

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

OA-1746/2016

MA-264/2017

Reserved on : 21.02.2017.

Pronounced on : 06.03.2017.

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

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

Sh. Jitender Singh,

44 years

S/o Sh. Tekchand Dahiya,
R/o 566, Village and PO Pooth
Kalan, Sec-24, Rohini-110043.

..... Applicant

(through Sh. Avneesh Garg, Advocate)

Versus

1. Union of India through
Its Secretary,
Union Ministry of Corporate Affairs,
Government of India,
New Delhi-110011.
2. Serious Fraud Investigation Office,
Second Floor, Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi-110003. Respondents

(through Sh. Ashok Kumar, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was originally employed with the Cabinet Secretariat as Field Officer. He was selected as Senior Asstt. Director (Investigation) on deputation basis in the office of respondent No.2.

He joined the aforesaid post on 01.04.2014. He was initially given tenure of five years extendable for a further period of two years. According to the applicant his performance on his deputation post was outstanding. However, he received an order on 12.05.2016 by which he was pre-maturely reverted to his parent cadre and was also directed to be relieved of his duties w.e.f. 16.05.2016. When he enquired from the respondents regarding reasons of his pre-mature repatriation, he was informed by a communication dated 17.05.2016 that this decision was taken by competent authority on administrative grounds. He filed this O.A. before this Tribunal and on 16.05.2016. While issuing notice to the respondents in the OA, we directed that in the meanwhile applicant shall not be relieved.

2. MA-264/2017 has been filed by the respondents for vacation of the aforesaid interim order. However, since this O.A. has been heard finally, this M.A. has become infructuous and is disposed of as such.

3. The applicant has submitted that the impugned order is completely silent about the reasons for his pre-mature repatriation. It has been issued without compliance of principles of natural justice as no notice whatsoever has been served upon the applicant before issue of this order. The impugned order was bad on facts as well as on law as the performance of the applicant on his deputation post had been outstanding. This order is a result of

colourable exercise of power by the respondents. This is also evident from the fact that the applicant has been given only three days to get relieved.

4. In their reply the respondents have submitted that the nature of work being carried out by respondent No.2 is of very sensitive nature and requires highest level of integrity on the part of its officers. The cases dealt with involve huge financial frauds by high profile individuals, which affect the interests of public at large.

4.1 The respondents have further submitted that the applicant applied for deputation as Senior Asstt. Director (Investigation) in response to an advertisement issued on 10.02.2013. He was selected by the competent authority and joined respondent No.2 w.e.f. 01.01.2014. While it is true that he was given a term of five years, the decision to pre-maturely repatriate him has been taken by the competent authority i.e. Ministry of Corporate Affairs, Government of India on administrative grounds.

4.2 Elaborating further on the reasons for repatriation of the applicant, the respondents have submitted that his conduct in dealing with the matter of M/s Satyam Computer Services Ltd. was suspicious. He was counselled and given a chance to improve his conduct but no improvement was noticed. He did not even comply with several administrative instructions. Consequently, various

assignments given to him were withdrawn over a period of time. In this regard, the respondents have drawn our attention to para-4.2 of their affidavit under the caption para-wise reply. The relevant portion is extracted below as hereunder:-

"It is worth mentioning that it came to the notice of respondent No.2 that Sh. T. Srinivasa Murthy, advocate for the respondents in Company Petition No. 01/2009 filed in the matter of M/s Satyam Computer Services Ltd before Hon'ble Company Law Board, New Delhi, had written a letter No. TSM/20/2015-16 dated 20.07.2015 addressed to the applicant. The relevant part of the letter is extracted below:-

"As discussed with you, I am sending herewith a USB flash drive in which you are requested to kindly store the files relating to various investigation report. I am authorizing my clerk Mr. Niranjan Dey, the bearer of this letter to collect the USB flash Drive containing the SFIO investigation report."

It is worth mention that this action was without any court direction or direction of the superior officers, which gave rise to suspicion. A copy of letter No. TSM/20/2015-16 dated 20.07.2015 is annexed as **Annexure-R2**.

