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

\+ **WRIT PETITION (CIVIL) No. 3668/2014**

Reserved on: 16th November, 2016

% **Date of Decision:** **30th** January, 2017

NATIONAL HUMAN RIGHTS COMMISSION AND OTHERS ....Petitioners

Through Mr. R.V. Sinha & Mr. A.S. Singh, Advocates.

Versus

ANIL KUMAR JOSHI AND ANOTHER .....Respondents

Through Mr. Feroze Ahmad and Mr. Ajmal Hussaini, Advocates.

WRIT PETITION (CIVIL) No. 4831/2014

S.S. GOSAIN ....Petitioner

Through Mr. S.K. Gupta and Mr. Ramesh K. Shukla, Advocates.

Versus

UNION OF INDIA AND OTHERS .....Respondents

Through Mr. Vivek Goyal, Central Government Standing Counsel for UOI.

Mr. R.V. Sinha & Mr. A.S. Singh, Advocates for NHRC.

Mr. Feroze Ahmad and Mr. Ajmal Hussaini, Advocates for respondent No. 4.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

The National Human Rights Commission (Commission, for short), its functionaries and S.S. Gosain have filed the present Writ Petitions impugning the order dated 13th December, 2013 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) whereby OA No. 205/2012, filed by Anil Kumar Joshi, challenging the absorption and appointment of S.S. Gosain as an Accountant has been allowed.

2. To appreciate the controversy and the *lis*, we would first refer to the relevant facts.

3. The National Human Rights Commission has been constituted under the Human Rights Act, 1993. Anil Kumar Joshi was appointed as a Junior Accountant with the Commission on 4th April, 1996. The next post in the hierarchy is that of Accountant. S.S. Gosain had joined the Commission as an Accountant on 21st August, 2005 on deputation basis. Prior to that, S.S. Gosain was holding an analogous post of Sub-Inspector (Ministerial) in the Border Security Force (BSF) since 21st May, 1999. In other words, S.S. Gosain had six years regular service in the identical grade before he had joined the Commission on deputation. The selection and deputation of S.S. Gosain was against one of the two sanctioned posts of Accountant in the Commission.

4. The Selection Committee of the Commission in its meeting held on 13th October, 2008 had considered the case of S.S. Gosain and 43 other deputationists for permanent absorption. The Selection Committee, reflecting on absorption of S.S. Gosain, had observed that out of two

sanctioned posts of Accountants, one post was earlier vacant due to non-availability of eligible candidates. The Committee opined that S.S. Gosain who had nine years of regular service in the requisite grade, and was working as a deputationist, should be absorbed to the post of Accountant. S.S. Gosain was due for consideration for promotion as Assistant Accounts Officer and if found fit, he would be considered for promotion as per seniority and in accordance with the Recruitment Rules. Upon absorption of S.S. Gosain as Assistant Accounts Officer, three Junior Accountants forming the feeder cadre who had completed more than eight years of regular service would be considered for promotion to the post of Accountant. The absorption, in other words, would not cause prejudice to the Junior Accountants.

5. The aforesaid recommendations were approved by the Chairperson of the Commission on 5th May, 2009 and it was decided that S.S. Gosain should be absorbed as an Accountant. Pursuant to the recommendation and approval, several deputationists were absorbed over a period of time after completing necessary formalities.

6. S.S. Gosain's absorption was initially stalled and delayed, for want of 'No Objection Certificate' from the BSF for the reason that he had not completed 20 years of service with them.

7. While the process of absorption was pending, S.S. Gosain's deputation period was extended with the mutual consent of the Commission and the BSF up to 20th February, 2010. S.S. Gosain completed his 20 year tenure in the BSF on 15th January, 2010. The Commission wrote to the the BSF, to communicate their concurrence to absorb S.S. Gosain. By the letter

dated 16th April, 2010 the Director General of the BSF conveyed the concurrence of the Competent Authority for grant of No Objection Certificate to permanently absorb S.S. Gosain in the Commission.

