IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	08.06.2023
Pronounced on	:	27.06.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.No.17134 of 2020

and

W.M.P.No.21191 of 2020 and 28505 of 2021

1 Union of India ,
Rep. by the Controller General of Accounts,
M/o. Finance, Department of Expenditure,
E-Block, INA, MahalekhaNiyantrak Bhawan,
New Delhi -23.

2 The Principal Chief Controller of Accounts,
M/o. Home Affairs, Heritage Building,
MDC National Stadium,
New Delhi- 110 002.

3 The Senior Accounts Officer, (Admn),
O/o the Principal Accounts Office (Admn),
M/o Home Affairs, Room No.6, second Floor,
Open Gallery, MDC National Stadium,
New Delhi -110 002.

4 The Senior Accounts Officer (Admn),
Regional Pay & Accounts Office,
CISF, MHA, 'D' Wing,
Rajaji Bhawan, Besant Nagar,
Chennai -600 090.

5 The Director General,
All India Radio,
Akashwani Bhawan,
Parliament Street,
New Delhi -110 001.

6 The Deputy Director (Engineering)/HOO
Doordarshan Kendra, Altinho,
Panaji, Goa 403 001.

7 The Assistant Estate Manager
Director of Estates,
Shastri Bhawan, Nungambakkam
Chennai -600 006. ... Petitioners

Vs.

1 The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai – 104.

2 S.T.Balamurugan ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of first respondent in O.A.No.1459 of 2017 dated 14.02.2020 in disposing the O.A filed by the second respondent with directions and quash the same.

For Petitioners	...	Mr.P.G.Santhosh Kumar
For R-1	...	Court
For R-2	...	Mr.P.Ulaganathan

ORDER

This Writ Petition has been filed by the petitioner to issue a Writ of Certiorari or any other writ or order, direction in the nature of Writ calling for the records of first respondent in O.A.No.1459 of 2017 dated 14.02.2020 in disposing the O.A filed by the second respondent with directions and quash the same and pass such order order or orders as may deem fit in the circumstances of the case.

2. The gist of the case of petitioner are as follows,

(i) The second respondent was working as LDC in Doordarshan Kendra, Panaji, Goa. The petitioners called for applications for the post of Accountant, purely on transfer of deputation basis. The second respondent applied for the said deputation and he was selected for deputation to Regional Pay and Accounts Office, (RPAO), CISF, Chennai as an Accountant for a tenure of three years in the Pay Band of Rs.5200-20200

(PB-1) with grade pay of Rs.2800/vide Principal Accounts Office MHA Letter No.10-64/Dep/Acctt/LDC/Dep/PrAo/Admn/MHA/1410-11/3679 dated 11.02.2011. As per the Controller General of Accounts (CGA) Recruitment Rules issued vide notification dated 24.01.2012, a deputationist with an exceptionally good performance, on completion of two years of deputation may be considered for absorption in public interest, subject to prior concurrence of the parent cadre and the CGA.

(ii) The second respondent after joining duty, within a period of seven months i.e., 18.11.2011 had submitted a representation and another representation dated 29.11.2012, expressing his conditional willingness for absorption in RPAO (CISF), Chennai. The second respondent's representation was not considered, due to the fact that vacancies of Accountant under Direct Recruitment Quota were available at Delhi/Kolkata Stations and no vacancy available in Chennai Station. In the year 2013, a total number of 14 deputationists were absorbed in DAO, Ministry of Home Affairs. Among those 14 deputationist, 13 were working at Delhi station and 1 was working at Kolkota station.

(iii) After 08.10.2013 no deputationist was absorbed, due to the receipt of large number of dossiers from Staff Selection Commission for appointment to the post of Accountant under Direct Recruitment Quota as well as change in absorption policy of the office of the CGA. In the month of October 2014 and in July 2015, clear cut instructions were issued that, no case for absorption be considered and referred to office of CGA for consideration and all deputationist on completion of their term shall stand repatriated to their parent departments.

