

18.03.2021

Ct. No.13

Sl. No.27

akd

**W.P.A. 21695 of 2019 [via video conference]
CAN 1 of 2020 [Old CAN 5684 of 2020]**

[Subrata Roy -Vs- Union of India & Ors.]

Mr. Victor Chatterjee

... .. for the petitioner

Mr. Surya Prasad Chattopadhyay

Mr. Rahul Karmakar

... .. for respondent nos.2 & 3

Ms. Rajashree Venkat Kundalia

Ms. Ritwika Banerjee

... .. for the UOI

The writ petitioner is a Wing Commander in the Indian Air Force. Pursuant to an advertisement dated 12th June, 2018 issued by the National Jute Board for the post of Director (Technology & Technical), he was selected on deputation. The letter of deputation and appointment was issued on 18th September, 2018 by the Member Secretary, National Jute Board. By reason thereof, the writ petitioner's service with the parent organisation i.e. the Indian Air Force remained undisturbed. The Ministry of Textiles, Government of India conveyed approval of the petitioner's appointment by deputation for a period of three years.

It is submitted that one of the terms and conditions of deputation and engagement with the National Jute Board is that the services of the petitioner were terminable on three months notice.

By an order dated 19th September, 2019, the Secretary, National Jute Board communicated to the petitioner that he was not suitable for the post of Director (Technology & Technical) in

the National Jute Board and relieved and repatriated the petitioner back to the Indian Air Force.

The said order of repatriation was challenged in W.P. No. 18772(W) of 2019, during pendency of which, the National Jute Board withdrew the order of repatriation on 13th September, 2019. The writ petition was dismissed as infructuous on 1st October, 2019.

By a further communication dated 1st October, 2019, it was communicated to the petitioner that his services were not suitable to the post of Director (Technology & Technical) at the National Jute Board and a fresh order of repatriation was issued to him. However, three months notice was given to the petitioner for the order to take effect. Salary for three months was duly paid to him.

The petitioner by communication dated 22nd October, 2019, sought for reasons as to why he was found unsuitable and as to whether the repatriation order was approved by the Ministry of Textile, Government of India.

The instant writ petition was filed on 20th November, 2019. Affidavits were called from the parties on 17th January, 2020. No interim order appears to have been prayed before the Coordinate Bench on the said date.

Against the order dated 17th January, 2020 passed in W.P. No.18772(W) of 2019, M.A.T. 269 of 2020 was filed. The said M.A.T. 269 of 2020 was disposed of by a Division Bench of this court vide order dated 11th March, 2020, inter alia, observing that since the petitioner was already repatriated to the parent organisation i.e. the Indian Air Force, his services should be regularised thereat without prejudice to his rights and

contentions in the said W.P. No.18772(W) of 2019. The National Jute Board was also restrained from filling up the said post of Director (Technology & Technical).

The parties have exchanged affidavits.

It is submitted by reference to a decision of the Hon'ble Apex Court in the case of ***Union of India Through Govt. of Pondicherry and Another vs. V. Ramakrishnan & Ors.*** reported in **(2005) 8 SCC 394** particularly paragraphs 32 & 35 thereof that the expression 'unsuitability and unsatisfactory performance' are exceptions to the general rule that a deputationist can be reverted back to his parent post at any point of time. It is submitted that unsatisfactory performance and unsuitability are clearly stigmatic and if found against a deputationist, he cannot be repatriated without a regular departmental enquiry.

Paragraph 32 of the said decision in the case of ***Union of India Through Govt. of Pondicherry and Another vs. V. Ramakrishnan & Ors. (Supra)*** is set out hereinbelow :-

"32. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. 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. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post-haste manner also indicates malice. (See *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia* SCC para 25)."

Paragraph 35 is also set out hereinbelow :-

"35. In *Parshotam Lal Dhingra*, it is categorically stated that when an appointment is made for a specific period, unless any disciplinary proceeding is initiated, a person will be entitled to hold the said post."

It is explicit and clear from a plain reading of the aforesaid dicta of the Hon'ble Supreme Court that unsuitability and unsatisfactory performance are the only grounds on which a deputationist can be repatriated to its parent organisation and the same are not stigmatic.

The petitioner was not found suitable in the post of Director (Technology & Technical) by the National Jute Board. It is quite possible that the National Jute Board may have considered at a given point of time that a Wing Commander of the Indian Air Force could do justice to the post of Director (Technology & Technical) in the National Jute Board.

Not having found the petitioner suitable for the post, the National Jute Board cannot be blamed for repatriating the petitioner. It is seen that the petitioner has not suffered any financial or other loss except the luxury of working outside the scope of the defence Rules.

The repatriation to the Indian Air Force of the petitioner cannot and shall not be treated as a stigma under any circumstances for all future purposes.

No interference is, therefore, called for in the instant writ petition.

With the aforesaid observations, the writ petition is disposed of.

In view of disposal of the writ petition, the connected application being CAN 1 of 2020 (*Old CAN 5684 of 2020*) is also disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for,
be given to the parties on usual undertaking.

(Rajasekhar Mantha, J.)