

(2019) 05 DEL CK 0004

In the Delhi High Court

Case No : Letter Patent Appeal No. 159Of 2018

Rakesh Kumar Verma

APPELLANT

Vs

Jawaharlal Nehru University & Anr

RESPONDENT

Date of Decision : 03-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 311

Jawaharlal Nehru University Act, 1966 — Section 27(2)(G), 31

Citation : (2019) 05 DEL CK 0004

Hon'ble Judges : Dr. S. Muralidhar, J; I.S. Mehta, J

Bench : Division Bench

Advocate : Krishnan Venugopal, Siddhartha, Pooja Dhar, Deepanshi, Shivendra Singh, Monika Arora, Kushal Kumar, Harsh Harsh, Praveen Singh,

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1. This appeal is directed against the judgment dated 15th March, 2018 passed by the learned Single Judge of this Court dismissing the Appellant's Writ Petition (C) No.10626/2017 assailing an order dated 23rd November, 2017 issued by the Respondent No.1, Jawaharlal Nehru University (JNU) where he was working as Finance Officer, asking him to proceed on leave with immediate effect and the order dated 25th November, 2017 issued by JNU relieving him of his duties and responsibilities as Finance Officer from the forenoon of 27th November, 2017.

Background facts

2. Statute 9 of the Statutes of the JNU lays down the duties and powers of the Finance Officer. Clause 9 (7) states that the Finance Officer "shall be the Secretary of the Finance Committee and exercise such powers and perform such duties as may be prescribed by the statutes." As a practice, the post of Finance Officer has been occupied by a person on deputation from the office of the Comptroller and Auditor General of India (CAG). The procedure for appointment

involves an advertisement being issued by the CAG inviting applications from persons willing to serve as such. In terms of Statute 27 a Selection Committee of the JNU thereafter conducts the interviews of candidates shortlisted. The post of the Finance Officer is a tenure post. Statute 9 (1) states that Finance Officer shall be appointed by the Executive Committee (EC) of JNU and shall be whole time salaried officer.

3. On 10th August, 2010 JNU wrote to the Assistant Comptroller & Auditor General of India in the office of the Comptroller and Auditor General of India (CAG) stating that the term of deputation of the previous Finance Officer of JNU was getting over on 16th August, 2010. JNU stated in the letter that it would like to fill the vacancies by drawing from Officers belonging to the Audit and Account services or from similar services. The letter indicated the qualifications, pay scale and job description of Finance Officer of JNU.

4. On 13th August, 2010 the CAG informed all eligible and willing Senior Administrative Grade Officers to send their willingness to the CAG to be appointed as Finance Officer of JNU, by 20th August, 2010. On 17th February, 2011 the Appellant sent an application to the CAG. On 8th February, 2011 the Vice Chancellor (VC) of JNU had asked the office of the CAG to send the names of few more officers so that the Selection Committee, constituted under Section 27 (2) (G) of the Statutes of JNU could select a competent candidate. By a letter dated 4th March, 2011 the CAG sent the names and bio-data of three officers for consideration.

5. The meeting of the Selection Committee was held on 4th April, 2011. On 6th April, 2011 the VC of JNU wrote to the CAG stating inter-alia that on the recommendations of the Selection Committee, the EC of JNU had in its meeting held on 5th April, 2011 approved the appointment of the Appellant as Finance Officer of the JNU.

6. An order was issued thereafter by the Office of the CAG on 25th April 2011 placing the services of the Appellant at the disposal of JNU "for appointment to the post of Finance Officer on deputation basis." JNU issued a Notification dated 25th May 2011 stating that the Appellant had taken over as Finance Officer with effect from the forenoon of 19th May 2011.

7. On 17th June, 2013 an office order was issued by JNU stating that in continuation of an earlier office order dated 17th May, 2012 "the deputation term" of the Appellant as Finance Officer of the JNU had been extended upto five years i.e. upto 18th May, 2016 "on existing terms and conditions on deputation."

8. On 18th November, 2013 an "Ordinance relating to terms and conditions of services of the Finance Officer" of JNU was approved. It inter-alia provided that the tenure would be five years which could be renewed for similar tenures by the EC and further that the Finance Officer shall retire on attaining the age of 62 years. Clause 7 of the Ordinance stated that the other terms and conditions of service of the Finance Officer shall be "such as prescribed for other non-

vocational employees of the University."

Renewal of term of Appellant

9. As the Appellant's initial term to the post of Finance Officer was expiring on 18th May 2016, a proposal was put up to the VC for renewing his term after 18th May, 2016 till he attained 62 years of age. On 4th December, 2015 the VC wrote to the CAG regarding extension of the period of deputation of the Appellant till 31st December, 2017. It was noted in the letter that the present term of the Appellant expired on 18th May, 2016. The reason for the request for extension was that the JNU had embarked on an "ambitious plan to modernize its working environment, strengthen and fully computerize its financial administration and make the financial information, including the information relating to all projects and fellowships, available to the stakeholders online." JNU was hoping to achieve the above goal by the end of 2017. It was stated that the Appellant "who has acquitted himself very well, is in charge of this and assurance of continuity of his tenure during the period of the project" would be a big help to JNU. Therefore, the CAG was asked to intervene in the matter personally and "extend the deputation of Sh. Verma till 31st December, 2017 as a special case." Enclosed with the letter was a letter from the Appellant stating that he was willing to have his term extended.