(iv) The second respondent filed an Original Application in O.A.No,1761 of 2015 before the Central Administrative Tribunal (CAT) to direct the respondents to permanently absorb the applicant as Accountant, from the date of absorption of applicant's immediate junior Thiru.Shivraj Singh, a deputationist, 4^{th} respondent who was absorbed as Accountant in CGA services with effect from 16.01.2013, at Chennai, within a time frame, with all attendant and consequential benefits, at par with Thiru.Shivraj Singh, 4th respondent. The said OA was disposed on 18.04.2016 with a direction that, the applicant is given liberty to file a detailed representation to the respondent authority, whereupon the respondent authority concerned after giving a personal hearing to the applicant, shall give a detailed reply concerning the objectivity involved in such absorption and the reason as to why the applicant was not absorbed by a speaking order and accordingly communicate the same within a period of one month thereafter and further directed the respondents to consider the applicant's case for absorption, if the applicant is found exceptionally good.

(v) During the pendency of the above said OA, the borrowing department i.e., the petitioners in Writ Petition have relieved the second respondent through proceedings dated 08.03.2016 and he was relieved with effect from 31.03.2016. Based on the order of Tribunal dated 18.04.2016, the second respondent made a representation to the Writ petitioners on 02.05.2016. The Writ petitioners also afforded personal hearing to the second respondent on 06.06.2016 and passed a detailed speaking order on 05.07.2016. Again the second respondent made representations on 08.08.2016 and 01.09.2016, requesting for extension of his deputation for a period of two years from 01.04.2016 in Chennai office on humanitarian ground. The second respondent by another representation dated 08.09.2016 has stated that, he was fully satisfied with the speaking order dated 05.07.2016 and had nothing to represent against the same. Further, he had stated that, since he had to join the parent office on 01.10.2016, he had requested for extension of deputation for the 6th year from 01.04.2016 to 31.03.2017 and his extension shall not entitle him to any right for his absorption. The said representations were rejected by the writ petitioners through an Order dated 28.11.2016.

(vi) The second respondent after eight months from the date of speaking order i.e., 05.07.2016, filed another Original Application in O.A.No.310/00773/2017 in the month of July 2017, challenging the order dated 05.07.2016, on the grounds that, the speaking order was not in consonance with the directions of the Tribunal's order in O.A.No.1761 of 2015. The Tribunal by its order dated 13.07.2017 had set aside the order of the writ petitioners dated 05.07.2016 and directed the writ petitioners to pass speaking order in consonance with the directions of the Tribunal order dated 18.04.2016 in O.A.No.1761 of 2015. Thereafter, the writ petitioners have passed a speaking order dated 29.08.2017 by giving elaborate reasons. Aggrieved by the said order, the second respondent filed another Original Application in O.A.No.1459 of 2017 seeking absorption in CCAS cadre MHA and to extend his deputation period till 31.03.2018. The above said Original Application was disposed on 14.02.2020, by setting aside the order of writ petitioners dated 29.08.2017 and directed the writ petitioners to consider the absorption of the applicant, in the light of the discussions and pass order in accordance with the rules within a period of three months from the date of receipt of a copy of the order. Aggrieved by the said order, the writ petitioners filed this writ petition.

3. The respondent in his counter affidavit stated that the writ petitioners have kept pending the representation of the second respondent without passing order and processed the other applications of the deputationists and 14 persons were absorbed. The parent department also issued No objection certificate, but without considering the same, the petitioners repatriated the second respondent on 31.03.2016, while pending

O.A.No.1761 of 2015. Inspite of order passed by the Tribunal the writ petitioners have not considered the direction of the Tribunal and again forced to file another O.A.No.773 of 2017. Even after the order passed by the Tribunal, the petitioners did not consider the direction of the Tribunal. Finally the Tribunal has passed an Order directing the writ petitioners to consider the absorption of the second respondent. The Order passed by the writ petitioners dated 29.08.2017 is totally against the direction of the Tribunal.

4. The learned counsel appearing for the petitioners has argued that, first of all, the applicant had not completed the mandatory statutory period of two years as deputationist for consideration of absorption and he filed representations on 18.11.2011 and 29.11.2012. Infact the second respondent has completed his two years deputation period only on 31.03.2013. Therefore, the representations of the second respondent cannot be considered as they are prematured. The second respondent was repatriated to his parent department on 31.03.2016 and was relieved with effect from 31.03.2016. Already the writ petitioners have passed reasoned

orders rejecting the second respondent's representations.

