

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: November 16, 2021

+ W.P.(C) 4690/2021 & CM No. 14458/2021

DR. A.S. SENTHI VADIVEL

..... Petitioner

Through: Mr. Lalan Chaudhary, Advocate

versus

THE UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC
for R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (ORAL)

1. This petition has been filed by the petitioner with the following prayers:

"It is, therefore, prayed that this Hon'ble Court may kindly be pleased to:

a) Quash the order No.10/121/2016-NCLT (Pt.II)-88 dated 17.02.2021 issued by the respondent No. 2 by which the offer of appointment sent to the petitioner for the post of Joint Registrar on deputation basis in NCLT, Hyderabad Bench is cancelled and the Communication No.3/1(3546)/Law-59/2020 dated 12.02.2021 of the respondent No.3 by which the petitioner was informed that "the matter has been examined by Ministry of Mines in consultation with DoPT and accordingly decided that the Officer cannot be relieved from a higher grade pay/scale of pay to a post in the lower grade pay/scale as per rules";

and

b) direct the respondent No. 2 to appoint the petitioner on deputation as Joint Registrar at NCLT Hyderabad;

c) Pass any other or further order which this Hon'ble Court may deem fit and proper, in facts and circumstances of the case, in the interest of justice."

2. The facts as noted from the petition are that respondent No.2, the National Company Law Tribunal ('NCLT', for short), Ministry of Corporate Affairs, had on August 16, 2018 invited applications for various posts including the post of Joint Registrar for NCLT Benches at various places including Allahabad, Chandigarh, Hyderabad, Kolkata and Mumbai, on deputation basis. The said post was in Pay Band-4 in the scale of ₹37,400 – ₹67,000 with Grade Pay of ₹8,700/- revised to Level-13 in Pay Matrix of 7th Central Pay Commission ('CPC', for short). The petitioner, who at the relevant point of time was working as Director (P&A) in the Geological Survey of India, in Pay Level-13, had applied for the post of Joint Registrar on deputation basis. After submission of the application, vide Memorandum dated November 19, 2020 he was promoted to the post of Deputy Director General (P&A) in Pay Level-14 effective from December 4, 2019.

3. That on January 15, 2020, a communication was issued by the NCLT calling upon the petitioner to appear for interview to be held on January 28, 2020. The petitioner did appear before the Selection Committee for interview on January 28, 2020. The petitioner having been found successful in the interview process,

a communication dated September 2, 2020 was issued by the respondent No.2 / NCLT to the Director General of the Geological Survey of India, Kolkata calling upon him to relieve the petitioner within 15 days from the date of receipt of the letter to enable the petitioner to report for duty at NCLT, Hyderabad Bench. It appears, pursuant thereto, the petitioner vide his communication dated September 4, 2020 requested the respondent No.3, i.e., the Director General, Geological Survey of India to relieve him from his duties in the said organization on or before September 16, 2020 to enable him to report to the authorities at Hyderabad. It appears that on January 12, 2021, respondent No. 3 in a communication to the petitioner giving reference to his request for relieving him to join the post of Joint Registrar, NCLT, Hyderabad Bench on deputation basis, conveyed to him that the same has not been approved by the competent authority, which made the petitioner to have a legal notice issued to the respondent No.3 citing a Judgment of the Supreme Court in the case of **Ashok Kumar Ratilal Patel v. Union of India & Anr. (2012) 7 SCC 757**, requesting the authorities to relieve him to join the post in question. Subsequently, vide communication dated February 12, 2021, respondent No. 3 reiterated its stand that the matter has been examined by the Ministry of Mines in consultation with the Department of Personnel and Training ('DoP&T', for short) and accordingly it was decided that an officer cannot be relieved from a higher grade pay/ scale of pay to a post in the lower grade pay/ scale of pay as per rules. Pursuant thereto, even the respondent

No.2 vide its communication dated February 17, 2021 to the Deputy Director (P&A) for Director General of the Geological Survey of India, Kolkata decided to cancel the offer sent to the petitioner which was communicated vide letter dated September 2, 2020 for the post of Joint Registrar on deputation basis.

4. A counter-affidavit has been filed on behalf of respondent Nos.1 & 3, wherein the facts as noted above are not disputed and it is stated that when the petitioner had applied for the post of Joint Registrar, NCLT on October 15, 2018, he was serving on an analogous post of Director (P&A) in Pay Band-4 in the pay-scale of ₹37,400 – ₹ 67,000 with Grade Pay of ₹8,700/- in the Geological Survey of India. Subsequently, the petitioner was promoted to the post of Deputy Director General (P&A) in the pay-scale at Level-14 of Pay Matrix in 7th CPC of ₹1,44,000 - ₹2,18,200/- vide Memorandum dated November 19, 2019 in terms of the approval granted by the ACC which has been accepted by the petitioner. It is thereafter that the petitioner was selected for the post of Joint Registrar in NCLT and selection letter dated September 2, 2020 was issued. Based on these facts, relieving of the petitioner on deputation was considered but was not approved by Ministry of Mines in consultation with the DoP&T as the instructions do not permit a person in a higher grade pay / scale of pay to join a post in lower grade pay / scale of pay on deputation.

