

\$~28

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

+ **W.P.(C) 9482/2018**

SHLOK BHARDWAJ

..... Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ruchir Mishra with Mr. Sanjiv
K. Saxena and Mr. M. K. Tiwari,
Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

%

27.11.2019

1. The Petitioner, who appears in person, is aggrieved by an order dated 21st August, 2018 passed by the Central Administrative Tribunal ('CAT'), New Delhi in O.A. No. 2114/2017.

2. The Petitioner who was initially appointed in the Indian Engineering Services ('IES') in 1995 was selected in the Central Staffing Scheme ('CSS'), also known as Central Deputation, by an order dated 20th May, 2015 as Director in the Department of Agriculture and Co-operation in Delhi for a period of 5 years. According to the Petitioner, while he was serving as Director in the Department of Agriculture and Co-operation, he had proposed the removal of a subordinate Section Officer.

3. On 26th May, 2017 an Office Memorandum ('OM') was issued stating that the Appointments Committee of the Cabinet ('ACC') had approved the proposal of the Department of Agriculture, Co-operation and Farmers Welfare for the premature repatriation of the Petitioner to his parent cadre i.e. the Ministry of Commerce "with extended cooling off condition." It was then stated that the Petitioner would be eligible for another central deputation only after 16th June, 2023, upon the completion of 3 years' cooling off period after 16th June, 2020, i.e. his approved central deputation tenure.

4. Aggrieved by the above order dated 26th May, 2017, the Petitioner preferred O.A. No. 2114/2017 before the CAT. In the counter-affidavit filed before the CAT, the Respondents tried to adduce reasons for the Petitioner's premature repatriation. However, the CAT in the impugned order made it clear that since the order dated 26th May, 2017 impugned therein did not spell out anything adverse against the Petitioner, the averments in the counter-affidavit would not hold good. In fact, even counsel for the Respondents submitted before the CAT, "once the order does not spell out anything of that nature, the apprehension of the applicant cannot be said to be well placed."

5. The CAT then considered the justification for the extended cooling off period and held that once the impugned order did not mention anything objectionable, the premature repatriation "should not result in curtailing his rights in his parent department". As a result, the OA was partly allowed by upholding the order impugned therein insofar as it repatriated the Petitioner

but “setting aside that part of the order which has the effect of extending his cooling off period.” It was clarified that “the cooling off period which is otherwise applicable to the applicant in the usual course shall, however, remain.”

6. It must be noted here that by way of the order dated 11th September, 2018, when this petition was first heard, this Court asked learned counsel for the Respondents to clarify whether the order dated 26th May, 2017 was “stigmatic in nature and would come in his way whenever he is due for promotion.” Thereafter, on 30th November, 2018, a counter-affidavit was filed where it stated, *inter alia*, that the order prematurely repatriating the Petitioner, “by any stretch of imagination, cannot be understood as stigmatic as alleged or at all.” It is further stated that “finding in the impugned order dated 21st August, 2018 that repatriation order does not spell out anything adverse against the applicant, are correct.”

7. Having heard the Petitioner, who appears in person, and Mr. Ruchir Mishra, learned counsel appearing for the Respondents, the Court would like to further clarify that once the categorical stand of the Respondents is that the impugned order is not stigmatic, any contention to the contrary either in the counter-affidavit filed before the CAT or in the counter-affidavit filed before this Court, imputing any acts of misconduct or otherwise to the Petitioner or about complaints received against him, leading to his premature repatriation, would not hold good. The Court, therefore, clarifies that whenever the case of the Petitioner is considered either for promotion or future empanelment/deputation, such averments adverse to him as

mentioned either in the counter-affidavit before the CAT or the counter-affidavit filed in this Court or even in the notings on file, following which the order of premature repatriation was passed, will not be taken into account and will be treated as obliterated. It is only on this basis that the part of the impugned order of the CAT declining to interfere with the order of premature repatriation is not being interfered with by this Court. Further, the observations in Paragraph 4 of the impugned order of the CAT, referring to the stand of the Respondents in the counter-affidavit containing averments adverse to the Petitioner shall be treated as expunged.

8. As regards the extended cooling off period, the Court upholds the impugned order of the CAT which has set aside that part of the order dated 26th May, 2017.

9. With the above clarifications, the petition is disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 27, 2019
tr