

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:41595-DB

RESERVED

Case :- SPECIAL APPEAL No. - 312 of 2020

Appellant :- Saurabh Gupta

Respondent :- The Unique Identification Authority Of India N.Delhi
And Ors.

Counsel for Appellant :- Sankalp Dewari, Abhishek Bose, Lalit
Shukla, Mohd. Shujauddin Waris, Praveen Kumar, Sachin Chaturvedi

Counsel for Respondent :- A.S.G., Lakshmi Gurung, Varun Pandey

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

(Om Prakash Shukla, J.)

- (1)** Heard Shri Lalit Shukla and Shri Praveen Kumar, learned Counsel representing the appellant, Ms. Shraddha Deshmukh assisted by Shri Varun Pandey, learned Counsel representing the respondent No.1 and Shri Vaibhav Tewari, learned Counsel representing the other respondents.
- (2)** This special appeal has been filed by the appellant under Rule 5, Section-C of Chapter-VIII of the Allahabad High Court Rules impugning judgment/order dated 01.10.2020 passed by the learned Single Judge of this Court in Writ Petition No. 8234 (S/S) of 2020. Apparently, the learned Single Judge, vide impugned Judgment, due to various reasons, did not find the case of the appellant fit for exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and as such, dismissed the writ petition.

- (3) It would be apt to mention herein that the appellant in writ petition No. 8234 (S/S) of 2020 had sought to challenge the curtailment of his deputation and repatriation from the Unique Identification Authority of India (herein after referred as ‘UIDAI’) to his parent Corporation, namely, Metals and Minerals Trading Corporation, Jaipur (hereinafter referred as ‘MMTC’) and in that regard, the appellant had challenged two orders, (i) dated 16.03.2020 which is the notice of his repatriation; and (ii) by an amendment in the said writ petition, another order dated 28.05.2020 passed by the Chief Executive Officer (CEO) of UIDAI rejecting the petitioner's representation against the order dated 16.03.2020.

Brief facts

- (4) First to the factual exposition. This Court abjures from a detailed narrative and refer to only those facts and to the extent, as is necessary and is well captured in the writ petition. The appellant being an employee of MMTC, Jaipur and in view of the OM dated 10.10.2013 inviting applications from eligible persons for filling up various posts in UIDAI on deputation basis at its regional office, Lucknow, applied, and was selected for such deputation. He was appointed on deputation as Deputy Director at the regional office of UIDAI, Lucknow vide an order dated 05.02.2014 for a period of 3 years from the date of taking over charge of the post or until further orders, whichever

event takes place earlier. The terms and conditions of deputation in UIDAI were to be governed by the Department of Personnel and Training (herein after referred as ‘DoPT’) OM dated 17.06.2010, as was also mentioned in the order of deputation dated 05.02.2014 and the OM dated 10.10.2013.

- (5) Pursuant to his selection on deputation basis as Deputy Director, the appellant joined at the regional office of UIDAI at Lucknow in 2014 itself and his initial tenure came to expire on 19.02.2017, however, his deputation was extended on yearly basis from time to time. It is apparent from records that last yearly extension was granted by the Chief Executive Officer of the UIDAI wherein his approval for extension of the appellant’s tenure was granted for a further period of one year from 18.02.2020, that is, upto 18.02.2021. Albeit, in the intervening period in August, 2019, the Deputy Director General of UIDAI sought explanation from the appellant regarding his day to day work and the reasons for non-submission of reports on time. Although, the appellant submitted a written reply on 30.08.2019, however, his reply was not found to be satisfactory and, accordingly, a comment was recorded by the Deputy Director General, who incidentally was also the head of the regional office at Lucknow.
- (6) In the meantime, on 21.01.2020, the Unique Identification Authority of India (appointment of officers and employees)

Regulations, 2020 (hereinafter referred to as '**2020 Regulations**') was framed under Section 21 (1) read with Sub-section 1 of Section 54 and Clause (x) of Sub-section 2 of Section 54 of the Aadhaar (Targeted delivery of Financial and other subsidies, benefits and services) Act, 2016 (herein after referred as Act, 2016), as amended vide the Aadhaar and Other Laws (Amendment) Act, 2019 (herein after referred as Act, 2019), were notified.

