

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.1804/2010**

% **Date of Decision: 16.03.2010**

COMMISSIONER OF TRANSPORT PETITIONER

Through Mr. Anju Bhattacharya, Mr. Elgin Matt
John, Advocates

Versus

SANJAY CHILLAR RESPONDENT

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. This petition has been filed by the Govt. of N.C.T of Delhi to assail the judgment passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') dated 07.12.2009 in O.A. No.1410/2008 whereby directions have been given to the petitioner to fix the respondent in the pay scale of Rs.6500-10500 on pro-forma promotion in relaxation of the instructions and rules, because the petitioner could not put the respondent to a financial loss by not absorbing the respondent. The petitioner was further directed to grant pay scale of Rs.5500-9000 to the respondent w.e.f. 10.12.1997 to

24.08.1998 which is the pay scale of the Inspector in the borrowing department in which the respondent had worked. Further directions were given to the petitioner to comply with the directions within a period not later than three months and to pay arrears to the respondent with 8% simple interest per annum.

2. Briefly stating the facts of this case are that the respondent was working as Sub-Inspector in BSF in the pay scale of Rs.5000-8000 and thereafter joined the petitioner as Inspector on deputation on 06.06.1997. Vide order dated 10.10.1997, the pay scale of the Sub-Inspector as well as the Inspector in BSF were revised to Rs.5500-9000 and to Rs.6500-10500.

3. During the course of his working on deputation with the petitioner, the respondent was promoted to the rank of Inspector in his parent department on 24.08.1998 on the principles of next below Rule. In this regard, intimation was also sent to the petitioner which accepted and taken on record in 1998 itself. There were requests made on behalf of the parent department of the respondent to repatriate the respondent to the parent department. However, repatriation was not done till 11.09.2001.

4. The respondent then made representation before the petitioner as well as his parent department for fixation of his pay in an appropriate pay scale in view of the development which had taken place during the course of his deputation with petitioner. However, the said representation was rejected. The respondent filed the Original

Application against the order of rejection dated 31.05.2007 which application has been allowed by the Tribunal vide order dated 06.03.2010. It is against this order that the petitioner has approached this Court.

5. It is the submission of the petitioner that as the respondent had joined the post of Inspector in the department of Transport of Govt. of NCT of Delhi and had also accepted the pay scale of Rs.5000-8000 along with the deputation pay and also continued to work on deputation even after promotion, therefore, he is not entitled to any benefit as claimed. At this stage, it will be appropriate to take note of the orders passed by the petitioner dated 31.05.2007:

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
TRANSPORT DEPARTMENT: ADMINISTRATION BRANCH
5/9 UNDER HILL ROAD: DELHI: 110054

No.3(19)/Admn/Tpt/974832

Dated: 31.5.07

To

The Deputy Commandant
72 BN BSF
HQRS 72 Battalion BSF
PO Narayanpur
Distt. Malda
West Bengal

Sub: Pay arrear of revised pay fixed in the scale of Rs. 5500-9000 for the period 6.6.97 to 11.9.01 in r/o Sanjay Chilar.

Sir,

With reference to your letter No. Estt/72BN/Pay-Fix/2007/2410-11 dated Nil on the subject cited above, I am direct to say that the request has been again considered by the competent authority and rejected on the grounds that the information relating to revision of pay scale had not

been informed timely. If the same had timely informed the official could have been repatriated in terms of the relevant instructions. Further, continuation of deputation beyond the initial period of one year was in the personal interest of the individual.

Yours faithfully,

Sd/-

(P.C. CHATURVEDI)
(COMMISSIONER (ADMN.))

6. The Tribunal has crystallized the issue which came up for consideration before it as under:

(i) whether the Applicant was retained in the Department of Transport, after his promotion in August 1998 in public interest or on the request of the Applicant; (ii) whether the B.S.F., the parent department of the Applicant, had informed the borrowing department about the promotion of the Applicant; and (iii) whether the B.S.F. had asked for the Applicants repatriation.

7. After perusing the record and taking note of the submission made by the parties, the Tribunal has noticed that:-

(i) the respondent joined the Department of Transport (in diverted capacity under Directorate of Vigilance) on 6.06.1997 on deputation for one year extendable to three years. On 29.01.1999, the following note was recorded in the file at page 42:

Sh. Sanjay Chillar, Inspector (Enforcement) was appointed as Inspector (Enf.) from B.S.F. on deputation w.e.f. 6/6/97 F.N. for a period of one year. He was then further sent on diverted capacity to Anti Corruption Branch by the orders of Chief Secretary, Delhi, photocopy

which are placed at 8/N. Sh. Sanjay Chillar is still continuing with the Anti Corruption Branch on diverted capacity. **The Enforcement Branch of the Transport Deptt. needs to be strengthened specially considering the implementation of orders of the Honble Supreme Court regarding phases out of vehicles. We may request Anti Corruption Branch to relieve Sh. Sanjay Chillar for working in the Transport Deptt. as Inspector (Enf.), for which purpose he was borrowed from BSF.**

Deputation period of Sh. Sanjay Chillar expired in April 98, therefore, further extension of deputation period upto April 2000 may be given.

- (ii) There was a specific query by the Special Commissioner (Transport) on 4.02.1999 as to why a departmental officer should not be promoted to the post of Inspector (Enforcement). It was clarified that the respondent was on a post earmarked for deputation and in view of the provision in the relevant recruitment rules for a ratio of 50:50 between the deputationists and promotees, the post occupied by the respondent could not be filled up by promotion.

