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

\+ **W.P.(C) 11008/2017 & CM Nos.45004/2017 (for stay), 45005/2017 (for exemption)**

UNION OF INDIA AND ORS ..... Petitioners

Through: Mr.Ripu Daman Bhardwaj, Advocate.

versus

MRS. SARITA KAPOOR ..... Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R

% **13.12.2017**

1. The petitioner/Chief Controller of Accounts is aggrieved by the judgment dated 27.03.2017, passed by the Central Administrative Tribunal, Principal Bench, New Delhi on an Original Application No.3478/2016 filed by the respondent praying *inter alia* for directions to consider her for absorption to the post of Accountant, at par with other similarly situated persons who have been duly absorbed by them.

2. The facts of the case, as culled out from the records, are that the petitioners had issued an advertisement on 17.09.2011, inviting applications for filling up vacancies in the cadre of Accountants on deputation basis. The said advertisement had clearly stated that the selected candidates could be considered for permanent absorption after successful completion of two years of deputation. In pursuance to the aforesaid advertisement, the

respondent had applied and was duly selected to the post of Accountant on deputation basis. She joined the said post in the office of petitioner No.3, on 20.03.2012. Initially, the respondent was appointed for a tenure of one year, which was extended for a further period of one year, vide order dated 20.03.2013. On 13.12.2013, the respondent submitted a representation to the petitioner No.3, seeking permanent absorption. Vide a communication dated 9/18.09.2014, her parent cadre i.e., the Ministry of Micro Small and Medium Enterprises gave her a no objection for absorption.

3. Initially, on 21.10.2014, the petitioner No.2 issued a communication stating therein that the competent authority had decided to put on hold absorption of all deputationists. By another communication dated 18.11.2014, the said order was directed to be kept in abeyance. Subsequently, vide order dated 23.07.2015, yet again, the absorption of all the deputationists in the Central Civil Accounts Service (CCAS) was put on hold and directions were issued to repatriate all deputationists to their parent departments on completion of their deputation term. As a result, vide order dated 10.08.2015, the petitioner No.3 informed the respondent that her case for absorption was turned down.

4. Contemporaneously, in response to an application submitted by the respondent on 31.07.2015, the petitioner No.3 wrote a letter dated 03.12.2015 to the respondent, informing her that the petitioner No.1 had approved her extension on deputation. Further, the extension of the respondent's deputation for the fifth year was approved vide letter dated 16.03.2016. As a result, the respondent's deputation was extended right upto 19.03.2017, even though her absorption had been declined.

5. Aggrieved by the decision of the petitioners to repatriate her on

completion of her deputation tenure on 19.03.2017, the respondent filed an Original Application before the Tribunal which has been allowed by quashing the communication dated 10.08.2015 whereby her request for permanent absorption had been rejected in the light of OM dated 23.07.2015 and directing that in the event that she is not found ineligible for any other reason, she shall be absorbed.

6. Mr.Bhardwaj, learned counsel for the petitioners submits that while passing the impugned order, the Tribunal did not appreciate the fact that absorption is not an inherent right and the consent and willingness of all the parties involved namely, the deputationist, the lending department as also the borrowing department, is essential. He submits that the rejection order dated 10.08.2015 was validly passed in view of OM dated 23.07.2015, issued by the Controller General of Accounts, Department of Expenditure, Ministry of Finance which stated that all deputationists, on completion of their term shall stand repatriated to their parent departments. He further submits that merely because the advertisement issued by the petitioners had stated that after successful completion of two years on deputation, a candidate can be considered for absorption, would not give a vested right to the respondent to seek permanent absorption.

7. We have heard the learned counsel for the petitioners and examined the impugned judgment as also the documents placed on record. The impugned judgment is predicated on three grounds, firstly, that once the statutory rules provide for filling up all of vacancies unfilled by direct recruitment, by way of deputation and the said deputationist is to be considered for absorption after completion of 2 years of deputation, by way of executive instructions, the employer cannot put on hold the absorption

cases of deputationists. The aforesaid observations have been made by the Tribunal in the light of the Recruitment Rules for the subject post, which read as follows:-

