

Non-reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1434 OF 2008

Shri Kamal Prashar

.....Appellant

Versus

Airport Authority and Another.

.... Respondents

AND

Civil Appeal No.1435 of 2008

Shri Kamal Prashar

....Appellant

Versus

National Airport Authority of India

...Respondent

J U D G M E N T**Uday Umesh Lalit J.**

1. Civil Appeal No.1434 of 2008 seeks to challenge the judgment and order dated 07.02.2006 passed by the High Court of Delhi in LPA Nos.21 of 1999 and 314 of 2000 as well as the order dated 02.06.2006 in Review Application No.209 of 2006 arising from said judgment and

order dated 07.02.2006 in so far as LPA No.314 of 2000 was concerned. Civil Appeal No.1435 of 2008 seeks to challenge the order dated 05.05.2006 passed by the High Court of Delhi in Review Application No.161 of 2006 arising out of the judgment and order dated 07.02.2006 in so far as LPA No.21 of 1999 was concerned. Since both these appeals arise out of the same proceedings they are being dealt with and disposed of by this common judgment.

2. The appellant was appointed as Assistant Aerodrome Officer with Director General Civil Aviation ("DGCA" for short) on 04.03.1974 and was promoted to the post of Aerodrome Officer in 1980. He was transferred to Leh by order dated 23.05.1985 but said transfer could not take place as proper accommodation was not available at Leh and the appellant continued to be stationed at Delhi. In the year 1985, the National Airport Authority Act, 1985 (Act 64 of 1985) was enacted which came into operation w.e.f. 07.12.1985 (hereinafter referred to as the Act). The Act provided for establishment of an authority namely National Airport Authority ("NAA" for short) for the management of Aerodromes and Civil Enclaves whereat domestic Air Transport Services are operated or intended to be operated and for management of all communication stations and matters connected therewith. Section

13(3) of the Act which is relevant for our purposes is quoted hereunder

:-

“13. Transfer of assets and liabilities of the Central Government to the Authority—

.....

 (3) Every employee holding any office under the Director-General of Civil Aviation immediately before the commencement of this Act solely or mainly for or in connection with such affairs of the Directorate-General of Civil Aviation as are relevant to the functions of the Authority under this Act as may be determined by the Central Government shall be treated as on deputation with the Authority but shall hold his office in the Authority by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement or other terminal benefits as he would have held such office if the Authority had not been constituted and shall continue to do so until the Authority duly absorbs such employee in its regular service.

Provided that during the period of deputation of any such employee with the Authority, the Authority shall pay the Central Government in respect of every such employee, such contribution towards his leave, salary, pension and gratuity as the Central Government may, by order, determine:

Provided further that any such employee, who has, in respect of the proposal of the Authority to absorb him in his regular service, intimated within such time as may be specified in this behalf by the Authority his intention of not becoming a regular employee of the Authority, shall not be absorbed by the Authority.”

3. The record indicates that NAA was established w.e.f. 01.06.1986 and the employees holding office under the DGCA as described in Section 13(3) of the Act were *en masse* sent on deputation to NAA. On 31.03.1986 the appellant had written to the DGCA stating that he would like to continue his services in the office of the DGCA. Immediately upon establishment of NAA, the appellant again wrote to the DGCA on 04.06.1986 stating that he did not wish to join NAA and his services be retained with the DGCA.
4. By order dated 11.07.1986 the appellant was transferred to Civil Aerodrome, Varanasi and it was directed that he be relieved from his posting at Delhi and he must join the post at Varanasi w.e.f. 15.7.1986. The appellant immediately wrote on 12.07.1986 to the Chairman, NAA and stated :-

“..... Moreover, I beg to draw your kind attention to my letter dated 31st March 1986 addressed to DGCA in which I had already requested him that I would like to continue my services in the DGCA so I would not join the NAA.

In view of the above it is requested that my transfer order may please be deferred till the end of the next academic session (April 87) in the mean time I may be absorbed in the DGCA. The reply to my request as contained in the above letter and subsequent reminder dated 4.6.86 (copy attached) is being awaited.”