- (iii) On 30.11.1999 following note was recorded at page 60 of the file:

The parent Deptt. of Sh. Sanjay Chillar has pointed out that Shri Chillar was sent on deputation in Trpt. Deptt. initially for a period of

one year & on expiry of this period, the official be repatriated to his parent department.

In this regard, it is submitted that the official who was posted with the approval of CS (Delhi) on diverted capacity with the Anti Corruption Branch, G.N.C.T. of Delhi has been retained in Govt. of N.C.T. of Delhi upto the period of 30.6.2000 (letter placed on file at pg. 215/C).

- (iv). It was only in April 2000 that the respondent requested for continuation of his deputation beyond 30.06.2000 and even offered himself for absorption (page 62 of note portion of the file). The proposal for his extension for one year up to 30.06.2001 was approved by the Principal Secretary-cum-Commissioner (Transport) 28.04.2000.
- (v) The parent department, B.S.F., objected to this and requested for immediate repatriation. The petitioner proposed absorption of the respondent. Meanwhile, the respondent completed the fourth year of deputation and the petitioner proposed his continuation on deputation, in the teeth of constant opposition from the B.S.F., for the fifth year, at page 82 of the file. Eventually, the Minister of Transport of the Government of NCT of Delhi approved an extension of two months from 5.07.2001.

8. The Tribunal, thus, observed that the extension in deputation up to three years was given by the Government of NCT of Delhi in public

interest, in spite of the parent department seeking his repatriation. It was during this period, the respondent was promoted on 24.08.1998.

9. The Tribunal further observed that in a note dated 21.02.2003, the Administrative Officer of the petitioner has noted at page 105 that -

the parent department of Sh. Chillar, Inspector (Enf.) had issued a letter dated 18.9.98 showing his promotion to the rank of Subedar [Inspector] w.e.f. 24.8.98.

It is further recorded at page 116 of the file as under:

4. The parent department of Sh. Sanjay Chillar, S.I., i.e. BSF made many requests to Transport Department, GNCT Delhi for his repatriation vide their letters dated 15.5.2000 (P.146/C), 6.6.2000 (P.151/C), 29.9.2000 (P.156/C). In spite (sic) of these requests the official was not repatriated to his parent department. As per Rule FR 11.9 (3) (iv), the extension should be subject to the prior approval of lending organization. In this it seems the rules were not followed while extending the period of deputation of Sh. Sanjay Chillar.

The matter was referred to Services Department Branch IV, which quoted the instructions dated 5.01.1994 of DOPT about extension of deputation, which are extracted below:

Para 8.8 of the consolidated instructions of Govt. of India on Deputation stipulate that If during the period of deputation, on account of pro forma promotion in the parent cadre under the Next Below Rule, the employee becomes entitled to a scale of pay higher than the scale of pay attached to the ex-cadre post, he may be allowed to complete the normal tenure of deputation, subject to 8.7 above but no further extension of

the period of deputation should be allowed in such cases.

Para 8.7 of the consolidated instructions stated that If during the period of deputation/foreign service, the basic pay of an employee exceeds the maximum of the scale of pay of the post or the fixed pay of the post, on account of pro forma promotion in his cadre under the Next Below Rule or otherwise, the deputation/foreign service of the employee should be restricted to a maximum period of six month from the date on which his pay exceeds such maximum and he should be reverted to his parent department within the said period.

13. It was on this ground, the petitioner refused to pay the arrears as claimed by the respondent and his parent department. It is, thus, clear from the contemporaneous record that the parent department had informed the petitioner about the respondent's promotion on 24.08.1998.

14. Taking all these facts into consideration, the Tribunal decided the O.A. of the respondent in his favor and against the department by observing that the petitioner was fully aware of the promotion of the respondent in his parent department in 1998, yet extended deputation of the respondent in public interest. It was thus, held that in the facts and circumstances of the case, the petitioner cannot deprive the respondent of the higher pay scale which became applicable to him after his promotion in his parent department, i.e., the pay scale of Rs.6500-10500 on pro-forma promotion even by relaxing the

instructions and rules for their own benefit. The petitioner was not entitled to put the respondent to financial loss as far as the pay scale of Rs.5500-9000 which became admissible to the respondent in his parent department as a replacement scale of the pay scale of Rs.5000-8000.

15. The Tribunal also observed that since that pay scale was also admissible to their own Inspector, they must provide that scale to the respondent who is working on the similar post and where also the pay scale has been revised from Rs.5000-8000 to Rs.5500-9000 w.e.f. 10.10.1997 as the pay scale of Sub-Inspector in BSF.

16. We may further observe that even as per the fundamental rules governing tenure of deputation/foreign service, the borrowing department is not entitled to retain the deputationist beyond a maximum period of six months from the date on which the pay of the employee exceeds the maximum to the scale of pay of the post or the fixed pay of the post on account of pro-forma promotion in his cadre under the next below rule or otherwise.

17. Thus, in this case, once the promotion of the respondent has taken place in his parent department to the post of Inspector as per the next below rule, the maximum period for which the respondent would not retain the petitioner beyond a period of six months from the date of intimation which in this case admittedly was given to the department in 1998 whereas the respondent was retained in service till 2001.

18. In view of the aforesaid, we find no reason to interfere with the aforesaid directions given by the Tribunal as the order is neither illegal

nor there are any procedural irregularity in passing directions which may vitiate the order so as to call for our interference while exercising jurisdiction under Article 226 of the Constitution of India. The petition is, therefore, dismissed without any order as to costs.

MOOL CHAND GARG, J.

MARCH 16, 2010

'anb'

ANIL KUMAR, J.