

ARMED FORCES TRIBUNAL
REGIONAL BENCH ; KOLKATA

OA 86 / 2023

Sub Suresh Rajput

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Kanchan Das, Advocate
For Respondents : Mr. Ajay Chaubey, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (A)

ORDER
29.09.2023

The applicant Sub Suresh Rajput vide the present OA makes the following prayers:-

“(a) To direct the respondents to quash/set aside the impugned orders of Letter No. No. 1205/CA-2 dated 02 Sep 2023 and Letter No. 1206/CA-2 dated 02 Sep 2023 of Respondent No. 4 in respect of repatriation of the Applicant locally with immediate effect from 30 Sep 2023.

(b) To direct the respondents to repatriate the applicant to his parent organization on scheduled date of 04 Jun 2024 as per previous repatriation order after conducting discharge drill at Depot Coy, APS Wing.”

An interim prayer was also made by the applicant:-

*“To direct the respondents to cancel the effect of impugned repatriation order No. 29/2023 dated 02 Sep 2023 whereby the applicant has been directed to repatriate locally with immediate effect from 30 Sep 2023 without conducting *repatriation drill at Depot Coy, APS Wing.”*

2. The respondents on advance notice who are represented have also filed the affidavit dated 28.09.2023 in opposition alongwith documents relied upon. In view of the prayer made by the applicant through the OA, as the substantial relief sought as well as the interim prayer both relate to the impugned repatriation order no. 029/23 dated 02.09.2023 whereby the applicant a Junior Commisioned Officer has been directed to repatriate locally w.e.f 30.09.2023 without conducting “relevant drill” at Depot Coy, APS Wing, we consider it appropriate to take up the OA itself for consideration as the pleadings on the record are complete and submissions in relation thereto have also been made.

CONTENTIONS OF THE APPLICANT

3. The applicant joined the Department of Posts Tehri Division on 31.12.1990 and joined the Army Postal Service Corps of the Indian Army on 20.02.1993 as a deputationist from the Department of Posts, Govt of India in the rank of ‘Warrant Officer’. The relevant terms and conditions of service for P&T non gazetted personnel on deputation to Army Postal Service vide

Ministry of Defence letter number 90004/APS/1A/1688/D(Mov) dated 19.03.1985 put forth as an Annexure A6 of the present OA are as under:-

“TERMS AND CONDITIONS OF SERVICE FOR P AND T NON-GAZETTED PERSONNEL ON DEPUTATION TO ARMY POSTAL SERVICE”

Volunteers for field service from P and T Department will be enrolled in the Army Postal Service Corps under Army Act on short term engagement.

2. The duration of engagement will be 18 months and so long thereafter as their Service may be required.

3. Age: The volunteers should not be over 40 years of age on the date of enrolment.

4. Medical/Physical Standards - They should be in medical category „A" and meet physical standards as prescribed from time to time.

5. Discipline: They will be governed by the Army Act and other orders applicable to Army persommel during their service in the Army Postal Service.

*6. Ranks: During their enrolment/appointment/promotion corresponding to substantive military ranks as specified below:-
Appointment Pay Corresponding Military rank (a) Packers/Runners/Mail Peons/Messengers/Task Work Messengers 196/232 Sepoy (b)Packers/Runners/Mail Peons/Messengers/Task Work Messengers Selection, Grade 210/270 Lance Naik (c) Postmen. Vill Postmen Mail Guard/lamadar/Head Postman 210/270 Naik (d) Postal Sorting Asst/ Lower Division Clerk 260/480 425/640 (17 Years and above Warrant Officer*

*"237. Those who have completed their initial period of engagement will be transferred to their parent department in the following order:
(a) Personnel who have outlived their usefulness and whose retention is not considered necessary in the interest of service will be re-*

transferred irrespective of the manpower position. Officers Commanding units will be competent to order such retransfer after obtaining approval of concerned Superior Postal Officer through proper channel."

4. The applicant was since promoted from the rank of Warrant Officer to the rank of Naib Subedar with effect from 14/5/2010 and was further promoted to the rank of Subedar with effect from 19/12/2022. **The applicant's initial term of engagement of 18 months of service in the Indian Army was completed on 19/8/1994.** His services were extended to the Indian Army from time to time and after getting promotion to the rank of Subedar, his services were further extended up to 04.06.2024 in terms of the Government of India letter dated 19/3/1985 with the age of superannuation of the applicant being 56 years, The applicant was to be repatriated to his parent organization vide repatriation order no. 9/23 APS deputationists dated 26.04.2023 wherein it was stated inter alia to the effect:-

"Approval is hereby accepted for repatriation of the personnel mentioned in Ser 01 to 02 of Appx A to this letter in their parent civil office on attaining the age limit wef the dates mentioned against under Army Rule 16, The Indl is directed to repot Deport Coy, APS Wing or repatriation drill / documentation on the date as noted against each"

5. The applicant was mentioned at serial no. 2 of the nominal roll of JCO's / ORs for issue of repatriation order - June 2024 with the details to the effect:-**"2. CBPO**

2 JCB34903L, 20/02/1993 04/06/2024 SIH1A1P1E1 0 Hindu
SUB (CL KSD) 05/06/1968 15/05/2024 LODHI
SURESH RAJPUT 19/12/2022 Uttar Pradesh"

whereby the applicant was directed to be repatriated with effect from 04.06.2024.

