

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.65 OF 2023

DISTRICT : PUNE

Sub.- Transfer/Repatriation

Smt. Indira Jaysing Aswar.)
Age : 38 Yrs, Working as Registrar,)
Having Office at Dr. Babasaheb Ambedkar)
Research & Training Institute (BARTI),)
Pune and residing at 48/2, Plot No.6,)
Ganeshnagar, Wadgaonsheri, Pune – 14.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Social Justice and Special Assistance)
Department, Mantralaya,)
Mumbai – 400 032.)

2. The Director General.)
Dr. Babasaheb Ambedkar Research and)
Training Institute (BARTI), Pune – 01.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Smt. S.P. Manchekar, Chief Presenting Officer for Respondent No.1.

Shri A.B. Moon, Advocate for Respondent No.2.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 03.05.2023

JUDGMENT

1. The Applicant has challenged the order dated 06.01.2023 cancelling her deputation and repatriating her to parent department

issued by Respondent No.2, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this O.A. are as under :-

While Applicant was serving on the establishment of Urban Development Department and was posted as Deputy Chief Executive Officer, Z.P, Buldhana, the Respondent No.1 – Social Justice and Special Assistance Department in consultation with Applicant's parent department and willingness given by her, appointed her as Registrar at Dr. Babasaheb Ambedkar Research and Training Institute, Pune (BARTI) for three years by order dated 14.10.2021. Accordingly, Applicant joined at BARTI. Though her deputation was for 3 years, the Director General of BARTI – Respondent No.2 by order dated 06.01.2023 abruptly curtailed her deputation and repatriated her to Urban Development Department and relieved her by order dated 06.01.2023 which is challenged by the Applicant in the present O.A. *inter-alia* contending that Respondent No.2 had no locus or competency to curtail the deputation and impugned order dated 06.01.2023 is also *malafide*, since it is stigmatic.

3. Respondent No.1 – Social Justice and Special Assistance Department as well as Respondent No.2 – BARTI filed Affidavit-in-reply resisting the O.A. and sought to justify the impugned order.

4. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the impugned order mainly on the following grounds :-

- (i) Respondent No.1 – Social Justice and Special Assistance Department (borrowing department) is the only authority and competent to curtail the deputation period.
- (ii) Impugned order curtailing deputation period being issued by former Director General of BARTI – Shri Dhammajyoti

Gajbhiye attributing dereliction in duties is without jurisdiction and stigmatic.

- (iii) Deputation is governed by Rule 40 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'Joining Time Rules, 1981' for brevity) read with Appendix-II which inter-alia provides that where services of deputationist is not required by the borrowing authority, it shall be open to borrowing authority to revert deputationist to the parent department with 3 months' notice to the parent department before curtaining deputation and no departure from the terms and conditions as mentioned in Rule 40 read with Appendix-II is permissible.

5. Per contra, Smt. S.P. Manchekar, learned Chief Presenting Officer for Respondent No.1 and Shri A.B. Moon, learned Advocate for Respondent No.2 – BARTI sought to justify the impugned order and pointed out that in view of unsatisfactory performance and dereliction in duties, the then Director General of BARTI in view of delegation of powers to him by governing Council of BARTI curtailed the deputation of the Applicant and relieved her from BARTI. They further contend that before issuance of impugned order, several show cause notice were given to the Applicant calling her explanation, but she submitted explanation of only one show cause notice which was not found satisfactory, and therefore, for smooth administration of BARTI, the Applicant was required to be repatriated to her parent department. The submission was also advanced that deputationist has no legally enforceable right to continue on deputation and it can be curtailed where circumstances warrants the same. In this behalf, reference is also made to G.R. dated 17.12.2016 Clause No.5 which *inter-alia* provides that in case of irregularity in functioning, misappropriation, dereliction in duties, the deputation

period can be curtailed without giving 3 months' notice to the parent department. On this line of submission, they plead that impugned order is legal and valid and needs no interference by the Tribunal.

