

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

% *Date of Decision : February 20, 2015*

+ **LPA No.75/2015**

AAKASH DEEPAppellant
Represented by: Mr.Shanker Raju, Advocate with
Mr.Nilansh Gaur, Advocate

versus

UNION OF INDIA & ANR.Respondents
Represented by: Mr.Naveen Chawla, Advocate with
Ms.Prabhsahay Kaur, Advocate for
R-1
Mr.Nikhil Nayyar, Advocate with
Ms.Pratima Gupta, Advocate for R-
2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The appellant filed a petition under Article 226 of the Constitution of India seeking the relief to quash the advertisement issued by respondent no.2/Delhi Electricity Regulatory Commission (DERC) inviting applications for appointment to the post of Executive Director (Law) and additionally for quashing the order dated November 11, 2014 passed by respondent No.2 putting on hold the appointment of the appellant to the post of ED (Law) in the respondent No.2. The subsequent order dated November 26, 2014 passed by respondent No.2 was also challenged by the appellant, as per which order the offer to the appellant for appointment to the post of ED (Law) made by the

respondent No.2 by letter dated September 30, 014 was withdrawn and cancelled.

2. The central issue of debate between the parties was whether the appellant had completed 7 years period of deputation outside his parent cadre : Department of Posts. For the reason if the appellant had completed 7 years period of deputation, he had to serve in his parent department for at least 3 years before being eligible to be considered to be appointed outside the department to a post as a deputationist.

3. The appellant had by way of Annexure P-12 tabulated the service rendered by him effective from July 01, 2005 till when the writ petition was filed and had also indicated further information regarding his possible postings in TDSAT. The chart reads as under:-

“Annexure P-12

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

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

4. Para 17.07 of the Central Staffing Scheme was claimed by the appellant to be relevant and applicable to determine as to in what manner the seven year period of deputation had to be computed. The para reads as under:-

“17.07. An officer who has served in the following Institutions/Posts for at least 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 Shashtri National Academy of Administration, Mussoorie.

.....”

5. Pithily stated, case of the appellant before the learned Single Judge was that the duration of his posting at Lal Bahadur Shastri National Academy of Administration, Mussoorie had to be halved while computing seven years' period of deputation.

6. The respondents did not dispute said legal position, but questioned the correctness of the tabular chart prepared by the appellant and annexed as Annexure P-12 to the writ petition.

7. Finding favour with the respondents, in paragraph 7 of the impugned decision dated January 09, 2015, the learned Single Judge has expressed an opinion as under:-

“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. With reference to the documents filed, in para 8 of the impugned order which has four sub-paras, the learned Single Judge has recomputed the period as under:-

*“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 learned Single Judge has noted a letter dated October 25, 2013 of DOPT concerning appellant completing seven years’ tenure outside his parent department on May 17, 2014, which 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)”*

10. The learned Single Judge has thereafter noted that the position indicated in the letter dated May 17, 2014 had been earlier stated in a letter dated December 11, 2013 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)”

11. Thereafter, in paragraph 12 of the impugned decision, the learned Single Judge has concluded as under:-

“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.”

12. With reference to the various periods, whether by way of data compiled by the appellant or as reflected by the learned Single Judge in paragraph 8 of the impugned decision, neither party is at variance.

13. Then what is the grievance in the appeal?

14. The grievance is to whether, on being sent to NIFM Faridabad for training at a time when the appellant was on deputation to the IAS Academy at Mussoorie, was the period January 21, 2008 to September 16, 2009 liable to be excluded on account of the appellant being required to attend the course to upgrade his skills, and in respect of which the appellant had relied upon a decision dated June 01, 2009 passed by the Central Administrative Tribunal, in para 21 and 22 whereof it was observed 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. The learned Single Judge has noted the decision of the Central Administrative Tribunal and has extracted paras 21 and 22 thereof, but has concluded the matter in para 15 and 16 of the impugned decision as under:-

“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.”

16. The appellant has grossly misstated some relevant facts and especially concerning his nomination for training at Faridabad for the reason undisputedly the appellant joined for training at Faridabad on January 21, 2008, but the Ministry of Communication withdrew the candidature of the appellant for training on November 07, 2008 reverting

the appellant back to Lal Bahadur Shastri National Academy of Administration, Mussoorie. In the meanwhile DOPT had shortlisted three candidates for appointment to the post left vacant by the appellant at Lal Bahadur Shastri National Academy of Administration, Mussoorie. Since the appellant was not holding any lien at the post with Lal Bahadur Shastri National Academy of Administration, Mussoorie he was put on compulsory wait till September 16, 2009.

17. The appellant wants this period to be treated as period spent with the parent department, which cannot be so treated as a matter of fact or in law.

18. The appellant is also not entitled to relief for two other reasons. Firstly he has misstated in the writ petition that he applied for the post under DERC through proper channel. The matter of fact is that the appellant did not forward his application to DERC through a proper channel and submitted the same directly. The second reason is, as conveyed to us orally at the Bar by learned counsel for the second respondent i.e. DERC that it has already prepared the panel and has offered appointment to the first person on the panel to join as Executive Director (Law) in DERC as a deputationist.

19. The appeal is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 20, 2015
mamta/rk