

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/00556/2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

AJAY KUMAR RAI

VS

UNION OF INDIA & ORS.

For the applicant : Mr.A.Chakraborty, counsel
Ms.P.Mondal, counsel

For the respondents : Mr.S.Banerjee, counsel (for RVNL)
Mr. B.L.Gangopadhyay, counsel
Mr.M.K.Bandyopadhyay, counsel (for S.E.Rly.)

Order on : 1.6.16.

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice with the consent of both sides.

2. Ld. Counsels for the parties were heard and materials on record were perused.

3. The admitted facts that could be discerned from the pleadings of the parties are as under :

The applicant, a Diploma holder Civil Engineer on being selected through a process of selection joined a Railway service as Jr. Estimator under CAO/Con/Bilaspur. Thereafter he was selected as Jr. Engineer (Works) and posted at Ranchi Division and was promoted as Sr. Section Engineer (Works). While serving as such the applicant applied against a notification issued by RVNL inviting applications from Railway employees for the post of AEN. He was selected by RVNL. With the approval of the DRM, Ranchi he was released to join the deputation post at RVNL which he joined on 2.7.12 for a period of 3 years, as per Railway Rules. On 28.1.15 i.e. almost six months prior to date of completion of 3 years of deputation period, the Joint General Manager, HR, RVNL requested the General Manager, S.E. Railway, Garden Reach for a "No

objection" of S.E. Railway for his continued deputation for two more years i.e. 4th & 5th years upto 2.7.2017, to be communicated to RVNL at the earliest, because on the ground that he was associated with the project for a long time and therefore for commissioning of the project his further association with the project was found necessary and as the applicant had already expressed his willingness for such continuation.

Since "no objection" was not furnished, on 22.6.15 the Additional General Manager, HR, RVNL, once again requested the General Manager, S.E. Railway for such "No objection". On 23.6.15 (Annexure R/1) the Sr. Personnel Officer (Engg) for CPO, S.E. Railway, communicated to the Joint General Manager, RVNL that extension of term beyond three years of deputation was not agreed to by the competent authority as the deputation itself was irregular and desired that he should be called back immediately from RVNL.

However, on 20.7.15, in supersession of such letter dated 23.6.15 the same authority communicated the approval of the competent authority for extension of deputation period of two more years of the applicant as Assistant Manager (Civil) in RVNL, up to 2.7.17.

On 8.1.16 the applicant was sent for training of RVNL engineer for advancement in Concrete Technology. Despite such approval for extension, curtailing the extended term, on 10.2.16 the Sr. Manager, HR, RVNL issued relieving letter as follows :

"As desired by South Eastern Railway, Shri Ajay Kumar Rai, ex-Sr. Section Engineer (Works), Ranchi Division, South Eastern Railway, currently working as Asstt. Manager (Projects) in RVNL's Project Implementation Unit at Kolkata, on deputation should be relieved of his duties in RVNL with immediate effect, with directions to report to the Divisional Railway Manager (P), Ranchi Division, Ranchi for further posting. The date of assumption of duty in the cadre by Shri Ajay Kumar Rai may be advised for issue of LPC by the Unit."

On 27.2.16 the applicant requested the Dy. General Manager (P) for grant of sick leave. On 29.2.16 he was relieved from duties of RVNL to report to Divisional Railway Manager (P), Ranchi Division, S.E. Railway, Ranchi for further posting. In this OA the applicant has therefore assailed the letters dated 10.2.16 and 29.2.16 supra. On 1.2.16 the PCE called the applicant back due to shortage of staff, that was acted upon on 10.2.16.

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4. In this OA the applicant has sought for quashing of the order dated 10.2.16, relieving order dated 29.2.16 and a direction to allow him to continue in RVNL till 2.7.17.

5. Ld. Counsel for the respondents had vociferously objected to the claim. He advanced the following arguments -

i) The initial sparing of the applicant for deputation was defective in as much as it was done without the approval of the Principal HOD of the department.

ii) His extension was not agreed to as communicated to him on 23.6.15 but due to repeated request of the applicant one of the HODs allowed such extension of two years without the approval of the Principal HOD of Engineering Department. Subsequently while reviewing the work progress of Ranchi Division the PHOD decided to call him back since his extension was not in proper manner and Ranchi Division was facing acute shortage of staff.

iii) As circulated by the Railway Board vide Est. Srl. No. 132/10, RBE 106/10 any deputationist could be called back as and when situation demands by giving notice of three months to the lending department and to the employee. Such notice was issued to RVNL who had no objection to release the applicant.