> "*This provision in the advertisement was in consonance with the Recruitment Rules (RRs) of the post, namely, Central Civil Accounts Service (Accountant and Senior Accountant Group-C post) Recruitment Rules, 2010 in which column-12 read as follows:-*
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> > *"(i) Vacancies remaining unfilled by direct recruitment through Staff Selection Commission in manner specified in item (i) of column 11 may be filled up by deputation by taking persons of appropriate grade from other Organised Accounts Services, Central Government, State Government or Autonomous Bodies which are fully funded by the Central or State Government subject to terms and conditions laid down by the Central Government from time to time in the regard.*
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> *(2) A deputationist with an exceptionally good performance; on completion of two years of deputation may be considered for absorption in public interest subject to the prior concurrence of the parent cadre and the Controller General of Accounts and subject to the fulfilment of the 3 OA-3478/2016 following conditions as on 1st January in the year of consideration;*
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> > *(a) Pay Band in the parent cadre: A deputationist who exercise an option for absorption should hold any of the following Pay Band in the parent cadre:*
> >
> > *(i) Pay Band-1 Rs. 5200-20200 Grade Pay 2800; or equivalent grade or."*

8. Secondly, the Tribunal has observed that the petitioners had

misinterpreted the rules inasmuch as the availability of vacancies was to be seen at the time of filling up of vacancies on deputation basis and not at time of considering the cases of deputationists for absorption. This was for the reason that the rules provide that only those vacancies that remain unfilled by direct recruitment, were to be given to the deputationists. Instead of implementing the rules in the correct perspective and processing the cases of deputationists who had become eligible for absorption, the petitioners had put an embargo on the absorption of deputationists merely because by then, the dossiers from the SSC for direct recruitment of Accountants, had become available to them.

9. Lastly, while passing the impugned judgment, the Tribunal also took note of the fact that two similarly placed deputationists namely, Shri D. Ramanathan and Shri V. Sreekumar had been duly absorbed by the petitioners on 19.11.2014, whereas, the respondent who was similarly placed, was discriminated against even though her fact situation was not any different. We may also note that the respondent had been appointed on deputation to the subject post on 20.03.2012, whereas the aforesaid two persons were appointed as deputationists subsequently but were still permanently absorbed, which benefit was not extended to the respondent.

10. Further, we may note that the respondent had submitted her application for absorption on 13.12.2013 and a NOC had been given to her by the parent department on 18.09.2014. As on the said date, the respondent was entitled to be considered for absorption not only in terms of the recruitment rules, but even as per the petitioner's OM dated 18.11.2014. However, petitioner No.3 did not recommend the respondent's case to the CGA till as late as 01.04.2015 and even thereafter, the same was kept

pending for no justifiable reason only to be subsequently turned down on 10.08.2015, only on the ground that by then, the circular dated 23.07.2015, prohibiting absorption had been issued.

11. We are of the view that had the petitioners referred the respondent's case to the CGA on time and had the CGA processed the same in a time bound manner, she would have been duly recommended for absorption, but unfortunately, the officers of the petitioner Nos.3 and 4 did not initiate the case of the respondent for absorption on time. As against this, when the cases of Shri D. Ramanathan and Shri V. Sreekumar were referred to the CGA from the Chennai and Cochin offices of the petitioner Nos.3 and 4, on 29.10.2014, the same were promptly approved for absorption on 19.11.2014.

12. In the light of the above facts, the respondent cannot be blamed in any manner for the delay on the part of the petitioners in processing her case. In our view, since the persons named above have been duly absorbed by the petitioners, the respondent who had joined as a deputationist prior to them, was equally entitled to be considered for absorption before them. The respondents representation dated 13.12.2013 seeking permanent absorption, had ripened for consideration immediately after September 2014, when her Parent Department had given her 'No Objection'. The decision taken on 21.10.2014 by the petitioners to put on hold the absorption of all deputationists was admittedly suspended vide order dated 23.07.2015. That being the position, there was no good reason for the petitioners to have kept dillying dallying and taking, their own time to process the respondent's case for permanent absorption. The entire fault lies at the door of the petitioners, for which the respondent cannot be made to suffer.

13. In view of the aforesaid facts and circumstances, we do not find any

ground to interfere with the impugned order which is well reasoned and without legal flaw. The present petition is accordingly, dismissed in *limine,* as meritless along with the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

DECEMBER 13, 2017/gm