

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

**OA-3220/2015
MA-3107/2015
with
OA-3218/2015
MA-310/20159**

Reserved on : 18.09.2015.

Pronounced on:29.09.2015.

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

OA-3220/2015, MA-3107/2015

Dayanand Kataria, IAS (TN-1989)
S/o Sh. B.R. Kataria,
R/o 7/2, DDA Officers Complex,
Bhagwan Dass Road,
New Delhi-1.

..... Applicant

(through Sh. Malaya Kumar Chand, Advocate)

OA-3218/2015, MA-3109/2015

Sh. Brijesh Kumar Mishra, IRSE
S/o Sh. Ram Krishna Mishra,
R/o A-3, DDA Staff Quarters,
Old Rajinder Nagar,
Ganga Ram Hospital Marg,
New Delhi.

..... Applicant

(through Sh. Malaya Kumar Chand, Advocate)

Versus

1. Union of India
Through its Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Department of Personnel & Training
Through Estt. Officer,
Govt. of India, North Block,
New Delhi.
3. Vice-Chairman,
DDA Vikas Sadan,
INA, New Delhi. Respondents in both OAs.

(through Sh. Gyanendra Singh, Sh. Dhanesh Relan with Ms. Sriparna Chatterjee, Advocates)

O R D E R

Mr. Shekhar Agarwal, Member (A)

MA-3107/2015 in OA-3220/2015 & MA-3109/2015 in OA-3218/2015

These applications have been filed by the respondents in the OAs for vacation of interim orders dated 28.08.2015 and 02.09.2015 passed in these OAs. Since we have taken up these OAs for final disposal, these MAs have become infructuous and are accordingly disposed of.

MA-3035/2015 in OA-3220/2015

2. This application has been filed by the OA applicant seeking a direction to the respondents to maintain status quo with regard to filling up the post of Principal Commissioner till the disposal of the OA and also to take cognizance of further developments in the matter. Since the OA has been taken up for final disposal, this MA has become infructuous and is disposed of as such.

MA-3036/2015 in OA-3218/2015

3. This application has been filed by the OA applicant praying that cognizance be taken by this Tribunal of subsequent developments in the matter as enunciated therein. Since this OA has been taken up for final disposal, no further orders are necessary. MA is accordingly disposed of.

OA-3218/2015 & OA-3220/2015

4. These two OAs are identical and are, therefore, being disposed of by this common order.

5. Applicant of OA-3220/2015 is an IAS officer of Tamil Nadu Cadre. Prior to his appointment in Delhi Development Authority (DDA) he had worked in the State of Tamil Nadu in various capacities. On 12.09.2012, he was appointed as Principal Commissioner, DDA in the rank of Joint Secretary to Government of India under the Central Staffing Scheme. His appointment was made with the approval of the Appointments Committee of the Cabinet. He was appointed for a period of five years from the date of assumption of charge of the post or until further orders, whichever was earlier.

6. Applicant of OA-3218/2015 is an officer of IRSE of 1993 batch. He was appointed as Commissioner (Land Management) in DDA on 22.11.2012 in the rank of Director to the Govt of India. His appointment was also for a period of five years from the date of taking over charge of the post or until further orders, whichever was earlier.

7. Their common grievance is that vide identical orders passed on 26.08.2015, they have been pre-maturely repatriated to their parent cadres much before completion of five years period for which they were appointed. They submitted their representations to the respondents on 26.08.2015. Their contention is that even before their representations could be considered, their repatriation orders were passed and hence they have approached this Tribunal by filing these OAs. The following relief has been sought in OA-3220/2015:-

"(i) It is respectfully prayed that impugned order no. K-11011/14/2003-DD1A.Vol.II dated 25th August-2015 of Ministry of Urban

Development, Govt. of India (Annexure-A-1) may please be quashed and set aside.

