

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01044/2018

Wednesday, this the 12th day of June, 2019

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member

C.K.Karthika, aged 33 years
W/o.S Sajeev
Accountant, (on deputation)
Pay and Accounts Office,
Ministry of Agriculture
(Department of Agriculture and Co-operation)
Fine Arts Avenue, Kochi – 16
Residing at: NIFPHATT Quarters
Pulleppadi, Ernakulam

..... **Applicant**

(By Advocate Mr.T.C.G Swamy)

V e r s u s

1. Union of India represented by the
Secretary to the Government of India
Ministry of Finance, New Delhi – 110 001
2. The Registrar General and Census Commissioner of India
Office of the Registrar General of India
2A, Mansingh road
New Delhi – 110 011
3. The Joint Director
Directorate of Census Operations
Andhra Pradesh and Telengana
1st Floor, Kendriya Sadan, Sultan Bazaar
Hyderabad – 500 095
4. Pay and Accounts Officer
Pay and Accounts Office, Ministry of Agriculture
(Department of Agriculture and Co-operation)
Fine Arts Avenue, Kochi – 16
5. The Chief Controller of Accounts
Principal Accounts Office
Ministry of Agriculture
No.16A, Akbar Road, Hutments
Annexe, New Delhi – 110 001

.2.

6. The Principal Controller General of Accounts
Ministry of Finance, Department of Expenditure
7th Floor, Lok Nayak Bhavan, Khan Market
New Delhi – 110 003

7. The Assistant Controller of Accounts
Office of the Controller General of Accounts
Department of Expenditure, Ministry of Finance
7th Floor, Lok Nayak Bhavan
Khan Market, New Delhi – 110 003

..... **Respondents**

(By Advocate – Mr.Thomas Mathew Nellimoottil)

This Original Application having been heard on 4.6.2019, the Tribunal on 12.6.2019 delivered the following:

ORDER

Per: Mr.Ashish Kalia, Judicial Member

The reliefs sought in the Original Application are as follows:

“(i) Call for the records leading to the issue of Annexure A-12 to A-14 and quash the same;

(ii) Declare that the refusal on the part of the respondents 5 and 6 to consider the applicant for regular absorption as Accountant in terms of Annexure A8 recruitment rules, is arbitrary, discriminatory and unconstitutional and direct the respondents accordingly;

(iii) Direct the respondents 5 and 6 to consider the applicant for regular absorption, as an Accountant under the 4th respondent after fulfilling the formalities, if any, and direct further to grant the consequential benefits thereof;

(iv) Award costs of and incidental to this application

(v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case. ”

2. Applicant was initially appointed as a Compiler under the 3rd respondent at Hyderabad w.e.f 11.01.2010. While so, applicant applied for deputation for the post of Accountant in Principal Accounts Office, Ministry of Agriculture. She was selected and joined under the 4th respondent at

.3.

Kochi on deputation basis on the forenoon of 13.4.2015, initially for a period of one year, extendable further under normal terms and conditions or till regular incumbent joins, whichever is earlier. The applicant had requested for a transfer to the office of the Directorate of Census Operations, Thiruvananthapuram by submission of several representations. As there were no response to the same and instead the applicant was attempted to be repatriated back to Hyderabad, applicant approached this Tribunal by filing O.A No.251/2017, which was duly considered by this Tribunal and disposed of with a direction to the respondents to consider her representation for transfer to Thiruvananthapuram and in the event such a transfer is not feasible, then applicant to be allowed to continue on deputation for a short period permissible as per rules or as long as the borrowing department within permissible period, is willing to retain the applicant (Annexure A-5). Thereafter her deputation was extended from time to time.

3. It is further stated that in accordance with the recruitment rules relating to the post of Accountant, there is a provision for appointment on deputation basis and such deputationists are also entitled to be considered for absorption. Applicant had applied for the same which was rejected by the respondents. Hence, she approached this Tribunal by filing O.A No.891/2018, which was disposed of by order dated 2.11.2018, directing the respondents to take an expeditious decision on the representation made (Annexure A-11) by the applicant. In implementation of the same, the 5th respondent has rejected the representation of the applicant (Annexure A-12).

.4.

Applicant submits that denial of consideration for regular absorption is arbitrary and unconstitutional as she is entitled for absorption. Feeling aggrieved by this, applicant has filed the present Original Application.

