

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00516/2018

Chandigarh, this the 1st day of May, 2018

...
**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

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Dr. Parminder Singh Bhatti S/o Sh. Naranjan Singh, aged 59 years, working as Medical Officer, Health, Municipal Corporation, U.T. Chndigarh.

.....Applicant

(Argued by: Mr. K.B. Sharma, Advocate)

Versus

1. Chandigarh Administration, Chandigarh through its Secretary, Local Govt. Chandigarh, U.T. Chandigarh, Sector 9, Chandigarh.
2. The Administrator, U.T. Chandigarh, Sector 6, Chandigarh.
3. The Advisor to Administrator, U.T. Chandigarh.
4. Commissioner, Municipal Corporation, U.T. Chandigarh, Sector 17, Chandigarh.
5. Sh. Rajesh Kalia, Councillor, Municipal Corporation, U.T. Chandigarh.

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Respondents

ORDER (Oral)

JUSTICE M.S. SULLAR, MEMBER (J)

1. The challenge in the instant Original application (O.A.), filed by applicant Dr. Parminder Singh Bhatti, Medical Officer, is to the impugned order dated 26.04.2018 (Annexure A-6), whereby the Administrator U.T. Chandigarh has repatriated him to his parent State of Punjab.

2. The matrix of the facts and material which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the present O.A., and exposted from the record, is that the applicant is a Member of Punjab Civil Medical Services. He was

stated to have been promoted on 20.08.2015 as Senior Medical Officer. He was sent on deputation to U.T. Administration, vide letter dated 30.09.2013 (Annexure A-1), for a period of one year. Thereafter, the Administrator, UT Chandigarh has extended the term of his deputation, for a further period of one year from 01.02.2017 to 31.01.2018, or till the new officer takes over, vide order dated 06.02.2016 (Annexure A-2).

3. After completion of his extended period of deputation on 31.01.2018, the applicant was repatriated to his parent state of Punjab, vide impugned order dated 26.04.2018 (Annexure A-6), by the U.T. Administrator.

4. Aggrieved thereby, the applicant has preferred the instant O.A. challenging the validity of the impugned order (Annexure A-6), on the following grounds:-

“ (a) That no doubt deputation cannot be claimed as a matter of right but once the competent authority extended the period of deputation for one year or till a new officer take over the one usual basis, therefore, the action of the respondents repatriating the applicant is illegal and arbitrary as till date no new officer has take over charge.

(b) That the action of the respondents acting upon the agenda which was passed by the respondents without associating the application is not only illegal and arbitrary but also against the principle of natural justice.

(c) That from the perusal of the minutes of meeting it is evident that the some members have stated that before decision, the applicant must be given opportunity of hearing but without granting any opportunity of hearing the respondents decided to repatriate the applicant to his parent department. The aforesaid action of the respondents is illegal and arbitrary.

(d) That the orders for repatriation to parent department are to be passed by the respondent no.3 with the approval of the respondent no.2.

(e) That, had the applicant not performed his duties diligently and honestly, the applicant would not have been granted the extension in service twice and not granted extension of deputation etc.

(f) That , of the reasons that the applicant did not oblige Sh. Rajesh Kumar, councilor and he refused to re-employ two drivers on the ground that he is not competent authority to re-employ the same, the applicant has been made scapegoat and ordered to be repatriated.

- (g) That the action of the respondents acting upon the extreme political pressure and repatriating the applicant at the fag end of his retirement is illegal and arbitrary.
- (h) That in the case of Union of India Vs. V. Ramakrishnan & Ors, 2005 (8) SCC 394, the Hon'ble Apex Court held that where there is any malafide, the repatriation of the employee can be questioned. In the instant case the order of repatriation has been passed by on the basis of political pressure and same smells arbitrariness. The orders have been passed by the respondents in exercising the colorable powers and in extraneous consideration.
- (i) That the impugned orders has been passed on the back of the applicant and the same is liable to set aside."

On the basis of the aforesaid grounds, the applicant seeks to quash the impugned order, in the manner, indicated hereinabove, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

5. Having heard learned counsel for the applicant, having gone through the record, with his valuable assistance, and after considering the entire matter, we are of the firm view that there is no merit, and the present O.A. deserves to be dismissed, for the reasons mentioned herein below.

