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

+ W.P.(C).9757/2015

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Judgment dated 20th October, 2015

DAYANAND KATARIA, IAS

..... Petitioner

Through : Mr.Sandeep Sethi, Senior Advocate with
Mr. Malaya Kumar Chand, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through : Mr. Dev P. Bhardwaj, CGSC for
UOI/respondents no.1 & 2.
Mr. Dhanesh Relan, Ms. Sriparna
Chatterjee, Mr. Shlok Chandra and Mr.
Arush Bhandari, Advocates for
DDA/respondent no.3.

+ W.P.(C).9759/2015

BRIJESH KUMAR MISHRA, IRSE

..... Petitioner

Through : Mr.Sandeep Sethi, Senior Advocate with
Mr. Malaya Kumar Chand, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through : Mr. Dev P. Bhardwaj, CGSC for
UOI/respondents no.1 & 2.
Mr. Dhanesh Relan, Ms. Sriparna
Chatterjee, Mr. Shlok Chandra and Mr.
Arush Bhandari, Advocates for
DDA/respondent no.3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. With the consent of the parties, both the writ petitions are taken up for final hearing and disposal since both writ petitions arise out of a common order

passed by the Central Administrative Tribunal dated 29.09.2015, common arguments have also been addressed in both the matters, the writ petitions are being disposed of by a common order. The basic facts of both the writ petitions are almost identical.

2. For the sake of convenience, the facts of W.P. (C) 9757/2015 are being noticed. The petitioner in W. P. (C) 9757/2015 is an IAS Officer of Tamil Nadu Cadre while the petitioner in W. P. (C) 9759/2015 is an Officer of the IRSE (Indian Railways Services of Engineers). The petitioner in W. P. (C) 9757/2015 who is an IAS Officer was appointed as Principal Commissioner, Delhi Development Authority (DDA) by a communication dated 27.08.2012 issued from the Secretariat of the Appointment Committee of the Cabinet, Ministry of Personnel, Public Grievances and Pension Department for a period of five years. The petitioner claims to have discharged his duties with utmost satisfaction in the larger interest of the DDA. Petitioner also claims to have achieved the targets fixed by the Vice Chairman (VC) of the DDA for the financial year 2014-15 and the achievements of the petitioner as on 31.03.2015 were accepted by the VC even as on 25.04.2015. The petitioners received a communication of 25.08.2015 regarding their premature repatriation on the ground of unsatisfactory performance. The petitioners approached the Central Administrative Tribunal on 27.08.2015. Interim protection was granted. The interim order was extended till the final disposal of the matter. It may be noted that initially DDA was not impleaded as a party. Subsequently, DDA was also impleaded as a party. The matter was finally heard and dismissed by an order dated 29.09.2015(hereinafter referred to as the impugned order).
3. Mr. Sethi, learned Senior Counsel appearing on behalf of the petitioners submits that the judgment of the Tribunal is bad in law as the same has

been passed without taking into account the facts of the case. Learned Senior Counsel further submits that the Tribunal has also failed to notice that the petitioners were appointed for a fixed period and their term could not have been curtailed except on the ground of suitability or unsatisfactory work. It is contended that the order passed by the DDA curtailing the period is whimsical, arbitrary and fanciful. It has been strongly argued before us that while passing the order of repatriation, the DDA has failed to comply with the principles of natural justice. The reversal of a senior officer prematurely to his Department in an abrupt and sudden manner is against the principles of natural justice. Mr. Sethi further contends that DDA has in fact failed to take into account the terms of Central Staffing Scheme which entails that prior to repatriation, an officer is liable to be given a show cause notice and his explanation was to be received prior to his repatriation. Learned Senior Counsel further submits that the action of the respondent/DDA is arbitrary, malafide and unjust and the same was taken in haste without following the office memorandum, a copy of which has been filed along with the writ petition to show that it was brought to the notice of the Ministry of Urban Development that the Central Staffing Scheme requires issuance of a show cause notice and an explanation from the officer.

