

OA No.599 /2019

New Delhi, this the 28th day of February, 2019

Ishwara N. Acharya, age – 48 years,
S/o Late Lingappa Acharya
R/o C5D/20 B, First Floor,
Janakpuri, New Delhi-110058
Working as Director with Central
Council for Research in Yoga

Group A. ...Applicant

(By Advocate: Shri V.C. Shukla)

Versus

1. Union of India,
Through Secretary,
Ministry of Ayush,
Ayush Bhawan, GPO Complex,
INA Market, New Delhi-110023.
2. Central Council for Research
in Yoga and Naturopathy,
through its Director
61-65, Institutional Area,
Janakpuri, New Delhi-110051.
3. Department of Personnel & Training
Through its Secretary,
North Block, New Delhi-11001.
4. Morarji Desai National Institute of Yoga,
Through its Director,
68 Ashoka Road
New Delhi-110001.

(By Advocate: Shri S.N. Verma)

ORDER (ORAL)**Justice L. Narasimha Reddy:-**

The applicant joined the service of the Morarji Desai National Institute of Yoga (MDNIY), the 4th respondent herein, in the year 2005, which is under the Ministry of AYUSH. On a representation made by him, he was taken on deputation in the Central Council for Research in Yoga and Naturopathy (CCRYN), the second respondent, under the same Ministry, through order dated 09.09.2014, for a period of five years.

2. Through an order dated 15.02.2019, the second respondent repatriated the applicant to the 4th respondent. The same is challenged in this OA.

3. The applicant contends that the deputation was for a period of five years and it could have been terminated before expiry of that period, only if his performance was found unsatisfactory or if any disciplinary proceedings were initiated. It is also pleaded that the Govt. framed comprehensive guidelines in relation to deputation vide Office Memorandum dated 17.06.2010 and according to

Clause 9 thereof, any premature repatriation must be preceded by a notice not less than three months. He contends that the said condition was not complied with nor any relaxation, as provided for under clause 10, was obtained.

4. The respondents filed a detailed counter affidavit. It is stated that the applicant, while working in the second respondent Organization on deputation basis, has resorted to certain activities which were found to be not in the interest of the Organization, so much so a vigilance inquiry was also conducted. It is stated that on the basis of the recommendations made by the Chief Vigilance Officer, the impugned order was passed repatriating the applicant to his parent department.

5. It is also stated that the DOP&T has issued clarification, stating that the OM dated 17.06.2010 does not apply to deputations under the same Ministry. Other grounds are also pleaded.

6. We heard Shri V.C. Shukla, learned counsel for the applicant and Shri S.N. Verma, learned counsel for

the respondents in detail at the stage of admission itself.

7. The applicant is an employee of the 4th respondent Institute and he was on deputation to the second respondent Council w.e.f. 15.04.2015 for a period of five years. It is essential to mention that respondent Nos.2 and 4 are under the same Ministry i.e. AYUSH, the first respondent herein. In the normal course, the applicant is entitled to remain on deputation till 14.04.2020. The order of repatriation passed against the applicant reads as under:-

“The President of the Governing Body of Central Council for Research in Yoga and Naturopathy (CCRYN) is pleased to repatriate (pre-mature) Dr. I.N. Acharya from the post of Director, Central Council for Research in Yoga and Naturopathy (CCRYN) with immediate effect.

2. Accordingly, Dr. I.N. Acharya is directed to report to the Director, Morarji Desai National Institute of Yoga, New Delhi with immediate effect.”

8. It is true that the order is a non speaking one and it does not refer to any vigilance angle, nor it is preceded by any notice, contemplated under OM dated 17.06.2010. Clause 9 of the OM reads 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."

Clause 10 also provide for relaxation of conditions and it reads as under:-

"10. Relaxation of conditions

An relaxation of these terms and conditions will require the **prior concurrence** of the Department of Personnel & training."

9. As pleaded by the learned counsel for the applicant, at the threshold of the OM itself, it is mentioned that the guidelines would apply to ex-cadre posts under Central Govt./ State Governments/ PSUs/ Autonomous Bodies, Universities/UT Administration, Local Bodies etc. In this case respondent Nos.2 and 4 are Autonomous Bodies but both of them are under the same Ministry.

10. The DOP&T, however, clarified that the guidelines may not apply to the deputations between the organizations under the same Ministry.

11. Even if we ignore this and treat the OM dated 17.06.2010 as applicable to the instant case also, there is a special circumstance that needs to be taken into account.

12. The performance of the applicant came to be verified by the Chief Vigilance Officer under the second respondent. On noticing certain acts and omissions on the part of the applicant, it was decided to repatriate the applicant before the completion of the period of deputation. The second respondent has chosen not to mention various reasons that warranted the premature repatriation or to initiate disciplinary proceedings, lest they reflect upon the career of the applicant. It was not a case of failure, but an effort to avoid damage to the applicant.

13. We are of the view that no prejudice can be said to have been caused to the applicant when he is repatriated *albeit* prematurely, when the other

alternative was to spell out the vigilance related issues or to initiate disciplinary proceedings.

14. Further, the deputation cannot be claimed by any employee as of right. Added to that, the very fact that the Vigilance Officer made certain objections vis-à-vis the functioning of the applicant discloses that his functioning was not satisfactory to the 2nd respondent. Whatever may be the right of the applicant vis-à-vis his parent department, he cannot insist that he is entitled to work in his own way, in the borrowing department.

15. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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