



GAHC010085102022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

WP(C) No.2985 of 2022

GO-004293N Shri Suryawanshi Pandurang Sayaji, Son of Late Sayaji Pandurang Suryawanshi, permanent resident of F-2, "Rukmini Villa Apartment", 3rd Lane, Jaysingpur – 416101, District: Kolhapur, Maharashtra and presently serving as Private Secretary at HQ CE Project Udayak, PIN – 931715, C/o 99 APO.

.....Petitioner

-Versus-

1. The Union of India, represented by Joint Secretary (BR), Ministry of Defence [earlier designated as Secretary (BRDB)], Room No.418, "B" Wing, 4th Floor, Sena Bhawan, New Delhi – 110011.
2. The Director General, Border Roads Organization, Seema Sadak Bhawan, Ring Road, Delhi Cantt., New Delhi – 110010.
3. The Additional Director General (East), Border Roads Organization, HQ ADGBR (East), Jalukbari, Lankeswar, Guwahati, Assam, PIN – 781014.
4. The Chief Engineer, HQ CE (P) Udayak, Doomdooma, District: Tinsukia, Assam, PIN – 931715, C/o 99 APO.

.....Respondents



5. The Chairman, DRDO, represented by teh Deputy Director, Department of Personnel (Pers-AA1), Ministry of Defence, Defence Research & Development Organisation (DRDO), Room No.266, DRDO Bhawan, Rajaji Marg, New Delhi – 110011.

.....Proforma Respondents

For the Petitioner : Mr. D. Borah, Advocate.
For the Respondents : Ms. R. Devi, Central Government Counsel.
Date of Judgment & Order : 12th May, 2022.

- B E F O R E -
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Borah, learned counsel for the petitioner. Also heard Ms. R. Devi, learned Central Government Counsel, appearing for all the respondents.

2. The petitioner's case is that the respondent No.5 (Chairman, DRDO) published an advertisement dated 19-25.03.2022 inviting applications from eligible candidates for filling up 63 posts of Private Secretary on deputation basis. The petitioner's grievance is that the respondent No.1 to 4 are not forwarding his application for the post of Private Secretary on deputation basis to the Defence Research & Development Organisation (DRDO), proforma respondent No.5.

3. Mr. D. Borah, learned counsel for the petitioner submits that the petitioner had submitted his application for appointment to the post of Private Secretary on deputation basis to the respondent authorities on 06.04.2022. The respondent No.4 thereafter issued Eligibility Certificate and Sparability Certificate dated 07.04.2022 stating that the petitioner was found eligible to apply for the said post and that the works presently handled by the petitioner would not suffer unduly by his departure.

4. The respondent No.4 [Chief Engineer, HQ CE (P) Udayak] thereafter forwarded the petitioner's application for the post of Private Secretary in Defence Research & Development Organisation (DRDO) to the respondent No.3. Thereafter, the Director General, Border Roads Organisation (BRO) (respondent No.2) issued the impugned letter dated 26.04.2022 stating that as per the latest Departmental Policy, the application for deputation could not be processed when the deficiency in a particular cadre was more than 15%. The letter also stated that since the present net deficiency in the rank of Private Secretary as on 01.04.2022 was 27.59%, it would not be possible to process the petitioner's case further. The petitioner's application was then returned back to the petitioner. The operative portion of the impugned letter dated 26.04.2022 is reproduced below:-

“(a) As per the latest departmental policy, the application for deputation cannot be processed when the deficiency in the particular rank is more than 15%. Since the present net deficiency in PS rank as on 01 Apr 2022 is 27.59%, it will not be possible to process the case further.”

5. The petitioner's counsel submits that the deficiency in the rank of Private Secretary is due to the fault of the respondent Nos.1 to 4, inasmuch



as, the post of Private Secretary is to be filled up 100% by promotion. The petitioner should not be made to suffer just because the respondent Nos.1 to 4 have not filled up the vacant posts in the cadre of Private Secretary in the BRO. He further submits that it is the fundamental right of every employee to advance his career and an employee must be given ample opportunity to upgrade his career prospect and any action on the part of the respondents in refusing permission to advance his future prospects would be violative of the fundamental rights of the petitioner.