10. In response thereto on 14th December, 2015 a communication was addressed by the office of the CAG to the VC of the JNU conveying the no objection of the CAG in respect of continuation of the deputation of the Appellant as Finance Officer in JNU for a further period beyond 18th May, 2016 to 31st December, 2017 "as per extent instructions of DOPT".

11. On 22nd December, 2015 an office order was issued by the JNU stating that the term of the Appellant as Finance Officer "has been renewed till 19th December, 2019."

Dissent by two members of the EC

12. Two of the elected members of the EC raised questions about the renewal of the term of the Appellant as Finance Officer. It was inter-alia pointed out by them that inaccurate information about the superannuation date of the Appellant had been provided to the EC. It was inter-alia noted that the EC was told that the Appellant would have "only some six extra months beyond April to superannuate, whereas it turns out that he has till 2019." It was noted that whereas the Appellant would be retiring in 2017 if he were to return his parent cadre after expiring of his current term as Finance Officer". The extension granted by the JNU would enable him to continue for two years beyond the normal superannuation age for Government servants. Consequently, the two members of the EC urged the VC to review the decision to renew the term of the Appellant and take the EC into confidence in its next meeting about the status.

13. Incidentally, these very two members dissented at the meeting of the EC

where the issue was discussed. However, it appears that their request was turned down. The Registrar of JNU by letter dated 19th January, 2016 informed the two members that their dissent had been recorded in the minutes of the EC of the 260th meeting which was confirmed at the 261st meeting held on 21st December, 2015 and necessary action in terms of the decision of the EC had already been taken.

14. A letter was addressed on 25th January, 2016 by the two dissenting members of the EC to the President of India who was a visitor of the JNU under the JNU Act, 1996 raising protest. This was forwarded to the VC of JNU by the Ministry of Human Resource and Development (MHRD) on 10th February, 2016 for being examined.

15. On 23rd February, 2016 the Registrar wrote a detailed letter to the Ministry, HRD that there was no procedural lapse in the 261st EC meeting. It was further pointed out that the EC has 22 members and all decisions are taken by consensus or by majority. EC had decided to renew the term of the Appellant with three members dissenting. There was nothing irregular in the EC's decision to renew the term of Appellant.

270th Meeting of the EC

16. At the 270th meeting of the EC on 23rd November, 2017 one of the EC members requested the VC to take under the head of "any other item" the issue concerning the service/term of the Finance Officer. It is stated that the Appellant who was present at the meeting was then asked to leave. At the 270th meeting of the EC which was held on 23rd November, 2017 under the head "any other matters" it was recorded as under:

"12. One of the Members pointed out that the Finance Officer of the University was initially appointed on deputation terms for five years. The Finance Officer will attain the age of 60 years on 31.12.2017 which is the age of retirement in his parent organization. He further added that extension given to the Finance Officer beyond the date of retirement was irregular and against the rules and, therefore, he should be repatriated to his parent department before his attaining the age of retirement. The Council after detailed discussion decided as under:-

1. The Finance Officer should proceed on leave with immediate effect.
2. The incumbent Finance Officer will retire from his parent organization on 31.12.2017.
3. He should be repatriated to his parent organization with immediate effect.

Before the discussion started on the above, the Finance Officer was advised to recuse himself from the meeting."

Impugned letters

17. A letter dated 23rd November, 2017 was issued to the Appellant directing

him to go on leave with immediate effect until further notice. This was followed by another order dated 25th November, 2017 to the effect that the Appellant would be relieved of his duties and responsibility as Finance Officer of the JNU with effect from 27th November, 2017 (forenoon).

18. On 27th November, 2017 the Petitioner filed WP (C) No. 10626/2017 in this Court challenging the above orders.

Impugned judgment of the Single Judge

19. By the impugned judgment dated 15th March, 2018 the learned Single Judge dismissed the writ petition and came to the following conclusions:

i) Although the Appellant had been interviewed prior to being selected for the post, his appointment was not a substantive appointment but only by way of deputation.

(ii) The Appellant's deputation was governed by the OM dated 5th January, 1994 of the DOPT as amended from time to time. Had it been an "appointment on deputation" there would be no occasion for the Appellant to have drawn deputation allowance from 2011 till 2013. Further while on deputation the Appellant had drawn salary as per the 7th Central Pay Commission (CPC) recommendations payable by his parent department i.e. CAG.

