

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

% **Reserved on : 30th August, 2011**
Date of decision : 19th September, 2011

+ **W.P.(C) 214/2011**

Post Graduate Institute of Medical Education &
Research & Ors.

..... Petitioners

Through: Mr.A.S. Chadhiok, ASG with Mr.Sandeep
Bajaj & Ms.Riya Kaul, Advs.
MrNeeraj Chaudhari, CGSC with
Mr.Akshay Chandra, Mr.Mohit Auluck &
Mr.Khalid Arshad, Advs. for Pet. 2 to 4

versus

Mr.Ajay Sehgal & Ors.

..... Respondents

Through: Mr.Sandeep Sethi, Sr.Advocate with
Mr.Manish Srivastava, Adv. for Resp.1
Mr.Anil Mittal, Adv. for Resp.2
Dr.Saif Mahmood, Adv. for Resp. 3

WITH

2. **W.P.(C) 6324/2011**

State of Uttar Pradesh

..... Petitioner

Through: Mr.Anil Mittal, Adv.

versus

Mr.Ajay Sehgal & Ors.

..... Respondents

Through: Mr.Asit Tiwari, Adv. for Resps. 2 & 3

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1. Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

DIPAK MISRA, CJ

These two writ petitions have been preferred under Articles 226 and 227 of the Constitution of India assailing the order dated 7th January, 2011 passed by the Central Administrative Tribunal, Principal Bench (for short 'the tribunal') in OA No. 3590/2010 whereby the tribunal has lanced the order of repatriation passed by the State of Uttar Pradesh repatriating the incumbent, namely, Mr.Ajay Sehgal, from the Post Graduate Institute of Medical Education & Research (PGIMER) to his parent cadre.

2. The Writ Petition (Civil) No. 214/2011 has been filed by PGIMER whereas Writ Petition (Civil) No. 6324/2011 has been filed by the State of Uttar Pradesh.

3. The facts which are essential to be exposted are that the respondent No.1, an officer belonging to Indian Forest Service from Uttar Pradesh cadre, was selected on deputation basis by the Ministry of Shipping, Road

Transport and Highways, Government of India, for assigning the post of Director. He joined the deputation post on 3rd September, 2007. On 19th November, 2007, he was served with a memo pertaining to the period 2004 while he was posted as Divisional Forest Officer at Saharanpur, U.P. The charges leveled against him show that while he was holding the said post, he received information with regard to felling of huge quantity of Khair trees in Badkhala Range in Maganpura beat of his division, but he did not carry on the inspection/checking and did not take appropriate steps as per the rules. As further alleged, he had saved the concerned officers/employees by concealing the information with regard to the illegal felling from his seniors. The respondent No.1 put forth before the tribunal that after the preliminary enquiry he was exonerated. But despite the same, a regular departmental enquiry was initiated, which he was attending as and when required. As the factual narration would reveal, at the time of deputation, all mandatory clearances were given and there was neither any proposal pending nor contemplated by the State Government to chargesheet him while relieving him for central deputation.

4. It was set forth before the tribunal that as per the Central Staffing Scheme, the period of deputation is five years. Clauses 17.11 and 17.12

provide for pre-mature reversion of the officers concerned to their respective cadres. While working on the post of deputation, he was selected for being appointed as Deputy Director (Administration) at the PGIMER, Chandigarh on deputation for a period of four years. The Ministry of Health and Family Welfare, vide office memorandum dated 11th August, 2009, requested the DOP&T to relieve him to facilitate his joining at the PGIMER, Chandigarh. He joined the said post with the concurrence and approval of the borrowing ministry, that is, Ministry of Personnel, and, therefore, the terms and conditions of the deputation were to be governed by the Central Staffing Scheme. He joined at PGIMER on 1st September, 2009. After the disciplinary proceeding was initiated, he participated and as per his information and belief, the enquiry officer had already submitted his report exonerating him. Despite the completion of enquiry, the State Government sent a request for repatriating him to his parent department. The request of the State Government was approved by the Ministry of Environment and Forests on 22nd July, 2010 and the said Ministry conveyed to the DOP&T that they had approved the proposed repatriation of the said petitioner due to pending disciplinary proceeding. In response thereto, the DOP&T informed that since the applicant was currently working against a non-central staffing

scheme post, it had no role and the Ministry of Health and Family Welfare was the appropriate authority to take a decision in this regard.