4. Mr. Sethi also contends that the necessity of issuing a show cause notice would be in line with the principles of natural justice and not granting an opportunity to the petitioners to explain the allegations against them has caused serious prejudice to their rights. Mr. Sethi submits that according to the communication dated 28.04.2015, the petitioners have been accused of not clearing files pertaining to new Kondli Settlement Scheme, new Land Acquisition Act, Implementation of the Public Premises Act, all of which do not fall in the domain of the petitioners and thus it cannot be said that

the petitioners are not suitable for the appointment.

5. Elaborating his arguments further, Mr. Sethi submits that in response to the show cause notice, the petitioners could have explained the stand and brought to the notice of VC that files are not being delayed on account of their attitude as they are not concerned with the above related schemes.
6. Additionally, attention of the court is drawn to the file notings which would also show that the DDA was well aware of the terms of the Central Staffing Scheme. However, the DDA has shown scant regard to their own scheme and given effect to the malafide action of premature repatriation.
7. Mr. Sethi has also drawn the attention of the court to the various file notings to show that even three days prior to the order of repatriation there was no grievance with regard to the functioning of the petitioners and the work carried out by the petitioners was detailed and no adverse entry was made by the VC who had proposed the idea of repatriation of the aforesaid two petitioners.
8. Mr. Sethi has also placed strong reliance on the decision rendered by a Division Bench of this court in the case of ***Union of India and Ors. v. Ct. Shamsher Singh***, W. P. (C) No. 3433/2007. The operative portion of which reads as under :

“We have heard the parties at length and have carefully considered their respective contentions. We have also perused the original record. The respondent was appointed for a fixed period of three years from 25th April, 2006 and he is entitled to hold the post for the said period. The Supreme Court in the case of Union of India through Government of Pondicherry Vs. Ramakrishnan and others [(2005) 8 SCC 394] relying on its earlier judgment in the case of Parshotam Lal Dhingra Vs. Union of India [(1958) SCR 828] held that in the case where deputation is for a specific term, it cannot be curtailed except on the ground of suitability or unsatisfactory work. We, therefore, do not agree with the contention of the petitioner that

the order dated 19th March, 2007 does not cast any stigma on the respondent. The finding of the learned Tribunal in this regard is correct. The Tribunal has rightly held that since the order dated 19th March, 2007 adversely affects the respondent, he should have been heard in the matter and, therefore, the order dated 19th March, 2007 is liable to be set aside for violation of principles of natural justice. We are in agreement with the said finding that the order dated 19th March, 2007 is violative of the principles of natural justice. We do not agree with the petitioner that there was no necessity for personal hearing to the respondent. With respect to the contention of the petitioner that the selection process of the respondent is illegal as similarly situated eligible candidates were not considered and complete ACR dossiers were not forwarded, we have examined the relevant records. We find that the DPC selected the respondent on 10th March, 2006. On the same date, i.e. 10th March, 2006 Sohan Singh, who had been working with the National Crime Records Bureau (NCRB) filed a complaint and continued filing complaints which ultimately resulted in the order dated 19th March, 2007. We fail to understand how Sohan Singh came to know of the findings of the DPC on the same day and he filed the complaint on the same day. Be that as it may, we need not comment on the merits of this case as we find the order dated 19th March, 2007 is violative of principles of natural justice and has been rightly set aside. We, therefore, dismiss the Writ Petition on this short ground alone. However, the petitioner is at liberty to initiate fresh action after providing sufficient opportunity to the respondent before taking any action.”

9. It is also contended that the Tribunal has incorrectly applied the judgments in the case of ***Kunal Nanda v. UOI & Anr.***, (2000) 5 SCC 362; ***Ratilal B. Soni v. State of Gujarat***, AIR 1990 SC 1132; ***Union of India v. V. Ramakrishanan***, (2005) 8 SCC 394; ***Gurinder Pal Singh v. State of Punjab***, 2005(1) SLR 629; ***U.P. Gram Panchayat Adhikari Sangh v. Daya Ram Saroj***, (2007) 2 SCC 138 and ***Shailesh Singh v. UOI***,

WP(C).2034/2010 to the facts of the present case and accordingly the order passed by the Tribunal is liable to be set aside and quashed.

