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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 3101/2003

This the 6th day of May, 2004

HON'BLE SH. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SH. SHANKER RAJU, MEMBER (J)

1. Sh. Jag Mohan
S/o Sh. Jeet Ram,
Intelligence Officer under suspension,
R/o H.No.361-P, Sector-14,
Gurgaon.
2. Sh. Shrikant Pandey,
Intelligence Officer under Suspension
C/o Sh. Jagmohan,
R/o H.No.361-P, Sector-14,
Gurgaon.

(By Advocate: Sh. Shyam Babu)

Versus

1. Union of India through
Secretary, Ministry of Finance
(Income Tax Department),
Govt. of India,
North Block,
New Delhi.
2. Secretary,
Govt. of India,
Ministry of Home Affairs,
Deptt. of Internal Security,
(Narcotics Control Bureau,
North Block, New Delhi.
3. Director General,
Govt. of India,
Ministry of Home Affairs,
Narcotics Control Bureau Headquarters
West Block No.1, Wing No.5,
R.K.Puram, New Delhi.
4. Chief Commissioner of Income Tax,
Aayakar Bhawan, Sadhu Vaswani Road,
Pune-411 037.

(By Advocate: Sh. M.L.Ohri proxy for
Sh. V.P.Uppal for Resp. No.1
Sh. A.K.Bhardwaj for Resp. No.2 & 3.

O R D E R

By Sh. Shanker Raju, Member (J)

Applicants impugn respondents' order dated 24.4.2003,
whereby they have been repatriated to their parent cadre. A
prayer has been made to allow deputation till pendency of the

[2]

criminal case pending against applicants and payment of salary for the month of April, 2003 and also release of subsistence allowance with interest.

2. The undisputed facts are that applicants who had been working as Inspectors in the office of Deputy Commissioner of Income Tax, Pune were appointed on deputation as Intelligence Officer in Narcotics Control Bureau w.e.f. 23.5.2001 as well as 5.2.2001. Though one of the orders pertaining to Sh. Jagmohan provides deputation until further orders on involvement of applicants in a criminal case registered under Section 170/384/120 B on the allegations that with the connivance of two other officials they allegedly extorted Rs.50,000/- in the guise of Income Tax Inspectors from M/s G.K. Gasket, Nariwalan, Karol Bagh, New Delhi. They have been placed under deemed suspension on account of their detention in custody and were repatriated to their parent cadre where they have joined under suspension.

3. Learned counsel for applicants referred to the decisions in State of M.P. v. Ashok Deshmukh, 1988 (7) ATC 783, K.S. Phadnis v. State of Maharashtra, AIR 1971 SC 798 and T.K. Mehta v. Union of India, 1989 (1) ATC 358 to contend that though the deputation was until further order keeping in view the DOPT instructions dated 29.4.88 tenure of deputation is for a maximum period of 3 years subject to extension for another year upto 5th year. It is in this prospectus stated that deputation of the applicants has come to an end on 5.2.2004 and 23.5.2004 respectively as such, in one of the cases order of repatriation is beyond the deputation period is deemed to be an extension.

4. It is further stated that no consent has been taken from applicants before repatriation or they had been informed and the order passed is punitive containing stigma which is not as per the terms of the DOPT instructions. Accordingly the aforesaid repatriation cannot be sustained in law.

5. It is further stated that while placing applicants under suspension, it is the duty of the respondents to pass specific orders for subsistence allowance.

6. On the other hand, learned counsel for respondents Sh. A.K.Bhardwaj as well as Sh. V.P.Uppal vehemently opposed the contentions and placed reliance on the decision of the Apex Court in Rati Lal B.Soni vs. State of Gujarat, 1990 (Supp) SCC 243 and Kunal Nanda vs. Union of India, AIR 2000 SC 2076. In the above conspectus it is stated that the deputationist has no right to continue on deputation indefinitely. Applicants were placed under suspension by the borrowing authority which they are empowered to do so in accordance with rules and as the cadre of intelligence officer is of ten, two ineffective officers on account of suspension, administrative exigencies warranted their repatriation which is neither stigmatic nor punitive.