5. As the factual matrix would further uncurtain, the State Government sent a communication on 31st August, 2010 requesting for repatriation of the applicant, the first respondent herein, as the state work was being affected. It was urged before the tribunal that the state has been changing its stand and, in any case, more than 15 officers of Indian Forest Service belonging to the U.P cadre, both seniors and juniors, are on central deputation and they have not been recalled. When the Ministry of Environment and Forests made a request to the Health Ministry to take appropriate decision with regard to the repatriation of the applicant, he submitted number of representations but eventually, the order of repatriation came to be passed on 30th September, 2010.

6. It was contended before the tribunal that when the deputation period was for a fixed tenure, it could not have been curtailed at the whim and fancy of the borrowing or lending department and it had to be supported by acceptable germane reasons. Be it noted, the stand of mala fide was abandoned by the applicant.

7. The stand put forth by the applicant was combated by the authorities contending, inter alia, that the repatriation of the applicant was required as the state work was suffering. It was also put forth that the order of repatriation is perfectly in accordance with the rules and regulations governing the field and there is no mala fide in the order of repatriation.

8. The tribunal referred to the initial order of deputation, his selection and further deputation to PGIMER for the balance period, the applicability of the central staffing scheme, the tenure fixed for him, the effect and impact of paras 17.01, 17.02, 17.03, 17.11 and 17.12 and came to hold that the tenure of the applicant was for a fixed period. The tribunal, taking note of the initial stand of the State of U.P. and its somersault, non-pendency of the enquiry, non-denial of the stand of the petitioner that he has been exonerated by the enquiry officer by the State of U.P., the stance of the applicant that other seniors and juniors are still in central deputation and there is no fathomable reason to get him repatriated, the basic law that ordinarily the period of deputation should not be curtailed except on such just grounds such as unsuitable or unsatisfactory performance, the nature of order passed for repatriation whether it is innocuous or punitive and the just and adequate reason for repatriation, the non-existent grounds advanced by the State of

U.P. for repatriation, the non-requirement of the applicant to participate in the enquiry and further placing reliance on the decision rendered in **Kunal Nanda vs. Union of India and another**, (2000) 5 SCC 362, came to hold as follows: -

“He came on deputation under the central staffing scheme issued by the Ministry of Personnel, Public Grievances and Pensions (DOP&T) dated 5.1.1996. It may be recalled that DOP&T was involved in the matter when the applicant was sent on deputation. It was also consulted when the applicant was to be sent on deputation as Deputy Director (Admn.), PGIMER, Chandigarh, to which it concurred. It is not the case of the respondents that when deputed on the post of Deputy Director (Admn.), PGIMER, the applicant was sent on deputation under the scheme of the Ministry of Environment and Forests dated 9.5.2007. That apart, once the law settled by the Hon'ble Supreme Court is that a fixed tenure of deputation cannot be curtailed except on such just grounds, as for example, unsuitability or unsatisfactory performance, the same has to be given precedence over the instructions relied upon by the learned counsel representing the respondents. The law laid down by the Supreme Court in view of provisions contained in Article 141 of the Constitution is binding on all courts and tribunals within the territory of India. The Tribunal is also bound to follow the law laid down by the Supreme Court. Still further, cases where no reasons are given or where reasons are given but the same are false or non-existent, would be two different categories. In the present case, even though no reason may have been recorded in the order as such, the respondents have come up with the explanation as mentioned above. If the reasons are found to be false or non-existent, the order of

repatriation would be totally arbitrary. It may even border on mala fides.”

