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

Date of Decision: 19.12.2019

+ W.P.(C) 6081/2019 and C.M. No.26223/2019

DR. HARINDER PAL SINGH ..... Petitioner  
Through: Mr. Pratap Venugopal,  
Advocate with Mr. Amarjit  
Singh Bedi, Advocate and Mr.  
Varun Chandiok, Advocate.

Versus

MINISTRY OF LAW AND JUSTICE & ANR..... Respondents  
Through: Mr. Ravi Prakash, CGSC with  
Mr. Farman Ali, Advocate and  
Mr. Aditya Ajay, Advocate.

+ W.P.(C) 9114/2019 and C.M. Nos.37635/2019 & 53081/2019

MINISTRY OF LAW AND JUSTICE ..... Petitioner  
Through: Mr. Ravi Prakash, CGSC with  
Mr. Amit Singh, GP and Mr.  
Farman Ali, Advocate.

versus

DR. HARINDER PAL SINGH & ANR. .... Respondents  
Through: Mr. Pratap Venugopal,  
Advocate with Mr. Amarjit  
Singh Bedi, Advocate and Mr.  
Varun Chandiok, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE G.S. SISTANI**  
**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**J U D G M E N T**

**G.S.SISTANI, J. (ORAL)**

Both these writ petitions arise from order dated 19.02.2019 passed by the Central Administrative Tribunal, Principal Branch, New Delhi ('Tribunal') in OA No.319/2019 and order dated 03.05.2019 passed in RA No.90/2019 filed in the matter. Arguments have been heard and with the consent of the parties, both matters are being disposed of by this common order.

2. W.P.(C) No.9114/2019 has been filed by the Ministry of Law & Justice ('Ministry') being aggrieved by order dated 19.02.2019 passed by the Tribunal, whereby the O.A. was decided *inter-alia* in favour of Dr. Harvinder Pal Singh, who for the sake of convenience will be referred to as 'Mr. Singh'. W.P.(C) No.6081/2019 has been filed by Mr. Singh being aggrieved by order dated 03.05.2019 passed by the Tribunal in a review application filed by the Ministry.

3. Some necessary facts which are required to be noticed for disposal of these writ petitions are that Mr. Singh was practising as a lawyer between 1999 to 2015. In the year 2015, he joined the Department of Legal Affairs, Ministry of Law & Justice as Assistant Legal Advisor. On 27.07.2018, Mr. Singh learned of a vacancy for the post of Recovery Officer on deputation basis in DRT-3 in Chandigarh under the Department of Financial Services, Ministry of

Finance. An application with regard to the same was made, following which an acceptance was conveyed to him on 26.12.2018. However, since the petitioner was not relieved by his parent department, an O.A. was filed and decided on 19.02.2019. The operative portion of order dated 19.02.2019 reads as under:-

*"7. It is no doubt true that no employee can claim the benefit of relaxation as a matter of right. However, if the department permitted him to incur certain obligations or to acquire certain rights, they cannot retract their steps to violate the right of the applicant. The employee got a legitimate expectation. It is not in dispute that the respondents have relieved two officers of the applicant's batch to join as Law Officers on deputation basis. When they did not find it difficult to relieve them either by granting relaxation or otherwise, there is no reason why the applicant be not extended the same treatment. Viewed in the context of legitimate expectation of the applicant which in turn is generated on account of assurance given by the respondents themselves that they would relieve the applicant on being selected, or from the angle of the discrimination which is frowned at by Article 14 of the Constitution of India, the action of the respondents cannot be sustained. The factors such as administrative exigency in the department are required to be taken into account, before Part II in the form is signed and not after the candidate is selected.*

*"8. We, therefore, allow the OA and direct the respondents to relieve the applicant to enable him to join the post of Recovery Officer in DRT within a period of four weeks, from today, if necessary, by granting the relaxation as was done in the case of two other Legal Advisors of the batch of the applicant. There shall be no order as to costs."*

and, being aggrieved by the direction issued in the foregoing order, the Ministry filed a review application, which led to order dated 19.02.2019 being reviewed by way of order dated 03.05.2019, the

operative portion of which reads as under :

*"8. We, therefore, allow the OA and direct the respondents to consider the case of the applicant along with the cases of Sh. Amit Tyagi and Sh. K.M. Arya in the context of granting relaxation of relevant rules as to the services to enable them to avail the benefit of deputation."*

In view of the above, the Ministry is now aggrieved by the parent order as well as the review order ; whereas Mr. Singh is aggrieved by the review order. It is in these circumstances that two writ petitions have come to be filed.

