
(2004) 06 GAU CK 0034
In the Gauhati High Court
Case No : Writ Petition (C) No. 1297 of 2004

Hare Ram Singh, Urban Programme Officer	APPELLANT
Vs	
State of Arunachal Pradesh and George Josheph, Junior Engineer, Public Works Department, Bameng Division	RESPONDENT

Date of Decision : 05-06-2004

Acts Referred:

Citation : (2004) 2 GLT 1177

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : P.K. Tiwari and J. Purakayastha, for the Appellant; B. Benarjee, Government Advocate, A.P. and A.K. Bhattacharjee, for the Respondent

Judgement

B.K. Sharma, J.—Right of a deputationist for absorption in the borrowing department and the procedure to be adopted for appointment on deputation are the twin issues involved in this writ proceeding.

2. The petitioner who at the relevant time had rendered about 15 years of service as Junior Engineer in the Public Works Department, Arunachal Pradesh, offered his candidature in response to a proposal dated 20.10.2000 of the Government of Arunachal Pradesh in the Urban Development Department for filling up posts of Urban Programme Officer on deputation basis. After observing necessary formalities, the petitioner was appointed as Urban Programme Officer on deputation basis for a period of one year by an order dated 7.6.2001. The petitioner joined the assignment on 2.7.2001. His such assignment, although was for one year, was extended for another six (6) months to 3.1.2003. On expiry of term of deputation on 3.1.2003, the petitioner was not repatriated and he continued to hold the post without any formal order. However, the formal order was issued on 30.10.2000 extending the deputation period of the petitioner retrospectively w.e.f. 3.1.2003 to 3.1.2004.

3. As per advice of the superior officer of the borrowing department, the petitioner volunteered for absorption and made a formal prayer for his absorption

as Urban Programme Officer in the department of Urban Development by his letter dated 14.7.2003. The authorized officer of the landing department i.e. Superintending Engineer, PWD also issued no objection certificate in favour of the petitioner for his such absorption. The application submitted by the petitioner was duly forwarded by the jurisdictional Deputy Commissioner by his letter dated 14.7.2003 recommending the case of the petitioner for permanent absorption and certifying the petitioner to be sincere, punctual and honest. The performance of the petitioner was certified to be excellent and he was stated to be extremely able in understanding/implementation of various schemes. According to the information of the petitioner, the borrowing department also processed the matter relating to permanent absorption of the petitioner in the relevant File No.SUB/E-71/2000.

4. It was at that stage, the petitioner could come to know that the Deputy Chief Minister of the State and the Minister, Excise and Narcotic having no nexus with the department of Urban Development, with an eye to bring the respondent No.4 in place of the petitioner recommended his case to the replacement of the petitioner. It is the case of the petitioner that based on such political pressure, the impugned order both dated 19.2.2004 were issued. By the 1st order dated 19.2.2000 the petitioner has been repatriated to his parent department and by the 2nd order issued on the same date, the respondent No.4 has been appointed as Urban Programme Officer in place of the petitioner. It will be pertinent to mention here that although the extended term of the petitioner had expired on 3.1.2004, but the petitioner continued on deputation till issuance of the impugned order dated 19.2.2004. It is the case of the petitioner that as in the earlier occasion, it was his expectation that his term of deputation would be extended retrospectively pending consideration of his case for absorption in the borrowing department.

5. Copies of the impugned orders have been marked to the Deputy Chief Minister and the Minister, Excise and Narcotic. This according to the petitioner is rather unusual as there was no official requirement to send the copies of the impugned orders to such political personalities having no nexus with the department. An emphatic statement has been made in paragraph 15 of the writ petition that it was on extraneous consideration and interference of the extra departmental authorities which made the foundation towards ouster of the petitioner. It is in this context, the petitioner prayed for a direction of this Court for production of the File No.DOTT/Estt.-003/99/2000.

6. It is the case of the petitioner that the respondent No.4 has been appointed on deputation basis without observing the due formalities as are required to be done in case of appointment on deputation and as was done in the case of the petitioner. Unlike the case of the petitioner, no advertisement/circular was issued inviting application from interested Officers for such appointment on deputation and according to the petitioner, the respondent No.4 has been hand picked under political pressure towards replacement of the petitioner whose case was under

consideration for permanent absorption in the department.

7. Thus impugned action towards issuance of the impugned orders have been assailed on two counts vice-

i) The post being held by the petitioner on deputation could not have been filled up by another deputationist till such time the case of the petitioner was considered for permanent absorption for which the process was already initiated and

ii) The respondent No.4 could not have been appointed on deputation in the manner and method in which the same was done at the behest of the political bosses and without resorting to the proper procedure for such appointment giving opportunity to all interested officers.

