

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.4239/2013

Order Reserved on: 10.03.2016

Order Pronounced on: 15.11.2016

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

M.K. Paul
Sector 7/1125, R.K. Puram
New Delhi-110 022

-Applicant

(By Advocate: Shri Padma Kumar S.)

Versus

1. Union of India, through
Secretary,
Ministry of Home Affairs
North Block, New Delhi-1.
2. Director General
Sashastra Seema Bal
East Block V, R.K. Puram
New Delhi-110 066
3. Senior Accounts Officer/Admn
Office Principal Accounts Office (Admn)
Ministry of Home Affairs
North Block, New Delhi-1.
4. Senior Accounts Officer
PAO (SSB) MHA, GOI
Level VI, East Block-IX
R.K. Puram, New Delhi-66.
5. Shri Sanjay Kumar
LDC, Through
Senior Accounts Officer/Admn
Office Principal Accounts Office (Admn)
Ministry of Home Affairs
North Block, New Delhi-1.

-Respondents

(By Advocate: Shri Ashok Kumar for R-1 to R-4
Shri H.K. Gangwani for R-5)

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

The applicant of this case is aggrieved by the inaction of the Respondents R-3 & R-4 in not having absorbed him in the post of Lower Division Clerk (LDC, in short), whereas a person who had joined on deputation as LDC later than the applicant was absorbed, and his being the senior most person on deputation, gives rise to his claim for his services to be absorbed. He has submitted that his absorption was rejected arbitrarily, and has sought parity with the Private Respondent R-5, whose services had been absorbed by the official respondents by using the relaxation clause, by conversion of direct recruitment vacancies, and since many such direct recruitment vacancies were still available, the applicant has filed this O.A.

2. The applicant was a Peon in a uniformed organization under Respondent No.2, with the Sashastra Seema Bal (SSB, in short). He applied for the post of LDC on deputation basis in the Principal Accounts Office (PAO, in short) of the Ministry of Home Affairs (MHA, in short). His request was granted, and he was taken on deputation, and he has claimed that both the borrowing organization, and the lending organization, are under the same Ministry. Against the very same Circular, in response to which the applicant was selected and joined on 09.12.2009, three more persons had also been taken on deputation, and they joined on different dates, before and after the applicant. When their three years' term of deputation was coming to an end, they were granted extension for the fourth year also. The applicant has claimed that the

private respondent R-5 had joined 16 days later than him, but he was already absorbed w.e.f. 02.01.2013, ahead of him. Therefore, he gave a representation for being accorded similar treatment, but it was rejected on the ground of administrative exigencies and non-availability of vacancies, and on account of there being no provision in the Statutory Rule. He has, therefore, claimed that when private respondent R-5 was absorbed by invoking the relaxation clause, his case should also have been considered. Hence this O.A.

3. When the case came up for admission on 06.12.2013 before a Coordinate Bench, while issuing notices, time had been granted to the respondents to file reply, and to the applicant to file his rejoinder thereafter, and it was mentioned that till such time, no adverse order would be passed against the applicant. It seems that notices were not properly issued and served upon private respondent R-5, because of which he had to file MA No.3117/2015, in which it has been pointed out that in another OA No.71/2014 **Sachin Kumar vs. Union of India & Others** also he had been arraigned as a party respondent, where notice has been served upon him, but that in the instant case the notice was never served upon him. Therefore, a fresh copy of the OA was ordered to be served upon the private respondent R-5 when his counsel appeared before the Bench on 21.09.2015, and reply was subsequently filed, and time was sought for filing rejoinder to the same, which was filed much later on 04.03.2016, whereafter the case was heard and reserved for orders.