After considerable though, Personal counsellings was also done for giving a chance to improve him his conduct but not improvement was noticed in his conduct. Thereafter, administrative instructions were issued but he did not comply with the order issued completely. Hence, the various assignments given to the applicant were withdrawn over a period of time and the copies of office orders for withdrawal of assignments and other instructions issued are annexed as **Annexure-R3 (colly)**. Therefore the conduct of the applicant over a period of time warranted his premature repatriation."

5. We have heard both sides and have perused the material placed on record. Arguing for the applicant learned counsel Sh. Avneesh Garg stated that a mere perusal of the impugned order

would reveal that no reason has been given for pre-mature repatriation of the applicant. In absence of any reason such an order is not sustainable and will be deemed to have been passed in an arbitrary and capricious manner. In this regard he has relied on the judgment of Hon'ble Supreme Court in the case of **UOI & Anr.** Vs. **S.N. Mailly & Anr.**, AIR 2015 SC 1008, in para-8 of which the following has been observed:-

“8. From the aforesaid order, it is luculent that the 1st respondent was appointed on deputation basis for a period of five years or until further orders, whichever was earlier. 6 Page 7 Submission of Mr. Tushar Mehta, learned ASG is that the order, as is demonstrable, being an order of deputation, it is the prerogative of the employer to recall him to the parent department without assigning any reason before the term of five years was over as such a rider was postulated in the order of appointment. Per contra, Mr. Gonsalves, learned senior counsel appearing for 1st respondent would contend that in the absence of any reason, such an order could not have been passed as that smacks of absolute arbitrariness which the law does not countenance. It is the stand of respondent no.2, Council for Scientific and Industrial Research (CSIR), that the 1st respondent had only gone on deputation and on being released, he was bound to come back to the parent department.”

5.1 He has also relied on a judgment of Co-ordinate Bench of this Tribunal in the case of **Rajeev Ranjan Vs. UOI & Ors.** dated 29.01.2015 to say that three months notice before pre-mature repatriation as prescribed in DoP&T O.M.No. 6/8/2009-Est (Pay II) dated 17.06.2010 has not been given. Thus, the order of pre-mature repatriation deserves to be quashed as it is violative of the instructions issued by DoP&T.

5.2 Other then these two judgments cited by the applicant, we have also seen the pronouncements of Apex Court in the case of **Ashok Kumar Ratilal Patel Vs. UOI**, (2012) 7 SCC 757 and **Union of India through Government of Pondicherry and Ors. Vs. V. Ramakrishnan and Others**, (2005) 8 SCC 394. Herein it has been held that a deputationist has no indefeasible right to continue on his deputation post. He can be recalled at the instance of either borrowing or lending organization at any time. However, such recall or repatriation should be based on justifiable reasons, such as, unsuitability to hold the post or unsatisfactory performance. Even though a deputationist does not have a right to continue on the post, he has right to be treated fairly and equally and if pre-mature repatriation is resorted to in an arbitrary and capricious manner without valid reasons, the same can be questioned.

5.3 In support of their contention, the respondents have also cited several judgments. They have relied on the judgment of a Co-ordinate Bench of this Tribunal in OA-3220/2015 along with OA-3218/2015 dated 29.09.2015 in which pre-mature repatriation of the applicants was upheld. The aforesaid order of the Tribunal was upheld by Hon'ble High Court of Delhi in WP(C) Nos. 9757-9759/2015 on 20.10.2015. Further, the respondents have relied on judgment of Hon'ble High Court of Delhi in WP(C) No. 12773/2009 (**Sh. Sitamber**