8. I have heard Mr. P.K. Tiwari, learned counsel appearing for the petitioner and Mr. B. Banerjee, learned Govt. Advocate, Arunachal Pradesh. I have also heard Mr. A.K. Bhattacharjee, learned senior counsel appearing on behalf of the respondent No.4. Mr. Tiwari made submission reiterating the averments made in the writ petition. His basic thrust of argument was that the ouster of the petitioner from the borrowing department without completing the process of consideration of his case for permanent absorption for which the proposal was already mooted being on extraneous consideration by way of political interference favoring the case of the respondent No.4 without following the due procedure for appointment on deputation, the entire action on the part of the respondents which eventually culminated to the issuance of the impugned orders dated 19.2.2004 is not sustainable and liable to be interfered with. Mr. B. Banerjee, learned State counsel appearing on behalf of the official respondents produced the records. He submitted that although the case of the petitioner was processed for absorption, the petitioner cannot claim for his such absorption as a matter of right. He fairly admitted that in the past as per the practice prevalent in the department, five deputationists were permanently absorbed.

9. Mr. A.K. Bhattacharjee, learned senior counsel appearing for the respondent No.4 submitted that if the process towards inducting the services of the respondent No.4 on deputation was through political interference, same would definitely call for interference of this Court. However, he questioned the right of the petitioner to continue on deputation.

10. Two separate affidavits-in-opposition have been filed, one on behalf of the respondent Nos.1 and 2 and the other one on behalf of the respondent No.4. Apart from taking the general ground of expiry on the term of the deputation of the petitioner, the pleaded case of the petitioner of extraneous consideration and political interference in the matter of appointment of the respondent No.4 on deputation has not been denied as such. As regards the claim of absorption of the petitioner, the stand of the official respondents is that the case of the petitioner could not be considered for permanent absorption. The respondent No.4 also has not denied the specific plea of political interference raised by the

writ petitioner. However, a stand has been taken that there was nothing wrong in endorsing the copies of the impugned order to the concerned Minister they being the representative of the concerned areas.

11. The petitioner has filed an affidavit-in-reply to the affidavit-in-opposition filed on behalf of the official respondents. In the reply, the petitioner has highlighted as to how the deputation of the petitioner was preceded by elaborate procedure of obtaining vigilance clearance, Constitution of Screening Committee and consideration of the case of various incumbents and as to how upon such elaborate procedure the petitioner was appointed on deputation unlike the case of the respondent No.4 who by a stroke of pen was appointed to the replacement of the petitioner without following any such procedure. The good performance of the petitioner has also been highlighted in the reply. As regards the question of permanent absorption of the petitioner, the petitioner has stated in his reply that the consistent practice and procedure followed in the department towards absorption of the deputationist cannot be given a good-bye and no departure from such a practice and procedure can be made only to accommodate the respondent No.4. In a nut-shell, the stand of the petitioner in his reply is that the process for consideration of his case for permanent absorption having been initiated as per the practice and procedure prevalent in the department, same ought to have been allowed to reach the stage of its conclusion before inducting the respondent No.4 towards replacement of the petitioner in a most illegal and arbitrary manner.

12. The File No.DOH/Estt-003/99-2000 of the department of Urban Development & Housing on the subject of Absorption/repatriation of by AUPOS/UPOS has been produced by Mr. B. Banerjee, learned State Counsel.

13. I have gone through the same. The records revealed that the respondent No.4 made an application to the Director, Urban Development and Housing offering his candidature against one of the post of Urban Programme Officer furnishing his bio-data for the same. The application is undated, but received in the Directorate on 10.2.2004. The application was not for consideration of his case on deputation but was for consideration of his case for appointment as Urban Programme Officer against any one of the vacancies available in the department. The records further revealed that the case of the respondent No. 4 was recommended by the Minister of Tax and Excise for his appointment/deputation as UPO. Such recommendation was made by communication dated 9.2.2004 addressed to the Director, Urban Development Department under U.O. NO.AW-TL/03. Such recommendations were also made by the Deputy Commissioner, East Kameng District by his letter dated 10.2.2004 issued under No.UD-1/03. Recommendation was also made by the Deputy Chief Minister by his letter U.O. No.DCM/AP-19/03-04 dated 14.2.2004 addressed to the Minister, Urban Development. The recommendation was made for appointment of the respondent No.4 to the replacement of the petitioner. The Minister, Urban Development readily agreed to the request of the Deputy Chief Minister and by

his note dated 16.2.2004 recommended for replacement of the petitioner and directed to take suitable action in the matter immediately. Note was given to the Director of Urban Development. Immediately thereafter the two impugned Notifications dated 19.2.2004 were issued.