6. The petitioner's counsel further submits that while the petitioner's application has not been forwarded to the DRDO, the applications of four Stenographers of the BRO were being forwarded to the DRDO to be considered for the post of Private Secretary in terms of the advertisement dated 19-25.03.2022, even though the cadre of Stenographers in the BRO is also having deficiency in the cadre/grade. He further submits that various decisions have been passed by this Court and the Division Bench in similar matters directing the respondent authorities to issue NOC and to forward applications of various employees of BRO, who apply for jobs and posts outside the BRO.

7. The learned counsel for the petitioner further submits that the Departmental Policy/SOP dated 20.04.2021, on the basis of which the respondent No.2 has decided not to send the petitioner's application to the DRDO, does not have the sanction of the Ministry of Defence and since a separate Policy with regard to forwarding of applications already exists by way of Office Memorandum bearing No.28011/1/2013-Estt.(C) dated 23.12.2013, the Departmental Policy/Standard Operating Procedure dated

20.04.2021 could not have been applied by the respondents for rejecting the petitioner's application.

8. The petitioner's counsel also submits that the Division Bench of this Court in **Writ Appeal 324/2015 (Swapan Kumar Mallik -Vs- The Union of India & 8 Ors.)**, vide judgment & order dated 25.01.2016 had dealt with a similar issue, wherein it held that in case there happens to be any deficiency of a particular rank/class of persons, it is for the BRO authorities to take appropriate action to fill the vacancies, but that can hardly be a ground to refuse permission/No Objection Certificate (NOC), particularly, when the appellant had also fulfilled the conditions for technical resignation. The Division Bench also held that in the absence of effective rebuttal, the refusal of the BRO authorities to grant NOC to the appellant on the ban on outside employment/absorption was ill-conceived and arbitrary and contravened his fundamental rights guaranteed under Articles 14 and 19 of the Constitution of India. He has also relied upon the Division Bench judgment of this Court in, **Writ Appeal No.188/2021 (Union of India & 2 Ors. -Vs- GO-3006M Ram Asra Khural & 2 Ors.)** and the judgment passed in **WP(C) No.3443/2021 (GO-002874M Sri Punil Kumar -Vs- Union of India & 5 Ors.)** in support of his submission that the petitioner's application for deputation to the DRDO should be sent to DRDO for its consideration.

9. Ms. R. Devi, learned Central Government Counsel submits that an employee of the BRO, such as the petitioner, does not have any fundamental right to deputation to any other Organisation, though they have a right of fair consideration in accordance with the Policy and needs of the Organisation. The learned Central Government Counsel further submits

that while the petitioner is only considering his interest by filing the present case, this Court would also have to look into the interest of the Organisation as a whole, which is serving the interest of the general public.

10. The learned Central Government Counsel submits that the fact situation in the cases cited by the learned counsel for the petitioner does not fit into the fact situation of the present case and as such, the decisions made therein would not be applicable to the facts of this case.

11. The learned Central Government Counsel also submits that the Policy on the basis of which the respondent No.2 has taken a decision not to send the petitioner's application to the DRDO has been made effective from 20.04.2021 and is applicable to this case.

12. I have heard the learned counsels appearing for the parties.

13. The Policy/Standard Operating Procedure dated 20.04.2021 on deputation/outside employment/foreign assignment applicable to GREF Officers states at Clause 7(j) as follows:-

“(j) The application will not be processed when the cadre deficiency for that particular rank of the applicant is greater than 15 percent. The officer will be allowed to proceed on deputation only when bare minimum requirement of the department has been met. The bare minimum requirement will be decided by HQ DGBR based on the work load and reasonable restrictions which are inbuilt to safeguard organizational interest and can be invoked by the DGBR as accorded by the MoD (BR) vide their ID No.BRDB/14/11/2015/GE-I dated 27 Nov 2017.”

A reading of Clause 7(j) shows that an application for deputation/ outside employment/foreign assignment will not be processed when the



cadre deficiency for that particular rank is greater than 15%. It further states that an Officer will be allowed to proceed on deputation only when the bare minimum requirement of the Department has been made. It further states that the bare minimum requirement will be decided by the HQ DGBR, which in this case is the respondent No.2.