4. The applicant has taken the ground that similarly situated persons cannot be treated differently, as it infringes similarity of treatment guaranteed under the Article 16 of the Constitution, and the reasons for not absorbing the applicant given by the respondents, as being on grounds of administrative exigencies, and non-availability of vacancies, are untenable, and his having joined prior to the private respondent R-5, the applicant had a better claim to be considered for absorption than the private respondent R-5. He had again submitted that since the applicant belongs to a parent service which is under the same Ministry, i.e., Ministry of Home Affairs (MHA, in short), his interest ought to be protected during the pendency of the OA, and in the result he had prayed for the following reliefs:-

- “a) Hon’ble Tribunal may be pleased to quash and set aside the impugned orders dated 23.05.2013 and 14.10.2013 (Annexure A-1 colly).
- b) Hon’ble Tribunal may be pleased to direct the respondents to consider the case of the applicant also along with the private respondent against the same vacancy against which the private respondent has been considered or all other similar vacancies, after declaring that the consideration of the private respondent alone having been done was illegal.
- c) If the applicant is found suitable for absorption, he may be granted the absorption from the same date as has been done in the case of the private respondents, with all consequential benefits.
- d) any other relief which the Hon’ble Tribunal may deem appropriate”.

5. As already pointed out, the Interim Relief claimed had been granted by the Coordinate Bench while admitting his case on 06.12.2013, for the period till the date of filing of rejoinder. In the instant case rejoinder to the counter reply on behalf of official respondents had been filed on

18.11.2014, and rejoinder to the counter reply filed by private respondent R-5 had been filed on 04.03.2016, on which later date the Interim Relief stood vacated.

6. The respondents had in their counter reply taken a preliminary objection that the seniority of having come on deputation cannot be the sole criteria for persons on deputation to be considered for absorption. It was further submitted that absorption cannot be claimed as a matter of right when an employee is taken purely on deputation basis for a fixed tenure, and he continues to be a Member of his parent cadre/department. It was further pointed out that the deputationists concerned in this case had come on deputation from the combatised SSB to the Central Civil Accounts Service (CCAS, in short) to which the CCAS (Lower Division Clerk Group 'C' Post) Recruitment Rules, 2010 (RRs, 2010, in short) apply (Annexure R-1 to the counter reply). It was further submitted that the case of the applicant for absorption in the CCAS Cadre could not be considered earlier due to inadequacy in his service records pertaining to the educational qualification possessed by him, as well as his date of birth, whereas the case of the private respondent R-5 was considered in accordance with the provisions of the above CCAS, RRs, 2010. It was further submitted that even though the quantum of relaxation granted in respect of the private respondent R-5 is admissible to the applicant also, yet his case was different due to inadequacy in his service record *vis-à-vis* ambiguity in the educational qualification possessed by him, and his date of birth in his Service Book, and a copy of a High School Mark Sheet pasted in the Service Book without any

endorsement by a Competent Authority, which had distinguished the case of the applicant from that of the private respondent R-5.

7. It was pointed out that as per the certified entries available in his Service Book, the educational qualification of the applicant is only 8th pass, according to the photocopy of the educational qualification possessed by the applicant as had been claimed by him at the time of his initial appointment in SSB (Annexure R-3 of counter reply). It was further submitted that an unattested photocopy of High School Marks Sheet issued by the Board of Secondary Education, Madhya Pradesh, Bhopal, had later been found pasted in his Service Book, but without any endorsement by a Competent Authority, and the source and purpose of the pasting of the said Marks Sheet in the Service Book was not clear, due to unavailability of supporting entries or intimation regarding the applicant having taken permission for acquiring such a qualification, and having acquired higher qualification (Annexure R-4). It was further submitted that the date of birth mentioned in the said pasted unattested High School Marks Sheet was found to be different from the date of birth of the applicant as recorded in the Service Book, since his date of birth as per his Service Book was 02.05.1963, and the date of birth mentioned in the High School Marks Sheet pasted without any attestation in the Service Book was 02.05.1967. It was, therefore, submitted that due to this inadequacy in the service record of the applicant, it was administratively not feasible to consider his absorption in the same manner like that of private respondent R-5.

8. It was further submitted that absorption of LDCs in CCAS cadre is not a regular feature, and absorption cannot be claimed by a deputationist as a matter of right, as unlike taking employees on deputation for a fixed tenure, permanent absorption of an employee into a new cadre is an irrevocable process, and, therefore, requires careful scrutiny of the service record of the person concerned.