4. Mr. Ravi Prakash, learned CGSC appearing for the Ministry submits that Mr. Singh did not qualify for being considered to be relieved for deputation since he had not completed 10 years of service in the parent department. Reliance in this regard is placed on O.M. dated 26.03.2014, relevant portions of which read as under:-

*"(i) An application will be considered for being forwarded only on completion of a minimum of 10 years' service in the Department."*

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*"2. Any relaxation in the above guidelines will be made only in exceptional circumstances, for reasons to be recorded in writing and subject to exigencies of Government work."*

5. Learned counsel has urged that minimum service of 10 years in the parent department is required even for forwarding an application for allowing deputation. Relaxation is to be made only in exceptional circumstances, for reasons to be recorded in writing and subject to exigencies of government work. He submits that the application of Mr. Singh was forwarded inadvertently in breach of the aforesaid policy

and guidelines; and the mistake could not have been permitted to continue. The no-objection certificate granted to Mr. Singh does not imply that he had earned any right to be relieved for the deputation post since that was done inadvertently. As far as the proposal with regard to the two other officers, being Sh. Amit Arya and Sh. K.M. Tyagi, is concerned, Mr. Ravi Prakash has drawn the attention of the court to paras (n)(i) and n(ii) of W.P.(C) No.9114/2019 filed by the Ministry, which we reproduce below:-

*"(n) It is submitted that the Petitioner in the R.A sought review of the Order dated 19.02.2019 on the below mentioned two ground:-*

*i. Firstly, on the ground that the Order dated 19.02.2019 had been passed based on misrepresentation of facts by Respondent No.1 herein, that the two officers of his batch who have been selected for deputation to Seychelles have been relieved by the Petitioner herein. However, it was submitted that the two officers selected for the foreign assignment, have also not been relieved by the Petitioner.*

*ii. Secondly, on the ground that the two officers selected for deputation to Seychelles by the Ministry of External Affairs were being considered under Indian Technical and Economic Co-operation (ITEC) programme. The Development Partnership Administration (DPA) in the Ministry Of External Affairs is entrusted with the task of undertaking various capacity building programmes and development projects abroad, as a part of its Technical Co-operation programme under Government of India Assistance which also includes deputation of experts to partner countries. In this regard India's Mission in*

*Victoria (Seychelles) had received a proposal for deputation of legal experts in different fields under the ITEC programme. The other two officers were being considered under the ITEC programme which is a part of Bilateral Co-operation between India and other countries, being coordinated by the Ministry of External Affairs and therefore stands on a different footing than vis-a-vis deputation to another Department within the Country.*

*A True Copy of the letter dated 25.04.2018 sent by the Ministry of External Affairs to the Petitioner regarding the Deputation of Legal Experts to the Government of Seychelles under the ITEC programme is annexed as ANNEXURE-P7."*

6. Relying on the aforesaid averments made in the writ petition, Mr. Ravi Prakash submits that the case of the petitioner cannot be equated with that of Mr. Tyagi and Mr. Arya. It is also stated that, as a matter of administrative exigency, there is shortage of officers in the Ministry. These reasons are detailed in para Nos. 4 and 5 of the Ministry's rejoinder, which paras read as under:-

*"4. That the contents of para 3 are misconceived, wrong and hence denied. In reply thereto, it is respectfully submitted that as on date, out of the total sanctioned strength of 39 ALAs, only 26 officers are working as ALAs in the Department. The allegation made by Respondent No.1 that Legal Consultants are drawing salary equal to ALAs is utterly wrong as they are drawing a consolidated amount of Rs. 60,000/- per month which is much less as compared to the salary of ALAs. Further, Legal Consultants are not authorised to perform the duties of ALA, however they have been engaged only to assist the Legal Adviser's cadre of Indian Legal Service. As regards the relieving of Shri J. Srinivas Rao is concerned, he has fulfilled the criteria of minimum 10*

*years of his service in the Department before going on deputation. Though 13 officers have been promoted in the grade of ALA, the fact remains that only 26 officers are working as ALAs in the Department against the sanctioned strength of 39.*

*"5. That the contents of para 4 are misconceived, wrong and denied. In reply thereto, it is submitted that besides the shortage of officers in ALA grade, there are also 8 vacancies (out of 13) in Joint Secretary & Legal Adviser grade, 18 vacancies (out of 20) in Additional Legal Adviser grade and 2 vacancies (out of 19) in Deputy Legal Adviser grade in the Department. Thus, it is factually correct that there is a shortage of officers in different grades of Indian Legal Services in the Department. In so far as the allegation of the applicant for picking and choosing the officers for deputation is concerned, the same is devoid of merits as the case of two officers for deputation to Seychelles stands on different footing from the case of the respondent no.1. The two officers selected for deputation to Seychelles by the Ministry of External Affairs were being considered under Indian Technical and Economic Cooperation (ITEC) programme. The Development Partnership Administration (DPA) in the Ministry of External Affairs is entrusted with the task of undertaking various capacity building programmes and development projects abroad, as a part of its Technical Co-operation programme under Government of India Assistance which also includes deputation of experts to partner countries. In this regard India's Mission in Victoria (Seychelles) had received a proposal for deputation of legal experts in different fields under the ITEC programme. The other two officers were being considered under the ITEC programme which is a part of Bilateral Co-operation between India and other countries, being coordinated by the Ministry of External Affairs and therefore stands on a different footing than vis-a-vis deputation to another Department within the country."*

7. In this backdrop, Mr. Ravi Prakash submits that the order of the Tribunal is bad in law as it suffers from basic infirmities and is liable to be set-aside and quashed.

