
(2013) 03 DEL CK 0217

In the Delhi High Court

Case No : Writ Petition (C) 3822 of 2012

National Highways Authority of India

APPELLANT

Vs

Sh. Mukul Saxena

RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0217

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : V.K. Rao, Ms. Meenakshi Sood, Ms. Padmapriya, Mr. Mukesh Kumar and Mr. M.K. Sinha, DGM Admn., NHA, for the Appellant; S.K. Gupta, Rajender Khattar, Ms. Kiran Suri and Ms. Aparna Mattoo Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—A large number of employees working on deputation with the writ petitioner but on the permanent rolls of various State Governments or Statutory Authorities or other Authorities under the control of different State Governments were desirous of permanent absorption in the writ petitioner and with reference to the Recruitment Rules for the posts in question, had approached the Central Administrative Tribunal with a prayer that the petitioner be directed to permanently absorb the employees. The said original applications were disposed of vide order dated March 25, 2010 by the Tribunal on a consent granted by the petitioner that it would consider the case of absorption of the claimants before the Tribunal as per Rule 13 of the amended Rules as of the year 2009. It is settled law that before a Transferee Department absorbs an employee on deputation consent of the Parent Department has to be obtained. The employee has to submit a technical resignation for only then there would be continuity in service for purposes of computing length of service rendered for purposes of terminal benefits payable. Needless to state in said situation the Parent Department has to bear a proportionate share of the terminal dues by paying over the amount to the Transferee Department when absorption takes

place. Further, adjustments pertaining to leave account etc. have to be done. This is the reason why the consent of the Parent Department has to be obtained.

2. Neither petitioner before the Tribunal was sought to be repatriated to the Parent Department and yet in spite thereof, miscellaneous applications were filed by some applicants which were disposed of by the Tribunal on September 29, 2011, granting 3 months time to the petitioner to comply with the consent order dated March 25, 2010, and pertaining to the information given by the petitioner as to why delay was taking place, being that the Parent Department had not granted the consent, the Tribunal directed that the petitioner need not wait indefinitely for a no objection from the Parent Department and it would be within the jurisdiction of the petitioner to presume said no objection being accorded.

3. The only grievance of the petitioner is that it being directed to presume a no objection would create insurmountable problems in the future, not only for the petitioner but even the employees, for the reason in the absence of an express consent from the Parent Department the proportionate money payable towards terminal benefits not being made available by the Parent Department nor the Provident Fund Account being transferred, the employee would face an uncertain future. Besides, there may be good reasons, in public interest, for the Parent Department to refuse permission for permanent absorption in another organization.

4. We agree with the contention urged by the petitioner. Without going into the reason why the Parent Department was taking time to accord the consent, and if the reason was found to be unjustified, without a direction to the Parent Department to grant consent, no direction could be issued to the petitioner to proceed ahead as if consent had been accorded. The effect of the direction issued by the Tribunal is to create an uncertain future for the employees, who for a better today are not seeing the uncertainty of the future.

5. Accordingly, we dispose of the writ petitions quashing the direction contained in the impugned order dated September 29, 2011 that the petitioner would treat a deemed no objection if the Parent Department does not grant approval for an employee to be absorbed within a reasonable time. In said circumstance the right of the applicants before the Tribunal would be to seek directions against their Parent Department.

6. Before concluding we note that save and except the precedentiary value of the direction impugned, the issue has otherwise become a non-issue inasmuch as some employees have been permanently absorbed upon no objection being granted by the Parent Department, some have been considered as per the Rule for permanent absorption but not found fit for permanent absorption and these employees have approached the Tribunal under fresh applications. Some employees, who had rendered qualifying service in the Parent Department have obtained voluntary retirement and thereafter have been permanently absorbed as fresh inductees by the petitioner.

7. Files be consigned to the Record Room. No costs.

CM No. 8013/2012 in W.P. (C) No. 3822/2012, CM No. 8221/2012 in W.P. (C) No. 3920/2012, CM No. 8223/2012 in W.P. (C) No. 3921/2012 and CM No. 8225/2012 in W.P. (C) No. 3922/2012

Since the writ petitions stand disposed of, instant applications seeking ad-interim relief till disposal of the writ petition stands disposed of as infructuous.