

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.021/01152/2017 and O.A. No.021/00041/2018

Date of Order :10.08.2018.

O.A. No.021/01152/2017

Between :

P.V.R.Rajasekharam, s/o late P.Chengal Rao,
Aged 49 yrs, Occ:Regional Officer (Group 'A'),
Central Board of Film Certification, 206, CGO
Towers, Kavadi guda, Secunderabad-500 080.

...Applicant

And

1. Union of India, rep., by the
Secretary, M/o Information & Broadcasting,
Shastri Bhavan, New Delhi-110 011.
2. The Chairman, Central Board of Film Certification,
9th Floor, Phase-I, Films Division Complex,
Dr.G.Deshmukh Marg, Mumbai-400 026.
3. Rahul Gowlikar, Occ:Deputy Director,
All India Radio, Opp:Legislative Assembly,
Rock lands, Saifabad, Hyderabad-500 004. ... Respondents

Counsel for the Applicant

... Mr.K.R.K.V.Prasad,

Counsel for the Respondents

... Mrs.K.Rajitha, Sr.CGSC

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And

1. Union of India, rep., by the
Secretary, M/o Information & Broadcasting,
Shastri Bhavan, New Delhi-110 011.

2. The Central Board of Film Certification, rep., by its Chief Executive Officer, 9th Floor, Phase-I, Films Division Complex, Dr.G.Deshmukh Marg, Mumbai-400 026.

3. Rahul Gowlikar, Occ:Deputy Director, All India Radio, Opp:Legislative Assembly, Rock lands, Saifabad, Hyderabad-500 004, under the orders of posting (UoP).

4. The Secretary, Dept. Of Personnel & Training, M/o Personnel, Public Grievances & Pensions, Govt. Of India, North Block, New Delhi-110 001. ... Respondents

Counsel for the Applicant ... Mr.K.R.K.V.Prasad,

Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORAL ORDER

(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

The applicant was appointed as Regional Officer, Central Board of Film Certification (CBFC), Hyderabad, on 02.06.2016 on deputation basis up to 27.10.2019 after being selected by a duly constituted Committee. Subsequently, during the period of deputation, by an order dated 20.12.2017, issued by the Under Secretary, Ministry of Information and

Broadcasting, an officer of the Senior Grade of IIS Group 'A' (STS) was posted as Regional Officer, CBFC, Hyderabad, that is in the same post as that of the applicant. The Ministry of Information and Broadcasting, thereafter issued a clarification on 22.12.2017 that the 3rd respondent will take over as Regional Officer, CBFC, Hyderabad, and upon his joining, the applicant was requested to assist him in the execution of work until further orders. The applicant then filed OA.No.1152/2017 and the matter came up for hearing before the Vacation Bench on 27.12.2017. The Tribunal directed to list the OA for instructions to the Counsel representing the official respondents. Thereafter, this Tribunal vide interim order dated 05.01.2018 directed to maintain status-quo as existing on 05.01.2018 with regard to the post of Regional Officer, CBFC, Hyderabad, until further orders. Thereafter, an impugned order dated 04.01.2018, (Annexure.A-I to OA.No.41/2018), was issued prematurely repatriating the applicant to his parent cadre, mentioning therein that the DoP&T had agreed for relaxation of three months notice period as per the terms of their OM dated 17.06.2010. Thereafter, an order dated 05.01.2018 was issued relieving the applicant and repatriating him to his parent cadre with immediate effect.

2. It is the contention of the applicant that the impugned orders were issued without any reason for premature repatriation and that he should be allowed to complete his tenure in terms of the appointment order dated 02.06.2016.

3. The learned counsel for the Applicant stated that aggrieved by the same order, Ms.A.Prathibha, Regional Officer, CBFC, Thiruvananthapuram, had filed an OA.No.180/00012/2018 before the Central Administrative Tribunal, Ernakulam Bench, wherein it was stated that since the appointment on deputation was for a period of 4 years, irreparable hardship has been caused to her on account of this premature and abrupt repatriation without any prior notice. The Counsel for the Applicant also stated that the applicant has never given any room for complaint nor has there been any case of proven misconduct on the part of the applicant during the deputation period. The counsel also contended that neither has any reason been given for effecting the premature repatriation of the applicant nor any reason given for the waiver of the mandatory three months advance notice on premature repatriation. He argued that since deputation is effected with the due consent of the officer concerned, the borrowing department as well as the lending department, the premature repatriation of the deputationists can only come to an end after giving reasonable notice to the official as well as the lending department in case of any unsatisfactory work or a proven misconduct. The Ernakulam Bench of this Tribunal has observed this position and stated that the issue has been made clear in *Purushothamlal Dhingra Vs Union of India* (AIR 1958 SC 36) and *Moti Ram Deka Vs North Eastern Railway, Union of India* (AIR 1964 SC 600), and has also referred to the order of the Mumbai

Bench of this Tribunal in *Sushovan Banarjee, IPS Vs Union of India* in OA.No.387/2010, which is extracted as under:

“31. Viewed from this angle, a deputationist’s position cannot be considered to be so tentative and vulnerable as to throw him at the whims and fancies of a particular person, that too without any notice and without adhering to the principles of natural justice. It is a reversal for a senior officer to be repatriated prematurely to his department in an abrupt and sudden manner. Even if he does not have an indefeasible right to continue on deputation till the completion of his tenure, he has a limited right to be informed of reasons for his premature repatriation in advance so that he may put up defence before the higher authorities. He does have a legitimate expectation to that effect. This would be compliance with the minimum requirement of the principles of natural justice. A sudden and abrupt repatriation without notice or opportunity, therefore, has to be regarded as arbitrary, unfair and unjust exercise of discretion, which is prohibited by law, particularly by equality clause enshrined under Articles 14 and 16 of the Constitution of India. Such an action cannot be justified on the touchstone of reasonableness as it would also be hit by the #Wednesbury Principle of Unreasonableness#, a principle which has been consistently followed since last many decades.”

4. The Ernakulam Bench of this Tribunal has also relied on the judgment of the Hon’ble Supreme Court in *Ashok Kumar Ratilal Patel Vs Union of India & Another* (2012 (7) SCC 757), which is extracted as under:

“12. However, the aforesaid principle cannot be made applicable in the matter of appointment(recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organisation or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be

followed. No person can be discriminated nor it is open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person, who applies for appointment on deputation has indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non- suitability or unsatisfactory work.

13. 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.

5. The learned counsel for the Respondents reiterated the same points raised before the Ernakulam Bench of this Tribunal stating that the impugned order was not specific to the applicant and that prior concurrence of the DOPT has been taken for relaxation of the condition of three months advance notice period.

6. After hearing the learned counsel on both sides and based on the facts placed before us, and the Hon'ble Supreme Court's orders on the subject, and since the issue involved in these OAs is squarely covered by the order dated 29.05.2018 passed in OA.No.180/00012/2018 by the

Ernakulam Bench of this Tribunal, we are of the conclusive opinion that the impugned orders dated 04.01.2018 and 05.01.2018 need to be set aside qua the applicant and the applicant be allowed to complete his deputation period.

7. Both the OAs viz., OA.No.1152/2017 and O.A.No.41/2018 are accordingly disposed off. No order as to costs.

Sd/-

(NAINI JAYASEELAN)
MEMBER (ADMN.)

Sd/-

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 10th day of August, 2018

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