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Central Administrative Tribunal
Principal Bench, New Delhi

O.A. No.202/2025

Reserved on:03.07.2025
Pronounced on:24.07.2025

Hon'ble Mr.Sanjeeva Kumar, Member (A)
Hon'ble Mr. Ajay Pratap Singh, Member (J)

Ajit Tamolia Aged about 41 years,
S/o Sh. Babu Lal Tamolia
R/oRZ-36A/4, Raj Nagar-I,
Palam, New Delhi-110077
Mob. No. 9871960331
Post: Senior Auditor Group – B (NG) ...Applicant
(By Advocate: Mr. Shubham Bahl for Mr. Anuj Aggarwal)

V/s

1. O/o the Comptroller & Auditor General of India (CAG)
Through its Dy.Comptroller & Auditor General (HR)
9, Deen Dayal Upadhyaya Marg,
New Delhi-110124
Email: cagoffice@cag.gov.in

2. O/o the Comptroller & Auditor General of India (CAG)
Through its Assistant Comptroller & Auditor General (N)-I, 9,
Deen Dayal Upadhyaya Marg,
New Delhi-110124
Email: cagoffice@cag.gov.in

3. Director General of Audit (Railway Commercial) Through its Sr. Audit Officer (Admn.)
Office of the Director General of Audit (DGA)
4, Deen Dayal Upadhyaya Marg,
New Delhi-110002
Email: pstechedu@nic.in

4. Director (Railway Commercial)
Office of the Director General of Audit (DGA)
4, Deen Dayal Upadhyaya Marg,
New Delhi-110002
Email: pdarlycom@cag.gov.in

5. Director General of Audit (Shipping)
Office of the Director General of Audit (Shipping)
Plot No. C-2, G.N. Block,
6th& 7thFloor, Mumbai-400051
Email: pdashippingmum@cag.gov.in

6. Principal Director of Audit (Infrastructure)
Office of Principal Director of Audit (Infrastructure)
A-Wing, 3rd Floor, I.P. Bhawan,
New Delhi-110002
Email: pdainfradl@cag.gov.in

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7. Director General of Commercial Audit, Mumbai
Office of Director General of Commercial Audit
8th Floor, Audit Bhawan, Bandra Kurla Complex,
Bandra (East), Mumbai-400051
Email: pdcamumbai@cag.gov.in

8. Dr. Nilotpal Goswami
Director General (Railway Commercial)
C/o Office of the Director General of Audit (DGA)
4, Deen Dayal Upadhyaya Marg,
New Delhi-110002
Email:goswamin@cag.gov.in ...Respondents

(By Advocate: Mr. S.S. Hooda)

O R D E R

Hon'ble Mr. Sanjeeva Kumar, Member (A):

By way of this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought the following relief(s):-

"(i) Set aside the impugned Order dated 20.12.2024, passed by the respondents whereby the representation dated 19.11.2024, as made by the applicant herein, was rejected;

(ii) Set aside the impugned Office Order No.91 dated 18.11.2024, passed by the Director General of Audit, Railway Commercial, Delhi, whereby the applicant is repatriated from the Office of the Director General of Audit (RC), Delhi on 18.11.2024, i.e. O/o the Director General of Audit (Shipping), Mumbai;

(iii) Direct the respondents to pay full salary to the applicant w.e.f.18.11.2024 till the applicant is reinstated in service, along with interest thereupon to be calculated at 18% p.a.;

(iv) Allow the present Original Application with costs in favour of the applicant; and

(v) Pass any other Order as this Hon'ble Tribunal may deem fit in the interest of just and in the favour of the applicant."

2. Brief facts of the case as gleaned from the O.A. are that the applicant was appointed on the post of Auditor in the Department of Comptroller & Auditor General of India. The parent office of the applicant is at Director General of Audit (Shipping), Mumbai. On 25.01.2013, the applicant married Mrs. Anju Tamolia, who is working as a Permanent PGT (Economics) in the Directorate of Education, Govt. of NCT of Delhi. Consequently, the applicant made representation thereby seeking his deputation to Delhi on the ground that he should be posted at the same station as his spouse.

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3. Vide letters dated 11.02.2015, 06.08.2021 and 09.11.2023 the respondents laid down guidelines for sending an employee on deputation at a place where his/her spouse is permanently posted and is working in Central Government, State Government and Public Sector Undertaking. In terms of the said guidelines, the applicant made representations to the respondents for a posting in Delhi on spouse ground. On 10.03.2017, the applicant was sent on deputation to Delhi in the Office of the Director General of Audit (RC), Delhi and his deputation period has been extended every year on the same ground and the last extension of deputation period was given to the applicant by the respondents on 06.06.2024. In terms of the said extension letter, the tenure of deputation of the applicant was to continue till 13.03.2025.

4. It is further submitted that vide letter dated 01.11.2024, Mr. M. Naveen Kumar authorized the applicant to collect some documents on his behalf from the Office of SDM (HQ), Daryaganj, Delhi and letter dated 01.11.2024 was given to the applicant on 06.11.2024 by Dr. Nilotpal. On 06.11.2024, the applicant was verbally directed by Dr. Nilotpal Goswami, Director General (Railway Commercial) to collect some documents on behalf of one Mr. M. Naveen Kumar from the Office of SDM (HQ), Daryaganj, Delhi. The applicant submits that the said directions were illegal and beyond the official duties of the applicant. Further, since the applicant did not know who Mr. M. Naveen Kumar was, the applicant was hesitant in going to Office of SDM (HQ), Daryaganj, Delhi. On 07.11.2024, Dr. Nilotpal Goswami, Director General (RC), again directed the applicant to visit the Office of SDM (HQ), Daryaganj, Delhi and get certain documents on behalf of Mr. M. Naveen Kumar. The applicant refused to go to the Office of SDM (HQ), Daryaganj, Delhi for the purpose of collecting the said documents. On this, Dr. Nilotpal (Railway Commercial), threatened the applicant that he would be repatriated back to his parent office. On 08.11.2024, the applicant was pressurized to collect the said documents from the Office of SDM (HQ), Daryaganj, Delhi, but the applicant refused to visit the Office of SDM (HQ), Daryaganj, Delhi. However, due to the pressure built by Dr. Nilotpal, the applicant agreed to accompany the other staff member of the Office of SDM (HQ), Daryaganj, Delhi for the purpose of collecting the documents. The applicant did not go inside the Office of SDM (HQ), Daryaganj, Delhi. The applicant was told by the Sr. Private

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Secretary that the signatures of Mr. M. Naveen Kumar are forged which further solidified the doubts that the applicant already had towards the said documents.

