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

+ **W.P.(C) 124/2019**

VIDYA SUKUMARAN

..... Petitioner

Through Mr. Umesh Sharma, Advocate.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through Mr. Akshay Mahija, CGSC with
Ms.Mahima Bahl, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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09.01.2019

CM APPL. 655/2019

1. Exemption Allowed, subject to all just exceptions.

W.P.(C) 124/2019 & CM APPL. 654/2019

2. Issue notice.

3. Mr. Akshay Mahija, Advocate accepts notice on behalf of respondents.

4. The petitioner is aggrieved by the order dated 26.11.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short 'Tribunal') in OA No.4297/2018. The petitioner had assailed her repatriation to Indian Space Research Organisation (ISRO) from the Ministry of External Affairs, where she was on three years deputation starting from 16.10.2016. The grievance raised by the petitioner was that

her repatriation was effected in breach of the Office Memorandum of the DOPT No.6/8/2009-Estt. (pay-II) dated 17.06.2010 which *inter alia* provided:

“9. 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 be so returned after giving an advance notice of at least three months to the lending Ministry! Department and the employee concerned.

10. Relaxation of conditions.

Any relaxation of these terms and conditions will require the prior concurrence of the Department of Personnel & training.”

5. The grievance of the petitioner was that she was not given the minimum three months’ notice and no concurrence of the DoP&T was obtained prior to waiving the three months notice.

6. Before the Tribunal it was admitted by the petitioner that she received notice of repatriation through e-mail on 11.10.2018. Consequently, the Tribunal directed that her repatriation shall take effect only after 10.01.2019 i.e. after expiry of period of three months from the date when she received notice.

7. The submission of learned counsel for the petitioner firstly is that she did not receive any notice and it was merely information. We cannot appreciate this contention as notice and intimation are one and the same thing. The fact is that the petitioner was informed—call it by an intimation, or a notice, that she was repatriated to her parent department.

8. The further contention of the learned counsel for the petitioner is that the non-compliance of the aforesaid OM dated 17.06.2010 vitiates the notice

of repatriation and annuls it.

9. The OM merely requires the giving of at least three months notice, *inter alia*, to the Officer, who is sought to be repatriated. Since that three months notice was short in the case of the petitioner, the Tribunal has granted relief which could be granted to the petitioner, namely, to direct that she shall continue in her post on deputation till the expiry of three months period i.e. 10.01.2019. We cannot accept the submission of the petitioner that the notice of the repatriation itself would be rendered illegal and ineffective only on account of the period of notice being short of three months. The only consequence of the notice being for a shorter period is that if the same is issued without concurrence of the DoP&T, the same would take effect on the expiry of the three months period. The situation is akin to a notice issued under Section 106 of the Transfer of Property Act, 1882 (in short 'the Act'). Section 106(3) of the Act provides:

“106(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.”

9. In view of the above discussion, we find no merit in this petition. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 09, 2019

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