However vide cancellation of repatriation order no. 09/2023, the applicant was directed to be repatriated with immediate effect. Further vide another letter dated 02.09.2023 i.e. the Repatriation Order no. 29/2023 issued to the effect that approval was accorded to repatriate the applicant locally with effect from 30th September 2023 (AN) on completion of initial terms of engagement (CITE), the said repatriation order 29 of 23 further states to the effect that the JCO will be repatriated under Army Rule 16. Paragraphs one and two of the said letter of the said repatriation order no. 29 of 2023 dated 02.09.2023 are to the effect:-

"1. Further ref to this est letter No 1205/CA-2 of even date, approval is hereby accorded to repatriate locally in to the JCO mentioned at AppxA to this letter of your CBPO wef 30 Sep 2023 (A/N) on Completion of Initial Terms of Engagement (CITE).

2. The JCO will be repatriated under Amy Rule 16. He will be repatriated locally on target date after issuing of no dues certificate and no objection certificate to all concerned. It may please be ensured that all the outstanding claims of the JCO are settled and personal occurrences promulgated in Part-II Orders, ACR In no JCO if due, may be initiated & fwd by your CBPO prior his SOS date"

6. The applicant submits that he is aggrieved by the issuance of the Repatriation order 29 / 23 dated 02.09.2023 which the applicant submits was served on him on 06/09/2023 and seeks that he be allowed to continue in his present deputation to be repatriated to his parent organization on the scheduled date of repatriation i.e. 04/06/2024 in terms of the initial repatriation order no. 09/2023 APS deputations dated 26.04.2023. The applicant submits that he has served in the Indian Army in the Army Postal Service for more than 30 years and the sudden cancellation of the previous repatriation order dated 26.04.2023 vide the new repatriation order dated 02.09.2023 served on the applicant on 06.09.2023 with directions to him to be repatriated to his parent organization with immediate effect from 30.09.2023, is in violation of the principles of natural justice, equity and suffers from a biased approach, apart from being discriminatory against the applicant and other persons who are to be repatriated on attaining the stipulated age limit as mentioned in the previous repatriation order no. 09/2023.

7. Inter alia, the applicant submits that he had also submitted a representation dated 06.09.2023 and another representation dated 08.09.2023 for appreciation of the subject issue to the respondents which had not been disposed of according to the applicant till the institution of the present OA on 18.09.2023. The applicant thus seeks that the repatriation order no. 29/23 be stayed and be set aside, with it having been further submitted that the applicant shall adhere to the directions made

in the previous repatriation order 9/23 to repatriate back to his parent organization with effect from 04.06.2024.

8. The applicant further submits that vide the initial repatriation order dated 26.04.2023 more than a year was granted to the applicant for the repatriation till 04.06.2024, which would have enabled the applicant to rehabilitate to the parent organization. The applicant further submits that his tenure in his present assignment in the Army Postal Services, has been without blemish and he was accorded two promotions.

9. The applicant further submits that in terms of the DOP&T OM dated 17.06.2010 no. 6/8/2009-Estt. (Pay II) as issued by the Government of India, Ministry Of Personnel, Public Grievances & Pensions in terms of Para 9 thereof, the requisite advance notice of at least three months to the lending Ministry or the Department and the employee concerned i.e. to him has not been given by the respondents and it has thus been submitted on behalf of the applicant that the undue haste with which the previous repatriation order 9 /23 dated 26.04.2023 has been cancelled only qua the applicant vide the repatriation order 29 /23 dated 02.09.2023 served on the applicant on 06.09.2023, is malicious.

10. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in Civil Appeal 6333-6334 of 2005 in the case of *U.O.I. Thr.*

GOVT. OF PONDICHERRY & ANR versus V. RAMAKRISHNAN & ORS.

dated 07.10.2005 whereby it was observed to the effect:

“Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post haste manner also indicates malice. [See Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others, (2004) 2 SCC 65, para 25] Kunal Nanda Vs. Union of India and Another [(2000) 5 SCC 362], relied upon by the learned Solicitor General, was a case where the petitioner therein had asserted a claim for permanent absorption in the department. The matter relating to appointment through the Government of Pondicherry Public Works Department Group "A" Post of Chief Engineer Recruitment Rules, 1996 was governed in terms of a notification dated 11th December, 1996. The said notification was issued by the Government of Pondicherry in exercise of its power under the proviso to Article 309 of the Constitution of India. Rule 3 thereof prescribes that the method of recruitment thereto shall be as specified in columns 5 to 14 of the Schedule appended thereto. In terms of the Schedule, the post of Chief Engineer was a selection post and one of the methods for recruitment as envisaged in Column 11 thereof is that the same post may be filled up by direct recruitment or by promotion or by deputation/ transfer. The said post could be filled up by transfer on deputation in terms of Column 12 of the Scheduled appended thereto. The appointment of the First Respondent in the said post was on short term deputation/ temporary basis till a regular appointment is made.”

