

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

New Delhi, this the 13th day of March, 2018

MA No.4109/2017
OA No.2857/2017
MA No.1040/2018
CP No.770/2017

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

Shri Shivaji Sarkar
Age about 64, Associate Professor
S/o Late Shri Sanat Sarkar
R/o B-18, Pariwahan Apartment,
Vasundhara Sec-5
Sahibabad, Ghaziabad. Applicants

(By Advocate : Shri Piyush Gaur)

Versus

1. Chairman
Indian Institute of Mass Communication
Aruna Asaf Ali Marg, JNU New Campus
New Delhi.
2. Director General
Indian Institute of Mass Communication
Aruna Asaf Ali Marg
New Delhi.
3. Deputy Registrar
Indian Institute of Mass Communication
Aruna Asaf Ali Marg
New Delhi. Respondents

(By Advocate : Shri Amit Singh with Ms.Divya Aggarwal)

Hon'ble Mr. Justice Permod Kohli, Chairman

ORDER(ORAL)

The applicant is aggrieved by the order dated 06.07.2017, whereby he was transferred from the Department of English Journalism at IIMC, New Delhi to its Regional Director, Dhenkanal Region, Regional Campus. One of the grounds which was urged is that the applicant is going to retire on 31.03.2018. Vide interim order dated 23.08.2017 passed in OA, the impugned transfer order dated 06.07.2017 was kept in abeyance and the applicant was allowed to continue at IIMC, New Delhi in the Department of English Journalism till further orders. The applicant is continuing as per aforesaid interim order.

2. The respondents filed Writ Petition No.7891/2017 against the interim order passed by the Tribunal. This Writ Petition was however, disposed of vide order dated 07.12.2017 with the following observations:-

Para4&5

"4. Having regard to the fact that Ms.Saini, learned counsel for the respondents is seeking time to file a counter affidavit in the present petition, we deem it appropriate to stay the proceedings in C.P.No.770/2017 filed by the respondent before the Tribunal and listed on 13.12.2017. It is further directed that on the next

date, the respondent will appear along with his counsel before this Court.

5. Learned counsel for the petitioners assures this court that the unpaid salary of the respondent for a period of two months, shall be deposited before the Tribunal by the next date of hearing, without prejudice to their rights and contentions in the present petition."

3. The respondents deposited a demand draft for an amount of Rs.2,63,033/- on account of salary of the applicant for two months in the name of Registrar of the Tribunal. However, considering the fact that the direction was to deposit the salary of the applicant by way of demand draft in the name of the applicant, the cheque deposited in the name of the Registrar, CAT was directed to be returned to the respondents with direction to deposit the same in the name of the applicant, which direction has since been complied with by the respondents.

4. When the matter was taken up today, it was brought to our notice that the applicant is going to retire on 31.03.2018. We are of the considered opinion that the applicant should be allowed to continue in IIMC, New Delhi in the Department of English Journalism till his retirement.

5. Learned counsel appearing for the respondents has however, submitted that the vide impugned order dated 06.07.2017, the applicant has been repatriated to the

Regional Campus, Dhenkanal. In para 2 (f) of counter it is mentioned that the respondents passed the order dated 06.07.2017 repatriating the applicant to his parent organisation, i.e., IIMC Dhenkanal Centre. Except this order no other document has been made placed on record which may indicate that the Regional Centre Dhenkanal, is parent department and applicant was on deputation at IIMC Delhi. It is admitted position that both the centres at Dhenkanal and New Delhi are part of the IIMC and are governed and controlled by IIMC. One centre cannot be said to be parent organization and other as a different organization. Learned counsel for the respondents relied upon the order dated 04.12.2015. We have perused the order. It reveals that earlier the applicant was compulsorily retired from service. Thereafter, the retirement order was reviewed and recalled and the applicant who was serving as Associate Professor (Ad hoc) was reinstated and posted at Dhenkanal, but allowed to work at New Delhi IIMC on deputation in the Department of Journalism(English). The word 'deputation' in this order seems to be inappropriate and superfluous. Even from this order it is evident that both the centres belong to IIMC. How the question of deputation from one centre to the other of the

same organization arises is not evident from this document as well.