6. At this juncture Id. Counsel for the applicant would join issue to submit that in terms of RBE 106/10 a notice to the employee who had to be called back prematurely, was mandatory. Failure to give such notice amounted to violation of such mandatory provisions rendering the consequential order a nullity in the eye of law, in view of the fact that when law requires mandatory notice for effecting an action, absence of such notice renders the action a nullity as in the case of retrenched employees under I.D. Act who are entitled to notice in terms of Section 25(F) of the I.D. Act.

7. Ld. Counsel for the applicant also cited the decision of Hon'ble Apex Court in **UOI -vs- S.N.Maity, Civil Appeal No. 5983/07** rendered on 6.1.15 and **Ashok Kumar Ratilal Patel -vs- UOI rendered by Hon'ble Apex Court**

in Civil Appeal No. 5225/12 which was followed in *S.N. Maity* supra. In *Ashok Kumar Ratilal Patel* the applicant had applied for "appointment" for the post of Director on deputation. The terms and conditions of his deputation was that the period of deputation would be for a period of one year extendable to maximum of three years on yearly basis with pay and scale of pay as Director in PB-4 with Grade Pay Rs.8700/- but with an option to the deputationist either to get his pay fixed in the deputation post under the operation of normal rules or to go to the pay of the parent post + deputation (duty) allowance in accordance with and subject to the conditions as modified from time to time and other general or special order issued by the Ministry of Finance. It was argued that the case of appointment was not that of a case of transfer on deputation but case of appointment on deputation following all due procedures for selection and appointment and in absence of any illegality in selection it was not open to the respondents to cancel the offer of appointment which they sought to be by recalling the deputationist prematurely. The pay scale of the applicant in deputation post was higher than that of the substantive post.

The Hon'ble Apex Court held as follows :

"The present case is not a case of transfer on deputation. It is a case of appointment on deputation for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the appellant. In such circumstances, it was not open for the respondent to argue that the appellant has no right to claim deputation and the respondent cannot refuse to accept the joining of most eligible selected candidate except for ground of unsuitability or unsatisfactory performance."

The Hon'ble Apex Court observed that :

"As the appellant was selected after due selection and was offered appointment on deputation, and, in absence of any valid ground shown by the respondents, we hold that the appellant has a right to join the post and the respondents were bound to accept his joining."

In *S.N.Maity* supra, also, the Hon'ble Apex Court where the employee was made to suffer financially Hon'ble Court held that the appellant should not suffer loss of salary.

Therefore the decisions were applicable where the deputationist was enjoying the higher scale of pay in the lending department vis-à-vis borrowing

department but due to abrupt ending of the deputation was compelled to come back to the parent department to join the post carrying a lower scale of pay thereby causing financial loss to him.

In the present case no such argument had been advanced by the Id. Counsel that by coming back to the parent organisation the applicant would entail loss in salary or emoluments whatsoever, Therefore the decisions are not applicable to the factual matrix of the present case.

8. During the course of arguments the following position emerged :

Para 8 of DOPT OM dated 17.6.10 referred to by both the parties as governing circular/provisions, enjoins the following provisions in regard to deputation/foreign service and extension of terms :

"8. Tenure of deputation/foreign service.

8.1 The period of deputation/foreign service shall be as per the Recruitment Rules of the ex-cadre post or 3 years in case no tenure regulations exist for the ex-cadre post.

8.2. In case where the period of deputation/foreign service prescribed in the recruitment rules of the ex-cadre post is 3 years or less, the Administrative Ministry/borrowing organisation may grant extension upto the 4th year after obtaining orders of their Secretary (in the Central Government)/Chief Secretary (in the State Government)/ equivalent officer (in respect of other cases) and for the fifth year with the approval of the Minister of the borrowing Ministry/Department and in respect of other organisations with the approval of the Minister of the borrowing Ministry/ Department with which they are administratively concerned.

8.3.1 The borrowing Ministries/Departments/Organisations may extend the period of deputation upto the fifth year where absolutely necessary in public interest, subject to the following conditions:

(i) The extension would be subject to the prior approval of the lending organisation, the consent of the official concerned and wherever necessary, the approval of the UPSCI State Public Service Commission and Appointment Committee of Cabinet (ACC).

(ii) If the borrowing organisation wishes to retain an officer beyond the prescribed tenure, it shall initiate action for seeking concurrence of lending organisation, individual concerned etc. six months before the date of expiry of tenure. In no case it should retain an official beyond the sanctioned term unless prior approval of the competent authority to grant further extension has been obtained.

(iii) No further extension beyond the fifth year shall be considered

8.3.2 Where extension is granted up to the fifth year, the official concerned will continue to be allowed deputation (duty) allowance, if he/she has opted to draw deputation (duty) allowance.

8.4 There shall be a mandatory 'cooling off period of three years after every period of deputation/foreign service up to Joint Secretary level posts and one year for Additional Secretary level posts.