5. It is stated that on 11.11.2024 the applicant applied for Earned Leave (EL) from 11.11.2024 to 14.11.2024 due to the incidents that occurred in the office and also because he was feeling mentally traumatized. As per the e-HRMS, that being the reporting and reviewing officer, Dr. Nilotpal arbitrarily rejected the said leave application. The said leave application was rejected purportedly on the ground that it was Audit Diwas Week and consequently, leave could not be given to the applicant. The applicant due to his poor mental health could not attend his duties w.e.f. 11.11.2024.

6. It is further stated that the applicant was served with a Memorandum dated 13.11.2024, wherein the applicant was directed to explain the reason for unauthorized absence from duties. On 13.11.2024, the applicant replied to the said Memorandum dated 13.11.2024. In the said reply, the applicant informed the respondents about the incident that had taken place in the previous week. Further, the applicant also informed the respondents that he would resume his duty from 18.11.2024. On 18.11.2024, the applicant rejoined his duty with the respondents. On the same day, the applicant was served with the impugned letter dated 18.11.2024, which reads as under:

> "Shri Ajit Tamolia, Sr. Auditor who is on deputation to this office from 14.03.2017 is hereby repatriated from this office on 18.11.2024 (A.N.) with instruction to join his parent office O/o the Director General of Audit (Shipping). Mumbai.
>
> (Authority: Director General's Order dated 18.11.2024)."

7. It is contended that with effect from 18.11.2024 till date, the applicant has not been paid his salary. It is submitted that the said action on the part of the respondents in not paying salary to him for the aforesaid period is illegal as well as unjustified. Being aggrieved, on 19.11.2024 the applicant filed an Original Application (OA No. 4528/2024) before this Tribunal thereby seeking the following reliefs: -

> "(i) Set aside the impugned Office Order No. 91 dated 18.11.2024, passed by Director (RC), Office ofthe Director General of Audit, Railway Commercial. Delhi, whereby the applicant is repatriated from the Office of the Director General of Audit (RC), Delhi on 18.11.2024 (A.N.) with instruction to join his parent office O/o the Director General of Audit (Shipping), Mumbai:

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(ii) Allow the present Original Application with costs in favour of the applicant; and

(iii) Pass any other Order as this Hon'ble Tribunal may deem fit in the interest of justice and in the favour of the applicant."

8. It is further contended that on 19.11.2024, the respondents passed an office order whereby the applicant was directed to deposit the pen drive as given to him by the respondents. On 20.11.2024, the applicant received a Memo dated 18.11.2024 via e-mail wherein it was declared by the respondents that the period from 11.11.2024 to 14.11.2024 will be treated as unauthorized absence from duty. Applicant submits that the Memo dated 18.11.2024, as received by the applicant on 20.11.2024, is illegal as well as unjustified.

9. Vide order dated 21.011.2024 this Tribunal was pleased to dispose of aforesaid OA with inter-alia following directions: -

"12. We note that the applicant made a representation in the form of a legal notice on 19.11.2024. Given the factual matrix of the case as highlighted above, and the arguments advanced by the learned counsel for the parties, we dispose of the present OA by directing the Competent Authority amongst the respondents to dispose of the representation which is in the form of a legal notice dated 19.11.2024, within a period of six weeks from the date of receipt of certified copy of this order.

13. Needless to say, the principles of natural justice shall be followed by the Competent Authority amongst the respondents while deciding the representation/legal notice dated 19.11.2024. Untill such time, the office order dated 18.11.2024 shall remain in abeyance.

14. This order is without prejudice to the rights and contentions urged by the respective parties, which may be raised by them at a later stage, if required.

15. All pending applications stand disposed of. No order as to costs."

10. The applicant states that vide order dated 22.11.2024, the respondents passed an Office Order wherein it was declared that the period of absence from duty, i.e. 11.11.2024 to 14.11.2024 will be treated as 'Dies Non' purportedly as per Rule 17(1) of the CCS (Leave) Rules, 1972, which was illegal, unjustified and in violation of the principles of natural justice. The applicant received the said order via e-

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mail on 26.11.2024. On 25.11.2024, the applicant vide email dated 25.11.2024 made a representation to the respondents thereby requesting the respondents to allow the applicant to rejoin his duties with the respondents. It is submitted that the said letter dated 25.11.2024 was duly received by the respondents. On 25.11.2024, the respondents issued a letter dated 25.11.2024 to the applicant whereby it was declared that the applicant will not be allowed to join duty with the respondent No.1. Applicant claims that the order dated 25.11.2024 is illegal, unjustified and in clear violation of the directions passed by this Tribunal vide Order dated 21.11.2024 in OA No. 4528/2024. Consequently, the respondents are guilty of willful and deliberate non-compliance of the order dated 21.11.2024 and are liable to be prosecuted for contempt of this Tribunal. The applicant vide e-mail dated 28.11.2024 requested for a personal hearing with the respondents and grant him an opportunity to present his case before them. It is submitted that the said e-mail was duly received by the respondents but no action was taken w.r.t the said e-mail dated 28.11.2024. Being aggrieved by the willful and deliberate violation of the directions passed by this Tribunal, the applicant on 03.12.2024 filed a Contempt Petition (CP No. 973/2024). Vide order dated 17.12.2024, this Tribunal was pleased to issue notice in the said Contempt Petition (CP No. 973/2024). It is submitted that the said Contempt Petition is pending before this Hon'ble Tribunal.

11. The applicant further submits that vide impugned Order dated 20.12.2024, the respondents have rejected the representation dated 19.11.2024, filed by the applicant which is illegal as well as unjustified. Further on 28.12.2024, the respondents issued Office Order wherein it was declared as under: -

> "With reference to this office letter no. DGA RC Deputation/22-61/2020-21/949 dated 16.12.2024, un-authorised absence from duty on 16.11.2024 in respect of Sh. Ajit Tamolia, Sr. Auditor has been treated as 'Dies Non' as per Proviso to FR 17(1)."