(iii) Merely because the inter-departmental communication dated 6th April, 2011 spoke of appointment to the post of Finance Officer, it would not be justified to conclude that the Appellant's appointment was a substantive one. On the other hand, the JNU's office order dated 17th June, 2013 made it clear that the deputation term of the Appellant was extended by five years upto 18th May, 2016 on the extending terms and conditions of the deputation.

(iv) While the Appellant's tenure on deputation was extended upto 19th December, 2019 i.e. till he attained 62 years, prior thereto the JNU had sent a letter dated 4th December, 2015 to the CAG to extend the Appellant's deputation till 31st December, 2017 i.e. the date of his retirement in the parent department enclosing a letter dated 4th December, 2015 of the Appellant expressing his willingness for extension of such deputation.

(v) The curtailment of the Appellant's deputation could not be termed as arbitrary; nor could it could be said to be hastily done in a capricious manner.

(vi) The impugned order repatriating the Appellant to his parent department was innocuous and not stigmatic. He had been asked to go on leave to facilitate the Appellant's smooth repatriation to his parent department. Statute 14 (ix) of the JNU Statutes empowered the JNU to curtail the Appellant's tenure.

(vii) There was no wilful infringement Clause 9 of DOPT's OM dated 5th January, 1994. Since the time between the end of the Appellant's deputation and his retirement was too short the service of advance notice was not required.

(viii) The fact that the Appellant's pension contribution, leave contribution and Provident Fund (PF) contribution was sent by the university to the Appellant's parent department it showed that he was only on deputation with JNU as Finance Officer. While 7th CPC had not been implemented for the employees of the JNU, the Appellant had been getting the higher pay because it had been implemented in the CAG.

(ix) The pre-mature repatriation of the Appellant proceeded on a sound logic and was not mala fide. No case for quashing of the impugned orders was made out.

(x) The pre-mature repatriation of the Appellant to his parent department proceeded on sound logic and was not mala fide. Therefore, no case for quashing of the impugned order was made out.

Submissions on behalf of the Appellant

20. Mr. Krishnan Venugopal, learned Senior counsel appearing for the Appellant, made the following submissions:

(i) It is well settled in a series of decisions of the Supreme Court of India in *Union of India v. S. N. Maity* (2015) 4 SCC 164, *Ashok Kumar Ratilal Patel v. Union of India* (2012) 7 SCC 757 and *Union of India v. Shardindu* (2007) 6 SCC 276 that there is a clear distinction between "transfer on deputation" and "appointment by deputation". In the case of the former, there is a simple inter-departmental transfer from one equivalent post to another and the repatriation thereafter can be without giving any reason. However, in the case of the latter i.e. appointment to a statutory post after following the statutory selection procedure, the person appointed is not only entitled to all the protections under the statute concerned but also against arbitrary action which will be in violation of Article 14 of the Constitution of India.

(ii) A tenure appointment eclipses the deputation and it is the terms and conditions of such appointment that will take precedence over deputation. Considering that the Appellant was appointed as Finance Officer after following the procedure for selection to that post, it would be too simplistic to term the appointment as by way of "deputation simpliciter" when in fact it was a "substantive" appointment.

(iii) Even assuming that it was a case of deputation simpliciter, the repatriation order violated Para 9 of the DOPT's OM dated 5th January, 1994 as the three month notice that has to be given to the parent department i.e. the CAG as well as the Appellant, was not given. It also violated the requirement of Para 9 of the DOPT's OM dated 17th June, 2010.

(iv) The termination order was in violation of Statute 31 which was part of the JNU Act and which permitted such termination only on four grounds stipulated therein. Statute 31(2) mandated that no employee could be removed unless he was given a show cause notice (SCN) and an opportunity to respond. Unless the case of the Appellant fell under Statute 31(1) (a) (b) the question of terminating

his services under Statute 31 by merely paying three month's salary in view of three months notice did not arise. If as suggested in the counter affidavit of the JNU, the Appellant was accused of "misconduct, financial impropriety and misfeasance/malfeasance" then under Statute 31(2) he was entitled to an opportunity hearing after issuance of SCN.

(v) The power to cancel or vary the contract could not override the protection afforded to the Appellant under Statute 31. The general power under Statute 14 (ix) to cancel or vary contracts cannot be invoked by JNU to violate the special provision in Statute 31. Reliance was placed on the decision in *J.K. Cotton Spinning & Weaving Mills Company Limited v. State of UP* (1961) 3 SCR 185.

(vi) In any event, going by the case of the JNU as stated in its affidavit, the so called repatriation which on the face of it appeared to be innocuous was in fact stigmatic and therefore a way of punishment as it cast aspersions on the integrity and character of the Appellant. Therefore, the impugned termination had to be preceded by a notice to the Appellant and an opportunity of being heard. Reliance is placed on the decisions in *Debesh Chandra Das v. Union of India* (1969) 2 SCC 158, *K.H. Phadnis v. State of Maharashtra* 1971 (1) SCC 790, *Purshottam Lal Dhingra v. Union of India* AIR 1958 SC 36 and *Registrar General, High Court of Gujarat v. JC Buddhbhatti* (2013) 16 SCC 59.