9. It was further submitted that in order to remove any doubts in regard to High School Marks Sheet, the Secretary, Board of Secondary Education, Madhya Pradesh, Bhopal, had also been consulted, as well as the applicant's parent department SSB. Copy of the verification report received from the Board of Secondary Education, Madhya Pradesh, Bhopal was produced as Annexure R-5, according to which the date of birth mentioned in their High School Certificate is 02.05.1967 was correct as per their records, because of which the anomaly in the applicant's date of birth, as recorded in the service record, could not be removed. The applicant's parent department had also in their reply submitted that his date of birth had been mentioned as 02.05.1963 as per the School Leaving Certificate issued by the Head Master/Principal, Bidhan Chandra Vidyalaya Senior Secondary School, Moti Bagh, which had been submitted by him at the time of his initial appointment, was the only authentic certificate available at the time of his joining SSB in respect of his educational qualification and date of birth. It was also reported that the applicant did not submit the High School Certificate at the time of his initial appointment with SSB as Fatigueman on 27.11.1984, and later at the time of his appointment as Peon on

23.04.1985. It was further submitted that the High School Certificate obtained by the applicant from the Board of Secondary Education, Bhopal was issued on 18.01.1996, though at that time he was posted with Director of Accounts, Cabinet Secretariat, New Delhi, and that Certificate had not been submitted by him to his parent office SSB for the necessary entry being made in the Service Book.

10. It was further pointed out that even as per the Seniority List issued as late as on 10.09.2010, the applicant's date of birth had been shown as 02.05.1963, and his Educational Qualification had been mentioned as Matriculate, and though his Educational Qualification was mentioned as Matriculate, but the date of birth remained the same as had been mentioned in the Service Book, and in the Seniority List. It was further pointed out that under GFR 256, and various instructions issued by the Govt. of India from time to time, every new appointee to a service declares the date of birth, in conformity with the documentary evidence, but the date of birth can be amended with certain conditions. The applicant had never requested to change his date of birth, and in case the date of birth is now amended, his service from 27.11.1984 would itself be rendered incorrect, as he could not have been employed in SSB at the age of 17 years, and his service when he was still a boy, and not an adult, will not be taken as qualifying service for either increments or for pension purposes, as clarified by SSB through Annexure R-6.

11. It was further clarified that even if now any fresh and higher educational qualification, acquired by the applicant after joining

Government service, is entered, and an amendment made by his parent organization in his Service Book, these changes sought to be affected now cannot be reckoned in the matter of an earlier decision, which had already been taken, and thereby not considering his case for absorption along with that of private respondent R-5 was explained. While it was admitted that at the time of taking the applicant on deputation with R-3 in 2009, there were sufficient number of vacancies in the grade of LDC, but it was submitted that now the strength of LDCs has become surplus, due to encadrement of PAO of Border Security Force (BSF, in short), New Delhi, in the CCAS Cadre, which encadrement was done in public interest, in pursuance of a policy decision taken. It was submitted that LDCs who have become surplus due to such encadrement have been temporarily adjusted against the vacant posts of Accountants, but those LDCs who were still on deputation, and had not yet completed their deputation tenure, had not been prematurely repatriated. It was, therefore, submitted that the applicant's contention that there are many unfilled direct recruitment vacancies available, including the one held by him, is incorrect and misleading.

12. It was submitted that as per RRs, the vacancies remaining unfilled by direct recruitment may be filled either by taking persons of appropriate grade from other organized Accounts Services of the Central Government, or State Government, or Autonomous Bodies which are fully funded by the Central Government, and the educational and other qualifications prescribed for such direct recruitment of LDCs, as per the notified RRs, required higher educational qualifications, from recognized

Board, with a typing speed @ 35 words per minute in English on computer. The action of the respondents in not granting relaxation of the Statutory Rule to the applicant on account of administrative reasons namely, inadequacy in his service records was, therefore, justified, which had placed the case of the applicant on a different footing from that of private respondent R-5.

13. It was further submitted that first, in compliance of the interim directions of this Tribunal, the deputation tenure of the applicant had been extended till the Academic Session 2013-14, till his son completes 12th Class. But, later on also, he was further allowed to continue to be on deputation with PAO (SSB), New Delhi, in respectful compliance of the interim directions of the Tribunal. It was, therefore, prayed that there is no merit in the OA, it may be dismissed with costs.