5. The above said order has not been challenged immediately and the second respondent while seeking extension of time for deputation, stated that, his extension shall not entitle him to any right for his absorption. Already a reasoned order was passed by the writ petitioners, however, the Tribunal has passed order directing the writ petitioners, as to why second respondent was not absorbed and other 14 persons were absorbed. For that, the writ petitioners have passed an elaborate speaking order dated 29.08.2017. Without considering the same, the Tribunal had set aside the order of the writ petitioners. The Tribunal has relied on the Judgment in **O.A.No.3478 of 2016** in the case of ***Ms.Saritha Kapoor Vs.UOI through Secretary, M/s Finance & others***. However, this Judgment will not be applicable to the facts of this case. In the present case, in the advertisement, there was no reference regarding permanent absorption, wherein, in the **Saritha Kapoor's case**, in the advertisement itself, there was a reference about the permanent absorption after successful completion of two years of deputation. Further in the present case, the scrutiny committee has not

scrutinized the case of the second respondent. The case of the second respondent was not referred to scrutiny committee, as there was no vacancy. Thus, he prays for quashing of Order passed in O.A.No.1459 of 2017 dated 14.02.2020 by the 1st respondent.

6. The learned counsel appearing for the second respondent has pointed out that, the applicant has been unjustly denied his rightful claim for absorption for the post of Accountant. The recruitment rules provides that a deputationist with an exceptionally good performance, on completion of two years of deputation may be considered for absorption in public interest, subject to prior concurrence of the parent cadre and the Controller General of Accounts. There is no dispute with regard to the office of the 4th petitioner, where second respondent was working on deputation had certified as exceptionally good and recommended for his absorption. Inspite of No Objection certificate given by the parent department for his absorption, the writ Petitioners denied for his absorption. The second respondent has filed O.A.No.1761 of 2015 before the 1st respondent Tribunal and the same was allowed through order dated 18.04.2016 with a

direction that "there are no details found set out as to why the other 13 persons were absorbed and directed to file fresh application. The second respondent gave a representation on 02.05.2016 to the writ petitioners for consideration of his absorption and the same was also not considered and rejected by an Order dated 05.07.2016. As against the said order, the second respondent filed O.A.No.773 of 2017 and the same was also ordered in favour of the second respondent through an order dated 13.07.2017. Even after the direction of the Tribunal, the writ petitioners have not considered the representation and once again rejected the representation through order dated 29.08.2017 and the same was challenged before the Tribunal in O.A.No.1459 of 2017. After elaborate hearing, the Tribunal has directed the writ petitioners to consider the applicant for absorption through an Order dated 14.02.2020. The writ petitioners deliberately kept the application of the second respondent pending, without passing any order of absorption and absorbed 14 persons in the year 2013. The Tribunal also relied upon the Judgment of ***Mrs.Saritha Kapoor's case*** and rightly allowed the application and further, as per the decision made by Hon'ble Supreme Court of India in the case of

Rameshwar Prasad Vs. MD UP Rajkiya Nirman Nigam Ltd, the writ petitioners cannot pick and choose by acting arbitrarily. Therefore, the order passed by the Tribunal is reasonable and in accordance with law, thereby writ petition is liable to be dismissed

7. Heard the submissions of the learned counsels appeared for both sides and perused the records.

8. In this case, the following facts are admitted,

(i) Second respondent was deputed to the borrowing department i.e., the writ petitioners' department for three years and thereafter, extended his deputation upto 5 years by several orders.

(ii) That, initially the deputation period was only 3 years and it is mandatory that, the deputationist has to complete 2 years for considering absorption as per Central Civil Accounts Service (Accountant and service Accountant Group C posts) Recruitment Rules, 2010.

(iii) The second respondent has requested to extend his tenure of deputation through letter dated 18.11.2011 and 29.11.2012 and the date of the 2 years of completion of deputation of the second respondent is on 31.03.2013.

(iv) The absorption cannot be claimed as a matter of right and consent has to be obtained from the parent department and the borrowing department.

(v)There is no mention about the permanent absorption in the advertisement for inviting applicants for deputation.