6. The expression 'deputation' has not been defined under the Fundamental Rules, but falls within the purview of the expression 'foreign service'. FR 9(7) defines 'foreign service' and reads as under:

(7) "Foreign service" means service in which a Government servant receives his pay with the sanction of Government from any source other than the Consolidated Fund of India or the Consolidated Fund of any State or the Consolidated Fund of a Union Territory."

FRs 109 and 110 under Chapter XII also deal with 'foreign service', and read as under:

F.R. 109. The rules in this chapter apply to those Government servants only who are transferred to foreign service after these rules come into force. Government servants transferred previously will remain subject to the rules in force at the time of transfer.

F.R. 110. (a) No Government servant may be transferred to foreign service against his will: 1 [Provided that this sub-rule shall not apply to the transfer of a Government servant to the service of a body, incorporated or not, which is wholly or substantially owned or controlled by the Government.]

(b) Transfer to foreign service outside India and in India may be sanctioned by the Central Government subject to any restrictions, which it may deem fit to impose by general or special order."

7. FR 110(a) provides that no government servant may be transferred to foreign service against his will. However, under the proviso thereto, this condition will not apply to the transfer of a government servant to the service of a body, incorporated or not, which is wholly or substantially owned or controlled by the government. The Government also issued office memorandum No.27/1/66,Ests.(A) dated 17.05.1966, which reads as under:

“ (1) Consent of government servant necessary for foreign service to Local Funds only if such Local Funds are not administered by Government.- A question arose as to whether the proviso to FR 110(a) could be invoked in cases of transfer of Government servants to Local Funds. It is clarified that FR 110(a) and its proviso covers cases of transfer of Local Funds not administered by Government. It has, however, been decided in consultation with the Comptroller and Auditor-General of India that these powers should not, for the present, be involved in cases of transfer of a Government servant to service under local funds not administered by Government servant to a Local Fund not administered by Government, his consent for such a transfer should still be taken as a measure of practical expediency.

2. It is further clarified in this connection that according to FR 128, Government servants who are paid from Local Funds administered by Government, are subject to the provisions of Chapters I to XI of the Fundamental Rules are not subject to the provisions of Chapter XII which relates to “foreign service”. Consequently, in the case of Government servant transferred to a local fund administered by Government, FR 110(a) including its proviso is not attracted. In such case, FR 11 will apply and the consent of the Government servant for the transfer will not be necessary.

3. The question whether the Central Government have the necessary powers under the Fundamental

Rules to transfer their employees without their consent to Panchyati Raj institutions set up in the Union Territories, has also been examined. It is clarified that necessary powers to do so are available under the proviso to FR 110(a). Accordingly, consent of the Government servant will not be necessary for transfer to such institutions.”

8. Thus, 'foreign service' would mean a service where the pay of the government servant is paid from any source other than the Consolidated Fund of India or the local fund of a State or Union Territory, meaning an *ex cadre* post, and under FR 110(a) consent of the government servant concerned is required for his transfer to a 'foreign service'. The consent may not be necessary where such transfer is to a body incorporated or not which is wholly or substantially owned or controlled by the government. The government has further issued instructions defining 'deputation' within India. Appendix-5 has been issued under FR 9(25). Though these instructions are for purposes of regulation of pay, nonetheless they define the term 'deputation' as well. Caption of these instructions contained in Section 1 of the Appendix-5 is reproduced hereunder:

“Transfer on deputation/foreign service of Central Government employee to *ex cadre* posts under the Central Government/State Governments/Public Sector undertakings/Autonomous Bodies, Universities/UT Administration, Local Bodies, etc., and vice versa –Regulation

of pay, Deputation (Duty) Allowance, tenure of deputation/foreign service and other terms and conditions."

9. Condition 3 of the aforesaid Appendix prescribes the scope of the term 'deputation/foreign service'. Same is also reproduced hereunder:

"3. Scope of Term 'deputation/foreign service' - Restrictions on treating an appointment as on deputation/foreign service.

3.1 The terms deputation/foreign service will cover only those appointments that are made by transfer on a temporary basis, provide the transfer is outside the normal field of deployment and is in public interest. The question whether the transfer is outside the normal field of deployment or not will be decided by the authority which controls the service or post from which the employee is transferred.

