

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**WEDNESDAY, THE TWENTY FOURTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE APARESH KUMAR SINGH
AND
THE HONOURABLE SRI JUSTICE G.M. MOHIUDDIN**

WRIT PETITION NO: 9758 OF 2021

Between:

1. The Secretary, Government of India, Ministry of Home Affairs, New Delhi
2. Union of India, Rep. by its Secretary, Department of Personnel and Training (DOPT), North Block, New Delhi - 110 001.

...PETITIONERS/RESPONDENT NOS.1 AND 2 IN THE OA

AND

1. D. Kalpana Nayak, (TN 1998) W/o. Sri Mahender Kumar Rathod, Aged 42 years, Occ. IPS, Currently serving as Inspector General of Police, Economic Offences Wing-II, (Financial Institution), Chennai.

...RESPONDENT/APPLICAT IN THE OA

2. The State of Telangana, Rep. by the Chief Secretary, 3rd Floor, Samatha Block, Telangana Secretariat, Hyderabad - 500 022, Telangana.
3. The State of Tamil Nadu, Represented by the Chief Secretary, Chennai.

...RESPONDENTS/RESPONDENT NOS.3 AND 4 IN THE OA

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ, order or direction, especially one in the nature of Writ of Certiorari, calling for the records relating, to order dated 24/1/2020 in O.A.No.372 of 2018 on the file of the Honble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same by declaring illegal, arbitrary, contrary to law.

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the order dated 24/1/2020 in O.A.No.372 of 2018 on the file of the Honble Central Administrative Tribunal, Hyderabad pending disposal of the Writ Petition.

**Counsel for the Petitioners: SRI N. BHUJANGA RAO,
DEPUTY SOLICITOR GENERAL OF INDIA**

Counsel for the Respondents: SRI G. BHEEMA CHARY

The Court made the following: ORDER

- iv. The respondent No.1 continued to serve in the state of Andhra Pradesh beyond the sanctioned tenure of five years. The over stay of the respondent No.1 was purportedly due to the administrative difficulties and service exigencies faced by the newly bifurcated State of Telangana, which had a deficit of senior All India Service officers.
- v. The Ministry of Home Affairs initially brought it to the notice of the Tamil Nadu Government that the respondent No.1 had not reported to his parent cadre after expiry of the approved period of Inter Cadre Deputation.
- vi. The Ministry also directed the State of Telangana by letter dated 28.06.2016 to relieve the respondent No.1 if not already relieved.
- vii. The respondent No.1 was finally relieved from Telangana on 20.05.2017
- viii. The Ministry of Home Affairs by Memo dated 17.01.2018 treated the period of over stay of the respondent No.1 i.e., from 02.03.2016 till 19.05.2017 as unauthorized over stay, that "the period of over stay shall not be counted for any increment with cumulative effect"; directing the recovery of excess payment and stating that adverse notice would be taken against his during empanelment.

ix. The respondent No.1 challenged Memo dated 17.01.2018 before the Tribunal by following O.A. The Tribunal allowed the O.A by order dated 24.01.2020 and set aside the Memo dated 17.01.2018 declaring it arbitrary, illegal and contrary to service conditions. The Union of India (Petitioners) filed the present writ petition challenging the said order of the Tribunal.

Submissions of the petitioners

5. Learned Deputy Solicitor General appearing on behalf of the petitioners, advanced the following submissions hereunder:

- i. That the service conditions of All India Service officers, including matters relating to inter-cadre deputation, are comprehensively governed by the All-India Services (Cadre) Rules, 1954. In particular, Rule 6(1) vests exclusive authority in the Central Government as the Cadre Controlling Authority to regulate Inter-cadre movement and postings, and no State Government can act contrary thereto.
- ii. That Inter-cadre deputation being an exception to the normal rule of service in the parent cadre, any extension beyond the sanctioned period can only be granted with the prior and prospective approval of the Central Government. The unilateral

retention of respondent No.1 by the borrowing State, even on the ground of administrative exigencies is without legal sanction, *non est* in law, and incapable of either binding the Central Government or conferring any enforceable right upon the respondent No.1.