12. It is contended that on 02.01.2025, the applicant received reply to his RTI Application. It is submitted that along with the said reply, the letter dated 18.11.2024 sent by the respondent No.1 to respondent No.5 stating that 01 vacancy for the post of Sr. Auditor has arisen due to the relieving of Sh. Ajit Tamolia who was working with them on

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deputation, was also attached. The applicant, through his counsel, also served a legal notice dated 08.01.2025 upon the respondents. The said legal notice dated 08.01.2025 was duly received by the respondents but, however, no reply to the said legal notice has been received by the applicant till date.

13. The applicant seeks to challenge the impugned action on the part of the respondents, on the following grounds inter alia-

A) The impugned order dated 20.12.2024 has been passed in utter disregard to the principles of natural justice. It is submitted that no hearing whatsoever was given to the applicant by the respondents before passing the impugned Order dated 20.12.2004. This Tribunal vide Order dated 21.11.2004 in O.A. No. 4528 2024 has categorically directed that the representation legal notice dated 19.11.2024 will be decided by the competent authority of the respondents after complying with the principles of natural justice but in the present case the impugned Order has been passed in utter disregard to the principles of natural justice, inasmuch as no opportunity of being heard was afforded to the applicant before passing the impugned Order dated 20.12.2024. Consequently, the impugned Order dated 20.12.2024 is contemptuous and in violation of the principles of natural justice.

B) The impugned Order dated 20.12.2024 as well as impugned Order dated 18.11.2024 are in violation of the OM dated 17.06.2010, passed by the DoPT, specially Clause 9 of the OM dated 17.06.2010 which reads as under:

"Premature reversion of deputationist to parent cadre

Normally, when an employee is appointed on deputation foreign service, his services are placed at the disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving an advance notice of at least three months to the lending Ministry/Department and the employee concerned."

[Underlining Added]

But in the present case, no advance notice of at least 3 months was given to the lending Ministry/Department to the employee concerned, as mandated under Clause 9 of the OM dated 17.06.2010. It is submitted also that the provisions of OM dated 17.06.2010 are

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mandatory in nature and the law as such has been declared by the Courts in the following judgments: -

> "Madhav Chaturvedi vs Union of India & Ors., passed by the Central Administrative Tribunal, Principal Bench in OA No. 2766/2017, decided on 08.11.2017, MANU/CA/0702/2017
>
> Rajkumar vs. National Human Rights Commission, Hon'ble Delhi High Court, decided on 12.03.2021, W.P. (C) No. 451/2021
>
> Madan Lal Saini & Ors. vs. Union of India & Ors. passed Hon'ble Delhi High Court (Division Bench), decided on 08.09.2022, W.P. (C) No. 13097/2022."

(C) In the impugned Order dated 20.12.2024, the respondents have categorically declared as under: -

> "Thus, the official has been repatriated on the grounds of indiscipline and insubordination to the Head of the Department."
> [Underlining added]

From the aforesaid admission on the part of the respondents, it is clear beyond doubt that the repatriation of the applicant is punitive as well as stigmatic in nature. It may be noted that the repatriation order thus, has been passed in utter disregard of principles of natural justice and is illegal as well as unjustified

D. It is contended further that the respondents instead of taking any action against the erring officer, i.e. Respondent No.8, have held the applicant guilty of indiscipline and insubordination and the said action on part of the respondents is biased, arbitrary and unjustified.

E. The applicant reiterates that impugned Orders suffer from malice, and are actuated by ulterior motives since the applicant refused to visit the Office of SDM (HQ), Daryaganj, Delhi for collecting the personal documents of Mr. M. Naveen Kumar, the applicant has been victimized by Dr. Nilotpal by repatriating the applicant to his parent office. It is emphasized that the applicant is not bound to follow the illegal order being passed by Dr. Nilotpal and consequently, the applicant rightly refused to visit the Office of SDM (HQ), Daryaganj, Delhi. It may be noted that the said incident is acknowledged by the respondents while passing the impugned Order dated 20.12.2024. The said act on the part of the applicant infuriated Dr. Nilotpal and with malafide intention, Dr. Nilotpal has passed the impugned Order dated 18.11.2024.

F. The applicant also points out that initially the ground for Repatriation was unauthorized absence, however, as per Order dated 20.12.2024,

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the ground for Repatriation was arbitrarily changed to insubordination and indiscipline to the Head of the Department which are contradictory in nature and thus prove that grounds for Repatriation are actuated by ulterior motives and there is no reason, much less a justified reason, for repatriating the applicant back to his parent office.

G. The applicant also submits that the impugned Orders are even otherwise extremely harsh inasmuch as the wife of the applicant is working in Delhi and the children of the applicant are studying in Delhi. The applicant is working continuously in Delhi since 2017. It may also be noted that in terms of the last Extension Order dated 06.06.2024, the applicant was entitled to continue in service in Delhi till 13.03.2025 and the premature repatriation of the applicant is illegal, unjustified and unreasonable.

H. It is re-emphasized by the applicant that impugned Orders dated 20.12.2024 and 18.11.2024 have been passed in utter disregard to the principles of natural justice. The purpose of passing the impugned Orders is based on alleged misconduct of unauthorized absence from duty. But instead of affording an opportunity of being heard, the respondents have unilaterally repatriated the applicant to his parent office.

I. The applicant also draws our attention to his exemplary service record and submits that in last 7 years of his deputation period, the applicant has never been served with any Memo, Show Cause Notice, Advisory, Charge Sheet, etc. Further, APARs of the applicant have throughout remained outstanding which proves that the applicant has always discharged his duties to the satisfaction of his seniors. Consequently, there was no action to repatriate the applicant to his parent office.