6. In view of pleadings and submissions, the issue posed for consideration is whether impugned order dated 06.01.2023 issued by Director General of BARTI curtailing the deputation is legal and valid.

7. At this juncture, before going ahead, it would be apposite to refer Rule 40 and Appendix-II of 'Joining Time Rules of 1981' which governs and regulates terms and conditions of deputation. Rule 40 and Appendix-II are as under :-

“40. Terms and conditions of transfer to foreign service.- (1) The authority sanctions the Government servant's transfer to foreign service or on extension in the period of foreign service must always send a copy of such sanction to the concerned Government servant and the Audit Officer.

(2) The Government servant himself should without delay communicate a copy to the officer, who audits his pay, and take his instructions as to the officer to whom he is to account for the contributions; he should also report to the latter officer the time and date of all transfers of charge to which he is party when proceeding on, while in, and on return from foreign service and furnish from time to time particulars regarding his pay in foreign service, the leave taken by him, his postal address, and any other information, which that officer may require.

(3) Every Government servant transferred to foreign service is expected to be conversant with the rules relating to foreign service. He should see that the rules and orders regulating his pay and other conditions of service while in foreign service are observed and that contributions, if any, are paid regularly.

(4) Transfer of a Government servant to foreign service should be made on the standard terms and conditions as in Appendix II. No departure from the prescribed terms and conditions shall be permissible.

Note.- Guidelines for both the competent authorities and the foreign employers are given in Appendix III.”

APPENDIX II

Standard terms and conditions of transfer of Government servants to foreign service

Note.- Whatever the word "Government servant" occurs in these terms, the name of the Government servant should be mentioned while applying these terms.

The following are the standard terms and conditions of transfer of Government servants to foreign service, including statutory Corporations, autonomous bodies. No departure from the prescribed terms and conditions shall be permissible.

(1) Period of Deputation.- The foreign service shall commence from the date the Government servant hands over charge of the post and will expire on the date he resumes charge of his post under Government. The Government servant shall be on deputation for a period of (Stated the period) years I the first instance provided that -

- (i) Government/competent authority reserves the right to recall him any time before expiry of the period of deputation, if his services are required by Government in the interest of public service;
- (ii) if his services are not required by the foreign employer, it shall be open to the foreign employer to revert him to the parent department, provided 3 months' notice is given to Government/competent authority by the foreign employer before effecting such reversion; and
- (iii) it is open to him to revert to the parent department after he gives a notice, of not less than three months, in writing to Government/competent authority of his intention to do so."

8. At the same time, it would be also apposite to see Clause No.३(५) of G.R. dated 17.12.2016, which is as under :-

“३(५) प्रतिनियुक्तीवर सेवा घेणा-या कार्यालयास काही विशिष्ट कारणास्तव विहित कालावधी संपण्यापूर्वी प्रतिनियुक्तीवर आलेल्या अधिका-यास त्याच्या मूळ प्रशासकीय विभागास/कार्यालयाकडे परत पाठवणे आवश्यक असल्यास, त्या आस्थापनेवरील सक्षम प्राधिका-याने तसे समर्थनीय कारण स्पष्ट करून त्याला / तिला परत पाठवण्याची यथास्थिती संबंधित प्रशासकीय विभागास / कार्यालयास तीन महिन्यांची पूर्वसूचना (नोटीस) देणे आवश्यक राहिल. तथापि, या संदर्भात विशिष्ट कारणे नमूद करून उदा. अनियमितता, अफरातफर, कर्तव्यच्युती, इत्यादी कारणे नमूद करून प्रतिनियुक्तीचा कालावधी तात्काळ संपुष्टात आणता येईल.”