10. Mr. Dhanesh Relan, learned counsel appearing on behalf of respondent no. 3/DDA submits that the present writ petition is not maintainable as the order sought to be challenged in these proceedings was not assailed before the Central Administrative Tribunal. In fact, despite the fact that the petitioners were working on deputation with the DDA, the DDA was not even impleaded as a respondent before the Tribunal. It is only during the pendency of the OA that an application was filed by the DDA seeking its impleadment. Learned counsel further contends that even at that stage, the petitioners neither amended the OA nor claimed the appropriate relief.
11. On merits, Mr. Relan submits that the law is well settled that ordinarily a deputationist has no legal right to continue at a particular post. He further submits that the order of repatriation does not cast any stigma on the petitioners and it is only that DDA finds the aforesaid two officers unsuitable for the post. It is thus, contended that in the absence of any stigma cast on the petitioners there was no requirement for any show cause notice and the entire petition does not reflect any act of *mala fide* against any of the officers of DDA.
12. Mr. Relan also submits that the term of the deputation in the case of the petitioners was not fixed. Relying upon the communication dated 27.08.2012, he submits that the period of deputation was five years or until further orders. Thus, the submission of the learned counsel for the petitioners is factually incorrect that the period of deputation of the petitioners was for a fixed period. Learned counsel for the respondent has also placed reliance on the case of ***L/Nk V.H.K. Murthy v. Special Protection Group and Anr.***, 87 (2000) DLT 37. In the aforesaid matter, the petitioners belonged to the Central Reserve Police Force (CRPF) who

were sent on deputation to the Special Protection Group (SPG). The repatriation was challenged and rejected. Reliance has been placed on the following paras of the judgment :

“15. Mr. Anil Mittal, learned counsel who appeared for the petitioner in CWP.Nos.3043/98 and 3465/96 submitted that when the period of deputation is six years, petitioner has right to remain on deputation for a period of six years. His tenure cannot be curtailed except on administrative reasons i.e. in exigency of service. He submitted that the petitioners in these two writ petitions were repatriated due to certain allegations against them which amount to misconduct and, therefore, repatriation was stigmatic in nature. Although petitioner was not responsible for any such incident, sending him back to his parent department on such grounds amounted to inflicting punishment on him for which he was not given any opportunity to explain his position inasmuch as no show cause notice was issued or enquiry held. Such an order of repatriation was punitive in nature and, therefore, could not be passed. In support of his submission he relied upon judgment of Kerala High Court in the case of C.Thiraviam Pillai Vs. The State of Kerala and others reported in 1976 (2) SLR 395.

16. Mr. K.C. Mittal who appeared for petitioner in CWP. No. 7285/99 submitted that although the petitioner was sent on deputation to SPG, the deputation was not of the nature which is generally understood in service jurisprudence. He submitted that as from very nature of SPG, the force is raised only by drawing officers on deputation basis and there is no regular selection. Therefore, mode of selection itself is by way of and a person who is considered for selection to be posted with SPG is selected for a period of six years by this mode and, therefore, he acquires vested right to be posted with SPG for a period of six years. If, in these circumstances, the officer is repatriated back before the expiry of six year period it amounts to termination of his services. He submitted that such repatriation has to be for good reasons and cannot be arbitrary. According to him the repatriation can be in three contingencies, namely, (i) for administrative

reasons, (ii) on the ground of unsuitability of the concerned officer and (iii) because of such act of the officer/conduct of the officer which is treated as blame-worthy and which in normal course would amount to misconduct. His further submission was that while repatriation in first two cases cannot be interfered with, if repatriation is on the ground of unsuitability, the SPG is supposed to disclose the material on the basis of which officer was treated as unsuitable And, in case the reason is attributable to his conduct, such a conduct has to be treated as misconduct and such repatriation would amount to termination which cannot be resorted to unless his explanation is called and he is given a chance to make his position clear. It was the submission of Mr.K.C.Mittal that Principles of Natural Justice become applicable in such cases and if a person is repatriated without observing this mandatory requirement, such repatriation may be treated as illegal. His further submission was that it is necessary to check arbitrary exercise of power. Otherwise it would give uncanalised power to the respondents to repatriate the person before the completion of six years tenure on any false allegations at the whims of the authorities. He referred to the judgment of Full Bench of Punjab and Haryana High Court in the case of Dr. Bhagat Singh, Vice-Chancellor, Punjabi University, Patiala Vs. The Chancellor, Punjabi University and others reported in 1981 (2) SLR 329.