4. Notices were issued to the respondents. They entered appearance through Shri Thomas Mathew Nellimoottil, Sr. PCGC and filed reply statement. It is submitted therein that the applicant who was a Compiler, was offered appointment as Accountant on deputation basis with the condition that “she can be repatriated to her parent department without assigning any reason before the completion of her period. ” It is further submitted that the Central Civil Account Service Rules (in short CCAS) states that vacancies (Accountants and Senior Accountant Group C) were remained unfilled by direct recruitment through Staff Selection Commission may be filled by deputation by taking the person from appropriate grade from other Organized Accounts services, Central Government, State Government or autonomous bodies fully funded by Central or State Government subject to terms and conditions laid down by the Central Government from time to time.

5. It is further submitted that the Ministry of Finance vide O.M dated 21.10.2014 ordered that the absorption of the deputationists in CCAS is an exercise to be resorted to only in circumstances where Staff Selection Commission is not in position to provide the requisite number of dossiers to the organisation. Now the Staff Selection Commission is conducting Combined Graduate Level Examination every year and is in position to provide the departmentalized accounts staff as per their requirements, the

.5.

competent authority had decided to put on hold the process of absorption of deputationists as Accountant. Lastly, they submitted that the Original Application is not maintainable and same is liable to be dismissed.

6. Heard Mr.T.C.G Swamy, learned counsel for the applicant and Mr.Thomas Mathew Nellimoottil, learned counsel for the respondents at length. Perused the records, legal position and the judgments cited by the counsel for parties.

7. The applicant has raised the question whether she can be absorbed in the respondents' organisation as Accountant during deputation as she is eligible and entitled for the same. To substantiate this learned counsel Mr.T.C.G Swamy has drawn our attention to the Recruitment Rules Annexure A-8, wherein it is provided that:

“ For the post of Accountant (Non-selection), age prescribed is between 18 and 27 years and qualification prescribed is Bachelor's degree from a recognised University.

Method of filling vacancy is 70% by direct recruitment through Staff Selection Commission; 25% by promotion on seniority basis and 5% by promotion on the basis of limited departmental competitive examination.

In column 12, it is stated that vacancies remaining

.6.

unfilled by direct recruitment through Staff Selection Commission in manner specified in item (i) of column 11 may be filled up by deputation by taking persons of appropriate grade from other Organised Accounts Services, Central Government, State Government or Autonomous bodies which are fully funded by the Central or State Government subject to terms and conditions laid down by the Central Government from time to time in this regard.

It is further stated in sub paragraph 2 that a deputationist with an exceptionally good performance; on completion of two years of deputation may be considered for absorption in public interest subject to the prior concurrence of the parent cadre and the Controller General of Accounts and subject to the fulfillment of the following conditions as on 1st of January in the year of consideration. ”

8. By citing these rules, Mr.Swamy has drawn our attention to the APARS wherein the applicant has been granted a very high grading of more than 8 marks, which is termed as 'outstanding'. The learned counsel has also drawn our attention to Annexure A-10 dated 22.1.2015 wherein certain persons have been absorbed by the respondent organisation and the applicant alone has been discriminated.

9. On the contrary, learned counsel for the respondents has submitted that

the Government has decided to fill up the vacancies which remained unfilled by direct recruitment through SSC only. Now the Staff Selection Commission is regularly conducting selection as per the requirements of the department. Hence, the government of India, Ministry of Finance has currently decided to put on hold the process of absorption of deputationist as Accountant in Central Civil Accounts Service vide Annexure A-14 order dated 21/10/2014. Thus, they are not in a position to consider the case of the applicant for absorption as Accountant. Learned counsel for the respondents has also submitted that the deputationists have no right to claim for their absorption or continuance on deputation basis and that the borrowing department has every power to repatriate the deputationist at any point of time taking into account the functioning requirement of the office. He has cited the order of the Principal Bench of this Tribunal in O.A No.691/2019.

“6. The Honourable Supreme Court in *Ratilal B. Soni & Others versus State of Gujarat & Others*, 1990 (Supp) SCC, 243, held that an employee on deputation can be reverted to his parent cadre at any time, who would have no right to be absorbed on the post of deputation. In *Kunal Nanda versus Union of India & Another*, AIR 2000 SC 2076, the Honourable Supreme Court has reiterated its 8 earlier decisions that the basic principle underlying deputation itself is that the person can always and at any time be repatriated to his parent Department to serve in his substantive position at the instance of either of the departments and there is no vested right in such a person to continue on deputation or get absorbed in the department to which he had gone on deputation. A Division Bench of Punjab & Haryana High Court in *Gurinder Pal Singh versus State of Punjab*, 2005 (1) SLR 629, after taking into consideration the decisions of the Apex court in *Kunal Nanda case (supra)*, *Ratilal B. Soni case (supra)*, and *Rameshwer Parshad versus Managing Director, U.P. Rajkiya Nirman Nigam Limited*, 1999 (5) SLR 203 (SC), has held that a deputationist would have no vested right to continue in the borrowing department till the completion of the stipulated period of deputation

and the deputation being a tripartite contract, can be continued only if all the parties like it to continue. Honourable Apex Court in the case of Kunal Nanda Vs. Union of India, AIR-2000 SC 2076, decided on 24-4-2000 held as follows:

"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."

