

**Central Administrative Tribunal
Principal Bench: New Delhi**

OA No.3259/2015

Reserved on: 29.10.2015
Pronounced on: 28.04.2016

Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)

Somesh Kumar
Age 36 years
S/o Ramkala
Accountant Principal Accounts Office (Admn)
Ministry of Home Affairs
R/o Vill Bichpuri
PO Agarwal Mandi
Tattiri, Distt. Baghpat (UP).

-Applicant

(By Advocate: Shri Padma Kumar S.)

Versus

1. Union of India, through
Secretary,
Ministry of Home Affairs
North Block, New Delhi-1.
2. Controller of Accounts (Home)
Principal Accounts Office (Admn)
Ministry of Home Affairs
North Block, Room No.217
New Delhi-11.
3. Senior Accounts Officer/Admn
Office Principal Accounts Office (Admn)
Ministry of Home Affairs
North Block,
New Delhi-1.
4. Inspector General (Estt.)
Directorate General ITB Police
MHA, Govt. of India
Block-02, CGO Complex,
Lodhi Road, New Delhi-3.

-Respondents

(By Advocate: Shri Hanu Bhaskar)

ORDER**Per Sudhir Kumar, Member (A):**

The applicant of this OA is before this Tribunal because of his having been aggrieved by the denial of absorption with the Respondents No.2 & 3, with which he was on deputation in the post of Accountant. The applicant is actually a Head Constable with Respondent No.4 Organization, Indo Tibetan Border Police (ITBP, in short), over the service matters of which this Tribunal has no jurisdiction. He was taken on deputation as Accountant against a civil post under Respondents No. 2 & 3. During the period of such deputation, he was occupying the post of an Accountant, which is governed by the Central Civil Accounts Service (CCAS, in short) (Accountant and Senior Accountant Group 'C' posts) Recruitment Rules (RRs, in short), 2010. He has pointed out that the aforesaid RR provides for 70% of the vacancies in the CCAS to be filled up by direct recruitment through Staff Selection Commission (SSC, in short), 25% by Time Bound Promotion on seniority by merit-cum-seniority based promotions, and 5% by accelerated promotion on the basis of Limited Departmental Competitive Examination. However, according to the applicant, vacancies remaining unfilled by direct recruitment through the SSC are filled up by taking persons on deputation, and such deputationists, with an exceptionally good performance, may even be considered for absorption in the CCAS after completion of two years of deputation, subject to the prior concurrence of their parent cadre, and the fulfilment of necessary and prescribed

conditions for such absorption as on 1st of January in the year of such consideration of their case for absorption.

2. It was submitted by the applicant that initially he was selected for deputation for a period of three years, vide office order dated 13.09.2010, and he has conceded that such deputation was subject to the condition of premature repatriation on the ground of unsuitability, indiscipline, exigencies of service etc. Later, after his having crossed the two years' threshold period for consideration of his case for absorption, the applicant submitted his willingness for absorption in the said cadre of CCAS, which was duly forwarded by his immediate superiors, and even a No Objection Certificate (NOC, in short) was sought from the parent organization of the applicant, under Respondent No.4, for his absorption. Simultaneously, a further NOC had also been sought from his parent department for extension of his deputation period for the 4th year, w.e.f. 03.09.2013 to 02.09.2014, which request was also acceded to by Respondent No.4.

3. The Respondent No.4 also simultaneously conveyed his approval for permanent absorption of the applicant in the borrowing department, through the letter dated 26.05.2014 (Annexure A-8), at the same time also prescribing that no permission for further extension of the applicant's deputation would be granted, since the NOC for his absorption had already been granted. Vide Office Order dated

29.09.2014, the applicant's deputation period was extended for completion of 4 ½ years' period upto 02.03.2015.

4. At the time of filing of this OA, the applicant was still on deputation with R-2&R-3, and was apprehending his being repatriated to his parent organization, as no extension of his period of deputation beyond the completion of 5 years of such deputation had been sought from Respondent No.4 by Respondents No. 2 & 3, and he was fearing huge prejudice to his rights for consideration of his absorption if his services were repatriated on 02.09.2015. However, it so happened that he filed his OA just one day prior to that date, i.e., on 01.09.2015, and the case was listed before a Coordinate Bench on 02.09.2015. The case was adjourned to 04.09.2015 for consideration of the prayer for interim relief, and it was ordered that till then the applicant shall not be relieved from his present place of posting. This Interim Relief was continued on 04.09.2015 and on 24.09.2015 also, although no prayer was made for continuation of that Interim Relief when the case was listed on 15.10.2015, before it was finally heard and reserved for orders on 29.10.2015.

