

(2018) 07 CAT CK 0141

In the Central Administrative Tribunal

Case No : Original Application No. 2472 Of 2017

Meena Srivastava

APPELLANT

Vs

Lieutenant Governor And Ors

RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:

Citation : (2018) 07 CAT CK 0141

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : F.K. Jha, G. Indira, Ranjan Tyagi

Final Decision : Dismissed

Judgement

1. The current O.A. has been filed seeking the following relief:-

"(i) This Hon'ble Tribunal be pleased to quash the written communication dated 26.09.2016 and direct the respondents to treat the deputation of the applicant as transfer and further direct the respondents to grant all the service & retirement benefits since 25.01.1978 and further grant all the consequential financial and promotional benefits notionally alongwith interest @ 12% p.a. till its realization, in the interest of justice.

(ii) This Hon'ble Tribunal may kindly be pleased to pass any other order/direction as this Hon'ble Tribunal deems fit in the facts and circumstances of the case."

2. Briefly stated, the facts of the case are that the applicant was appointed as temporary Lower Division Clerk on 25.01.1978 in the basic pay of Rs.260/- p.m. in Andaman & Nicobar Administration, Port Blair. She was appointed as Trained Graduate Teacher for a period of three months by respondents No.1 & 2 vide their order dated 22.08.1984. Her ad hoc appointment was converted into temporary appointment vide order dated 06.09.1988 with salary at Rs.440/- p.m. along with usual allowances as admissible under Rules w.e.f. 25.08.1986.

3. The applicant states that she was appointed as Trained Graduate Teacher

(TGT) (Hindi) in Navodaya Vidyalaya Samiti (NVS) with due permission of respondents No. 1 & 2 in the pay scale of Rs. 1400-2600/- vide appointment letter dated 31.08.1987.

4. The applicant was sent on deputation on 14.01.1988, after being relieved from her duty on 15.01.1988 to join her new assignment as TGT in NVS Faizabad, UP. This appointment was subject to the condition that her lien in the post of TGT will be kept in the department for a period of two years w.e.f. 16.01.1988.

5. The applicant states that she was directed to be repatriated to her parent department vide order dated 17.07.1991. Since similarly placed teachers were absorbed with respondent no.4 and the applicant was denied this benefit, she challenged the said repatriation before the Hon'ble High Court of Judicature at Allahabad at Lucknow through WP No. 4941(W) of 1991. Vide order dated 20.08.1991, Hon'ble High Court stayed the repatriation of the applicant and restrained the borrowing department from repatriating the applicant. It was finally decided on 09.01.2008, by C.A.T., Lucknow Bench.

6. The CAT, Lucknow Bench vide their judgment dated 09.01.2008 disposed of the case with the following directions:-

"This TA stands disposed of with the directions of the respondents that in the event applicant confirms to the eligibility criteria at the time of appointment, her case shall be considered for permanent absorption within a period of two months from the date of receipt of copy of this order. No costs."

7. In view of the aforesaid judgment, the case of the applicant was placed before the Absorption Committee, who did not approve the absorption finding her ineligible in NVS. Hence, vide order dated 25.11.2008, it was decided that the applicant be repatriated. The applicant joined the office of respondents on 09.01.2009.

8. She states that she was not allowed to work in the office and was informed that they needed instructions from the higher authorities to perform her duty. The applicant represented to the respondents vide various representations dated 13.07.2009, 24.08.2009, 31.12.2009, 04.02.2010 and 16.03.2010 etc. The applicant has cited the order of the Chief Secretary (respondent No.2) dated 01.06.2010 wherein he has held that her joining should be accepted by the department and the disciplinary proceedings for major penalty should also be carried out to their logical conclusion. The applicant was allowed to join duty vide order dated 16.06.2010, and was posted as TGT at Miletalak on 06.08.2010 where she joined on 11.08.2010.

9. The applicant further submits that she was paid salary for the month of April, 2011 though she joined the service of the respondents on 09.01.2009. She represented against this discrimination in salary and for denial of other benefits like increment, ACP/MACP etc. but her pleas fell on deaf ears. However, the salary of the applicant was rectified on 17.09.2012 and she started getting

revised salary from September-October, 2012 onwards upto January, 2013. Again her salary was stopped w.e.f. February, 2013 till her superannuation on 31.05.2013. It is averred that her salary was again reduced to the minimum of the band on 12.11.2013 and was further reduced to the lowest pay of TGT. Later, in May, 2014, salary for February, 2013 to May, 2013 (on minimum band) was credited to her after which a recovery of Rs.94,479/- was effected from her salary, purportedly on account of over payment. Her GPF and other retiral benefits were also received by her after a delay of almost 34 months. The applicant has discussed the events leading to her suspension order dated 08.03.2002 and the subsequent revocation of the same on 03.09.2004. Various other grievances against the respondents have also been discussed in the O.A., however, I confine myself to the specific relief claimed by the applicant in the O.A. as mentioned in Para-1.