14. The applicant filed a rejoinder to this counter reply stating that the official respondents are making false averments regarding their having considered his case, and that the contention of the respondents that deputationists cannot be considered for absorption as a matter of right is hedged by the condition that they are prohibited in law to adopt a pick and choose policy arbitrarily for absorbing employees. He had repeated his contentions as raised in the O.A., and had denied that the date of birth was at all an issue because of which absorption of his services could have been denied to him. It was further submitted that if he had been found eligible for being appointed on deputation, he should also be held to be eligible to be considered for absorption, as for the cases of

absorption, there is no qualification prescribed in the relevant RRs, and it was contended that the qualifications prescribed for direct recruitment are not relevant, as the same have not been prescribed for absorption cases.

15. However, to protect his claim, the applicant had through MA No.388/2015, filed on 21.01.2015, sought to bring a copy of his Matriculation Certificate on record, as Annexure MA-1, and a document showing that there were available vacancies. The said MA No.388/2015 was listed before the Bench on 05.02.2015, and the counsel for the applicant submitted that the documents attached to the MA are necessary for adjudication of the OA. However, learned counsel for the respondents submitted that since they are not part of the Service Book of the applicant, they need to file a reply, for which time was granted. Ultimately, no orders were passed on that MA till the case came to be heard and reserved for orders.

16. Respondents filed their reply to MA on 17.02.2015, stating that the Matriculation Certificate bearing Book No. 73 with serial no.7211 now submitted by the applicant as Annexure MA-1 is different from the copy of the Matriculation Certificate bearing Book No.163 with serial no.16112 which was found to have been pasted in his Service Book, a copy of which had been produced as Annexure R-4 of the counter affidavit. It was further submitted that the applicant had never approached the respondents with the copy of the fresh certificate for updating his Educational Qualification as Matriculate in the Service Book, and even

the dates of birth indicated in the two Certificates were different, as in the latest certificate produced at Annexure MA-1 to the MA, the date of birth appears to be 02.05.1963, which was not the same in the earlier certificate. It was submitted that it is not at all clear as to how and when the applicant had appeared at the examination of the Board of Secondary Education, Madhya Pradesh, Bhopal. It was submitted that even after the latest Matriculation Certificate now produced by the applicant, the said ambiguity in the date of birth still exists, and has been further accentuated, due to mismatch in the two certificates, and, therefore, it will not be administratively feasible to reckon the fresh certificate for review of an earlier decision.

17. It was further submitted that the copy of the office order dated 27.05.2014 annexed as Annexure MA-2 produced with the said MA did not reflect the availability of vacancies of LDCs in CCAS Cadre, since, consequent upon the integration of PAO, Central Reserve Police Force (CRPF, in short), MHA with DAO, MHA, the PAO CRPF was an integral unit of DAO, MHA, and the documents as produced by the applicant pertain to those CRPF personnel who were posted and attached and working on the strength of PAOs of BSF and CRPF as on 24.09.2009, and were inducted into CCAS Cadre by a proper process of encadrement. It was further submitted that the applicant had not been repatriated till that date, even though his parent organization SSB had requested that he may be repatriated immediately to avoid any inconvenience, and it was submitted that an MA has already been filed by the respondents for vacation of the stay, as there was no proposal to consider absorption of

LDCs into the CCAS Cadre at this juncture. It was, therefore, reiterated that the OA be dismissed, being devoid of any merits, with cost against the applicant, in favour of the respondents.

18. The applicant filed rejoinder to this (respondents') MA on 21.04.2015, denying that the date of birth has any relevance to the right of the applicant to be considered for absorption, and reiterating the averments made in his O.A. and MA.