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19. Mr. Maninder Singh learned counsel who appeared for the respondents in CWP. No. 7450/99 while explaining the sensitive nature of the job to be performed by these deputationists in SPG made the following neat submissions:

1. The petitioners were the permanent employees in their respective parent organisations, namely., CRPF, ITBP etc. They came on deputation to SPG. Normal tenure of deputation is six years but law permits the SPG to curtail this period of deputation.

2. According to petitioners' own admission, there was a difference between "suitability of an officer" and "misconduct committed by an officer" while serving in SPG. If the officer is sent back to his parent department on the ground that he is unsuitable that is clearly permissible as per the terms of deputation.

3. The terms and conditions of deputation were duly accepted by the petitioners. One of the terms and conditions of deputation was that a person can be repatriated back even before the expiry of deputation period without assigning any reason and this was not challenged by any of the petitioners in any writ petition. That being the position, petitioners had no vested right to remain in SPG for complete period of six years.

4. In such a case when the person is repatriated back to his parent department, such a repatriation is as per the terms of his contract, namely, terms and conditions of deputation and there is no application of Principles of Natural Justice in such cases. In support of his submission he relied upon the judgment of Apex Court in the case of State of Uttar Pradesh & Anr. Vs. Kaushal Kishore Shukla .

5. Scope of judicial review in such cases is limited and the Courts could interfere only on the ground that repatriation order is actuated with mala fides and that too supported by sufficient material on the basis of which allegation of mala fides could be substantiated keeping in view the high standard of proof required to establish mala fides as per the law laid down by Supreme Court in the case of S. Pratap Singh Vs. State of Punjab .

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23. After all, even otherwise, what are the rights of a deputationists?

24. 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. Ofcourse, 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. 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.

25. *For these reasons I am also inclined to accept the submissions made by Mr.Maninder Singh learned counsel for the respondents that the tenure of deputation can be curtailed for bona fide reasons and in the instant case the moment it is found that "suitability" of an officer has attracted a question mark, it is permissible for the respondents to repatriate said officer to his parent department. For this reason the Constitutional Bench judgment of Supreme Court cited by the petitioners in the case of K.H. Phadnis Vs. State of Maharashtra may not be of any help to the petitioners. First as I have already pointed out above, the sensitive nature of the duties is to be kept in mind which is the hallmark of the present case. Secondly, even as per the aforesaid judgment of the Supreme Court "unsuitability" would be a valid ground to repatriate an officer. Thirdly, since petitioners have no*

vested right to remain in SPG for complete period of six years, the question of observance of Principles of Natural Justice, before sending a person back to his parent department would not arise, inasmuch as the repatriation of these petitioners is as per the terms of contract and the judgment of Supreme Court in the case of Kaushal Kishore Shukla (Supra) comes handy.

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28. After all what is impugned action taken by the respondent authorities ultimately? The petitioners are only sent back to their parent department. Of course, after the authorities convinced themselves that it is not in the interest of SPG to retain these petitioners on deputation any longer. Once such an opinion is formed on the basis of material on record which can be treated as sufficient material, it was not necessary that petitioners should have been given any notice to show cause or memo before repatriating them back to their parent department. No disciplinary action is taken by the respondents. There is no adverse effect on the service conditions of the petitioners. The effect of the impugned order is that these petitioners go back and join their parent department, the post which they are holding on substantive basis, without entailing any loss either in terms of status which they were enjoying as regular employees in their parent department or the emoluments or other service conditions. I may hasten to add here that all this discussion should be read in the context of the nature of sensitive job to be performed in SPG without laying down any general proposition of law.

