

Central Administrative Tribunal  
Principal Bench  
New Delhi

O.A.No.3783/2015

Order Reserved on: 20.11.2015  
Order pronounced on 23.12.2015

Hon'ble Shri V. Ajay Kumar, Member (J)  
Hon'ble Shri Uday Kumar Varma, Member (A)

Dr. Atul Verma  
S/o Sh. Pran Nath Verma  
R/o B-28, Hyderabad Estate  
Napeaon Sea Road  
Mumbai – 400 026. ... Applicant

(By Advocate: Shri Manish Goswami for Gaurang Kanth)

Versus

1. Union of India  
Through Secretary  
Ministry of Home Affairs  
North Block  
New Delhi.
2. Union of India  
Through Secretary  
Ministry of Finance  
North Block  
New Delhi.
3. State of Himachal Pradesh  
Through its Chief Secretary  
Nisam Vihar, Shimla  
Himachal Pradesh – 171 002. .. Respondents

(By Advocate: Shri Rajeev Kumar)

**ORDER****By V. Ajay Kumar, Member (J):**

The applicant, a 1991 batch Indian Police Service Officer of Himachal Pradesh cadre, currently in the rank of Inspector General of Police applied on 18.04.2012 for the post of Director, Forward Markets Commission (FMC) through his Cadre Controlling Authority, i.e., 1<sup>st</sup> Respondent-Ministry of Home Affairs.

2. The Forward Markets Commission is the Chief Regulator of Commodity Futures Markets in India and established in the year 1953 under the provisions of Forward Contracts (Regulation) Act, 1952 (in short as FC(R) Act, 1952). It was originally under the Ministry of Consumer Affairs, Food and Public Distribution, however, in September, 2013 the same was shifted to the Administrative Control of the 2<sup>nd</sup> Respondent-Ministry of Finance.

3. The 1<sup>st</sup> Respondent, who is the Cadre Controlling Authority of the applicant, forwarded the applicant's application for deputation to FMC and on approval from the competent authority, he was appointed as Director, FMC w.e.f. 25.04.2013 for a period of three years, vide Annexure P4 dated 01.05.2013. During his tenure with FMC, in view of his outstanding performance, he was awarded with the police medal on Independence Day of 2015.

4. The Central Government vide Gazette Notification S.O. 2362(E) and S.O. 2363(E) dated 28.08.2015 have notified the merger of FMC with Securities Exchange Board of India (SEBI), and repealed the Forward Contracts (Regulation) Act, 1952 w.e.f. 29.09.2015, in exercise of the powers conferred by Section 131, 133 and 132 of Finance Act, 2015 (20 of 2015). Accordingly, the FMC ceased to exist w.e.f. 29.09.2015.

5. The FMC vide the impugned Annexure P1 dated 10.09.2015, stated that the service of the applicant with FMC shall come to an end w.e.f. 29.09.2015, i.e., the date of repeal of FC(R) Act, 1952 and accordingly he will be repatriated from his deputation with FMC and shall stand relieved from his duties in FMC in the afternoon of 28.09.2015. Consequently, the FMC vide the impugned Annexure P2 dated 24.09.2015, repatriated the applicant to his parent cadre w.e.f. 28.09.2015. Aggrieved by the same, the applicant preferred the OA, seeking the following relief(s):

- (a) "Quash and set aside the Orders dated 10.09.2015 and 24.09.2015 issued by the Foreign Markets Commission (Respondent No.2 is the administrative department for the FMC) whereby the Applicant is relieved from the service of the FMC and repatriated to his parent cadre i.e. Respondent No.3,
- (b) Direct the Respondent No.1 to decide the Applicant's representations dated 16.09.2015 and 28.09.2015 for the compulsory waiting and accommodate him in some other services of Respondent No.1 or Respondent No.2 or any other Govt. Department in accordance with clause 15 of the Tenure Policy for the IPSC Officers on Central Deputation and DOPT guidelines.
- (c) Pass any other order(s) or further orders as may be deemed fit in the interest of justice and equity."

6. The Cadre Controlling Authority of the applicant, i.e., the 1<sup>st</sup> Respondent-Ministry of Home Affairs and the 2<sup>nd</sup> Respondent-Ministry of Finance, under whose administrative control FMC was functioning filed separate counters opposing the OA prayer.

7. Heard Shri Manish Goswami for Shri Gaurang Kanth, the learned counsel for the applicant and Shri Rajeev Kumar, the learned counsel for the respondents 1 and 2, and perused the pleadings on record.