(emphasis supplied)

9. A cursory glance at the said provisions would clarify the following :

- i) The period of deputation as per DOPT circular, applicable also to the Railways in ex cadre post, is three years.
- ii) It is for the "borrowing" organisation to grant extension up to 4th year after obtaining orders "of their" Secretary/Joint Secretary/equivalent officer as the case may be and for the 5th year with the approval of the Minister of the "borrowing" Ministry or department with which they are administratively concerned, for the 5th year.
- iii) The "borrowing" Ministry or department or organisation may extend the period of deputation up to 5th year where absolutely necessary for public interest subject to the conditions that,
 - a) Extension would be subject to prior approval of both the lending organisation as well as of the official, etc.
 - b) In case borrowing organisation wishes to retain an officer beyond the prescribed tenure it shall initiate action for seeking concurrence of lending organisation six months before expiry of the tenure and in no case would retain an officer beyond sanctioned term without prior approval of competent authority to grant further extension.

10. In the present case it could be noted that the borrowing organisation i.e. RVNL had infact initiated the process of seeking concurrence of the lending organisation six months prior to expiry of the deputation period of three years. Such letter unfortunately was not acted upon by the lending organisation until a reminder was sent almost at the fag end of the deputation period.

First the lending organisation refused to allow extension but later on, on 20.7.15, it agreed to such extension. The role of the lending organisation in regard to extension of deputation of its employee was very limited. It was only empowered to grant or refuse "No objection" for extension. The lending organisation i.e. Eastern Railways did not have the power to refuse extension itself. The power to refuse extension was in the domain of borrowing department.

11. S.E. Railway schedule of powers on establishment matters, as cited by both the parties, demonstrates that an HOD of a department has full powers (FP), of forwarding application for deputation of Railway employees in terms of Para 1402 of IREM Vol.I for posts outside the Railways. Such powers presumably include the power to allow an employee to go on deputation to another organisation since no separate provisions could be noted prescribing/empowering any other officer as appropriate sanctioning authority or approving authority to allow such deputation. Therefore the contention of the respondents that the deputation to the applicant was wrongly allowed by HOD (the PCR) when PHOD was the only authority to approve such deputation, could neither be visualised, comprehended nor countenanced. No specific rules could be cited by the respondents to show that the PHOD of the department i.e. the General Planning and Designing Engineer (CPDE) had the sole authority to approve deputation or to disallow extension. Therefore, the contention of the respondents that the applicant was wrongly allowed extension by an incompetent officer of the lending department, did not hold water.

12. Having gone through the schedule of powers as furnished by the counsels and having found no specific rules in regard to any authority higher other than an HOD of a department to allow deputation or to give no objection for its extension, I would hold that neither the original deputation nor grant of approval/no objection for extension was given by any incompetent authority and as such neither the deputation nor approval for extension was given irregularly ^{or} and illegally. The officers of lending department simply presumed that the initial lending or extension was invalid and therefore desired to call him back as they acted on a mistaken belief.

13. If the initial deputation or no objection for extension was neither invalid nor illegal, there was no occasion for the lending department to call the applicant back on such grounds. Such calling back of lending organisation, if on the ground that the initial lending or extension of deputation was invalid, was inarguably and indubitably on a misbelief and consequential release of the borrowing organisation vide its letter dated 10.2.16 if on the basis of a

superfluous desire of the lending department on a misbelieve, as argued, was misattributed.

14. Although a deputationist does not have a right to extension of deputation, once validly extended, the rules in regard to curtailment of deputation as in RBE 106/2010 would equally apply to him. It lays down the following :

"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."

It could be noticed that on 1.2.16 the PCE (the HOD of lending department) desired to call him back due to shortage of staff and so the applicant may have been released on 10.2.16 by RVNL.

Since the rules unambiguously spell out that before curtailing the period of deputation, (without specifying whether it was applicable to the original term of three years or extended term of two years), a notice to the deputationist was mandatory, curtailing the period without such notice was bad. The communications between the borrowing department and the lending department keeping the applicant in dark, was not proper.

15. In view of the enumerations supra, I am of the considered opinion that since it was the pious wish of the lending department either on some misbelief or due to some bonafide reasons to bring the applicant back from deputation, abruptly and prematurely curtailing the deputation that was legally extended, it was incumbent upon the borrowing department to curtail the deputation period, while acting as per such wish, only as per rules. They ought to have given three months' notice in advance to the applicant as well. Having failed to act as per rules the officers of borrowing and lending department acted contrary to law.

16. Accordingly, I would quash the release order dated 10.2.16 with liberty to the borrowing department as well as to the lending department to act in

accordance with the provisions and the rules governing their departments. Till such action is taken, the obvious concomitance would be that the applicant would be allowed to serve the borrowing department.

17. This OA is accordingly disposed of. No order as to costs.

(BIDISHA BANERJEE)
MEMBER (J)

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