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

+ **W.P.(C) 5262/2017**

SANJAY KUMAR

..... Petitioner

Through: Mr. A.K. Bhardwaj & Mr. M.D.
Jangra, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Arun Bhardwaj, CGSC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

14.07.2017

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C.M. No. 22327/2017

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 5262/2017 and C.M. No. 22326/2017

The petitioner has preferred the present writ petition to assail the order dated 30.05.2017 passed in O.A. No. 1162/2017. The petitioner had preferred the said Original Application to assail the order of his repatriation from Intelligence Bureau (IB) to his parent department, i.e. Border Security Force (BSF). The order of repatriation passed in respect of the petitioner reads as follows:

“Shri Sanjay Kumar, ACIO-II/Exe (PIS No.136333), a deputationist SI/Exe (No.100092691), BSF is hereby given 3 months notice in terms of para 9 of DOP&T OM dated 17.06.2010 for repatriation to his parent department. On

expiry of the above notice period, he will stand repatriated to his parent department w.e.f. 22.05.2017 with the direction to report for duty to his parent department i.e. BSF.

*Sd/-
(B.K. Singh)
Joint Director”*

Upon the petitioner preferring the Original Application, the respondents were called upon to respond to the same. The respondents then disclosed, that the repatriation was necessitated since the petitioner was involved in violating immigration rules, thereby granting illicit immigration clearances to passengers holding Emigration Check Required (ECR) category Passport and Employment Visa going to Protectorate of Emigrants (POE) countries without POE clearance. In that respect, FIR No.56/2016 dated 08.02.2016 has also been registered at PS – IGI Airport punishable under Section 420/ 120B IPC and Section 24 of the Immigration Act. The petitioner was arrested on 11.02.2016 and detained in custody for a period of 48 hours. The aforesaid incident, allegedly, took place when the petitioner was on deputation with the IB.

The Tribunal did not find merit in the petitioner's Original Application and, accordingly, rejected the same.

The first submission of learned counsel for the petitioner is that the order of repatriation was stigmatic. We have set out the order of repatriation and find that the same does not cast any stigma against the petitioner.

The further submission of learned counsel for the petitioner is that the stigma has become evident upon filing of the counter-affidavit by the respondent before the Tribunal. He submits that the petitioner had placed reliance on an earlier decision of the Tribunal in O.A. No.2005/2008

decided on 12.05.2009 titled ***Ved Prakash Vs. Union of India & Others***. In this order of the Tribunal, the Tribunal had lifted the veil to determine the reason for premature repatriation of the applicant. Learned counsel submits that, in the present case also, the same procedure should have been adopted, and if so adopted, the repatriation would have been found to be stigmatic. He submits that the Tribunal was bound to follow its earlier decision. In this respect, he places reliance on ***SI Roop Lal and Another Vs. Lieutenant Governor through Chief Secretary, Delhi & Others***, JT 1999 (9) SC 597, and in particular paragraph 12 of the said decision.

The further submission of learned counsel for the petitioner is that the Supreme Court has held in ***Union of India through Government of Pondicherry & Another Vs. V. Ramakrishnan & Others***, Civil Appeal No.6332/2005 decided on 07.10.2005, that 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. Even where the tenure is not specified, the order of reversion could be challenged on the grounds of mala fide.

Here itself, we may observe that this decision clearly holds that a deputationist does not have an indefeasible right to hold the deputation post. Thus, the petitioner does not have any such right. Moreover, in the present case, the petitioner did not assail his repatriation on the grounds of mala fide. First of all, there are no allegations of mala fide, and secondly, no individual was arrayed before the Tribunal against whom the mala fide could be alleged.

Lastly, learned counsel for the petitioner places reliance on the

decision of the Supreme Court in *Union of India & Another Vs. Shri J.P. Verma and Another*, 2003 (96) FLR 184, wherein the Supreme Court placed reliance on an earlier decision in *Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Others*. In *Dipti Prakash Banerjee* (supra), the Supreme Court, inter alia, observed that there is “*a clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its annexures*”.

In our view, this decision also is not applicable in the facts of the present case for the reason that, firstly, in *Dipti Prakash Banerjee* (supra), the Court was concerned with an order of termination, and not an order of repatriation of a deputationist to his parent department. Secondly, the order of repatriation in the present case does not refer to any other document whatsoever. Thirdly, under Rule 20 and 21(2)(ii) of the CCS (CCA) Rules, 1965, the IB was obliged to place the services of the petitioner with the BSF, i.e. the lending authority, so that the disciplinary proceedings for imposition of major penalty could be undertaken by the lending department.

It is the petitioner who approached the Tribunal and invited the respondent to answer the challenge to the order of repatriation. In these circumstances, the respondents disclosed the administrative reasons for repatriation which, in any event, the IB is bound to communicate to the BSF.

We may also refer to paragraph 9 of the OM dated 17.06.2010 which stipulates that normally when an employee is appointed on deputation, 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 be so returned after giving him an advance notice of at least three months to the lending Ministry/ Department and the employee concerned. Even the order dated 06.08.2014 passed by the BSF, placing the services of the petitioner at the disposal of the IB stipulates that the deputation would be subject to premature repatriation on ground of unsuitability and exigency of service, as well as for any unforeseen factors.

We are satisfied that in the facts of the present case, the repatriation of the petitioner was not unjustified. His involvement in the criminal case was a justifiable cause for his repatriation and he was unsuitable for the deputation post. His performance was unsatisfactory. These reasons have not been incorporated in the order of repatriation. Thus, the same is not per se stigmatic. So far as the submission of the petitioner that the Tribunal should have followed *Ved Prakash* (supra) is concerned, we are of the view that the Tribunal correctly did not apply the said decision in view of the materially different fact situation. In *Ved Prakash* (supra), the repatriation was allegedly mala fide and an act of victimisation. However, as noticed above, there is no whisper of any mala fides by the petitioner. Thus *SI Roop Lal* (supra) is of no avail to the petitioner.

Dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

JULY 14, 2017

B.S. Rohella