8. Shri Manish Goswami, the learned counsel appearing for the applicant, submits the following in support of the relief(s) prayed in the OA:

- a) The applicant was selected for deputation for a period of three years and as per the Consolidated Deputation Guidelines for All India Service Officers, the applicant is entitled for a deputation period of five years, since he is in the rank of Inspector General. Due to the merger of FMC with SEBI, the applicant could avail only two years five months of deputation period.
- b) As per Clause 15 of the Tenure Policy for IPS Officers on central deputation, dated 30.03.2010 (Annexure P5), since the post of Director, FMC, wherein the applicant was working on his central deputation, was abolished, along with FMC, on its merger with SEBI, the applicant shall continue to be born on the strength of the 1<sup>st</sup> Respondent-MHA, and his pay and

- allowances shall be met by it till such time he assumes charge of a new post. His services, during the period of his compulsory wait, shall be utilized by the MHA for any specific assignment. His name for posting shall be circulated by MHA among CPMFs/CPOs depending on the vacancies available.
- c) As per Clause 20 of Annexure P5 dated 30.03.2010, any relaxation or deviation from the policy in respect of cases of officers of the level of IG and above, the prior approval of ACC is required, however, without any such prior approval of ACC, the impugned orders are passed.
- d) As per Clause 9 of the Office Memorandum dated 17.06.2010 of the DoP&T, i.e., the terms and conditions of transfer on deputation/foreign service of Central Government employees, in case of premature reversion of deputationist to parent cadre, his services could be so returned after giving an advance notice of at least three months to the lending Ministry/Department and the employee concerned. No such advance notice was given to the applicant before his premature repatriation.
- e) The applicant in the month of August, 2015 applied for the post of Chief Vigilance Officer in PSUs as circulated by the DoP&T, and the FMC vide letter dated 05.08.2015, forwarded the said application to the applicant's Cadre Controlling

- Authority, i.e., Respondent No.1-MHA and in turn, it had forwarded the same vide letter dated 02.09.2015 to the applicant's parent cadre for their concurrence/NOC. After filing of the OA, the parent cadre of the applicant conveyed its concurrence/NOC for the post of Chief Vigilance Officer in CPSOs vide letter dated 05.11.2015 (copy of the same supplied at the time of hearing).
- f) The parent cadre of the applicant vide Annexure P8 dated 09.09.2015 issued a No Objection in favour of the applicant for the post of Additional Director in Wild Life Crime Control Bureau, Ministry of Environment and Forest Climate Change, New Delhi. However, since by that time, the said post was already filled up, the applicant could not join in the said post. It means the parent cadre of the applicant does not require the services of the applicant at this point of time. Accordingly, the applicant, vide Annexures P9 and P10, requested the respondents to kept him under compulsory wait, so that his applications for a suitable post are materialized in the meanwhile.
- g) Since the applicant joined FMC on deputation for a period of three years, which can further be extended for two more years, he shifted his family and his children are in the middle of their academic year and if he is shifted from the present place, their education will be severely affected.

h) The DoP&T OM dated 12.06.2013 issued amendments in the policy relating to reversion of officers belonging to All India Service as well as Central Services on premature cessation of their tenure as Private Secretary/Officer-on-Special Duty to Ministers to the effect that officers of all the three All India Services as well as Central Services who are appointed as PS/OSD from the "Offer list" may be allowed to complete their normal period of Central Deputation if their term as PS/OSD ends for whatever reason before the completion of such term. Since the applicant also belongs to an All India Service, the same is applicable to him also and hence he should be allowed to complete his normal period of central deputation, i.e., till completion of five years.

i) The learned counsel placed reliance on the following decisions:

a) **Union of India & Anr. versus V. Ramakrishnan and Others**, (2005) 8 SCC 394.

b) OA No.387/2010 (**Sushovan Banarjee v. Union of India & Others**) dated 08.09.2010 of the Bombay Bench of the Central Administrative Tribunal.

9. Shri Rajeev Kumar, the learned counsel appearing for both the respondents 1 and 2, while drawing attention to the various averments made and the documents enclosed to the respective counters, vehemently opposed the OA.

10. The learned counsel submits that the premature repatriation of the applicant from the service of FMC is due to the merger of FMC with SEBI in pursuance of the repeal of FC(R) Act, 1952 w.e.f. 29.09.2015 vide the Gazette Notification S.O. 2362(E) and S.O. 2363(E) dated 28.08.2015, a circumstance which is unforeseen and inevitable in view of the policy decision of the Government. Hence, the applicant cannot seek continuation of his deputation with the FMC, on any ground, as the same ceased to be in operation.