19. As mentioned above, when the notice was finally served on private respondent R-5, he had filed his counter reply on 01.12.2015, submitting that while he (private respondent R-5) was rightly considered for absorption against the post of LDC, which he was occupying as a deputationist, the official respondents have already submitted that the case of the applicant too will be considered for absorption against the post occupied by him as deputationist, and that there was no conflict in between the applicant and him (private respondent R-5) in so far as absorption was concerned, and that he does not and cannot object to the applicant's request for similar absorption, except that the applicant cannot seek relief for consideration of his case for absorption against the same vacancy against which his case (the case of private respondent R-5) had been considered. It was submitted that since there was no quota or percentage prescribed in the RRs for such absorption, there can be no situation in which the applicant and private respondent R-5 must compete with each other, and that both cases have to be dealt with by the official respondents independently.

20. It was, however, submitted by the private respondent R-5 that OA suffers from non-joinder of necessary parties, as the CCAS LDC Group 'C' post RRs, 2010 were framed by the Controller General of Accounts, Ministry of Finance, Department of Expenditure, which is the Controlling Authority for the cadre of LDCs & PAOs of MHA, who had not been made a party by the applicant directly, or through the Principal Chief Controller of Accounts. It was submitted that, instead, the applicant has impleaded two Senior Accounts Officers as Respondents R-3 & R-4, who actually have no power to consider applicant's case for absorption, and, therefore, it was submitted that the OA is liable to be dismissed in so far as it may affect the rights and interests of private respondent R-5.

21. The applicant filed a rejoinder to this counter reply on 04.03.2016, and submitted that the private respondent R-5 has admitted that he has no objection to the consideration of the case of the applicant for absorption, and denying that the Rule can be relaxed for the purpose of absorption of only one person, who was also junior to the applicant, it was reiterated that the applicant is entitled to be considered for absorption, along with the private respondent R-5.

22. Heard. During the course of hearing, learned counsel for the applicant filed copies of DoP&T OM dated 03.10.1989 regarding the procedure to be followed in cases where appointment has to be made by transfer on deputation. On the other hand, learned counsel for respondents produced three documents, first of which was a letter dated

10.12.2014 written by Dy. Inspector General (Pers.) of SSB to the Chief Controller of Accounts, who is not a party respondent before us in this OA, asking for the applicant to be repatriated immediately to his parent cadre, failing which his office would be constrained to initiate departmental action against the applicant for overstaying on deputation.

23. Secondly, he filed a copy of the judgment of the Hon'ble Allahabad High Court in Service Bench case No.490/2000 dated 20.03.2012 **Smt. Shyama Dubey vs. Navodaya Vidyalaya Samiti, Ministry of Human Resource Development**, in which the Hon'ble Allahabad High Court had noticed the judgments of the Hon'ble Supreme Court in the case of **Ratilal B. Soni and Others vs. State of Gujrat, 1990 (supp.) SCC 243**, and in the case of **Rameshwar Prasad vs. Managing Director, U.P. Rajkiya Nirman Nigam Ltd., 1999 (8) SCC 381**. In the latter judgment, it was held that an employee who was on deputation has no right to be absorbed in the service where he is working on deputation. The Hon'ble Allahabad High Court had also noticed the case of **Kunal Nanda vs. Union of India (2000) 5 SCC 362**, in which also it was held by the Hon'ble Supreme Court that a deputationist cannot assert and succeed in his claim for permanent absorption in the department where he works on deputation, unless his claim is based upon a statutory rule, regulation or order, having the force of law, and, therefore, a deputationist can always be repatriated to his parent department, at the instance either of the borrowing department, or of the parent department, and that there is no vested right in such a person to continue for long on deputation, and to get absorbed in the borrowing

department. The Hon'ble Allahabad High Court had then gone on to hold as follows:-

“We may point out that the deputation is like transfer of an employee from one government department to another to meet the exigencies of public service and a person being deputationist has no right to continue or claim absorption unless his/her permanent absorption is covered by statutory provisions. As averred above, repatriation amounts to transfer and the court generally avoids to interference in such matters unless there is violation of law or allegations of malafides has been made in the writ petition”.