(vi)The second respondent was relieved from the borrowing department on 31.03.2016. The question of absorption of the second respondent arises only after the completion of 2 years i.e., after 31.03.2013.

9. In this case firstly, there is no record to show that, the second respondent had applied for his absorption after completion of statutory period 2 years of his deputation. Further as per rules, there are other qualifications, which should also be taken into account while absorbing the deputationists. The second respondent himself admitted in his request letter for extension dated 08.09.2016 that, he is not claiming absorption as a

matter of right and his extension cannot entitle him to his absorption. The main condition for absorption is that consent shall be obtained from the parent cadre and from the Controller General of Accounts (CGA). In this case, the parent department had only gave consent in the form of No Objection Certificate that too prior to the date of completion of 2 years as deputationist, but the CGA has never considered the case of the second respondent for absorption. Therefore, the condition as per the Recruitment Rules, that the concurrence of parent cadre and CGA has to be obtained, which has not been complied.

10. The contention of the second respondent is that, he made representations on 18.11.2011 and 29.11.2012 but those representations were prematured and no application was filed by the second respondent after completion of statutory period of 2 years as per Rules. Thereby his above said contention is not an acceptable one. Further, the second respondent had requested for his extension after three years. At that time, the second respondent did not question about his process of absorption and requested for extension of his deputation and the same was considered by

the borrowing department, after consultation with the parent department. In the meantime, the second respondent filed O.A.No.1761 of 2015 before the Central Administrative Tribunal for his absorption and the same was allowed on the ground that, there are no details found set out, as to why the other 13 persons were absorbed and there was no intimation to the applicant. Further, liberty was given to the applicant to file detailed representation to the respondent authority, whereupon the respondent authority concerned, after giving a personal hearing to the applicant, shall give a detailed reply concerning the objectivity involved in the absorption and the reason as to why the applicant was not absorbed by a speaking order and accordingly communicate the same within a period of one month thereafter. In the meantime, during pending O.A.No.1761 of 2015 the second respondent deputation was not extended and he was relieved from borrowing department on 31.03.2016.

11. Therefore, on date of the order passed by Tribunal on 18.04.2016, the second respondent was not working under the writ

petitioners. As admitted by the both parties that pending O.A.No.1761 of 2015, Interlocutory Application was filed by the deputationist by stating that, the repatriation order to be passed by the borrowing department and the Tribunal also passed interim order to grant leave to the second respondent, whatever he entitled as per rules in the event of passing repatriation order. While so, there is no challenge to the order passed by petitioners regarding repatriation of the second respondent. Once the second respondent was relieved from the duty by the borrowing department, the question of representation and reconsideration for absorption would not arise, as there was no relationship of borrowing department and deputationist between the parties. Though the repatriation order was passed during the pendency of O.A.No.1761 of 2015, once the second respondent having knowledge of the repatriation order, he ought to have challenged the repatriation order, but he failed to do so. Therefore, the order of Tribunal regarding fresh representation is not valid according to law, when the second respondent was relieved from the borrowing department. However, as directed by the Tribunal the writ petitioners have passed elaborate order dated 05.07.2016 on the representation given by the second respondent dated 02.05.2016, stating that, the second respondent cannot be absorbed for the reason that,

(a) There was no vacancy of Accountant under direct recruitment quota at Chennai Station.

(b) Receipt of surplus number of dossiers for the post of Accountant from Staff Selection Commission (SSC), through the office of Controller General of Accounts, i.e., 10 dossiers against 3 vacancies.

(c) Issue of order of appointment to all the 10 candidates sponsored by SSC by assimilating transfer of posts from other units of DAO, MHA to RPAO (CISF), Chennai.

12. After the said order dated 05.07.2016, the second respondent has given representations to the writ petitioners dated 08.08.2016, 01.09.2016 and 08.09.2016 for extension of his deputation. In the representation dated 08.09.2016, the second respondent stated that,

> *"In pursuance of Pr.AO(Admn), MHA, C-1 Hutments, Dalhousie Road, New Delhi Order No.10/64/DEP/ACCTT/PrOA/Admn/MHA/2016-17/4698-4700 dated 05th July 2016 in compliance of the Hon'ble*

CAT Madras Bench, Chennai OA.No.1761/2015, regarding my request for absorption in DAO, MHA, I Sh S T Balamurugan, LDC, Prasar Bharti hereby confirm that I am fully satisfied with the said speaking order and I have nothing to represent against the same.