- (ii) To call for the original records of the case pertaining to the premature repatriation of the applicant and to quash the entire proceedings of premature repatriation as the same are in violation of laid down procedure and policy of Department of Personnel and Training and principle of natural justice.
- (iii) Pass any such further orders as the Hon'ble Tribunal Court may deem fit and proper in the facts and circumstances of the above noted case."

Identical relief has also been sought in OA-3218/2015.

8. Their contention is that the orders of the respondents were not sustainable in the eyes of law. They had been appointed to their posts under the Central Staffing Scheme with the approval of the ACC. Their pre-mature repatriation was permissible only with the approval of ACC and that too in exceptional circumstances. Moreover, pre-mature repatriation on ground of unsatisfactory performance is acceptable only when proper course of action is followed, which requires the administrative Ministry to obtain officer's explanation on each alleged lapse or shortcoming prior to their repatriation. Since this procedure was not followed in their cases, the orders of the respondents were unsustainable. Further, they have alleged that the orders of the respondents were discriminatory and violative of Articles 14 & 19 of the Constitution. They were also against the principles of natural justice and legitimate expectations of the applicants. Further, these orders were arbitrary, non-speaking and cryptic and on this ground alone they were liable to be quashed.

9. The applicants had earlier filed these OAs impleading only the Ministry of Urban Development and DoP&T as parties. Subsequently, DDA where these applicants were working approached this Tribunal by filing MAs in both the OAs

for impleadment. These applications were allowed on 02.09.2015 and DDA through their Vice-Chairman were impleaded as a party as respondent No.3.

10. Respondent No.3 have filed their reply in which they have stated that Vice-Chairman, DDA had written a letter dated 28.04.2015 to the Secretary, Ministry of Urban Development in which it was mentioned that the functioning of the Land Management Division of DDA where the OA applicants were working was far from satisfactory. Many important policy matters pertaining to New Kondli Resettlement Scheme, Land Acquisition, implementation of Public Premises Act, Bawana Resettlement Scheme of Slum Dwellers etc. were pending since long in this Division. Despite repeated reminders, the relevant files were not processed. Daily a large number of aggrieved people were visiting the DDA but their files were not put up despite the instructions of the Vice-Chairman. Thus, the attitude and behaviour of the applicants was not conducive and desirable to the working conditions in the organization. No senior officer was also willing to work in this division. Vice-Chairman, DDA had also mentioned in his letter that this matter had been discussed by him with LG, Delhi, who had the same view. Vice-Chairman, DDA, therefore, recommended that both the applicants be pre-maturely repatriated to their parent cadres. The Ministry of Urban Development considered this letter and thereafter referred it to DoP&T for consideration and necessary action. On 21.08.2015, DoP&T informed the Ministry of Urban Development that the competent authority has approved the proposal of the Ministry for pre-mature repatriation of the applicants. A copy of this letter was also endorsed to Prime Minister's Office, Cabinet Secretariat, New Delhi, Chief Secretary of Tamil Nadu, Secretary, Ministry of Railways and the applicants. Thereafter, the DDA passed the relieving orders dated 26.08.2015.

Subsequently, vide their communication dated 07.09.2015, DoP&T clarified that the proposal of pre-mature repatriation of the applicants had the approval of the ACC.

11. We have heard both sides and have perused the material on record. Arguing for the applicants, learned counsel Sh. Malaya Kumar Chand stated that the applicants had been appointed to their posts for a period of five years with the approval of ACC. He stated that as per O.M. dated 07.10.2014 of DoP&T (A-4) the Central Staffing Scheme permits pre-mature repatriation only in exceptional circumstances and that too with the prior approval of the ACC. He argued that in the case of the applicants their pre-mature repatriation had not been approved by the ACC. Disputing this, learned counsel for the respondents, Sh. Dhanesh Relan stated that the communication dated 07.09.2015 of DoP&T (R-4) made it absolutely clear that the pre-mature repatriation of the applicants had been approved by the ACC.

