

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

+ **W.P.(C) No. 209/2015 & CM No.331/2015 (stay)**

% **9th January , 2015**

SH. AAKASH DEEP CHAKRAVARTIPetitioner
Through: **Mr. Shankar Raju, Adv. and Mr.**
Nilansh Gaur, Advocates.

VERSUS

UNION OF INDIA & ANR. Respondents
Through: **Mr. J.S.Bhasin, Adv. for R-1.**
Ms. Pratima Gupta, standing counsel
and Ms. Anshul Garg, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 226 of the Constitution of India is filed by the petitioner seeking the relief of quashing of the fresh advertisement issued for appointment to the post of Executive Director (Law) (in short ED (Law)) of the respondent no.2/Delhi Electricity Regulatory Commission (DERC) and also for setting aside the impugned order dated 11.11.2014 of respondent no.2 whereby respondent no.2 put a hold on the appointment of the petitioner to the post of ED (Law) in the

respondent no.2. The subsequent order of respondent no.2 dated 26.11.2014 is also challenged by the petitioner as per which the offer to the petitioner for appointment to the post of ED (Law) made of the respondent no.2 by letter dated 30.9.2014 was withdrawn and cancelled.

2. The issue in the present case is whether petitioner has completed seven years of deputation outside his parent cadre in the Department of Posts of the Union of India, inasmuch as, after a period of seven years on deputation of an employee outside his parent department, there cannot be continuation of deputation or appointment in a post outside the parent department without there being a cooling off period of 3 years. It is conceded on behalf of the petitioner that the total period of deputation can be seven years and whereafter there has to be a cooling off period of three years before posting outside the parent employer by way of deputation.

3. Petitioner contends that petitioner has not completed the period of seven years outside his parent department and therefore the impugned orders are liable to be recalled and petitioner be appointed to the post of ED (Law) of the respondent no.2.

4. Petitioner has given the following chart as Annexure P-12, and which is argued for being taken alongwith para 17.07(i) of the Central

Staffing Scheme of the Government of India, and therefore it is argued that the petitioner has not completed the period of seven years of deputation outside his parent department of Indian Postal Service. As per para 17.07(i) of the Central Staffing Scheme deputation period to the IAS Officers Academy at Mussoorie is to be halved ie only half of the period of posting at IAS Academy is to be taken towards counting of the total deputation period. This chart filed by the petitioner as Annexure P-12 to the writ petition and para 17.07(i) of the Central Staffing Scheme read as under:-

“Annexure P-12

Order No.	Order issuing authority	Place of Posting	Whether to be counted as CSS	Effective period
	Department of Posts (DoP)	IAS Academy Mussoorie	Foreign Deputation	1.7.2005 to 17.5.2007
OM No.6/7/2007-EO (MM-1) Dated 8.4.2007	DoPT	IAS Academy Mussoorie	Central Staffing Scheme	18.5.2007 to 17.5.2011
6/2/ASP/2005 Dated 15.1.2008	IAS Academy Mussoorie	NIFM Faridabad	CAT 2460/2008 order attains finality (No)	21.01.2008 to 16.09.2009
2-25/2007-SPG Dated 7.11.2008	DoP	IAS Academy Mussoorie	Status denied	21.01.2008 to 1.06.2009
OM No. 6/7/2007-EO(MM-1) Dated 8.9.2009	DoPT	Central Information Commission	Yes	22.09.2009 to 17.05.2014

No.15-7/2011- Restg Dated 19.07.2013	DoT	TDSAT	Yes but approval of DoPT was sought	08.07.2013 to 07.07.2016
No.24/1/2013 EO (MM-1) Dated 25.10.2013 and 13.02.2014	DoPT	TDSAT	Yes, Cadre Clearance sought	17.05.2014 to 07.07.2016
No.2-8/2013- SPG Dated 06.12.2013	DoP	Tripura	No	6.12.2013 onwards
No.2-2/2014 SPG Dated 19.06.2014	DoP	Muzaffarpur	No	19.06.2013 onwards

The period of deputation admitted is from 17.5.2007 to 21.01.2008 and then from 22.09.2009 to 16.12.2013 which roughly makes up 4 years and 11 months only.

Para 17.07

“17.07. An officer who has served in the following Institutions/Posts for atleast three years will be permitted to count half the period spent in that post towards his central deputation tenure.

(i) Postings at the Lal Bahadur Shastri National Academy of Administration, Mussoorie.

.....”

5. Before turning to the aforesaid chart, firstly it is required to be noted that the petitioner is guilty of concealment of facts because petitioner has not filed the application by which he applied for being appointed to the

post of ED (Law) of the respondent no.2/DERC. Filing of this application was necessary because the record shows that this application for appointment to ED (Law) was not through a proper channel i.e the application was not filed by the petitioner through his parent employer/department of the Department of Posts. In fact, counsel for the respondents argued that if the application had been filed through a proper channel i.e petitioner's parent employer, the application would not even have been forwarded to respondent no.2/DERC because petitioner had already completed the deputation period of seven years and therefore he was required to undergo a cooling off period of three years before an appointment to a post outside his parent department. Clearly therefore the petitioner has deliberately not filed his application which was made to the respondent no.2 for the post of ED (Law) because if filed this application would have shown that it had not been filed through a proper channel being his parent employer/Department of Posts.