11. Reliance was likewise placed on behalf of the applicant on the order dated 8/11/2017 of the Central Administrative Tribunal Principal Bench, New Delhi in the case of *Madhav Chaturvedi versus Union of India and others* to contend to

similar effect that where there has been no adherence to the terms of deputation prescribed in the DOP&T dated 17/6/2010 before ordering premature retirement, and no advance notice had been given either to the applicant thereof or to his parent organization in that case the repatriation order was held to be illegal, as well as stigmatic, with it having been observed therein to the effect that such an order ought not to have been passed without following the principles of natural justice, as well as without adhering to the stipulated conditions in Para 9 of the DOP&T OM dated 17.06.2010. The observations in para 14 of the said order are to the effect:-

“14. Undisputedly, the applicant has been repatriated prematurely without giving him or to his parent organization any advance notice as contemplated in paragraph 9 of the DoP&T O.M. dated 17.06.2010. As held by the Hon'ble Apex Court in the judgments cited supra, advance notice to a deputationist before ordering his repatriation prematurely is a mandatory requirement, which the respondents have failed to observe in this case. The averments made in the counter reply of the respondents also make it clear that the premature repatriation was not simplicitor. The respondents have given specific reasons, although not recorded in the impugned order, as to dissatisfactory performance of the applicant, his actions amounting to insubordination and indiscipline. Taking all these things into consideration, we are of the view that the impugned Annexure A-1 order is not only illegal but stigmatic as well. Such an order should not have been passed without following the principles of natural justice as well as without adhering to the stipulated conditions in paragraph 9 of the DoP&T O.M. dated 17.06.2010. The judgments of this Tribunal as well as Hon'ble Apex Court cited in paragraph (7) supra, also support this viewpoint.

15. In the conspectus of discussions in the foregoing paragraphs, the OA is allowed. Impugned Annexure A-1 order dated 16.08.2017 is quashed and set aside. Respondents are directed to allow the applicant to rejoin BPRD within two weeks from the date of receipt of a copy of this order. The period from 14.08.2017, the date when the

applicant was relieved by Annexure A-1 order, and till he rejoins the BPRD shall be treated as period spent on duty. The respondents, however, have liberty to repatriate the applicant to his parent department, ie., BSF, by following the due process as contemplated in DoP&T O.M. (ibid) and keeping in mind the judgments of this Tribunal as well as Hon'ble Apex Court cited in paragraph (7) above”

12. Reliance was also placed on behalf of the applicant on the order dated 21/12/2016 of the AFT PB New Delhi in OA 1655 of 2016, in which case an interim stay of the repatriation to the parent department had been granted. The applicant thus submits that his unwarranted repatriation with effect from 30th September 2023 would cause him great mental agony apart from stigma despite he having had an unblemished 30 years of service in the Indian Army and would also deprive him from getting medical treatment of his wife who is suffering from CML (blood cancer) from the R&R Army hospital which would be an irreparable loss.

CONTENTIONS OF THE RESPONDENTS

13. The respondents through the counter affidavit filed in opposition have submitted to the effect that the contention of the applicant that his services with the Army Postal Services Corps in the Indian Army had been unblemished is wholly incorrect and that the respondents have submitted that the applicant was awarded the following punishments on 23.06.2021:-

(a) To take rank and precedence as if his appointment as Naib Subedar before date the fourteenth day of May 2011 (loss of seniority of twelve months).

(b) To be severely Reprimanded. In this connection summary trial documents are enclosed as Annexure R-3 (Collectively).

14. The respondents thus submit that these punishments awarded to the applicant are in relation to an offence in terms of Section 63 of the Army Act 1950,- An act prejudicial to good order and military discipline. The respondents further submit that the applicant in his representation dated 08 Sep 2023 mentioned that he has served 'more than 30 years of colourful service without any major blotch in total service carrier' whereas the applicant had been awarded with two punishments through Summary Trial for an offence "An act prejudicial to good order and military discipline" during his career which makes it amply clear that the applicant had made a false statement. Inter alia the respondents submit that the Competent Authority had also judged that the applicant had outlived his usefulness and accordingly approved for his immediate repatriation based on the punishments awarded to the applicant under the Army Act 1950. The respondents further submit that as per para 2 of ROI 02/2001, it is stipulated that ***"no mention will be made in the repatriation order that the individuals concerned have outlived their usefulness"*** laid that as such no mention was made in applicant's repatriation

order, but that the applicant has been ordered to repatriate locally from his unit on 30 Sep 2023 (A/N) on disciplinary grounds.