5. The appellant did not join the services at Varanasi and remained absent. By his representation dated 02.09.1986, he stated that he was making all efforts to see that his option of not joining NAA was fulfilled. He also stated:-

“.....In any event I would like to request your good-self to at least give me my posting at Delhi until the next academic session whereafter the undersigned may be transferred to any station as per law.”

6. By internal communication dated 04.02.1987 the office of the DGCA wrote to the Chairman of NAA requesting to relieve the appellant so that he could be posted in the office of the DGCA treating the case to be of reversion to his parent office. However, as a matter of fact the appellant was not relieved and continued to remain on deputation with NAA. On 11.03.1987 NAA issued a memorandum stating that the request of the appellant for being posted in the office of the DGCA could not be acceded to and that the appellant was required to join his post at Varanasi immediately. In spite of such clear intimation, the appellant did not join his post at Varanasi and continued to remain absent. On 23.02.1988, i.e. nearly after a year, the appellant again wrote that the insistence of NAA that he should join at Varanasi was

uncalled for as the DGCA had already asked NAA to relieve him so that he could join the office of the DGCA.

7. Sometime in October 1989, option as contemplated under Second Proviso to Sub-section 3 of Section 13 of the Act was extended to many employees whose services stood deputed with NAA. However, such option was not extended to the appellant because of his continued absence from duty.
8. On 11.02.1991 a memorandum was issued to the appellant enclosing statement of Articles of Charges framed against him for his continued absence from 15.07.1986. The substance of imputation of alleged misconduct along with list of documents was submitted and disciplinary proceedings were initiated against him. In his reply, the appellant submitted inter alia that he had applied for repatriation which request was accepted by the DGCA on 04.02.1987 and as such the appellant could not and ought not to be proceeded against. The Enquiry Officer by his report dated 31.08.1992 concluded that the appellant was transferred to Varanasi w.e.f. 15.07.1986 and was relieved on 15.07.1986 for joining Civil Aerodrome, Varanasi, that the appellant did not report at Varanasi upon his transfer, that there was no

application on record to show that he had taken any kind of leave and that he was absenting from duty since 15.07.1986.

9. On 10.10.1992 the appellant submitted his representation against the enquiry report dated 31.08.1992. Thereafter, the Chairman of NAA being the competent authority recommended major penalty and sent the matter to the relevant Ministry. While the matter was so pending, the services of the appellant were placed at the disposal of the DGCA by relieving him vide letter dated 13.03.1995 addressed by the Administrative Directorate.
10. The appellant thereafter filed Writ Petition No.4402 of 1995 in the High Court of Delhi submitting that since 04.02.1987 his services all the while were with the DGCA, that the entire disciplinary proceedings were without jurisdiction, that in any case on and with effect from 13.03.1995 his services were placed at the disposal of the DGCA and that despite such order he was not allowed to join his posting with the DGCA. The appellant therefore prayed that he be allowed to join his duty, that NAA be directed to disburse his full pay and allowances from July 1986 onwards and that the DGCA be directed to release his pay and allowances for the period from 04.02.1987. While opposing the petition, it was submitted that by virtue of the statutory scheme the

appellant stood deputed with NAA but he had continued to remain absent with a view to avoid transfer out of Delhi. It was further submitted that so long as he was not relieved by NAA, the appellant continued to be in the service of NAA.

11. The writ petition was allowed by a Single Judge of the High Court vide judgment and order dated 02.11.1998. It was observed that Section 13(3) of the Act could not be read to deny the right of an employee which he had on account of his service conditions with his parent department under the Fundamental Rules and that it was his right to ask for reversion from deputation to join the parent department. It was further observed that non-repatriation of the appellant after 04.02.1987 was illegal and uncalled for and that on and with effect from 04.02.1987 the appellant stood relieved from the services under NAA and consequently the entire disciplinary proceedings were without jurisdiction. Allowing the writ petition, it was ruled that the appellant was entitled to all consequential benefits and promotion in the office of the DGCA.

