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

CNR No. DLHC010052182026

+ **W.P.(C) 2032/2026**

VIPIN KUMAR

.....Petitioner

Through: Mr. Divyanshu Bhandari and Mr.
Ankit Gupta, Advocates.

versus

NATIONAL TESTING AGENCY

.....Respondent

Through: Ms. Pankhuri Shrivastava, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **15.09.2026**

CM APPL. 62663/2026 (seeking early hearing)

1. The Petitioner seeks an early hearing. With the consent of counsel, the writ petition is taken up and finally heard today.
2. The application stands disposed of.

W.P.(C) 2032/2026

3. The Petitioner challenges his premature repatriation from the National Testing Agency¹ to his parent department, the Department of Technical Education, Government of Uttar Pradesh. NTA's power to prematurely terminate the deputation cannot be disputed. The issue is whether it exercised that power on the terms governing the Petitioner's selection and appointment, and, if not, what relief remains practical.
4. The Petitioner did not come to NTA under a routine inter-



departmental arrangement. NTA advertised the post on 10th August, 2023. He applied, was interviewed on 12th October, 2023, and was selected as Deputy Director on deputation/foreign-service terms. The offer dated 17th October, 2023, stated:

“You have been selected for the post of Deputy Director in National Testing Agency (NTA) on deputation basis/foreign service terms in the Pay Level-11 under the 7th CPC, initially for a period of three (03) years, extendable further as per the extant Instructions, unless repatriated earlier on own request or by NTA with advance notice of 03 (three) months to all concerned.”

5. The Petitioner joined NTA on 23rd November, 2023. His appointment order fixed an initial tenure of three years from that date and again provided that NTA could repatriate him prematurely only after three months’ advance notice.

6. While on deputation, the Petitioner received a *pro forma* promotion in his parent cadre. NTA granted the corresponding pay fixation and, by order dated 8th September, 2025, designated him as Joint Director. That order altered his designation, not his rank. His description of it as a promotion therefore has no bearing on the dispute.

7. On 20th December, 2025, the Petitioner was transferred from the General Administration Division to Exam Division III. On 26th December, 2025, NTA issued a show-cause notice. It stated that his posting to Exam Division III followed a report regarding his performance by the Director (Administration); that the Director of Exam Division III had returned him within three days; and that Directors of other divisions were also unwilling to work with him.

8. The Petitioner replied on 31st December, 2025. He stated, *inter alia*,

¹ “NTA”



that no deficiency in his performance had earlier been communicated to him, referred to the assignments handled during his tenure and expressed willingness to work in any division of NTA.

9. On 5th January, 2026, NTA passed the impugned order:

“Shri Vipin Kumar, Joint Director, NTA who is on deputation from Department of Technical Education, Government of UP is hereby relieved from the duties of NTA on administrative ground w.e.f. 05/01/2026 (AN). He is directed to report to his parent organization.”

10. The order thus brought the deputation to an end with immediate effect. No advance notice was given either to the Petitioner or to the lending department.

11. On 6th January, 2026, the Petitioner sought reconsideration. Apart from seeking the material underlying the adverse assessment of his performance, he specifically invoked paragraph 9 of the DoPT Office Memorandum dated 17th June, 2010, and requested, in the alternative, that the stipulated three months’ notice be afforded to him.

12. The representation did not lead to reconsideration. The Petitioner reported to his parent department on 16th January, 2026, after having already challenged the immediate repatriation in his representation dated 6th January, 2026.

13. The present petition was instituted on 10th February, 2026. On 12th February, 2026, this Court kept the repatriation order in abeyance. NTA carried the interim order in appeal. By order dated 16th February, 2026 in LPA 75/2026, the Division Bench noticed that the Petitioner had already joined and worked in his parent department and observed that restoration at the interim stage could create administrative complications involving both



the lending and borrowing organisations. The interim order was accordingly kept in abeyance, and an expeditious decision of this petition was requested. The Division Bench expressly left the merits untouched.

Submissions

14. The Petitioner contends that the impugned action is contrary both to the express terms on which he was appointed on deputation and to paragraph 9 of the DoPT Office Memorandum dated 17th June, 2010, which requires three months' advance notice before premature repatriation. According to him, no such notice was given either to him or to his parent department. He further submits that the show-cause notice dated 26th December, 2025, was couched only in general terms, referring broadly to his performance, his return from Exam Division III and the unwillingness of other Directors to work with him, without disclosing any specific instance or underlying material. The considerably more serious allegations are now set out in NTA's counter-affidavit. He therefore argues that the opportunity afforded by the show-cause notice was not a meaningful one and that NTA cannot seek to sustain the impugned action on grounds which were never disclosed to him at the relevant stage.

