

(2015) 09 DEL CK 0021

In the Delhi High Court

Case No : Writ Petition (C) 5854 of 2015

Mukesh Chandra Tiwari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Citation : (2015) 09 DEL CK 0021

Hon'ble Judges : G.S. Sistani, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : K.C. Mittal, for the Appellant; Ruchir Mishra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J—By way of the present petition, the Petitioner challenges the order dated 08.05.2015 passed by the Central Administrative Tribunal in O.A. No. 1546/2015, whereby the Tribunal dismissed the application of the Petitioner.

2. The brief facts of the case are that the Petitioner joined the Central Industrial Security Force (CISF) as a Constable on 01.02.1994. However, vide order dated 18.01.2013, the Petitioner was sent on deputation in the Intelligence Bureau (IB) for a period of three years in the rank of SA/Exe. In the pay bank of Rs. 5200-20,200/- plus Grade Pay of Rs. 2,000/-. Pursuant to the above order, the borrowing department, i.e., the IB issued Office Order No. 45 dated 22.02.2013 indicating that the applicant had reported for duty at IB Hqrs., New Delhi on 18.01.2013. However, before completion of the period of three years, he was served with the impugned order dated 13.02.2015 giving him three months notice in terms of Para 9 of DOP&T O.M. No. 06/08/2009/Estt.(pay-II) dated 17.06.2010 for his premature repatriation to his parent department. Being aggrieved by the order filed an application before the Central Administrative Tribunal praying for the following reliefs:-

"(i) this Tribunal may kindly quash the order dated 13.02.2015 & 08.12.2014 as

it do not show any misconduct;

(ii) pass such order further order or order as may be deem fit and proper under the circumstances of the case." after hearing the contentions of both the counsel O.A. was dismissed.

3. The learned counsel for the for the petitioner argued that the Respondent No. 5, i.e., the Assistant Director, IB called for an explanation from the Petitioner vide notice dated 08.12.2014 for his alleged unauthorised absence from duty on 27th & 28th November, 2014. The Petitioner gave his explanation on 10.12.2014, but the Respondents without passing any order on his explanation, after two months, passed the impugned order thereby repatriating him to his parent department. The Counsel further argued that the Petitioner has the right to continued until the completion of three years period of his deputation and thus the Respondents are not justified in passing the impugned order of repatriation. No other point in urged before us.

4. Whereas the Counsel for the Respondent while representing the respondents opposed the prayer and vehemently contended that a deputationist has no indefeasible right to continue in the borrowing department and his period of deputation can be curtailed and repatriated to his parent department before expiry of the period of deputation. He further referred to the order dated 22.02.2013 wherein the joining of the Petitioner was accepted by the borrowing department. However, in the said letter, there is also a reference of Para 9 of the DOP&T O.M. dated 17.06.2010 which provides that a deputationist could be returned to the lending department after giving an advance notice of at least three months to the lending Ministry/department and the employee concerned.

5. The Counsel for the respondent further submitted that in the instant case, applying the aforesaid O.M., the borrowing department by the impugned order dated 13.02.2015 has given three months advance notice to the applicant as well as the lending department, i.e., CISF.

6. To decide the present case in hand, we are of the view that it is important to go through the meaning of deputation in service law although it is already well settled. In *State of Punjab and Others Vs. Inder Singh and Others*, (1997) 8 JT 466 : (1997) 6 SCALE 442 : (1997) 8 SCC 372 : (1998) SCC(L&S) 34 : (1997) 4 SCR 425 Supp , the Apex Court held as under:-

"18. 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."

7. The question which arises in the present case is whether the borrowing department can return the deputationist to the lending department after giving an advance notice of at least three months or not? Whether the deputationist can continue his services till the expiry of the period of his deputation without the consent/need of the borrowing department?