5. In filing this OA, the applicant has taken the ground that as a deputationist in the borrowing department, he had a Statutory Right for his case to be considered for absorption, after his having completed the minimum prescribed period of two years of deputation. He has further taken the ground that he had rendered exceptional service, because of

which only the Respondents No. 2 & 3 had sought extension of his deputation period for the 4th year from 03.09.2013 to 02.09.2014. He has further taken the ground that a large number of vacancies are available in the service concerned for his absorption, and he has a right to be considered for such absorption, which is a fundamental right, and repatriating him without consideration of those rights would be illegal and arbitrary. In the result, he had prayed for the following reliefs:-

- “a) Declare that any action of the respondents to repatriate the applicant without a fair consideration for absorption is illegal and arbitrary.
- b) Hon’ble Tribunal may be pleased to direct the respondents to consider the case of the applicant for absorption before he is repatriated.
- c) If the applicant is found suitable for absorption, he may be granted the absorption with all consequential benefits.
- d) Any other relief which the Hon’ble Tribunal may deem appropriate”.

6. The respondents filed their counter reply on 16.09.2015, taking the preliminary ground that the OA is liable to be dismissed in view of Section 20 of the Administrative Tribunals Act, 1985, as prior to the filing of the present OA, the applicant has made no representation whatsoever to the Competent Authority, seeking absorption in the post which he was occupying on deputation. It was further submitted that *inter-se* communications between the respondents cannot be considered to be a representation on behalf of the applicant. It was further submitted that it is the policy of the Government since July 2015 that on completion of their term of deputation, all deputationists shall stand repatriated to their parent departments, and that no further extension

would be either granted or sought. It was pointed out that neither the applicant has made any representation, nor is there any vested or inherent right available to him to be absorbed in the respondent department.

7. It was further submitted that absorption depends upon a number of conditions, and even if initially consent is given, the same can be subsequently withdrawn before the actual absorption takes place. It was submitted that initially only, in the year 2012, the applicant had given a representation for consideration of his absorption, which had been forwarded to the Respondent No.4 on 14.08.2012, and NOC was also sought. However, at that time, through their letter dated 15.10.2012, Respondent No.4 had rejected the said request, clearly communicating that NOC for permanent absorption of the applicant cannot be granted. Due to this reason, the applicant's case could not be considered for absorption along with the cases of other similar deputationists at that point of time.

8. It was submitted that Respondent No.3 then again sought NOC from Respondent No.4, through letter dated 22.08.2013, for permanent absorption of the applicant, but once again the said NOC was declined by Respondent No.4 through their letter dated 26.09.2013. It was submitted that it was at this stage that the Respondents No.2&3 had sought extension of his deputation from the parent cadre, under Respondent No.4, which was granted.

9. It was further submitted that the primary reason at that point of time for considering permanent absorption of the applicant was that at that time there were a number of vacant posts of Accountants in the department. However, the Respondent No.4 had ultimately granted NOC for permanent absorption of the applicant only through their letter dated 26.05.2014, and the extension of applicant's deputation for another six months was sought through letter dated 29.08.2014, since at that time the 4th year of his deputation was to expire on 02.09.2014. The Respondents No.4 granted this extension of six months also through letter that 15.09.2014, with the stipulation that no further requests for extension of his deputation would be entertained.

10. It was further submitted that in parallel, since there was a shortage of Accountants in the department, a proposal was initiated in January 2015 for considering permanent absorption of all the eligible and suitable deputationists, for which a Committee was constituted. At the same time, fresh selections had also been conducted by the SSC, and the Respondents No. 2 & 3 received a large number of dossiers from the SSC for substantive appointment of selected directly recruited candidates as Accountants. At the same time, on the one hand extension of the applicant's deputation for another six months till 02.09.2015 was sought, and on the other hand the Govt. of India took a policy decision on 23.07.2015 for not absorbing the deputationists in the department, and that all deputationists, on completion of their deputation term,

would stand repatriated to their parent department. With the new policy, the earlier OMs dated 21.10.2014 and 18.11.2014 on this subject stood withdrawn.

