(2009) 10 AHC CK 0136

In the Allahabad High Court

Case No : Writ Petition No.1540 (S/B) of 2003

Kanhaiya Lal Tewari APPELLANT

Vs

Central Administrative Tribunal, Lucknow Bench, Lucknow and Others RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2009) 10 AHC CK 0136

Hon'ble Judges : Sibghat Ullah Khan, J and Anil Kumar, J

Final Decision : Dismissed

Judgement

1. By means of the present petition, the petitioner has challenged the order dated 9.9.2003 passed by the Central Administrative Tribunal, Lucknow Bench Lucknow thereby dismissing the petitioner''s Original Application No. 589 of 2001, Kanhaiya Lal Tewari v. Union of India and also the order dated 5.10.2001 by which the petitioner has been repatriated to its parent department.

2. We have heard Sri Kuldeep Singh, Learned counsel for the petitioner and Sri Asit Kumar Chaturvedi, learned counsel for the opposite parties.

3. The facts, in brief, as submitted by the learned counsel for the petitioner are to the effect that the petitioner was initially appointed as Lower Division Clerk on 4.3.1982 in the office of Inspecting Assistant Commissioner of Income Tax, Inspection Range Ludhiana from where he was transferred to Lucknow in the Office of Chief Commissioner, Income Tax, Lucknow on 17.4.1985. By means of order dated 28.12.1985 passed by Chief Commissioner (Administration) Income Tax, Lucknow , the petitioner was appointed on the post of Hindi Translator on ad hoc basis and joined the said post on 1.7.1986 and worked till 15th July, 1988 and thereafter he was reverted back to the post of Lower Division Clerk.

4. While petitioner was working as Lower Division Clerk in the office of Chief Commissioner, Income Tax, Lucknow, a Notification was issued on 10.9.1990 by

which it was notified that the respondents proposed to fill up the post of Hindi Translator in the grade of Rs. 16002660 with certain condition as mentioned therein. In pursuance of said Notification dated 10.9.1990, a written test was held and as per version of the petitioner, he passed the said written test and thereafter an interview was conducted by the respondents in which he had been declared successful and by order dated 9.3.1992, and was appointed on the post of Hindi Translator on deputation basis in the pay scale of Rs. 16002600 in the office of the Commissioner, Income Tax, Lucknow. Subsequently, by means of order dated 23.3.1992, the petitioner was attached with the Assistant Director (Official Language) in the office of Commissioner, Income Tax, Lucknow.

5. It has further been submitted by the learned counsel for the petitioner that although in the Notification issued in the year 1990, it was not notified that the post of Hindi Translator was to be filled up on deputation basis but when the appointment order was issued in which it was mentioned that the petitioner was appointed on deputation basis as Hindi Translator. So keeping in view the said facts, the petitioner preferred a representation to respondent no.4 for considering his case for absorption on the post of Hindi Translator but no heed whatsoever had been paid on the representation of the petitioner and the reminders made thereafter on one hand and on other hand, the persons, who are similarly situated to the petitioner, namely, Sri Zaheeruddeen Siddiqui, Prabhu Dayal Sharma and Smt. Annapurna Dixit were absorbed on the post of Hindi Translator in the department.

6. In view of the said fact, when the petitioner again submitted a representation dated 24.4.2001 (Annexure 5 to the writ petition). Without disposing of the said representation and without assigning any reason whatsoever, the Chief Commissioner , Income Tax, Lucknow passed an order dated 15.10.2001, repatriating the petitioner to the post of Lower Division Clerk in a most arbitrary manner.

7. Aggrieved by the order dated 5.10.2001 passed by Chief Commissioner, Income Tax, Lucknow (opposite party No.4) , the petitioner had challenged the same before Central Administrative Tribunal, Lucknow Bench ,Lucknow by way of Original Application No. 589 of 2001, (Kanhaiya Lal Tewari v. Union of India and others).

8. Contesting respondents, before Central Administrative Tribunal Lucknow, had filed their counter affidavit stating therein that the petitioner was initially appointed as Lower Division Clerk on 4.3.1982 in the office of the Inspecting Assistant Commissioner of Income Tax, Inspection Range Ludhiana. Later on, he was transferred to the office of Chief Commissioner, Income Tax , Lucknow on 17.4.1985.

