

(2013) 11 DEL CK 0019

In the Delhi High Court

Case No : Writ Petition (C) No. 4836 of 2013 and CM No's. 10962 of 2013 and 10963 of 2013

Asim Chaudhary

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0019

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Govind Jee, for Mr. Prashant Bhushan, for the Appellant; Amrit Pal Singh, CGSC for R-1/UOI, Mr. Sudhir Nandrajog and Mr. Sumit Babbar and Mr. Vikramaditya, for FSSAI, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The present writ petition assails the order dated 17th July, 2013 passed by the Central Administrative Tribunal rejecting the petitioner's original application wherein he had prayed for the following reliefs:-

- a) To issue a writ of mandamus directing Resp. No. 1 to allow the applicant to complete his deputation in the Food Safety and Standards Authority of India as per the DoPT Rules OM No. 2/99/91-Estt. (P-II) dated 5.1.1994, as amended from time to time, and DoPT OM No. 6/8/2009 dated 17.6.2010, as per the original advertisement.
- b) Direct to Resp No. 1 that the period of engagement of the applicant beyond 31.7.2012 till 17.12.2012 should be regularized and he treated as on duty.
- c) Direct that the pay and other allowances including statutory deductions and remittances may be paid, considering the financial difficulties being faced by him.
- (d) Direct the Central Government that the post of CEO should. - filled at the earliest as he is the legal representation and administrative and financial head

under the Food Safety And Standards Act, 2006.

(e) Direct that Cost should be awarded to the applicant for this litigation, which has really been thrust upon him by the arbitrary action of the Chairperson and acting CEO of FSSAI.

(f) Award compensation to the applicant for the unwarranted hassle and mental agony caused to him by this litigation.

The challenge by the petitioner raises primarily an issue of the right and entitlement of a deputationist to continue on deputation after expiry of the period for which he had been originally so appointed.

2. It is necessary to notice certain basic facts in some detail inasmuch as the petitioner's entire challenge rests on the plea that his tenure of deputation would not be governed by the period specified in the letter of appointment or the extension thereof but would be deemed to be the period of maximum deputation stipulated in the advertisement issued by the respondents.

3. The petitioner is admittedly an officer of the Oil & Natural Gas Corporation Limited (hereinafter referred to as "ONGC") holding a permanent lien to a post with this organisation. At the relevant time, the borrowing organisation, the Food Safety & Standards Authority of India (hereinafter referred to as "FSSAI"), a statutory body set up under the Food Safety & Standards Act, 2006 was in the nascent stages of its organisation. It issued an advertisement in August, 2010 inviting applications for filling up a single post of Director (Administration) on deputation. So far as the period of deputation stipulated in clause 5 is concerned, the advertisement stipulated that "the-tenure of deputation will normally be three years".

4. The petitioner's candidature found favour with the respondents and he was offered an appointment by a letter dated 22nd December, 2010 wherein the respondents offered the petitioner the post of Director (Administration) for a period of only "one year extendable to further two years".

The petitioner unconditionally accepted the offer of appointment and on 2nd February, 2011 joined the organisation on deputation without any protest or demur.

5. It is noteworthy that the period of one year came to an end on 1st February, 2012. The respondent however issued a letter dated 10th February, 2012 extending the period of the petitioner's tenure on deputation by six months only till 31st July, 2012. Even at this stage, no objection was found by the petitioner to such extension.

6. The petitioner has placed before us the office orders dated 30th July, 2012 wherein the respondents refer to the prior communication dated 10th February, 2012. The respondents unequivocally declared that consequent upon the completion of his extended period of deputation, the petitioner stands relieved of

his duties with the FSSAI w.e.f. 31st July, 2012 and repatriated to his parent organisation i.e. the ONGC. The petitioner was directed to report to his parent organisation.