10. In support of her contentions, the applicant has relied on the following decisions of Hon'ble Supreme Court/Hon'ble High Court/CAT:-

- (i) D.S. Nakara & Ors. Vs. UOI, (1983) 1 SCC 305.
- (ii) Deoki Nandan Prasad Vs. State of Bihar & Ors., (1971) Supp. SCR 634.
- (iii) State of Punjab and Anr. Vs. Iqbal Singh, (1976) IILLJ 377 SC.
- (iv) UOI Vs. Irshad Husain & Ors., [WP(C) No.2056/2016.
- (v) Shankara Cooperative Housing Society Limited Vs. M. Prabhakar and Ors., (2011) 5 SCC 607.
- (vi) Privy Council in Lindsay Petroleum Company Vs. Hurd, (1874) LR 5 PC 221.
- (vii) Moon Mills Limited Vs. Industrial Court, AIR 1967 SC 1450.
- (viii) Maharashtra SRTC Vs. Balwant Regular Motor Service, AIR 1969 SC 329.
- (ix) OA-16/2010 (Govt. of India Press Workers Union & Ors. Vs. UOI & Ors.) wherein the laid down principle by the Apex Court in the case of Roshan Lal Tandon Vs. UOI & Ors., AIR 1967 SC 1889 and in the case of General Manager, South Central Railway Sikandarabad & Anr. Vs. AVR Siddhniti & Ors., 1994(4) SCC 335.
- (x) K.K. Madhavan & Anr. Vs. UOI & Ors., 1987 AIR 2291.
- (xi) OA-3718/2010 (O.P. Gauba Vs. UOI).

11. The respondents No. 1 and 2, in their counter, submit that the applicant was on deputation to Navodaya Vidyalaya Samiti, Faizabad, UP from 16.01.1988 to 15.01.1991. Further extension of her deputation beyond 15.01.1991 was not permissible under the Rules. However, the applicant approached the Hon'ble High Court and obtained a stay order on her repatriation order without any information to the respondents and without permission of the Education Department. In other words, she almost abandoned her service at Education

Department to take up an alternative employment at Navodaya Vidyalaya Samiti.

11.1 On her relieving from there on 25.11.2008, the applicant, after a gap of 20 years 10 months and 10 days, approached the Directorate of Education on 09.01.2009 to report for duty. The matter regarding overstay of the applicant was taken up with DoPT and MHA for regularization of the extended period of deputation. The Ministry of Home Affairs directed the respondents to deal with the case of the applicant as per the provisions contained in OM No. 6.8.2009-Estt. (Pay-II) of DoP&T dated 17.06.2010 regarding tenure of deputation/foreign service and O.M. No. 6.8.2009-Estt. (Pay-II) dated 01.03.2011 regarding over stay while on deputation.

11.2 They aver that, as per O.M. No. 14017/30/2006-Estt.(RR) dated 29.11.2006, the deputationist officer is deemed to have been relieved on the date of expiry of the deputation period unless the competent authority has requisite approvals and has extended the period of deputation in writing prior to the date of its expiry. Respondents submit that in the event of the officer over staying for any reason whatsoever, he/she is liable to disciplinary action and other adverse Civil/Service consequences which would include the period of unauthorized over stay not being counted for service for the purpose of pension and that any increment due during the period of unauthorized over stay being deferred with cumulative effect, till the date, on which the officer rejoins his parent cadre.

11.3 The respondents have further relied on DoP&T O.M. dated 16.05.2013 in respect of "Proper Monitoring of deputation by the lending departments." The said O.M. stipulates that the Ministry of Home Affairs cannot consider the ex-post facto approval for regularization of over stay on deputation in respect of a deputationist, hence the applicant is not eligible for any kind of benefits on account of unauthorized over stay beyond the deputation period. As such withholding of her pension, gratuity, ACP/MACP etc. along with retirement and service benefits by the respondent authorities were/are as per the notified service norms/rules.

11.4 The respondents submit that in compliance of the directions issued by CAT, Lucknow Bench on 09.01.2008, the applicant's case was placed before the Absorption Committee for permanent absorption but the same was rejected. Since the qualifying service of the applicant (on her retirement) was not enough to make her eligible for pension and other retiral benefits, hence the same have been withheld, as per rules governing such cases.

12. I have gone through the facts of the case carefully and also considered the rival submissions carefully. I have also gone through the cases relied upon by the applicant.

13. The facts not in dispute are that the applicant was sent on deputation to NVS vide order dated 14.01.1988. In the Order No. 74 dated 14.01.1988, it was made clear that her lien in the post of TGT will be kept in the parent department

for a period of two years w.e.f. 16.01.1988 after which she was required to revert to the parent organization or to resign from there. On issuance of the repatriation order dated 17.07.1991, the applicant obtained a stay order from the Hon'ble High Court of Allahabad and continued to work with the borrowing organization at NVS Faizabad, UP till she was ordered to be repatriated vide order dated 25.11.2008, after her case for permanent absorption was rejected by the Absorption Committee.

