

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.834/2015

Order Reserved on: 18.04.2016

Pronounced on:02.05.2016

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Nidhi Chhibber, IAS,
Chief Electoral Officer,
Chattisgarh, aged 45 years,
W/o Shri Vikas Sheel,
D-1/7, Officers Colony,
Devendra Nagar,
Raipur-492001.

-Applicant

(By Advocate Shri Mahesh B. Chhibber)

-Versus-

1. Union of India through the Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
Department of Personnel & Training,
North Block,
New Delhi.

(By Advocate Shri D.S. Mahendru)

2. State of Chhattisgarh,
Through the Chief Secretary,
Mantralaya,
Mahanandi Bhawan,
Naya Raipur,
Chhattisgarh-492001.

-Respondents

(By Advocate Shri Shailender Tiwary with Mr. A.P.
Mayee)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for in the OA read as under:

- “i) Quash and set aside Notice/Letter No.12/1/2014-EO(SM-1) dated 05.06.2014 (Annexure A-1) and Order/letter No.12/1/2014-EO (SM-1) dated 24.06.2014 (Annexure A-2) issued by the Respondent No.1 (DOPT); and
- ii) Call/Summon the complete record of the case for kind perusal of this Hon’ble Tribunal; and
- (iii) Pass such other and further orders as deemed fit and proper in the circumstances of the case to meet the ends of justice.”

2. The brief facts of this case are as under.

2.1 The applicant belongs to 1994 batch of IAS borne on the Chattisgarh cadre. Pursuant to respondent No.1 DO letter dated 03.12.2013, she applied for Government of India deputation online for the year 2014 and also informed about it to respondent no.2 who too formally forwarded her name to respondent no.1 for the central deputation on 07.02.2014. At that time applicant was working as Additional Chief Electoral Officer (ACEO).

2.2 Vide Annexure A-6 communication dated 01.03.2014, the Respondent no.1(R-1) informed

Respondent no.2 (R-2) that the Appointments Committee of Cabinet (ACC) has approved the proposal to appoint the applicant to the post of Joint Secretary in the Department of Defence for a period of five years from the date of assumption of the charge of the post or until further orders. R-2 vide Annexure A-8 communication to R-1 informed that the State Government of Chattisgarh is not in a position to depute the applicant for taking up the Central Govt. assignment due to acute shortage of IAS officers. In the meanwhile, the applicant was appointed as Chief Electoral Officer (CEO) on 24.05.2014. R-1 vide Annexure A-13 letter dated 01.04.2014 requested R-2 again that the applicant may be relieved to take up the Central Government assignment forthwith and if no reply is received within 15 days of the receipt of the letter, it would be presumed that the officer concerned and the Government of Chattisgarh have nothing to say in the matter and the Department of Personnel and Training (DOPT) shall accordingly go ahead with cancellation of her appointment and notify the debarment with its attendant consequences. R-2 again vide Annexure A-14 letter dated 09.04.2014 wrote to R-1 that the State Govt. is not in a position to relieve the applicant to take up the Central Government assignment due to extreme shortage of

officers and also requested not to start debarment proceedings against her. Finally R-1 wrote Annexure A-1 order dated 05.06.2014 to R-2, whose contents are reproduced below:

“Subject: relieving Ms.Nidhi Chhibber, IAS (CG:94) to enable her join new assignment at the Centre.

Sir,

I am directed to refer to the Government of Chhattisgarh letter No.E-1-24/2013/1-2 dated 23.04.2014 on the above mentioned subject, and to say that the election process for General Elections 2014 has been over, but Ms.Chhiber has not yet been relieved from the State Government to join her assignment at the Centre.

2. In view of the above, it is again brought to notice that refusal to join the assignment at the Centre attracts the liability of debarment from future central deputation for a period of five years as per 19.3(a) and (b) of the Central Staffing Scheme. Further, in terms of this Department's OM No.14/1/98-FA (UN), dated 26.02.1998 the officer shall also stand debarred from being given cadre clearance for being deputed on foreign assignment/consultancies abroad, during the period of debarment. The implications of not joining the assignment may again be brought to the notice of Ms. Nidhi Chhiber, IAS (CG:94), so that on a later date, she may not represent that the adverse consequences of not joining the assignment at the Centre under the Central Staffing Scheme were not in her notice.