(vii) The impugned action of JNU was vitiated by mala fides. It came about when following the UGC's letter dated 16th October, 2017 regarding excess salary paid to Dr. Neelima Mondal, the Appellant informed the EC that he would not delay such recovery and would carry out the directions of the HRD Ministry and UGC with immediate effect. It is at the meeting that was held on 23rd November 2017 to discuss this issue, that the matter of removal of the Appellant was discussed, without their being any agenda item and after asking the Appellant to leave the meeting. This was in violation of the procedural requirement for conduct of meetings of the EC under Ordinance No. M-2 of Part III (Misc.) of Academic Rules and Regulations.

(viii) The concerns raised by Professor Ajay Patnaik a member of the EC by a letter dated 28th November, 2017 revealed that there had been a tampering with the minutes of the said meeting and the very wording of the minutes demonstrated this. The extreme haste with which the decision was taken was also indicative of mala fides. Reliance was placed on the decisions in *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia* (2004) 2 SCC 65 and *Union of India v. V. Ramakrishnan* (2005) 8 SCC 394.

(ix) The allegations against the Appellant about financial impropriety and omissions and commissions were entirely baseless and a ruse to justify his illegal removal. The allegation with respect to irregularity in TDS collection was not tenable since TDS was not deducted by the Finance Officer but by the Drawing and Disbursing Officer (DDO). Likewise, payment of service tax in bill is not checked or authorised by the Finance Officer. As on date approximately 55 audit

paras were pending in the JNU and the Respondents had selectively picked two paras out of 55, which related to 2014-15 and made them appear as irregularities committed by the Appellant. In any event the Appellant had been given no opportunity to answer these allegations.

Submissions on behalf of JNU

21. Ms. Monika Arora, learned counsel appearing on behalf of the JNU, made the following submissions:

(a) The Appellant came on deputation to the JNU as Finance Officer from the office of the CAG initially for a period of five years. Deputation was a tripartite agreement as explained by the Supreme Court in *State of Punjab v. Inder Singh* (1997) 8 SCC 372. It required the consent of the lending Department i.e. the CAG. That decision had to be accepted by the borrowing Department which in this case was JNU. It also involved the consent of the employee. As long as the said tripartite agreement subsisted the arrangement could continue. If the arrangement/agreement was disturbed in any manner, the employee would lose a legally enforceable right to continue and complete the agreed period of deputation.

(b) In terms of para 3.3 of the letter No.6/8/2009 of the Ministry of Personnel Government of India dated 17th June 2010, "a person in a higher grade pay/scale of pay shall not be appointed on deputation to a post in a lower Grade Pay/scale of pay." In terms of the 6th CPCs norms, the Appellant was in a higher post in the CAG's office in the pay scale of Rs. 67,000-79,000/- whereas the prescribed pay of Finance Officer in the JNU was substantially lower i.e. Rs.37,000-67,000 with the grade pay of Rs. 10,000/- . As soon as this discrepancy came to light, JNU had no alternative but to repatriate the Appellant to his parent organisation, since the higher salary payable to the Appellant was causing a financial strain.

(c) In any event the Appellant was employed in JNU for 6-1/2 years which was over and above his stipulated tenure of five years. This was in contravention of various circulars of the Central Vigilance Commission (CVC) which directed organisations not to retain persons in the same position for long duration with a view to avoiding development of "vested interests."

(d) The fact that he continued to be on deputation in this period was evident from the fact that JNU continued sending to his parent department i.e. the CAG, the Appellant's pension contribution, leave contribution and provident fund contribution. Till the date of his repatriation the Appellant continued to draw his salary as per the 7th CPC which had not yet been implemented even for permanent employees of the JNU.

(e) The decision in *Ashok Kumar Ratilal Patel v. Union of India* (supra) was distinguishable on facts as it pertained to cancellation of the appointment on deputation and not repatriation of an employee on deputation. The appointment

letter issued to the Appellant distinguished his appointment from other regularly appointed persons in the JNU and therefore the Appellant could not seek protection under Section 31 of the JNU Act or the Statute thereunder.

(f) Dr. Neelima Mondal was not an EC member for more than a year prior to the meeting at which it was decided to repatriate the Appellant to his parent department. She was not privy to the deliberations of the EC. There is no record of Dr. Neelima Mondal influencing the decision of the EC nor is there any discussion regarding recoveries of money due to her. The Finance Officer was not a member of the EC and the VC as Chairperson of the EC had the right to invite a person to the meeting or to request a member to leave the meeting. A member of the EC could raise an issue for discussion under "any other item" in the agenda.

(g) There was therefore no illegality in the EC discussing the case of the Appellant's repatriation to his parent department at the meeting held on 23rd November, 2017.