11. It was further submitted that the applicant was informed through letter dated 08.09.2015 (Annexure-B of the counter reply) that his request for permanent absorption in the CCAS cadre was considered by the Competent Authority, but could not be acceded to in view of the latest policy decision taken by the Government.

12. The Respondents No.2 & 3 had, therefore, submitted that in the case of the present applicant, when the Rules had permitted his absorption, his parent cadre did not agree to his permanent absorption, and when the Government policy regarding deputationists had changed in July 2015, his absorption could not have been given effect to. It was further submitted that there was no inherent right available to the applicant during the period of his deputation to be necessarily absorbed, and his right to be considered for such absorption has not been denied, as his case has been properly considered before communicating the rejection of his request through letter dated 08.05.2015. It was, therefore, prayed that the OA may be dismissed with costs.

13. The applicant filed a rejoinder on 21.09.2015, and submitted that since the right of the applicant emanates from the statutory provision governing the field, through a change in their policy the respondents

cannot arbitrarily deny the applicant a consideration of his case for absorption, and that he was, therefore, entitled to be considered for absorption. It was further submitted that the mode of recruitment through absorption is not dependent upon the arrival of dossiers of direct recruit candidates from the SSC, as absorption is also one of the statutory modes of recruitment. It was further submitted that the respondents cannot override the statutory provision by their internal policy decision, and thus frustrate the valuable right available to the applicant for consideration of his case for absorption. Once again, he had given a list of the persons who were similar deputationists, and the respondents have already absorbed them. It was submitted that contrary to their submissions, the respondents are still considering the cases of absorption of deputationists with them, as per Office Memorandum dated 20.08.2015 (Annexure A-14), which was actually filed later by the applicant on 26.10.2015.

14. It was submitted that the respondents have a duty cast upon them to act as per the statutory provisions, and that the averment made by the respondents was wrong due to the fact that even before the revised policy decision, which itself is contrary to the statutory provisions, the NOC from his parent department for his being absorbed had been received. It was further submitted that a person who has been on deputation for a longer period should be considered for the purpose of absorption prior to a person who is junior by virtue of length of his service on deputation. Through Annexure A-13, the applicant had also filed a copy of his

representation dated 07.08.2015 regarding his prayer for permanent absorption in the respondent department.

15. Heard. During arguments, learned counsel for the applicant relied upon the Hon'ble Apex Court judgments in **Rameshwar Prasad vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others (1999) 8 SCC 381; 1999 Supp(2) SCR 593**, in **Kunal Nanda vs. Union of India & Anr. (2000) 5 SCC 362**, and in **Union of India & Ors. vs. S.A. Khaliq Pasha & Anr. (2009) NSC 63**.

16. Learned counsel for the applicant submitted that in the case of **Rameshwar Prasad vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others** (supra), the Hon'ble Apex Court had laid down the law with the following observations:-

“14. We agree with the learned counsel for the respondent No. 1 and make it clear that **an employee who is on deputation has no right to be absorbed in the service where he is working on deputation. However, in some cases it may depend upon statutory rules to the contrary. If rules provide for absorption of employees on deputation then such employee has a right to be considered for absorption in accordance with the said rules.** As quoted above, Rule 16(3) of the Recruitment Rules of the Nigam and Rule 5 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 provide for absorption of employees who are on deputation.

15.....The appellant continued in service without any break. Rule 4 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 which was admittedly applicable, provides that **no government servant shall ordinarily be permitted to remain on deputation, for a period exceeding 5 years. Nothing has been stated by the Nigam as to why he was not repatriated. If the appellant was not to be absorbed, he ought to have been repatriated in the year 1990 when he had completed 5 years of service on deputation.** By not doing so, the appellant is seriously prejudiced. The delay or inadvertent inaction on the part of the Officers of the Nigam in not passing appropriate

order would not affect the appellant's right to be considered for absorption in service of Nigam as provided in Rule 16(3) of Recruitment Rules.

16.xxxxxxxxxxxxxxx(Not reproduced here).