12. We have gone through the relevant documents produced by the respondents as Annexures to their affidavit. At Annexure R-1, they have annexed a copy of the letter of Vice-Chairman, DDA dated 28.04.2015 by which pre-mature repatriation of the applicants was proposed by him to the Ministry of Urban Development. At Annexure R-2, Office Memorandum of Ministry of Urban Development dated 12.05.2015 has been made available by which this matter was referred by this Ministry to the Establishment Officer, DoP&T. At Annexure R-3, the respondents have made available a copy of O.M. dated 21.08.2015 of DoP&T by which approval of the competent authority to this proposal has been conveyed. Thereafter, at Annexure R-4, a copy of DoP&T O.M. dated 07.09.2015 is available, which is reproduced below:-

**"Subject : Premature repatriation of Shri Dayanand Kataria, IAS (TN:89),
Principal Commissioner (LM) and Shri Brijesh Kumar Mishra, IRS
(c)(E)(9) Commissioner (LM), DDA to their parent cadres.**

The undersigned is directed to refer to the Ministry of Urban Development's OM No. K-11011/14/2003-DD1A.Vol.II dated 4.9.2015 on the subject mentioned above and to say that the order for premature repatriation of Shri Dayanand Kataria and Sh. Brijesh Kumar Mishra has the approval of the Appointments Committee of the Cabinet.

2. Ministry of Urban Development is also requested to defend the case on behalf of Department of Personnel & Training, if it has been included as a party in the said case filed in CAT."

13. Perusal of these documents makes it abundantly clear that pre-mature repatriation of the applicants was first proposed by Vice-Chairman, DDA to Ministry of Urban Development, who referred to the DoP&T for consideration and approval. The DoP&T then obtained the approval of ACC on the same and conveyed it to the Ministry of Urban Development and DDA. Thus, there is no doubt that pre-mature repatriation of the applicants has been approved by the ACC.

14. We also do not find any substance in the contention of the learned counsel for the applicants Sh. Malaya Chand that ACC themselves had not issued the orders. It is common knowledge that DoP&T acts as the Secretariat of the ACC and orders of ACC are conveyed by DoP&T to various Ministries/Officers. Hence, we find no merit in this argument.

15. Sh. Malaya Chand, learned counsel for the applicants next argued that it was wrong to say that the performance of the applicants in DDA was unsatisfactory. The Vice-Chairman, DDA was himself biased against the applicants as they had prevented him from distributing illegal payment of

roughly Rs. 250 crores in Barwala village over and above the compensation for land acquisition. They had thus prevented the major financial loss to the DDA. Learned counsel also stated that the allegations made about the behaviour and attitude of the applicants were false and baseless and there was no evidence to prove the same. According to him, the Vice-Chairman, DDA was himself indulging in irregularities which the applicants had not supported. Hence, they were victimized and their pre-mature repatriation was recommended by the Vice-Chairman.

16. The allegations of mala fide levelled against the Vice-Chairman, in our opinion, have to be out rightly rejected. This is because the applicants have not impleaded the Vice-Chairman, DDA by name as party. Thus, no opportunity has been given to the Vice-Chairman to refute them. Moreover, except for making bald averments the applicants have not produced any evidence to support their allegations against the Vice-Chairman. Hon'ble Supreme Court in the case of **S. Pratap Singh Vs. State of Punjab**, 1964 AIR 72 has laid down that high standards of proof are required to establish mala fide. In absence of any such proof provided by the applicants, we hold that these allegations have remained unsubstantiated and have to be ignored.

17. Learned counsel for the applicants next argued that it was wrong to say that the performance of the applicants was unsatisfactory. In fact, it was only the Vice-Chairman, who was saying so and there was no evidence to support the same. In our opinion, the scope of judicial review is very limited in such matters. It is not for this Tribunal to adjudge the performance of the applicants and substitute their judgment for the judgment of superior officers of the

applicants. The performance of the applicants can be adjudged only by the officers/authorities who have supervised their work. In this case, the Vice-Chairman, DDA, who was their immediate supervising officer was dissatisfied with their performance. The Ministry of Urban Development also agreed with his assessment as is evident from the fact that they forwarded his proposal to DoP&T.

