

(2010) 10 SHI CK 0200
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 6245 of 2010

Padam Dass Thakur

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 12(4), 20
Constitution of India, 1950 — Article 166
Prevention of Corruption Act, 1988 — Section 2

Citation : (2010) 10 SHI CK 0200

Hon'ble Judges : Kurian Joseph, C.J.;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Material facts necessary for the adjudication of this petition are that petitioner was appointed as Constable in the Police Department on 29.1.1985. He was promoted as Head Constable. Thereafter he was promoted to the post of Assistant Sub Inspector in the year 1996. He became Sub Inspector in the year 2003 and thereafter was promoted to the post of Inspector in the year 2006. The summary of charges dated 5.5.2008 was issued to the petitioner. He was sent on deputation for two years to Steel Authority of India, New Delhi vide office order dated 30.7.2009. Text of order dated 30.7.2009 reads thus:

In pursuance of the Director General of Police, Himachal Pradesh, Shimla office order Endst. No. P-II (2) Depu/Misc/2007-41766-68 dated 20.7.2009 Inspector Padam Dass of State CID is hereby relieved on deputation basis for the period of two years to Steel Authority of India Limited, New Delhi with immediate effect.

2. Petitioner was directed by the Inquiry Officer to be present before him vide communication dated 25.2.2010. Petitioner requested the Inquiry Officer to adjourn the proceedings. The Inquiry Officer thereafter again sent a communication dated 19.5.2010 to the petitioner asking him to appear before him on 28.5.2010. In response thereto, petitioner sent reply dated 26.6.2010

requesting the Inquiry Officer to transfer the inquiry to the Steel Authority of India Limited. The Inquiry Officer vide letter dated 29.6.2010 rejected the request of the petitioner to transfer the departmental inquiry to new Department. He again issued notices to the petitioner on 14.7.2010 and 22.7.2010 asking him to appear for hearing. Petitioner again requested the Inquiry Officer to transfer the departmental inquiry to new Department vide letter dated 29.7.2010. Petitioner filed reply and his statement was also recorded on 27.9.2010.

3. Mr. Lovneesh Kanwar has strenuously argued that as per office memorandum issued by the Ministry of Home Affairs dated 16.4.1969, inquiry is required to be transferred to the borrowing department.

4. Mr. R.K. Bawa, learned Advocate General has strenuously argued that petitioner has been sent on deputation and not transferred and in these circumstances the instructions issued vide office memorandum dated 16.4.1969 are not applicable.

5. We have heard the learned Counsel for the parties and have perused the pleadings carefully.

6. Disciplinary proceedings have been initiated against the petitioner and summary of charges was issued on 5.5.2008. He has gone on deputation on 30.7.2009. The request made by the petitioner to transfer the disciplinary proceedings to the borrowing department, i.e. Steel Authority of India, was rejected by the Inquiry Officer on 29.6.2010. It will be apt at this stage to quote relevant portion of office memorandum dated 16.4.1969, which reads thus:

What happens to In such cases, it is not necessary for the disciplinary disciplinary authority (B) to start de proceedings startd novo proceedings by framing and by a disciplinary delivering fresh articles of charge to authority (A) in the concerned official. He can carry respect of a on with the enquiry proceedings at Government servant the point where the transfer of the when the latter is accused officer was effected. If, transferred to the however, the accused official is jurisdiction of transferred to another service, then another disciplinar the procedure laid down in Rule 12(4)(b) authority (B) even of the CCS (CCA) Rules will though he said have to be followed. Government servant continues to be in the same service?

7. It is evident from the phraseology employed in the clarification that these instructions will apply if an incumbent is transferred to the jurisdiction of other disciplinary authority. In the instant case, petitioner has been sent on deputation as per office order dated 30.7.2009.

8. Their Lordships of the Hon"ble Supreme Court in State of Punjab and Others Vs. Inder Singh and Others, have succinctly explained the expression "deputation" to mean 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. 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. Their Lordships have 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 "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 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 been 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.

9. Their Lordships of the Hon"ble Supreme Court in C. Rangaswamaiah and Others Vs. Karnataka Lokayukta and Others, have held that person sent on deputation continues to remain employees of the lending authority with which master and servant relationship continues till it is terminated. Their Lordships have further held that police officers sent on deputation to Lokayukta by State Government continued to be public servants of the State Government unless and until they are absorbed in the Lokayukta. Their Lordships have held as under:

22. The learned Single Judge as well as the Division Bench are one, as already stated, in accepting that the police officers of the State on deputation continue to remain as public servants in the service of the State Government, as long as they are not absorbed in the Lok Ayukta. This legal position is absolutely unassailable because the State of Karnataka has merely lent the services of these officers to the Lok Ayukta and the officers continue to be employees of the State. In spite of the deputation of officers with the Lok Ayukta the relationship of master and servant between the State of Karnataka and these officers does not stand terminated (State of Punjab v. Inder Singh 1997 (6) SCC 372).