17. In our view, **it is true that whether the deputationists should be absorbed in service or not is a policy matter, but at the same time, once the policy is accepted and rules are framed for such absorption, before rejecting the application, there must be justifiable reasons. Respondent No. 1 cannot act arbitrarily by picking and choosing the deputationists for absorption. The power of absorption, no doubt, is discretionary but is coupled with the duty not to act arbitrarily, or at whim or caprice of any individual.** In the present case, as stated earlier, the General Manager (N.E.Z.) specifically pointed out as early as in the year 1988 that appellant's service record was excellent; he was useful in service and appropriate order of his absorption may be passed..... **It is apparent that he was absorbed from 19-11-90 because from that date his deputation allowance was also discontinued. If he was to be continued on deputation, there was no reason for non-payment of deputation allowance. So on the basis of statutory rules as well as the policy, appellant stand absorbed in the service of Nigam."**

(Emphasis supplied).

17. In **Kunal Nanda vs. Union of India & Anr.** (supra), the Hon'ble Apex Court has made the following observations after distinguishing the case from that of **Rameshwar Prasad** (supra):-

"6. On the legal submissions made also there are no merits whatsoever. **It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. 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. The reference to the decision reported in Rameshwar Prasad v. M.D., U.P. Rajkiya Nirman Nigam Ltd., (1999) 8 SCC 381 : 1999 AIR SCW 3427 : AIR 1999 SC 3443 : 1999 Lab IC 3285 : (1999 All LJ 2220) is inappropriate since, the consideration herein was in the light of statutory rules for absorption and the scope of those rules....."**

18. In the case of **S.A. Khaliq Pasha** (supra), the Hon'ble Apex Court has relied upon both the above cases in **Rameshwar Prasad** (supra) and in **Kunal Nanda** (supra), and has held as follows:-

"Furthermore, **in absence of any statutory rules, an employee does not have any legal right to be absorbed in the services.** It is so held in Kunal Nanda vs. Union of India and Anr. [2000 (5) SCC 362], in the following terms:

"On the legal submissions also made there are no merits whatsoever. **It is well settled that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. 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. The reference to the decision reported in Rameshwar Prasad v. M.D., U.P. Rajkiya Nirman Nigam Ltd is inappropriate since the consideration therein was in the light of the statutory Rules for absorption and the scope of those Rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree needs mention, only to be rejected. The stand of the respondent Department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e. a degree is a must and essential and that there could be no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that Department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim.**"

(Emphasis supplied).

19. On the other hand, learned counsel for the respondents argued that it was never the case that the respondents had not considered the case of the applicant for absorption, and that his request regarding his permanent absorption in the CCAS cadre had been duly considered by the Competent Authority in accordance with the Rules and procedure, but that could not be acceded to due to administrative constraints as mentioned in Annexure-B of the counter reply dated 08.09.2015 as follows:-

- “1) receipt of large number of dossiers from Staff Selection Commission for the post of Accountant, and
- 2) instructions contained in the office of CGA’s O.M. No.A-110201/1/2014/MF. CGA(A)/ 245 dated 23.07.2015 (copy enclosed), that no case for absorption be considered by Pr AO and referred to that office for consideration. All deputationists on completion of their term shall stand repatriated to their parent departments.”

20. The law relating to the rights of deputationists is very well settled. The term “deputation” has been dealt with by the Hon’ble Courts in a number of cases. In the case of State of Mysore Vs. M.H. Bellary AIR 1965 SC 868; 1964 (7) SCR 471; 1966 (1) LLJ 50, the Hon’ble Supreme Court had held as follows:-

“Promotion of persons on deputation to another department:-

“...Service on deputation in another department is treated by rule as equivalent to service in the parent department”..... So long, therefore, as the service of the employee in the new department is satisfactory, and he is obtaining the increments and promotions in that

department, it stands to reason that satisfactory service, and the manner of its discharge in the post which he actually fills, should be deemed to be rendered in the parent department also, so as to entitle him to promotions which are open on seniority-cum-merit basis”.

[emphasis supplied].

21. Further in the case of State of Mysore Vs. P.N. Nanjundaiah; 1969 SLR 346; 1969 (3) SCC 633; AIR 1968 SC 1113, the Hon’ble Supreme Court had further clarified the same point in deciding that in the case of service on deputation being satisfactory, an employee gets his right of promotion in the parent department. A case directly on the point of a person on deputation being entitled to promotion only in his parent department was decided by the Hon’ble Apex Court in the case of Rajasthan State Electricity Board, Jaipur vs. Mohan Lal 1967 SLR 573; AIR 1967 SC 1857; 1967 (3) SCR 377; 1968 (1) LLJ 257.

