
(2006) 05 JH CK 0136
In the Jharkhand High Court

Dr. S.N. Maity

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) 4 JCR 657

Hon'ble Judges : S.J. Mukhopadhaya, J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This writ petition has been preferred by the petitioner against the order dated 8th September, 2005 passed by Central Administrative Tribunal (hereinafter referred to as the Tribunal), Circuit Bench at Ranchi in O.A. No. 215 of 2005. whereby and where under, application preferred by petitioner was dismissed.

The parent department of the petitioner is Central Mining Research Institute, Dhanbad (Council of Scientific and Industrial Research—hereinafter referred to as CSIR). He was deputed on 29th July, 2003 as Controller General of Patents, Designs and Trade Marks. After about one year, by impugned Order F No. 8/52/2001-PP & C) dated 31st August, 2004, he was repatriated to his parent department. The said Order was challenged by the petitioner in O.A. No. 215 of 2005, which was dismissed by the Tribunal by impugned Judgment and Order dated 8th September, 2005.

2. The main plea taken by the respondents is that the petitioner has no right to continue on deputation and he is not entitled for any protection of pay in the deputation post.

3. The Tribunal while dismissed the application preferred by the petitioner so far as deputation is concerned, in respect to second prayer for grant of T.A. and salary, directed the respondents to decide the claim. In this background, this

Court is not deciding the issue in regard to the second prayer for grant of T.A. and salary.

In the present case, the following questions arise for determination:

(a) Whether the Order F No. 8/52/2001-PP & C, dated 31st August 2004 issued by Under Secretary to the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy & Promotion repatriating the petitioner to his parent department is illegal.

(b) Whether the petitioner has right to continue as Controller General of Patents, Designs, and Trade Marks?

In normal parlance "transfer" means the movement of an employee from one headquarter station in which he is employed to another station; "deputation" is a transfer to another organisation outside the cadre and service. As no person has right to hold a post at a particular place, except "tenure post" and the transfer", or "deputation" does not affect fundamental right of a person, normally the Courts are reluctant to interfere with the order of "transfer" and "deputation" or if a persons is repatriated to his parent department.

Apart from the normal "transfer" and "deputation", sometime they are made source of recruitment. Persons are appointed to act for another post by way of transfer or deputation. If it is a source of appointment that means if the posts are filled up by appointment on, the basis of transfer or deputation then the State is required to follow Articles 14 & 16 of the Constitution of India. In such case, the State cannot act arbitrarily and required to give equal opportunity to all similarly-situated persons for appointment to the post and cannot deny the benefit on the ground of administrative exigency.

For example, source of recruitment, as prescribed for appointment in the Bihar Engineering Service Class-II, is "by direct recruitment" or "by promotion" or "transfer of officers already in the Government service", permanent or temporary. Similarly, source of recruitment, as prescribed under the Lok Sabha Secretariat (Methods of Recruitment and Eligibility, Conditions for Appointment) amendment Order, 1996 for the posts of Additional Secretary, Joint Secretary etc., is being made "by promotion" and "transfer on deputation".

For appointment, while Articles 14 & 16 is to be followed, in the matter of general transfer, posting or deputation. Article 16 is not required to be followed. If transfer or deputation is the source of appointment, Article 16 mandates giving opportunity to all similarly situated.

4. From the writ petition, it appears that the respondents issued an advertisement in the "Employment News" dated 20/26th October, 2001, calling for applications from eligible candidates for appointment to the post of Controller General of patents, Designs and Trade marks, vide Annexure-8. Therein, the Ministry proposed to fill up the post by transfer on deputation, including short-term contract. The petitioner being eligible applied through his parent

organisation i.e., Central Mining Research Institute, Dhanbad. The selection was made by the Union Public Service Commission (UPSC for short),"which held interview and personal talk on 4th June, 2002. The petitioner having found fit for appointment and being on the top of the merit list, the UPSC recommended his name for appointment. The competent authority approved the appointment of the petitioner for the post of Controller General of Patents. Designs and Trade Marks in the scale of Rs. 18,400-500-22400/- on deputation basis for a period of five years or until further orders, whichever is earlier with effect from the date of assumption of the charges of the post, communicated vide letter No. 8/52/2001-PP & C (Vol. II) dated 23rd June, 2003 issued by the Deputy Secretary to the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion. Thereafter, H.E. President of India was pleased to appoint the petitioner as Controller General of Patents. Designs and Trade Marks under the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) on deputation basis for a period of five years or until further orders, whichever is earlier vide Notification No. 8/52/2001-PP & C dated 11th August, 2003. It was published in the official Gazette of India Part-I, Section II. The petitioner joined the said post and continued to function but after about 11 months, the Under Secretary to the Government of India. Ministry of Commerce and Industry, Department of Industrial Policy and Promotion issued impugned Order F No. 8/52/2001-PP & C dated 31st August, 2004 and petitioner was repatriated to his parent department, namely Central Mining Research Institute, Dhanbad with immediate effect.

5. It is a settled principle that performance of an act otherwise and in a manner, which does not disclose any discernible principle, which is reasonable, may itself attract vice of arbitrariness. Any action if arbitrary or discriminatory cannot be upheld.

6. The present case is not a simplicitor case of transfer, posting or deputation and thereby the respondents cannot take plea that they have prerogative to transfer or post or place on deputation a Government employee on one or other post nor can repatriate such employee to his parent department on such ground as the case relates to appointment and the source of appointment is only deputation on transfer. As Articles 14 & 16 were followed in the matter of appointment to the post of Controller General of Patents, Designs and Trade Marks, the authorities are bound to disclose the ground for which such appointment has been disturbed by repatriating the petitioner to his parent department. The respondents cannot repatriate a person to his parent department to accommodate an other against such post, till valid ground is shown for such repatriation and it does not attract the vice of arbitrariness.

7. In the present case, the respondents have failed show the ground to repatriate the petitioner to his parent department, which is required in this type of case. In absence of such valid ground. the manner in which the repatriation has been made does not disclose any reasonable principle for such repatriation of

petitioner to his parent department. In the circumstances, we hold the impugned Order F No. 8/52/2001-PP & C, dated 31st August, 2004 arbitrary and violative of Article 14 of the Constitution of India.

Apart from the aforesaid fact, it will be evident from the impugned Order F No. 8/52/2001-PP & C dated 31st August, 2004 that the order has been issued by the Under Secretary to the Government of India. Neither the said order disclose nor in their counter affidavit, the respondents have made clear that the order was issued by the Union of India, as the Notification of appointment of petitioner dated 11th August, 2003 was issued by the Order of H.E. President of India. The petitioner having been appointed by the order of H.E. President of India, it was not open to the Under Secretary to the Government of India to cancel such appointment by repatriating the petitioner to his parent department.

8. For the reasons aforesaid, the impugned Order F No. 8/52/2001-PP & C dated 31st August, 2004 cannot be upheld nor the consequential order of relieving, if any, and they are set aside. The petitioner stands reinstated to the post of Controller General of Patents, Designs and Trade Marks with same and similar terms and conditions, as mentioned in the Notification No. 8/52/2001-PP & C, dated 11th August, 2003 and with all the consequential benefits.

9. This writ petition is allowed, with the aforesaid observations and directions. In the facts and circumstances, there shall "be an order cost assessed to the tune Rs. 5000/- (five thousand) to be paid by the respondents to the petitioner.