10. Similarly, their Lordships of the Hon"ble Supreme Court in Umapati Choudhary Vs. State of Bihar and Another, have held that deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organization (commonly referred to as the borrowing authority). Their Lordships have held as under:

8. Deputation can be aptly described as an assignment" of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled. The University, the parent department or lending authority, the Board, the borrowing authority and the appellant the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the deputation of the appellant was not in public interest or it --."as vitiated by favoritism or mala fide. The learned single Judge in the previous writ petition had neither quashed the deputation order nor issued any direction for its termination. Indeed the learned single Judge had dismissed the writ petition. No material has been placed before us to show that between November 1987 when the judgment of the single Judge was rendered and December 1991 when the Division Bench disposed of the writ petition filed by the appellant the petitioners of the previous case had raised any grievance or made any complaint regarding non-compliance of the directions made in the judgment of the learned single Judge. In these circumstances the Division Bench was clearly in error in declining to grant relief to the appellant. Further, the appellant has, in the meantime, retired from service, and therefore, the decision in the case is relevant only for the purpose of calculating his retiral benefits.

11. Their Lordships of the Hon"ble Supreme Court in *Prasar Bharti and Others Vs. Amarjeet Singh and Others*, have explained the distinction between deputation and transfer. Their Lordships have held that there exists a distinction between "transfer" and "deputation". "Deputation" connotes service outside the cadre or outside the parent department in which an employee is serving. "Transfer", however, is limited to equivalent post in the same cadre and in the same department. Their Lordships have further held that deputation would be a temporary phenomenon; transfer being antithesis must exhibit the opposite indications. Their Lordships have held as under:

13. There exists a distinction between "transfer" and "deputation". "Deputation" connotes service outside the cadre or outside the parent department in which an employee is serving. "Transfer", however, is limited to equivalent post in the same cadre and in the same department. Whereas deputation would be a temporary phenomenon, transfer being antithesis must exhibit the opposite indications.

12. Their Lordships of the Hon"ble Supreme Court in *Khemi Ram Vs. The State of*

Punjab, have held that in case Government servant is sent on deputation to another State, order of suspension can be passed by the parent Government. Their Lordships have held as under:

5. As regards the second point, the High Court has extracted Rule 20 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, on which reliance was placed by the counsel for the petitioner and has rightly held that there is nothing in the rule to show that it was not permissible for the Punjab Government to make an order for the suspension of the appellant merely because it has placed his services at the disposal of the Himachal Pradesh Administration on deputation. Moreover, as has been stated, the appellant reverted to the State of Punjab with effect from August 4, 1958, and came under the direct administrative control of that State. The High Court therefore rightly decided that point also against the appellant.

13. A Division Bench of Kerala High Court in *State of Kerala v. Sugathakumar* 1998 (7) SLR 111 have held that Government is empowered to suspend an employee pending departmental enquiry, inspite of the fact that he is on deputation to another department which comes directly under the control of the Government. Their Lordships have held as under:

9. In our opinion, the respondent being a Government servant within the meaning of Section 2(c)(iii) of the Prevention of Corruption Act and the ANERT is a body controlled and aided by the Government as envisaged in the Act, the government has got jurisdiction to initiate disciplinary action and also place the Government employee under suspension. We have already referred to 1997 (2) KLT 825 which deals with the similar situation. This Court held that the Government has the power and jurisdiction to suspend a person from service even outside the provisions of the service regulations so long as the incumbent is a public servant within the meaning of Prevention of Corruption Act. The vigilance enquiry had revealed serious irregularities and illegalities committed by the respondent. Thus the Vigilance Department has the competence to order suspension from the service in cases of misconducts and offences relatable to the Prevention of Corruption Act. This again in 1997 (2) KLT 825 (already referred to above) held that the Vigilance Department has the power to issue directions for the suspension from service of persons who come within the ambit of Section 2(c) (iii) of the Act. It is indisputable that the ANERT is a body controlled and aided by the Government as envisaged in the above Act and that the respondent as Director is a public servant within the meaning of the above provision. Thus the government, in our opinion has the jurisdiction to issue impugned Ext. P-10 suspension order in any view of the matter. In the instant case learned Judge though quashed Ex. P-16 and P-17 has not however quashed Ex. P-10. So Ex.t. P10 order still stands. The amended provisions of the Rules of Business of the Government of Kerala framed under Clauses (2) and 3 of Article 166 of the Constitution of India, it has been directed that issuance of orders sanctioning prosecution of public servant under the Code of Criminal Procedure or under the

Prevention of Corruption Act, 1988 placing him under suspension and finalizing the disciplinary proceedings against him under the relevant rules and orders in pursuance of a vigilance enquiry contemplated initiated against the public servant has been allocated to the Vigilance Department. This Court, as already referred to have taken the same view in 1995 (2) KLT 250 and 1996 (2) KLT 502 have held that the Vigilance Department has the power to issue suspension order in such cases.

14. In the case in hand, petitioner has been sent on deputation. The lending department has retained disciplinary control over the petitioner. The inquiry proceedings had been initiated before the petitioner was sent on deputation. The disciplinary control has never been given to borrowing department by the lending Department. In view of this, there is neither any illegality nor any arbitrariness in Annexure P-5 dated 29.6.2010 whereby the request of the petitioner for transferring the disciplinary proceedings from lending department to borrowing department has been turned down.

15. Accordingly, in view of the observations made hereinabove, there is no merit in the writ petition and the same is dismissed with no order as to costs.