....

I understand that the extension of deputation tenure for the 6th year shall not entitle me any right to claim my absorption as a matter of right and also not seek extension beyond 6th year/unless happened in due course."

Therefore, after the order passed by the writ petitioners on 05.07.2016, the second respondent has not challenged the order immediately.

13. Per contra, he gave representation for extension of his tenure for his deputation. In that request dated 08.09.2016, he made statement that, he is fully satisfied with the speaking order and nothing to represent against the same and also his extension of time shall not entitle him any right to claim any absorption as a matter of right. While sending representations for extension of time, the second respondent has never insisted for his absorption and only sought for extension of time. Therefore, even according

to the second respondent, he agreed with the order dated 05.07.2016 passed by the borrowing department by denying his absorption. Further, in the order dated 05.07.2016 itself, the petitioners have categorically stated the reasons for non absorption. In the meantime, the writ petitioners i.e., borrowing department passed orders on those representations of the second respondent through order dated 28.11.2016 by negativing the claims of second respondent for extension of deputation.

14. After rejection of his extension of deputation by the Principle Account Office (ADMN), through order dated 28.11.2016, the second respondent repeatedly made several representations for 2 years for extension of his deputations. Then again on 16.01.2017, 03.03.2017 and 01.05.2017 made representations for extension of deputation and for absorption. On 21.06.2017, the borrowing department has passed order that, order dated 05.07.2016 had already conveyed to the second respondent that his request for permanent absorption in RPAO (CISF) Chennai could not be agreed due to administrative constraints, which was also accepted and confirmed by the second respondent vide his

representation dated 08.09.2016. Further, Official Memorandum dated 28.11.2016 had already informed the second respondent that, his request regarding extension of tenure on domestic ground, could not be acceded by competent Authority due to administrative reasons and copy was also sent to the parent cadre. In view of the facts explained above, at present, no action is pending in his office, with regard to the aforesaid representations submitted by the second respondent. Further, in the said order itself, clearly stated that, the second respondent obviously could have joined to his parent cadre, since he was already being relieved/repatriated by the office of CGA with effect from 31.03.2016. More over, after repatriation, the service matters of repatriated deputationists is dealt by his parent cadre.

15. Therefore, as stated in the Order dated 21.06.2017, once the deputationist was repatriated to his parent cadre, he ought to have filed his representation only through his parent cadre. Moreover, the second respondent did not challenge the repatriation immediately after passing the orders. The second respondent filed another O.A.No.773 of 2017 and the same was also allowed by the Tribunal by an Order dated 13.07.2017. In

the said O.A.No.773 of 2017, the Tribunal has passed orders by setting aside the order of the writ petitioners dated 05.07.2016 and directed the writ petitioners to pass a speaking order strictly in compliance of the directions of the Tribunal contained in the order dated 18.04.2016 within a period of one month from the date of receipt of a copy of the order.

16. In the said O.A.No.773 of 2017, the second respondent did not challenge the repatriation order dated 08.03.2016. Per contra, awaited for the extension of his deputation and having failed in the extension, the second respondent filed the O.A.No.773 of 2017, with delay for a period of 8 months, from the date of order passed by the writ petitioners. In the earlier representation dated 08.09.2016, the second respondent agreed the order of borrowing department dated 05.07.2016 and thereafter, having failed in his attempts for the extension of deputation period, he changed his version and filed the O.A.No.773 of 2017, without challenging the repatriation order dated 08.03.2016 and the rejection order of his extension and absorption order dated 28.11.2016. This attitude of the second respondent shows that his primary concern is about his extension of tenure

for deputation and after unsuccessful in his attempts, he filed the Original Application. More over, on the date of filing of O.A.No.773 of 2017, there was no relationship between the parties as borrowing department and deputationist, as the second respondent was relieved on 31.03.2016.