29. I do not agree with the submissions of the petitioners that the impugned order visits with any stigma. Admittedly, the impugned order does not make any reflection on the work and conduct of the petitioners. Only when the petitioners filed the writ petitions and to meet the challenge of arbitrariness, respondents have stated in the counter-affidavit the reasons which compelled the respondents to repatriate the petitioners. The petitioners have tried to highlight the reasons stated in the counter-affidavit and argue on that basis that order is stigmatic. I do

not agree. It may be mentioned that the respondents in Catch-22 situation. Had the counteraffidavit would not disclose any reason for repatriation of these petitioners, the petitioners would have contended that the impugned repatriation orders are passed without any basis and or material and, therefore, these orders are arbitrary. If the reasons are disclosed in the counter-affidavit to show that the exercise of power by the respondents was bona fide and it was on the basis of material on record which compelled the respondents to form an opinion about the unsuitability of the petitioners to retain them further in the SPG, petitioners are challenging the action as stigmatic. It is only to satisfy the conscious of the court and to further show that the impugned action was not arbitrary but based on relevant considerations and bona fide exercise of power that the reasons are disclosed in the counter affidavit. From these reasons disclosed in the counter-affidavit, petitioners cannot be allowed to argue that the orders are stigmatic. No doubt it is the power of the court to go behind the order passed and see the real motive by piercing the veil. However, as mentioned above, in such cases where the person comes on deputation and has no vested right to remain with the host department, the Court has to interfere only when the order is passed arbitrarily and mala fide. If there was some material which shows some negligence or conduct of the petitioner and becomes the basis of decision of the respondents to repatriate such an officer, it cannot be called as a stigmatic, more so when the impugned order is innocuous and silent on the conduct of the petitioners. Once I take the aforesaid view, various judgments cited by the petitioners may not be of any consequence. I have already referred to the Constitutional Bench Judgement of the Supreme Court in the case of K.H. Phadnis (Supra) and observed that even as per that judgment a person who is unsuitable can be sent back to his parent department. Other judgments cited either relate to observance of Principles of Natural Justice or lifting of veil to decide in order to find the real cause for passing the orders. These aspects I have already detailed with above. Needless to mention I say at the cost of repetition that matter pertains to security of Prime Minister or former Prime Ministers. In such a case even slightest doubt in the mind of respondents about the

competency of an officer would justify the reversion as no chance can be taken with security of this nature. Slightest error may cause irreversible damage. Further as I have already pointed out above, I have perused the record also to satisfy as to whether the order passed were arbitrary or for extraneous or mala fide reasons and I am satisfied from the record that the action of repatriation of the petitioners to their parent department was a bona fide exercise of power. For these reasons Rule is discharged. Interim orders stand vacated. All these petitions fail and dismissed. In view of the peculiar facts of these cases, there shall be no orders as to costs.”

13. In support of his submission that it is for the Department where the officer has been working on deputation to decide the suitability of the officer, the learned counsel submits that the Hon'ble Supreme Court of India has compared the repatriation with a transfer.
14. As far as the plea with regard to non-completion of the terms of the Central Staffing Scheme is concerned, Mr. Relan points out that the scheme referred to in the communication sought to be relied upon, does not provide for issuance of a show cause notice to the officer prior to repatriation either after the expiry of the period or in case of repatriation prior to the completion of the period, a copy of the Scheme has been placed on record. Mr. Relan submits that it is not borne out from this scheme that issuance of a show cause notice is a mandatory requirement. Mr. Relan explains the content of the communication dated 27.08.2012 and submits that this communication only contains the view of the Ministry of Personnel, Public Grievances and Pensions. He further submits that in case the order of repatriation, where no stigma is attached, there is no requirement for issuance of show cause notice to the officer. Reliance is also placed on the case of *Asif Iqbal, IRS v. Union of India*, (2009) SCC Online Del 2691, wherein it has been held that:

“4. Learned counsel for the Petitioner contended, quite passionately, that the decision to repatriate his client was taken by the Government on the basis of the so-called "overall situation of inept handling of the affairs of the Foundation....." He submitted that this cast a stigma on the abilities and efficiency of the Petitioner and the Petitioner should at least have been given a show cause notice or a proper hearing before any precipitate action is taken.

