

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgment Reserved on August 29, 2013*  
*Judgment Delivered on September 05, 2013*

+ **W.P.(C) No.936/2005**

ANIL KUMAR JAIN ..... Petitioner

Represented by: Mr.G.D.Gupta, Sr.Advocate  
with Mr.K.R.Sachdeva, Advocate

versus

UOI ..... Respondent

Represented by: Mr.V.S.R.Krishna, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR. JUSTICE V.KAMESWAR RAO**

**V.KAMESWAR RAO, J.**

1. The petitioner is aggrieved by the order dated December 07, 2004 passed by the Central Administrative Tribunal whereby the Original Application filed by him was dismissed.
2. The claim of the petitioner before the Tribunal was for quashing the order dated December 18, 2002, as also another order of the same date December 18, 2002, whereby he has been repatriated to his parent department i.e. Ministry of Commerce and Industry, Department of Commerce (Supply Division), New Delhi. His prayer also included that a declaration be given by the Tribunal that he should be deemed to have been absorbed in Indian Railways with effect from March 20, 1995 and necessary orders in this regard be issued by the Indian Railways.
3. Some of the important facts for deciding this petition are that the petitioner is an officer of Indian Supply Service, having been appointed

on March 01, 1975. While he was working as Deputy Director of Supply he proceeded on deputation to the post of Deputy Controller of Stores in the Indian Railways in the pre-revised scale of ₹3500-5000. He joined the Central Organization for Modernization of Workshops (COFMOW) in the Indian Railways initially for a period of one year on March 20, 1989.

4. The term of the deputation was extendable upto three years. Suffice would it be to state that the term of the deputation of the petitioner was extended from time to time till March 20, 1995.

5. It is the case of the petitioner that on October 09, 1996, 7 officers of the Directorate General of Supplies & Disposals (DGS&D) were considered for absorption by the Railway Board which included the petitioner also. It was decided that he would be absorbed in Indian Railways against the post vacated by one Mr.N.Shanker. This aspect was informed by the Indian Railways to his parent office which it appears had not accepted the proposal of the Indian Railways. The applicant accordingly filed Original Application No.2658/1997 before the Tribunal, inter-alia, seeking a direction for issuing formal orders with regard to his absorption in the Indian Railways Store Service with effect from March 20, 1995 with all consequential benefits.

6. The said Original Application was disposed of by the Tribunal on September 02, 2002 with direction to the respondents to re-consider the absorption of the petitioner in Indian Railways by passing a detailed and speaking order within a period of four months till then status quo as of date was directed to be maintained.

7. The respondent passed a speaking order dated December 18, 2002 whereby the claim of the petitioner for absorption in Indian Railways

was turned down. It is this order which was impugned by the petitioner before the Tribunal.

8. It was the stand of the respondents before the Tribunal that there were clear directions of the Department of Personnel & Training against further extension of deputations of the petitioner. That apart the Directorate General of Supplies & Disposal was not agreeing to release any post for the purpose of absorption in the Indian Railways. Therefore, it was decided to terminate the deputation of the petitioner with COFMOW and to repatriate him to DGS&D. Further, it was their stand that the Indian Railways had proposed that the case of the petitioner could be considered but there was no provision for absorption in the rules of the Indian Railways in the post which the petitioner was holding on deputation. The Department of Supply did not agree to the proposal of the Indian Railways and the suggestion of the Department of Supply for absorption of the petitioner against any of the cadre post of Indian Railways Store Service was not found acceptable by the Indian Railways.

9. The Tribunal after considering the legal position on an issue of this nature where a deputationist has no right to seek absorption had dismissed the Original Application.

10. Mr.G.D.Gupta, learned Senior Counsel appearing for the petitioner would reiterate the stand taken by the petitioner before the Tribunal. That apart reliance had been placed on Rule 21(9) of the Indian Railway Store Service Recruitment Rules, 1969, which inter-alia stipulates that occasionally recruitment from other service in consultation with the Commission is permissible. Learned senior counsel has also filed a statement showing, had petitioner been absorbed

in Indian Railways he would have got promotion in Indian Railways at least to the post of Director (Selection Grade) and Deputy Director General (SAG) much before he got promoted to posts in said grades in his parent department of DGS&D.

11. It is noted that the petitioner superannuated on May 31, 2012.

12. We may state here that the real issue which falls for our consideration is whether the petitioner was entitled to be absorbed in the Indian Railways in the given facts. The facts are not in dispute.

13. It is true that the case of the petitioner was considered by the Indian Railways against the post vacated by one Mr.N.Shankar. Mr.N.Shankar had come on deputation to the Indian Railways along with the post on which he was working in DGS&D. Mr.N.Shankar got promotion and he was relieved from the Indian Railways in March, 1995. From March, 1995 to September, 1997 the Department of Supply did not post any person in place of Mr.N.Shankar. Be that as it may, the Indian Railways did consider the issue of absorption of the petitioner against the post vacated by Mr.N.Shankar. The same was not accepted by the Ministry of Commerce under which DGS&D comes. We are conscious of the fact that six officers from the DGS&D were posted in Indian Railways and subsequently absorbed. These six officers are those who have come to Indian Railways along with their post. In so far as the petitioner is concerned, he came on deputation not with the post and therefore this was the reason the petitioner could not be absorbed in the Indian Railways.

14. It is also a fact that no provision exists in the Indian Railways Store Service Recruitment Rules, 1969, which contemplates absorption in the post which the petitioner was holding on deputation. This aspect is

of relevance when we are deciding the issue in the context of the relief prayed for by the petitioner. Without there being a provision in the Recruitment Rules stipulating absorption of a deputationist the petitioner could not have been absorbed.