24. Thirdly, learned counsel for the respondents had filed a copy of the Hon'ble Delhi High Court's judgment dated 05.09.2013 in W.P. (C) No.936/2005 **Anil Kumar Jain vs. Union of India**, and had, in particular, pointed out the Paragraphs 2 & 15. Para-2 is a recording of facts of that case, and Para-15 includes the comments of this Tribunal in the petitioner's case, in which it was recorded as follows:-

“2. The claim of the petitioner before the Tribunal was for quashing the order dated December 18, 2002, as also another order of the same date December 18, 2002, whereby he has been repatriated to his parent department i.e. Ministry of Commerce and Industry, Department of Commerce (Supply Division), New Delhi. His prayer also included that a declaration be given by the Tribunal that he should be deemed to have been absorbed in Indian Railways with effect from March 20, 1995 and necessary orders in this regard be issued by the Indian Railways.

3 to 14 xxxxxxxxxxxxxxxx(*Not reproduced here*)

15. That apart, a deputationist has no right to seek absorption. In this regard after referring to the judgments of the Supreme Court the Tribunal has held as under:

“18. Reference to the decision rendered by the Supreme Court in the case of RAMESHWAR PRASAD v. U.P.RAJKIYA NIRMAN NIGAM LTD., 1999 (2) SCSLJ 495 would be inappropriate because therein, the Supreme Court was concerned with the relevant rules of the Nigam but had still held that there was no permanent right of absorption to the deputationist. No such rules have been noticed in the present case and, therefore, the said decision is distinguishable.

19. The position in law is well settled and we refer with advantage to the decision of the Supreme Court in the case of RATILAL B. SONI AND OTHERS v. STATE OF GUJARAT AND OTHERS, AIR 1990 SC 1132 wherein the Supreme Court held that when a person is on deputation, he could be reverted to his parent cadre at the relevant time. He does not get any right to be absorbed on deputation post.

20. Same view had been expressed by the Supreme Court in the case of UNION OF INDIA v. S.N.PANIKAR, (2001) 10 SCC 520 and it was reiterated in the case of MUNI SINGH AND ANOTHER v. STATE OF BIHAR, (2002) 9 SCC 485. The Supreme Court reiterated the earlier view that there is no enforceable right for being permanently absorbed. It was held:

“1. Having considered the rival submissions and also the relevant provisions of the Rules, we do not see any enforceable right with the petitioners for being permanently absorbed though we see suffcontention of Dr. Dhavan that the appropriate Government would be well advised to consider the retention of these petitioners permanently in the Bureau having regard to the case that they have already rendered services from 1991 till 1999, and that the Rules themselves contemplate to man the post on transfer.”

21. It is true that there has been a correspondence between the Ministries but no formal order absorbing the applicant till date has been passed. Merely because one of the Ministry was willing at one time, does not give an enforceable right to the applicant till such time a final order is passed.

22. Other wise also, reverting back to the correspondence to which we have referred to above, it is obvious that it was only that the name of the applicant was being considered. No final order has been passed.

23. We know from the decision of the Supreme Court in the case of BACHHITTAR SINGH v. STATE OF PUNJAB AND ANOTHER, AIR 1963 SC 395 wherein it was held that before something amounts to an order of the State Government, two functions are necessary. The Constitution requires that action must be taken by the authority concerned and the order should be passed and communicated to the person who would be affected by that order before the State and that person can be bound by that order. No order absorbing the applicant has been passed. Therefore, he remained as deputationist without having a right to claim that he must be absorbed.”

25. Thereafter, the Hon'ble Delhi High Court had arrived at its own conclusions in Para-21 to 24 as follows:-

"21. We note that in Civil Appeal Nos.368-369/2009 Union of India & Ors. v. S.A.Khalliq Pasha & Anr., decided on January 13, 2009, the Supreme Court has held as under:-

"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."

22. The Tribunal having considered all the aspects of the case dismissed the Original Application. We find no infirmity in the impugned order.

23. The writ petition is accordingly dismissed.

24. No costs."

(Emphasis supplied)

26. We have given our anxious consideration to the facts of this case, and are appalled at the temerity of the applicant to have filed false and fictitious documents at various stages. The respondents had, along with their counter reply, produced a photocopy of the Marks Sheet Certificate Sl. No.162 purporting to have been issued by the Madhyamik Shiksha Mandal, Madhya Pradesh, Bhopal, in respect of the year 1985, printed in Hindi numerals, which year had been struck out, and in which the name of the applicant had been shown, and his date of birth had been shown as 02.05.1967, and it had been shown that the examinee had obtained 148 marks out of total 500 marks (Page-69 of the paper book of the OA).