11. The learned counsel further submits that the applicant was appointed as Director, FMC for a period of three years or till further orders, whichever is earlier from the date of assumption of charge of the post. Hence, the applicant cannot have an objection even if he is repatriated prematurely before the period of three years, for any valid reason, such as abolition of FMC itself.

12. With regard to the application of Clause 15 of the Annexure P5 OM dated 30.03.2010, i.e., the Tenure Policy of IPS Officers on central deputation, and as regards to the contention of the applicant that Respondent ought to have put him on "compulsory wait", it is submitted that at present no vacancy is likely to occur at the level of IG under the Administrative control of Ministry of Home Affairs (Respondent No.1) for considering the request of applicant for appointment in CAPF etc. Further at present 32 IPS officers are already "on offer" for Central deputation. Further it is stated that the appointment for the posts of Chief Vigilance Officers in Central Public

Sector Enterprises (CPSE) is made by DoP&T by their own procedure/availability of vacancies. Respondent No.1 forwards the nominations (prescribed format) of IPS officers to DoP&T for the post of CVO. However, forwarding of nomination to DoP&T will not confer any right on an officer for appointment as CVO. Further it is stated that Para 16.1 (Annexure II) of IPS Tenure Policy, stipulates that the deputation tenure as prescribed in the preceding paragraphs will not confer any right on an officer to remain on Central deputation. The Central Government reserves the right to revert any officer to his/her State cadre at any time without assigning any reason.

13. The learned counsel submits that the decisions cited by the applicant's counsel have no application to the facts of the present case. Similarly, the learned counsel further submits that the OM dated 12.06.2013 also has no application to the applicant as the same was pertaining to those All India Service Officers, who are appointed as Private Secretaries/Officer on Special Duty to the Ministers only.

14. The 1<sup>st</sup> Respondent in their reply affidavit while not denying the eligibility and entitlement of the applicant for appointment to the post of Chief Vigilance Officer in any of the CPSEs, stated that the same would be considered and forwarded to DoP&T on receipt of mandatory concurrence of the parent cadre, which is awaited, and they cannot keep the applicant on compulsory wait for unidentified period. However, in view of the concurrence/NOC now issued, by the 3<sup>rd</sup> Respondent vide letter dated 05.011.2015 (a copy of the same is

produced at the time of hearing), the learned counsel for the respondents 1 and 2 stated that the same would be processed as per rules.

15. In the backdrop of the aforesaid rival contentions, it is necessary to examine the relevant clauses of the OM dated 30.03.2010 (Annexure P5), i.e., the Tenure Policy for IPS Officers on Central Deputation.

**Clause 2.1:**

“Rule 6(1) of the IPS (Cadre) Rules, 1954 provides for deputation of IPS officers to the Central Government or another State Government or to a company association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government.”

**Clause 15:**

**“Compulsory Waiting**

15.1 When an officer is to be appointed to a post different from the one held previously on account of return from training, or abolition of post, etc., he/she shall continue to be borne on the strength of the organization in which he/she previously held the post and his/her pay and allowances shall be met by that organization, till such time he/she assumes charge of a new post. The services of such officer during the period of his/her compulsory wait can be utilized by the MHA or by the organization concerned with the approval of the MHA for any specific assignment.

15.2 The names of officers on compulsory wait for posting shall be circulated by MHA among CPMFs/CPOs depending on the vacancies available and, in case an officer is not selected against a post within a period of three months, his/her posting to any particular organization will be made by MHA on a mandatory basis.”

16. Similarly, the relevant terms and conditions for transfer on deputation of Central Government employees (OM dated 17.06.2010) read as under:

**“9. Premature reversion of deputationist to parent cadre:**

Normally, when an employee is appointed on deputation/foreign service, his services are placed at the

disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving an advance notice of at least three months to the lending Ministry/Department and the employee concerned.

**10. Relaxation of conditions:**

Any relaxation of these terms and conditions will require the prior concurrence of the Department of Personnel & Training.”

17. Though the repeal of the FC(R) Act, 1952, and the merger of the FMC with SEBI, was a policy decision of the Government and cannot be found fault with by anybody, which is the sole reason for the premature repatriation of the applicant, but the same was not happened in a single day. Nothing prevents the respondents from following the various terms/guidelines/instructions such as giving an advance notice of at least three months or placing the applicant in compulsory wait till he gets a posting among any CPMFs/CPOs/CPSEs. A fortiori, when the reason for premature repatriation of the applicant, is the merger of FMC itself, and that the applicant's applications for appointment in CPSEs or in other entitled organizations/authorities, are pending.

