

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.1755/2011
M.A.No.1208/2016

Order reserved on 24th October 2016

Order pronounced on 20th December 2016

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Mr. M Sethu Ramalingam
Son of (late) Mr. S Manicka Vasagam
Age 60 years and resident of
MS-8 No.105, Kendriya Vihar, Sector 56
Gurgaon

..Applicant

(Mr. Padma Kumar S, Advocate)

Versus

1. Union of India through Secretary
Ministry of External Affairs
South Block, DHQ PO
New Delhi-11
2. Secretary
DOP&T, North Block
New Delhi – 1
3. Joint Secretary (TC)
Ministry of External Affairs
South Block, DHQ PO
New Delhi -11
4. Joint Secretary (Trg) & CAO
Ministry of Defence
E Block, DHQ PO
New Delhi -11

..Respondents

(Mr. M K Bhardwaj, Advocate for respondent Nos. 1 & 3 -
Mr. H K Gangwani, Advocate for respondent Nos. 2 & 4)

O R D E R

Mr. K.N. Shrivastava:

The applicant, through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, has prayed for the following main reliefs:-

“(i) A direction quashing the impugned orders.

(ii) A direction to Respondent No. and 3 to grant the deputation benefits as per the pay fixed vide Office Order dated 09.02.2007 on the basic pay of Rs.14625 on 28.8.2004 in the scale of Rs.12,000-16500/- rather than on the basic pay of Rs.13575/- on 28.8.2004 in the scale of Rs.10000-15200/-.

(iii) In the alternative, direct the Respondent No.4 to grant the benefit equivalent to (ii) from the parent department as the parent department is also bound under the rule, if the said rule prevents the Respondent No.1 and 3 to grant the benefits from External Affairs Ministry.

(iv) In the alternative, but on exhaustion of the remedies at sub para (ii) or (iii) above, a direction to the Respondent No.4 to grant arrears in the scale of Joint Director for the period from 28.8.2004 to 20.10.2005 as well.

(v) A direction to the respondents to grant the Applicant interest of the above amounts arrived at as above, as per the rate of bank interest prevalent at the relevant time.”

2. The brief facts of the case are as under:-

2.1 The applicant joined the Armed Forces Headquarters Service (AHFS) on 02.02.1997 as an Assistant. He had been getting his regular promotions. When he was holding the post of Deputy Director, he was deputed to Mauritius under the Indian Technical & Economic Cooperation (ITEC) Programme of Ministry of External Affairs (MEA) from 28.08.2004 to 20.10.2005.

2.2 The terms and conditions of the deputation had been spelt out by the MEA in their letter dated 02.02.1987 (Annexure A-3 (colly.)), which *inter alia*, stated as under:-

“(iii) In case the expert becomes due for promotion in his regular line in his parent department/State Government, he will not be entitled to proforma promotion and/or financial benefits accruing therefrom during the period of his deputation. It will, however, be for the parent department/State Government to safeguard the interests of the expert.”

2.3 During the course of his deputation to Mauritius, the applicant along with 45 others was granted *in situ* promotion to the grade of Joint Director vide Annexure A-8 O.M. dated 30.10.2006 issued by the Ministry of Defence (MoD). For the purpose of this case, the relevant paragraph 4 of the said O.M. is extracted below:-

“The in-situ appointment per se does not involve any change in the existing Command and Control and level/ channel of reporting. However, the concerned establishment may consider making some internal adjustments regarding the level/ channel of submission by the incumbent of the upgraded post as warranted based on functional requirements. Under no circumstances will the officer appointed on in-situ basis be posted against the regular duty post of Jt. Director by concerned establishment on its own. Posting against the regular duty post of Jt. Director, if need be, will be ordered by this office.”

2.4 The applicant has been claiming the benefit of his *in situ* promotion to the post of Joint Director for the deputation period. The MoD had taken a stand that during the said period he was on deputation with the MEA and as such MEA should pay the said benefits to the applicant. On the contrary, MEA says that the terms and conditions of the deputation, as spelt out in paragraph 2.2 above, make it clear that any consequential benefits relating to promotion during the deputation period is to be borne by parent department.

2.5 In view of the varying stands of the two Ministries, i.e., (MEA & MoD), the applicant approached this Tribunal in O.A. No.216/2008, which was disposed of by the Tribunal vide order dated 18.08.2008 directing the

MoD to consider the prayer of the applicant with regard to the claim of payment of difference in the allowances for the period of deputation in Mauritius based on the higher pay scale given to him on promotion as Joint Director by passing a reasoned and speaking order in accordance with law.