6. Let us now examine the chart at page 82 of this writ petition alongwith para 17.07(i) of the Central Staffing Scheme to determine as to whether the petitioner has completed seven years outside his parent department. The only argument which has been urged on behalf of the

petitioner is for taking benefit of Central Staffing Scheme of January 1996, para 17.07(i) and that if the benefit of this scheme is given, it is argued that the petitioner has not completed a period of seven years outside the department. Let us examine this argument.

7. A reading of the chart Annexure P-12 shows that the petitioner is less than fair in making out this chart inasmuch as, even a cursory reference to this chart shows that there is overlapping of periods as given under different periods of deputations, and not only there is overlapping of periods, a deliberate confusion is sought to be created by setting out different appointments at different posts with different employers for the same period of time without giving a last column showing as to which is the period which was served by the petitioner on deputation with which different employers/departments other than the parent employer. The obvious reason for filing a garbled chart is that the petitioner somehow or the other wants to create a smoke screen for arguing that he has not completed a total period of 7 years outside his parent employer. To compound the confusion, petitioner has not even filed the orders showing specific periods of deputations with specific employers/departments other than his parent department of Department of Posts.

8. From the papers of this case the periods of deputation of the petitioner outside his parent is roughly as under:-

(i) Petitioner was deputed to the IAS Academy Mussoorie from 1.7.2005 to 17.5.2007 and thereafter till 21.1.2008, when on 21.1.2008 he was deputed by his parent employer with the National Institute of Financial Management at Faridabad. The period of posting at the IAS Academy Mussoorie thus is from 1.7.2005 to 21.1.2008 ie a period of 2 years 6 months and 20 days. This period when halved in terms of para 17.07(i) of the Central Staffing Scheme comes to a period of 1 year 3 months and 10 days.

(ii) Petitioner was thereafter deputed to the National Institute of Financial Management, Faridabad from 21.1.2008 to 16.9.2009 which is a period of 1 year and 8 months.

(iii) Petitioner was thereafter posted in the Central Information Commission from 22.9.2009 to 7.7.2013 and which is a period of 3 years 9 months and 15 days.

(iv) The fourth period is the period from 8.7.2013 to 17.5.2014 and in which period the petitioner was deputed at TDSAT and which is a period of 10 months and 9 days.

Adding the aforesaid four periods, the total period of deputation comes to about 7 years and 7 months i.e a period beyond a maximum period of 7 years which is permissible as a deputationist at one go.

9. The matter with respect to whether the petitioner has been on deputation outside his parent department for over 7 years can also be looked into in another manner. As per his own chart Annexure P-12 petitioner is shown as being deputed to the IAS Academy Mussoorie from 1.7.2005 to 17.5.2007 in terms of the first horizontal column. Therefore, from 18.5.2007 petitioner has completed a period of 7 years of deputation outside his parent department and which period of 7 years from 18.5.2007 ends on 17.5.2014. This has been so specifically stated by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training in terms of its letters dated 25.10.2013 and 11.12.2013 which are reproduced below. In this regard and relevant to this aspect which is to be noted is that the petitioner has not filed any order to show that he continued on deputation in terms of a valid order at IAS Academy, Mussoorie after 17.5.2007, and in

fact the record shows that the petitioner subsequently was deputed to National Institute of Financial Management at Faridabad.

10. At this stage, it will be relevant to refer to a letter dated 25.10.2013 of Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training stating that the petitioner completes his seven years' tenure outside his parent department on 17.5.2014. This letter reads as under:-

“Approval of Deputation in TDSAT by DoPT

**F.No.24/1/2013-EO(MM-II)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training**

New Dated, the 25th December, 2013

OFFICE MEMORANDUM

Subject: Extension of tenure of Shri Akash Deep Chakravarti (IPOS:94), Registrar in Telecom Disputes Settlement & Appellate Tribunal (TDSAT)-reg.

The undersigned is directed to refer to Telecom Disputes Settlement and Appellate Tribunal (TDSAT)'s letter No.10/5/2013 dated 30.9.2013 on the above mentioned subject and to say that Shri Akash Deep Chakravarti was appointed in CIC for the balance period of the combined tenure of seven years which is up to 17.5.2014. He counts his central deputation with effect from 18.5.2007.

2. In terms of extant instructions, an officer can remain outside his cadre for a maximum period of seven years at a stretch. Shri Chakravarti will complete his tenure of seven years on 17.5.2014 and as such no further extension is admissible. Any extension beyond the maximum permissible limit is not covered under guidelines.