15. NTA, on the other hand, submits that the Petitioner's performance, conduct and overall administrative suitability had become a matter of concern during the course of his deputation. In support of this stand, it relies principally upon an internal communication dated 25th October, 2025 addressed by the Director (Administration), which records, *inter alia*, allegations of irregular attendance, deficient drafting and noting, inadequate involvement in assigned administrative functions, failure to attend to urgent responsibilities, and certain irregularities said to have occurred under his



supervision. The communication also refers to an allegation that false bills had been submitted under the imprest fund, which, according to NTA, had possible vigilance implications. NTA further states that, after the Petitioner was transferred to Exam Division III, the Director of that Division also did not wish to retain his services and that other Directors were similarly unwilling to have him posted under them.

16. NTA accepts that it did not give three months' notice, but contends that the requirement was not absolute and that the circumstances warranted an administrative decision to return the Petitioner to his parent organisation. According to NTA, such repatriation did not amount to a disciplinary penalty, and a deputationist has no vested right to continue with the borrowing organisation for the entirety of the deputation tenure once his services are no longer considered suitable for its functional requirements. It also contends that the Petitioner was afforded an opportunity to respond through the show-cause notice dated 26th December, 2025 and that his explanation was considered but not found satisfactory. Having regard to the concerns which had arisen and the temporary nature of a deputation arrangement, NTA submits that his immediate repatriation was justified. NTA also points out that the Petitioner had, by then, received a higher proforma promotion in his parent cadre and has since rejoined that department.

Analysis

17. A deputationist has no indefeasible right to continue with the borrowing organisation. That proposition, however, does not by itself answer the present challenge.

18. The law distinguishes a routine transfer on deputation from an



appointment made after advertisement and selection. In *Ashok Kumar Ratilal Patel v. Union of India*², the Supreme Court held that a candidate selected for an advertised deputation post does not stand on the same footing as an employee whose services are simply lent by one establishment to another. The former is entitled to fair and non-arbitrary treatment under Articles 14 and 16.

19. *Union of India v. S.N. Maity*³ applied this distinction. The officer had been appointed to a deputation post for a fixed tenure after undergoing a selection process. The Supreme Court held that, although the tenure could be curtailed, such curtailment could not be arbitrary or capricious and had to have a rational basis.

20. *Union of India v. V. Ramakrishnan*⁴ states the same principle: a fixed deputation tenure should ordinarily not be curtailed without just cause. Unsuitability and unsatisfactory performance may furnish such cause.

21. The instant case is of an appointment on deputation following selection, not a routine lending of services between departments. NTA advertised the post, interviewed and selected the Petitioner, and appointed him for a defined tenure. The temporary character of deputation does not, by itself, answer his challenge to the manner in which that tenure was curtailed.

22. Selection did not, however, guarantee the Petitioner three years at NTA. His appointment terms permitted premature repatriation. NTA could end the deputation before November 2026 for a valid administrative reason, including unsuitability or unsatisfactory performance, but only in accordance with the conditions governing that power.

² (2012) 7 SCC 757

³ (2015) 4 SCC 164



23. Tested against these principles, the impugned decision is flawed in two respects.

24. First, NTA could assess whether the Petitioner remained suitable for deputation, and the Court would not sit in appeal over that administrative assessment. The present record, however, shows that the decision was not based merely on an assessment that his services were no longer required; it was supported by specific allegations concerning his performance, conduct and financial propriety.

25. The show-cause notice dated 26th December, 2025 referred generally to an adverse report by the Director (Administration), the Petitioner's return by Exam Division III, and the unwillingness of other Directors to work with him. It disclosed neither the incidents nor the material behind those statements.

26. The counter-affidavit presents a different and more serious case. It relies on the communication dated 25th October, 2025, which alleges irregular attendance, negligence, deficient discharge of administrative duties, irregularities concerning vehicles and stores, and false imprest-fund bills with possible vigilance implications.

27. These allegations were not an afterthought. The communication of 25th October, 2025 preceded the repatriation. Yet none was put to the Petitioner when NTA sought his explanation.

28. NTA explains that the detailed grounds were not set out "with due regard to the principle of non-stigmatization". There is no difficulty with the proposition that a borrowing organisation may choose to frame an order of repatriation in non-stigmatic terms. That, however, is different from

⁴ (2005) 8 SCC 394



withholding from the employee the material which forms the basis of the proposed action. If the decision was in fact founded upon the allegations now relied upon in the counter-affidavit, fairness required that the substance of those allegations be disclosed to the Petitioner at a stage when he could meaningfully respond to them. The omission cannot be cured merely by placing the material on record after the decision has already been taken.