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6. On the issue whether a fixed period of deputation can be terminated prematurely, the law laid down by the Supreme Court is to be found in paragraph 32 of *Union of India v. V. Ramakrishnan & Others*, (2005) 8 SCC 394. The Supreme Court held that a deputationist has no legal right to continue in the borrowing department and ordinarily the term of deputation should not be curtailed except on grounds such as unsuitability or unsatisfactory performance. This is what the Supreme Court has said:

"Ordinarily, a deputationist has no legal right to continue in the post. 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. (See *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia*, (2004) 2 SCC 65)"

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9. It seems to us that even an efficient officer may turn out to be a misfit in a particular position or in a particular organization. Merely because an officer is not able to deliver goods due to factors which may or may not be within his control or his aptitude or his suitability to hold a particular post in a particular organization, does not mean that the officer can be tarred as inefficient or incompetent or unable to

perform his duties satisfactorily. It does appear from a reading of the papers before us that the Petitioner, even though he may be an efficient officer with the Department of Revenue, happened to be not well suited for the job of a Secretary of the Foundation. Having said so, it does not mean that the Petitioner can be painted black and generally referred to as an inefficient or incompetent officer. In any case, that is certainly not the intention of the Respondents as repeatedly stated by the learned Additional Solicitor General. It is merely fortuitous that the Petitioner is not well suited to the job of a Secretary to the Foundation requiring his repatriation to his parent cadre.

10. In our opinion, no stigma has been cast upon the Petitioner in this regard and, therefore, we do not think it appropriate to interfere with the impugned order of repatriation. We may mention that no mala fides have been alleged against anybody, least of all the Appointments Committee of the Cabinet.”

15. We have heard the learned counsel for the parties and considered their rival contentions.
16. Since the matters have been heard on merits in details, we do not consider it appropriate to dismiss the writ petitions only on the ground that the impugned order was not assailed before the Central Administrative Tribunal, although the aforesaid order was in the knowledge of the petitioners either prior to the filing of the writ petitions and certainly during the pendency of the writ petitions.
17. The first submission of Mr. Sandeep Sethi, learned Senior Counsel for the petitioners is that the respondents have failed to honour the Office Memorandum dated 07.10.2014 wherein it has been brought out that the Central Staffing Scheme (hereinafter referred to for short as ‘CSS’) prescribes a specified tenure for officers and once the officers are appointed, they are not generally repatriated prematurely. The repatriation is only in exceptional circumstances and with the prior approval of the Appointments Committee of the Cabinet (ACC) and in case a premature

repatriation on grounds of unsatisfactory performance, the proper course of action requires the Administrative Ministry to obtain the officer's explanation on each alleged lapses or shortcoming.

18. Mr. Relan, learned counsel for the respondent DDA has submitted that the Office Memorandum sought to be relied upon by the petitioners is not applicable to the facts of the present case for the reason that the Central Staffing Scheme has been referred to in this Office Memorandum, but the Central Staffing Scheme does not provide for any provision for obtaining an officer's explanation.
19. We are unable to accept the submission of Mr. Sethi. A copy of the Central Staffing Scheme has been placed on the record by the petitioners, no such provision has been pointed out which requires issuance of a show cause notice prior to repatriation of a deputationist. The judgment in the case of ***Union of India and Ors. v. Constable Shamsher Singh***, [WP(C).3433/2007, decided on 04.07.2008] sought to be relied upon by Mr. Sethi in support of his submission, in our view, is not applicable to the facts of the present case as in the aforesaid matter, the order of reversion was stigmatic in nature and secondly in the aforesaid matter the deputation was for a fixed period unlike in the present case where the deputation was for five years or until further orders. In the case of ***Union of India, through Govt. of Pondicherry & Another v. V. Ramakrishnan and Others***, [C.A.6332 of 2005 [Arising out of S.L.P.(C No.18026 of 2005 decided on 07.10.2015], it has been held where the tenure is not specified, an order of reversion can be questioned when the same is *mala fide*. In the aforesaid judgment, the Apex Court has highlighted the fact that neither a deputationist has a legal right to continue to the post nor he has a right to be absorbed in the post to which he is deputed. The Apex Court has highlighted that ordinarily the term of deputationist should not be curtailed

except on grounds of unsuitability or unsatisfactory performance.

20. In our view, the terms of Central Staffing Scheme has been complied with as the file noting and also the Office Memorandum dated 21.08.2015, 07.09.2015 and 25.08.2015 would show that the Competent Authority has approved the proposal of the Ministry for premature repatriation of the petitioners to their parent cadres. The aforesaid communications and the order by which the petitioners stand repatriated read as under:

“F.No.26/3/2012-EO(MM-II)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

North Block, New Delhi
The 21st August, 2015

OFFICE MEMORANDUM

Subject: Premature repatriation of Shri Dayanand Kataria, IAS (TN:89), Principal Commissioner (LM) and Shri Brijesh Kumar Mishra, IRS(C& CE:1993), Commissioner (LM) to their parent cadre.

