

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-278/2017

Reserved on : 14.02.2017.

Pronounced on : 28.02.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Nawal Kishore Sharma
55 years,
S/o Late Sh. K. C. Roy,
R/o Flat No. 702, Block-A,
NHAI Residents Apartment,
Sector-17, Dwarka,
New Delhi-110075.

.... Applicant

(through Sh. Abhishek Kaushik with Sh. A.K. Singh, Advocate)

Versus

1. National Highways Authority of India
(through its Chairman)
G-5 & 6, Sector-10,
Dwarka, New Delhi-110075.
2. General Manager (HR/Admin)-II,
National Highways Authority of India,
G-5 & 6, Sector-10,
Dwarka, New Delhi-110075.
3. Union of India,
Ministry of Road Transport and Highways
Through its Secretary,
Transport Bhawan,
1, Sansad Marg, Gokul Nagar,
Sansad Marg Area,
New Delhi-110001.

..... Respondents

(through Sh. Manish Bisnoi with Sh. Pradeep Kumar and Sh. Anil Kumar, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

Brief facts of the case are that the applicant joined the respondent National Highways Authority of India (NHAI) on deputation basis w.e.f. 30.03.2016. He was given deputation tenure upto 06.12.2017 or until further orders, whichever was earlier. His grievance is that vide impugned order dated 20.01.2017, he has been pre-maturely repatriated to his parent department and has also been ordered to be relieved with immediate effect. He, therefore, approached this Tribunal by filing this O.A. On 24.01.2017 while issuing notice in this O.A. we directed the respondents not to force the applicant to hand over charge till the next date of hearing.

2. According to the applicant, the aforesaid order of repatriation was violative of his Constitutional rights as it was arbitrary. It was violative of the DoP&T O.M. dated 17.06.2010, in para-9 of which, it is laid down that in cases of pre-mature repatriation, an advance notice of at least three months be given to the Lending Ministry as well as to the employee concerned. He further submitted that this order was vague and does not disclose the circumstances under which competent authority took decision to repatriate him. In fact, at the time when this order was issued he was in the midst of an official tour. He has gone on to state that pre-mature repatriation

will create a stigma in his service record and will also cause great hardship to his family members.

3. Arguing for the applicant, learned counsel Sh. Abhishek Kaushik stated that the applicant had been selected after a rigorous process lasting over several months. The respondents had advertised the post of Chief General Manager and had received 33 applications in response to the same. Only-09 were short listed by the Screening Committee out of these. Thereafter, a High Level Search-cum-Selection Committee recommended applicant's name for the aforesaid post out of the 09 short listed applications. Thus, applicant had been selected after a rigorous selection process but has been repatriated pre-maturely without any justifiable reasons. He also stated that the mandatory three months notice as prescribed in DoP&T Instructions was not given to him. He further argued that even though a deputationist has no right to continue on the post yet he has a right to be treated fairly and equitably. In this case, the same has been denied to the applicant. He further argued that the applicant's case was not a case of deputation simpliciter in which a Government servant is transferred from one department to another or from one Government to another. In fact, the applicant had been selected for this post in accordance with the NHA Regulations, which prescribe for filling up the post on deputation basis. The selection process had been rigorous.

4. The applicant has relied on several judgments to support his contention. On the issue of applicant's repatriation being violative of DoP&T O.M., he has cited the following judgments in which pre-mature repatriation order was set aside because three months notice was not given:-

- (i) **Shriprakesh Pathak Vs. UOI & Ors.**, (OA-488/2012 decided on 10.12.2013 by Patna Bench of CAT)
- (ii) **Abdul Basit Vs. UOI & Ors.**, (OA-575/2012 decided on 12.03.2014 by Allahabad Bench of CAT).
- (iii) **Bhausahab Shankar Salinke Vs. UOI**, (OA-3513/2012 with OA-3514/2012 decided on 22.01.2013 by Principal Bench of CAT).
- (iv) **Sanjay Shiva Vs. UOI & Ors.**, (OA-1640/2014 decided on 27.09.2015 by Principal Bench of CAT).

4.1 He has also produced a copy of NHA order dated 04.08.2016 regarding pre-mature repatriation of one Smt. T. Chanda Biswas, Dy. General Manager (HRD) in which three months notice was given.

4.2 Further, he has relied on the judgment of Apex Court in the case of **Ashok Kumar Ratilal Patel Vs. UOI**, (2012) 7 SCC 757, paras-13 & 14 of which read as follows:-

“13. Ordinarily transfers on deputations are made as against equivalent post from one cadre to another, one department to another, one organisation to another, or one Government to another; in such case a deputationist has no legal right in the post. Such deputationist has no right to be absorbed in the post to which he is deputed. In such case, deputation does not result into recruitment, as no recruitment in its true import and significance takes place as the person continues to be a member of the parent service.

