



2025:DHCD:1327-06



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 7489/2017****UNION OF INDIA AND ANR**

.....Petitioners

Through: Mr. Ripudaman Bhardwaj,
CGSC with Mr. Kushagra Kumar,
Mr. Abhinav Bhardwaj, Mr. Himanshu
Kaushik and Mr. Deepak Kaushik, Advs.

versus

M SETHU RAMANLINGAM

.....Respondent

Through: Mr. Padma Kumar S. Adv.

CORAM:**HON'BLE MR. JUSTICE C.HARI SHANKAR****HON'BLE MR. JUSTICE AJAY DIGPAUL****JUDGMENT (ORAL)**

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17.02.2025**AJAY DIGPAUL, J.**

1. The present writ petition was filed under Article 226 of the Constitution of India by the Union of India, Ministry of Defence, Joint Secretary E/CAO, Ministry of Defence¹ challenging the order dated 20.12.2016 passed by the Central Administrative Tribunal Principal Bench, New Delhi² whereby the Tribunal had quashed the decisions of the Ministry of Defence³ and the Ministry of External Affairs⁴ denying the respondent, Mr. M. Sethu Ramalingam, the financial benefits accruing from his *in-situ* promotion to the position of Joint

¹ "the petitioner", hereinafter

² "the Tribunal", hereinafter

³ "MoD", hereinafter

⁴ "MEA", hereinafter



2025:DHJ:1327-06



Director during his deputation to Mauritius. The Tribunal further directed the MoD to disburse the arrears in the scale of Joint Director for the period spanning from 28.08.2004 to 20.10.2005, along with an interest of 9% per annum on these arrears.

2. The genesis of this dispute is that the respondent joined the Armed Forces Headquarters Service⁵ on 02.02.1997 as Assistant (Direct Recruit) and after serving for a period of around 13 years, he was promoted as Deputy Director (Group 'A' post) in AFHQ CS. Subsequently, he was deputed to Mauritius under the Indian Technical & Economic Cooperation⁶ Programme of the MEA from 28.08.2004 to 20.10.2005 to train bureaucrats in Mauritius vide MEA order dated 05.11.2003.

3. During the period of his deputation to Mauritius, the respondent, along with 45 others, was granted in situ promotion to the rank of Joint Director vide OM dated 30.10.2006 issued by the MoD. The relevant extract of paragraph 4 of the aforesaid Office Memorandum is reproduced herein-below:-

“The in-situ appointment per se does not involve any change in the existing Command and Control and level/ channel of reporting. However, the concerned establishment may consider making some internal adjustments regarding the level/ channel of submission by the incumbent of the upgraded post as warranted based on functional requirements. Under no circumstances will the officer appointed on in-situ basis be posted against the regular duty post of Jt. Director by concerned establishment on its own. Posting against the regular duty post of Jt. Director, if need be, will be ordered by this office.”

⁵ “AFHS”, hereinafter

⁶ “ITEC”, hereinafter

Ref. (C) 7489/2017



2025:DHC:1327-06



4. Thereafter, *vide* OM dated 30.10.2006, the MoD (Navy) issued an order on 09.02.2007, fixing the respondent's pay at Rs.12,000-375-16,500/- with increments. It was noted that the respondent was on deputation with the MEA from 28.08.2004 to 20.10.2005, thus not entitled to the benefit for the deputation period.

5. Resultantly the respondent requested the MEA to pay the difference in pay and allowances for the period of his deputation in Mauritius following his *in-situ* promotion as Joint Director in AFHQ CS. However, the MEA declined the request, citing the ITEC programme terms, which the respondent had agreed to through an undertaking, stating that he was not entitled to pro forma promotion or financial benefits during the deputation period.

6. The terms and conditions of deputation stipulated that any financial benefits arising from promotions during the deputation period would be borne by the parent department. However, a dispute arose between the MoD and the MEA regarding which ministry was responsible for bearing the financial burden of the respondent's *in-situ* promotion.

7. This disagreement led the respondent to approach the Tribunal in O.A. No. 216/2008, which was disposed of by the Tribunal on 18.08.2008 with the directions to the petitioners herein to consider the prayer of the respondent herein with regard to the claim for payment of difference in the allowances for the period of deputation in Mauritius. A reasoned and speaking order shall be issued in accordance with the law, considering the higher pay scale granted



upon promotion to Joint Director effective from the year 2002. The decision must be communicated to the applicant within a period of three months.