17. According to the petitioners, as ordered by the Tribunal leave was granted to the second respondent from 01.04.2016 to 30.09.2016. It is pertinent to note that, the borrowing department can only credit the leave of deputationist and cannot grant leave to him after his repatriation to his parent cadre. However, the Tribunal passed order directing the writ petitioners to grant leave as per rules. Once repatriation order is passed and deputationist is relieved, the borrowing department cannot grant any kind of leave and it ought to have sent the leave particulars to the parent cadre. Even assuming that, he was on leave, his leave period was also ended on 30.09.2016. On the date of filing of O.A.No.773 of 2017, the second respondent was not working under the borrowing department. Once the second respondent was relieved from the office of borrowing department, without challenging the order of repatriation dated 08.03.2016, the filing of

O.A.No.773 of 2017 is not maintainable, as there was no relationship as borrowing department and deputationist. Therefore, the filing of O.A.No.773 of 2017 is not in accordance with law. However, based on the order of the Tribunal the writ petitioners have passed reasoned speaking order dated 29.08.2017, which is the impugned order herein.

18. In the said order, the writ petitioners have clearly stated the reason for non absorption of the second respondent. The reasons stated are in para 8,

> *"As fas as objectivity and reason behind considering the case for absorption of above mentioned 06 deputationists/not considering the case of applicant's concerned, we may once again refer to the Annexure-I mentioned above, wherein following is evident:-*
>
> *(a) Applicant initially applied for absorption at Chennai Station specifically vide his representation dated 18/11/2011 and subsequent representation dated 13/03/2012 and accordingly his parent department i.e Prasar Bharti on 05/12/2012 gave "NOC" on the line of representation for his absorption at RPAO CISF, Chennai itself (copy enclosed).*

(b) It is pertinent to mention here that main objective to absorb (secondary method of recruitment) the official is to fill the vacancy of Accountant in DAO, MHA, in case primary source of recruitment i.e Direct Recruitment Quota vacancy remains unfilled through SSC, so that day to day functioning of the office does not hamper. All other conditions, such as "Exceptionally good performance" etc are to be assessed only when main condition i.e availability of vacancy under DRQ is fullfilled.

(c) For absorption vacancy is the primary necessity for initiating/considering any case. Applicants case for permanent absorption could not be considered only due to unavailability of vacancy of Accountant under DRQ at Chennai station, whereas during the same period (in between 18.04.13 to 08.10.13) 06 similarly placed officials were considered since there were vacant posts of Accountant under DRQ at the Delhi/Kolkata stations where these deputationists joined and submitted willingness for absorption (Annexure-I).

(d) The reasons for "NIL" vacancy under DRQ at Chennai Station (during the aforesaid period) was that the SSC

sponsored 10 dossiers of Accountants on 10 July 2012, for their appointment at Chennai Station in DAO, MHA. At that time RPAO CISF, Chennai has only 03 vacancies (including one held by applicant Sh S T Balamurugna on deputation basis as stop gap arrangement until the dossiers are received under DRQ from SSC). These 10 dossiers were assimilated by appointment of candidates/cancellation of dossiers(in case of non acceptance) and this whole process ended in the year 2014. The contention of the applicant that he was on a post in Chennai and the vacaný would fall vacant, if he would have been repatriated is incorrect, since dossiers sponsored by SSC was pending at that time for appointment of fresh recruits as Accountant at Chennai Station for that particular post.

(e) The applicant was not considered for absorption along with other similar placed persons only on the ground of non availability of vacancy under "DRQ" at Chennai Station due to pendency of dossiers sponsored by SSC at Chennai Station during that period. The process of cancellation of these dossier completed in the year 2014 when the process of absorption of similar placed persons was already concluded in this office in between the period 18.04.13 to 08.10.13. Thereafter (ie. after 08.10.13) to till date this office did not refer any case of deputationist to CGA for absorption in DAO,

MHA due to receipt of large number of dossiers from SSC for appointment to the post of Accountant under direct recruitment quota as well as change in the absorption policy of the office of Controller General of Accounts in the month of Oct 2014 and subsequently in month of July 2015, wherein clear cut instructions were issued that no case for absorption be considered and referred to CGA for consideration and all deputationists on completion of their term shall stand repatriated to their parent departments.

(f) It is further added that applicant has submitted his willingness for absorption at initial stage in Chennai station only, on the basis of which his parent department has also given NOC' for his absorption at Chennai Station (refere at Para (a) above), so the contention of the applicant that he submitted his willingness in any vacancy anywhere in India is also incorrect."