18. Further in the proposal, it was mentioned that the matter had been discussed by Vice-Chairman, DDA with LG, who had supported the proposal for pre-mature repatriation. The applicants in their rejoinder have also mentioned that they had made a representation to LG, DDA, New Delhi regarding pre-judicial attitude of the Vice-Chairman, DDA as far as back on 20.07.2015 in which they had also claimed that the allegations levelled against them by the Vice-Chairman were baseless and unsubstantiated. Thus, it is clear that the matter was in the knowledge of LG. Despite that LG did not intercede on behalf of the applicants. Neither the Vice-Chairman nor the Ministry of Urban Development nor LG supported the applicants. DoP&T and finally the ACC also accepted the Vice-Chairman's recommendations. Thus, it is clear that none of the supervising officers/authorities of the applicants, namely, Vice-Chairman, DDA, Ministry of Urban Development and the LG supported their contention. Under these circumstances, it is difficult to accept their argument that their performance in DDA was satisfactory.

19. Learned counsel for the applicants further argued that the applicants had been appointed on deputation basis for a period of five years and they had legitimate expectation of continuing on those posts for that period. While it is

true that orders of their appointment mentioned that they were being appointed "for a period of five years or until further orders, whichever was earlier", this did not give a handle to the respondents to act whimsically or capriciously. Their tenure could not have been curtailed except for justifiable reasons and that also only after following the prescribed procedure. In the case of one of the applicants, the Vice-Chairman, DDA had earlier moved a proposal for pre-mature repatriation but this was returned by DoP&T vide their letter dated 07.10.2014 (A-4) with the remarks that pre-mature repatriation on ground of unsatisfactory performance can be accepted only after proper course of action had been followed, which required the Administrative Ministry to obtain the officer's explanation on each alleged lapse or shortcoming. Learned counsel submitted that in the instant case since this requirement has not been complied with, the orders of the respondents were not sustainable. Moreover, the orders were cryptic and non-speaking and no reasons for pre-mature repatriation have been disclosed in the same.

20. Learned counsel for the respondents, on the other hand, argued that a deputationist had no vested right to continue on deputation post and the period of deputation can be curtailed at any time at the instance of either the borrowing or the lending department. Learned counsel placed reliance on the judgment of Hon'ble Supreme Court in the case of **Kunal Nanda Vs. UOI & Anr.**, (2000) 5 SCC 362, in para-6 of which the following has been held:-

"6.....The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation....."

21. We have considered the aforesaid submissions. We have also perused the judgment of various Courts on this subject. We find that in the case of **Ratilal B. Soni Vs. State of Gujarat**, AIR 1990 SC 1132 it has been held by Hon'ble Supreme Court that an employee on deputation can be repatriated to the parent cadre at any time as he does not have any right to continue on deputation basis. In the case of **UOI Vs. V. Ramakrishnan**, (2005) 8 SCC 394 it has been held that deputation term can be curtailed on grounds of unsuitability or unsatisfactory performance. In the case of **Gurinder Pal Singh Vs. State of Punjab**, 2005(1) SLR 629, a Division Bench of Hon'ble Punjab & Haryana High Court held as follows:-

“In service jurisprudence, “deputation” is described as an assignment of an employee of one department or cadre to another department or cadre. The necessity for sending on deputation arises in “public interest” to meet the exigencies of “public service”. The concept of deputation is based upon consent and voluntary decision of the employer to lend the services of his employee, corresponding acceptance of such service by the borrowing employer and the consent of the employee to go on deputation. A deputation subsists so long as the parties to this tripartite arrangement do not abrogate it. However, if any one of the parties repudiate the agreement, the other two have no legally enforceable right to insist upon continuance of the deputation.”