3. However, if TDSAT wants continuation of Shri Chakravarti in relaxation of the guidelines, a proposal in that regard may be submitted with justification and approval of the Minister-in-Charge for placing it before the competent authority. The proposal should be accompanied with the cadre clearance of the officer.” (underlining added)

11. The aforesaid position has been reiterated by the same department of the Government vide its letter dated 11.12.2013 and which reads as under:-

“F.No.24/1/2013-EO(MM-II)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
(Office of Establishment Officer)
North, Block, New Delhi-110001
Dated the 11th December, 2013

**Sub: Registration of Shri Akash Deep Chakravarty, (IPoS: 1994)
from Central Deputation to Department of Posts-reg.**

Vide O.M. of even number dated 02.12.2013, this Department had informed TDSAT that the maximum permissible tenure of 7 years of Shri Akash Deep Chakravarty would come to an end on 17.05.2014 and any further extension of tenure beyond that would require the cadre clearance of the Cadre Controlling Authority. The TDSAT had also been requested that if they were interested in any further extension

beyond 17.05.2014, they have to obtain the cadre clearance and then seek the approval of the ACC for any relaxation to the guidelines. In para 3 of that letter, however, it was mentioned that either the TDSAT should obtain cadre clearance or immediately revert Shri Chakravarty to join his cadre.

2. It is hereby clarified that the previously approved tenure of Shri Chakravarty is upto 17.05.2014. He can, therefore, continue up to that date. For any extension beyond that date, either cadre clearance/ACC approval should be obtained or he should be reverted back to his cadre after that date.”

(underling added)

12. The matter yet can be looked into even from a third angle to show that the petitioner has completed a period of 7 years outside his parent department inasmuch as, petitioner has admittedly remained posted outside his parent department from 1.7.2005 to 17.5.2014. Out of this period, the petitioner was at IAS Academy, Mussoorie from 1.7.2005 to 21.1.2008 and which is a period of 2 years 6 months and 20 days. When this period of 2 years 6 months and 20 days is halved the same becomes 1 year 3 months and 10 days. The total period from 1.7.2005 to 17.5.2014 comes to a total period of 8 years 10 months and 16 days. From this period of 8 years 10 months and 16 days if we reduce half a period from 1.7.2005 to 21.1.2008, being a period of 1 year 3 months and 10 days, the period becomes about 7 years and 7 months ie beyond the maximum period of 7 years permissible for deputation.

13. Therefore, looking at it from any angle, whether of petitioner deliberately filing a confusing chart Annexure P-12; petitioner not giving separate periods of deputation with separate employers/departments so as to find out the total period of posting outside his parent department; petitioner not filing letters/permissions showing authorization of his parent employer/Department of Posts permitting deputation with different employers/departments, it becomes clear that the petitioner has tried to confuse the issue and the facts. It is however clear that the petitioner has spent till 17.5.2014 a period of 7 years outside his parent department and therefore he has to under go a cooling off period of three years before he is appointed on deputation again outside his parent employer/department of Posts. It is also reiterated herein that it is for this reason of lacks of *bonafides* on the part of the petitioner that petitioner did not route his application for appointment on deputation as ED (Law) to respondent no.2/DERC through his parent employer being the Department of Posts.

14. Petitioner at one stage tried to seek some benefit of an order passed by the Central Administrative Tribunal (CAT) on 1.6.2009 in a case which was filed by him claiming that training period with National Institute of Financial Management at Faridabad is not a mandatory service condition,

however, I fail to understand that how the observations relied upon in the said order of the CAT dated 1.6.2009 can help the petitioner in any manner but since two paras of the order of the CAT dated 1.6.2009 being paras 21 and 22 are relied upon by the petitioner, the same read as under:-

“21. We are in respectful agreement with this principle enunciated by the Honourable High Court of Karnataka. The Applicant may apply and be nominated for a training course to improve his skills. However, not attending such training course would not result in any adverse action against him or attending the training course would not result in any benefit to him in normal course of advancement in service. It would not be a condition of service if it is only giving him merely a hypothetical chance for applying to some post where the course or study, which is he is pursuing is prescribed as educational qualification. It cannot be held to be a condition of service. We would like to reiterate that whether training is a condition of service or is not a condition of service would depend on the facts and circumstances of each case. In the present case, it is clear that is not a condition of service.

22. Since training is not a condition of service in the instant case, as we have seen by the above analysis, this Tribunal has no jurisdiction to interfere in this matter. In these circumstances, we do not think it necessary to dilate upon the other issue as mentioned in this order at the outset. The OA is dismissed as not maintainable. There will be no order as to costs.”

15. As already stated above that one fails to understand as to how the aforesaid paras 21 and 22 of the judgment of the CAT dated 1.6.2009 can in any manner help the petitioner because the observations relied upon do not in any manner pertain to determining of any period of deputation of

the petitioner outside his parent department of the Department of Posts and these observations are only that a training course is not a condition of service.

16. In view of the above, this petition is wholly misconceived and is thus dismissed with costs. Counsel for respondents will file their certificates of fees in this Court within a period of two weeks from today. Costs can be recovered by the respondents in accordance with law.

JANUARY 09, 2015
ib

VALMIKI J. MEHTA, J.