

Before Surya Kant & Sudip Ahluwalia, JJ.

GURNAM SINGH—*Petitioner*

versus

UNION OF INDIA AND OTHERS—*Respondents*

CWP No.1377 of 2017

January 01, 2017

A. Constitution of India, 1950—Arts. 226 and 227—Deputation—Consensual act—No enforceable Right of Retention—CAT declined stay—Repatriation to Parent Department— Deputation not extended—Retirement due—No interference warranted.

Held that, deputation is essentially a consensual act between the borrowing and the lending departments. Unless both the departments agree, the employee concerned cannot compel them for sending and/or retaining him on deputation. In the instant case, the borrowing department has expressed its inability to retain the petitioner on deputation. Even if the Government of India Instructions allow extension in deputation beyond a period of five years, such an enabling provision cannot be construed to have conferred an enforceable right on an employee to seek retention in deputation period.

(Para 3)

B. Deputation—Lien on post in parent department—Pro forma promotion can be granted in absentia.

Held that, the fact that the petitioner was drawing higher pay or was in higher rank while on deputation is also not a ground for granting ad interim stay by Court. It often happens that on deputation an employee is taken against a higher post and obviously while on deputation he would be entitled to draw higher emoluments on such post. However, on repatriation, the employee is bound to occupy the substantive post against which he/she holds lien in the parent department. If meanwhile he/she becomes entitled to promotion in his parent department then pro forma promotion can be granted in absentia by the parent department. If the petitioner has any such claim, he can surely raise the same before his parent department i.e. CFSL.

(Para 4)

C. Emoluments on deputation— Incidence of service, not condition of service.

Held that, the plea that petitioner's further continuation on deputation would have benefited him in getting higher pension is also not

a valid ground to force the Department to retain him on deputation. The withdrawal of emoluments drawn while on deputation is a fortuitous circumstance which is an ‘incidence of service’ and not a ‘condition of service’.

(Para 5)

Puneet Bali, Senior Advocate with
Puneet Sharma, Advocate
for the petitioner

SP Jain, Additional Solicitor General of India with
Gagandeep Singh and Suresh Batra, Advocates
For respondent-UOI (on caveat)

SURYA KANT, J. oral

(1) The petitioner is aggrieved by the order dated 20.01.2017 vide which the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, ‘the Tribunal’) has declined to grant *ad interim* stay against the order of his repatriation from the Directorate of Enforcement to his parent department, namely, the Central Forensic Science Laboratory.

(2) Though the Tribunal was not required to pass such a detailed order while considering the request for *ad interim* relief, nevertheless, the petitioner is admittedly a permanent employee of the Central Forensic Science Laboratory, Chandigarh (CFSL) and he was taken on deputation to the Enforcement Directorate on the post of Deputy Director initially for three years which was further extended for another two years. The petitioner is now due for retirement on attaining the age of superannuation w.e.f. 30.11.2017. His deputation period of five years stood expired on 31.12.2016. The competent authority in the Directorate of Enforcement in its wisdom has taken a decision not to extend the deputation period of the petitioner and consequently, he has been repatriated. The only factor which the Tribunal ought to have considered in this factual backdrop was whether repatriation of the petitioner to his parent department would cause any irreparable loss or that a *prima facie* case for his retention in the Directorate of Enforcement is made out?

(3) Deputation is essentially a consensual act between the borrowing and the lending departments. Unless both the departments agree, the employee concerned cannot compel them for sending and/or retaining him on deputation. In the instant case, the borrowing department has expressed its inability to retain the petitioner on deputation. Even if the Government of India Instructions allow extension in deputation beyond a period of five years, such an enabling provision cannot be

construed to have conferred an enforceable right on an employee to seek retention in deputation period.

(4) The fact that the petitioner was drawing higher pay or was in higher rank while on deputation is also not a ground for granting *ad interim* stay by Court. It often happens that on deputation an employee is taken against a higher post and obviously while he would be entitled to draw higher emoluments on such post. However, on repatriation, the employee is bound to occupy the substantive post against which he/she holds lien in the parent department. If meanwhile he/she becomes entitled to promotion in his parent department then *pro forma* promotion can be granted *in absentia* by the parent department. If the petitioner has any such claim, he can surely raise the same before his parent department i.e. CFSL.

(5) The plea that petitioner's further continuation on deputation would have benefited him in getting higher pension is also not a valid ground to force the Department to retain him on deputation. The withdrawal of emoluments drawn while on deputation is a fortuitous circumstance which is an 'incidence of service' and not a 'condition of service'.

(6) Similarly, the petitioner's plea that he has been investigating some high profile cases in the Directorate of Enforcement etc. is not crucial to the point in issue. The investigation of high profile cases is a subject-matter of monitoring before this Court in PIL jurisdiction and any lack or deficiency in this regard can be very well remedied in those proceedings.

(7) Having held so, we cannot overlook the fact that the observations made by the Tribunal in a part of para-18 and those in para-19 of the impugned order are totally uncalled for. The Tribunal ought not to have made these observations while deciding the stay matter. The question whether Mr. KK Singh has committed any misconduct or not falls within the domain of the department and not the Tribunal. Such observations are accordingly ordered to be struck off.

(8) Needless to say that the observations made by the Tribunal or this Court are tentative opinions and will have no bearing on the fate of the Original Application.

(9) With these observations, clarifications and directions, the writ petition is dismissed.

Shubreet Kaur