J. The impugned Order dated 20.12.2024 and 18.11.2024 have also been challenged as on the ground that they have not issued by competent authorities. Towards this Clause 3 (c) of the letter dated 09.11.2023 is cited, which reads, inter-alia, as under: -

> "3. As routing such proposals through Hors is time consuming and sometimes causes unnecessary delay in processing these proposals and also causes hardship to individual concerned, the Competent Authority has reviewed the existing system of approval and ordered the following with immediate effect

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C Further, the cases of deputation of officials on spouse grounds/extension in the tenure of deputation of officials on spouse grounds, where HoDs are not able to accept the requests, shall continue to be sent to HQrs for taking final decision by the Competent Authority."

It is submitted that in terms of the said letters dated 09.11.2023, the request for repatriating the applicant to his parent department ought to have been sent to HQ of Comptroller & Auditor General of India and, thereafter, on the approval from the HQ, the Order with respect to repatriate could have been passed by the respondents. It is also submitted that in terms of the directions passed by this Hon'ble Tribunal and in conformity with the prevailing rules, i.e. Central Civil Services Rules, HQ of O/o the Comptroller & Auditor General of India, Delhi is the competent authority to decide the representation in the instant case filed by the applicant. It is submitted that the impugned Orders have been passed by the Director General of Audit (Infrastructure) and Director (Railway Commercial), which are not competent to pass the said orders. Consequently, the impugned Orders dated 20.12.2024 and 18.11.2024 are illegal and ultra vires.

K. In conclusion, the applicant has re-asserted that impugned Orders dated 20.12.2024 and 18.11.2024 are illegal, unjustified, arbitrary, discriminatory, punitive, stigmatic, unreasonable, unconstitutional, violative of Articles 14, 16, 21 and 311 of the Constitution of India and in violation of the principles of natural justice, suffers from malice and also violative of the policy pertaining to deputation on the ground of posting of husband/wife at the same station.

14. The respondents in their counter reply have submitted that from a perusal of the applicant's pleadings, it is evident that he is serving in the Indian Audit and Accounts Department (IAAD) and he is borne on the cadre of the Director General of Audit (Shipping), Mumbai, a constituent office under the IAAD. He was on deputation with the office of the Director General of Audit (Railway-Commercial), New Delhi another constituent office under the IAAD. Therefore, at no point in time was the applicant ever on deputation outside the IAAD, he was on deputation within IAAD. Ipso facto, the deputation of the applicant is not covered by the provisions of the DOPT OM dated 17.06.2010. Additionally, it is an admitted fact that the applicant was on deputation

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on "spouse ground". As per the prevailing instructions, as contained in respondents' circulars dated 11.02.2015 and 06.08.2021, deputation on "spouse grounds" is not treated as one made in public interest and is considered on the personal request of the employee. Further, Clause 3.1 of the DoPT OM dated 17.06.2010 specifies that the terms deputation/foreign service appearing in the OM will cover only those appointments that are made by transfer on a temporary basis provided the transfer is outside the normal field of deployment and is in public interest. Clause 3.2(c) further directs that temporary appointment made on the basis of personal requests of employees will not be treated as deputation/foreign service for the purposes of the OM. The relevant portions are reproduced for ready reference;

> "3. Scope of Term 'deputation/foreign service' Restrictions on treating an appointment as on deputation/foreign service.
>
> 3.1 The terms deputation/foreign service will cover only those appointments that are made by transfer on a temporary basis provided the transfer is outside the normal field of deployment and is in public interest. The question whether the transfer is outside the normal field of deployment or not will be decided by the authority which controls the service or post from which the employee is transferred.
>
> 3.2 The following types of appointments will not be treated as deputation/foreign service for the purposes of these orders:
>
> ...
>
> (c) Temporary appointment made on the basis of personal requests of employees.
>
> ...

15. It is submitted that once the deputation is not in public interest and is affected on the basis of personal request of an employee, the provisions of the OM dated 17.06.2010 cease to apply. The non-appreciation of Clauses 3 and 12 of the DoPT OM dated 17.06.2010 is completely fatal to the applicant's case. Notwithstanding the complete non-applicability of the DOPT OM dated 17.06.2010 in the case of the applicant, the law regarding premature repatriation of a deputationist is well settled. In **U.P. Gram Panchayat Adhikari Sangh** v. **Daya Ram Saroj**, reported at (2007) 2 SCC 138, the Hon'ble Supreme Court held that 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

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person to continue for long on deputation. In the case of **L/Nk VHK Murthy** vs **Special Protection Group**, 2000(57) DRJ 157 decided on 31.01.2000, the Hon'ble High Court of Delhi while considering an order of premature repatriation held as under;

> "After all what is impugned action taken by the Respondent authorities ultimately? The Petitioners are only sent back to their parent department. Of course, after the authorities convinced themselves that it is not in the interest of SPG to retain these petitioners on deputation any longer. Once such an opinion is formed on the basis of material on record which can be treated as sufficient material, it was not necessary that Petitioners should have been given any notice to show cause or memo before repatriating them back to their parent department. No disciplinary action is taken by the Respondents. There is no adverse effect on the service conditions of the Petitioners. The effect of the impugned order is that these Petitioners go back and join their parent department the post which they are holding on substantive basis without entailing any loss either in terms of status which they were enjoying as regular employees in their parent department or the emoluments or other service conditions. I may hasten to add here that all this discussion should be read in the context of the nature of sensitive job to be performed in SPG without laying down any general proposition of law.
>
> I do not agree with the submissions of the petitioners that the impugned order visits with any stigma. Admittedly, the impugned order does not make any reflection on the work and conduct of the Petitioners. Only when the Petitioners filed the writ Petitions and to meet the challenge of arbitrariness Respondents have stated in the counter-affidavit the reasons which compelled the Respondents to repatriate the Petitioners. The Petitioners have tried to highlight the reasons stated in the counter-affidavit and argue on that basis that order is stigmatic, I do not agree. It may be mentioned that the Respondents are in catch-22 situation. Had the counter-affidavit would not disclose any reason for repatriation of these Petitioners, the Petitioners would have contended that the impugned repatriation orders are passed without any basis and or material and, therefore, these orders are arbitrary. If the reasons are disclosed in the counter-affidavit to show that the exercise of power by the Respondents was bona fide and it was on the basis of material on record which compelled the Respondents to form an opinion about the unsuitability of the Petitioners to retain them further in the SPG, Petitioners are challenging the action as stigmatic. It is only to satisfy the conscious of the Court and to further show that the impugned action was not arbitrary but based on relevant considerations and bona fide exercise of power that the reasons are disclosed in the counter-affidavit. From these reasons disclosed in the counter-affidavit, Petitioners cannot be allowed to argue that the orders are stigmatic. No doubt is the power of the court to go behind the order passed and see the real motive by piercing the veil. However, as mentioned above, in such cases

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> where the person comes on deputation and has no vested right to remain with the host department, the Court has to interfere only when the order is passed arbitrarily and mala fide. If there was some material which shows some negligence or conduct of the Petitioner and becomes the basis of decision of the Respondents to repatriate such an officer, it cannot be called as a stigmatic, more so when the impugned order is innocuous and silent on the conduct of the Petitioners, Once I take the aforesaid view, various judgment cited by the Petitioner may not be of any consequence, I have already referred to the Constitutional Bench Judgment of the Supreme Court in the case of K.H. Phadnis (supra) and observed that even as per that judgment a person who is unsuitable can be sent back to his parent department. Other judgments cited either relate to observance of Principles of Natural Justice or lifting of veil to decide in order to find the real cause for passing the orders. These aspects I have already detailed with above. Needless to mention I say at the cost of repetition that matter pertains to security of Prime Minister or Former Prime Ministers. In such a case even slightest doubt in the mind of respondents about the competency of an officer would justify the reversion as no chance can be taken with security of this nature. Slightest error may cause irreversible damage. Further as I have already pointed out above, I have perused the record also to satisfy as to whether the order passed were arbitrary or for extraneous or mala fide reasons and I am satisfied from the record that the action of repatriation of the petitioners to their parent department was a bona fide exercise of power. For these reasons Rule is discharged. Interim orders stand vacated. All these petitions fail and dismissed. In view of the peculiar facts of these cases, there shall be no orders as to costs."

16. The respondents submit that a bare reading of the repatriation order dated 18.11.2024 makes it crystal clear that the repatriation order is completely innocuous. The impugned order dated 18.11.2024 does not make any reflection on the work and conduct of the applicant. It is only when the applicant himself invited comments from the respondents for reasons behind his repatriation that the respondents have detailed the reasons which compelled the respondents to repatriate the applicant. The Hon'ble High Court of Delhi in **Dayanand Kataria, IAS** vs **Union of India & Ors.**, W.P. (C). 9757 of 2015, while dealing with another issue of premature repatriation, held the following;

> "Mr. Sethi has also submitted that the judgment relied upon by the counsel for the respondent in the case of LINK V.H.K. Murthy (supra) is not applicable to the facts of the present case as the judgment relates to the peculiar facts of the case as it pertain to the Special Protection Group. While factually Mr. Sethi is correct, but the general principles laid down in the aforesaid judgment, in our view, are fully applicable while dealing with the question of

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repatriation of a deputationist. While dealing with case of a deputationist, the basic underlying principles which are to be kept in mind are:

(i) That the deputationist does not acquire an indefeasible right or vested right to hold the post on deputation;

(ii) Ordinarily, the period of deputation should not be curtailed and premature repatriation should be in exceptional circumstances;

(iii) Even when the tenure of a deputationist is specified, his period of deputation can be curtailed on grounds, such as unsuitability or unsatisfactory performance; and

(iv) Prior to the repatriation, it is not mandatory to issue a show cause notice. However, in case where the repatriation is stigmatic in nature, the principles of natural justice should be followed and a show cause notice should be issued."

17. At this stage, it is apposite to mention that Office Order No. 1 dated 07.03.2017 leaves no manner of doubt that continued suitability of the applicant was always fundamental to his continuation on deputation. The basic guiding principles regarding deputation can be summarized as follows:

"(i) That the deputationist does not acquire an indefeasible right or vested right to hold the post on deputation;

(ii) Ordinarily, the period of deputation should not be curtailed and premature repatriation should be in exceptional circumstances;
(iii) Even when the tenure of a deputationist is specified, his period of deputation can be curtailed on grounds, such as unsuitability or unsatisfactory performance;

(iv) Prior to the repatriation, it is not mandatory to issue a show cause notice. However, in case where the repatriation is stigmatic in nature, the principles of natural justice should be followed and a show cause notice should be issued."

18. The respondents further submit that applying the principles to the case of the applicant, it is apparent that the applicant's refusal to do his duties, proceeding on leave when his request for leave was denied that too during an important week for the respondents i.e. the Audit Diwas Week, leave no manner of doubt that his performance was unsatisfactory and he was unsuitable. Further, the language of the repatriation order is innocuous and does not in any manner allude to

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the work and conduct of the applicant, therefore it is not stigmatic in nature and there was no need to issue a show-cause notice. Notwithstanding there being no requirement for issuance of a show-cause notice, the applicant's objections to the repatriation have been duly considered and a speaking order has also been passed in support thereof. Therefore, the order of repatriation and the present OA is without merits.

19. Regarding the applicant's contention that he was forced to collect some documents from the SDM (HQ) Daryaganj, which was not a part of his duty, the respondents submit that the Sr. PS to Director General (DG) asked the official to collect the information and the DG did not ask him directly.

20. It is categorically denied that any threat was extended to the applicant or any pressure was built up on him. Further, the applicant cannot be the arbiter of what directions are illegal and beyond the official duties. The leave request of the applicant was rejected because the Audit Diwas celebrated the establishment of the Department 164 years back and there were 10 Compendiums to be released. Further, Workshops, School visits and Blood Donation Camp as a common event were also organized. The Audit Diwas was inaugurated by the Hon'ble Speaker of the Lok Sabha and as per HQ directions dated 14.11.2024, the office was required to join the live broadcast on CAG official website on 16.11.2024 for Audit Diwas celebration. The event was to be presided over by the Hon'ble Speaker of the Lok Sabha. Office Orders 89 and 90 were accordingly issued on 13.11.2024 and 14.11.2024 respectively. All officers who were not on authorized leave were present barring the applicant. The sanction or denial of leave is well within the rights of the Respondents. Further, the applicant was aware that his leave had been denied.