9. Thereafter, the petitioner was appointed on ad hoc basis on the post of Hindi Translator where he worked till 14.7.1988 and thereafter the petitioner joined on his substantive post of Lower Division Clerk on 15.7.1988. Later on, again he

was posted on deputation as Hindi Translator in the department.

10. It was further submitted in their counter affidavit that subsequently, the Central Board of Direct Taxes (Attached & Subordinate Offices) (Junior Hindi Translator) Recruitment Rules, 1991 were notified on 17.1.1991, according to which the post of Junior Hindi Translator, Grade Rs. 14002300, was to be filled by any transfer on deputation/ Transfer, failing which by direct recruitment from amongst Central Government offices, holding (a) (I) analogous post or (ii) post in the pay scale of Rs. 12001400 or equivalent, with three years regular service in the Grade or (iii) post in the pay scale of Rs. 9501500 or equivalent, with five years regular service in the Grade and (b) possessing educational qualification and other qualification laid down in column 8 for direct recruit and the Recruitment Rules 1991 were amended by the Central Board of Direct Taxes (Attached & Subordinate Offices) Junior Hindi Translator Recruitment (Amendment) Rules, 1993 notified on 21.3.1994.

11. Moreover in suppression of the Income Tax Department (Hindi Translator) Recruitment rules, 1976, the Income Tax Department (Senior Hindi Translator) Recruitment Rules, 1992 were issued and published on 19.1.1993 superseding the earlier notification of 1976 meaning thereby that from 19.1.1993, the post of Senior Hindi Translator was to be governed by the recruitment Rules of 1992 and the mode of recruitment to the post of Senior Hindi Translator which is promotional post is to be made amongst the Junior Hindi Translator and in the event if no junior Hindi Translator is available , the said post have to be filled up by transfer on deputation failing which by direct recruitment.

12. In view of the said fact the order dated 5.10.2001 passed by Chief Commissioner Income Tax, Lucknow (opposite party No.4) by which the petitioner was repatriated back to the post of Lower Division Clerk, is perfectly valid and needs not interference and the Original Application filed by the petitioner was liable to be dismissed having no merit.

13. The Central Administrative Tribunal, Lucknow Bench Lucknow on the basis of pleading as pleaded by the parties before it. By means of its judgment and order dated 9.9.2003, had dismissed the Original Application filed by the petitioner.

14. Aggrieved by the order dated 9.9.2003 passed by the Tribunal and the order dated 5.10.2001 passed by the Chief Commissioner, Income Tax, Lucknow (opposite party no.4), the petitioner has challenged the same by means of present writ petition.

15. Learned counsel for the petitioner, in brief, has challenged the orders in question on the following grounds:

(a) No reason whatsoever has been given by the opposite party no.4 while passing the order dated 5.10.2001 thereby repatriating back the petitioner to the post of Lower Division Clerk so the order dated 5.10.2001 passed by the opposite party no.4 and the order dated 9.9.2003 passed by Central

Administrative Tribunal, Lucknow Bench, Lucknow are illegal and arbitrary in nature.

(b) The petitioner is subjected to hostile discrimination as the similarly situate persons,namely, Sri Zaheeruddeen Siddiqui, Prabhu Dayal Sharma and Smt. Annapurna Dixit were absorbed on the post of Hindi Translator in the department whereas the petitioner was repatriated back on the post of Lower Division Clerk, the said action on the part of the respondent no.4 is arbitrary and violative of Article 14 of the Constitution of India.

16. We have heard the learned counsel for the parties and perused the record.

17. In the present case, the petitioner was working on the post of Lower Division Clerk in his parent department in substantive capacity and thereafter he was posted on deputation as Hindi Translator in the office of Chief Commissioner, Income Tax, Lucknow, and while working on the post he had given an application for being absorbed as Hindi Translator on 15.2.1994.

18. However, at that relevant point of time, In the department on 19.1.1993 rules were published known as the Income Tax Department (Senior Hindi Translator) Recruitment Rules, 1992 superseeding the earlier notification of 1976 meaning thereby that from 19.1.1993, the post of Senor Hindi Translator is to be governed by the recruitment Rules of 1992.

19. Further by the Recruitment Rules1992, the mode of recruitment to the post of Senior Hindi Translator which is promotional post is to be made amongst the Junior Hindi Translator and in the event if no junior Hindi Translator is available , the same has to fill up by transfer on deputation failing which by direct recruitment.