15. That apart, a deputationist has no right to seek absorption. In this regard after referring to the judgments of the Supreme Court the Tribunal has held as under:

*“18. Reference to the decision rendered by the Supreme Court in the case of RAMESHWAR PRASAD v. U.P.RAJKIYA NIRMAN NIGAM LTD., 1999 (2) SCSLJ 495 would be inappropriate because therein, the Supreme Court was concerned with the relevant rules of the Nigam but had still held that there was no permanent right of absorption to the deputationist. No such rules have been noticed in the present case and, therefore, the said decision is distinguishable.*

*19. The position in law is well settled and we refer with advantage to the decision of the Supreme Court in the case of RATILAL B. SONI AND OTHERS v. STATE OF GUJARAT AND OTHERS, AIR 1990 SC 1132 wherein the Supreme Court held that when a person is on deputation, he could be reverted to his parent cadre at the relevant time. He does not get any right to be absorbed on deputation post.*

*20. Same view had been expressed by the Supreme Court in the case of UNION OF INDIA v. S.N.PANIKAR, (2001) 10 SCC 520 and it was reiterated in the case of MUNI SINGH AND ANOTHER v. STATE OF BIHAR, (2002) 9 SCC 485. The Supreme Court reiterated the earlier view that there is no enforceable right for being permanently absorbed. It was held:*

*“1. .... Having considered the rival submissions and also the relevant provisions of the Rules, we do not see any enforceable right with the petitioners for being permanently absorbed though we see sufficient force in the*

*contention of Dr. Dhavan that the appropriate Government would be well advised to consider the retention of these petitioners permanently in the Bureau having regard to the case that they have already rendered services from 1991 till 1999, and that the Rules themselves contemplate to man the post on transfer. ....”*

*21. It is true that there has been a correspondence between the Ministries but no formal order absorbing the applicant till date has been passed. Merely because one of the Ministry was willing at one time, does not give an enforceable right to the applicant till such time a final order is passed.*

*22. Other wise also, reverting back to the correspondence to which we have referred to above, it is obvious that it was only that the name of the applicant was being considered. No final order has been passed.*

*23. We know from the decision of the Supreme Court in the case of BACHHITTAR SINGH v. STATE OF PUNJAB AND ANOTHER, AIR 1963 SC 395 wherein it was held that before something amounts to an order of the State Government, two functions are necessary. The Constitution requires that action must be taken by the authority concerned and the order should be passed and communicated to the person who would be affected by that order before the State and that person can be bound by that order. No order absorbing the applicant has been passed. Therefore, he remained as deputationist without having a right to claim that he must be absorbed.”*

16. Further, even the plea of discrimination would not stand in the facts of this case since the officers who were absorbed had come on deputation along with the post, which was not the case of the petitioner. A post in the Indian Railway Store Service is filled in a particular manner under the Rules. An incumbent can be appointed in terms of the Rules in the manner contemplated and not otherwise.

17. The Court should also be mindful of the fact that the absorption of the petitioner would also have serious implications in the cadre management of Indian Railway Store Service as the same would have had an effect on the service conditions of the serving officers. No relief could have been granted to the petitioner without the serving employees being made a party. In fact, the Indian Railways had not accepted the suggestion of Department of Supply for absorption of the petitioner against one of the cadre post of the Indian Railway Store Service. Under the circumstances there was no option for the Indian Railways to repatriate the petitioner to his parent department.

18. One aspect which also requires our consideration is that whether the petitioner could have been absorbed against the post left vacant pursuant to repatriation of one Mr.C.P.Nimje who had not sought his absorption in the Indian Railways.

19. This Court vide its order dated April 05, 2011 had directed the respondent to file affidavit in that regard.

20. The affidavit filed by the respondent would reveal that the absorption of the petitioner in place of Mr.C.P.Nimje was not considered acceptable on the reason that the question of seeking nomination of officer in place of Mr.C.P.Nimje should not arise since the transfer of officers for absorption has to be treated as final. The question of seeking fresh option did not arise in view of earlier commitment and understanding between the Ministry of Railways and Ministry of Commerce & Industry. The petitioner in his rejoinder to the additional affidavit filed by the respondent does not dispute such a decision except saying that *'the in action of the respondent with respect to the aforesaid decision in favour of the petitioner qua the officers is malafidely and*

*arbitrary.*’ It is clear that the process of absorption was one time and with respect to those officers who had come along with their post and who had opted for absorption. It also transpires that the post which became vacant on repatriation of Mr.C.P.Nimje was encadred in the Indian Railway Store Service. Once encadred, the same has to be filled in terms of Indian Railway Store Service Recruitment Rules, 1969 which does not contemplate absorption.

21. We note that in Civil Appeal Nos.368-369/2009 Union of India & Ors. v. S.A.Khalliq Pasha & Anr., decided on January 13, 2009, the Supreme Court has held as under:-

*“Furthermore, in absence of any statutory rules, an employee does not have any legal right to be absorbed in the services. It is so held in Kunal Nanda vs. Union of India and Anr. 2000 (5) SCC 362, in the following terms:*

*“On the legal submissions also made there are no merits whatsoever. It is well settled that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in Rameshwar Prasad v. M.D., U.P. Rajkiya Nirman Nigam Ltd is inappropriate since the consideration therein was in the light of the statutory Rules for absorption and the scope of those Rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he*

*is exempt from the requirement of possessing a degree needs mention, only to be rejected. The stand of the respondent Department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e. a degree is a must and essential and that there could be no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that Department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim.”*

22. The Tribunal having considered all the aspects of the case dismissed the Original Application. We find no infirmity in the impugned order.

23. The writ petition is accordingly dismissed.

24. No costs.

**(V.KAMESWAR RAO)**  
**JUDGE**

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**SEPTEMBER 05, 2013**

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