- (7) Pursuant to the notification of the aforesaid regulations, on 29.01.2020, applications were invited from eligible candidates for permanent absorption in the cadre of UIDAI under Regulation 5 of the Regulations, 2020 with standard stipulations, including that mere fulfilment of the eligibility criteria by a candidate and submission of application form by him/her would not confer a right to get him/her absorbed in the cadre of UIDAI, which was to be contingent upon the recommendations of the selection Committee, etc.
- (8) The appellant claiming himself to be eligible for such permanent absorption is said to have applied on 07.02.2020 and his application was forwarded by his superior officer on 12.02.2020. However, admittedly, the absorption process did not take place as it was held up in view of certain queries made by the Officers' from the UIDAI which in turn made queries in this regard from the concerned departments, but the said queries

have not been resolved. However, in the interregnum on 13.02.2020, the appellant's deputation was extended for a further period of one year from 18.02.2020, that is, upto 17.02.2021.

(9) Furthermore, it has come on record that on 26.02.2020 and 27.02.2020, two complaints were received by UIDAI against the appellant, one lodged by Shri Devashish Bhatt, Assistant Section Officer and the other by Shri Praveen Dixit, Driver in the general pool. Both were employees working at the regional office at Lucknow and in both the complaints, misbehaviour and improper conduct by the appellant towards them was alleged. The Deputy Director General, being Head of the regional office, constituted an internal inquiry committee on 27.02.2020 comprising of Shri Dev Shankar, Assistant Director General, Regional Office, Ranchi and Shri Anil Kumar, Deputy Director, Regional Office, Ranchi (at Patna). The aforesaid two-member fact finding inquiry committee is said to have recorded the statement of aforesaid complainants as well as other Officers and employees of the Regional Office and submitted its report on 04.03.2020 which was found to be averse to the appellant.

(10) It has come on record that in the meantime, Shri Vivek Kumar Daksh came to be posted as Assistant Director General in the Regional Office, Lucknow on 05.02.2020 and from the said

date he became the Reporting Officer of the Appellant and as such on 02.03.2020, while the aforesaid fact finding inquiry against the appellant, instituted on 27.02.2020, was still pending, an explanation was called from him by the aforesaid reporting officer relating to huge pendency of grievances/ complaints, which, as per the work distribution order dated 21.12.2018, the appellant was required to dispose of. The said letter invariably alleged that the review of work as on 28.02.2020, revealed that more than 10000 cases were pending for exceptional handling of date of birth cases in the Regional Office at Lucknow, wherein many cases were pending for more than a year which had caused substantial delay in disposal of sensitive public complaints. It was alleged that the appellant had neither taken any prompt action to dispose of these cases at his end as Supervisor nor reported this issue to his superior for prompt handling. Further, allegations have been levelled to the effect that the appellant had failed to devise any mechanism to supervise this issue at regular intervals at his level as Deputy Director and even the coordination mechanism among staff which was handling this issue was also not put in place. Consequently, the appellant was asked for an explanation of the aforesaid non-monitoring, non-reporting and non-disposal of pendency, within 3 days.

- (11) Although, the appellant replied on 05.03.2020, however, as aforesaid, since a day prior to this i.e., on 04.03.2020, the report of the fact finding internal inquiry committee came to be submitted; the Assistant Director General (Admn./HR) in the office of Deputy Director General, Regional Office, Lucknow on 05.03.2020 itself, sought inputs from the reporting Officer- Shri Vivek Kumar Daksh, Assistant Director General regarding performance of the appellant and apparently on 06.03.2020 the said reporting Officer commented that the work of the appellant was unsatisfactory and not up to the mark.
- (12) Thus, in the aforesaid background, the Deputy Director General, Regional Office, Lucknow vide letter dated 06.03.2020, addressed to the Assistant Director General (Admn./HR), UIDAI Headquarters, New Delhi recommended for appellant's premature repatriation to his parent Department/ Office. Apparently, on 12.03.2020, the competent authority, who is said to be the Chief Executive Officer, granted approval for premature repatriation of the appellant and the same was conveyed to the Regional Office, Lucknow.
- (13) Coincidentally, on the same date i.e., 12.03.2020, the absorption process was also put on hold on account of certain unresolved issues by the Headquarters of UIDAI, New Delhi, as mentioned earlier and on 16.03.2020, the order curtailing the deputation of the appellant and giving notice for his repatriation citing Clause

9 of the OM dated 17.06.2010 was issued and subsequently, as the notice period was 3 months, the appellant was relieved on completion of the said period during the pendency of the Writ Petition. However, the said relieving was subject to final orders in the said Writ petition, in view of certain interim orders passed in favour of the appellant.

