is possible to say that ^{that} post may be filled in under Clause 2 column 11 of the schedule to the Recruitment Rules which provides for two ^{modes} ~~means~~ for filling up that vacancy. Firstly, candidates from amongst Group 'D' employees of that very department have to be considered for promotion and given that post and only if such a candidate is not available then that can be filled in by transfer on deputation. The instructing officer of the respondent No.2 conveyed through Mr G.Sarma that at present there is no candidate eligible for promotion from amongst the Group 'D' employees having the necessary qualification. ~~The~~ avenue therefore, is open

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for applicant being considered by transfer on deputation for the purpose of absorbing him as Lower Division Clerk. He fulfills the educational qualifications that are prescribed in clause 2 column 11 of the schedule, he being Pre-University Science qualified and having typing speed in English about 30 words as stated by him and not denied by the respondents. However, whether he should be extended benefit of that provision is to be decided by the respondents. It may also be stated that by order dated 22.8.90 the applicant was given quasi permanent status in the post of Lower Division Clerk with effect from 16.1.89 by his parent department i.e. Police Academy. Having regard to the length of service the applicant has put in with the department of respondent No.2 and the no objection of the parent department atleast from 1989 until the Recruitment Rules came into force we have no reason to assume that the respondents will not sympathetically consider his case under clause 2 of column 11 of the schedule to the Recruitment Rules if it is permissible since there would seem a difficulty in their way in doing so straightaway which arises by reason of the letter of the Police Academy dated 11.11.93 in which they have shown their unwillingness to continue the applicant further on deputation and have expressed the need for his repatriation. It is stated in that letter (Annexure-1 to the written statement) that the Academy has a very limited staff making the administration difficult without adequate staff and the Ministry has issued directions to fill up the vacancies immediately and therefore necessary action to repatriate the applicant may be taken as soon as his



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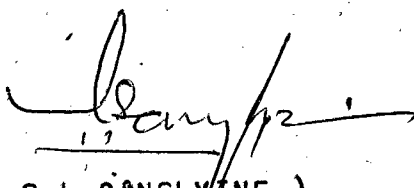
extended tenure of deputation is over i.e. on 14.6.94. Mr Sarkar very fairly stated that he cannot stretch his argument to contend that willingness or no objection of the parent department even though the applicant was given the status of quasi permanent appointee would not be necessary for making his absorption effective in the Ministry of Environment and Forest in the department or respondent No.2. At this stage the objection to the maintainability of the application taken by the respondents and reiterated by Mr Sarma assumes importance. Obviously we cannot ^{give} make any direction to the Police Academy behind their back yet we would leave it for that department to consider whether they can give their no objection for the absorption of the applicant in the post of Lower Division Clerk with respondent No.2 in the event of respondents being inclined to extend the benefit of clause 2 column 11 of the schedule to the Recruitment Rules to the applicant. All that we can say is that having regard to the circumstances inter alia that the applicant has worked for 5 years albeit on deputation in the office of the respondent No.2, nothing adverse has been shown against him, he has worked in higher post from time to time while on deputation with respondent No.2, he had reason to legitimately expect that he would be eventually absorbed in the office of the respondent No.2 and had in that belief made preparations for his permanent settlement at Shillong that the respondents as well as the parent department of the applicant will keep an open mind to consider his case sympathetically. We would ~~have~~ like to make it clear ^{that that decision} it will entirely rest


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with the respondents and the Police Academy. Subject to the above observations as we are not satisfied that any relief by way of an effective order can be granted to the applicant we are constrained to dismiss the application.

9. In the result, the application is dismissed. There will be no order as to costs.

10. The interim order of stay is vacated but it is left to the respondents not to require the applicant to go back to his parent department immediately or at least till the parent department reconsiders his case in the light of the observations made above, which we do hope will be done as expeditiously as possible. Here again we are to add that it is left to the discretion of the department as well as the respondents depending upon the exigencies of the situation in both the departments to take appropriate decision. If necessary the respondents may apprise the parent department with their own views in the matter and seek its views.


(G.L.SANGLYINE)
MEMBER(A)


(M.G.CHAUDHARI)
VICE-CHAIRMAN