20. In the said Rules 1992, it was further clarified that even on transfer on deputation, only such of the person can be taken who are either holding analgous post or in the pay scale of Rs. 14002600 or 14002300 with five years regular service. Admittedly, the petitioner was neither in the pay scale of Rs. 14002600 or 14002300 nor he can be said to be Junior Hindi Translator with five years regular service therefore, naturally he has no right to claim for absorption on the post in question as neither he fulfilled the eligibility conditions nor there is a provision in the Recruitment Rules 1992 for absorption on the post of Senior Hindi Translator. So the Central Administrative Tribunal had rightly rejected the claim of the petitioner by means order dated 9.9.2003 and confirmed the order dated 5.10.2003 passed by opposite party no.4 as such we do not find any illegality or infirmity in the said orders because the petitioner was working on deputation and a person, who was working on deputation had got no right whatsoever to be absorbed on the post in question on which he had been sent on deputation except in accordance with the Rules as provided for absorption in the department.

21. In the case of Ratilal B. Soni and others v. State of Gujarat and others, 1990

(Supp) SCC 243 Hon''ble the Supreme Court has held that:

?The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post.?

22. In the case of State of Punjab and others v. Inder Singh and others, (1997) 8 SCC 372, Hon''ble Supreme Court has held that :

?The concept of ?deputation? is well understood in service law and has a recognised meaning. ?Deputation? has a different connotation in service law and the dictionary meaning of the word ?deputation? is of no help. In simple words ?deputation? means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or head Constables as the case may be.?

23. In the case Rameshwar Prasad v. Managing Director, U.P. Rajkiya Niraman Nigam Limited and others , (1999) 8 SCC 381, Hon''ble the Supreme Court has held that :

?We agree with the learned counsel for the respondent and make it clear that an employee who is on deputation has no right to be absorbed in the service where he is working on deputation.?

24. In the case of Kunal Nanda v. Union of India and another, (2000) 5 SCC 362 Hon''ble the Supreme Court has held that:

?It is well settled that unless the claim of the deputationist for a 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 basis principle underlying deputation itself is that the person concerned can always and 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.?

25. In the case of Mahesh Kumar K. Parmar and others v. S.I.G. Of Police and others, (2002) 9 SCC 485, Hon''ble the Supreme Court has held as follows:

?Mr. Dholakia, the learned Senior Counsel appearing for the State, on the other hand, submitted that the Rules never contemplated a permanent absorption of the existing employees on deputation, and therefore, since the nature of their tenure in the Bureau was that of a deputation , the employer has always a right to repatriate the deputationist to the parent organization, and consequently, the question of issuing a mandamus for their permanent absorption does not arise.?

26. This Court in the case of Netram Gangwar and others v. State of U.P. and others, 2004 (5) AWC 4056 has held :

?The appointment letters issued by the District Basic Shaiksha Adhikari specifically provided that they they were appointed on deputation on a purely temporary arrangements which can come to an end at any time without any prior information. The appointment order made it clear that the deputation is up to the period of the scheme or upto 31.3.2003 whichever is earlier and the post shall be treated to be sanctioned only till that time.

The learned Single Judge, relied upon the decision of the Supreme Court in Jaipal and others v. Stte of Haryana and others (1988) 3 SCC 354. In which the Supreme Court considered the question of payment of the equal pay and for regularisation of the instructors under the Adult and Non Formal Scheme under the Education Department of Haryana. The Supreme Court did not accept the claim for regularization on the ground that project of Adult and Non Formal Education was temporary and was likely to last upto 1990 . In M.D.U.P. Land Development Corporation and Others v. Amar Singh and others, (2003)5 SCC 388, the Supreme Court observed that the employees cannot claim regularization as the matter of right after the project came to a close.

The appellants were on deputation and they have been repatriated to their substantive post. As rightly held by the learned Single Judge, the petitioners have no right to continue under the new scheme. They were on deputation, and it is well settled that a person on deputation has no right to continue on deputation, and he can be repatriated to his parent department at any time vide Kunal Nanda v. Union of India JT 2000 (6) SC574: (2000) 5 SCC 362: Rameshwar Prasad v. Managing Director, U.P. Rajkiya Nirman Nigam Ltd. And others, 1999 (4) AWC 2743(SC) : JT 1999(7) SC 44: 1999(3) UPLBEC 2412: Dr. O.P. Singh v. State of U.P. and others, 2003(5) ALR 44, etc.?