9. Indisputably, Applicant's parent department is Urban Development Department and it is by virtue of order dated 14.10.2021 issued by Respondent No.1 – Social Justice and Special Assistance Department, the Applicant has been deputed on the establishment of BARTI for three years. Notably, there is specific reference in the deputation order dated 14.10.2021 that the appointment of the Applicant is made in terms of

terms and conditions as mentioned in Rule 40 read with Appendix-II of 'Joining Time Rules of 1981' which is as follows :-

“शासन आदेश :-

श्रीमती इंदिरा जयसिंग अस्वार, उप मुख्य कार्यकारी अधिकारी, जिल्हा परिषद बुलढाणा यांची निबंधक, डॉ. बाबासाहेब आंबेडकर संशोधन व प्रशिक्षण संस्था, पुणे या पदावर आदेशाच्या दिनांकापासून पुढील ३ वर्षाकरिता प्रतिनियुक्तीने नियुक्ती करण्यात येत आहे.

२. श्रीमती इंदिरा जयसिंग अस्वार यांची ६ वेतन आयोगानुसार रु.१५६००-३९१०० ग्रेड पे रु.६६००/- अशी वेतनश्रेणी असून त्याप्रमाणे त्यांचे वेतन अदा करण्यात यावे.

३. सदर प्रतिनियुक्ती महाराष्ट्र नागरी सेवा (पदग्रहण अवधी, स्वीयत्तर सेवा, निलंबन व बडतर्फी व सेवेतून काढून टाकणे या काळातील प्रदाने नियम, १९८१ मधील परिशिष्ट-३ मधील मार्गदर्शक सूचनांच्या अधीन राहून परिशिष्ट-२ मध्ये नमूद केलेल्या अटी व शर्ती व संदर्भ क्र.१ येथील शासन निर्णयातील तरतुदीनुसार करण्यात येत आहे.”

10. It is thus apparent that it is in consultation with Urban Development Department which is parent department of the Applicant and on consent given by the Applicant, she was deputed as Registrar, BARTI for 3 years. BARTI is registered under Societies Registration Act, 1860 with a status of autonomous body and Ministry of Social Justice and Special Assistance Department is Chief Patron of the said Institution as mentioned in Memorandum of Association of BARTI. Thus, though BARTI is an autonomous body, it is under general control of administrative Department of Social Justice and Special Assistance.

11. Now turning to the issue involved in the present matter, the pivotal question is as to whether relieving order issued by Respondent No.2 is without jurisdiction or competency. Indisputably, Applicant is relieved unilaterally by the then Director General of BARTI without any consultation for approval of Ministry of Social Justice and Special Assistance which is borrowing authority. It may be noted that BARTI is not borrowing authority, but it is an institution under the general control of Social Justice and Special Assistance Department which is the borrowing authority. This being the position, obviously in terms of Rule 40 with Appendix-II of 'Joining Time Rules of 1981' where borrowing authority intends to curtail deputation, it can do so provided 3 months' notice given to the parent department by the borrowing department before effecting such repatriation or reversion. True, in terms of Clause

d(5) of G.R. dated 17.12.2016 in case of irregularities, misappropriation, dereliction in duties, there could immediate repatriation without giving 3 months' notice. However, it is for the borrowing department to curtail the deputation period and to revert a Government servant and not for BARTI. All that, BARTI could make report to the borrowing department i.e. Social Justice and Special Assistance Department and on receipt of such proposal if borrowing department is satisfied, then it could do so even without giving 3 months' notice. However, in the present case, it is BARTI, who unilaterally repatriated and relieved the Applicant by impugned order, which is totally in contravention of Rule 40 read with Appendix-II of 'Joining Time Rules of 1981'. As per these Rules, the terms and conditions of deputation are strictly governed by these Rules and no departure from the prescribed terms and conditions as mentioned in Appendix-II is permissible. In such situation, BARTI cannot be said competent or have jurisdiction to curtail deputation and to repatriate the Applicant.