21. The respondents state that the applicant was repatriated because he was unsuitable. The applicant remained on leave most of the times (130/489 days) in the past one year and four months from July 2023 to Oct 2024, he frequently came late in the office and was not willing to work outside of the office assigned to him. Further while submitting joining report, he has not submitted any medical certificate, therefore, he could have attended the Audit Diwas in office on

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16.11.2024. The Applicant has been paid salary from 01.11.2024 to 18.11.2024 which was credited to his salary account on 29.11.24. As per order dated 20.12.2024 issued by the Competent Authority, the period from 19.11.2024 to the date of issue of order was to be decided by the parent office.

22. The respondents further state that as per office records, 03 pen drives have been issued to the applicant. While relieving on 18.11.2024, he was instructed to return the official pen drives which he did not return. The letter of 19.11.2024 was the first reminder and second reminder was issued vide letter dated 25.11.2024 to which he replied that no official pen drive was issued to him.

23. We have heard both the parties and also carefully gone through the pleadings, including the counter reply and the written submissions.

24. Learned counsel for the applicant based on the OA and the written submissions placing reliance on the judgment of Hon'ble High Court of Delhi in Dayanand Kataria (supra) reiterates that since the impugned order is stigmatic and punitive in nature and is in utter disregard to the principles laid down including principles of natural justice, the same should be quashed. It is also argued that as evident from the impugned order dated 20.12.2024, the order is punitive and also suffers from malice inasmuch as the respondents instead of taking any action against the erring officer, i.e. Respondent No.8, has held the applicant guilty of indiscipline and insubordination. He also submitted that the foundation of repatriation order is a misconduct of purported unauthorized absence from duty. However, as per the subsequent order dated 20.12.2024, the ground for repatriation was arbitrarily changed to insubordination and indiscipline to the Head of the Department. Therefore, both orders are contradictory.

24. It is reiterated that otherwise also the impugned orders are extremely harsh as the wife of the applicant is working in Delhi and the children of the applicant are also studying in Delhi.

25. Our attention is also drawn to the exemplary service record of the applicant, his clean service record and also to the fact that his APARs have remained 'outstanding' throughout. By way of reiteration,

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it is also stated that orders are in violation of DoP&T OM dated 17.06.2010 wherein it is stipulated that premature reversion to the parent cadre of the deputationist can be resorted to only after giving an advance notice of at least three months to the lending Ministry/Department.

26. Learned counsel for the respondents, on the other hand, has reiterated the claim made in the counter reply and the written submissions and submitted that the initial repatriation order dated 18.11.2024 does not make any reflection on the work and conduct of the applicant. It is only upon the directions of the Tribunal that a speaking order came to be passed where the respondents stated the reasons that compelled them to repatriate the applicant.

27. The respondents have placed reliance on the judgment/order of the Hon'ble High Court of Delhi in L/Nk. VKH Murthy vs. Special Protection Group (supra) wherein it has been dealt with the issue of premature repatriation and held that reasons disclosed for repatriation on the direction of the court cannot be made basis to say that the repatriation order is stigmatic or based on misconduct. Further, the Hon'ble Court has held that if the Department is put in a Catch-22 situation, they have to disclose reasons otherwise it will be held to be arbitrary and if reasons are disclosed it will be held as stigmatic. Further, the principles laid down in L/Nk. VHK Murthy vs Special Protection Group have been held to be applicable across the board by the Hon'ble High Court of Delhi in Dayanand Kataria (supra) which lays down principles regarding deputation as follows:

> (i) That the deputationist does not acquire an indefeasible right or vested right to hold the post on deputation;
>
> (ii) Ordinarily, the period of deputation should not be curtailed and premature repatriation should be in exceptional circumstances;
>
> (iii) Even when the tenure of a deputationist is specified, his period of deputation can be curtailed on grounds, such as unsuitability or unsatisfactory performance;
>
> (iv) Prior to the repatriation, it is not mandatory to issue a show cause notice. However, in case where the repatriation is stigmatic in nature, the principles of natural justice should be followed and a show cause notice should be issued.

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28. The learned counsel for the respondents also submits that the provision of three months notice is not applicable in the present case, as the applicant was not serving outside the organization but was on deputation within IAAD. The learned counsel would also argue that deputation on 'spouse ground' as not treated as one made in public interest and is considered on personal request of the applicant. Thus applicant does not have any ground on both counts.

29. The respondents stated that unsuitability of the applicant has been detailed in Para 12 and 13 of the impugned order dated 20.12.2024. His unsuitability is further evident from the contents of Ann. A-11, A-13, A-14 and A-18 of the OA.

30. The learned counsel further contends that that applicant has alleged that the issue started when he was given an illegal order to collect certain documents from the O/o SDM, Daryaganj on behalf of one Mr. M.Naveen Kumar which the applicant refused. The applicant was posted in the Secretariat of Respondent No.3 in Secretariat posting, the employee concerned is authorized to collect and deliver information/letter to Govt. Offices and it is a normal part of duty in Secretariat. The information which was required was that of Institute of Public Auditors of India (IPAI) of which Mr. M. Naveen Kumar and other IA&AS officers are the members. Further, the applicant cannot be the arbiter of what directions are illegal and beyond his official duties, further, no charter of duties has been placed on record by him to substantiate his argument. The applicant remained on leave most of the times (130/489 days) in the past one year and four months from July 2023 to October 2024, he frequently came late in the office and was not willing to work outside of the office assigned to him. Additionally, the '4th Audit Diwas' was held on 16.11.2024, and as per Office Order 89 dated 13.11.2024 and Office Order 90 dated 14.11.2024, all the officers/officials were instructed to attend the office on 16.11.2024. However, as admitted by the applicant himself, he did not adhere to this Office Order and did not attend the office on 16.11.2024 and remained absent without leave. Further while submitting joining report, he has not submitted any medical certificate, therefore, he could have attended the Audit Diwas in office on 16.11.2024.