3. In case no reply is received within 7 days of receipt of this letter it would be presumed that the officer concerned and the Government of Chhattisgarh have nothing to say in this matter and this Department shall accordingly go ahead with cancellation of her appointment and notify the debarment with its attendant consequences as stated in para 2 above.”

2.3 Finally R-1 vide Annexure A-2 letter dated 24.06.2014 debarred the applicant from Central

Deputation for a period of five years. The operative part of the said letter reads as under:

“9. Since Ms. Nidhi Chhiber, IAS (CG:94) has failed to join the post, the approval conveyed to the aforesaid appointment is hereby cancelled and she is debarred from deputation for a posting under the Central Staffing Scheme for a period of five years with immediate effect. In addition to the debarment of Ms. Chhiber from Central deputation, she is also debarred from taking up any foreign assignment/consultancies abroad during the period of debarment as per the extant policy. Ms. Nidhi Chhiber may kindly be informed accordingly.”

2.4 Aggrieved by the impugned Annexure A-1 and Annexure A-2 letters from R-1, the applicant has filed the instant OA.

3. Pursuant to the notices the respondents entered appearance and filed their reply. The case was taken up for hearing the arguments of the parties on 18.04.2016.

Shri Mahesh B. Chhibber, learned counsel for the applicant and Shri D.S. Mahendru, learned counsel for R-1 and Shri Shailender Tiwary with Mr. A.P. Mayee, learned counsel for R-2 argued the case.

4. The main contention of the learned counsel of the applicant was that although the applicant wanted to take up her Central Government assignment of Joint Secretary in the Department of Defence but the State Government of Chattisgarh was not ready to relieve her due to their

internal reason of shortage of officers and consequently she could not take up the Central Government assignment. The learned counsel specifically drew our attention to Annexure A-10 letter dated 11.03.2014 of the applicant addressed to R-2 in which she has stated as under:

“I wish to submit that I have been posted as Joint Secretary, Department of Defence, by the Government of India vide the wireless message No.12/1/2014-EO (SM-1), dated 3.03.2014, in pursuance of my application under central staffing scheme 2014, duly recommended by the Government of Chhattisgarh, vide letter no. 526/3057/2013/1-2, dated 7.02.2014. By the afore referenced letter, I have been informed, that the State government has communicated to the Government of India, not to consider my nomination sent earlier, for posting in the GOI, as my deputation cannot be permitted on account of administrative reasons.

Since my nomination had already been considered by the competent authority and posting order issued on 3.03.2014, prior to the State Governments above referenced letter, you are requested to relieve me forthwith, so as to enable me take up my new posting in New Delhi, as per the posting orders issued by Government of India.”

5. The learned counsel submitted that from the Annexure A-10 letter of the applicant, it would be crystal clear that the applicant was quite keen to join as Joint Secretary, Department of Defence in the Central Government on deputation basis, but she could not do so as the State Government did not relieve her. It was also submitted that vide Annexure A-1 and Annexure A-2

letters of R-1, it is the applicant who has been punished for no fault of her.

6. Concluding his arguments, the learned counsel submitted that the punishment of debarment from the Central Deputation for a period of five years imposed on her by R-1 vide Annexure A-2 is absolutely unfair and against the principles of natural justice in view of the fact that this punishment has been imposed on the applicant for no fault of her and hence the prayers made in the OA may be allowed and the impugned Annexure A-1 and Annexure A-2 notice/letter may be quashed and set aside.

7. Per contra, the learned counsel for R-1 submitted that the applicant was appointed as Joint Secretary, Department of Defence in Govt. of India with the approval of the ACC after following a lengthy process. He said that the R-1 had been warning R-2 that if the applicant is not relieved forthwith to take up her Central Government assignment, the danger of debarment would be looming large on her. Despite repeated reminders from R-1, R-2 did not relieve the applicant to take up the Central assignment. It was also submitted that vide Annexure R-1 letter dated 19.08.2015, even after the debarment of the applicant vide Annexure A-2 letter dated 24.06.2014, R-1

wrote to R-2 on 19.08.2015 that the Central Government would still be willing to lift the debarment and take the applicant on deputation to Central Government provided the State Government decides to relieve her immediately.

The learned counsel drew our attention to the contents of the said letter and the same is reproduced below:

“To

Shri Vivek Kumar Dhand

Chief Secretary

Government of Chhattisgarh

Raipur.