Reference- Ministry of Urban Development's OM No.K-1101/14/2003-DDA.Vol.II dated 12th May, 2015-10-21

The Competent Authority has approved the proposal of the Ministry of Urban Development for pre-mature repatriation of Shri Dayanand Kataria, IAS (TN:89), Principal Commissioner (LM) and Shri Brijesh Kumar Mishra, IRS (C& CE:1993), Commissioner (LM) in Delhi Development Authority (DDA) to their parent cadres.

Sd/-
(Chhatra Mani)
Under Secretary to the Govt. of India
Tel.23093846”

“No.26/3/2012-EO(MM II)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi,
Dated the 7th September, 2015

OFFICE MEMORANDUM

Subject: Premature repatriation of Shri Dayanand Kataria, IAS(TN:89), Principal Commissioner(LM) and Shri Brijesh Kumar Mishra, IRS(c)E(93), Commissioner (LM), DDA to their parent cadres.

The undersigned is directed to refer to the Ministry of Urban Development's O.M.No.K-11011/14/2003-DD1A. Vol.II dated 4.9.2015 on the subject mentioned above and to say that the order for premature repatriation of Shri Dayanand Kataria and Shri Brijesh Kumar Mishra has the approval of the Appointments Committee of the Cabinet.

2. Ministry of Urban Development is also requested to defend the case on behalf of Department of Personnel & Training, if it has been included as a party in the said case filed in CAT.

Sd/-
(Chhatra Mani)
Under Secretary to the Government of India

Ministry of Urban Development
(Shri S.B. Prasad, Under Secretary)
Nirman Bhawan,
New Delhi.”

“K-11011/14/2003-DD1A.Vol.II
Government of India
Ministry of Urban Development
(Delhi Division)

Nirman Bhawan, New Delhi.
Dated the 25th August, 2015

To
The Vice Chairman,

Delhi Development Authority,
Vikas Sadan, INA,
New Delhi.

Subject: Premature repatriation of Shri Dayanand Kataria, IAS(TN:89), Principal Commissioner (LM) and Shri Brijesh Kumar Mishra, IRS (C&CE: 1993), Commissioner(LM), DDA to their parent cadres.

Sir,

The undersigned is directed to refer to DDA's letter No.PS/VC/DDA/2015/31 dated 28.04.2015, requesting repatriation of Shri Dayanand Kataria, Principal Commissioner(LM) and Shri Brijesh Kumar Mishra, Commissioner(LM) to their parent cadres.

2. The proposal of DDA regarding repatriation of these two officers was taken up with DoPT. DoPT has conveyed that the Competent Authority has approved this proposal.

3. You are, therefore, requested to initiate necessary action to relieve them immediately and apprise the Ministry in this regard.

Yours faithfully,

Sd/-
Under Secretary to the Govt. of India
Tel:23061478"

21. We are conscious of the fact that the order of repatriation cannot be whimsical, arbitrary or fanciful. Communication dated 28.04.2015 issued by the Vice Chairman, DDA to the Secretary, GOI, Ministry of Urban Development has been placed on record which provides for reasons seeking repatriation of the aforesaid two officers. Mr. Sethi has highlighted before us the fact that the order of repatriation is stigmatic and secondly in case a show cause would have been issued to the petitioners, they would have clarified that the petitioners are not concerned either with the new Kondli Settlement Scheme, the New Acquisition Act and the

Implementation of Public Premises Act. We are of the view that this submission is without any force for the reason that the Vice Chairman has taken an overall view of the matter and reached a conclusion that both the petitioners are not suitable for the post and the suitability of the officers lies purely in the domain of the Vice Chairman and no ground of judicial review of the decision of the Vice Chairman which stands duly approved by the Competent Authority, Appointments Committee of the Cabinet and the DOPT.