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31. It is also averred that the applicant's refusal to discharge his duties and proceeding on leave when his request for leave was denied that too during an important week for the Respondents i.e. the Audit Diwas Week, leave no manner of doubt that his performance was unsatisfactory and he was unsuitable. Further, the language of the repatriation order is innocuous and does not in any manner allude to the work and conduct of the applicant, therefore it is not stigmatic in nature and there was no need to issue a Show-Cause Notice. Notwithstanding there being no requirement for issuance of a Show-Cause Notice, the applicant's objections to the repatriation have been duly considered and a speaking order has also been passed in support thereof. Notwithstanding the aforementioned, the applicant joined his parent Department on 04.02.2025 and further, the post which fell vacant upon his repatriation has been filled up. Further, the extended period of deputation of the applicant would have come to an end on 13.03.2025.

32. We have considered the submissions. It is not in dispute that the applicant was in deputation on spouse ground and his deputation would have come to an end on 13.03.2025. It is also not in dispute that notwithstanding the above, the applicant joined his parent Department on 04.02.2025. The period of deputation which would have ended on 13.03.2025 is over now. Thus order dated 18.11.2024 wherein the applicant had been initially repatriated from the office of Director General of Audit, Delhi with instructions to join his parent office, i.e. office of the Director General of Audit (Shipping), Mumbai has lost its relevance.

33. The fundamental question, therefore, before us is whether the order dated 20.12.2024 which is stated to have been passed in compliance of the direction of this Tribunal is sustainable or not inasmuch as the impugned orders are alleged to be stigmatic, punitive and contrary to the principles of natural justice.

34. It is not disputed that the deputationists do not acquire any indefeasible right to hold the post of deputation, but it is also acknowledged that premature repatriation should be resorted to in exceptional circumstances when the officer is found to be unsuitable or

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his performance is unsatisfactory and if the repatriation is stigmatic the principles of natural justice should be followed and show cause should be issued. It is also a fact that the respondents did not conduct any enquiry against the applicant in respect of his alleged misconduct, including alleged unauthorized absence. Though in the initial impugned repatriation order dated 18.11.2024, no ground for premature repatriation was given but the subsequent order dated 20.12.2024 establishes that the misconduct of the applicant indeed constitutes the foundation of his repatriation. If that is the case, the respondents ought to have conducted domestic enquiry in terms of the procedure laid down under the rules as the impugned order are stigmatic in nature. The order of the repatriation whether stigmatic or not would depend upon the nature/words mentioned, which, depicts the foundation of the order of repatriation which will also decide that the same is punitive or not.

35. The coordinate Bench of this Tribunal vide Order/Judgment dated 08.02.2013 in OA No.2470/2015, titled **Capt. Yashraj Tongia** vs. **Union of India and another**, has considered the similar issue, Paras 10 and 11 thereof read as under:-

> "10. The Apex Court in Mathew P. Thomas v Kerala State Civil Supply Corpn. Ltd. & others [(2003) 3 SCC 263], in para 11 held as follows:
>
> "....From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service. If the form and language of the so-called order of termination simpliciter of a probationer clearly indicate that it is punitive in nature or/and it is stigmatic there may not be any need to go into the details of the background and surrounding circumstances in testing whether the order of termination is simpliciter or punitive. In cases where the services of a probationer are terminated by an order of termination simpliciter and the language and form of it do not show that either it is punitive or stigmatic on the face of it but in some cases there may be a background and attending circumstances to show that misconduct was the real basis and design to terminate the services of a probationer. In other words, the facade of the termination order may be simpliciter, but the real face behind it is to get rid of the services of a probationer on the basis of misconduct. In such cases it becomes

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> necessary to travel beyond the order of termination simpliciter to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he is in reality removed from service on the foundation of his misconduct."

36. The above observation of the Apex Court makes it clear that while deciding whether the termination of a probationer is a termination simpliciter or punitive, the Tribunal can travel beyond the order of termination to find out what in reality is the background and what weighed with the employer to terminate the services of the probationer. We are aware that the present case is not that of termination but repatriation, however if the foundation of such order is stigmatic, the law laid down by the Hon'ble **Apex** Court holds the field.

37. The Hon'ble Supreme Court in **Dipti Prakash Banerjee** vs **Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & others** [(1999) 3 SCC 60], laid down the criterion for differentiating as to when a simple order of termination is to be treated as founded on the allegations of misconduct, and when complaints could be only as a motive for passing such an order of termination. The Hon'ble Supreme Court held that to determine as to whether the termination of services is punitive or simpliciter would depend upon the stigma in the order of termination. It was held that stigma may be inferable from the references quoted in the termination order, though the order itself may not contain anything offensive. It was further held that termination order would be bad if it contains stigma but no regular inquiry has been held. In para 21 the Apex Court made the following observations:

> "21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as „founded on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the

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> allegations would be a motive and not the foundation and the simple order of termination would be valid."

38. Now the issue, which arises for adjudication as to whether the order of premature repatriation dated 20.12.2024 of the services of the applicant in the case in hand is an order of repatriation simpliciter or punitive/stigmatic. We have carefully perused the order dated 20.12.2024. In the sad order the main grounds for repatriation are as follows:

> "13. He was repatriated to his parent office on 18.11.2024 because he remained on leave most of the times in past one year, he frequently came late in the office, he was not willing to work outside of office assigned to him and he did not adhere to the office order directing all officials to be present for celebration of Audit Diwas on 16.11.2024. Further Shri Ajit Tamolia, Sr Ar while receiving his repatriation order did not agree to return the personal/official information he had in his custody in the pen drive officially given to him. In his e-mails "ajit83tamolia@mail.com" and "ajitt.comm@cag.gov.in" and official laptop/desktop was cleaned of data by shri Ajit Tamolia, Sr Ar before leaving office. He similarly did not respond to two reminders issued on 19.11.2024 and 25.11.2024. As on date official (APAR, Exam, Disciplinary) and personal data (salary/PR/GPF/KYC) data of DG in whose secretariat he was posted has been given by him despite three reminders."

39. The reasons given in the aforesaid para can be divided into two categories-

(i) "Long drawn" conduct of the applicant during the currency of his deputation with the respondents;

(ii) The delinquency/misconduct which are of recent times.