Singh Vs. UOI & Anr.) dated 15.07.2010 wherein it has been held that if the repatriation order is non-stigmatic then there is no requirement of issuing a show cause notice or holding an enquiry before repatriating the petitioners. Since the petitioner has no right to hold the post, there is no requirement of observance of principles of natural justice. The same view has been reiterated by Hon'ble High Court of Delhi in the case of **L/NK V.H.K. Murthy Vs. Special Protection Group**, 2000 IV AD (Delhi) 624. On the same issue respondents have relied on the judgment of Hon'ble High Court of Delhi in WP(C) No. 7415/2009 (**UOI Vs. BManoranjan Kumar & Ors.**) dated 06.09.2010 wherein it has been held that if the repatriation order is not stigmatic or mala fide, it cannot be said that the action to repatriate an employee to his parent cadre was unjustified. The respondents also cited para-15 of the judgment of Hon'ble High Court of Andhra Pradesh at Hyderabad in the case of **D.K. Rao Vs. GOI, rep. By its Secretary, Ministry of Surface Transport & Ors.** [WP(C) No. 913/1993] dated 07.09.2010, which reads as follows:-

“Apart from there being no allegation of mala fides on the part of any officer, the repatriation order on the face of it does not show that there is any stigma attached to the appellant. Thus, the case cited instead of helping the appellant supports the case of the respondents though it is based on certain complaints received.”

6. We have considered the rival submissions of the parties. Learned counsel for the applicant had submitted that since three

months notice before pre-mature repatriation was not given to the applicant, the order of pre-mature repatriation was violative of Instructions issued vide DoP&T O.M. dated 17.06.2010 and, therefore, unsustainable on this ground. We have, however, considered this issue in a judgment of this very Bench in OA-278/2017 (**Nawal Kishore Sharma Vs. NHAI & Ors.**) dated 28.02.2017 where we have come to the conclusion that direction regarding giving three months notice before pre-mature repatriation has to be treated as directory and not mandatory since consequence of non-observance of the same have not been provided for in this O.M. In this regard, we have placed reliance on the judgment of Apex Court in the case of **Modern School Vs. Shashi Pal Sharma & Ors.**, (2007) 8 SCC 540. Paras-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."

6.1 The next argument taken by the applicant was that the impugned order does not disclose any reasons and in absence of reasons such an order is not sustainable. The respondents, however, submitted that if reasons were enumerated in the impugned order,

the same would become stigmatic. The reasons, however, have been given in the counter affidavit.

6.2 We have considered the submissions of both sides and have also seen the various judgments relied upon by them. In our opinion, the position that emerges from a reading of these judgments is that a deputationist does not have indefeasible right to continue on his deputation post. However, he has a right to be treated fairly and equally. He can be pre-maturely repatriated for justifiable reasons, such as, unsatisfactory performance and unsuitability to hold the post. Moreover, when the order of repatriation is non-stigmatic, there is no requirement to issue a show cause notice or hold an enquiry before pre-maturely repatriating the officer. The Courts must, however, lift the veil and see whether repatriation is based on justifiable reasons and has not been resorted to in an arbitrary and capricious manner.

6.3 Applying the aforesaid principles to the instant case, we find that the reasons adduced by the respondents for repatriating the applicant pre-maturely as extracted in earlier part of the judgment are justified since the conduct of the applicant in dealing with such matters was found to be suspicious. We also find that the applicant was counselled to improve his conduct but no visible improvement was noticed in his conduct. Thereupon, the respondents slowly

withdrew the assigned work from him. Thus, in the instant case, it cannot be said that the applicant has been repatriated in an arbitrary or capricious manner. Valid reasons prompted the respondents to take this action.

6.4 As far as requirement of issuing a show cause notice and following principles of natural justice is concerned, it has been clearly laid down in the case of **Sitamber Singh** (supra) and **L/NK V.H.K. Murthy** (supra) that since a deputationist has no right to hold the post, if the order of repatriation is non-stigmatic then there is no requirement of issuing a show cause notice or holding an enquiry. In the instant case also, we find that the impugned order does not cast any stigma on the applicant and, therefore, no notice was required to be issued.

7. We, therefore, do not find any infirmity in the action of the respondents. There is no merit in this O.A. and the same is dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

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