15. The respondents further submit that the Government of India MOD letter no. 90146/1/APS-1E/R-347/611 / D (Mov) dated 26.02.1999 has prescribed the age limit for retention of Non-Regular cadre (deputationists) APS personnel on enhanced age limit as stipulated as under:-

“

a) <i>Sub Major -</i>	<i>57 years of age or 4 years of tenure, whichever is earlier.</i>
b) <i>Sub/Nb Sub -</i>	<i>56 years</i>
c) <i>WOs/OR -</i>	<i>54 years”</i>

and that thus in accordance with this policy, the repatriation order 09/ 23 (Case File No 1205/CA-2) dated 06.04.2023 had been issued in respect of the applicant on completion of his age limit with an instruction to report Depot Coy, Army Postal Service Wing on 15 May 2024 (A/N) and struck of strength (SOS) w.e.f. 04 Jun 2024 (A/N) from APS.

16. The respondents have further submitted that subsequently the Integrated Headquarters (IHQ) of MoD/ Addl. Directorate General APS (ADG APS) (Higher Authority) vide their letter No 90051/APS-1D dated 05 July 2023 intimated the APS Records that *“the applicant has been awarded punishment through Summary Trial and competent authority has directed to take necessary action for*

repatriation of the applicant to his parent circle under the provision of Army Act-1950 in consonance with paras 2, 6 and 8 of Record Office Instructions (ROI) 02/2001."

17. The respondents further submit that as per the Record Office Instructions (ROI) 02/2001 in terms of para 2 of ROI it is prescribed "*Personnel who have outlived their usefulness and whose retention is not considered necessary in the interest of service will be retransferred to their parent department irrespective of manpower position. Powers to approve discharge of personnel who have outlived their usefulness serving with 2 Central Base Post Office (CBPO) is vested with Addl Dte Gen APS. On approval from competent authority, Record office will issue formal Repatriation Order on completion of Initial Terms of Engagement (CITE). No mention will be made in the Repatriation Order that the individuals concerned have outlived their usefulness.*"

18. It is thus submitted by the respondents that in view of this letter dated 05.07.2023 the Addl. Directorate General APS directed the APS Records vide letter no. 90051/APS-1D dated 30.08.2023 for necessary action be taken for repatriation of the said applicant and that thus the APS Records cancelled their earlier Repatriation Order 09/2023 and issued a fresh Repatriation Order No 29/2023 (Case File Number 1206/CA-2) dated 02 Sep 2023 with an instruction to

repatriate the applicant locally from his present unit (i.c. 2 Central Base Post Office) on 30 Sep 2023 (A/N).

19. Inter alia the respondents submit that the applicant submitted his personal applications dated 06 Sep 2023 and 08 Sep 2023 addressed to the Addl Dte Gen APS requesting to cancel APS Records Repatriation Order No 29/2023 (Case File Number 1206/CA-2) dated 02 Sep 2023 under intimation to APS Records which was considered by Addl DG APS, but not approved.

20. The contents of the said letter dated 02.09.2023 as read with the rectification amendment made on 21.09.2023 is to the effect:-

"1. Further ref to this est letter No 1205/CA-2 of even date, approval is hereby accorded to repatriate locally in to the JCO mentioned at AppxA to this letter of your CBPO wef 30 Sep 2023 (A/N) on Completion of Initial Terms of Engagement (CITE).

2. The JCO will be repatriated under Amy Rule 16. He will be repatriated locally on target date after issuing of no dues certificate and no objection certificate to all concerned. It may please be ensured that all the outstanding claims of the JCC are settled and personal occurrences promulgated in Part-II Orders, ACR In no JCO if due, may be initiated & fwd by your CBPO prior his SOS date

3. Please ensure action on all affected Paras of ROI 02/2001 and ROI 03/2002. OC Unit may further ensure: -

(a) To obtain certificate as per Para 17 & 38 of ROI 02/2001 from the JCO and fwd this est duly countersigned. (Specimen enclosed)

(b) To deposit the Incl's I-Card, URC Card, clothing and other items issued from Army before SOS.

(c) Documentation and RME/RMB be carried out as per AO 03/89 before SOS.

4. You are requested to publish personal occurrence in writ Part II order accordingly. List of docus required are att as per Appx 'B' to this letter.

5. Please ack."

Copy to:-

Addl Dte Gen APS - for info in compliance to IHQ of MoD (Army) APS Dta
letter No 90051/APS-1D dt 05 Jul 2023 & 29 Aug 2023 pl.

HQ Eastern Comd - for info pl.

(APS Br)

P&T Adm Cell – For info & necessary action wrt this est letter of even number dt
15 Jul 2023.

Depot Coy, APS Wing

For info and necessary action please.