3.2 The following types of appointments will not be treated as deputation/foreign service for the purpose of these orders:-

(a) appointment of serving employees made either by promotion or by direction recruitment from amongst open market candidates, whether on permanent or temporary basis.

(b) Permanent appointment made by transfer.

(c) Temporary appointment made on the basis of personal requests of employees.

(d) Arrangements necessitated by staff imbalances arising on re-organization of offices on the same or different stations,

subject to the specific condition that no Deputation (Duty) Allowance will be admissible in such cases.

3.3. A person in a higher Grade Pay/scale of pay shall not be appointed on deputation to a post in lower Grade Pay/scale pay if the deputation is from Central Government to Central Government and also in cases where the scale of pay and dearness allowance in the parent cadre post and ex cadre post are similar.

3.4 However, no appointment on deputation/foreign service shall be made from/to Central Government/an organization where the pay scale and DA in the parent cadre post and ex cadre post are dis-similar, if the basis pay in the parent cadre increased by one increment plus dearness allowance(s) including interim relief if any, admissible to a person in the parent cadre post exceeds the basic pay plus dearness allowance(s) including interim relief, if any, at the maximum of the pay scale of the ex cadre post. In the revised pay structure, the maximum of the scale would mean the sum of the Grade Pay of the ex cadre post and maximum of the Pay Band PB-4, i.e. Rs.67,000. For example, if the ex cadre post is in the Grade Pay of Rs.4,200, then the maximum would be Rs.71,200.i.e. Rs.4,200 plus Rs.67,000 (maximum of PB-4)."

10. From a perusal of the aforesaid Appendix it is also evident that the deputation/foreign service of a Central Government employee is in fact a transfer to an ex cadre post under the Central Government/State Governments/Public Sector Undertakings/autonomous bodies, etc. Condition 3.1 extracted hereinabove further provides that where the transfer of a government servant is

on temporary basis outside the normal field of deployment and is in public interest, it is 'deputation'. From a conjoint reading of these provisions, it can be safely inferred that the terms 'deputation' or 'foreign service' which are used only for deputation, means a temporary transfer to an ex cadre post to another organization, or, may, in the same organization, i.e., under the same Government, but to another department, etc. This definition excludes transfer of a government servant on the cadre post in the same organization.

11. From the counter affidavit and the two transfer orders placed on record, we find that the applicant was/is an employee of IIMC, which has at least two Centres, i.e., Dhenkanal and New Delhi. The applicant is holding a cadre post. Earlier on revocation of his order of compulsory retirement, he was posted at Dhenkanal Centre, but physically allowed to work at IIMC, New Delhi. It is not the case of the respondents that the two Centres have different and separate cadres and have no commonality between the cadre at two Centres. Thus, the plea of the learned counsel for the respondents that the applicant was on deputation from Dhenkanal Centre to Delhi is without any basis. The post in Delhi is the same where the applicant was

appointed, i.e., Associate Professor (*ad hoc*) (Journalism) in the Department of English Journalism in IIMC. The transfer of the applicant to New Delhi was in fact a transfer to another post borne on the cadre of the service and it was never a deputation to an ex cadre post.

12. In view of above facts and circumstance, we are of the considered view that the applicant was not repatriated vide impugned order but only transferred from IIMC New Delhi to Dhenkanal. Even the impugned order does not mention that it is an order of repatriation.

13. Admittedly, the applicant is an employee of IIMC in the office of respondent No.1. Since the applicant is retiring on 31.03.2018, no purpose will be served by keeping the OA pending. Thus, the impugned order is quashed and set aside. The applicant is allowed to continue in the IIMC, New Delhi from where he has to retire. The demand draft of two months' salary of the applicant for August, 2017 and September, 2017 which has been deposited by the respondents with the Tribunal is directed to be released in favour of the applicant. Registry will hand over the said demand draft to the applicant against appropriate receipt. Since the applicant is allowed to continue in New Delhi IIMC,

his entire salary will be drawn at New Delhi IIMC. Needless to say that the applicant will also be entitled to all retrial benefits in accordance with law. This exercise shall be completed by the respondents within a period of two months from the date of receipt of a certified copy of this order.

14. With the above directions, the OA is dispose of. No order as to costs.

(K.N.Shrivastava)
Member(A)

(Justice Permod Kohli)
Chairman

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