12. True, deputationist has no legal right to continue in the post to which he is deputed as canvassed by the learned Advocate for the Applicant. In the present case, the crux of the matter is, who is competent authority to curtail the deputation and not about right to continue in the post. Reliance placed on the decision of Hon'ble High Court in ***Writ Petition No.259/2008 [M. Arumugam A. Muthusamy Vs. Union of India] decided on 10.09.2008*** is totally misplaced. In that case, it was on request of deputationist, it was cancelled before completion of tenure of deputation. It is in that context, Hon'ble High Court held that parent department can curtail the period of deputation before expiry in certain contingencies and deputationist has no legal right to continue in the post. As such, there was no dispute about the competency of the Department/authority which curtails deputation which is involved in the present case. Similarly, the decision of ***CAT, New Delhi in O.A.No.1735/2011 [Ashok Kumar Vashisht Vs. Union of India] decided on 07.05.2002*** is also of no assistance to the

Respondents. It was a case of suppression of material fact about the antecedents while posted on deputation with National Investigation Agency, but later, the said authority noticed bad antecedents of the Petitioner and consequent to it, deputation with NIA was cancelled and he was repatriated. It is in that context, CAT in reference to decision of Hon'ble Apex Court held that even if tenure of deputation is stipulated, the deputationist does not have indefeasible right to hold the said post and deputation can be curtailed, since deputation is tripartite contract involving parent department, borrowing department and concerned employee and it can be continued only if all these three parties like it to continue. At the same time, it has been observed by CAT that deputation curtailment must be simplicitor and the grounds of curtailment should not be stigmatic or punitive and where grounds for repatriation is stigmatic or punitive, the order of repatriation must precede proper enquiry and principles of natural justice. In that case, though Petitioner alleged *malafide*, it was not established and borrowing department i.e. NIA itself curtail the deputation which was upheld by CAT. Thus, the facts are totally distinguishable and the said decision is of no assistance to the Respondents.

13. Similarly, reliance placed on the decision of Hon'ble High Court, New Delhi in ***Writ Petition No.10626/2017 [Rakesh Kumar Verma Vs. Jawaharlal Nehru University & Anr.] decided on 15.03.2018*** is also of no assistance to the Respondents. In that case, the challenge was to the order of University directing the Petitioner to proceed on leave where he was on deputation, since he was due to retire on 31.12.2017 and he was repatriated by University (borrowing authority) to parent department and it was a case of simplicitor repatriation and it was found innocuous order of repatriation. The repatriation was done by virtue of provisions under Jawaharlal Nehru University Act, which empowers University to cut-short Petitioner's tenure. Suffice to say, in that case also, deputation was by borrowing authority and it was found simple repatriation without stigma.

14. True, Applicant's deputation was curtailed by the then Director General of BARTI as per delegation of powers to him by governing Council in terms of Resolution on Subject No.32 in their meeting dated 07.12.2012. The Subject of Resolution is as under :-

“विषय क्र.३२ : शासनामार्फत या संस्थेकडे प्रतिनियुक्तीवर येणा-या शासकीय अधिकारी/कर्मचा-यांना महासंचालक यांच्या संमतीशिवाय अथवा या संस्थेच्या मागणीशिवाय प्रतिनियुक्तीवर न पाठविण्याबाबत.

विविध शासकीय विभागामार्फत या संस्थेकडे काही अधिकारी व कर्मचारी प्रतिनियुक्तीवर पाठवण्यात येतात. काही अधिकारी/कर्मचारी त्यांच्या वैयक्तिक फायद्यासाठी व सोयीसाठी अशा संस्थेमध्ये प्रतिनियुक्तीवर येतात. सदरहू प्रतिनियुक्ती अधिकारी व कर्मचारी हे संस्थेच्या ध्येयधोरणाच्या उद्दिष्टपूर्तीसाठी काम करीत नाहीत. अशा अधिकारी/कर्मचा-यांचा फारसा उपयोग संस्थेच्या उद्दिष्टपूर्तीसाठी होत नाही. या संदर्भात या संस्थेकडे प्रतिनियुक्तीवर कुठल्याही शासकीय/निमशासकीय कार्यालयाकडून महासंचालकांच्या पूर्वपरवानगीशिवाय तसेच संस्थेच्या मागणीशिवाय कोणताही अधिकारी व कर्मचारी संस्थेकडे पाठवू नये. तसेच या संस्थेकडे जे अधिकारी/कर्मचारी संस्थेकडे प्रतिनियुक्तीवर आलेले आहेत व भविष्यात येणार आहेत त्यापैकी कोणतेही अधिकारी/कर्मचा-यांचे कामकाज असमाधानकारक/संशयास्पद आढळून आल्यास तसेच या संस्थेच्या ध्येयधोरणाच्या उद्दिष्टामध्ये त्याचा उपयोग नाही, असे निदर्शनास आल्यास अशा प्रतिनियुक्तीवर आलेल्या अधिकारी/कर्मचा-यांना त्यांच्या मूळ विभागाच्या आस्थापनेवर पाठविण्यासाठी कार्यमुक्त करण्याचे अधिकार महासंचालकांना द्यावेत.”