9. Being of this view, the tribunal quashed the order of repatriation and directed that the applicant shall be restored to his position as he occupied before passing of the order of repatriation.

10. First, we shall refer to the notification dated 11th September, 2007 whereby the first respondent was sent on deputation under the central staffing scheme. It reads as follows: -

“The President is pleased to appoint Shri Ajay Sehgal, IFS (UP:86) as Director in the Ministry of Shipping, Road Transport & Highways (Department of Road Transport & Highways) on deputation basis under the Central Staffing Scheme in the pay scale of Rs.14,300-400-18,000 for a period of 5 years w.e.f. 3.9.2007 (F.N.) or until further orders, whichever event takes place earlier.”

11. Thereafter, as has been narrated hereinbefore, he was sent as Officer on Special Duty at the level of Director to the Minister of State for Finance for a period of five years, subject to a maximum tenure of ten years at the centre or on co-terminus basis or until further orders. Thereafter, he was sent to PGIMER for a period of four years. The memorandum dated 3rd

September, 2007 sending him to deputation at PGIMER reads as follows: -

“Dr.Ajay Sehgal, IFoS (UP:86), presently on ‘Compulsory Wait’ in the Department of Economic Affairs, Ministry of Finance, has been selected for appointment as Deputy Director (Admn.) in the Post Graduate Institute of Medical Education & Research (PGIMER), Chandigarh under the Ministry of Health & Family Welfare, for a period of four years with effect from the date of assumption of charge of the post or up to the balance period of the combined tenure of 7 years, which is up to 02.09.2014 or until further orders, whichever occurs the earliest. He counts his central deputation with effect from 03.09.2007.

2. He may kindly be relieved of his duties immediately with instructions to take up his new assignment in the PGIMER, Chandigarh.

3. This issues with the approval of the competent authority.”

Thus, the deputation period was to commence 3rd September, 2007.

There is no dispute that the deputation period has been curtailed.

12. Before we advert to the factual canvas and the reasons ascribed by the tribunal to arrive at the conclusion, it is apposite to refer to certain authorities dealing with the arenas of assail pertaining to repatriation. In ***Kunal Nanda*** (supra), the Apex Court has expressed the opinion as under:

“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. M.D., U.P. Rajkiya Nirman Nigam Ltd.* (1999) 8 SCC 381 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.”

13. In *Ratilal B. Soni & Ors. v. State of Gujarat & Ors.*, AIR 1990 SC 1132, it has been held that an employee on deputation can be repatriated to

the parent cadre at any time as he does not have any right to continue on the deputation basis.

14. In this context, it is profitable to refer to the decision of the Apex Court rendered in *Umapati Choudhary vs. State of Bihar*, (1999) 4 SCC 659 wherein their Lordships have observed thus:

“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 organisation (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....”

15. In *L/Nk V.H.K. Murthy v. Special Protection Group & Anr.*, 2000 IV AD (Delhi) 624, it has been held as follows: -

“It is now well settled that deputation is just a transfer of a Government employee from one department to another or from one Government to another, i.e. from Central Government to State Government or State Government to State Government or State Government to Central

Government. So in its very nature, the tenure of a deputationist is a precarious one. Of course, in some cases, it may be for a fixed term, but even then it is implicit that a deputationist can always be repatriated to his parent State/Department in public interest or in the exigencies of service. Further, a deputationist continues to hold lien on his permanent post in his parent cadre till of course he is permanently absorbed in the borrowing department. Another wholesome principle is that if many persons are drafted to serve on deputation, their inter-seniority in the borrowing department should be respected and preserved during the period of such deputation to the new department. (Reference [(1987) 5 ATC 91 : (1987) 4 SCC 566] wherein it was observed: "There is not much difference between deputation and transfer. Indeed when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one Government to another." It is thus manifest that a deputationist has no right to the post held by him in the borrowing department and he can always be repatriated to his parent department in public interest and exigencies of service. This right of the borrowing department to repatriate the employee and for that matter right of the lending department to recall their own employee sent on deputation, is well recognised in service jurisprudence."

