

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4113 OF 2024

Shailesh Kumar Gatlewar]
S/o Shri Krishna Shantaram Gatlewar]
Aged about 58 years,]
R/o C-4/4, Ganga CHS,]
Plot No.13, Sector-16,]
Near Pillai College,]
New Panvel – 410206]
District Raigad]..... Petitioner.

Vs.

- 1] Union of India]
Through its Secretary]
Department of Personnel And Training]
(DoP&T), Ministry of Home Affairs]
GOI, North Block,]
New Delhi 110001.]
- 2] The Director,]
Central Bureau of Investigation]
CGO, Complex, Lodhi Road,]
New Delhi.]
- 3] Mr. C. H. Nagaraju – IPS]
HOB / DIG, BS&FC, CBI]
4th Floor CBI Building, BKC]
Mumbai – 400053]
- 4] Mrs. Harshita Attaluri – IPS]
HOB / DIG, BS&FC, CBI]
4th Floor CBI Building, BKC]
Mumbai – 400053]

- 5] The Chairman & Managing Director,]
Central Bank of India,]
11th Floor Chandermukhi,]
Nariman Point, Mumbai – 21]..... Respondents.

Mr. Shailesh Kumar Gatlewar – Petitioner in person.
Mr. Neel Helekar for the Respondent-Union of India.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 08th APRIL 2024**

ORAL JUDGMENT : (PER CHIEF JUSTICE)

1. Rule. Rule made returnable forthwith. With the consent of the Petitioner who appears in person and Shri Neel Helekar, learned counsel representing the Respondent-Union of India the matter has been taken up for final hearing.

2. By filing this Writ Petition under Article 226 of the Constitution of India, the Petitioner assails the validity of the order dated 10th January 2023 passed by the Mumbai Bench of the Central Administrative Tribunal, Mumbai ("CAT") in Original Application No.653 of 2017 whereby the Original Application has been dismissed.

3. The facts of the case which can be culled out from the pleadings available on record are that the Petitioner was appointed on deputation on the post of Advisor (Banking) with Central Bureau of Investigation ("CBI") on 30th June 2016. Prior to his appointment on deputation, the Petitioner was working with the Central Bank of India. The order of appointment on deputation was based on approval accorded by the CBI for his appointment on deputation on short term contract basis for a period four years by means of a letter of the Administrative Officer (Personnel) of CBI, dated 30th May 2016. The said appointment of the Petitioner on deputation was made on the basis of the recommendation made by Union Public Service Commission ("UPSC") which selected the Petitioner for being appointed on deputation with CBI.

4. Pursuant to the order of appointment on deputation, the Petitioner submitted his joining, however, within a year of his joining, he was served with a notice dated 13th June 2017 issued by the CBI stating therein that in view of the provisions

contained in paragraph 9 of Office Memorandum dated 17th June 2010 issued by the Department of Personnel and Training, Government of India, he is repatriated from CBI to his parent Department with effect from the date of expiry of period of three months from the date on which the notice was served. Taking exception to the notice of repatriation, dated 13th June 2017, the Petitioner preferred Original Application No.524 of 2017 before the CAT which was disposed of by means of order dated 6th September 2017 whereby the CBI was directed to consider the representation dated 24th July 2017 filed by the Petitioner against the notice dated 13th June 2017.

5. In compliance of the said order dated 6th September 2017 passed by the Tribunal the representation of the Petitioner against the notice of repatriation was considered by the Director, CBI who passed an order on 20th October 2017, rejecting the representation preferred by the Petitioner dated 24th July 2017. It is this order dated 20th October 2017 passed by the Director, CBI which was made subject matter of the challenge by the

Petitioner by instituting the proceedings of Original Application No.653 of 2017 which too has been dismissed by means of the Impugned Order dated 20th October 2017 passed by CAT.

6. Submission of the Petitioner, who appears in person, challenging the Impugned Order passed by the Tribunal as also the order dated 20th October 2017 passed by the Director, CBI and the notice of repatriation dated 13th June 2017 is that the Petitioner's term of deputation was 4 years, which as a result of Impugned Order, has been curtailed without assigning any reason and as such the notice of repatriation itself is illegal and thus not sustainable.

7. The Petitioner has also argued that he is entitled to the protection of Article 311 of the Constitution of India and without conducting an inquiry into the alleged misdemeanor of the Petitioner, the Impugned Order repatriating him to his parent department i.e. Central Bank of India has been passed which is vitiated for the reason that the same is violative of Article 311 of

the Constitution of India. It is his further submission that the Petitioner's selection for being appointed on deputation was made by the UPSC and as such he is entitled to the protection of Article 311 of the Constitution of India.