Insofar as delegation of powers is concerned, the delegation of powers to the Director General, BARTI cannot supersede or override Rule 40 of 'Joining Time Rules of 1981' which are framed in exercise of powers under Article 309 of the Constitution of India. As per 'Joining Time Rules of 1981', it was for the borrowing department i.e. Respondent No.1 – Ministry of Social Justice and Special Assistance Department to recall/repatriate the Applicant by curtailing her deputation period if circumstances warrant so. However, in the present case, it is BARTI who unilaterally relieved the Applicant without any consultation or approval with the parent department i.e. Respondent No.1. Suffice to say, Respondent No.2 cannot usurp the powers of Respondent No.1 and where such powers are exercised it being in blatant contravention of 'Joining Time Rules of 1981', the same is totally bad in law and liable to be quashed.

15. Curiously, in impugned order issued by BARTI, there is reference that the report about the performance of the Applicant and for curtailment of deputation was made to Respondent No.1. However, Respondent No.1 failed to take cognizance of it and played role of silent spectator. That apart, even after passing order dated 06.01.2023, no

such steps were taken by Respondent No.1 for curtailing the deputation of the Applicant by passing appropriate order, which may indicate that Respondent No.1 did not feel it necessary to curtail the deputation and to recall the Applicant or for some other reasons best known to it. Be that as it may, since order of curtailing deputation is passed by Respondent No.2 who is not at all competent authority, the order passed by authority having no jurisdiction or competency in the eye of law is *non-est* and bad in law.

16. During the course of hearing, learned Advocate for the Applicant also raised the issue that impugned action taken by the then Director General Shri Dhammajyoti Gajbhiye was *malafide* in view of some complaints made by the Applicant against him. She has also pointed out that subsequently after transfer of Shri Gajbhiye by order dated 28.02.2023 in his place, Shri Sunil Ware was posted in his place and he disapproved the action taken by his successor for repatriation of the Applicant. Shri Sunil Ware also gave letter dated 16.03.2023 to Respondent No.1 – Government that there is no approval to the delegation of powers to Director General and opined to recall the impugned order dated 06.01.2023 at the level of Government. However, later, Shri Sunil Ware made volte-face and in Additional Affidavit he stated that he wrongly addressed the said letter to the Government and stated that the action taken by his predecessor is correct. Insofar as this issue is concerned, since order passed by Respondent No.2 dated 06.01.2023 itself is without jurisdiction or authority, now it is not necessary to see and examine as to whether the impugned action was *malafide* or there were sufficient reasons for curtailing the deputation. Therefore, in my considered opinion, it would be not appropriate to make any comment about the sufficiency of reasons for curtailing deputation and impugned order dated 06.01.2023 is liable to be quashed and set aside on the ground of competency and jurisdiction of Respondent No.2 to pass any such order.

17. The totality of aforesaid discussion leads me to sum-up that impugned order dated 06.01.2023 passed by Respondent No.2 is totally bad in law for want of competency and jurisdiction and liable to be quashed and set aside. However, at the same time, Respondents are free to take decision afresh which should be in adherence to Rules and with due process of law. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) Impugned order dated 06.01.2023 issued by Respondent No.2 is quashed and set aside.
- (C) Interim relief granted by the Tribunal by order dated 17.01.2023 is made absolute.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 03.05.2023

Dictation taken by :

S.K. Wamanse.

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