5. Mr. Lalan Chaudhary, learned counsel appearing for the petitioner would reiterate the facts and rely upon the Judgment in the case of *Ashok Kumar Ratilal Patel (supra)* to contend that

the deputation of the petitioner being an appointment on deputation, not a transfer on deputation, the petitioner's case is squarely covered by the said Judgment of the Supreme Court. He is required to be relieved by the respondent No. 3 to enable him to join the post of Joint Registrar in NCLT, Hyderabad Bench.

6. On the other hand, Mr. Anurag Ahluwalia, learned CGSC appearing for respondent Nos. 1 to 3 would contend that the petitioner is not entitled to any relief for two reasons; primarily, before he was given the offer of appointment as Joint Registrar, NCLT, he had been promoted to the higher post of Deputy Director General (P&A) which is in Level-14 of Pay Matrix in the 7th CPC unlike the post of Director (P&A), which was in Level-13 of the Pay Matrix in 7th CPC on which he was working at the time of submitting the application. Secondly, the Office Memorandum ('OM', for short) issued by the DoP&T dated June 17, 2010 clearly states that a person in a higher grade pay / scale of pay shall not be appointed to a post in lower grade pay / scale of pay on deputation. He states, had the petitioner been appointed to the post of Deputy Director General (P&A) before submitting the application for appointment, he could not have applied to the post being on a higher post which would surely disentitle him to be considered and appointed to the post of Joint Registrar, NCLT. He also states the Judgment relied upon by the learned counsel for the petitioner in the case of **Ashok Kumar Ratilal Patel** (*supra*) is not applicable in the facts of this case inasmuch as that was a case of withdrawal of offer of appointment whereas the present case is a case of denying permission for release on

deputation. Secondly, in *Ashok Kumar Ratilal Patel (supra)*, the appointment was withdrawn by the borrowing department, whereas in the present case, the petitioner's release is being objected to by his parent / lending department. Further in the said case, the parent organization had no objection for his release, which is not the case herein.

7. Having heard the learned counsels for the parties and perused the record, the only issue which arises for consideration in this petition is whether, the respondents are justified in not relieving the petitioner for his joining the post of Joint Registrar in NCLT, Hyderabad Bench and withdrawing the offer given to the petitioner in that regard. The case of the respondents is made primarily by relying upon the OM dated June 17, 2010, which stipulates that a person in higher grade pay / scale of pay shall not be appointed to a post in lower grade pay / scale of pay, on deputation, whereas the case of the petitioner is that the same is permissible in view of the Judgment of the Supreme Court in *Ashok Kumar Ratilal Patel (supra)*.

8. Having noted the issue and the broad submissions as made by the counsels, it is a conceded case of the petitioner that, when he submitted the application on October 15, 2018 pursuant to the advertisement / notification calling for applications for various posts including the post of Joint Registrar, he was working as Director (P&A) in the Pay Band-4 in the scale of ₹37,400 – ₹67,000 with Grade Pay of ₹8,700/- which was revised to Level-13 in Pay Matrix of 7th CPC. But while his application was pending consideration, vide Memorandum dated November

19, 2019, upon the approval of the ACC, the petitioner was promoted as Deputy Director General (P&A) in Level-14 of Pay Matrix in 7th CPC of ₹1,44,000 - ₹2,18,200/-. In other words, the post to which the petitioner was promoted to, was not analogous to the post of Joint Registrar in NCLT. The notification / advertisement, shows the following eligibility:

“Officers of the Central Government or State Governments or Union Territories or High Courts/ Supreme Court/Courts or Tribunals or statutory Organization or State/Higher Judicial Service holding:-

- (a) (i) analogous post on regular basis in the parent cadre or department; or*
- (ii) a post in Level-12 in Pay Matrix of 7th CPC with five years regular service, or*
- (iii) a post in Level-11 in Pay Matrix of 7th CPC with ten years regular service.*
- (b) (i) Degree in Law from a recognized University, and*
- (ii) Experience in personnel and administrative matters.”*

The above reveals that the eligibility for the post is Level-13 (analogous post), Level-12 with five years of service or Level-11 with ten years of service. The Level-14 officer was not eligible to the post. Had the petitioner got the promotion before he applied for the post in question, his application would not have been forwarded by his employer for the simple reason that he was not eligible, being in Level-14, to the apply for the said post. Having got promotion to the post of Deputy Director General (P&A) before interview, the petitioner was not eligible to be considered for deputation on the date of interview. Merely because the petitioner was interviewed and granted offer of

appointment shall not make the appointment valid, as the same was not in accordance with the notification / advertisement. There may be many Level-14 officers who could not have applied for the post being ineligible.