27. Later on, with his MA No. 388/2015, which was never disposed of, and which we are disposing of today along with the OA, it is seen that he had filed as Annexure MA-1 along with that MA a similar looking Marks Sheet Certificate from Book No.73, with serial no.7211, in respect of High School Certificate Examination of 1984, in which the date of birth had been shown to be 02.05.1963, and it had been shown that the examinee therein had obtained 148 marks, with the total marks having been printed as 450 in that Mark Sheet filed along with MA, while the total marks in the Marks-Sheet Certificate affixed in the Service Book, without any authorization, and photocopies of which were produced by the applicant, showed the total marks to be 500.

28. We are perplexed that if the applicant had taken the concerned examination in the year 1984, how could he have obtained his Mark Sheet printed on the Mark Sheet Form printed in the year 1985, in which the total marks were 500, and the year had been scored off, and getting

it affixed in his Service Book without any authorization, and, suddenly, many years thereafter, he has now produced a neat and clean Marks Sheet, purportedly issued by the same Board for the Examination of 1984, in which he had obtained 148 marks, while the total marks were mentioned as 450.

29. It is clear from the Marks Sheet at page 69 of the paper book of the OA, and affixed in the Service Book that that Marks Sheet was written and issued on 18.01.1996. But the new Marks Sheet, which the applicant had produced along with his MA as Annexure MA-1, does not even show the date when it had been issued. The signatures are also different in the two Marks Sheets, just like the total marks, out of which the examinee is supposed to have obtained 148 marks.

30. One more thing which is perplexing is that if the applicant had already passed the High School Examination in the year 1984 itself, why did not he declare High School as his Educational Qualification at the time of his appointment with the Respondent No.2-SSB on 28.11.1984 as a Fatiguelman, and at the time of his appointment with SSB as a Peon on 23.04.1985, by both of which dates certainly the Marks Sheet of 1984 examination would have been issued, and would have been in his hand.

31. Therefore, we are left with an inescapable conclusion that both the Marks Sheets bearing Book No. 73 with Sl. No.7211 (produced by the applicant himself), and Book No.162 with Sl. No.16112 (produced by the respondents along with counter reply), written on the format of the High School Certificate Examination in the year 1985, as affixed unauthorizedly in the Service Book of the applicant, and produced by the

respondents as an Annexure to the counter reply, as well as the Annexure MA-1 produced by the applicant himself along with his MA, are bogus and forged. If the applicant indeed possessed the qualification of High School, he would have taken action any time after his appointment on 27.11.1984 to get his educational qualification corrected, and could have tried to claim his qualification to be High School Pass. Thus, he has produced two forged Marks Sheets, first one showing his date of birth 02.05.1967, and when the discrepancy was pointed out by the respondents in their counter reply dated 25.09.2014, the applicant has filed another Marks Sheet showing his date of birth correctly, as entered in the Service Book, to be 02.05.1963, through filing an MA No.388/2015 on 21.01.2015.

32. It is clear from the pleadings that there being discrepancies in his service records and date of birth, the case of the applicant was rightly not considered by the respondents for absorption. Also, apart from the cited judgments of Allahabad High Court in the case of **Smt. Shyama Dubey vs. Navodaya Vidyalaya Samiti, Ministry of Human Resource Development** (supra) and of the Hon'ble Delhi High Court in **Anil Kumar Jain vs. Union of India** (supra), in the context of this very service of CCAS, to which the applicant of this OA is seeking absorption, a case filed by a deputationist from the ITBP had been decided by the same Bench of this Tribunal in OA No.3259/2015 on 28.04.2016. We may borrow the following paragraphs from that order with benefit:-

“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 to 30 xxxxxxxxxx (Not reproduced here)

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 CRPF. 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.”

33. The ratio of the order passed in the above O.A. is fully applicable to the instant case also. In the result, this OA is dismissed, but we desist from ordering filing of a case of perjury against the applicant for his having filed false/forged documents before this Tribunal. Also, there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.