29. This Court drew the same distinction in *Ali Ahmad Khan v. Chairman, National Book Trust*⁵. A borrowing organisation may return a deputationist for a genuine administrative reason. But where allegations touching eligibility, integrity or conduct are the foundation of the decision, fairness requires that they be disclosed and that the employee be given an opportunity to answer them.

30. It is unnecessary for the Court to determine the truth of these allegations. They have not been tested in any disciplinary proceeding, and no finding of misconduct has been recorded. The limited conclusion is that, insofar as they formed the basis of the repatriation, the general terms of the show-cause notice did not afford the Petitioner a meaningful opportunity to answer them.

31. Quite apart from this, NTA disregarded an express condition of the Petitioner's appointment.

32. The offer dated 17th October, 2023, and the appointment order dated 23rd November, 2023, both required three months' advance notice before premature repatriation by NTA. This was not a incidental stipulation. It formed part of the terms on which NTA offered, and the Petitioner accepted, the post.



33. Paragraph 9 of the DoPT Office Memorandum dated 17th June, 2010, imposes the same requirement. It requires at least three months' advance notice to the employee and the lending organisation before premature reversion. In *Madan Lal Saini v. Union of India*⁶, the Division Bench enforced paragraph 9 and directed continuation until the prescribed notice was issued.

34. NTA admittedly gave no notice. Its view that notice was unnecessary in the interests of either side cannot override the terms of appointment. Paragraph 10 of the Office Memorandum also requires prior DoPT concurrence for any relaxation. None has been shown.

35. The show-cause notice dated 26th December, 2025, was not the required notice. It did not tell the Petitioner that NTA had decided to repatriate him or that the deputation would end after three months. It only sought his explanation within seven days.

36. NTA was entitled to end the deputation early, but only in accordance with the terms governing that action. Since the order dated 5th January, 2026 relieved the Petitioner immediately, without the stipulated notice, it cannot be sustained to that extent.

Relief

37. The remaining question is the form of relief. Although restoration would ordinarily follow consideration of an unlawfully curtailed tenure, the subsequent events make that course neither practical nor appropriate here.

38. The Petitioner returned to his parent department on 16th January, 2026 and has remained there. The Division Bench noted the administrative

⁵ 2026:DHC:4995

⁶ 2022:DHC:3565-DB



difficulty of moving him again between the two establishments. That observation did not touch the merits, but the underlying circumstance remains.

39. The original tenure, as per the Petitioner's own case, is to expire on 17th October, 2026. Little of it now remains. Sending the Petitioner back to NTA only to repatriate him shortly thereafter would serve no practical purpose.

40. Nor can the Court assume that the Petitioner would have remained at NTA until the last day of the three-year tenure, for the appointment itself permitted premature repatriation. The immediate repatriation was nevertheless unlawful because NTA did not give the stipulated notice. Further, insofar as the adverse allegations formed the foundation of the decision, the Petitioner was entitled to a meaningful opportunity to answer them.

41. Relief must therefore be tailored to the present position. *S.N. Maity* recognises the Court's power to do so when a fixed tenure is wrongly curtailed. Here, however, the appointment itself allowed early repatriation on three months' notice. It would therefore not be appropriate to assume that the Petitioner would have served the entire remaining tenure.

42. The appropriate relief is therefore to place the Petitioner, for the stipulated three-month notice period, in the financial position he would have occupied had notice been duly given. This leaves his service in the parent department undisturbed and, through adjustment of the amounts received there, avoids double payment.

43. The petition is accordingly disposed of in the following terms:

i. The order dated 5th January, 2026, is unsustainable to the extent that it



ended the Petitioner's deputation immediately, without the stipulated three months' advance notice.

ii. Since the Petitioner has continued in his parent department and little of the original tenure remains, he shall not be restored to NTA.

iii. NTA shall, within eight weeks, calculate the emoluments and deputation-related benefits that would have been payable to the Petitioner during the three-month notice period commencing on 5th January, 2026. From that amount, it shall deduct the salary and corresponding benefits paid by the parent department for the overlapping period. Any balance shall be released within four weeks after the calculation.

iv. There shall be no double payment to the Petitioner for any period or component. In the event, pursuant to the aforesaid calculation and adjustment, any amount is found to have been paid in excess to the Petitioner, no recovery shall be effected from him on that account.

v. The allegations concerning the Petitioner's performance, conduct and alleged financial irregularities remain unadjudicated. Nothing in the impugned order or in the pleadings filed to defend it shall be treated as a finding of misconduct against him.

44. Pending applications, if any, also stand disposed of.

SANJEEV NARULA, J

SEPTEMBER 15, 2026

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