7. It is only on the eve of expiry of the extended period of deputation that the petitioner became wiser and started raising objections. For the first time, on 30th July, 2012, the petitioner raised an objection by way of a letter dated 30th July, 2012 submitting that the terms of advertisement for the post of Director (Administration) ought to be followed. Reference was made to the orders of the Department of Personnel & Training of the Government of India which have been quoted in his appointment letter. The petitioner prayed that the decision of the respondents may be therefore reviewed. The respondents have submitted that even this objection was made to the Director (Enforcement) of the FSSAI and no representation was submitted to any competent authority in the organisation.

8. During the course of hearing, Mr. Sudhir Nandrajog, learned senior counsel for the respondent-FSSAI has handed over a copy of the letter dated 10th February, 2012 which has been referred to in the respondent's letter of 30th July, 2012. There was no objection to the same being taken on record or scrutinized by us.

9. At this stage, it is necessary to note the manner in which the petitioner has proceeded in the matter. Instead of abiding by the directives of the borrowing department, the petitioner made an application dated 31st July, 2012 to the FSSAI seeking grant of ten days leave w.e.f. 31st July, 2012. It is noteworthy that in this communication, the petitioner sought leave for the reason that he has "preparing to join at new place of posting". Implicit in this request is the petitioner's acceptance of the termination of his deputation and the intention to abide by the directive to resume his duty with his parent department. This was followed by a communication dated 8th August, 2012, also addressed to the FSSAI, whereby the petitioner sought extension of his leave till 24th August, 2012 due to pressing family requirements.

10. The respondents informed the petitioner by an order of 24th August, 2012 that he had been relieved from the services of FSSAI w.e.f. 31st July, 2012 and was granted earned leave w.e.f. 1st August, 2012 to 24th August, 2012. He was once again directed to report to his parent organisation. There was still no resumption of duty with ONGC. However, the petitioner followed up with communications dated 31st August, 2012, 29th August, 2012 and 10th September, 2012 seeking extension of leave for one or the other reason. These requests were also favourably considered and the petitioner was informed of the same by the order dated 12th September, 2012 & 27th September, 2012. In each communication, the petitioner was directed to report to his parent organisation.

11. In the meantime, it appears that the petitioner was approaching the Ministry of Health & Family Welfare seeking continuation of his deputation with the FSSAI. In this regard, a letter dated 27th November, 2012 was addressed on behalf of

the FSSAI to the Ministry informing it about the circumstances in which the petitioner had been appointed. The respondents clearly informed the Ministry that a conscious decision stood taken by the Chairperson and CEO in-charge to repatriate the petitioner to his parent office looking at his "fit with the organisation". The letter notes that nothing adverse with regard to the petitioner has come to notice. It was also pointed out that the petitioner had been appointed only for one year subject to extension of two years and that his case had been reviewed and the deputation was extended for only six months i.e. upto 31st July, 2012.

12. The Ministry responded by a communication dated 7th December, 2012 referring to an office memorandum dated 25th February, 2009 which contained a stipulation with regard to premature reversion to the parent cadre of the deputationist. It was pointed out that on premature reversion, the services of the deputationist could be returned to the parent department after giving advance notice of three months to the lending department/Ministry and the employee concerned. The Ministry requested the respondents to review and reconsider the deputation terms of the petitioner in view of the "hardship being faced by his family" due to "premature termination of the deputation".

13. It is this position which is asserted by the petitioner in support of his challenge by way of the present writ petition contending that his deputation was for a period of three years and could not have been prematurely terminated. The submission is that termination required a compliance with the requirement of the Office Memorandum dated 17th June, 2010.

14. This is countered by learned senior counsel for the respondents submitting that the petitioner's deputation tenure was for a period of one year which was extended by six months and he has been repatriated after the expiry of the full period of deputation. It has been submitted that the instant case is not a case of premature repatriation and, therefore, the stipulation under the Office Memorandum dated 17th June, 2010 does not have application.