12. NAA and the DGCA being aggrieved, filed LPA Nos.21 and 314 of 2000 respectively before the Division Bench of the High Court which were allowed vide judgment and order dated 07.02.2006. It was held

that by virtue of Section 13(3) of the Act the services of the appellant were automatically placed on deputation with NAA and he could not go back to the parent department unless relieved by NAA. It was further observed that unless and until relieved by a specific order, the appellant continued to be in the services of NAA and he could not have absented himself from his duties in NAA. The Division Bench thus set aside the judgment and order passed by the Single Judge and dismissed the writ petition.

13. The appellant filed Review Application No.161 of 2006 in so far as the judgment and order of the Division Bench in LPA No.21 of 2006 was concerned. Said review application was dismissed by the Division Bench vide order dated 05.05.2006. The appellant had also filed Review Application No.209 of 2006 against the judgment and order dated 07.02.2006 in so far as LPA No.314 of 2006 was concerned. Said review application was dismissed by the Division Bench vide its order dated 02.06.2006. The judgment and orders in LPA Nos.21 of 1999 and 314 of 2000 and aforesaid review applications are under challenge in these civil appeals. It may be mentioned that on 02.08.2006 the Government of India, Ministry of Civil Aviation,

passed an order imposing the penalty of “dismissal from service” on the appellant.

14. Appearing for the appellant, Mr. V. Shekhar, learned Senior Advocate submitted that the learned Single Judge was right in his assessment about the effect of deputation and the rights of the appellant and that the appellant stood repatriated to the DGCA w.e.f. 04.02.1987 and as such the subsequent proceedings were without jurisdiction. While opposing these contentions, Ms. Vibha Dutt Makhija, learned Senior Advocate relied upon Section 13(3) of the Act and submitted that the services of the appellant stood statutorily deputed with NAA and unless he was specifically relieved, he continued to be in the services of NAA and was not justified in remaining absent unauthorisedly.

15. The effect of Section 13(3) of the Act is clear and every employee holding any office under the DGCA in connection with the functions of the Authority under the Act stood statutorily deputed with NAA and continued to be on deputation till duly absorbed in its regular service by NAA. The expression used in said Section is “shall be treated on deputation” which unequivocally shows mandatory nature of the statutory provision. Neither the employee nor the DGCA could

stop such statutory deputation or have any say in the matter. Second Proviso to Sub-section 3 of Section 13 of the Act contemplates exercise of discretion, within such time as may be specified, by the employee in respect of proposal of the Authority to absorb him. The discretion would therefore be available at a later point in time as and when the proposal for absorption is taken up for deliberation or consideration and not at the first stage when the services stood statutorily deputed with NAA.

16. The services of the appellant having thus been deputed with NAA, the appellant ought to have joined his post at Varanasi and was not justified in remaining absent unauthorisedly. The fact that the appellant prayed for disbursement of pay and allowances from NAA with effect from 15.07.1986 itself shows that he was conscious of the jural relation and that with effect from 15.07.1986 his services were with NAA. The tenor of his letters dated 04.06.1986, 11.07.1986 and 02.09.1986 further shows that he was well aware that his services stood deputed with NAA. In the circumstances and more particularly after 11.03.1987 the appellant was not at all justified in remaining

absent. His continued absence from 15.07.1986 disentitles him from any relief.

17. The reliance on internal communication dated 04.02.1987 is completely misplaced. By said communication, the request was definitely made by the DGCA that the appellant be relieved to enable him to be repatriated to the parent department. However, such request was not acceded to and it was specifically conveyed to the appellant by communication dated 11.03.1987 that he should join his duty at Varanasi. In the face of such communication, the appellant could not have absented himself and if he did so, he alone would be responsible for the consequences.

18. As the services of the appellant were deputed with NAA, it was definitely competent to initiate the disciplinary proceedings for his continued absence. The order of dismissal passed on 02.08.2006 is not under challenge in these appeals. As regards the entitlement to seek disbursement of pay and allowances from NAA, in our view, the appellant is not entitled to any relief. We do not find any error in the assessment made by the High Court in the judgment and order under

appeal. We, therefore, dismiss these appeals leaving it open to the appellant to raise any challenge as regards the order of dismissal, if so advised. However, there shall be no order as to costs.

.....J
(Dipak Misra)

.....J
(Uday Umesh Lalit)

New Delhi
October 28, 2015.



JUDGMENT