18. In **V. Ramakrishnan** (supra) the 1<sup>st</sup> Respondent was appointed on deputation as Chief Engineer of the Public Works Department, Govt. of Pondichery on short term deputation/temporary basis, pending selection of the regular incumbent by the UPSC w.e.f. 01.07.2004. One R. Sunder Raju, who was working as Superintendent Engineer, is promoted as Chief Engineer and as a result the 1<sup>st</sup> Respondent was repatriated to his parent department on 14.02.2005 and relieved of his

duties, on the same day. Though the facts are different, the learned counsel relied on this Judgement only to the limited extent to show that despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed on such just grounds as, for example, unsuitability or unsatisfactory performance, and even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide and post haste a manner.

19. In **Sushovan Banarjee** (supra), when the deputation of the applicant was abruptly curtailed due to the disliking of the Chair Person, of the Children's Film Society of India, wherein the applicant therein was appointed as Chief Executive Officer on deputation, a Coordinate Bench of this Tribunal having found that the reasons mentioned for the impugned action were not valid, quashed the impugned premature repatriation orders therein.

20. The other aspect of the issue is that once a merger of two organizations takes place, all the obligations to the employees and others of the organization which was merged, have to be honoured by the organization in which it was merged, except where a specific condition to the contrary is provided in the merger terms. It is not forthcoming from the pleadings of either of the parties with regard to the merger terms. However, it will be in order to infer that the natural and likely consequence of a merger is that the new entity after merger retains the staff and respects the commitments vis-à-vis the staff of

the merged entity. It is not the case of the respondents that the repatriation of the applicant is in accordance with the terms of merger. In absence of this, any repatriation must be deemed to be a premature repatriation and therefore, must then necessarily follow the procedure for this purpose, namely issuance of a notice and an opportunity to the deputationist to state his case before taking a decision. The impugned order, thus, in our view suffer from this serious infirmity.

21. Further, as rightly contended by the learned counsel for the applicant that the merger of FMC with SEBI was not taken in a single day, the respondent could as well put the applicant on advance notice of three months as provided under the Rules mentioned above.

22. After going through the submissions and documents on record and after hearing the rival counsels, we have come to this clear conclusion that this abrupt end to the deputation posting of the applicant with FMC without giving any advance notice to him is not in consonance with the established principles of natural justice, more so because this pre mature termination has taken place on account of no fault of the applicant. There is nothing on record and there is no submission to the effect by the respondents that the work performance or the conduct of the applicant during the period spent so far in FMC was unsatisfactory or inadequate in any way. It is also evident that this premature repatriation has put the family of the applicant and particularly his children to considerable hardship and mental agony as

their education careers have been unexpectedly interrupted. Therefore, in all fairness the applicant is entitled to remain on deputation till atleast the completion of original tenure of deputation i.e. till 24.04.2016.

23. We are inclined to accept the analogy and parity of the present case with that of Private Secretaries/Officers on Special Duty dealt with in the DoPT circular dated 12.06.2013. The most important commonality between the two is the fact that the cessation of their tenures does not happen because of any fault on their part. The provisions of this DoPT order are applicable to All India Service Officers and the applicant being one, his case needs to be viewed and decided in the light of the same considerations and compulsions.

24. In view of the above discussion, we are of the view that the OA deserves to be allowed. The impugned orders P1 and P2 are therefore quashed. Our further directions are as follows:-

- a) As a consequence of quashing of P1 and P2, the applicant shall continue to be borne on the strength of FMC(now SEBI) and shall continue to get his salary and allowances from FMC(now SEBI) till he assumes charge of a new post or till the conclusion of his original tenure of deputation i.e. three years, whichever comes earlier. This amounts to being on compulsory wait in terms of clause 15 of the Tenure Policy for IPS Officers on Central deputation.

b) During the remaining tenure of the applicant with FMC (now SEBI), the Respondent No 1 i.e. the Ministry of Home Affairs as cadre controlling authority shall expeditiously take all necessary steps to accommodate the applicant in any other organisation in Mumbai till his originally stipulated tenure of deputation comes to an end. This will also include facilitating consideration of his appointment as CVO in any of the PSUs.

The OA is thus allowed. No costs.

(Uday Kumar Varma)  
Member (A)

(V. Ajay Kumar)  
Member (J)

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