16. In the case of *Union of India and another vs. V. Ramakrishanan and others*, (2005) 8 SCC 394, it has been held as under:

"Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be trued that when deputation does not result in absorption in the service to

which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post-haste manner also indicates malice.”

17. In *Gurinder Pal Singh & Ors. v. State of Punjab & Ors.*, 2005 (1)

SLR 629, a Division Bench of Punjab and Haryana High Court has held thus—

“In service jurisprudence, “deputation” is described as an assignment of an employee of one department or cadre to another department or cadre. The necessity for sending on deputation arises in “public interest” to meet the exigencies of “public service”. 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 arrangement 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.”

18. In *U.P.Gram Panchayat Adhikari Sangh and others vs. Daya Ram*

Saroj and others, (2007) 2 SCC 138, it has been ruled thus:-

“Once we hold that the respondents were on deputation to the Gram Panchayats, the position of deputation in service is well settled by a catena of decisions of this Court. Avoiding multiplicity, we refer to *Kunal nanda v. Union of India* (supra) as under:-

“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.”

19. In *Shailesh Singh v. Union of India & Ors.* titled WP (C) No.2034/2010 decided on 10th August, 2010, a Division Bench of this Court has opined that a person who proceeds on deputation for a fixed tenure, does not have any vested right to work in the transferee department for the period stipulated and in the exigency of the service, the tenure can be curtailed.

20. The present factual matrix has to be tested on the touchstone of the aforesaid principles. The authorities cited above clearly lay down that a deputationist does not have a vested right to continue. The deputation is

associated with various facets. True it is, in the case of *V. Ramakrishanan and others* (supra), the Apex Court has laid down that when a deputation is for a specific term, it cannot be curtailed except on such just grounds as unsuitability or unsatisfactory performance and even if the term is not satisfied, the reversion can be challenged if it is mala fide. The said decision does not state that in public interest, a deputationist cannot be repatriated. Though the tribunal, while enumerating the facts, has mentioned that it has to be on just grounds, yet it has not accepted the grounds given by the State on the foundation that they are non-existent. The tribunal has held so as the enquiry has come to an end before the order of repatriation has been passed and, secondly, there are other officers working on deputation. Clause 14.10 of the Scheme reads as follows: -

“14(x) The deputation tenure as prescribed in the preceding paragraphs will not confer any right to the officers to remain on deputation. The Central Government reserves the right to revert the officers to their parent cadres at any time without assigning any reason or change his place of posting. The tenure of the officer(s) can also be curtailed in public interest at the discretion of the Competent Authority.”

21. Thus, the concept of public interest is inherent in the policy. The tribunal has not accepted the said stand and, in fact, observed, as we have

reproduced hereinbefore, that the order may even border on mala fides. In our considered opinion, the reasoning given by the tribunal is wholly unsustainable as it is the domain of the employer to recall the deputationist from the borrowing department and when both the departments have arrived at a consensus, regard being had to the factum of public interest, the tribunal should not have interfered with the order of repatriation. It is worth noting that the fact that other officers, senior and junior, are still working on deputation has weighed with the tribunal. The State Government has clearly stated that they wanted the first respondent as the State work had suffered. That apart, the disciplinary proceeding has not yet come to an end. The first respondent might have been exonerated by the enquiry officer but that is not the closure of the disciplinary proceeding from all spectrums. The tribunal, in our considered opinion, has erred by holding that the stand of public interest as put forth by the State is unacceptable as the grounds are non-existent. The issue of public interest especially in the facts of the present case has its immense relevance and in certain circumstances the State is the best authority to say what would subserve the cause of public interest.

22. In view of the aforesaid premises, we conclude and hold that the order of the tribunal is indefensible and, accordingly, the same is quashed. The

respondent, who has not yet joined the parent department, shall submit his joining report within a period of three weeks hence. There shall be no order as to costs.

CHIEF JUSTICE

SEPTEMBER 19, 2011
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SANJIV KHANNA, J.