14. The aforesaid revelation made from the records, leave no manner of doubt that there was no proposal for repatriation of the petitioner till such time, the case of the respondent No.4 was recommended by the aforesaid authorities. The Deputy Chief Minister of the State wanted replacement of the petitioner towards accommodation of the respondent No.4 and made recommendation on that basis. The concerned Minister of the department also readily obliged the Deputy Chief Minister without evaluating the materials on record and taking into consideration of the same as was expected of him in such a matter and directed the Director, Urban Development towards replacement of the petitioner making it known in his note that such replacement was necessitated because of the recommendation of the Deputy Chief Minister.

15. The respondent No.4 was appointed on that basis by the impugned order dated 19.2.2004 to the replacement of the petitioner. In the process apart from replacement of the petitioner from the post of Urban Programme Officer the procedure to be adopted in the matter of filling up a post on deputation was given a complete good-bye. Unlike the case of the petitioner in whose case the detailed procedure of inviting applications, constitution of Screening Committee and consideration of the case of the applicants for appointment on deputation by the Screening Committee was not followed etc. The petitioner was appointed through such an elaborate and detailed procedure, but in the case of the respondent No.4 it was the recommendation of the Deputy Chief Minister and the Minister, Excise which played the all important role towards appointment of the respondent No.4 as UPO to the replacement of the petitioner. There was no competition, no selection and it was the respondent No.4 who alone was picked up for such appointment. The detailed procedure of inviting application, scrutiny thereof and selection by the Screening Committee was replaced only for him with the recommendation of the Ministers un-connected with the department and the Minister of the department also readily accepted the same showing solidarity to the Cabinet Colleagues unmindful of the rules and regulation, practice and procedure being followed in the department in the matter of appointment on deputation.

16. In the above context, I may gainfully refer to the various guidelines consolidated in Chapter-18 of Swamys complete Manual on Establishment and Administration. As per the said consolidated guidelines, accurate assessment of the vacancies should be made sufficiently in advance so that the Ministers/ Departments will be able to follow the procedure properly and the vacancy Circular should invariably be published in the Employment News. All the salient features of the vacancy Circular, as per e.g, qualification and experience, officers eligible, last date for receipt of nomination as prescribed by the Department

should invariably be published in the Employment News. Further requirement is that the Circular should be addressed to all the agencies or source of selection specified in the Recruitment Rules. The guidelines have emphasized upon following such a procedure so much so that a certificate is required to be issued certifying issuance of vacancies circular to all the agencies. Other relevant factors such as crucial date for determination of eligibility, eligibility of departmental officer for appointment by deputation, tenure of deputation absorption of an officer on transfer basis, seniority of persons absorbed after being on deputation etc. have also been laid down in the guidelines.

17. It appears that while considering the case of the petitioner for appointment on deputation, the aforesaid guidelines were taken into consideration and was appointed only after he was found suitable by a duly constituted Screening Committee. However, in case of the respondent No.4, the protective hands of the extra departmental authorities over his head not only absolve to him from the rigours of such a procedure but favoured him with the appointment on deputation for a period of two (2) years unlike the case of the petitioner in whose case even after going through the process of the elaborate procedure as enumerated above, it was only for one year.

18. With the aforesaid revelation from the records coupled with the violation of the guidelines formulating the procedure for deputation, I have no hesitation to hold that the deputation of the respondent No.4 by the impugned Notification dated 19.2.2004 is not sustainable. Accordingly, the impugned Notification dated 19.2.2004 appointing the respondent No.4 on deputation as Urban Programme Officer stands set aside and quashed.

19. This necessarily lead to the second issue involved in the writ petition as to whether the petitioner is entitled to be considered for absorption in the borrowing department. From the records it appears that a proposal was made for extension of the services of the petitioner for another two years w.e.f. 4.1.2004 to 3.1.06. Such a proposal was made by a note dated 27.1.2004 in the File. However, with the kind of recommendation made in favour of the respondent No.4 as reflected above, the petitioner not only did not get such extension but was sought to be repatriated by the impugned order. In the note dated 17.2.2004 available in the File, the denial of extension to the petitioner has been termed as unfortunate. A reading of the contents of the File relating to the appointment of the respondent No.4 and the repatriation of the petitioner gives the irresistible conclusion that the petitioner was sought to be replaced only to accommodate the respondent No.4 whose case was recommended by the aforementioned extra departmental authorities.