22. It is seen that in the case of Union of India through Govt.of Pondicherry & Anr. vs. V.Ramakrishnan & Others. Civil Appeal No.6332/2005; the case specifically concerned with the absorption of deputationists and the Hon’ble Apex Court had ordered as follows:

“Ordinarily, a deputationist has no legal right to continue in the post. **A deputationist indisputably has no right**

to be absorbed in the post to which he is deputed.

However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is malafide. An action taken in a post haste manner also indicates malice. [See Bahadursinh Lakhubhai Gohil Vs. agdishbhai M. Kamalia and Others,(2004) 2 SCC 65, para 25]”.

[Emphasis supplied]

23. It is, therefore, clear that the rights of deputationists differ from those of the direct appointees, and since deputation involves three voluntary decisions, of (a) the lending authority, (b) the borrowing authority, and (c) the employee concerned, in all this while, when the present applicant has continued to maintain his lien in his parent Ministry, in the case any of these three voluntary decisions of either (a) the lending authority, or (b) the borrowing authority, or (c) the employee concerned, is reversed, he can always be reverted back from his status of a deputationist to his parent Departmental cadre/Ministry, subject to the qualification laid down by the Hon’ble Apex Court in the case “Union of India through Govt. of Pondicherry & Anr” (supra) that ordinarily the specified terms of deputation should not be curtailed, except on just grounds, for

example, unsuitability or unsatisfactory performance., which is not the case in the instant case, as the applicant has been on deputation for five years, and it is not a case of premature curtailment of his deputation.

24. Thus, the law is well settled that no deputationist has a vested right for being necessarily absorbed in the service where he is on deputation. A deputationist only has a right for his request for absorption to be considered in accordance with the Rules and procedure, and if the case of the respondents before us is that the posts concerned have since been filled up through substantive appointment of direct recruit candidates through the SSC, or are in the process of being so filled up, as had been explained to the applicant on 08.09.2015 itself, and if there is a policy decision of the Government which comes in the way, and which was also communicated to the applicant, the applicant cannot have a grievance against the rejection of his case for absorption. In this context, the learned counsel for the respondents had also cited the OM dated 23.07.2015 (Annexure-A of the counter reply) which stated as follows:-

“A.110201/1/2014/MF.CGA(A)/245
Government of India
Ministry of Finance
Department of Expenditure
Controller General of Accounts

7th floor, Lok Nayak Bhavan
Khan Market, New Delhi.

Dated: 23 July, 2015

Office Memorandum

Sub: **Absorption of deputationists as Accountant in Central Civil Accounts Service.**

Attention is invited to this office OM No.A.11020/1/2014/MF.CGA(A)/287 dated 21.10.2014 and A.11020/1/2014/MF.CGA(A)/312 dated 18.11.2014 on the subject cited above and to state that the instructions contained therein stand withdrawn with immediate effect.

2. Therefore, no case for absorption be considered by Pr.A.Os and referred to this office for consideration. All deputationists on completion of their term shall stand repatriated to their parent departments.

(D.D.K.T.Dason)
Assistant Controller of Accounts”.

25. Therefore, it is not as if the applicant had at any stage been unaware about the status of his deputation with the Respondent-Department. The parent department of the applicant had initially declined to issue NOC for his permanent absorption with the Department of Respondents No. 2 & 3, but had later through their letter dated 26.05.2014 (Annexure A-8) granted NOC for such permanent absorption. Thereafter, respondents No. 2 & 3 did not take timely action, and through Annexure A-9 dated 29.08.2014 sought extension of his deputation for six months in the 5th year, stating that the permanent absorption of the application was under active consideration. This request was acceded to by the Respondent No.4 through Annexure A-10 dated 15.09.2014 for extension of the applicant's deputation by the requested period of six months from 03.09.2014 to 02.03.2015, with the proviso that no further request for extension of his deputation tenure will be entertained, since they have already issued the NOC for his permanent absorption with the department of Respondents No. 2 & 3.

26. Based upon this, Respondents No. 2 & 3 had issued the Office Order No.226/2014 (Annexure A-11) dated 29.09.2014 extending the applicant's deputation for six months of the 5th year deputation from 03.09.2014 to 02.03.2015. In spite of a clear cut statement from the parent department of the applicant on 15.09.2014 that no further extension of the applicant's deputation tenure will be entertained, since NOC for his permanent absorption had already been issued by them earlier on 26.05.2014, the Respondents No. 2 & 3 still sent a letter dated 20.02.2015 at Annexure A-12 seeking further consent/NOC for extension of deputation period of the applicant for another six months for 5th year of his deputation, i.e., w.e.f. 03.03.2015 to 02.09.2015.