14. Clearly, the over stay of the applicant, though covered by the stay of the Hon'ble High Court, was never regularized by the competent authority. The respondents have relied upon various OMs issued by DoP&T, GOI, which lay down the provisions of overstay of an Officer, while on deputation. The relevant portion of O.M. dated 17.06.2010 governing such situations is reproduced below :

"(i) The period of deputation/foreign service shall be as per the Recruitment Rules of the ex-cadre post or 3 years in case no tenure regulations exist for the ex-cadre post.

(ii) In case where the period of deputation/foreign service prescribed in the recruitment rules of the ex-cadre post is 3 years or less, the Administrative Ministry/borrowing organisation may grant extension upto the 4th year after obtaining orders of their Secretary (in the Central Government)/Chief Secretary (in the State Government)/ equivalent officer (in respect of other cases) and for the fifth year with the approval of the Minister of the borrowing Ministry/ Department and in respect of other organisations with the approval of the Minister of the borrowing Ministry/Department with which they are administratively concerned."

Similarly, O.M. No. 6/8/2009-Estt.(Pay-II) of DoP&T dated 01.03.2011 also stipulates that :-

"Undersigned is directed to refer to this Departments OM of even number dated the 17" June, 2010 and to say that as per existing instructions no extension in deputation beyond the fifth year is allowed. Further, as per the OM No. 1401713012006-Estt (RR) dated the 29th November, 2006, the deputationist officer is deemed to have been relieved on the date of expiry of the deputation period unless the competent authority has with requisite approvals, extended the period of deputation, in writing, prior to the date of its expiry. It is observed that despite these clear instructions, proposals for regularization of overstay of officers on deputation beyond the five year period continue to be received in the Department. It is reiterated that it will be the responsibility of the immediate superior officer to ensure that the deputationist does not overstay. In the event of the officer overstaying for any reason whatsoever, he/she is liable to disciplinary action and other adverse Civil/Service consequences which would include the period of unauthorised overstay not being counted for service for the purpose of pension and that any increment due during the period of unauthorized overstay being deferred with cumulative effect, till the date on which the officer

rejoins his parent cadre."

There is also an advisory issued by DoP&T vide O.M. dated 16.05.2013 in respect of "Proper Monitoring of deputation by the lending departments", which lays down the tenure of deputation and other terms and conditions, which the Government employees are mandated to follow. Para-8.2 deals with tenure of deputation, categorically stating that:-

"In case where the period of deputation/foreign service prescribed in the recruitment rules of the ex-cadre post is 3 years or less, the Administrative Ministry/borrowing organisation may grant extension upto the 4th year after obtaining orders of their Secretary (in the Central Government)/Chief Secretary(in the State Government) equivalent officer (in respect of other cases) and for the fifth year with the approval of the Minister of the borrowing Ministry/Department and in respect of other organisations with the approval of the Minister of the borrowing Ministry/Department with which they are administratively concerned."

In Para-8.3 of the same O.M. it is stated that:-

"8.3.1 The following Ministries/Departments/Organisations may extend the period of deputation upto the fifth year where absolutely necessary in public interest, subject to the following conditions:

(i)The extension would be subject to the prior approval of the lending organisation, the consent of the official concerned and wherever necessary, the approval of the UPSC/State Public Service Commission and Appointment Committee of Cabinet(ACC).

(ii) If the borrowing organisation wishes to retain an officer beyond the prescribed tenure, it shall initiate action for seeking concurrence of lending organisation, individual concerned etc. six months before the date of expiry of tenure.

In no case it should retain an official beyond the sanctioned term unless prior approval of the competent authority to grant further extension has been obtained.

(iii) No further extension beyond the fifth year shall be considered."

15. In the instant case, not just the applicant but even the borrowing and parent organisation have erred in not being vigilant in following the norms mandated to be followed in case of the applicant.

16. Be that as it may, obviously the applicant was not keen on returning back to her parent department and reported back only when it became unavoidable to continue in terms of the repatriation order dated 25.11.2008. The respondents took up her case with DoP&T and Ministry of Home Affairs for regularization of her over stay of "extended period" from her parent organisation, which was rejected. Despite the clear instructions on the over stay of officers on deputation, the officer, over stayed and became liable for disciplinary action and other civil

service consequences. As per the O.M. No. 14017/30/2006-Estt.(RR) dated 29.11.2006, the deputationist officer is deemed to have been relieved on the date of expiry of the deputation period unless the competent authority has with requisite approvals, extended the period of deputation, in writing, prior to the date of its expiry. The respondents have also clarified that her service period in the department for the purpose of pension was not sufficient, since she did not have any relaxation for continuation of service in the borrowing organisation after a period of two years.

17. In my view, the respondents have already shown enough indulgence to the applicant and have made efforts to regularize her overstay by referring her case to MHA & DOP&T etc. The same has however been rejected due to clear instructions governing such cases of overstay. I also find that the facts of the citations relied upon by the applicant are different from the facts of the instant case and hence are not applicable here.

18. In view of the aforementioned discussions, I have no hesitation in concluding that benefits claimed by the applicant in the O.A. are totally devoid of merit and she is not entitled to any relief as claimed by her in the O.A. In view of the same, O.A. is dismissed. No costs.