10. Honourable Apex Court in the case of **Union of India Versus Ramakrishnan**, AIR 2005 SC 4295, also observed as follows:-

"32. Ordinarily, a deputationist has no legal right to continue in the post..... "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 mala fide. An action taken in a post haste manner also indicates malice. [See *Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others*, (2004) 2 SCC 65, para 25]"

Rameshwar Parshad v. Managing Director, UP Rajkiya Nirman Nigam Limited 1999(5) SLR – 203(SC) held as under:

“A deputationist would have no vested right to continue in the borrowing department till the completion of the stipulated period of deputation and the deputation being tripartite contract, can be continued only if all the parties like it to continue. ”

11. Learned counsel for the respondents has also cited the case of **Ashok Kumar Ratilal Patel v. Union of India and Another** in (2012) 7 SCC 757 and O.A No.691 of 2019 **Dalvir Singh v. Union of India** decided by the Principal Bench of this Tribunal.

12. After going through all legal positions and legal citations, we are of the view that deputation is a tripartite agreement, wherein the first party is the employee, second party is the parent department and third party is the borrowing department. This contract comes into existence only when all the three parties give their consent. It is needless to say that if one of the parties is not in agreement, then deputation cannot be taken place. Now it is crystal clear that the deputationist has no legal right for absorption unless or until the borrowing department as well as parent department agreed to it. In the present case, the borrowing department i.e., the respondents have their own valid reason for not considering the applicant's absorption as they are getting regular incumbents for the post of Accountant through Staff Selection Commission.

13. In view of the above, the applicant cannot claim as a matter of right for absorption in the respondent department despite her eligibility for the same. Thus, we are of the view that the present Original Application is devoid of merit and is accordingly dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

Annexure A1 - A true copy of Office Memorandum under No.A 12023/Pr.AO/Admn/Dep./Gr.'C'/2014/2447 dated 5.2.2014 issued by the 5th respondent

Annexure A2 - A true copy of the order No.A 32016/1/2005Estt. dated 26.3.2015, from the office of the 3rd respondent

Annexure A3 - A true copy of Office Order bearing No.PAO/Agri/Cochin/Admn/2015-16/03 dated 16.4.2015, issued from the office of the 4th respondent

Annexure A4 - A true copy of Office Order No.186/2016 dated 30.3.2016 issued from the office of the 5th respondent

Annexure A5 - A true copy of Order in O.A No.251/2017 dated 16.5.2017 of this Hon'ble Tribunal

Annexure A6 - A true copy of order bearing F.No.A-12023/Pr.AO/Admn/Dep./Gr.C/Vol.2/2017-18/1470-73 dated 09.10.2017 issued from the office of the 5th respondent

Annexure A7 - A true copy of F.No.A-12023/Pr.AO/Admn/Dep./Gr.C/Vol..2/2017-18/1630-33 dated 20/21.3.2018 issued from the office of the 5th respondent

Annexure A8 - A true copy of Recruitment Rules relating to the post of Accountant, under the respondent 4 to 6

Annexure A9 - A true copy of representation dated 3.7.2018 submitted by the applicant before the 5th respondent

Annexure A10 - A true copy of the order bearing No.Admn/1/(34)3/Absorption/2014-15/1421 dated 22.1.2015 issued by the Ministry of Finance

Annexure A11 - A true copy of the order of this Hon'ble Tribunal in O.A No.891 of 2018 dated 2nd Nov 2018

Annexure A12 - True copy of the order bearing No.A-12023/Pr/AO/Admn./Dep/Dep/Gr.C/Vol.2/18-19/2110 dated 07/11-12-2018

Annexure A13 - True copy of the order bearing No.A 110201/1/2014/MF.CGA(A)/245 dated 23.7.2015 issued by the seventh respondent

Annexure A14 - True copy of the order bearing No.A110201/1/2014/MF.CGA(A)/287 dated 21.10.2014

.11.

Annexure R1 - True copy of Central Civil Accounts Service (Accountant and Senior Accountant Group 'C' posts) Recruitment Rules, 2010 dated 24.1.2012

Annexure R2 - True copy of Office Memorandum dated 21.10.2014

Annexure A15 - True copy of the Notice, bearing no.PAO/Agri&FW/Cochin/Admn/Deputation/2018-19/1994 dated 8.1.2019 issued from the office of the fourth respondent, Pay and Accounts Officer, Kochi .