8. We have perused the original file produced by the Commission which would indicate that the Junior Accountants had throughout objected to absorption of S.S. Gosain. The Junior Accountants, including Anil Kumar Joshi, obviously felt that the absorption would hinder their promotional chances. Anil Kumar Joshi and one Murari Lal had initiated legal proceedings by filing OA No.1134/2011 against the absorption of S.S. Gosain and an *interim* order that absorption would be subject to the outcome of the said O.A. was passed. During the pendency of this O.A. Murari Lal, who happened to be senior to Anil Kumar Joshi, was promoted against the second vacancy to the post of Accountant. On the said promotion, Anil Kumar Joshi withdrew OA No.1134/2011 with permission to file a fresh application, and consequently O.A. No.205/2012 was filed in which the impugned order dated 13th December, 2013 has been passed.

9. The issue of absorption of S.S. Gosain, the office file reveals, was examined at different levels, with divergent opinions being expressed in favour and against his absorption. These opinions were reflective of the opposite stands and claims of the Junior Accountants and S.S. Gosain. The result was an undue delay before a final decision was taken.

10. S.S. Gosain's absorption to the post of Accountant was approved by the Chairperson on 1st March, 2011, who in his own handwriting has recorded that S.S. Gosain had been found suitable by the Selection Committee and his parent department had given the requisite No Objection Certificate. The detailed note of the Secretary General, appended above the

said approval is elaborate and lucid. The note takes notice of the divergent stands and records that the Selection Committee had earlier recommended absorption of several deputationists including S.S. Gosain in their report dated 13th October, 2008, which was approved by the Chairman of the Commission on 5th May, 2009. S.S. Gosain's absorption could not be completed earlier for want of No Objection Certificate from his parent department, i.e. the BSF, which stands furnished vide letter dated 16th April, 2010. Absorption of deputationists was not considered to be a onetime exercise open for a limited period, for some of the deputationists were absorbed in 2010. There were two sanctioned posts of Accountants in the Commission, but the Recruitment Rules for the said posts had not been notified. The Selection Committee had noticed that S.S. Gosain had been deputed from an analogous grade and on absorption would be immediately eligible for promotion to the next higher post of Assistant Account Officer. Therefore, he would not block promotion prospects of the Junior Accountants. Referring to the proposed Recruitment Rules, pending approval before the Ministry of Home Affairs, it was observed that these would be of no relevance to deny S.S. Gosain's absorption as the recommendations of the Selection Committee had been approved earlier by the Chairperson. It would be arbitrary not to absorb S.S. Gosain, especially when the Commission had written a reminder to the parent department, who had then issued the No Objection Certificate.

11. We have referred to the aforesaid recordings/ notings in the original file to elucidate and show that the decision to absorb S.S. Gosain was a well considered and thoughtful decision. It was not taken in haste or perfunctorily, but after deliberating on the rival stands and gives due

credence to the interests of the Junior Accountants, including Anil Kumar Joshi. The decision to absorb S.S. Gosain was not capricious or arbitrary, but an attentive and contemplative decision, evaluating different facets and relative merits and demerits to decide the controversy. By no stretch can the decision be categorized as perverse or erroneous in the sense that the decision making process was falliable and faulty.

12. The Commission vide order dated 18th May, 2011 informed all concerned that, consequent to approval of the Chairperson and acceptance of the technical resignation by the Competent Authority of the parent cadre (BSF), S.S. Gosain had been absorbed in the grade of Accountant w.e.f. 1st March, 2011. As indicated above, this was subject to the final orders passed by the Tribunal in OA No1134/2011, which was then pending.

13. Two more facts may be noticed, as these are relevant. By order dated 18th September, 2012, S.S. Gosain was given charge of the post of Assistant Accounts Officer on *ad hoc* basis w.e.f. 13th September, 2012. By order dated 28th September, 2012 Anil Kumar Joshi was promoted as accountant on *ad hoc* basis.

14. We would now specifically examine the reasoning given by the Tribunal to set aside the absorption and appointment of S.S.Gosain as an Accountant in the Commission. In Paragraph 11 of the impugned order, the Tribunal has referred to the Recruitment Rules for the post of Accountant, which were effective and applicable after 28th March, 2011. Thus these Rules were, therefore, subsequent in time and were not applicable when S.S. Gosain was recommended for absorption by the Selection Committee on 13th October, 2008 and the approval was granted by the Chairperson of the Commission on 5th May, 2009. These Rules were also not applicable when

the BSF had furnished a No Objection Certificate vide letter dated 16th April, 2010 and when the Chairperson of the Commission granted the second approval and issued final directions for absorption of S.S. Gosain on 1st March, 2011. The absorption was delayed between April,2010 and 1st March, 2011 on account of the objections and obvious precipitous pressure put by the Junior Accountants like Anil Kumar Joshi. This had delayed the issuance of the formal appointment order. As noticed above, the Secretary General of the Commission had considered the relevant factors in his note dated 28th February, 2011 and observed that S.S. Gosain should be absorbed. The said note was placed before the Chairperson, who in his own handwriting had approved S.S. Gosain's absorption as an Accountant for he was found to be suitable by the Selection Committee and his parent department had issued the requisite No Objection Certificate.

15. The approval note of the Chairperson of the Commission is dated 1st March, 2011, and is before the Recruitment Rules for the post of Accountant were approved on 28th March, 2011.

16. In the absence of approved and notified Recruitment Rules, the Commission, as has been observed in paragraph 11 of the impugned order of the Tribunal dated 13.12.2013, was following the Model Recruitment Rules, which were as under:-

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Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods	In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/absorption to be made.

Any one or both of the following methods of recruitment according to requirement in each case:- (i)Promotion failing which by transfer on deputation. (ii) Transfer on deputation or transfer on deputation/transfer.	**Promotion** ......(designation of the feeder post) with ...... Years regular service in the grade. (To be omitted if promotion is one of the methods of recruitment). **Transfer on deputation/transfer** A.(a) (i) Assistants of CSS holding the post on regular basis; or (ii) UDCs of CSCS with 10 years regular service in the grade; and (b) Who have undergone training in cash & Accounts work in the ISTM or equivalent and possess three years experience of cash, accounts and budget work; failing which, **B. Officers under the Central Govt:** (a)(i) holding analogous posts on regular basis; or (ii) with five years regular service in posts in the pay scale of Rs.1400-2300/2600 or equivalent; or (iii) with ten years regular service in posts in the pay scale of Rs.1200-2040 or equivalent; and (b) who have undergone training in cash and accounts work in the ISTM or equivalent and possess three

	years experience of cash, accounts and budget work, OR A pass in the SAS or equivalent examination conducted by any of the organized Accounts Department of the Central Government. The departmental officers in the feeder category who are in the direct line of promotion shall not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for appointment by promotion. (Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organization/ department of the Central Government shall ordinarily not to exceed three years. The maximum age limit for appointment by transfer on deputation/transfer shall be not exceeding 56 years as on the closing date of receipt of applications.).

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The Model Recruitment Rules had postulated recruitment by promotion or transfer on deputation/transfer. Thus, an appointment by transfer on deputation, or transfer, was one of the suggested modes for appointment as per the Model Rules. Appointment of S.S. Gosain by transfer or transfer by deputation was not violating the Model Rules and was one of the suggested or recommended modes of recruitment. S.S. Gosain certainly met and satisfied the eligibility conditions mentioned in the Model Rules for he was in an analogous post on regular basis in the BSF. Pertinently, the Selection Committee in its meeting held in 2008 had noticed that the post of Assistant Accounts Officer, the next post in the hierarchy, was vacant and upon absorption of S.S. Gosain he would be eligible and possibly promoted to the said post. S.S. Gosain was appointed as an Accountant on deputation in the Commission on 21st August, 2005. At that time, none of the Junior Accountants were eligible for being promoted to the post of Accountant. S.S. Gosain had been working at an analogous post in the BSF since 1999 and at the time of his appointment on deputation had six years regular service in the same grade and accordingly was senior and had more experience than Anil Kumar Joshi.

17. Another reason given by the Tribunal to quash S.S. Gosain's absorption was violation of the directives in the OM dated 29th November, 2006 issued by DOP&T relating to deputationists. The said OM has been quoted in Paragraph 18 of the impugned order dated 13.12.2013 and reads as under:-

> "(i) The terms and conditions of deputation shall clearly lay down not only period of deputation as per the Recruitment Rules for the post or as approved by the competent authority but also the date of relieving of the deputationist. No further orders for relieving the officer will be necessary.
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> (ii) The deputationists officer including those who are presently on deputation would be deemed to have

> been relieved on the date of expiry of the deputation period unless the competent authority has with requisite approvals, extended the period of deputation, in writing, prior to the date of its expiry. It will be the responsibility of the immediate superior officer to ensure that the deputationist does not overstay. In cases where officers are on deputation on the date of issue of these orders and the normal tenures are getting over in a period of six months, the concerned officers/organisations may be allowed an extension of not more than one month, on a case to case basis with the approval of the DOPT.
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> (iii) That in the event of the officer overstaying for any reason whatsoever, he is liable to disciplinary action and other adverse civil/service consequences which would include that the period of unauthorised overstay shall not count for service for the purpose of pension and that any increment due during the period of unauthorised overstay shall be deferred, with cumulative effect, till the date on which the officer rejoins his parent cadre."

18. Paragraph 19 of the impugned order, referring to this OM, observes that deputationists should be relieved on expiry of the period of deputation unless the Competent Authority has prior approval for extension of the deputation period in writing. It was accordingly held that overstay of S.S. Gosain on deputation beyond five years was impermissible and clearly in violation of the OM. The OM mandates and fixes responsibility on the superior officers to ensure that deputationists do not overstay and in the event that an officer overstays, disciplinary action or adverse civil or service consequences should follow.

19. The Tribunal in paragraph 20 of the impugned order is factually wrong when it records that the five years, i.e. maximum permissible period, of deputation of S.S. Gosain had ended on 12^{th} April, 2010. S.S. Gosain was appointed as an Accountant on deputation with the Commission on 21^{st} August, 2005. The five year term would have, therefore, come to an end on 20^{th} August, 2010. The BSF had prior thereto vide their communication dated 16^{th} April, 2010, furnished their no objection to absorption of S.S. Gosain as an Accountant in the Commission. As noticed, the BSF and the Commission had earlier agreed to extend the deputation period from 21^{st} August, 2009 to 20^{th} February, 2010 vide the communication dated 1^{st} January, 2010. Anil Kumar Joshi is right in his submission that there is no formal order extending the deputation period after 20^{th} February, 2010, but that facet/position cannot be read in isolation and has to be read along with the No Objection Certificate issued by the BSF dated 16^{th} April, 2010 as well as the stand and conduct of the Commission. Even if we were to accept that there was no formal order of extension and therefore technical lapse on the part of the BSF and the Commission, we do not think S.S. Gosain should suffer and his appointment by way of absorption should be set aside. The said lapse would be an irregularity and not an illegality. We cannot be oblivious and have to make a concession in favour of S.S. Gosain for the reason that his absorption was delayed and interrupted in view of objections and demurrals by Anil Kumar Joshi and other Junior Accountants. This factual position, was the reason for the unfortunate delay. But for the hindrance and objections raised by Anil Kumar Joshi and other Junior Accountants S.S. Gosain's absorption on completion of the formalities would have been much earlier and before the culmination of his

five year term as a deputationist, which came to an end on 20th August, 2010. This is hardly a case where the aforesaid Office Memorandum would come to the aid and assistance of Anil Kumar Joshi.

20. The impugned order passed by the Tribunal refers to and quotes several internal file notings made by different officers. Internal file notings are views expressed by different officers. These notings were never communicated to S.S. Gosain or Anil Kumar Joshi. These internal opinions or observations of different officers cannot furnish any cause of action unless made in terms of Article 166 and communicated to the Officer concerned. In the present case, the internal file notings would not constitute a legal ground to set aside the absorption of S.S. Gosain. Internal file notings are meant to record the views of the Officers, but what would eventually be implemented or accepted would be the final decision which is communicated to the affected parties. The final communication furnishes cause of action. Divergent views can and should be expressed for it shows due consideration of all points of view. Courts and Tribunals do not sit as an appellate forum or an authority to examine the wisdom of the decision. Decisions taken can be challenged on the ground that they are perverse, which no reasonable man should have reached, are arbitrary, or are bad in law for they suffer from an error in the decision making process. It is in this context that we have referred to the reasons given by the Tribunal to set aside the absorption of S.S. Gosain and recorded a finding that the said reasons are unsustainable. Absorption of S.S. Gosain did not merit judicial interference.

21. In view of the aforesaid discussion, we allow the present writ petitions filed by the Commission and S.S. Gosain and set aside the impugned order of the Tribunal dated 13th December, 2013. OA No. 205/2012 filed by Anil Kumar Joshi would be treated as dismissed. The Writ Petitions are accordingly allowed and the appointment of S.S. Gosain as an Accountant with the Commission is upheld. In the facts of the present case, there would be no order as to costs.

Sd/-
(SANJIV KHANNA)
JUDGE

Sd/-
(CHANDER SHEKHAR)
JUDGE

JANUARY 30, 2017
VKR/ssn