(h) There were complaints received from the CVC regarding the acts of omission and commissions of the Appellant. The EC in its wisdom without initiating an inquiry decided to repatriate the Appellant to his parent organisation. There was no error committed by the learned Single Judge in concluding that this was a case of repatriation of the Appellant to the parent department anticipating his attaining the age of superannuation in the parent department. Repatriation/reversion is not a punishment. Reliance is placed on the decision *Kunal Nanda v. Union of India* AIR 2000 SC 2076.

Transfer on deputation or Appointment on deputation?

22. The first question to be considered is whether the Appellant's appointment as Finance Officer in the JNU was by way of transfer by deputation simpliciter or was it a case of "appointment by deputation", with the emphasis being on word "appointment" as contended by him?

23. The first letter concerning the appointment of the Appellant is one dated 6th April, 2011 addressed by the VC of JNU to the Assistant CAG in the office of the CAG. It says that based on the recommendations of the Selection Committee, the EC in its meeting held on 5th April, 2011 had approved the appointment of the Appellant as Finance Officer, JNU. The Assistant CAG was requested to arrange to get the Appellant relieved from his posting to enable him to join as Finance Officer in JNU. Interestingly, the letter given by the Appellant to the Assistant CAG on 17th February, 2011 expressing his willingness to apply for the post gives the subject matter as "Deputation as Finance Officer in Jawaharlal University, New Delhi."

24. The letter written on 4th March, 2011 by the Assistant CAG to the Registry, JNU nominating three officers including the Appellant "for consideration to the above deputation post" also describes the subject matter as "filling up the post of

Finance Officer in Jawaharlal University, New Delhi on deputation basis."

25. The order dated 25th April, 2011 issued by the office of the CAG makes it abundantly clear that the appointment of the Appellant was on deputation basis. The said order reads as under:

"Services of Shri RK Verma (IA& AS-1953), Principal Accountant General (Audit), Jharkhand, Ranchi, on relief from his present duties by Ms. Mridula Sapru, are placed at the disposal of Jawaharlal Nehru University, New Delhi for appointment to the post of Finance Officer on deputation basis.

2. Terms and conditions of deputation of Shri RK Verma with Jawaharlal Nehru University, New Delhi will be governed by the Government of India, Department of Personnel & Training O.M. No. 2/29/91-Estt (Pay-II) dated 5.1.1994 as amended from time to time. Leave salary and pensions contribution during the period of his deputation will be paid by the Jawaharlal Nehru University, New Delhi.

3. This order is issued in supersession of the posting order no. 794-GE.I/1-2011 dated 15.2.2011."

26. Correspondingly on 25th May, 2011 JNU issued a notification stating that the Appellant had taken over as Finance Officer with effect from the forenoon of 19th May, 2011 and intimation was sent in this regard to the CAG.

27. Office Order dated 281/2013 dated 17th June, 2013 issued by JNU also makes it clear that the Petitioner was on deputation with the JNU. The said office order issued by the Deputy Registrar (Administration) reads as under:

"In continuation of the Office Order No. 163 date 17th May, 2012, the deputation term of Sh. R.K.Verma, IA & AS, as Finance Officer of the University has been extended to five years i.e. up to 18.05.2016 on the existing terms & conditions of deputation.

This issues with the approval of the competent authority."

28. A copy of this order too was marked to the office of the CAG.

29. A note was prepared by the Registrar of JNU on 8th October, 2015 for consideration of the VC pointing out that the term of the Appellant was ending on 18th May, 2016, the date on which he would complete five years. Reference was made to the Ordinance concerning the terms and conditions of service of the Finance Officer in terms of which his tenure would be five years which could be renewed for similar tenures by the EC "and he shall retire on attaining the age of 62 years." It was accordingly proposed that the Appellant could be asked whether he was willing to consider for renewal of his tenure for a further period of five years or till he attains the age of 62 years, "whichever is earlier." This was placed before the VC on the same date. A letter was then addressed on 4th December, 2015 by the VC to the CAG requesting the CAG that the "deputation period" of the Appellant as Finance Officer of JNU "be extended till 31st

December, 2017." This was obviously because both JNU and CAG were aware that the Appellant was superannuating in his post in the CAG's office on 31st December 2017. The question of the "deputation" extending beyond that date did not arise.

30. It was clear therefore that JNU, as a borrowing Department, was making a request to the CAG, the lending Department, for approving the extension of deputation of the Appellant till 31st December, 2017. It is in response to this request that on 14th December, 2015 the CAG wrote to the VC conveying the no objection of the CAG in respect of the Appellant who was "on deputation as Finance Officer" in the JNU with effect from 19th May, 2011 "for continuation in the post for the further period beyond 18th May, 2016 to 31st December, 2017 as per extent instructions of DOPT."

31. It must be noticed at this stage that the request made by the VC of JNU on 4th December, 2015 was based on the decision taken by the EC at the 260th meeting held on 20th November, 2015 approving renewal of the term of the Appellant for a further period of five years or till he attained 62years whichever is earlier. On that basis a note had been prepared for the VC proposing that an order may be issued stating that the term of the Appellant had been renewed till 19th December, 2019. However, this was only a proposal. Although on 22nd December, 2015 Office Order No. 457/2015 was issued stating that term of the Appellant as Finance Officer had been renewed till 19th December 2019, the fact remained that on 4th December, 2015 the VC had sought extension of the deputation period from the CAG till 31st December, 2017 and that approval was granted.