19. According to the writ petitioners, there was no vacancy and thereafter, Staff Selection Commission has sponsored 10 dossiers of Accountants on 10.07.2012 for their appointment in Chennai station against three vacancies, thereby the case of the second respondent was not

considered for absorption. The applicant was not considered for absorption along with other similar placed persons, only on the ground that vacancies available at Chennai Station were filled up by Staff Selection Commission during that period. The process of cancellation of those dossier completed in the year 2014 when the process of absorption of similar placed persons was already concluded between the period 18.04.2013 to 08.10.2013. Thereafter (ie. after 08.10.13) to till date this office did not refer any case of deputationist to CGA for absorption in DAO, MHA due to receipt of large number of dossiers from SSC for appointment to the post of Accountant under direct recruitment quota as well as change in the absorption policy of the office of Controller General of Accounts in the month of Oct 2014 and subsequently in month of July 2015, wherein clear cut instructions were issued that no case for absorption be considered and referred to CGA for consideration and all deputationists on completion of their term shall stand repatriated to their parent departments.

20. Therefore, from the order dated 29.08.2017 passed by the writ petitioners, it is clear that, it is a reasoned order and direction of the Tribunal is also complied. Thereafter, the second respondent filed

O.A.No.1459 of 2017 before the Central Administrative Tribunal by challenging the impugned order. The relieves are to set aside the order dated 29.08.2017, to set aside the repatriation order dated 08.03.2016 and the order passed by the CGA dated 21.06.2017. The repatriation order was passed as early as on 08.03.2016, but the same was not challenged immediately. Moreover the second respondent filed O.A.No.773 of 2017 in the month of July 2017, but failed to challenge the repatriation order dated 08.03.2016. Now after thought belatedly challenged the order dated 08.03.2016. Therefore, the prayer regarding repatriation order on 08.03.2016 itself is lack of merits. As far as prayer regarding absorption is concerned, already detailed order was passed on 05.07.2016 and the same was accepted and acted upon by the second respondent vide letter dated 08.09.2016. However, the borrowing department as ordered by the Tribunal once again passed detailed order by giving reasons for non absorption of the second respondent. As far as the prayer regarding order dated 21.06.2017 is concerned, it is subject to prayer of order dated 05.07.2016. Moreover, in the order dated 21.06.2017, it is clearly stated that already orders dated 05.07.2011 and 28.11.2016 were informed to second respondent and he was relieved on 31.03.2016 and his leave also ended on 30.09.2016 and after repatriation, the subject matter of a repatriated deputationist is dealt by the parent cadre. Therefore, the order of borrowing department is reasonable once and no infirmities found in the order.

21. The second respondent contention is that, similar persons were absorbed in the year 2013, but his case has not been considered for absorption. For that, the petitioners have answered stating that, there was no vacancy in Chennai and first of all, second respondent was eligible for absorption only after 31.03.2013 and thereafter, there was no vacancy and then the CGA issued notification not to absorb any persons due to change in the absorption policy.

22. The Tribunal in the order dated 14.02.2020 in para 11 onwards discussed about the case and finally allowed the application in O.A.No.1459 of 2017 by directing the respondents therein/writ petitioners herein to consider the absorption of the second respondent. Further there is

an order about the repatriation that, without absorption the repatriation was not correct. The Tribunal failed to note that repatriation order was not challenged by the second respondent in the earlier proceedings. Further, the Tribunal has taken into account of the fact that, subsequently in the year 2019 and 2020, the petitioners have absorbed some persons, but those absorption cannot be questioned now as the second respondent was relieved as early as on 31.03.2016. Once the second respondent was relieved from the post, he cannot question the subsequent events. The Tribunal has given reasons for allowing the O.A.No.1459 of 2017 are that the Hon'ble High Court of Delhi in ***Ms.Saritha Kapoor Vs.UOI through Secretary, M/s Finance & others,*** held that, the impugned order shows that the vacancies were considered at the time of absorption and not at the date of deputation. Therefore, the stand taken by the respondent in O.A.No.1459 of 2017 in rejecting the applicant's absorption is not correct.