8. The Apex Court in *Ratilal B. Soni and others Vs. State of Gujarat and others*, AIR 1990 SC 1132 : (1990) 60 FLR 468 : (1990) 1 JT 229 : (1990) LabIC 889 : (1990) 1 LLJ 525 : (1990) 1 SCALE 228 : (1990) 1 SCC 243 Supp : (1990) SCC 243 Supp : (1990) 1 SCR 414 : (1990) 1 UJ 548 held as under:-

"5. 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. We see no infirmity in the judgment of the High Court and as such we dismiss the appeal. There shall be no order as to costs."

9. Similar view was taken up by this court in *Union of India (UOI) Vs. Manoranjan Kumar and Others*, (2010) 172 DLT 726 and held as under:-

"42. In this regard, it would be relevant to take note of judgment of this Court in WP(C) No. 12773/2009 entitled as *Shri Sitamber Singh v. Union of India (UOI)*, decided on 15.7.2010. The relevant portion is reproduced hereunder:

"In service jurisprudence, "deputation" is described as an assignment of an employee of an department or cadre to another department or cadre. The necessity for sending on deputation arises in "public interest" to meet the exigencies of "public services". The concept of deputation is based upon consent and voluntary decision of the employer to lend the services of his employee, corresponding acceptance of such service by the borrowing employer and the consent of the employee to go on deputation. A deputation subsists so long as the parties to this tripartite agreement do not abrogate it. However, if any one of the parties repudiate the agreement, the other two have no legally enforceable right to insist upon continuance of the deputation. Even in the cases where deputationists continue for a pretty long period and options for their "absorption" in the borrowing department were taken, yet their repatriation to the parent department was upheld by the Apex Court in *Ratilal B. Soni and others Vs. State of Gujarat and others*, AIR 1990 SC 1132 : (1990) 60 FLR 468 : (1990) 1 JT 229 : (1990) LabIC 889 : (1990) 1 LLJ 525 : (1990) 1 SCALE 228 : (1990) 1 SCC 243 Supp : (1990) SCC 243 Supp : (1990) 1 SCR 414 : (1990) 1 UJ 548

after holding that "the appellants being on deputation, they could be repatriated to their parent cadre at any time and they do not get any right to be absorbed on the deputation post."

"Deputation" per se being a contractually made ad hoc arrangement, seldom confers any right upon a deputationist, either for completion of the term of deputation or regularization of such stop-gap arrangement. The judgments relied upon by the learned Counsel for the College in this regard squarely answer the controversy."

10. In Kunal Nanda Vs. Union of India and Another, AIR 2000 SC 2076 : (2000) 6 JT 574 : (2000) 4 SCALE 34 : (2000) 5 SCC 362 : (2000) SCC(L&S) 705 : (2000) AIRSCW 1945 : (2000) 4 Supreme 388 the Apex Court held as under:-

"6. On the legal submissions also made there are no merits whatsoever. 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 basic 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. The reference to the decision reported in Rameshwar Prasad Vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others, AIR 1999 SC 3443 : (1999) 7 JT 44 : (1999) 5 SCALE 603 : (1999) 8 SCC 381 : (2000) SCC(L&S) 60 : (1999) 2 SCR 593 Supp : (2000) 1 SLJ 137 : (1999) AIRSCW 3427 : (1999) 8 Supreme 176 is inappropriate since the consideration therein was in the light of the statutory Rules for absorption and the scope of those Rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree needs mention, only to be rejected. The stand of the respondent Department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e. a degree is a must and essential and that there could be no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that Department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim."

11. On perusal of facts and submissions of both the counsels for the parties, we are in consonance with the view of the Learned Tribunal that the order passed by the Respondent was in accordance with the provisions contained in cause 9 of the DOP&T O.M. dated 17.06.2010 and the law in this regard is well settled by the Hon'ble Supreme Court in many cases. Therefore, there is no legal right of the Petitioner to continue the service at the borrowing department without their consent or needs. Moreover the holding lien with the parent department, cannot

insist to allow him to complete the period of deputation in the borrowing department, if it is not willing to utilize his service. It is always open to the borrowing department to curtail the period of deputation by giving an advance notice on three months to the deputationist and the lending department.

12. Hence, we find no infirmity in the order of the Central Administrative Tribunal which would require interference. The petition is without any merit and the same is accordingly dismissed.