27. In view of the above said judicial pronouncement the submission made by the learned counsel for the petitioner that he had been wrongly repatriated back on the post of Lower Division Clerk and not absorbed on the post of Senior Hindi Translator in the office of Chief Commissioner, Income Tax, Lucknow has got no force and is rejected.

28. So far as the next submission made by the learned counsel for the petitioner that the petitioner was subjected to hostile discrimination as persons similarly situate to the petitioner had been absorbed in the department whereas the petitioner had been repatriated back to the post of Lower Division Clerk has also

got no force in view of the categorical findings which are given by the Central Administrative Tribunal and further the findings has also been given that the parent department had not given the no objection certificate for his absorption, the relevant para9 of the judgment of Tribunal in this regard is quoted below:

?9. Coming to the next contention of the applicant the basis principles of discrimination is that all the persons with whom applicant claims parity or states to be similarly circumstanced should be on the same platform. As there cannot be any similarity between two unequals person. In the instant case, respondents have explained that only one person Sri Zaheeruddin Siddiqui ws absorbed as Sr. Hindi Translator in the scale of Rs. 16002660 but his absorption had taken place in July, 1992 i.e. prior to the amendment of recruitment rules for senior Hindi Translator. Therefore, it is wrong on the part of the applicant to compare his case with Sri Zaheeruddin , because at that time he was governed by different set up Recruitment Rules whereas when applicant had applied for his for as the other two persons are concerned, they were not absorbed as Sr. Hindi Translator but they were absorbed only as Junior Hindi Translator which was very much permissible under the recruitment rules for junior Hindi Translator. Moreover, they fulfilled eligibility as required under the said recruitment rules, Therefore, we are satisfied that the contention of discrimination is not sustainable in the present facts of the case. The contention of the applicant is accordingly rejected. As for as letter dated 17.1.1996 is concerned, the very first condition of the said letter is that the deputationist should fulfill the eligibility conditions as prescribed in the recruitment rules and that his parent department should have not objection, if the said deputationist is absorbed.?

29. It is now well settled law that while exercising the power of judicial review in exercise of the extra ordinary jurisdiction under Section 226 of the Constitution of India, this Court is not supposed to interfere with the findings of the facts arrived at by the Tribunal unless and until this Court concludes that such findings of fact are either perverse or based on no evidence.

30. In the case of Syed Yakoob v. K.S. Radhakrishnan & others, (1964(5) SCR 64) the Supreme Court has held as follows:

?finding of fact cannot be challenged in a proceeding on the ground that the relevant and material evidence was in sufficient to sustain the finding and that adequate or sufficiency of evidence or an inference of fact to be drawn from the evidence or finding of fact are entirely within the jurisdiction of the Tribunal.?

31. In the case of State of West Bengal v. A.K. Shaw, (AIR 1990 SC 2205), the Supreme Court has observed that if quasi judicial Tribunal had appreciated the evidence on record and recorded the findings of fact, those findings of fact would be binding on the High Court. By the process of Judicial review, the High Court cannot appreciate the evidence and record its own findings of fact.

32. In the case of L. Chandra Kumar v. Union of India and others, 1997 (3) SCC 261, the Constitutional Bench of the Apex Court has laid down the scope of the

power of judicial review exercised by the High Court while deciding the writ petition against the judgment of Central Administrative Tribunal in para 93 as follows:

?Their function in this respect is only supplementary and all such decisions of the Tribunal will be subject to security before the Division Bench of the respective High Courts.?

33. In the case of State of Uttar Pradesh and another v. Man Mohan Nath Sinha and another, (2009) 8 SCC 310, the Hon''ble Supreme Court has held that:

?The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.?

34. As in the present case, learned counsel for the petitioner has failed to point out any reason whatsoever that the findings of fact recorded by the Central Administrative Tribunal in this regard are contrary or perverse so the submission made by the learned counsel for the petitioner that the petitioner is subjected to hostile discrimination thereby not absorbing the service on the post of Senior Hindi Translator and repatriating back to the petitioner on the post of Lower Division Clerk is an action on the part of respondent no.4 which is violative under Article 14 of the Constitution of India is accordingly rejected.

35. For the forgoing reasons, the petition lacks merit and is accordingly dismissed. However, there is not order as to costs.

(Petition dismissed)