22. Mr. Sethi has also submitted that the judgment relied upon by the counsel for the respondent in the case of *L/NK V.H.K. Murthy* (supra) is not applicable to the facts of the present case as the judgment relates to the peculiar facts of the case as it pertains to the Special Protection Group. While factually Mr. Sethi is correct, but the general principles laid down in the aforesaid judgment, in our view, are fully applicable while dealing with the question of repatriation of a deputationist. While dealing with a case of deputationist, the basic underlying principles which are to be kept in mind are: (i) That the deputationist does not acquire an indefeasible right or vested right to hold the post on deputation; (ii) Ordinarily, the period of deputation should not be curtailed and premature repatriation should be in exceptional circumstances; (iii) Even when the tenure of a deputationist is specified, his period of deputation can be curtailed on grounds, such as unsuitability or unsatisfactory performance; and (iv) Prior to the repatriation, it is not mandatory to issue a show cause notice. However, in case where the repatriation is stigmatic in nature, the principles of natural justice should be followed and a show cause notice should be issued.
23. In our view, the short question which arises for consideration is whether the order of reversion passed in the case of the petitioners is stigmatic in nature

or not. Reading of the aforesaid communications would show that the orders of repatriation are not stigmatic in nature.

24. In the present case, neither the orders of repatriation nor the communication issued by the Vice Chairman, DDA dated 28.04.2015 can be termed as stigmatic. In the case of *Asif Iqbal, IRS v. Union of India*, 2009 SCC Online Del 2691, it was held as under:

“9. It seems to us that even an efficient officer may turn out to be a misfit in a particular position or in a particular organization. Merely because an officer is not able to deliver goods due to factors which may or may not be within his control or his aptitude or his suitability to hold a particular post in a particular organization, does not mean that the officer can be tarred as inefficient or incompetent or unable to perform his duties satisfactorily. It does appear from a reading of the papers before us that the Petitioner, even though he may be an efficient officer with the Department of Revenue, happened to be not well suited for the job of a Secretary of the Foundation. Having said so, it does not mean that the Petitioner can be painted black and generally referred to as an inefficient or incompetent officer. In any case, that is certainly not the intention of the Respondents as repeatedly stated by the learned Additional Solicitor General. It is merely fortuitous that the Petitioner is not well suited to the job of a Secretary to the Foundation requiring his repatriation to his parent cadre.”

25. In the case of *U.P. Gram Panchayat Adhikari Sangh v. Daya Ram Saroj*, reported at (2007) 2 SCC 138, the Hon’ble Supreme Court has held that 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. Again in the case of *Shailesh Singh v. UOI*, [WP(C) No.

2034/2010], it has been 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 service the tenure can be curtailed.

26. In the present case, the term of the petitioners was five years or until further order, thus, it cannot be said that the term of the petitioners has been curtailed. Reading of the order dated 25.08.2015 by which the petitioners have been repatriated together with the statement made by Mr. Ralan, Advocate would show that the order was not stigmatic. The terms of the Central Staffing Scheme, in our view, stand complied with as the approval of the Competent Authority was obtained.
27. We find that there is no complaint against the petitioners on any offences of moral turpitude, neither there is any specific complaint which has prompted the DDA to curtail the period of deputation of the petitioners. We find that the present case is one where both the officers apparently do not seem to be suitable for the post held by them in the understanding of the Vice Chairman and the request of the Vice Chairman for repatriation of these two officers has been considered by the Lt. Governor and also been approved by the Appointments Committee of the Cabinet. The proposal of repatriation was taken up with the DOPT. DOPT conveyed that the competent authority had approved the proposal, which is evident from the letter dated 25.08.2015 reproduced above. Scope of judicial review is limited. The only ground for interference in the order of repatriation would be *mala fides* supported by sufficient material. In this case, the petitioners have failed to establish *mala fides*.
28. We find no infirmity in the orders passed by the Central Administrative Tribunal. Writ petitions are without any merit; the same are accordingly dismissed. No costs.

CM.APPL Nos.23639/2015 & 23440/2015 in WP(C).9757/2015

27. Applications stand dismissed in view of the order passed in the writ petition.

CM.APPL Nos.23445/2015 & 23444/2015 in WP(C).9759/2015

28. Applications stand dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 20, 2015 sc/pst