20. A proposal for permanent absorption of the petitioner and others was made on 5.3.2002 as it appears from the records. In the proposal, the past cases of absorption of five officers as Urban Programme Officer was also referred to. The proposal also recorded about the no objection certificate received from the lending department i.e. P.W.D. The proposal also pointed out about the provision

for such absorption under the Draft Recruitment Rules which have been cleared by all the concerned department including Law department. The proposal further pointed out that none of the Officers in the feeder grade were eligible and qualified for promotion as UPO. The proposal mooted in the File progressed further by way of granting extension for further six months and proposing to obtain NOC and other related documents within the extended period of deputation for the purpose of absorbing the petitioner and others as permanent staff of the department.

21. With the aforesaid proposal and progress relating to permanent absorption of the petitioner and others, the matter proceeded further and recommendation was made for final approval of the Recruitment Rules pointing out that the post of UPO_s are Group-B Gazetted post requiring approval of the Minister, Urban Development, the File was further processed for obtaining such approval. Approval was duly accorded by the Minister of the department on 18.4.2002 by way of granting extension of deputation for six months and to send further proposal for permanent absorption/recruitment. The records further revealed that 50% of the total vacancies of UPO are required to be filled up by direct recruitment through Public Service Commission and remaining 50% by promotion failing which by transfer on deputation. Referring to the past cases of absorption of five UPOs, a recommendation was made for permanent absorption of existing UPOs. There is also reference of the past absorption against the quota of direct recruitment. When the matter rested thus the aforesaid development towards issuance of the impugned orders took place in quick succession which eventually culminated to the initiation of the present writ proceeding.

22. Mr. P.K. Tiwari, learned counsel appearing for the petitioner placed reliance on the decision of the Apex Court as reported in K. Narayanan and others Vs. State of Karnataka and others, to bring home his argument that recruitment in its comprehensive terms includes any method provided for inducting a person in public service and that appointment, selection, promotion, deputation are all well known methods of recruitment. He also referred to another decision of the Apex Court as reported in Rameshwar Prasad Vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others, to emphasise the right of the petitioner to be considered for absorption. The Apex Court in that case observed as follows :-

In our view, it is true that whether the deputationists should be absorbed in service or not is a policy matter, but at the same time, once the policy is accepted and rules are framed for such absorption, before rejecting the application, there must be justifiable reasons. Respondent 1 cannot act arbitrarily by picking and choosing the deputationists for absorption. The power of absorption, no doubt, is discretionary but is coupled with the duty not to act arbitrarily, or at the whim or caprice of any individual.

23. Mr. Tiwari, also placed reliance on the Division Bench judgment of this Court in R.N. Hazarika Vs. State of Assam as reported in (1991) 2 GLR 384 to emphasise that upholding the order of repatriation of the petitioner merely on the ground of

expiry of the term of deputation without considering the attending circumstances in which the replacement of the petitioner came into being would amount to restoration of an illegal order by which the respondent No.4 was appointed. He also placed reliance on the decision of the Apex Court as reported in *State of Madhya Pradesh and Others Vs. Ashok Deshmukh and Another*, to buttress his argument that in case of repatriation of the petitioner, on account of allegation made against him to which Mr. Banerjee, learned State Counsel had obliquely and remotely referred to, same would carry a stigma against the petitioner and the order of repatriation would be bad in law.

24. From the aforesaid narration of facts and the revelation made from the records it is clear that the case of the petitioner and others were considered for permanent absorption and in fact the proposal was mooted and the matter proceeded on that basis in reference to the Draft Recruitment Rules and the earlier absorption made under similar circumstances. The Apex Court in the case of *Rameshwar Prasad (Supra)* recognized the right of the deputationists to be considered for absorption and emphasized that although the power of absorption is discretionary, but at the same time such power is coupled with the duty not to act arbitrarily or at the whim or caprice of any individual. In the instant case, there is no manner of doubt and rather established on perusal of the records that the case of the petitioner was excluded even from the purview of the consideration for absorption on a permanent basis only to make room by way of accommodating the respondent No.4.

25. Appointment/recruitment to any service can be made from different sources i.e. by direct appointment, by promotion or by absorption/transfer. The source of recruitment can either be internal or external. Internal source would relate to cases where appointments are made by promotion or by transfer and by absorption. External source would mean recruitment of eligible persons who are not already in service in the Organisation in which the recruitment is to be made. Persons specified in both the categories possessing requisite qualifications are eligible for appointment. There is no dispute that the petitioner is eligible for appointment as Urban Programme Officer. The relevant file also recognizes the position. In fact the case of the petitioner along with others was recommended and processed for permanent absorption. But for the intervening issue relating to the appointment of the respondent No.4 on deputation in the aforesaid manner and method, perhaps the case of the petitioner and others would have been considered for such absorption.