- iii. That the retention of respondent No.1 in the State of Telangana, though appears to be pursuant to a proposal of the State of Telangana dated 27.09.2016 for extension of her tenure while on Inter-cadre deputation, was not actually the result of a *suo motu* decision of the Government of Telangana. Rather, the proposal was initiated at the instance of respondent No.1, who made a representation to the Director General of Police, Telangana, asserting that the respondent No.1 was eligible to be considered for extension beyond five (05) years.
- iv. That the Memorandum dated 17.01.2018 does not partake the character of a disciplinary or punitive order. It merely records the administrative and regulatory consequences flowing from non-compliance with the statutory Cadre Rules. In issuing the said memorandum, the Central Government acted strictly within its jurisdiction as the Cadre Controlling Authority, in determining

the manner in which the period of unauthorised overstay is to be treated.

- v. That the CAT committed an error of law and Jurisdiction by substituting its own assessment, in place of the decision taken by the competent authority, which amounts to judicial overreach into matters of cadre control and service policy, which lie within the exclusive domain of the executive under the statutory framework governing All India Services.

Submissions of the respondent No.1

6. Learned Senior Counsel appearing on behalf of the respondent No.1, advanced the following submissions hereunder:

- i. That the respondent No.1 continued to discharge her duties strictly in compliance with the explicit directions issued by the Government of Telangana. The respondent No.1 has no discretion to unilaterally relinquish charge or report back to the parent cadre, as such conduct would have amounted to abandonment of duty and invited disciplinary action.
- ii. That the delay in reliving her was solely due to State's own administrative decisions and not to any lapse, request, or

omission on his part, however, the State Government in its affidavit filed before the Tribunal has confirmed that the respondent No.1's continuation was entirely at the request and instance of the State Government.

- iii. That the continuation of respondent No.1 beyond the sanctioned deputation period was compelled by post-bifurcation administrative exigencies and shortage of senior officers, and that penal consequences for such overstay are arbitrary, disproportionate, and violative of Article 14 of the Constitution.
- iv. That respondent No.1 rendered full and effective service during the relevant period and, having accepted such service and paid salary, denial of consequential benefits would be inequitable and contrary to the doctrine of *quantum meruit*.

7. We have taken note of the respective contentions urged.

Analysis and finding

8. In the present case, the retention of respondent No.1, though purportedly based on the proposal dated 27.09.2016 for extension of her tenure on Inter-cadre deputation, was not initiated *suo motu* by the Government of Telangana. The record shows that respondent No.1

made a representation to the Director General of Police, Telangana, claiming eligibility for extension beyond five (05) years on the basis of DoP&T O.M.No.140117/2/2016-AIS-II dated 27.06.2016. Acting on this representation, the proposal was recommended by the Director General of Police and thereafter forwarded by the State Government to the Central Government citing shortage of officers. On examination of the said Office Memorandum, this Court finds that such reliance was misplaced and that the proposal did not stem from any independent or *suo motu* decision of the State Government.

9. This Court finds that the period of overstay of respondent No.1, having occurred *de hors* the statutory sanction of the Central Government, is in law an unauthorised period of absence from the parent cadre. The administrative exigencies of the borrowing State cannot unilaterally dilute or override the Central Rules. Any such interpretation would fundamentally undermine the unified structure of the All-India Services, effectively converting a deputed officer into a permanent asset of the borrowing State without the approval of the Cadre Controlling Authority.

10. The reliance placed by the learned Senior Counsel in **Central Council for Research in Ayurvedic Sciences v. Bikartan Das**¹ fails to support respondent No.1's contention and, does not advance his case inasmuch as the order of the Tribunal suffers from error of law and Jurisdiction.

11. At the outset, this Court finds that the Tribunal failed to uphold the absolute supremacy of the statutory framework governing Inter-cadre deputation under the All-India Services (Cadre) Rules, 1954. Rule 6(1) makes it unequivocally clear that the power to 'depute' and, by necessary implication, the power to sanction the tenure of that deputation, rests exclusively with the Central Government. The relevant Rule is extracted hereunder for ready reference:

6. Deputation of cadre officers – (1) A cadre officer may, with the concurrence of the State Governments concerned and the Central Government, be deputed for service under the Central Government or another State Government or under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government.

