

**Central Administrative Tribunal
Principal Bench**

OA No.3412/2016

New Delhi, this the 6th day of October, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. V.N. Gaur, Member (A)**

Harish Sharma (AIAFA, CBSE on absorption basis),
Aged 46 years,
S/o Late Shri P.L. Sharma,
R/o D-4, Main Market,
Shakar Pur,
Delh-92.

...applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

1. Union of India,
Through its Secretary,
Ministry of Finance,
Department of Expenditure,
North Block,
New Delhi.
2. The Controller General of Accounts,
Ministry of Finance,
Department of Expenditure,
Lok Nayak Bhawan,
New Delhi.
3. The Controller of Accounts,
Department of Science & Technology,
Technology Bhawan,
New Mehrauli Road,
New Delhi.
4. Central Board of Secondary Education,
Through its Secretary,
Shiksha Kendra, 2 Community Centre,
Preet Vihar,
Delhi-92.

...respondents

ORDER (ORAL)**Mr. Justice Permod Kohli, Chairman:**

The applicant belongs to Civil Accounts Department. The applicant was serving as Sr. Accounts Officer, in Pay Band-3 with Grade Pay of Rs.6600. The respondent No.4 issued an advertisement dated 09-15.03.2013 inviting applications for deputation/absorption. The applicant applied in response to the said advertisement and he was appointed vide order dated 08.08.2013 to the post of Additional I.A.F.A. in the Pay Band-3 with Grade Pay of Rs.7600/- with the Central Board of Secondary Education (CBSE). The term of deputation was initially for a period of one year. One of the conditions was that during the period of deputation the Board reserves the right to repatriate a person to the parent department. The deputation was on the standard terms. The CBSE vide its order dated 18.09.2014, requested the Cadre Controlling Authority i.e. CGA for its 'No Objection' for the proposed absorption of the applicant. The Cadre Controlling Authority issued 'No Objection Certificate' vide order dated 21.10.2014.

2. In the meantime, the parent department of the applicant i.e. Department of Science & Technology started disciplinary proceedings against him by issuing Memorandum of Charges dated 11-12.06.2015. On Charge Memorandum being issued, the Cadre Controlling Authority withdrew 'No Objection Certificate'. The

applicant filed OA No.3194/2015 before this Tribunal. The said OA was dismissed vide judgment dated 15.03.2016. From the perusal of the judgment, it appears that the respondent No.4 i.e. the borrowing department projected before this Tribunal that the said department has created its own cadre and as such it does not require the services of the applicant on deputation/absorption any more. It appears that during pendency of this OA, the respondent No.4 also issued the repatriation order dated 28.08.2015. Taking into consideration the above circumstances, this Tribunal vide the aforementioned judgment passed the following order :-

“7. We have considered the arguments of the

learned counsel for the parties and have also perused the pleadings and documents annexed thereto. There is no dispute with regard to the facts in the case. The issue lies in a very narrow compass. Admittedly, respondent No.4 initially wanted to absorb the applicant for which they had obtained NOC from respondent No.2. Later on, in view of the fact that the Department of Science and Technology, where the applicant had worked just prior to coming on deputation to respondent No.4, have initiated a departmental proceedings against him, the cadre controlling authority withdrew the NOC issued earlier just to facilitate the conduct of the disciplinary inquiry. Now since respondent No.4 has made it absolutely clear that they do not require the services of the applicant either on deputation or on absorption basis. Hence the applicant has no option except to go back to his parent organization.

8. In view of the above, the OA is dismissed, as it is devoid of any merit.”

3. The applicant filed the Review Application No.77/2016, against the said order, which also came to be dismissed on 08.07.2016. On dismissal of his Review Application, the applicant

filed WP(C) No.7169/2016 before the Hon'ble High Court of Delhi. During the course of hearing, the applicant withdrew the said Writ Petition to enable him to seek appropriate remedy as available to him, in accordance with law. The Hon'ble High Court of Delhi passed the following order dated 12.08.2016 :

“After some hearing in the matter, learned counsel for the petitioner submits that he wishes to withdraw the present writ petition and application to enable the petitioner to seek appropriate remedy as available to him in accordance with law as neither the repatriation order was challenged nor the Tribunal has dealt with the said issue.

Accordingly, writ petition and application stand dismissed as withdrawn.”

4. After the withdrawal of the Writ Petition, the applicant filed an MA No.2700/2016 seeking recalling of the order dated 15.03.2016 passed in the OA referred to hereinabove. This MA was dismissed by the Tribunal vide its order dated 12.09.2016, as not maintainable. While dismissing the MA, Tribunal noticed the fact that the OA had been dismissed and thereafter the Review Application also stood dismissed.

5. The present OA has been filed seeking to challenge the order of repatriation dated 28.08.2016 passed by respondent No.4. Shri M.K. Bhardwaj, learned counsel appearing for the applicant submits that since the order of repatriation was not under

challenge in the earlier OA, in terms of the liberty granted by the Hon'ble High Court of Delhi, he has right to challenge the same.

6. Technically speaking, he may be correct. However, we find that the findings recorded in the earlier OA No.3194/2015 having attained finality, the applicant is not entitled to any relief in the present OA.

7. As noticed hereinabove, the respondent No.4 who has passed the impugned order clearly projected before the Tribunal that in view of creation of its own separate cadre for accounts unit, the services of the applicant are not needed. Keeping in view this important aspect and the fact that NOC earlier granted to the applicant had been withdrawn, this Tribunal dismissed the OA. Thereafter, a review filed by him also resulted in dismissal and the Writ Petition filed before the Hon'ble High Court of Delhi had been withdrawn. Again MA No.2700/2016 filed for recalling the order of the OA has also been dismissed, though not on merits. The fact remains that the lending department has withdrawn the NOC and the borrowing department has clearly stated in the earlier OA that in view of the creation of its own accounts unit, services of the applicant are no more needed. The depute cannot impose himself on the borrowing department particularly for his permanent absorption although initially when he applied at the relevant time,

there was a provision for absorption but under the changed circumstances i.e. creation of its accounts unit, the lending department refused to retain the applicant as deputy and, thus, obviously, it has no intention to absorb the applicant.

8. In this view of the matter, we do not find any valid ground to interfere in the order impugned. This OA is, accordingly, dismissed.

9. Shri Bhardwaj submits that even after passing of the order, he has not been relieved, thus the status is unsettled. Taking into consideration his submission, we direct the respondent No.4 i.e. Central Board of Secondary Education (CBSE) to relieve the applicant to enable him to join his parent department. Let the needful be done within a period of one week from the date of receipt of a certified copy of this order. No costs.

(V.N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

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