32. The question that arises is whether there was any intention to continue the term of the Appellant beyond 31st December, 2017 up to 19th December, 2019 as a regular employee of the JNU on substantive basis?

33. While it is true that the EC in the first instance at the meeting held on 20th November, 2015 decided to renew the term of the Appellant as Finance Officer till 19th February, 2019, what is plain is that the EC decided not to extend the tenure of the Appellant in any event beyond his completing 62 years since it acknowledged that his date of birth was 20th December, 1957. However, the EC does not appear to have taken any conscious decision that the period beyond 31st December, 2017 should be treated as a regular appointment to the post. The manner in which the VC of the JNU requested the consent of the CAG for extension of the deputation upto 31st December, 2017 indicates that even JNU considered the Appellant to be on deputation. At that stage, there was no conscious decision taken as to how the period beyond 31st December, 2017, when the Appellant's appointment with the CAG would come to an end was going to be treated.

34. At this stage, it is necessary to refer to the changes brought about in para 9 of the DoPT Office Memorandum (OM) dated 5th September, 1994 by the

subsequent OM dated 17th June, 2010. Para 9 of the OM dated 5th September, 1994 concerned pre-mature reversion of a deputationist to the parent cadre and read as under:

"9. Premature reversion of deputationist to parent cadre.

Normally, when deputation/foreign an service, employee his services is are appointed placed at on the disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving advance intimation of reasonable period of the lending Ministry/Department and the employee concerned."

35. The above OM dated 5th January, 1994 was superseded by OM dated 17th June, 2010. Para 9 of the revised OM reads as under: "9. Premature reversion of deputationist to parent cadre.

Normally, when an employee is appointed on deputation/foreign service, his services are placed at the disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving an advance notice of at least three months to the lending Ministry/Department and the employee concerned."

36. OM dated 5th January, 1994 required an advance intimation of "a reasonable period" being given to the lending Ministry and the employee when such employee is sought to be prematurely reverted to the parent Department, whereas the OM dated 17th June 2010 specifies that it should be an advance "notice" of "at least three months". In the present case, the deputation of the Appellant was first extended beyond the initial period of five years and thereafter was continued virtually till the end of the maximum possible deputation period i.e. 31st December, 2017 since the reversion order was passed just about a month prior thereto i.e. on 25th November, 2017. If one now peruses the DoPT OM dated 17th June, 2010 it indicates that the reasonable period for pre-mature reversion would be "at least three months".

Clause 9 in the OM dated 17th June, 2010 opens with the word "normally".

In the present case, admittedly the initial period of deputation came to an end on 18th May 2016 and the extended period of deputation on 31st December, 2017. Beyond 31st December 2017 there could be no possible extension of "deputation" since the Appellant was on that date superannuating in his post at the CAG's office. As of 25th November, 2017 the stage had been reached for the imminent reversion of the Petitioner to his parent department. In a sense, therefore, the reversion of the present case should not be termed as "pre-mature" with hardly a month being left for the normal plus extended period of deputation to come to an end.

37. The justification offered by JNU for the repatriation of the Appellant at the

end of his extended tenure of deputation is traced to para 8 of the OM dated 17th June, 2010 which is titled "tenure of deputation/foreign service".

The relevant portion is contained in para 8.3.1 which reads as under

"8.3.1 The borrowing 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."

38. There are several indications of the Appellant continuing on deputation throughout this period up to his actual date of repatriation to the CAG. The first is that JNU continued to send his pension contribution, leave contribution and PF contribution to his parent department i.e. the CAG. Secondly, he was drawing salary from 1st January, 2016 in the JNU, upto his repatriation to the CAG, as per the recommendations of the 7th CPC. This higher pay had not been implemented for permanent employees of the JNU whereas it had been implemented in the office of the CAG. Thirdly, his letter of appointment clearly stated that his terms and conditions of appointment would be governed by the DoPT norms. This meant the DoPT OM dated 5th January, 1994 as substituted by the OM dated 17th June, 2010.

39. It is in this background that one has to view the decision taken at the 270th meeting of the EC held on 23rd November, 2017. The minutes of the said meeting have already been extracted in para 16 of this judgment. Mr. Krishnan Venugopal is perhaps justified in his criticism of the wording of the said minutes para 12 (1) of which states that the Appellant should proceed on leave with immediate effect and para 12 (3) states that he should be repatriated to his parent organisation with immediate effect. However, it is possible to make sense of the decision if it is read sequentially viz., that having proceeded on leave he should be repatriated. The intention is clear from para 12 (2) which acknowledges that the Appellant would retire from the CAG on 31st December, 2017. The decision of the EC when read as a whole acknowledges that the Appellant was on deputation; that it was initially for five years and further till 31st December 2017 and that an extension given to him beyond the date of

retirement in the CAG would be irregular. This is traceable to para 8.3.1 the DoPT OM dated 17th June, 2010 which governed the terms and conditions of the Appellant's service as Finance Officer of JNU.