26. The Draft Recruitment Rules of which the reference has been made in the relevant records also contained provision for absorption of deputationists. The Apex Court in the case of *Abraham Jacob and Others Vs. Union of India*, observed It is too well settled that the service condition of employees, in the absence of a statutory rule could be governed by administrative instruction. In that case, the provision of the Draft Rules were approved by the Governmental authority as in the instant case and the application of the same was held to be

valid . Similarly, in the case of Vimal Kumari Vs. The State of Haryana and Others, the Apex Court held that it is open to the Government to regulate the service conditions of the employees for whom the rules are made by those rules even in their draft stage. Recourse to such draft rules is permissible for the interregnum.

27. As has been noticed above the recruitment rules for the department has already been approved by different departmental authorities including the Law Ministry and it is now only to be notified. It has also been noticed that as per the past practice followed by the department absorption of deputationist is a recognized mode of recruitment. It has also been noticed that the case of the petitioner along with other deputationists was processed for consideration for absorption but abandoned mid way without any finality to the matter. As against the recommendation of the case of the petitioner for further extension of deputation by two years, possibly to facilitated consideration of his case for absorption, the recommendation made in favour of the respondent No.4 by the extra departmental authorities intervened in the matter putting an end to the consideration of the case of the petitioner for absorption and rather was ordered for repatriation.

28. It is true that the petitioner does not have any indefeasible right to continue on deputation. It is equally true that his term of deputation has come to an end. There is no denial of the power of the borrowing authority to repatriate an incumbent serving on deputation even before expiry of the term/tenure of deputation period. However, the case of the petitioner will have to be considered in the light of the issue which has already been decided against the respondent No.4 and also in the light of the fact that the case of the petitioner was once processed for permanent absorption. It is in this context, the Apex Court in the case of Rameshwar Prasad(Supra) emphasized the need of consideration of the case of the deputationists by not acting arbitrarily or at the whim or caprice of any individual. The Apex Court also emphasized that once the policy for absorption of deputationists is accepted, before rejecting the case for absorption, there must be justifiable reasons, which is missing in the instant case.

29. For the foregoing reasons I have no hesitation to hold that as against the original proposal for absorption of the petitioner in the borrowing department for which NOC was also issued by the lending department and to grant him further extension of deputation by another two years were outweighed by the recommendations of the extra departmental authorities made in favour of the respondent No.4 and the impugned order of repatriation dated 19.2.2004 was the natural sequence of the other impugned order dated 19.2.2004 by which the respondent No.4 was sought to be inducted on deputation with the replacement of the petitioner. In that view of the matter, the impugned order of repatriation is liable to be interfered with and accordingly the same stands set aside and quashed. However, this does not mean that the petitioner has got any indefeasible right to continue in the borrowing department either on deputation

or by way of permanent absorption. At the same time, the official respondents cannot be oblivious of their duty to consider the case of the petitioner for permanent absorption. They will also be entitled to consider as to whether the petitioner should be allowed to continue on deputation as per the necessity of the department, but the same must not be guided by any extraneous considerations.

30. The official respondents will now take a decision consistently with the observations made above, as to whether there is any necessity to continue the services of the petitioner on deputation. However, this will have to be preceded by a decision relating to the consideration of the case of the petitioner for permanent absorption in the department as was mooted earlier. It will be entirely upto the department to take final decision in the matter as regards the proposal for absorption. It will be in the fitness in the things to give a final shape to the original proposal to consider the case of the petitioner and others for permanent absorption in the department. It is made clear that the petitioner will have only the right to be considered for such absorption but not his absorption as such. It will be open for the respondent to consider the case of the petitioner and others applying the same yardstick and parameters as were applied in the case of earlier five incumbents who were permanently absorbed in the department. Till consideration of the case of the petitioner in that manner, or in the event of a decision not to go for such permanent absorption, till the new deputationists are brought to the department adopting the same procedure as in the case of the petitioner and the procedure noted above, the petitioner may be allowed to continue on deputation in the borrowing department. However this direction will not stand on the way of the official respondents to repatriate the petitioner in case of a decision not to fill up the post any more on deputation or by way of permanent absorption.

31. The writ petition stand allowed to the extent indicated above. There shall be no order as to costs.