2.6 In obedience of the *ibid* order of the Tribunal, MoD has passed a speaking order vide impugned O.M. dated 19.08.2009 (Annexure A-1 (colly.)) rejecting the prayer of the applicant.

2.7 The applicant also represented to the respondent No.1 (MEA) vide his representation dated 19.03.2010. The said representation was, however, rejected by the said respondent vide the Annexure A-1 (colly.) order dated 16.04.2010.

Aggrieved by the impugned Annexure A-1 (colly.) orders dated 19.08.2009 and 16.04.2010, the applicant has filed the present O.A. praying for the reliefs as indicated in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their respective replies. The applicant thereafter filed his rejoinder. Respondent Nos. 1 & 3 also filed an additional affidavit, to which a response was filed by the applicant. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 24.10.2016. Mr. Padma Kumar S, learned counsel for applicant, Mr. M.K. Bhardwaj, learned counsel for respondent Nos. 1 & 3 and Mr. H.K. Gangwani, learned counsel for respondent Nos. 2 & 4 were heard.

4. The main argument put forth on behalf of the respondent No.1 & 3 is that it was made very clear to the applicant that he would not be entitled for

the higher grade on account of any promotion or otherwise during the deputation, and that the applicant had given an undertaking to this effect on 15.12.2003. The said undertaking was in accordance with the terms and conditions, which governed the appointment under ITEC Programme of MEA, which is reproduced in paragraph 2.2 above. As such, the respondent No.1 & 3 did not owe any responsibility towards the *in situ* financial upgradation of the applicant to the grade of Joint Director vide Annexure A-8 O.M. dated 30.10.2006.

5. The pleading of respondent Nos. 2 & 4 is that during the relevant period, i.e., 28.08.2004 to 20.10.2005, the applicant was on deputation with MEA and was sent to Mauritius on a project, and as such the financial benefits to the applicant in terms of his *in situ* upgradation to the grade of Joint Director are to be borne by respondent No.1.

6. Arguments of the parties were heard on 24.10.2016. We have considered the arguments of the learned counsel for the parties and have perused the materials placed on record.

7. It is seen that the applicant has also filed M.A. No.1208/2016 seeking condonation of delay in filing the present O.A. We also perused the contents of this M.A. For the reasons stated therein, this M.A. is allowed and delay of 9 months in filing the O.A. is condoned.

8. Admittedly, the applicant was on deputation to Mauritius under the ITEC Programme of MEA. The terms and conditions of the said deputation were clearly spelt out by respondent No.1 vide Annexure A-3 (colly.), relevant extract of which is reproduced in paragraph 2.2 above. It is

abundantly clear that respondent No.1 had made its position crystal clear that during the period of deputation, no additional financial burden arising out of promotion of the applicant is going to be borne by it. This position is also understandable in view of the fact that under the ITEC Programme, all the terms and conditions as also the expenditure involved are properly assessed and budget is accordingly provided for. Additional funds, under ITEC Programme for meeting any such unforeseen financial liability, are not available.

9. Looking the entire matter from the perspective of the applicant, it can be said that the applicant is legitimately entitled for consequential benefits pursuant to the *in situ* financial upgradation given to him vide Annexure A-8 O.M. dated 30.10.2006. It is to be noted that this promotion is granted *in situ*; meaning thereby that an officer would be continued in his existing position, *albeit* he would only be placed in higher pay scale. Since the applicant was on deputation to Mauritius under ITEC Programme of MEA, in terms of this order, he was entitled to avail promotion at his existing place itself. Since the terms and conditions of deputation, as spelt out by respondent No.1, do not entitle the applicant to draw the additional financial benefits accruing to him by virtue of Annexure A-1 order, it is only logical that his parent organization should grant him this additional financial benefit.

Therefore, we are of the view that the impugned Annexure A-1 (colly.) O.M. dated 19.08.2009 passed by respondent No.4 as also the order dated 16.04.2010 issued by respondent No.1, denying the financial benefits for the period of deputation to the applicant, are not in order.

10. In the conspectus of the discussions in the foregoing paragraphs, we dispose of the O.A. in the following terms:

- (i) The O.M. dated 19.08.2009 (Annexure A-1 (colly.)) issued by the respondent No.4 is quashed and set aside.
- (ii) Respondent No.4 shall grant the arrears in the scale of Joint Director for the period from 28.08.2004 to 20.10.2005 to the applicant within a period of three months from the date of receipt of a copy of this order.
- (iii) The applicant shall also be entitled for in the interest on the arrears @ 9% p.a.

11. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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