Provided that in case of any disagreement, the matter shall be decided by the Central Government and the State Government or State Governments concerned shall give effect to the decision of the Central Government.

¹ (2023) 16 SCC 462

12. It is pertinent to note that the Tribunal committed a jurisdictional error in treating the Memorandum issued by the Ministry of Home Affairs as a disciplinary penalty. A disciplinary penalty necessarily presupposes a formal inquiry into alleged misconduct, such as wilful absence or disobedience of orders. The impugned Memorandum, however, represents a regulatory consequence flowing from a particular status, namely unauthorised retention, and not from any adjudication of fault or misconduct. The Central Government, having sanctioned deputation for a specified period, is required to account for any period of overstay in accordance with its extant policy so as to preserve the integrity of the cadre roster and the all-India seniority structure. Treating such period as unauthorised absence or as leave without pay is thus a natural, logical, and non-punitive administrative consequence arising from the failure of the borrowing State and respondent No.1 to adhere to the Central Government's deputation orders.

13. The contention of respondent No. 1 that executive instructions cannot be applied retrospectively, based on reliance on **Sonia v. Oriental Insurance**² is misplaced, and does not advance the case of respondent No.1, as there is no retrospective application of the executive instructions in the present case.

² (2007) 10 SCC 627

14. With regard to the submission that respondent No.1 continued to discharge duties during the relevant period, it is well settled that considerations of equity cannot override mandatory statutory rules. The Hon'ble Supreme Court in ***Raghunath Raj Bareja and others v. Punjab National Bank and others***³ has repeatedly cautioned that equity cannot supplant the law. Both the borrowing State and respondent No.1 were fully aware of the All-India Service Rules governing inter-cadre deputation. The borrowing State was obliged to relieve respondent No.1 upon expiry of the sanctioned tenure, and respondent No.1, being a senior All-India service officer, was equally obligated to ensure compliance with the orders of the Central Government and to report any delay to the Ministry of Home Affairs. The failure to do so, even if not wilful, necessarily attracts the administrative consequences imposed by the Cadre Controlling Authority in order to uphold the rule of law.

15. For the foregoing reasons, this Court is of the considered view that the Tribunal has acted beyond scope of its limited judicial review jurisdiction and rendered a decision contrary to the statutory scheme.

³ MANU/SC/5456/2006 = 2007 (4) ALT 4 (SC)

16. Accordingly, the Writ Petition is allowed, setting aside the order dated 24.01.2020 passed in O.A.No.372 of 2018. The memorandum dated 17.01.2018 is hereby restored. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.
That Rule Nisi has made Absolute as above witness

**Witness THE HON'BLE CHIEF JUSTICE APARESH KUMAR SINGH,
Wednesday, The Twenty Fourth Day Of December
Two Thousand And Twenty Five**

**SD/-B. REKHA RANI
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To,

1. The Chief Secretary, The State of Telangana, 3rd Floor, Samatha Block, Telangana Secretariat, Hyderabad - 500 022, Telangana.
2. The Chief Secretary, The State of Tamil Nadu, Chennai.
3. One CC to Sri N. Bhujanaga Rao, Deputy Solicitor General of India[OPUC]
4. One CC to Sri G. Bheema Chary, Advocate [OPUC]
5. Two CD Copies

TJ

BS

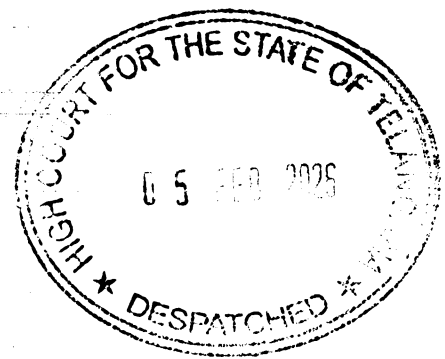
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HIGH COURT

DATED:24/12/2025

ORDER

WP.No.9758 of 2021



**ALLOWING THE WRIT PETITION
WITHOUT COSTS**

⑦
SK
24-01-28