14. In view of Clause 7(j) of the Standard Operating Procedure on deputation/outside employment/foreign assignment of GREF Officers (hereinafter referred to as "SOP of 2021"), the competent authority to decide whether an application for deputation can be allowed/processed lies with the respondent No.2. The Certificates dated 07.04.2022 issued by the Chief Engineer (respondent No.4) can only have a recommending effect and the final decision on the same would lie only with the respondent No.2 in terms of Clause 7(j) of the SOP of 2021.

15. In ***Writ Appeal 324/2015 (Swapan Kumar Mallik -Vs- The Union of India & 8 Ors.)***, which was disposed of by a Division Bench of this Court by judgment & order dated 25.01.2015, the issue therein was with respect to the prayer of the writ petitioner for absorption into the National Highways Authority of India (NHAI).

16. In ***Writ Appeal No.188/2021 (Union of India & 2 Ors. -Vs- GO-3006M Ram Asra Khural & 2 Ors.)***, which was disposed of by a Division Bench of this Court vide judgment & order dated 02.09.2021, the petitioner therein had applied for a post advertised by the National Highways Authority of India (NHAI) for recruitment to the post of General Manager (Technical) on deputation. The writ petitioner, who was an Executive Engineer in BRO,



applied for the post and submitted his application on 06.02.2020 to his employer, i.e. BRO, for forwarding his application to the NHAJ. The application of the writ petitioner was forwarded by the BRO to NHAJ. Thereafter, the writ petitioner appeared in the examination and was selected for the post. However, before joining the post, the writ petitioner was required to appear in an interview and also submit a No Objection Certificate (NOC) from his employer. The writ petitioner submitted an application on 10.06.2020 to his employer for issuing him an NOC. The NOC was not given to the writ petitioner and the writ petitioner was communicated vide letter dated 19.02.2020 that the employer had refused permission to the petitioner for appearing in the written examination to be conducted by the NHAJ, as there was shortage of Officers eligible for posting in high altitude areas.

The writ petitioner approached this Court vide WP(C) No.2804/2020 and this Court allowed the writ petition, whereby the BRO was directed to issue/grant NOC to the writ petitioner. The Union of India thereafter filed Writ Appeal No.188/2021 and the Division Bench of this Court held that the settled position was that the writ petitioner was legally bound to take permission/NOC from his employer in case he was to sit in any interview for appointment on deputation in any other Department/Organisation. The Division Bench held that the order dated 19.02.2020 denying NOC to the writ petitioner was only communicated to the writ petitioner on 09.06.2020, i.e. after he appeared in the examination and was selected. It further held that there was nothing on record to show that the order dated 19.02.2020 was communicated to the writ petitioner before 09.06.2020 or before he appeared in the examination. The Division Bench

thus held that when there was nothing to show that there was a specific denial of NOC by the employer, but at the same time had approved the cases of 15(fifteen) other Engineers of the same Department for deputation to the NHAI, some of whom had not even cleared the examination, the same only showed bias against the writ petitioner. As the petitioner's application to his employer for forwarding his candidature for the post advertised by the NHAI was not rejected by the NHAI and as the BRO had also recommended 15(fifteen) other Officers to be sent for deputation to the NHAI, the Division Bench held that the Union of India had failed to show any reason as to why NOC should have been denied to the writ petitioner. Accordingly, the Division Bench dismissed the writ appeal and upheld the order passed by the learned Single Judge.

17. In **WP(C) No.3443/2021 (GO-002874M Sri Punil Kumar -Vs- Union of India & 5 Ors.)**, this Court had allowed the prayer of the writ petitioner, by directing the BRO to issue an NOC to the writ petitioner to enable him to join the post of General Manager (Technical) in the NHAI in terms of the offer of appointment letter dated 03.06.2021 issued by the NHAI, as it was not unexpected for the petitioner to have assumed that approval for the same had been given by the concerned authority. WP(C) No.3443/2021 had been disposed of on the ground that the same was covered by the judgment rendered in Writ Appeal No.188/2021.