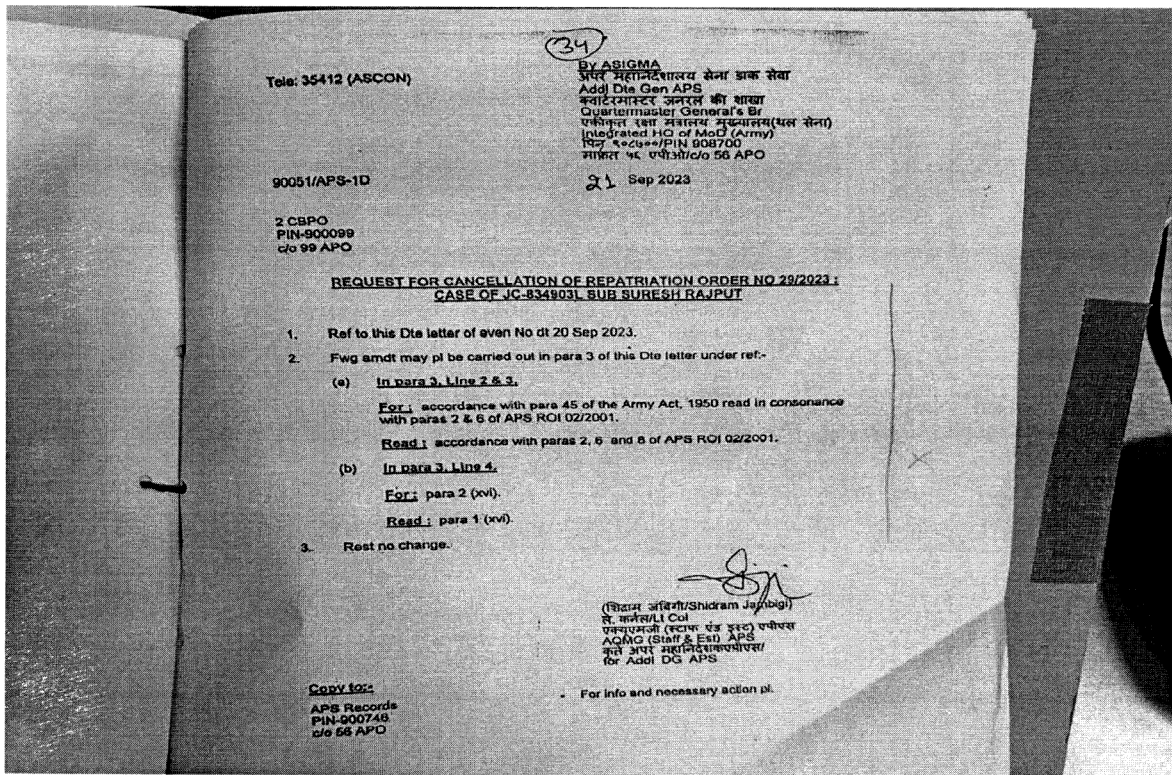
DA (P) Nagpur

Internal

ER Gp/NE Gp -

For info & necessary action wrt this est letter of even
number dt 15 Jul 2023."

The letter dated 21.09.2023 is to the effect:-



21. Inter alia the respondents submit that in terms of the revised policy received vide Govt of India, MoD of Communication, Department of Posts letter No 7-4/2021 SPG dt 18 Jul 2023 , officials of the Department of Posts on deputation to APS are required to be repatriated to the Department of Posts at least one year before the age of compulsory retirement from the Army.

22. The respondents thus submit that in the instant case the applicant might have been repatriated on 04 Jun 2023 as per revised policy on completion of age limit, however, owing to delay in receipt of policy, administrative constraints & other directions of competent authority on said policy, the same has been implemented w.e.f. 05 Sep 2023. The respondents further submit that all other counterparts of

the applicant who were supposed to repatriate during the month of Jun 2024 as issued vide this repatriation order No 09/2023 (Case File No 12057CA-2) dated 06 Apr 2023 have now been ordered to repatriate according to Govt of India. Ministry of Communication, Department of Posts letter dt 18 Jul 2023 and the respondents submit that in view of the facts, the applicant's retention in service beyond 30 Sep 2023 (A/N) is not justified.

23. The respondents thus submit that the OA be dismissed as it lacks substance and merits as per the existing policy of the provisions that prevail across all defence personnel.

24. Inter alia a submission was made on behalf of the respondents by the learned counsel for the respondents placing reliance on the verdict of the Hon'ble Supreme Court in *LT. COL. VIJAYNATH JHA vs. UNION OF INDIA AND OTHERS* to contend to the effect that in terms of Section 3 (o) of the Armed Forces Tribunal Act 2007, this Tribunal does not have jurisdiction in relation to the present matter.

ANALYSIS

25. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that the Armed Forces Tribunal Act, 2007 vide Section 3(o) thereof provides to the effect:

“3(o)-“service matters”, in relation to the persons subject to the Army Act, 1950(46 of 1950), the Navy Act, 1957(62 of 1957) and

the Air Force Act, 1950(45 of 1950), mean all matters relating to the conditions of their service and shall include-

- (i) Remuneration(including allowances), pension and other retirement benefits;*
- (ii) Tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deducdtions;*
- (iii) Summary disposal and trials where the punishment of dismissal is awarded;*
- (iv) any other matter, whatsoever, but shall not include matters relating to-*
 - (i) order issued under Section 18 of the Army Act, 1950(46 of 1950), sub-section(1) of section 15 of the Navy Act, 1957(62 of 1957) and section 18 of the Air Force Act, 1950(45 of 1950) and*
 - (ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950(46 of 1950), the Navy Act, 1957(62 of 1957) and the Air Force Act, 1950*45 of 1950).*
 - (iii) Leave of any kind*
 - (iv) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months;”*

(emphasis supplied)

Section 2 of the said enactment provides to the effect:

2. Applicability of the Act-(1) The provisions of this Act shall apply to all persons subject to the Army Act, 1950(46 of 1950), The Navy Act, 1957(62 of 1957) and the Air Force Act, 1950(45 of 1950).

(2) This Act shall also apply to retired personnel subject to the Army Act, 1950(46 of 1950) or the Navy Act, 1957(62 of 1957) or the Air Force Act, 1950(45 of 1950) including their dependents, heirs and successors, in so far as it relates to their service matters.”

26. In the instant case, the impugned repatriation order No.29/2023 has been made by the respondents under Rule 16 of the Army Rules, 1954 which provides to the effect:

“16 Release- A person subject to the Act may be released from the service in accordance with the Release Regulations for the Army or in accordance with any other regulations, instructions or orders made in that behalf.”

27. Apparently, the repatriation of the applicant sought to be made by the respondents in terms of Rule 16 of the Army Rule, 1954 is thus an act of the respondents which relates to service matters falling within the ambit of Section 3(o)(iv) of the Armed Forces Tribunal Act, 2007, in as much as it relates to repatriation sought to be made by the respondents of the applicant deputed to the Army Postal Service Corps back to the Department of Posts.

28. In these circumstances, the contention sought to be raised on behalf of the respondents that the present OA is not maintainable and does not fall within the ambit of Section 3(o) of the Armed Forces Tribunal Act, 2007 cannot be sustained. Reliance placed on behalf of the respondents on the verdict of the Hon'ble Supreme Court in *Lt. Col. Vijaynath Jha Vs Union of India & Ors.(supra)* is wholly misplaced as that case related to an appellant who had been commissioned in the Indian Army and was subsequently inducted into the Directorate General of Quality Assurances which was a different organization from the Indian Army in which the appellant therein sought a permanent secondment. In that case, the appellant who had been commissioned into the Indian Army on 11.03.1989 in the Engineering Discipline, was subsequently selected and inducted in the Directorate General of Quality Assurance(DGQA) from 31.05.2004 for a period of two years **and after completion of his two years had returned back to the Army** on 06.06.2007. He claimed for a permanent secondment in the DGQA which was considered and not found fit for the permanent secondment by the QASB and in these circumstances it was held that the Armed Forces Tribunal had no jurisdiction in the matter, in as much as in terms thereof the Tribunal had jurisdiction limited to deal with service conditions and the Army Act and the Rules but not in relation to the non-

selection of that appellant by the DRDO and that the matter did not relate to the Army Act or the Rules made thereunder. Apparently, the facts of the instant case before us in which the applicant had initially joined the Department of Posts on 31.12.1989 and thereafter had been on deputed in the Indian Army from 20.02.1993 in the Army Postal Service Corps **and who is sought to be repatriated by the respondents in terms of Rule 16 of the Army Rules, 1954** back to the Department of Posts from the Indian Army i.e. from the Army Postal Service Corps are not *in pari materia* with the facts of the case before the Hon'ble Supreme Court in *Lt. Col. Vijaynath Jha*(Supra). The contention thus raised on behalf of the respondents that the present OA is not maintainable within the ambit of Section 3(o) of the Armed Forces Tribunal Act, 2007 cannot be sustained and is rejected.

29. In the instant case, the applicant seeks that the repatriation order No.9/2023 APS Deputations dated 26.04.2023 be implemented so that his repatriation back to his parent office is in accordance therewith on 04.06.2024 and not before. In relation to the said aspect, it is essential to observe that a deputationist does not have an indefeasible right to continue in the post though there is no bar to absorption in the post to which he is deputed. However, as laid down the Hon'ble Supreme Court in

the case of *Union of India through Govt of Pondicherry & Another Vs V Ramakrishnan & Ors*, 2005 SCC(L&S) 1150 when the tenure of the deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds, as for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is *mala fide* and an action taken in a post haste manner also indicates malice.

30. The respondents, however, seek to contend that the applicant has been summarily tried under Sections 83 and 85 of the Army Act, 1950 for the offence committed under Section 63 of the Army Act, 1950 in relation to an act prejudicial to Good Order and Military Discipline has already been adverted to elsewhere hereinabove. The respondents also submit that the applicant had pleaded guilty to the charge framed against him i.e to the charge.

**“The accused JC-834903L Naib Subedar Suresh
Rajput of 1699 Field Post Office attached to Headquarters
37 Infantry Brigade, is charged with:**

**Army Act
GOOD**

AN ACT PREJUDICIAL TO

**Section 63
DISCIPLINE**

ORDER AND MILITARY

In that he,

At, New Delhi, on 09 November, 2016, which came to the knowledge of the authority competent to initiate action on 06 July, 2018, while performing the duties of Field Post Master, 666 Field Post Office, improperly carried out financial transactions amounting to Rupees 1,20,000/- (Rupees One lakhs and twenty thousand only) on a no transaction business day in contravention of Government of India , Ministry of Finance, Department of Economic Affairs, Gazette Notification Number S.O. 3407/(E) dated 08 November, 2016.”-

was framed on 22.06.2021 to which the applicant had pleaded guilty and it had been awarded to the effect that the applicant shall :

“(a)take rank and precedence as if his appointment as Naib Subedar before the date the fourteenth day of May 2011(loss of seniority of twelve months).