8. Thereafter, in consonance of the *ibid* order of the Tribunal, the MoD passed a speaking order *vide* its impugned O.M. dated 19.08.2009 rejecting the prayer of the respondent stating that the respondent had already received financial benefits. The MoD reasoned that the respondent was promoted to the post of Joint Director with effect from 01.03.2006, which ensured career and financial growth. Furthermore, the respondent continued to receive salary and allowances from the parent department during the deputation period, meaning no financial loss had occurred. Based on this, the MoD concluded that additional deputation benefits or arrears were not justified, as the applicant was already compensated under existing service rules.

9. Aggrieved by the OM dated 19.08.2009, the respondent filed a representation before the MEA on 19.03.2010, which was rejected on 16.04.2010. The MEA placed reliance upon the order passed by the Tribunal on 18.08.2008, stating that the MoD was responsible for considering the respondent's claim for the difference in allowances during the deputation period in Mauritius.

10. Aggrieved by the order dated 19.08.2009 and 16.04.2010 the respondent herein filed an OA. NO.1775/2011 *inter alia* praying as under:-



2025:DHC:1327-06



- (i) *A direction quashing the impugned orders.*
- (ii) *A direction to Respondent No.1 and 3 to grant the deputation benefits as per the pay fixed vide Office Order dated 09.02.2007 on the basic pay of Rs.14625 on 28.8.2004 in the scale of Rs.12,000-16500/- rather than on the basic pay of Rs.13575/- on 28.8.2004 in the scale of Rs. 10000-15200/-.*
- (iii) *In the alternative, direct the Respondent No.4 to grant the benefit equivalent to (ii) from the parent department as the parent department is also bound under the rule, if the said rule prevents the Respondent No.1 and 3 to grant the benefits from External Affairs Ministry.*
- (iv) *In the alternative, but on exhaustion of the remedies at sub para (ii) or (iii) above, a direction to the Respondent No.4 to grant arrears in the scale of Joint Director for the period from 28.8.2004 to 20.10.2005 as well.*
- (v) *A direction to the respondents to grant the Applicant interest of the above amounts arrived at as above, as per the rate of bank interest prevalent at the relevant time."*

11. The Tribunal *vide* its order dated 20.12.2016 quashed the above said OM. In addition, granted relief to the respondent herein.

12. The petitioners, being aggrieved by the order dated 20.12.2016 of the Tribunal, preferred the present writ petition.

13. The petitioners contend that the Tribunal's order is erroneous and deserves to be set aside. The petitioners argued that the Tribunal has failed to appreciate the true import of the terms and conditions of the deputation. The petitioners further contend that the Tribunal has erred in holding the MoD liable for the payment of arrears.

14. This Court has meticulously examined the submissions of both



2025:DHC:1327-06



the parties and has carefully perused the records. The core issue that arises for consideration is whether the respondent is entitled to the financial benefits accruing from his *in-situ* promotion to the grade of Joint Director during his deputation to Mauritius from his parent ministry i.e. MoD.

15. The terms and conditions of the deputation, as stipulated in the MEA's letter dated 02.02.1987, are crucial to the determination of this issue. The relevant extract from the said letter is reproduced below:-

“(iii) In case the expert becomes due for promotion in his regular line in his parent department/State Government, he will not be entitled to Performa promotion and/or financial benefits accruing there from during the period of his deputation. It will, however, be for the parent department/State Government to safeguard the interests of the expert.”

16. A plain reading of the aforesaid clause makes it clear that an employee deputed under the ITEC Programme is not entitled to proforma promotion or financial benefits accruing therefrom during the period of deputation. However, the parent department shall safeguard the interests of the deputed employee.

17. In our view, the Tribunal has rightly noted that the expression "safeguard the interests of the employee." However, it is reasonable to interpret this expression as ensuring that the deputed employee does not face any disadvantage compared to his counterparts in the parent department due to his deputation.

18. In the present case, the respondent was granted an *in-situ*



promotion to the grade of Joint Director during his deputation. Had he not been deputed to Mauritius, he would have been entitled to the financial benefits accruing from this promotion. However, on account of his deputation, he was denied these benefits, on the pretext that he was working for a different ministry at relevant time.

19. The Tribunal has correctly appreciated this aspect of the matter and has rightly held that the terms and conditions of the deputation do not preclude the respondent from claiming the financial benefits accruing from his *in-situ* promotion. The Tribunal has also rightly held that the MoD is liable to grant the respondent the arrears in the scale of Joint Director.

20. For the aforesaid reasons, we find no reason to interfere with the judgment passed by the Tribunal, which is accordingly affirmed.

21. The writ petition is dismissed.

22. Let the needful be done within a period of four weeks from today.

C.HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 17, 2025/sk

Click here to check corrigendum, if any