18. The facts of the above cases referred to by the learned counsel for the writ petitioner, i.e. Writ Appeal No.324/2015, Writ Appeal No.188/2021 and WP(C) No.3443/2021 show that the fact situation in those cases and the fact situation in the present case are different. In the present case, the

competent authority to decide whether the petitioner's application for taking part in the selection process for the post of Private Secretary on deputation basis is the respondent No.2. The last date for submission of the applications for the post of Private Secretary in terms of the advertisement dated 19-25.03.2022 is 17.05.2022. The impugned letter dated 26.04.2022, intimating the decision of the respondent No.2 not to forward the petitioner's application for deputation, has been made prior to the last date for submission of applications. As such, there is a specific rejection of the petitioner's application based on Clause 7(j) of the SOP 2021 and the impugned letter dated 26.04.2022 categorically states that the deficiency in the rank of Private Secretary as on 01.04.2022 is 27.59%, which is more than the permissible deficiency allowed by the respondents, i.e. 15%. Further, the petitioner herein has not taken part in the selection process for the advertised posts.

19. The petitioner's prayer in the present case is to direct the respondents Nos.1 to 4 to send his application for consideration for appointment as Private Secretary in the DRDO on deputation, which in effect means that if he is selected, the respondents should give their permission to the petitioner to go on deputation, without giving an option to the respondent No.2 to exercise his discretion. This Court, on considering the fact that the employer needs to give his consent to an application for deputation, is of the view that this Court cannot substitute its views in respect of the views given by the respondent No.2. Further, though career advancement and upgradation of career prospects of an employee should not be impeded, the fact remains that the petitioner is trying to force the

hand of the respondents, who have the right to exercise their discretion to either allow or reject the prayer for deputation. It is the considered view of this Court that as long as the petitioner is in the parent Organisation, the Rules, Policies and Guidelines adopted by the respondents would be applicable to the petitioner. Further, though the petitioner has a right to look for career advancement, the overall interest of the Organisation would also have to be kept in focus and the reason given by the respondent No.2 denying permission to the petitioner in terms of its SOP cannot be faulted.

20. It is settled law that a case is only an authority for what it decides and not what logically follows from it. A little difference in facts changes the precedential value of a decision. In the present case, the core issue that has arisen is as to whether an employee of an Organization has a fundamental right to deputation to any other Organization or Department, even when the employer exercises its discretion to the contrary.

21. In the case of *Umapati Choudhary -Vs- State of Bihar*, reported in **(1999) 4 SCC 659**, the Apex Court held that deputation can be aptly described as an assignment of an employee of one Department or cadre or even an Organisation, to another Department or cadre or Organisation and the necessity for sending on deputation arises in public interest to meet the exigencies of public service. The Apex Court further held that the concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such service by the borrowing employer. It also involves the consent of the employee to go on deputation or not.

As can be seen from the law laid down by the Apex Court, the

employer cannot compel an employee to go on deputation from the parent Department/Organisation to another Department/Organisation, unless a statutory Rule exists in this behalf. Similarly, an employee cannot compel his employer to send him on deputation or have him considered for deputation with another Department or Organisation where there is no cadre post. Thus, deputation connotes service outside the parent Department/Organisation from which an employee is serving. This Court accordingly holds that an employee does not have a fundamental right to deputation, in the absence of the consent of the employer.

22. In the present case, though the petitioner has taken a stand that there exists deficiency in the cadre of Stenographers, the same is only a vague averment which has not been substantiated. In any event, the fact remains that there exists a deficiency in the grade of Private Secretaries to which the petitioner belongs. With regard to the contention of the petitioner's counsel that the Policy/SOP dated 20.04.2021 cannot be applied for rejecting the petitioner's application, this Court is of the view that there is nothing to show that the said Policy/SOP cannot be made applicable to the petitioner's case, inasmuch as the settled law with regard to deputation in any event requires the consent of the employer to give its consent to the employee to go on deputation to another Organisation. As has been stated earlier, the cadre of Private Secretaries being 27.59% deficient, the said reason for not allowing the petitioner's case cannot be said to be irrational.

23. The respondents having considered the petitioner's application for deputation and on considering the grounds for rejection, this Court does not find any grounds to interfere with the said decision. In any event, with



regard to the question of allowing or disallowing a prayer for deputation, it would not be proper for this Court to substitute its views from that made by the competent authority, especially when this Court finds that it is a reasonable decision.

24. In view of the reasons stated above, this court does not find any ground to allow the writ petition. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant