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

+ W.P.(C) 6173/2017

SANJAY SRIVASTAVA

..... Petitioner

Through: Mr. Sachin Datta, Sr. Adv. with
Ms. Prity Sharma and Ms. Rijuta
Mohanty, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Rajinder Dhawan, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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24.07.2017

CM. No. 25666/2017 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 6173/2017

The challenge in the writ petition is to the order dated 19th February, 2015 whereby the petitioner was repatriated to his parent department (Northern Railway) w.e.f the same date.

The petitioner was appointed on deputation with respondent no.3 on the post of Dy. Manager for a period of three years while working in the Northern Railway. It is the submission of Mr. Sachin Datta, learned Sr. Counsel appearing for the petitioner that the deputation being of three years, the same could not have been curtailed prematurely. He would rely upon the Rules of the Railway, which are applicable to the respondent no.3 /

organization to contend that before repatriation, the respondent no.3 was required to intimate the petitioner of his pre-mature repatriation. The same having not been done, the impugned order needs to be set aside. He would rely upon the judgment of the Supreme Court in the case of ***Union of India, through govt. of Pondicherry and Anr. v. V. Ramakrishnan and Ors.***(2005) 8 SCC 394.

On the other hand, Mr. Rajinder Dhawan, learned counsel for the respondent no.3 opposes the writ petition on the ground that the petitioner has no indefeasible right to continue on deputation. According to him the petitioner was transferred on deputation to the respondent no. 3 organization. In other words, it is not an ordinary deputation. He relies upon the judgment of the Supreme Court in the case of ***Ashok Kumar Ratilal Patel v. Union of India and Anr.*** (2012) 7 SCC 757 in support of his contention.

Having heard the learned counsel for the parties, I note, the impugned order is dated 19th February, 2015. The petitioner having suffered accident was admitted in the Hospital from where he was discharged on 27th February, 2015. The representation as pointed out by Mr. Datta is dated 13th August, 2015 that is after six months. The petitioner has also filed a petition before Central Administrative Tribunal inter alia seeking identical reliefs. Suffice to state, no relief has been prayed for by the petitioner seeking a direction against the Railways for allowing him to join the Railways.

Be that as it may, the petitioner having been appointed on deputation and the Rule 8 (which I reproduce hereunder) as pointed out by Mr. Datta stipulates that an Officer can be prematurely repatriated with an advance intimation suggest the power of the respondent to pass the impugned order.

“8. Premature reversion of deputationist to parent cadre –
Normally when an employee is appointed on deputation / Foreign Service, his services are placed at the disposal of the Parent Ministry / Department at the end of the tenure.

However, as and when a situation arises for premature reversion to the parent cadre of the deputationist his services could not be so returned after giving advance intimation of reasonable period to the lending Ministry / Department and the employee concerned.”

Further the order having been passed on 19th February, 2015; the petitioner having knowledge of the same in 2015 when he received it; and the order having been challenged before the Tribunal, today in 2017 it is quite late in the day for the petitioner to challenge his repatriation order dated 19th February, 2015 that too on the ground of lack of intimation which denotes information. In so far as the judgment relied upon by Mr. Datta in the case of ***V. Ramakrishnan & Ors. (supra)*** is concerned in para 32 the Supreme Court has held as under:

“32. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. 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 Vs. Jagdishbhai M. Kamalia and Others, (2004) 2 SCC 65, para 25]”

The said judgment would not be applicable to the facts of this case. Particularly in view of Rule 8, which I have reproduced above.

In view of above discussion, I do not see any merit in the petition, same is dismissed.

CM Nos. 25665/2017 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 24, 2017/jg