40. Although a reference has been made by Ms. Arora, learned counsel for JNU, to Statute 14 (ix) of the JNU Act which empowers the EC to vary, carry out and cancel contracts, this Court is of the view that even independent of Statute 14(ix) the EC was at liberty to decide that the period beyond completion of the normal plus extended period of deputation of the Appellant would not be converted into a regular appointment with JNU. There was no conscious decision earlier taken by the JNU in this regard.

41. At the risk of repetition, it is trite that once the Appellant ceased to be an employee of the CAG, there was no question of his being on "deputation" from the CAG to the JNU beyond that date. Therefore, in any event there could have been no question of extension of deputation beyond 31st December, 2017. This was perhaps not kept in view when the EC earlier decided to extend the tenure of the Appellant till 19th December, 2019 when he would attain 62 years of age. At that stage, the Appellant was still on deputation and it was perhaps not realised that the deputation itself would come to an end on 31st December, 2017.

42. This explains why the earlier EC resolution is silent on how the period beyond 31st December, 2017 should be treated. At its 270th meeting held on 23 rd November, 2017 the EC did decide in that regard. It decided not to treat the period beyond the period 31st December, 2017 as a regular appointment by the JNU. It is clear that the Appellant would revert to the CAG. All of the above decisions are therefore consistent with treating the Appellant as being on deputation with the JNU.

43. The Court agrees with the submission on behalf of the JNU that since the Appellant was on deputation the question of treating him as a regular employee of JNU did not arise and that Statute 31 was applicable only to regular employees. Therefore, the question of complying with the procedural requirements set out in Statute 31 before repatriating the Appellant to the parent department, does not arise in the present case. The question of therefore giving him salary in lieu of notice period or giving him the grounds on which he was being repatriated and giving by way of a SCN and giving an opportunity to respond thereto does not arise.

44. In this context it must be observed that although the JNU may have sought to adduce reasons in the counter affidavit for why it decided to repatriate the Appellant, the impugned orders by themselves do not spell out any of those reasons. There is no occasion for the Court therefore to treat those orders as stigmatic. What the repatriation order does is simply to acknowledge that the period of deputation has come to an end and nothing more. It is not possible to read anything further into those orders. A repatriation at the end of the deputation period cannot and should not be treated as a punishment. The law in

this regard has been explained by the Supreme Court in *K.H. Phadnis v. State of Maharashtra* (supra) as under:

"The order of reversion simpliciter will not amount to a reduction in rank or a punishment. A Government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, Article 311 will be attracted."

45. In the present case the position that emerges on an examination of the documents on record is that:

(a) The appointment of the Appellant as Finance Officer of JNU was by way of deputation and continued as such. In other words, merely because the appointment as such was by the Selection Committee, did not convert it into a substantive appointment.

(b) The repatriation of the Appellant was virtually at the end of his term of deputation and cannot be termed as "premature". There was, therefore, no infraction of para 9 of the OM dated 17th June 2010 on account of the failure to give him and the CAG three months" advance notice.

(c) Since the Appellant's appointment remained as one on deputation, and with his emoluments being consistent with what was payable to him in his post with the CAG, it did not transform into a substantive appointment with JNU on a regular basis. Therefore, the question of applicability of Statute 31 did not arise.

46. Further, there is no vested right to continue in deputation or claim a right to absorption at the end of a period of deputation. The law in this regard is well settled as explained in *Kunal Nanda v. Union of India* (supra) as under:

"It is well settled that unless the claim of the deputationist for 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."

Decisions cited by the Appellant

47.1 Since considerable reliance has been placed by the Appellant on the decision in *Union of India v. S. N. Maity* (supra) [Maity's case], the Court would like to discuss it at some length. There the Respondent No.1 was working as Scientist E-2 in the Central Mining and Research Institute under the Council of Scientific and Industrial Research. On 29th July, 2003 he was appointed on deputation to the post of Comptroller General of Patents, Designs and Trademarks. The appointment of Respondent No.1 was after undergoing a selection process. The appointment was for five years or "until further orders".

47.2 Even before the fixed tenure of five years came to an end, the Respondent No.1 was repatriated to his parent department after only one year. The plea of the Appellant was that the appointment of the Respondent No.1 was "for five years or until further orders" and that the phrase "until further orders" gave discretion to curtail the period of deputation.

47.3 In those circumstances, it was held that the curtailment of the period of deputation from five years to one year "cannot be arbitrary or capricious but must have some rationale". It was held that the order dated 17th January, 2005 directing repatriation of Respondent No.1 was "absolutely silent on any aspect and has curtailed tenure of posting without any justifiable reasons."