8. On the other hand, Mr. Neel Helekar, learned counsel representing the Respondent – Union of India, opposed the prayers made in the Writ Petition and has stated that it is wrong to say that no reasons have been assigned for repatriating the Petitioner to his parent department. He has also drawn our attention to clause 9 of the Office Memorandum dated 17th June 2010 issued by the Ministry of Personnel Public Grievances & Pensions Department of Personnel and Training which permits premature reversion of deputationist to his parent cadre. Thus it is his submission that the Writ Petition is liable to be dismissed.

9. We have considered the submissions made by Petitioner who appeared in-Person and the learned counsel representing the Respondent – Union of India. Though the petitioner was initially appointed on deputation with the Central

Bureau of Investigation on being selected by the UPSC for a period of four years, however, his continuance on deputation was always subject to the provisions as contained in the Office Memorandum dated 17th June 2010 issued by the Department of Personnel & Training, Government of India. The said Office Memorandum dated 17th June 2010 has been issued for regulating the transfer on deputation/foreign service of Central Government Employees to ex-cadre posts under the Central Government/State Government/Public Sector Undertakings/Autonomous Bodies etc. The said Office Memorandum thus regulates the pay, deputation (duty) Allowance, tenure of Deputation/foreign service and other terms and conditions relating to appointment by way of deputation.

10. As per clause 9 of the said Office Memorandum dated 17th June 2010, generally an employee is appointed on deputation and his services are placed at the disposal of the parent department at the end of the tenure of deputation, however, as and when a situation arises for premature

repatriation to the parent department, the services of deputationist can be returned after giving an advance notice of at least three months not only to the employee concerned, but also to the parent/lending department. Thus before completion of terms of deputation, the deputationist can be reverted back to his parent department provided such a situation arises giving rise to the need of premature repatriation of the employee concerned to the parent department.

11. The Petitioner was appointed on deputation initially for a period of four years, however, before completion of period of even one year, a notice of repatriation was issued on 13th June 2017 which provided that the Petitioner shall stand repatriated from CBI to the Central Bank of India with effect from the date of expiry of a period of three months. The said notice does not indicate any reason. However, the order dated 20th October 2017 passed by the Director of CBI in compliance of the order passed by the Tribunal on 6th September 2017 discloses certain reasons as to why the Petitioner has been repatriated. The reasons can

be found in paragraph 2 of the said order, according to which, the services of the Petitioner in CBI were not found satisfactory and up-to the mark as was required in the functioning of CBI by the supervisory officers where the Petitioner was posted since his joining the CBI. The said order further discloses that the Petitioner was found lacking in required exposure to do justice to the job of a Banking Advisor and that he was not found disciplined and compliant to the system. Another reason assigned in the said order dated 20th October 2017 repatriating the Petitioner to his parent department is that he did not submit his monthly diaries which are essential to monitor his work, despite directions issued on two dates viz. 04th November 2016 and 5th December 2016. The said order further states that the Petitioner submitted his monthly diary only on 16th June 2017, that is only after receipt of the notice of premature repatriation. Thus we find from the order dated 20th October 2017 that sufficient reasons have been assigned for repatriating the Petitioner to his parent department.

12. It is well settled law that a deputationist does not have any right to continue to work in the borrowing department for the simple reason that even after appointment on deputation to the parent department no lien is created with the parent department rather his lien remains intact with the parent department. Even otherwise, in case the parent department is not willing to continue to utilize the services of the deputationist, it is always open for the borrowing department to repatriate the deputationist. A deputationist, in other words, does not have any vested right, that too, against the willingness of the borrowing department, to continue to function on deputation.

13. So far as the submission made by the Petitioner based on the provisions of Article 311 of the Constitution of India is concerned, the said argument is absolute misconceived which merits rejection, and the same is hereby rejected. It need not be spelt out here that protection of Article 311 is available to a Government employee in case he faces any of the major penalties of dismissal, removal, or reduction in rank as a measure of punishment. The order of repatriation of a

deputationist cannot be in any manner said to result into a major penalty or punishment. In this view, the protection of Article 311 of the Constitution of India as pleaded by the Petitioner is not available to him, even if his appointment with the CBI was made on the basis of selection held by UPSC.

14. We also notice that the Tribunal has considered the aforesaid aspects and has also mentioned clause 9 of the Office Memorandum dated 17th June 2010 issued by the Department of Personnel & Training which clearly permits premature repatriation of deputationist to his parent cadre in case any such situation arises. We are of the opinion that on account various misdemeanors which find mentioned in the order dated 20th October 2017 passed by the Director of CBI, the situation had arisen for premature repatriation of the Petitioner to the Central Bank of India.

15. For the reasons aforesaid, we are not inclined to interfere in this Writ Petition which is hereby dismissed. There shall be no order as to costs. Rule stands discharged.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)