8. Mr. Pratap Venugopal, learned counsel appearing for Mr. Singh in W.P.(C) No.6081/2019 and in W.P.(C) No.9114/2019 submits that the Ministry has taken shifting stands in the matter. He submits that on the one hand, no-objection was given for deputation, while on the other hand Mr. Singh was not relieved. It is contended that once no-objection was granted, Mr. Singh had no reason to believe that he would not be relieved; that the grant of no-objection itself must be taken as grant of relaxation of the 10 year service rule; and would also amount to acceptance that the Ministry did not have any shortage of Law Officers; and further that the case of Mr. Singh was on the same footing as that of the other two officers. He submits that as per information available with him, Mr. Tyagi and Mr. Arya were in the process of being relieved; and it was on the basis of such information that he had made an averment to that effect in the writ petition. This is also reflected in order of the Tribunal dated 19.02.2019; and in fact, the Tribunal observes that that is the undisputed position. However, in the review petition filed, the Ministry has taken a different stand. Counsel points-out that earlier the Ministry's stand was that Mr. Tyagi and Mr. Arya were placed differently since by relieving them, the Ministry was fulfilling their international treaty obligations while now they say that they have not relieved Mr. Arya and Mr. Tyagi but a proposal to relieve those officers is under consideration. He further

submits that the petitioner has practised as a lawyer for more than 15 years; and in view of that length of practice, no relaxation should be required in his case.

9. We have heard learned counsel for the parties; have considered their rival contentions; and have carefully examined the order passed by the Tribunal dated 19.02.2019 and the order passed in review dated 03.05.2019.

10. The law is well settled that relieving of an officer for deputation is not a matter of right. It is also well settled that, ordinarily, an officer who is relieved for deputation is not recalled for a period of one year; however, that is not an absolute rule. An employer, may for various reasons, recall an officer at any stage, even after he has been relieved for deputation. No doubt that a 'no-objection' was given to the petitioner but it is the admitted position that he was never led to believe that he had been relieved. It was for this reason that he was forced to approach the Tribunal. The Tribunal was persuaded to allow the O.A. since, it appears, the Tribunal believed that the actions of the department had led the petitioner to incur certain obligations; and further, that it was perceived that the applicant had reason to harbour the legitimate expectation that since he had been given a no-objection, he would also be relieved. The Tribunal was also persuaded by the representation that the respondents had already relieved two other officers of the applicant's batch to join certain posts in Seychelles on deputation basis.

11. Today however, a statement has been made at the bar by Mr. Ravi Prakash, that as of today, no personnel have been relieved.

However, Mr. Ravi Prakash has submitted during the course of hearing that there is likelihood that the said officers may be relieved to fulfil international treaty obligations.

12. Regardless of what the Ministry may decide in relation to Mr. Arya and Mr. Tyagi, in the Ministry's petition it has been explained in fair detail that the case of Mr. Arya and Mr. Tyagi is in any case different from that of Mr. Singh, inasmuch as the said two other persons will, if at all, be relieved for deputation in order to fulfill international treaty obligations. Even moreso, if the said two persons are relieved for deputation, it would further deplete the strength of Law Officers available with the Ministry which will only aggravate the administrative exigencies within the Ministry. Suffice it to say therefore, that the case of Mr. Singh on the one hand and Mr. Arya and Mr. Tyagi on the other cannot be taken to be similar. Although a no-objection for the deputation post was indeed granted in favour of Mr. Singh and Mr. Singh accordingly may have had reason to believe that he would also be relieved of his charge in the Ministry, we are satisfied that the no-objection came to be granted in an act of inadvertent error, since admittedly Mr. Singh had not completed 10 years of service in the parent department. Such error ought to have been rectified at the earliest, which it was not; and this compelled Mr. Singh to approach the Tribunal, which was avoidable effort and trouble that Mr. Singh was put through. However, everything else notwithstanding, the mere grant of no-objection for deputation certainly did not confer on Mr. Singh any right to be relieved from his charge in the Ministry, not least because in any case a deputationist

can always be recalled by the parent department at any point of time; and deputation is therefore never a matter of 'right'.

13. In the foregoing view of the matter, we are satisfied firstly, that inspite of the issuance of a no-objection by the Ministry, Mr. Singh did not acquire any right to be relieved for a deputation post; secondly, that Mr. Singh's case stood on a different footing than that of Mr. Arya or Mr. Tyagi; and thirdly, it appears, that the services of Mr. Singh are required in the Ministry and the Ministry is therefore well within its authority not to relieve him for the deputation post at the Debt Recovery Tribunal.

14. Resultantly, we allow W.P.(C) No.9114/2019 and dismiss W.P.(C) No.6081/2019. All pending applications, if any, also stand disposed of. However, considering that Mr. Singh was compelled to approach the Tribunal since the Ministry did not correct its erroneous action in granting a no-objection, the Ministry is directed to pay to Mr. Singh costs in the sum of Rs.5,000/- within four weeks from today.

**G.S.SISTANI, J.**

**ANUP JAIRAM BHAMBHANI, J.**

**DECEMBER 19, 2019**

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