47.4 In the present case there are several distinguishing features which make the above decision inapplicable. In the first place here the initial period of deputation was not sought to be curtailed at all. The Petitioner who joined JNU on deputation in May, 2011 went on to serve in the JNU till November, 2017 i.e. well beyond five years. The so called curtailment of deputation was only by one month. The deputation was come to an end on 31st December, 2017 and the Petitioner was asked to go back to the parent cadre on 25th November, 2017. The curtailment of the deputation of the present case, if at all, was just by one month and not by four years as was in Maity's case. Thirdly, the present repatriation is not without a rationale. The DoPT OM's which were applicable in the case of the Appellant, and not expressly applicable in Maity's case, discourage the extension of deputation beyond five years. In any event, even the extended period of deputation in the present case was allowed to run virtually in the entire course. Consequently, the Court does not find the decision in Maity's case to be of any assistance whatsoever to the Appellant.

48.1 Now turning to the decision in *Union of India v. Shardindu* (supra) [Shardindu's case] there the Respondent had been selected as Chairperson of the NCT for a period of four years or till he attained the age of 60 years whichever is earlier. After his appointment the Respondent was relieved by the Government of Uttar Pradesh on 21st January, 2004 and he joined the NCT on

22nd January, 2004. Before the expiry of the period of four years an order was issued on 18th November, 2005 purporting to terminate his deputation prematurely and repatriate him to the parent cadre. The reason being an inquiry had been conducted in 2004 in the State of U.P in his parent cadre for an incident that was stated to have happened in 2001.

48.2 Both the Single Judge and the Division Bench of the High Court before whom the repatriation order was challenged held it to be invalid. Affirming the said decisions of the High Court the Supreme Court concluded that once regulations have been framed and a detail procedure laid down the termination of the services could be done only the manner provided. It was held that the appointment of the Respondent was not purely an appointment on deputation basis he had been selected under the NCTE Act, 1993 and his appointment was for a fixed tenure after such due selection. Therefore, that kind of deputation stood "on an entirely different category".

48.3 In the present case, as already noticed hereinbefore the Appellant ran the entire initial period of deputation till the end and in fact got a further year and sum of deputation. No parallel can be drawn with Shardindu's case since in the present case, unlike in Shardindu's case, it was made expressly known that the Appellant's deputation was subject to the DoPT norms. His deputation continued till the maximum period that it was possible to be continued i.e. 31st December, 2017. It was really not a case of pre-mature reversion or repatriation. For the aforementioned reasons even the decision in Shardindu's case does not come to the aid of the Appellant.

49. The position is no different as far as the decision in Ashok Kumar Ratilal Patel v. Union of India (supra) is concerned. The said case related to cancellation of the appointment on deputation and not repatriation of an employee at the end of the normal tenure of deputation. The Court also finds that the decision in University of Kashmir v. Dr.Mohd. Yasin (1974) 3 SCC 546 is again distinguishable on facts and of no relevance to the present case.

No malafides

50. The decision in Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia (supra) was relied upon by Mr. Venugopal in support of his contention that the impugned decision repatriating the Appellant to the office of the CAG was taken "post haste" and was vitiated by mala fides. In the present case, although there was no specific agenda item to consider the case of the Appellant's continuation in JNU as Finance Officer, there is nothing to indicate that the decision was taken, "post haste" in the manner suggested by the Appellant. The Court is not impressed with the attempt by the Appellant to link of the decisions taken by him regarding withholding of sums from the salary of Dr. Neelima Mondal as triggering the decision to prematurely repatriate him to his parent cadre.

51. On 23rd November, 2017 when the EC met, the end of the deputation of the Appellant on 31st December 2017 was imminent. A decision in that regard had,

therefore, necessarily to be taken by the EC. In the circumstances, the said decision cannot be said to be post haste and therefore, the question of mala fides does not arise.

52. As explained in *Purshottam Kumar Jha v. State of Jharkhand* (2006) 9 SCC 458:

"23. It is well settled that whenever allegations as to mala fides have been levelled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegation or bald assertion that the action taken was mala fide and malicious is not enough. In the absence of material particulars, the court is not expected to make "fishing" inquiry into the matter. It is equally well established and needs no authority that the burden of proving mala fides is on the person making the allegations and such burden is "very heavy". Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be "made than made out" and hence it is necessary for the courts to examine it with extreme care, caution and circumspection. It has been rightly described as "the last refuge of a losing litigant". (Vide *Gulam Mustafa v. State of Maharashtra* AIR 1977 SC 448; *Ajit Kumar Nag v. GM (PJ), Indian Oil Corpn. Ltd.* (2005) 7 SCC 764)"

53. This Court is therefore not persuaded on the pleadings in the writ petition that Appellant had been able to show that the impugned decision of the JNU to repatriate him to the office of the CAG at the end of his normal period of deputation was vitiated by malafides.

Conclusion

54. For the aforementioned reasons, the Court is satisfied that the impugned judgment of the learned Single Judge does not call for interference.

55. The appeal is accordingly dismissed with no order as to costs.