15. Another important event, which intervened, deserves to be noticed. Despite the above position, the respondents did review the case of the petitioner so far as his appointment was concerned. While reiterating the above position with regard to the petitioner's tenure as a deputationist and his repatriation, the respondents issued an order dated 18th December, 2012 wherein it was clearly noted that there was "no vacancy at the Director level in FSSAI". The respondents further stated that a compassionate view was taken by them in the background of the petitioner's "familial need" and the FSSAI was willing to take the petitioner on deputation till the end of May, 2013 as a "Consultant". The respondents thereupon made an offer of appointment as Consultant to the petitioner vide their letter dated 18th December, 2012, the material terms whereby deserve to be noted in extenso and read as follows:-

(i) Your fresh deputation will commence from your date of joining till the end of

May, 2013. There will be no regularization of the period from your date of repatriation till the date of joining.

(ii) You will be relieved on 31/05/2013 (AN) and no further extension of deputation will be given. Your appointment order will carry your relief order w.e.f. 31/05/2013 (AN). No further order for your relief will be required.

16. The petitioner accepted the fresh appointment as Consultant on compassionate grounds unconditionally and submitted a joining report on 18th December, 2012 again without any protest at all. It is also essential to note that the office order dated 20th December, 2012 issued by the respondents whereby the petitioner was taken on strength with effect from 18th December, 2012 pointed out that the petitioner's appointment would be till 31st May, 2013. It was also stipulated that the appointment was for him to assist in a specific task in the Kumbh Mela operation.

17. By a letter dated 21st December, 2012, the petitioner subsequently sought that his deputation be continued beyond 31st July, 2012 till 1st February, 2014 on the post of Director (Administrator) for which he had been relieved by his parent department. The petitioner pointed out that he had not been relieved by the ONGC for the post of Consultant and also prayed for regularization of the period beyond 31st July, 2012 till 17th December, 2012.

The respondents reiterated the stand already taken in their response dated 24th December, 2012. The petitioner was clearly informed that he had joined duties as Consultant with the FSSAI in terms of the letter dated 18th December, 2012 which spelt out the terms of his appointment. He was clearly told that he shall not raise any issue regarding non-relevant issues of the past and that, if he was desirous, he may mention that he was not agreeable to the terms within 48 hours following which the FSSAI would take appropriate action regarding him. The petitioner was required to inform the respondents that he was agreeable to the terms and conditions in the said letter. The respondents unequivocally informed the petitioner that he was not being continued in the substantive post of Director (Administration) from 31st July, 2012 when his deputation ended; that regularization of the period of the petitioner's absence without leave could not be done by the FSSAI and no further reopening of the terms of appointment was possible.

18. The petitioner unequivocally and unconditionally accepted the terms of appointment contained in the letter dated 18th December, 2012 by way of his communication dated 27th December, 2012. We may note that the petitioner also states therein that he had taken up the Kumbh Mela assignment assigned to him by a letter dated 20th December, 2012.

Despite this position, the petitioner filed the Original Application No. 736/2013 before the Central Administrative Tribunal seeking the above prayers.

19. The respondents opposed the maintainability of the petition as well as the

petitioner's claim on merits inter alia on the ground that the petitioner was initially appointed as a deputationist on clearly notified terms and conditions which he unconditionally accepted. The petitioner was bound by the well settled principle that a deputationist has no legal right to continue in the post after the period of deputation. The respondents also challenged the maintainability of the application at the instance of the petitioner on the ground that he was estopped by his conduct, as noted above, from raising a challenge to the action of the respondents. The respondents also assailed the maintainability of the application at the instance of the petitioner on the ground that he was guilty of suppression of material record and facts and therefore, had approached the Tribunal with unclean hands disentitling him of any relief whatsoever.

20. The Tribunal conducted a detailed consideration of the issues and by its judgment dated 17th July, 2013 agreed with the respondents on all issues and dismissed the application filed by the petitioner resulting in the challenge thereto by way of the present writ petition.

21. Before us, the petitioner has challenged the judgment of the Central Administrative Tribunal on the very grounds which were pressed before the Tribunal. The petitioner has firstly contended that his period of deputation could not have been less than three years and the appointment for a lesser period was contrary to the office memorandum dated 5th January, 1994 issued by the Department of Personnel & Training ("DOPT" hereafter) as well as the period stipulated in the advertisement.