23. But from the inception, the writ petitioners had taken stand that, there was no vacancy in Chennai during the year 2013 i.e., after completion of statutory mandatory period of 2 years of deputation. The other

deputationists were absorbed in Delhi and Kolkata. Further, there was no proper application filed by the second respondent, after completing the statutory period of 2 years, thereby this case was not sent to scrutiny committee and thereafter, due to ban order passed by CGA for absorption, the case of second respondent was not considered. These facts are reflected in the order dated 29.08.2017. Therefore, the reasons stated by the writ petitioners are acceptable. Further, the permanent absorption cannot be claimed as a matter of right. The above said aspects were not considered by the Tribunal. Further, the Tribunal failed to take into account that the second respondent agreed the order dated 05.07.2016 through his representation dated 08.09.2016 and awaited for 8 months and then only filed O.A.No.773 of 2017 that too without challenging the repatriation order and again filed O.A.No.1459 of 2017. Further the Tribunal failed to note that pre conditions for absorption as per Rule is that, consent of parent cadre and CGA and in this case the parent cadre has only given consent and CGA has not given any consent for permanent absorption of the second respondent and thereby the pre condition for permanent absorption has not been complied.

24. Further, the second respondent has not questioned his absorption till 2015. From 01.04.2013 onwards, he was eligible for absorption, but he was waiting till 2015 and filed first writ petition only in the year 2015 and during the pending of the said writ petition, he was repatriated to his parent department and the said order was also not challenged. Further, according to the petitioners, first of all, the second respondent has to complete his tenure of two years as deputationist and his case has to be sent for No Objection from the parent department and thereafter, documents have to be sent to the scrutiny committee to scrutinize the papers of the second respondent. In this case, papers were not sent to the scrutiny committee, since he did not complete 2 years deputation period. Further, in the case of ***Ms.Saritha Kapoor Vs.UOI through Secretary, M/s Finance & others,*** in the advertisement itself, there is a reference about the permanent absorption after two years of deputation period. In the present case, there is no any reference about the absorption. Therefore, the facts in **Mrs.Saritha Kapoor's case** will not be applicable to the present facts of the case. Further, the similar placed persons were absorbed in the year 2013, but the

second respondent name was not considered, for the reason that, there was no vacancy in Chennai and already Staff Selection Commission has sponsored candidates through direct recruitment. It is an admitted fact that, the second respondent cannot seek absorption as a matter of right, he has to comply the conditions. But according to the writ petitioners, the second respondent's case was not considered due to non vacancy and direct recruitment by Staff Selection Commission.

25. The learned counsel for the second respondent has drawn the attention of this Court that, the petitioners cannot adopt the pick and choose method, when similar employees were absorbed. To support his contention, he relied Judgment in ***Rameshwar Prasad Vs Managing Director U.P. Rajkiya Nirman Nigam Ltd and others,*** wherein the Hon'ble Supreme Court held that, respondent No.1 cannot act arbitrarily by picking and choosing the deputationists for absorption. The power of absorption, no doubt, is discretionary but is coupled with the duty not to act arbitrarily, or at whim or caprice of any individual. But in the case on hand, the second respondent has not filed any application for his permanent absorption after

the completion of 2 years of statutory period and there was no vacancy and thereby the above said case law will not be applicable to the present facts of the case. Therefore, as discussed supra, the Order passed by the Tribunal for dated 14.02.2020 is unsustainable and liable to be set aside.

26. Accordingly, the Order passed by Central Administrative Tribunal in O.A.No.1459 of 2017 dated 14.02.2020 is set aside.

27. In the result, this Writ Petition is allowed and the order passed by the Central Administrative Tribunal in O.A.No.1459 of 2017 dated 14.02.2020 is set aside. There shall be no order as to costs. Consequently, connected W.M.P.Nos.21191 of 2020 and 28505 of 2021 are closed.

(D.K.K.J) (P.D.B.J)

27.06.2023

Index: Yes
Internet: Yes/No
Speaking/Non speaking order

gd

D.KRISHNAKUMAR,J.

and

P.DHANABAL,J.

gd

To
The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai – 104.

Pre-delivery Order in
W.P.No.17134 of 2020

27.06.2023