

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

OA-547/2015

Reserved on : 28.04.2016.

Pronounced on : 06.05.2016.

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

Dr. Manoj Srivastava, 58 years
S/o late Sh. Srivastava,
R/o B-52, Noida, UP
And working as Registrar,
Protection of Plant Varieties and Farmers'
Right Authority,
S-2, A-Block, NASC Complex, DPS Marg,
New Delhi-110 012.

.... Applicant

(Applicant in person)

Versus

1. Union of India through
Secretary,
Ministry of Agriculture,
Krishi Bhawan,
New Delhi.
2. Chairperson,
Protection of Plant Varieties and Farmers'
Rights Authority ,
S-2, A Block, NASC Complex,
DPS Marg, New Delhi-110 012.
3. Vice-Chancellor,
Punjab Agriculture University,
Ludhiana.

..... Respondents

(through Sh. Rajinder Nischal, Advocate)

O R D E R

The applicant joined service with respondent No. 3 on 03.12.1980. On being selected for the post of Registrar on deputation basis with respondent No.2, the applicant joined there on 24.04.2009. On 14.09.2013, he got proforma promotion in his parent department. When the respondent No.1 refused to extend the benefits of proforma promotion to the applicant on his deputation

post, he filed OA-4165/2013 before this Tribunal. In the said O.A. on 28.11.2013 an interim order was passed in his favour, the operative part of which reads as follows:-

"In view of the above position, issue notice to the respondents returnable on 12.12.2013. In the meanwhile, the respondents shall not pass any adverse orders against the applicant without the leave of this court with regard to his repatriation."

2. When the applicant was being repatriated to his parent cadre by the respondents without considering his case for absorption, he filed another OA-552/2014 before this Tribunal. In the aforesaid OA on 14.02.2014 following interim directions were given:-

"Heard.

Issue notice to the respondents, returnable on 28.2.2014.

In the interest of justice, till the next date of hearing, the respondents shall not repatriate the applicant to his parent cadre.

Issue DASTI."

3. In compliance of these directions, while the respondents No. 1 & 2 continued the applicant's deputation even beyond the 05 years period commencing from 24.04.2014, they stopped paying him deputation duty allowance after November, 2014. On 30.01.2015, they issued the impugned order by which they ordered recovery of an amount of Rs. 28933/- from him, which had been paid to him as deputation duty allowance from 24.04.2014 to 30.11.2014. The applicant submitted a representation against the same on 02.01.2015 but no action was taken by the respondents.

4. Separately, when this Tribunal dismissed the Contempt Petition-281/2015 filed by the applicant, he approached Hon'ble High Court of Delhi by filing Writ Petition (C) No. 4596/2015. This Petition was disposed of by the Hon'ble High

Court on 11.05.2015 in which it was held that the interim orders granted in favour of the applicant by the Tribunal shall continue to operate. Finally, OA-552/2014 of the applicant was decided by this Tribunal on 20.07.2015 by the following order:-

"6. Considering the facts and circumstances of the case, we are of the opinion that the applicant cannot be faulted for believing that he shall be considered for absorption after being initially appointed on deputation. If the respondents intended to invite applications only for selecting candidates on deputation basis, there was no need to mention absorption also for the same.

7. We, therefore, direct the respondents to consider the case of the applicant for absorption. The applicant has submitted that his parent cadre has already given no objection for the same. The respondents may do so within a period of eight weeks from the date of receipt of a certified copy of this order. In case, he is found fit, he shall be so absorbed. If he is not found fit for absorption, the respondents shall be at liberty to repatriate him forthwith. No costs."

5. The applicant has now approached this Tribunal against the impugned order dated 30.01.2015 by which deputation duty allowance paid to him from 24.04.2014 to 30.11.2014 was being recovered. He has sought the following relief:-

"(a) The applicant humbly prays that pending the disposal of this OA the Respondent No.1 shall not pass orders as to repatriation of the applicant to his parent department.

(b) The applicant humbly prays to stay the operation of the office order No. PPV&FRA/FADM'PB/2014 dated 30th January, 2015 issued by the Respondent No.2 till the disposal of this instant Original Application."

6. In their reply, the respondents have submitted that the applicant had joined them as a deputationist on 24.04.2009. He completed 05 years of deputation on 23.04.2014. DoP&T O.M. dated 17.06.2010 (Annexure-R-3) lays down that deputation allowance cannot be paid beyond a period of 05 years. Hence, in accordance with these guidelines of DoP&T, the respondents propose to recover from the applicant the deputation duty allowance paid to him from

24.04.2014 to 30.11.2014. According to them, there is no merit in this O.A. and it deserves to be dismissed.

7. I have heard both sides and have perused the material on record. There is no dispute that under normal circumstances deputation duty allowance is paid for a maximum period of 05 years only. However, in this case, it is clear that the applicant continued on deputation beyond 05 years on the strength of interim orders of this Tribunal. In OA-552/2014 the applicant's plea was that although the respondents had promised in the advertisement, in response to which, he was selected for deputation that he shall be considered for absorption as well, the respondents were proposing to repatriate him to his parent cadre without considering him for absorption. Under these circumstances, first interim order dated 14.02.2014 was given in his favour in which respondents were directed not to repatriate him to his parent cadre pending decision in his OA. Subsequently, in the judgment delivered on 20.07.2015, the applicant's claim was found to be justified and directions were given to the respondents to first consider him for absorption and then repatriate him only if he was found unfit for absorption. Thus, it is clear that even his continuation of deputation beyond 05 years by interim order was found to be justified in the final decision in his case.

8. The question before me is to decide whether the deputation duty allowance is payable to a government servant, who continues on deputation even beyond a period of 05 years on the strength of Court orders. None of the parties could either cite any instructions or judgment in support of their case. However, in my opinion, since this Tribunal had ordered continuation of the applicant on the deputation post, it is implied that such continuation must be on the same terms and conditions on which the applicant was working on the said

post. In view of the aforesaid, the deputation duty allowance will be payable to the applicant even beyond 05 years and the DoP&T O.M. dated 17.06.2010 cited by the respondents shall not apply in this case.

9. I, therefore, allow this O.A. and set aside the order dated 30.01.2015 of the respondents. I further direct that any recovery made pursuant to the aforesaid order shall be refunded to the applicant within a period of six weeks from the date of receipt of a certified copy of this order. Considering the facts and circumstances of this case, I am not inclined to allow any interest on the amount to be refunded. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/