9. The OM dated June 17, 2010 on which the respondents have relied upon which is reproduced as under states that a person in a higher grade-pay / scale of pay shall not be appointed on deputation to a post in a lower grade-pay / scale of pay:

“xxx xxx xxx

3.3. A person in a higher Grade Pay / scale of pay shall not be appointed on deputation to a post in lower Grade Pay / Scale of pay if the deputation is from Central Government to Central Government and also in cases where the scale of pay and dearness allowance in the parent cadre post and ex-cadre post are similar.

xxx xxx xxx”

10. After the petitioner was found successful, a letter dated September 2, 2019 was issued by the NCLT, confirming and intimating his selection to the post of Joint Registrar, NCLT, Hyderabad Bench and requesting his employer / respondent No.3 to relieve him to enable him to join the post. The petitioner had also written a letter dated September 4, 2020 to the employer / respondent No.3 to relieve him, which request was declined on the ground that he was holding a higher post of Deputy Director General (P&A) in Level-14 of Pay Matrix of 7th CPC and in view of the OM dated June 17, 2010 which is reproduced above, a

person working in higher grade-pay / scale of pay cannot be appointed on deputation to a lower grade-pay / scale of pay.

11. Mr. Chaudhary has heavily relied upon the Judgment in the case of ***Ashok Kumar Ratilal Patel (supra)*** wherein the Supreme Court in Paras 13, 14 and 15 has held as under:

“13. Ordinarily transfers on deputations are made as against equivalent post from one cadre to another, one department to another, one organisation to another, or one Government to another; in such case a deputationist has no legal right in the post. Such deputationist has no right to be absorbed in the post to which he is deputed. In such case, deputation does not result into recruitment, as no recruitment in its true import and significance takes place as the person continues to be a member of the parent service.

14. However, the aforesaid principle cannot be made applicable in the matter of appointment (recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organisation or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be followed. No person can be discriminated nor is it open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person who applies for appointment on deputation has an indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.

15. The present case is not a case of transfer on deputation. It is a case of appointment on deputation for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the appellant. In such circumstances, it was not open for the respondent to argue that the appellant has no right to claim deputation and the respondent cannot refuse to accept the joining of

most eligible selected candidate except on ground of unsuitability or unsatisfactory performance.”

12. From the perusal of the aforesaid paras, it is noted that the petitioner in that case was sent on deputation carrying a lower pay scale and the borrowing department was of the view that they would not be in a position to pay the petitioner therein a higher pay-scale and the offer of deputation was withdrawn. The Supreme Court also held that appointment in that case was not a transfer on deputation, but is a case of appointment on deputation for which advertisement was issued and after due selection the offer of appointment was issued to the applicant and hence, he is required to be dealt with fairly. It is settled law that, an appointment on deputation can be made from a higher scale to a lower scale, but I note, the eligibility of the petitioner was not an issue in the case relied upon. Consideration pre-supposes eligibility. So, the OM dated June 17, 2010 relied upon by the respondents has to be seen from the perspective that a person working in a higher pay level / scale (Level-14 in this case) is not eligible for a lower post (Level-13 in this case). So, seen from the perspective of eligibility in terms of the notification dated August 16, 2018 and the OM dated June 17, 2010, the impugned action cannot be faulted. Additionally, Mr. Ahluwalia is right in contending that the Judgment is distinguishable on facts inasmuch as in **Ashok Kumar Ratilal Patel (supra)**, there was a withdrawal of offer of appointment to the petitioner therein by the borrowing organization, whereas in the case in hand, the NCLT / respondent No.2 has cancelled the offer of appointment

dated September 2, 2019 issued to the petitioner because of the objection put forth by the parent / lending department of the petitioner. There was no such objection in the case of ***Ashok Kumar Ratilal Patel (supra)*** by the parent / lending department of the petitioner therein going on deputation to a post in a lower grade pay / scale of pay.

13. In view of my discussion above, the Judgment being distinguishable, I do not see any reason to interfere in the impugned action. The petition is dismissed.

CM No. 14458/2021

Dismissed as infructuous.

V. KAMESWAR RAO, J

NOVEMBER 16, 2021/jg