22. We have noted above that the advertisement in the instant case stated that the tenure of deputation would normally be three years.

23. So far as the office memorandum dated 5th January, 1994 issued by the DoPT is concerned, Clause 8 thereof merely prescribes that the period of deputation/foreign service would be "subject to a maximum of three years" in all cases except for those posts where a longer period of tenure is prescribed in the recruitment rules. The petitioner has placed reliance on Clause 9 of the memorandum which is concerned with premature reversion of a deputationist to the parent cadre.

24. As noted above, the petitioner's appointment letter stated that he was appointed as Director (Administration) on deputation basis "initially for a period of one year extendable to further two years". It cannot be denied that it is the letter of appointment which provides the terms and conditions under which the petitioner was appointed. He accepted such appointment without any objection. The Tribunal has concluded that so far as the deputation period is concerned, the appointment letter had divided it into two parts-the initial period being for one year extendable by further period of two years. The intendment of the authorities being that it would enable the borrowing department an opportunity to examine the conduct of the deputationist and to consider change which may have taken place in the organisation during the period. A stock of this situation or a review

was required to be taken at the end of period of one year. The extension of two years was permissible only upon satisfactory completion of the initial period.

25. So far as the plea that the appointment letter was contrary to the advertisement is concerned, we find that the advertisement does not in any case suggest that the deputation has to be for a period of three years. The use of the expression "normally" therein manifests that discretion is conferred on the borrowing department to stipulate the period of deputation within three years. The advertisement does not state that the tenure "will" be three years. The two expressions are not the same.

26. Clause 8 of the Memorandum dated 5th January, 1994 stipulates only a maximum period of three years of the deputation. It prescribes no minimum period.

27. No challenge is laid to the authority of the borrowing department to make an appointment of the deputationist on a period which is less than three years. Certainly, no prohibition in this regard is to be found in the documents placed before us.

28. As noted above, the petitioner accepted the terms and conditions stipulated in the appointment letter dated 22nd December, 2010 which included the appointment for the period of one year as well as the extension thereof by the letter dated 10th February, 2012 by a period of six months without any protest. It is only after the respondents had passed the order relieving the petitioner on 30th July, 2012 and repatriating him to the ONGC, that the petitioner submitted for the first time a representation on the same date.

29. The conduct which followed also showed that the petitioner had accepted the legality and validity of the respondents' action inasmuch as he accepted his appointment on deputation in the post of consultant by the letter dated 18th December, 2012 for the period till end of May, 2013. The petitioner made a representation only after joining his assignment as a consultant. However, after the firm response by the respondents' letter dated 24th December, 2012, the petitioner addressed a letter dated 27th December, 2012 accepting all terms and conditions of his appointment as Consultant. In fact, the petitioner specifically accepted the assignment of the Kumbh Mela work assigned to him in such capacity. The petitioner, thus, abandoned all objections.

30. The respondents have placed before this court a communication dated 29th January, 2013 addressed by the FSSAI to the ONGC setting out the fact that the petitioner had been relieved from his initial appointment w.e.f. 31st July, 2012. However, in view of the representation made by the petitioner to the Ministry of Health & Family Welfare and the direction dated 7th December, 2012, the respondents took a compassionate view of his familial need and appointed him as Consultant.

31. The respondents also informed the ONGC that the petitioner had been

sanctioned leave till 30th September, 2012 and not granted any leave thereafter and that his appointment as Consultant was for a specific period till the end of Kumbh Mela which would be over by 10th March, 2013 and the petitioner's services may not be required thereafter and that he may be surrendered to the ONGC w.e.f. 31st March, 2013.

32. The petitioner appears to have sent a representation dated 1st February, 2013 stating that his deputation was to complete on 1st February, 2014 and that the respondents are required to review the orders which they have passed which are violating the DoPT orders again.

33. In their response, the respondents reiterated their above noted stand.

34. We have no manner of doubt that the tenures of both of the petitioner's appointments were clearly stipulated by the respondents and his contention that the period of deputation has to be for a period of three years, is completely devoid of legal merits.