Subject :Central Deputation of Ms. Nidhi Chhiber, IAS (CG:94) under the Central Staffing Scheme-reg.

Sir,

I am directed to refer to the Government of Chhattisgarh letter No.E-17/2004/1-2 dated 22.07.2014 on the above mentioned subject and to say that the proposal of revocation of debarment in respect of Ms.Nidhi Chhiber, IAS (CG:94) has been examined and it has been decided that thought the proposal for revocation of debarment in the instant case is not covered under the extant guidelines, however in view of the representation of the officer and the request of the State Government, the State Government may be given one more opportunity to relieve the officer from the State so as to enable her to join as Joint Secretary in the Government of India, subject to the condition that the debarment order in respect of Ms. Nidhi Chhiber would be revoked only after she joins the post in Government of India. Since, the vacancy against which Ms.Chhiber was originally appointed has since been filled, if the ACC approved the above recommendation, then Ms. Nidhi Chhiber would be considered for posting against an existing JS level vacancy in Government of India.

2. In view of the above, State Government of Chhattisgarh may convey its concurrence to the above decision at the

earliest. In case no reply is received within 30 days of dispatch of this letter it would be presumed that the officer concerned and the Government of Chhattisgarh have nothing to say in this matter and debarment of the officer shall continue.”

8. The learned counsel however, acknowledged that the applicant vide Annexure R-2 letter dated 10.09.2015 had put-forth before R-1 her side of the story and had requested for revocation of the debarment. The learned counsel further stated that it is indeed surprising that the State Government of Chhattisgarh on the one hand on 07.02.2014 had forwarded the application of the applicant to R-1 for the Central Government deputation but on the other hand chose to post her as CEO under the Election Commission of India after that date on 24.05.2015 and then have taken an additional plea that for relieving her the consent of the Election Commission of India would be required.

9. Concluding her arguments, the learned counsel for R-1 stated that in the matter of debarring the applicant from Central Government deputation consequent to her not joining as Joint Secretary, Department of Defence despite ACC's approval has been done as per the extant Rules and as such, no fault can be found in the impugned Annexure A-1 notice and impugned Annexure A-2letter of

debarment and hence the OA may be dismissed being devoid of merit.

10. The learned counsel for R-2 stated that the State Government of Chattisgarh could not relieve the applicant for taking up her new assignment in the Central Government on deputation basis entirely due to the reason that the State was having severe shortage of officers. It was also submitted that the reasons for not relieving the officer have been adequately explained by the State Government to the Central Government in their various communications. Hence the debarment imposed on the applicant by R-1 is not proper and the same may be lifted.

11. We have gone through the arguments put-forth by the learned counsel for the parties and perused the pleadings and the documents annexed thereto. The factual matrix of the case would indicate that the applicant was selected to the post of Joint Secretary, Department of Defence in Government of India on deputation basis under the Central Staff Scheme and accordingly a formal order was communicated to the State Government by the Central Government vide Annexure A-6. As the applicant was not being relieved by the State

Government to take up her Central Government assignment, R-1 has been sending repeated warnings to the State Government through R-2 of the consequences to follow if the applicant is not relieved and she fails to take up her Central Government assignment. Ultimately, vide impugned Annexure A-2 letter the applicant has been debarred from Central Government deputation for a period of five years as she was not relieved by the State Government and consequently she could not take up her Central Government assignment. What is most important for us to note here is that the applicant vide her Annexure A-10 letter dated 11.03.2014, addressed to R-2 had fervently requested that she may be relieved by the State Government so that she could take up her Central Government assignment. She had also written to R-1 vide her letter dated 10.09.2015 (Annexure R-2) explaining her position and predicament as to why she could not take up her Central Government assignment for no fault of her. In view of it, we are absolutely convinced that the applicant was not at all at fault in not taking up the Central Government assignment. It is the State Government who has refused to relieve her and consequently she could not take up the Central Government assignment. As a consequence of Annexure A-2 letter of debarment, it is the

applicant who has to suffer and not the State Government; which we feel would be unfair. Under these circumstances, we feel that Annexure A-1 and Annexure A-2 notice/letter are not in order and deserve to be quashed and set aside.

12. In the conspectus, we quash and set aside the impugned Annexure A-1 and Annexure A-2 notice/letter issued by R-1. The OA is allowed.

13. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice M.S. Sullar)
Member (J)

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