27. Neither the applicant, nor the respondents, have brought on record any reply from Respondent No.4 to this communication having been received by the Respondents No. 2 & 3. Therefore, the continuation of the applicant's deputation with Respondents No. 2 & 3 w.e.f. 03.03.2015 was in the absence of any consent/NOC for extension of his deputation period by the last six months' period of the 5th year of his deputation by his parent Cadre Authority-Respondent No.4. It was five months after Annexure A-12 dated 20.02.2015 with OM dated 23.07.2015 (Annexure-A) reproduced above was issued, stating that the instructions regarding absorption of deputationists stand withdrawn, and that all deputationists shall stand repatriated to their parent departments on completion of their term.

28. In so far as the present applicant is concerned, two things are clear. Firstly, the applicant's continuation to be on deputation with Respondents No. 2 & 3 w.e.f. 03.03.2015 onwards itself was without any consent/NOC for the same having been received from his parent department Respondent No.4. Secondly, his request reiterated through Annexure A-13 dated 07.08.2015 was also not disposed of till the date of filing of this OA, and even the letter of rejection of his request dated 08.09.2015 was issued after the present OA had been filed by the applicant on 01.09.2015, and interim orders in his favour had been issued by a Coordinate Bench on 02.09.2015.

29. At the same time, the applicant is right in pointing out that in spite of their having issued the OM dated 23.07.2015, as reproduced above, stating that no case for absorption will be considered by the Principal Accounts Officer and referred to the Office of Controller General of Accounts for consideration, nearly one month after that the respondents have themselves issued the OM dated 20.08.2015 (supra), once again relying on the earlier OMs dated 21.10.2014 and 18.11.2014, which were stated to have been withdrawn by the OM dated 23.07.2015, and have called for information in respect of persons working as Accountants on deputation basis, for the purpose of absorption of deputationists in the same service.

30. Therefore, when the Respondents No. 2 & 3 are themselves not adhering to their own OM dated 23.07.2015 (Annexure-A of the counter

reply), and have issued Annexure A-14 dated 20.08.2015 thereafter, they cannot be allowed to take the plea of following that OM dated 23.07.2015, and decline to consider the case of the applicant, as has been stated in sub-para-2 of the OM dated 08.09.2015 as reproduced above. The respondents cannot approbate and reprobate in this manner, and having continued to extract work from the applicant in regard to finalization of pension cases of ITBP personnel even after the date of 03.03.2015, without any consent or NOC from the parent department of the applicant for extension of his deputation for the last six months' period of the 5th year, the respondents cannot now deny to consider his case for absorption.

31. Consideration for absorption is an administrative decision, this Tribunal cannot issue directions to the respondents to directly absorb the applicant, as that is an administrative function.

32. The Hon'ble High Court of Delhi in the case of **National Highways Authority of India vs. Ashok Kumar Gupta** in W.P. (C) No.8412/2014 dated 03.12.2014 has held as follows:-

“11. The choice of the public employer – whether, or not, to absorb the individual, is entirely based upon its discretion and its perception about the utility, competence and efficiency of the deputationists. As mentioned earlier, barring procedural failure in regard to the fair consideration of the request for absorption - which necessarily has to manifest from the records - the subject would be hardly one for judicial review. If Courts or Tribunals were to intervene routinely in such matters - as the CAT unfortunately did not once but twice over in the present case, the efficiency and functioning of public organisation would seriously be undermined. On the other hand, the parent employer has repeatedly insisted that the applicant should return to his duties. Not only has that organisation continued

his lien, but would have undoubtedly made arrangements in his absence on a stop gap basis, and make do without a permanent officer. A direction of the kind that the CAT has given in the impugned order amounts to needlessly interfering with the discretion which otherwise needs to be exercised judiciously after taken into consideration all relevant factors. The manner in which the CAT went about intervening repeatedly in this manner is rather unfortunate; we cannot help but express this, and regret that such a situation has come to pass.

12. For the forgoing reasons, the impugned order of the CAT is hereby set aside. The writ petition is allowed, but, without any order as to costs. A copy of this order shall be communicated to the relevant Bench of the CAT through its Principal Registrar.”