The assertions which are related to the first category are that he remained on leave for most of the time in past one year; he frequently came late to the office meaning thereby that the applicant was habitual late comer and lastly, he was not willing to take up work outside of office assigned to him. Such imputations are indeed serious in nature which also cast stigma on the applicant. But there is nothing on the pleadings or even during the course of hearing to point if any action was taken by the respondents or even a note of caution or show cause was issued to the applicant for such long drawn acts of delinquency. While his latest APAR for 01.04.2023 to 31.03.2024 has not been placed and we do not know if the same has been finalized or not but if his past three years' APAR preceding 01.04.2023 to 31.03.2024 are any indication of his service record, the same has been

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"Outstanding". If the aforesaid misconduct on the part of the applicant which indeed constitutes the foundation of his repatriation, was in the knowledge of respondents, were not in a position to understand as to why the respondents failed to take any action against the applicant.

40. The main contention of the applicant is that the respondents have acted out of malice and vengeance since he did not collect certain documents on behalf of Mr. M. Naveen Kumar from the office of SDM (HQ), Daryaganj, Delhi. We have also paid attention to the response of the reply to such contention contained in the impugned order as well as in the written submissions. Para 9 of the impugned order reads as follows:

> "9. Shri Ajit Tamolia, Sr. Ar in his legal notice/representation has stated that on 6.11.2024, 7.11.2024, 8.11.2024, he was directed by DG to collect documents on behalf of one Mr. M. Naveen Kumar from the Office of SDM (HQ), Daryaganj, Delhi. He stated that the said directions were illegal and beyond his official duties of. Further, since he did not know who M. M. Naveen Kumar was, he was hesitant in going to Office of SDM (HQ), Daryaganj, Delhi. He also alleged that Sr. Private Secretary told that the signatures of Mr. M. Naveen Kumar are forged which further solidified the doubts that he already had towards the said documents. On 11.11.2024, he applied Earned Leave (EL) e-HRMS (Electronics Human Resource Management System) due to the incidents that occurred in the office and also because he was feeling mentally traumatized. The leave was rejected by the DG on grounds that it was Audit Diwas Week, the biggest annual event of the department, involving several activities requiring coordination, and consequently, leave could not be given. Shri Ajit Tamolia claimed that due to his poor mental health he could not attend his duties w.e.f. 11.11.2024. Further, no advance notice of three months was given as required DoPT O.M. dated 22.04.2016 for premature reversion of deputationist to parent cadre."

41. The respondents have also contended that the official was asked by the DG Secretariat only to collect some documents relating to Institute of Public Auditors of India wherein Mr.M.Naveen Kumar and other IA&AS officers were the members and the allegation made by Ajit Tamolia, Senior Auditor is baseless. Further, it is contended that the applicant cannot be the arbiter of what directions are illegal and beyond his official duties and no charter of duties has been placed on record by him to substantiate his argument.

42. The respondents have placed reliance on judgment in L/Nk VHK Murthy (supra) wherein the Hon'ble Delhi High Court held that if the

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counter affidavit had not disclosed any reason for repatriation of these Petitioners, the Petitioners would have contended that the impugned repatriation orders are passed without any basis and/or material and, therefore, these orders are arbitrary. On the contrary if the reasons are disclosed in the counter affidavit, the petitioners are challenging the action as stigmatic. But in the said judgement it was also held that in such cases where the person comes on deputation and has no vested right to remain with the host department, the Court can interfere when the order is passed arbitrarily and is mala fide. In the present case, if the respondent was a late comer who was not willing to work outside of office for the work assigned to him, remained on leave most of the time in past one year, the least respondent could have done was to issue show cause or a warning to him and also conducted a domestic enquiry in terms of procedure laid down under the rules if required, but no such action was ever taken by the respondents. It also does not augur well that immediately after the incident of his refusal to collect certain documents from the SDM Office, Daryaganj, the respondents resorted to certain actions leading to his premature repatriation, such as memorandum dated 13.11.2024 to explain the reason for unauthorized absence, though the applicant had applied for leave on 11.11.2024 to 14.11.2024, which was rejected, followed by repatriation order of 18.11.2024 and memo of the same date treating his absence as unauthorized absence of duty. Further, the applicant approached this Tribunal on 21.11.2024 and the very next day i.e.22.11.2024 an office order was passed declaring his absence from 11.11.2024 to 14.11.2024 as 'Dies Non'.

43. It is not the case of the applicant that on being repatriated he simply goes back and joins his parent department. The order dated 20.12.2024 will remain in his record and its adverse impact on his career in future cannot be obviated, if the order stands. Moreover, in the aforesaid cited judgment relied upon by the respondents, no malafide was ever alleged and/or made out. There was not even a whisper of malafides which is attributed to any particular officer. But in the case in hand the basic contention of the petitioner is premised on malafides. It is also pertinent to note that there is a difference between 'suitability of an officer' and 'misconduct committed by an officer' while on deputation. If the officer is sent back to his parent cadre on the

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ground that he is unsuitable that may be permissible as per the terms of deputation but if a misconduct is imputed, the principles of natural justice must be followed, which is lacking in the instant matter. Thus, the aforesaid judgment relied upon by the respondent does not apply to the instant matter and is distinguishable.

44. Also in the light of the law laid down by the Hon'ble Apex Court in Mathew P.Thpmas vs Kerla State Civil Supply Corpn (supra) and Dipti Prakash Banerjee vs S N Bose National Centre for Basic Sciences (supra) it is evident that the Tribunal can travel beyond the order of premature repatriation order dated 18.11.2024 to find out if the order is simpliciter or a punitive and to ascertain what in reality is the background and foundation of the order of repatriation.

45. Also in view of the aforesaid, it is undisputed that the impugned order of premature repatriation of 18.11.2024 has merged into order dated 20.12.2024 which is stigmatic & punitive and the same is not permissible in the absence of a regular departmental enquiry in accordance with the law.

46. In the light of aforesaid facts and discussions, the impugned orders dated 18.11.2024 and 20.12.2024 are set aside. Since the applicant has already been repatriated and he has also joined his parent organization and his period of deputation is also over, no further direction is required, other than setting aside the impugned orders. The respondents are also directed to pay full salary to the applicant till the time he has worked with the respondents. The period of his absence, including *dies non*, should be regularized granting him leave as admissible to him. No order as to costs.

(Ajay Pratap Singh)
Member (J)

(Sanjeeva Kumar)
Member (A)

/kdr/

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