14. However, the aforesaid principle cannot be made applicable in the matter of appointment (recruitment) on deputation. In such case, for appointment on deputation in

the services of the State or organisation or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be followed. No person can be discriminated nor is it open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person who applies for appointment on deputation has an indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work."

4.3 He has also relied on the judgment of Apex Court in the case of **UOI through Government of Pondicherry and Ors. Vs. V. Ramakrishnan and Others**, (2005) 8 SCC 394, para-32 of which reads as follows:-

"Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. 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 such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post-haste manner also indicates malice."

5. The respondents have not filed a reply in this case and have chosen to argue the case without filing the reply. Sh. Manish Bisnoi, learned counsel for the respondents stated that the Instructions of DoP&T regarding three months notice were not directly applicable

to NHAI as NHAI was an autonomous Statutory Body and not a Government department. In this regard, he has relied on the judgment of Apex Court in the case of **UOI & Ors. Vs. N. Hargopal and Ors.**, (1987) 3 SCC 308, para-8 of the judgment, which is relevant, reads as follows:-

“ It is clear that it is the desire of the Government of India that all government departments, government organisations and statutory bodies should adhere to the rule that not merely vacancies should be notified to the Employment Exchanges, but the vacancies should also be filled by candidates sponsored by the Employment Exchanges. It was only when no suitable candidates were available, that other sources of recruitment were to be considered. While the government is at perfect liberty to issue instructions to its own departments and organisations provided the instructions do not contravene any constitutional provision or any statute, these instructions cannot bind other bodies which are created by statute and which function under the authority of statute. In the absence of any statutory prescription the statutory authority may however adopt and follow such instructions if it thinks fit. Otherwise, the government may not compel statutory bodies to make appointments of persons from among candidates sponsored by Employment Exchange only. The question, of course, does not arise in the case of private employers which cannot be so compelled by any instructions issued by the government.”

5.1 Further, he argued that these Instructions do not prescribe the consequence of non observance of the same. In view of this, these Instructions can only be regarded as directory and not mandatory. Had these Instructions been mandatory, it would have been provided that non observance of these Instructions would make the pre-mature repatriation order a nullity. In this regard, he relied on the judgment of Hon'ble Supreme Court in the case of **Modern**

School Vs. Shashi Pal Sharma and Ors., (2007)8 SCC 540, para-21 & 22 are relevant and are reproduced as herein:-

"21. Reliance placed by Mr. Ramamurthy on the departmental instruction dated 17.10.1996 is not relevant. The said departmental instruction reads thus :

"As per provisions of Delhi School Act and Rules, 1973, the Managing Committee of the school is the appointing authority in respect of aided and unaided recognized schools. On various occasions the Managing Committee has to discharge the statutory obligation of obtaining approval of the Director of Education to various proposals by passing a resolution.

Before any proposal is put up before the D.E., for obtaining his approval, the individual proposal is to be examined on merits, which includes scrutiny of the resolution passed by the Managing Committee.

In the past, it is observed that most of the schools are not adhering to the approved Scheme of Management. DE nominees have been provided to all the aided and unaided schools, who are not invited by the Managing Committee of the schools. In some cases, 'special invitees' are invited to attend the meeting of the Managing Committee in contravention to the approved Scheme of Management.

All the Managers of aided/unaided schools are therefore, directed-

1. to call the meeting of the Managing Committee in accordance with the approved Scheme of Management.
2. to invite the DE nominees/advisory board nominees in the meeting and notice of the meeting should be sent by special messenger or by Regd. Post only.
3. to incorporate in the body of resolution, the names of members who have attended the meeting of Managing Committee. If the DE nominee has not attended the meeting, a certificate should be recorded therein that notice of meeting of Managing Committee was sent on

_____ (date) by registered post or by special messenger.

4. Resolution should not be passed by circulation among the members."

22. The manner in which the meeting of the Managing Committee should be called for is a matter governed by the internal rules of the school. The said departmental instructions does not state that any deviation therefrom would result in the Resolution passed by the Managing Committee by circulation, if rendered nullity, the same must be held to be directory."

5.2 He further stated that a deputationist has no vested right to remain in the post. He holds office on the pleasure of the borrowing organisation and once that pleasure is withdrawn, he can be repatriated at any time. In support of his contention, he has cited the judgment of Hon'ble High Court of Delhi in the case of **UOI Vs. Manoranjan Kumar & Ors.**, (2010)Delhi Law Times 726(DB), paras-39, 40, 41 & 42 are reproduced:-

"39. Merely because an officer had good ACR grading and might have worked efficiently at an earlier point of time and also proved to be a Good CVO, the employer in this case i.e. the petitioners if not satisfied regarding his overall suitability for the post on which he has been sent on deputation only for a specified period was certainly entitled to withdraw their pleasure in permitting him to continue on the post. If the pleasure is withdrawn without any harm to the incumbent and without taking any action pursuant to the complaints lodged against him, even if it is accepted that those complaints had been lodged by interested parties, it would not be a case which calls for any interference by a judicial Tribunal to quash such orders repatriating respondent to his parent cadre.

40. The judgments cited by the respondent have been gone into by us, which had been given in the given facts but we are afraid that looking at the canvass in its totality is of no help to the case of the respondent.

41. It is well settled that deputation of an employee requires three parties i.e. the employee, the parent department and the borrowing department. Either of them may decide not to continue with the deputation. Until and unless such action is stigmatic, mala fide or is harmful to the interests of employee sent on deputation, it cannot be said that action on the part of the employer to repatriate the employee to his parent cadre was unjustified. In fact such a view negates the provisions contained under [Section 7](#) of the Major Port Trust Act.

42. In this regard, it would be relevant to take note of judgment of this Court in WP(C)No.12773/2009 entitled as Shri Sitamber Singh Vs. Union of India (UOI) and Anr., decided on 15.07.2010. The relevant portion is reproduced hereunder:-

"In service jurisprudence, "deputation" is described as an assignment of an employee of an department or cadre to another department or cadre. The necessity for sending on deputation arises in "public interest" to meet the exigencies of "public services". The concept of deputation is based upon consent and voluntary decision of the employer to lend the services of his employee, corresponding acceptance of such service by the borrowing employer and the consent of the employee to go on deputation. A deputation subsists so long as the parties to this tripartite agreement do not abrogate it. However, if any one of the parties repudiate the agreement, the other two have no legally enforceable right to insist upon continuance of the deputation. Even in the cases where deputationists continue for a pretty long period and options for their "absorption" in the borrowing department were taken, yet their repatriation to the parent department was upheld by the Apex Court in [Rattilal B. Soni v. State of Gujarat](#) AIR 1990 SC 1132 : 1991(3) SLR 77 (SC) after holding that "the appellants being on deputation, they could be repatriated to their parent cadre at any time and they do not get any right to be absorbed on the deputation post."

"Deputation" per se being a contractually made ad hoc arrangement, seldom confers any right upon a deputationist, either for completion of the term of deputation or regularization of such stopgap arrangement. The judgments relied upon by the learned Counsel for the College in this regard squarely answer the controversy."

5.3 On the same issue, he has cited the judgment of Hon'ble Supreme Court in the case of **Kunal Nanda Vs. UOI & Anr.**, (2000) 5 SCC 362 as well as Hon'ble High Court of Delhi in the case of **L/NK V.H.K. Murthy Vs. Special Protection Group and Anr.**, 2000 IV AD (DELHI) 624 wherein it has been held that a deputationist has no vested right to remain in the host department and also there was no requirement of observance of principles of natural justice by issuing a show cause notice before repatriation. Learned counsel has also cited Hon'ble Supreme Court judgment in the case of **Ratilal B. Soni and Ors. Vs. State of Gujarat and Ors.**, 1990 (Supp) SCC 243 as well as judgment of a Co-ordinate Bench of this Tribunal in the case of **Smt. Rashmi Jain Vs. UOI** dated 23.05.2008 wherein the applicant was repatriated without issuance of a show cause notice and the repatriation was upheld by the Tribunal.

6. We have heard both sides and have perused the material placed on record. Two issues arise for our consideration:-

(i) Whether it was mandatory to give three months advance notice before repatriating the officer?

(ii) Whether an officer can be pre-maturely repatriated without observance of principles of natural justice by issue of a show cause notice to him?

6.1 We proceed to deal with each of them as hereunder:-

6.2 The applicant has relied on several judgments wherein repatriation order was set aside on the ground that it was passed without issuing advance notice of three months as prescribed in the DoP&T O.M. dated 17.06.2010. However, on going through the judgments cited by the applicant, we find that in none of them the ground taken by the respondents herein that the aforesaid directions as far as NHA was concerned were only directory and not mandatory, has been dealt with.

We find merit in the contention of the respondents that since consequence of non observance of these directions have not been prescribed in the O.M. dated 17.06.2010, as held in the judgment of Hon'ble Supreme Court in the case of **Modern School** (supra), these instructions have to be regarded as directory and not mandatory.

6.3 The next issue to be considered is whether issue of a show cause notice was necessary before repatriating the applicant.

We have gone through the judgments cited by both sides. In our opinion, from harmonious reading of all these judgments, it would follow that a deputationist has no vested right to continue on his deputation post. He can be pre-maturely repatriated at the instance of both the following organisation as well as lending organisation. He does hold office during the pleasure of the borrowing organisation and must go back to his parent cadre as soon as that pleasure is withdrawn. It is in his parent cadre that he

holds lien on his substantive post. There is, therefore, no mandatory requirement of issuing a show cause notice before pre-maturely repatriating a deputationist. However, a deputationist has an indefeasible right to be treated fairly and equitably. Thus, his premature repatriation must be based on justifiable reasons. If the repatriation is based on the ground of misconduct then issue of show cause notice is also necessary to give an opportunity to the deputationist to explain his position.

6.4 We also notice that in the judgments relied upon by the respondents, justifiable reasons were given by the respondents therein for pre-maturely repatriating the applicant. Thus, in the case of **Smt. Rashmi Jain** (supra) the reasons adduced were that she had displayed obstructive attitude while dealing with payment of legal remuneration to the advocates who had defended AIIMS in various litigations and that such payment was to be made not as an advance but after the advocates had appeared for the Institute. In the case of **L/NK V.H.K. Murthy** (supra) also Hon'ble High Court of Delhi had seen the original record of the respondents and satisfied itself that the order was not arbitrary or based on extraneous and mala fide reasons. In the case of **Manoranjan Kumar & Ors.** (supra) also several documents had been cited in para-11 of the judgment, a perusal of which had revealed that several complaints had been received regarding the work and conduct of the respondent therein.

The cases of **Kunal Nand and Ratilal B. Soni & Ors.** were of absorption and not of pre-mature repatriation and, therefore, are not directly relevant.

7. We notice that in the impugned order no reasons for repatriating the applicant have been given. Learned counsel for the respondents had argued that the respondents were in a catch 22 situation. Had they disclosed the reasons for repatriation of the applicant the repatriation order would have become stigmatic. On the other hand, when no reasons have been disclosed, the respondents are being accused of repatriating the applicant without reason. Since the impugned order does not disclose the circumstances under which the applicant was pre-maturely repatriated, we summoned the original file of the respondents to lift the veil and ascertain the reasons due to which the applicant was pre-maturely repatriated. The respondents placed before us File No. 11019/2210/2016-Admn Section: HR-I Division. Notes on page-6 of the aforesaid file are reproduced below:-

“Discussed with Chairman. In the overall interest of the functioning of NHAI, it is proposed to repatriate the following officers to their parent Cadres with immediate effect i.e. Friday 20.1.2017 (A.N.)

- (i) Shri Asim Chaudhary, CGM (Legal)
- (ii) Shri N K. Sharma, CGM (HR/Adm) I

Till suitable replacements are found, work of CGM (Legal) is proposed to be handled by Sh. K. Venkata Ramana & of CGM (HR/Admn) I by Sh. A.K. Sodhi, CGM (Coord).

For kind approval, pl."

8. A perusal of this record reveals that the aforesaid file was the personal file of one Sh. Asim Chaudhary as is evident from the above note. Both of them were ordered to be pre-maturely repatriated with immediate effect. A reading of this note makes it evident that no reasons leave aside cogent reasons have been given by the respondents. On our persistent query, it was clarified by the respondents that there was no other material concerning the applicant, which was relevant to the issue. Thus, the order of pre-mature repatriation of the applicant was passed because it was felt that his continuation in NHAI was not in the overall interest of the organisation. In our opinion, this order appears to be whimsical and smacks of arbitrariness. No justifiable reason has been adduced. The inevitable conclusion from the aforesaid is that the applicant has not been treated in a fair and equitable manner as has been laid down by Hon'ble Supreme Court in the case of **Ashok Kumar Ratilal Patel** (supra). It is ironic that an officer who had been selected by the respondents out of 33 applications received after following a rigorous selection process and on the basis of recommendation of a High Level Committee has been pre-maturely repatriated without there being anything adverse against him on record. For this reason,

in our opinion, the impugned order is unsustainable and deserved to be quashed.

9. We, therefore, allow this O.A. and set aside the impugned order dated 20.01.2017. The applicant shall be allowed to continue on his deputation post and if he is not repatriated for any other reason in accordance with law. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/