(b) to be severely Reprimanded.”

31. The respondents thus submit that in as much as the applicant's tenure in the Army Postal Service Corps was not without blemish as contended by the applicant and that he had faced disciplinary proceedings, the Integrated Headquarters(IHQ) of MoD/Addl. Directorate General APS(ADG APS)(Higher Authority vide their letter No.90051/APS-ID dated 05 July, 2023 had sought to the effect:

“the applicant has been awarded punishment through Summary Trial and competent authority has directed to take necessary action for repatriation of the applicant to his parent circle under the provision of Army Act-1950 in consonance with paras 2,6 and 8 of Record Office Instructions(ROI) 02/2001).

32. **In relation to the said aspect, it is essential to observe that the Army Postal Service Corps Records vide Repatriation order No. 9/2023 dated 26.04.2023 had issued instructions for the repatriation of the applicant w.e.f. 04.06.2024.** The respondents have also submitted that in terms of the ROI 02/2001 in as much as the “personnel who have outlived their usefulness and whose retention is not considered necessary in the interest of service will be retransferred to their parent department and in terms of the same no mention is to be made in the repatriation order that the

applicant had outlived his usefulness thus there is no such mention made in the repatriation order No.9/2023 dated 02.09.2023.

33. In relation to the submissions that have been made on behalf of the respondents to the effect that the applicant had undergone a Summary Trial and had been awarded punishment of loss of seniority of 12 months and to suffer severe reprimand which had been imposed on him w.e.f. 25.06.2021, as rightly contended on behalf of the applicant, the applicant has already undergone the said awarded punishment of the loss of seniority as well as severe reprimand and there is nothing that the respondents have brought on the record to indicate any subsequent misconduct of the applicant on record, as rightly contended on behalf of the applicant, the applicant cannot be faced with double jeopardy in relation to the said Summary Trial which was conducted against him and he was penalized and he cannot be punished for the second time by depriving him of the grant of the safeguards of natural justice available to a Govt employee on deputation, in terms of Ministry of Personnel Public Grievances & Pensions, Department of Personnel & Training Letter No.6/8/2009-Estt(Pay II) dated 17.06.2010. which vide para 9 thereof provides to the effect:

“9. 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."

and which thus necessarily requires issuance of an advance notice of atleast three months to the lending Ministry/Department and the employee concerned.

34. In the instant case that the requisite advance notice of atleast three months in terms of the said Para 9 of the letter dated 17.06.2010 has not been issued to the applicant, was not refuted on behalf of the respondents. The respondents however, choose to contend that the principles of the said letter dated 17.06.2010 do not apply to the applicant and placed reliance on Para 11 thereof which reads to the effect:

"11. Date of Effect

These orders will take effect from 1.1.2006 and shall be applicable to all officers who were on deputation on 1.1.2006 or appointed thereafter except for the revised rates of deputation(duty) allowance which shall be applicable from 1.9.2008 as mentioned below Para 6.1. of this OM."

35. In relation to the said submission of the respondents that the DOPT letter dated 17.06.2010 does not apply to the applicant and that the contentions sought to be made on behalf of the respondents that the applicant was not an officer, the same are wholly against the record. The

contents of the repatriation order dated 02.09.2023, Order No. 29/2023 which is the impugned order itself states that the applicant is a Junior Commissioned Officer. However, it is sought to be submitted on behalf of the respondents that the letter dated 17.06.2010 of the DOPT takes effect w.e.f. 1.1.2006 and the applicant in the instant case had been deputed on deputation much prior to the same i.e. on 20.02.1993. The said contention has to be rejected outright as rightly submitted on behalf of the applicant, that in terms of Para 11 of this letter dated 17.06.2010 itself, the principles of this letter are applicable to all officers **who were on deputation on 1.1.2006 or appointed thereafter** and would thus apply to the applicant herein as well.

36. Significantly, Para 10 of this DOPT letter dated 17.06.2010 stipulates to the effect:

“10. Relaxation of conditions

Any relaxation of these terms and conditions will require the prior concurrence of the Department of Personnel & Training.”

thus making it apparent that any relaxation of the terms and conditions of the DOPT letter dated 17.06.2010 requires prior concurrence of the Department of Personnel and Training. No such prior concurrence of the Department of Personnel & Training has been obtained for non-compliance of

para 9 of the letter dated 17.06.2010 for giving the requisite advance notice of atleast three months to the parent department and to the concerned employee taken on deputation by the respondents herein. In view thereof it is apparent that the impugned repatriation order No.29/2023 which was served only on 06.09.2023 on the applicant directing repatriation back to his parent department on 30.09.2023 has to be held to be a repatriation order issued totally in haste.