6. Ex-facie the main arguments of learned counsel that the period of deputation of the applicant was extended till 31.01.2018 or the arrival of a new incumbent, and since he was repatriated with malafide intention, at the instant of Respondent No.5, so the impugned order is arbitrary and illegal, are neither tenable nor the observations of the Hon'ble Apex Court in the case of **Union of India Vs. V. Ramakrishnan & Others**, 2005 (8) SCC 394, wherein it was observed that the order of repatriation of an employee can be questioned if it was passed with malafide intention, by the authorities.

7. There can hardly be any dispute in this regard, but the same will not come to the rescue of the applicant in the instant case, as he has miserably failed to plead and substantiate the specific allegations of malafide against Respondent No. 5. It is not well settled principle of law that malafide is very easy to allege, but difficult to prove as the onus to prove malafide lies on the person, who alleges it.

8. Likewise, the Hon'ble Apex Court in the case **State of Punjab & Another Vs. Gurdial Singh & Others** (1980) 2 SCC 471 has ruled as under:-

"9. The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat..... that all power is a trust- that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or impels the action mala fides on fraud on power vitiates the acquisition or other official act."

9. The same view was reiterated by this Tribunal in **T.M. Sampath Vs. Union of India**, [OA No. 188/2012 decided on 30.08.2013] and **Naresh Wadhwa Vs. Union of India** [OA No. 810/2013 decided on 29.10.2013], wherein it was held that the malice has to be proved beyond any reasonable doubt, which is totally lacking in the present case. Therefore, the bald allegation, that the repatriation order was passed, at the instance of Rajesh Kalia, Councilor, Municipal Corporation, UT Chandigarh (Respondent No. 5), is not at all sufficient, which remained unsubstantiated. Indeed, the impugned order was passed, by the Administrator, UT Chandigarh, and not by Respondent No. 5.

10. Sequel, the mere fact that the deputation period of the applicant was extended till 31.01.2018 or till the arrival of a new incumbent, *ipso facto*, is not a ground, much less cogent, to retain him and will not come to his rescue in any manner. The moment, the extended deputation period came to an end on 31.01.2018, then the competent authority has every legal right, to repatriate him, who was working on deputation.

11. What cannot possibly be disputed here is that it is now a well settled principle of law that a deputationist has no legal right for extension after expiry of his period of extended tenure. A deputationist cannot assert and succeed in this regard on his wishful thinking and on speculative grounds. The basic principles underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his sustentative position therein, at the instance of either of the parent or borrowing department. There is no vested right for

such a person to continue for long deputation. This matter is no more *res integra* and is now well settled.

12. An identical question came to be decided by Hon'ble Apex Court in the case of **State of Punjab and Others Vs. Inder Singh and Ors** – JT 1997 (8) SC 466. Having considered the rights of the deputationist and other judgments in the cases of **Ratilal B. Soni and Ors Vs. State of Gujrat and Ors**. 1990 AIR 1132, and **Puranjit Singh Vs. Union Territory of Chandigarh and Ors** (1994) Supp. 3 SCC 471, wherein it was ruled that a deputationist could be reverted to his parent cadre at any time and he has got no right for extension. It was further held as under:-

“19. Concept of “deputation” is well understood in service law and has a recognized meaning. ‘Deputation’ has a different connotation in service law and the dictionary meaning of the word ‘deputation’ is of no help. In simple words ‘deputation’ means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules. Whether the transfer is outside the normal field of deployment or not, is decided by the authority, who controls the service or post, from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head constables as the case may be.”

The same view was reiterated by Hon'ble High Court of Delhi in the case of **Shyam Singh, net Ram Chourasiya Vs. Union of India and Ors**, 128 (2206) DLT 346.

13. Meaning thereby that the applicant has neither legal nor vested right for extension of his tenure on deputation beyond 31.01.2018, in the obtaining circumstances of the case. The

contrary arguments of learned counsel for the applicant 'stricto sensu' deserve to be and are hereby repelled, under the present set of circumstances. As such, the ratio of law laid down in the aforesaid judgments is *mutatis mutandis* applicable in the instant controversy, and is the complete answer to the problem in hand.

14. No other point, worth consideration, has either been urged or pressed by the learned counsel for the applicant.

15. In the light of the aforesaid prismatic reasons, as there is no merit, so the instant O.A. is hereby dismissed as such, with no order as to costs.

(P. GOPINATH)
MEMBER (A)

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(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 01.05.2018