7. It is further stated that the subsistence allowance is to be paid by the parent Commissionerate for which communication has already been made to them. Applicants have already been paid the subsistence allowance and their contention in this behalf is misconceived.

8. It is further stated that the deputation is a tripartite agreement and once the borrowing department is not consented to it deputationist has no right to stay. Learned counsel state that applicants have already joined and this has been allowed by the parent department which is a tacit approval and consent to their repatriation.

9. We have carefully considered the rival contentions of the parties and perused the material on record.

10. As per DOPT guidelines an employee appointed on deputation in a situation warranting premature reversion to the parent cadre the respondents are empowered to do so. In Kunal Nanda's case (supra) the Apex Court has made the following observations:

"On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputations 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 claim underlying deputation itself is that the person concerned can always 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. The reference to the decision reported in Rameshwar Prasad vs. M.D., U.P. Rajkiya Nirman Nigam Ltd., (1999) 8 SCC 381 is inappropriate since, the consideration herein was in the light of statutory rules for absorption and the scope of those rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree need mentioned, only to be rejected. The stand of the respondent - department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e., a degree is a must and essential claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim."

11. If one has regard to the above, a deputationist has no vested legal right to be absorbed or to be retained indefinitely. It is the discretion of the borrowing authority to allow him to remain after the maximum period of tenure of deputation.

12. As per DOPT instructions tenure of deputation is maximum for 3 years. In the cases of both applicants this has already expired. Thereafter they have no right to claim further extension, as this has not been specifically accorded to them by the competent authority.

13. In so far as premature termination of deputation is concerned, in Rati Lal Soni's case (supra) the Apex Court has upheld the same by holding that one has no right to remain on deputation. The contention put forth by the learned counsel for applicants that once the order is punitive the same cannot be given effect to and a stigmatic order is an order in nullity is concerned, we have perused the orders passed by the respondents. Applicants undisputedly have been involved in a criminal case and were accordingly placed under deemed suspension. The borrowing department has a right to retain those deputationist who had been performing satisfactory service. This is with a view to optimise efficiency and inadministrative exigencies when the object sought to be achieved has not been achieved, nothing precludes the respondents from repatriating the applicants to their parent department. Moreover we find that the orders passed by the respondents repatriating them are neither punitive nor stigmatic. In narration of fact of involvement of applicants in criminal case as reflected from the FIR cannot be a stigma.

Moreover, if one has no right to remain indefinitely, assuming the order is based on involvement in criminal case would not vitiate it.

14. In the case law cited by the learned counsel for the applicants are distinguishable. For a deputationist to be absorbed the tripartite agreement is *sine qua non* as well as consent of the borrowing department. If one of the conditions is not meted out, the agreement would not be complete. In the present case, though applicants may be willing to continue but the borrowing department is not willing to retain them.

15. As regards the consent of the parent department is concerned, the respondents have written to the parent department and in response thereto applicants have joined their parent department and have been taken on duty though on suspension. This is a tacit consent and conclusively establishes that the parent department has agreed to their repatriation. We also find from the record that regarding payment of subsistence allowance respondents have already written to the parent department of applicants and in lieu thereof they had already been paid the subsistence allowance. In this regard, contentions of applicants are unfounded. The further payment, if any, is to be made by their parent department.

16. As regards consent of applicants and a show cause notice before resorting to premature repatriation is concerned, principles of natural justice are not attracted as the action of the respondents is not punitive.

[7]

17. Moreover, applicants have already completed their maximum tenure of 3 years beyond which for want of extension approved by the borrowing authority, they have no right to remain on deputation.

18. In the result for the foregoing reasons, OA is bereft of merit and is accordingly dismissed. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

V.K. Majotra
6.5.04
(V.K. MAJOTRA)
VICE CHAIRMAN(A)

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