37. However, in as much as has already been observed hereinabove that a deputationist does not have an indefeasible right to continue on his deputation post, in the instant case w.e.f. from the date 06.09.2023 when the applicant was served with the repatriation order No.29/2023 calling upon him to be repatriated w.e.f. 30.09.2023 i.e. the period from 06.09.2023 till 05.12.2023 has to be and shall be treated to be a period of an advance notice in terms of Para 9 of the DOPT letter dated 17.06.2010 .That the requisite compliance of Para 9 of the Office Memo dated 17.06.2010 has necessarily to be complied with is brought forth through the verdict of the High Court of Delhi in W.P.(C) 451/2021 in the case of *Shri Raj Kumar Vs National Human Rights Commission* wherein the aspect of requisite compliance of Para 9 of the said OM has been has been referred as under:

“Insofar as the stipulation in the said OM that the employee also need to be notified is concerned, suffice to state the office order dated October 07,2019, clearly stipulates that the deputation of the petitioner shall be governed by the terms and conditions contained in the said OM. Para 9 of the said OM, which is under the heading premature reversion of deputationist to parent cadre, also stipulates giving three months’ notice to the employee concerned, and which notice has not been given to the petitioner herein, though he has been prematurely repatriated. Mr. Garg is justified in his submission that premature repatriation of the petitioner is in violation of OM dated June 17, 2010. The issue can also be seen from the perspective that when an Officer is sought to be premature repatriated, the borrowing authority is required to follow the principles of natural justice as held by the Supreme Court in the case of P Venugopal(supra) wherein in para 39 the Supreme Court inter alia held curtailment of time of five years can only be made for justifiable reasons and in compliance with principle of natural justice. No doubt, the case of the respondent in the counter affidavit is that the petitioner was being constantly guided and advised to improve his performance which he failed to improve and there was no alternative with the authority concerned, to repatriate the petitioner back to his parent department which depicts the compliance of principles of natural justice, is not appealing. There is nothing on record to show such an action/procedure was followed up by the respondent/NHRC and for that matter, the petitioner was put to notice if he does not improve his performance he shall be repatriated back after three months. Hence, on this ground as well, the premature repatriation of the petitioner shall be in violation of OM dated June 17,2010, which clearly stipulates three month’s notice to the petitioner.”

(emphasis supplied)

38. The orders dated 17.08.2022 and dated 22.08.2022 of the Division Bench in WP(C) 12122.2022 and W P(C)) 11913/2022 in the case of **Rajendra Kumar & Ors Vs Union of India & Ors** and in **Suresh Chand & Ors Vs Union of India & Ors** respectively are to the similar effect wherein it was observed vide paras 4,5,6 and 7 in both the said verdicts to the effect:

“4. Learned counsel appearing for the petitioners has drawn attention of this Court to Clause 9 of the Office Memorandum bearing no. 6/8/2009-Estt. (Pay II) dated 17.06.2010 wherein it is stated 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.

5. As per the averment made in the present petition, Clause 9 mentioned above has not been complied with.

6. Accordingly, we hereby dispose of the present petition by directing the respondents to issue advance notice in terms of Clause 9 above.

7. However, till then, the petitioners shall continue to operate at their deputed place(s) of posting.”

Order dated 30.06.2017 of the Central Administrative Tribunal,(PB)New Delhi in OA No.2766/2017 in the case of **Madhav Chaturvedi Vs Union of India & Ors** is to similar effect.

39. As regards the contention raised on behalf of the respondents that in terms of the letter issued by the Ministry of Communication and Posts dated 18.07.2023 regarding non-regular personnel of Army Postal Services is made atleast one year before the date of retirement in civil side/parent department or age of compulsory retirement in Army whichever is earlier and that this letter cannot be made defunct, it is essential to observe that the said letter cannot dilute from the principles of natural justice enshrined in terms of Para 9 of DOPT letter dated 17.06.2010 which have to be given precedence.

CONCLUSION

40. Thus, in as much as there has been no compliance of the DOPT letter dated 17.06.2010, as observed hereinabove, the period from 06.09.2023 to 05.12.2023 i.e. the period from the date of receipt of the repatriation Order dated 02.09.2023 received by the applicant till the expiry of three months' notice therefrom i.e. till 05.12.2023 shall be the deemed period of an advance notice as required in terms of Para 9 of the DOPT letter dated 17.06.2010, as the advance notice to the lending Ministry/Department as well as to the applicant herein JC 834903L Sub Suresh Rajput and thus the repatriation of the applicant to his parent department is stayed till the

date i.e. 05.12.2023 and the repatriation order dated 02.09.2023 No.29/2023 received by the applicant on 06.09.2023 shall take effect from 06.12.2023.

41. The OA 86/2023 stands disposed of in the above terms.

**[LT GEN SHASHANK SHEKHAR MISHRA]
MEMBER (A)**

**[JUSTICE ANU MALHOTRA]
MEMBER (J)**

Chanana/AP/
29.09.2023