35. Mr. Nandrajog, learned senior counsel has rightly pointed out that the deputation is a tripartite agreement between the employee, the borrowing and the lending departments. It would come to an end when anyone of the three does not desire to continue the same.

36. The petitioner accepted the stipulations in the offers of appointment without any objection. He is, certainly, estopped from objecting thereafter or raising the challenge which he did before the Central Administrative Tribunal.

37. Even otherwise, the petitioner has only been repatriated to his parent department. It is not the petitioner's case that the same results in punitive consequences to him.

38. The petitioner has placed reliance on para 32 the pronouncement of the Supreme Court reported at Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, which reads thus:

32. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. 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 v. Jagdishbhai M. Kamalia SCC para 25).

39. This judicial precedent reiterates the well settled legal proposition that a deputationist has no legal right to continue in the office. So far as the tenure of deputationist is concerned, when specified, the Supreme Court has declared that ordinarily the tenure should be completed. It could be curtailed on just grounds which include unsuitability or unsatisfactory performance. When the tenure is not specified, the order of tenure can be questioned when the same is mala fide or action is taken in a post-haste manner suggesting malice.

40. In the instant case, the petitioner does not dispute that he has served the full prescribed tenures on deputation. There is no premature termination. The well settled legal principles negate the petitioner's challenge.

41. It appears that before the Tribunal, reliance was also placed on the pronouncement of the judgment of the High Court of Punjab & Haryana dated 25th April, 2013 in CWP No. 11960/2012 Sumer Singh & Ors. Vs. State of Haryana & Ors. wherein the court had held as follows:-

9. xxx In the facts of the present case, as the petitioners had never been validly appointed to the post of Conductors/Drivers, no right came to vest in them to continue on such post. There would be no requirement of observance of the principles of natural justice prior to taking a decision calling upon the petitioners to join back on their substantive posts.

42. The court had also held that the impugned order did not entail any adverse civil consequences to the petitioner. Placing reliance on Punjab State Electricity Board and Another Vs. Baldev Singh, , it was held that there was no requirement of grant of a hearing before the order.

43. Learned counsel for the appellant has urged before us that the learned Tribunal has erred in holding that the post of Director (Administration) did not exist and that the borrowing organisation has no option but to repatriate the applicant to its parent organisation. The factual narration above shows that the petitioner accepted the termination of his period of deputation. He unconditionally accepted the appointment as a Consultant as well as its specified tenure. Even if there were vacancies in the post of Directors, the petitioner is stopped from laying claim thereto.

44. In this regard, the Tribunal has also referred to the circumstances in which the respondents re-considered the decision to repatriate the petitioner. Before us also it is pointed out that the respondents re-worked the assignment of duties to the directors. It is pointed out that the work of administration and surveillance was being looked after by two separate directors when the petitioner had been appointed on deputation as Director (Administration). Subsequently, in an administrative shuffle, the work of both administration and surveillance was entrusted to the Director (Surveillance). For this reason, the respondents maintained that the petitioner did not "fit the field" and had even informed the Ministry in this regard.

45. It is pointed out that the compassionate appointment of the petitioner as a Consultant was effected in this background pursuant to the Ministry data dated 7th December, 2012 upon a review of the termination of the petitioner's services with the respondents. Inherent is his acceptance of the Consultant's position is the termination of his appointment as Director (Administration).

46. The petitioner's tenure as a Consultant has also come to an end of May, 2013 and he stands relieved from the FSSAI.

47. So far as the reliance on the Office Memorandum dated 17th June, 2010 to the Directorate of Personnel & Training is concerned, the same applies to a case of premature reversion as pointed out. As there is no premature repatriation of the petitioner, the Office Memorandum dated 17th June, 2010 has no application to the instant case.

48. The Tribunal has concluded that the appellant has concealed material facts. The petitioner does not dispute the non-disclosure of the complete documents before the Tribunal. For all these reasons, the challenge by the petitioner to the order dated 17th July, 2013 is factually and legally not tenable.

The writ petition is, accordingly, dismissed.