33. This Principal Bench of the Tribunal has also in the case of **K. Pradeep Kumar vs. Union of India and Others** in OA No.3203/2015 in the order dated 22.12.2015 has held as follows:-

“6. We have heard both sides and have perused the material on record. We agree with the Senior Counsel for the applicant that even though the applicant 5 OA-3203/2013 does not have a right to be absorbed in IB, he does have a right to be fairly considered for absorption in IB if the respondent department does have a policy of absorbing deputationists. The respondents cannot act arbitrarily and whimsically and all deputationists deserve to be considered in a fair manner. It is seen from the material made available that the only reason for rejecting the applicant’s case for absorption given by the Screening Committee was that there were adverse remarks in his APAR for the year 2011-2012. The same have now been expunged and applicant’s APAR has also been upgraded as is evident from order dated 10.08.2015 passed by the respondents. Thus, there is merit in the contention of the applicant’s counsel that the case of the applicant for absorption needs to be reconsidered after this material change in his record.

7. However, we notice that the applicant has been repatriated to his parent cadre on 10.08.2015. He has also been relieved of his duties w.e.f. 14.08.2015 and admittedly he has now joined in his parent department. We also notice from the material placed on record that on the day when repatriation orders of the applicant were passed, the applicant had already completed his prescribed deputation period with IB having joined there on 04.12.2006. Also there was no Court case pending nor was there any stay order of any Court operating against applicant’s repatriation. The last case filed by the applicant was OA-2565/2014, which was disposed of by this Tribunal on 20.04.2015 with a direction to the respondents to dispose of the representation of the applicant against adverse APAR afresh and also to maintain status quo regarding the applicant’s posting atleast for a week after disposal of the representation. In

pursuance of the same, the respondents disposed of the representation of the applicant and repatriated him thereafter. The present O.A. has been filed on 25.08.2015. Thus, it is clear that the orders of the respondents repatriating the applicant cannot be faulted for violation of directions of any Court or for frustrating the case of the applicant for absorption by repatriating him during pendency of any OA. Further, in our opinion, the applicant had a right to be considered for permanent absorption in IB only as long as he was a deputationist with them. Now that the applicant has joined his parent cadre, no such right subsists as the applicant is no longer a deputationist but an employee of CRFPF. In the case of **NHAI Vs. Ashok Kumar Gupta** (WP(C) No. 8412/2014) Hon'ble High Court on 03.12.2014 has held that the choice of the public employer whether, or not, to absorb the individual, is entirely based upon its discretion and its perception about the utility, competence and efficiency of the deputationists and barring procedural failure in this regard, the subject would hardly be one for judicial review. Hon'ble High Court has also directed that Courts/Tribunals should not routinely interfere in such matters. In the same judgment, it has also been observed that the deputationist's right to continue much less seek absorption, after the end of the deputation tenure is so tenuous, as to be called non-existent and barring manifestly perverse or arbitrary orders, the borrowing organisation cannot be compelled to continue with the employment of the deputationist much less absorb him."

34. These cases have also been considered by the same Bench in its order in **Sanjay Kumar Arora & Ors. vs. Union of India & Ors.** (OA No. 4705/2015 dated 26.04.2016) also.

35. Therefore, though the case of the applicant could have been considered, and should have been considered, by the respondents for his absorption at the appropriate point of time, he lost out of such consideration because when the Respondent-Department wanted to absorb him, there was no NOC from his parent department, and when the parent department gave such NOC, the Respondents No. 2 & 3 had already taken a decision to fill up all the vacancies by direct recruitment etc.

36. Therefore, in terms of the law as laid down by the Hon'ble Delhi High Court and by this Tribunal in the cases of **National Highways Authority of India vs. Ashok Kumar Gupta** (supra), and **K. Pradeep Kumar vs. Union of India and Others** (supra), and in **Sanjay Kumar Arora & Ors.** (supra), no relief can be provided to the applicant. It is only a fortuitous circumstance that the applicant could not be considered for being absorbed in the respondent department, but the clock cannot be put back by the orders of this Tribunal. As was held by a Coordinate Bench at Hyderabad Bench of this Tribunal, in the case of **A. Venkatmuni vs. Union of India** (OA No.1917/2000 decided on 06.09.2001), that there are several fortuitous circumstances which are common in service, and that fortuitous circumstances are a part of one's service career. Therefore, the OA does not merit being allowed, and no relief can be granted to the applicant.

37. As a result, the OA is dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.