In **U.P. Gram Panchayat Adhikari Sangh Vs. Daya Ram Saroj**, (2007) 2 SCC 138, the Hon'ble Supreme Court has held that the basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation. Again in the case of **Shailesh Singh Vs. UOI**, WP(C) No. 2034/2010 it has been opined that a person who proceeds on deputation for a fixed tenure does not have any vested right to

work in the transferee department for the period stipulated and in the exigency of service the tenure can be curtailed.

22. From the above citations, it is clear that in service jurisprudence the rights of both the lending as well as borrowing department to curtail the deputation tenure of a deputationist has been well recognized. However, such curtailment has to be for justifiable reasons. Some of the reasons on which such curtailment has been found to be sustainable are recalling an officer in public interest, unsuitability or unsatisfactory performance, exigencies of public service, misconduct etc. In the instant case, we find that the reasons for repatriation are contained in the letter of the Vice-Chairman, DDA addressed to the Ministry of Urban Development. Therein it has been mentioned that many important proposals remained pending with the division in which the applicants were working for long. These proposals were not processed by the applicants despite repeated reminders. Many files regarding a large number of aggrieved persons were never put up despite instructions. The behaviour and attitude of the applicants was not conducive and suitable for the working conditions in the organization. Thus, it is evident that the proposal for repatriating the applicants was mooted on the grounds of lacklustre and unsatisfactory performance, which rendered them unsuitable for continuing on their deputation post. We find that unsuitability to hold the post or unsatisfactory performance has been held to be a valid ground for pre-mature repatriation by Hon'ble Supreme Court in the case of **V. Ramakrishnan** (supra). Again in **Shailesh Singh** (supra) Hon'ble High Court of Delhi held that unsuitability to hold a post was justifiable reason for pre-mature repatriation. Even the applicants themselves have not disputed that pre-mature repatriation can be resorted to on ground of

unsatisfactory performance provided proper procedure has been followed. This is evident from their own pleadings as mentioned in ground-(d) of their OA, which reads as follows:-

“....premature repatriation on grounds of unsatisfactory performance can be accepted only after proper course of action is followed which requires the administrative Ministry to obtain the officer's explanation on each alleged lapse or shortcoming. “

Thus, we come to the conclusion that the grounds on which the applicants were pre-maturely repatriated were valid grounds.

23. Next the question to be examined is whether prescribed procedure should have been followed before repatriating these officers. Learned counsel for the applicants argued that this involved calling for explanation of the officers concerned. In other words, principles of natural justice should have been observed and the applicants should have been put to notice before initiating the proposal for their repatriation. Admittedly, the applicants had never been issued a show cause notice or a warning nor had they been suitably counselled before proposal for repatriation was mooted. The question to be examined is whether failure to follow “*audi alteram partem*” makes the orders of repatriation unsustainable in law. To decide this issue, we place reliance again on the judgment of Hon'ble High Court of Delhi in the case of **Shailesh Singh** (supra) in which it has been held that repatriation on the ground of unsuitability to hold the post is not stigmatic. Further, in the case of **L/NK V.H.K. Murthy Vs. Special Protection Group**, 2000 IV AD (Delhi) 624, the Hon'ble High Court of Delhi after examining the issue of pre-mature repatriation came to the conclusion that while on deputation a deputationist continues to hold lien on his permanent post in his parent cadre. He also maintains his seniority in his cadre while serving

on deputation. Thus, there is not much difference between deputation and transfer. The deputationist, therefore, has no right to hold the post held by him in the parent department and he can always be repatriated to his parent department in public interest and exigencies of service. Since he has no vested right to hold the post, the question of observance of principles of natural justice before sending a person back to his parent department does not arise.

24. Thus, the conclusion to be drawn from the above citation is that there was no legal requirement of following the principles of natural justice before repatriating the applicants. Hence, there was no necessity of putting the applicants to notice before repatriation or disclosing reasons and passing a speaking order for repatriating them.

25. We, therefore, conclude that there is no infirmity in the orders of the respondents. The OAs are devoid of merit and are accordingly dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/