(14) The records reveal that against the aforesaid order dated 16.03.2020 for repatriation, the appellant preferred a representation to the Chief Executive Officer of UIDAI, which came to be rejected on 28.05.2020 and the said order also had been impugned by the appellant in the writ petition along with the original order dated 16.03.2020.

(15) The learned Single Judge objectively dealt with each and every contention of the parties therein, and vide a very reasoned Judgment dated 01.10.2020, the learned Single Judge dismissed the writ petition of the appellant. It is this order, which has been sought to be challenged in the present appeal.

Contention of the parties

(16) The learned Counsel for the appellant Mr. Lalit Shukla has vociferously argued that the appellant was not on deputation on the date of the impugned order dated 16.03.2020 as he had already got absorbed in the UIDAI, by rule of immediate absorption with effect from expiry of three years of deputation

on 19.02.2017. The learned Counsel in this regard has submitted that the appellant was recommended for appointment on deputation for three years from 19.02.2014 to 18.02.2017 and in view of a letter dated 23.12.2016 from MMTC to UIDAI, obtained by the appellant under the provisions of RTI, MMTC, has stated that the appellant would reach the maximum deputation period of three years on February 18, 2017. Thus, it has been sought to be argued by the appellant that since UIDAI instead of repatriating the appellant before the aforesaid expiry of deputation period, sought the appellant's cadre clearance from MMTC, which was promptly obliged, but without obtaining exemption from the "Rule of Immediate Absorption" for the post of Deputy Director, he should be deemed to be absorbed with the obtaining of his cadre clearance from MMTC.

- (17) The edifice of the argument of the learned Counsel for the appellant seems to be built on the proposition that, since clause 6 & 9 of the Office Memorandum dated 31.10.2007 issued by the Department of Pension & Pensioner's Welfare, specifically provided, that if a Central Government servant is allowed to proceed to a Central Autonomous body on deputation basis *without obtaining specific exemption for the post*, the Official will have to be treated as having resigned from the Central Government and absorbed in the Central Autonomous body.

(18) The learned Counsel has relied on DoPT OM dated 17.06.2010, which provided for the period of deputation as per the recruitment rules of the ex-cadre post or 3 years in case no tenure regulation exists for the ex-cadre post. According to the learned Counsel, when the said OM is read along with the proviso to Fundamental Rule 13, it is ample clear that “no lien” of a Government servant would be retained, where he has proceeded on immediate absorption basis and in case his deputation is beyond the maximum limit admissible under the orders of the government issued, from time to time. Therefore, drawing an inference, it has been submitted that in absence of exemption for the post of deputy director in the Authority, the appellant stands already absorbed in services of UIDAI with the cadre clearance by MMTC with effect from 19.02.2017 and since he stands already absorbed, his lien in the parent organisation/MMTC also got terminated from the date of absorption in UIDAI. According to the appellant, the respondents very well knew of the aforesaid legal position; although, instead of issuing an order of absorption, the appellant had been arbitrarily extending the deputation, even though the said extension was not permissible as per law.

(19) It has also been argued that Regulation 4 of the Regulations, 2020 enacted with effect from 21.01.2020, is in violation of Section 58 of the Aadhar Act, inasmuch as, it failed to consider

employees as part of initial cadre who had already been absorbed into its services through the rule of immediate absorption during the operation of Section 58 of the Aadhar Act. The learned Counsel in this regard has relied on the judgment of **Kerala State Electricity Board & Ors. Vs Thomas Joseph Alias Thomas M. J. & Ors.** (Civil Appeal Nos. 9252-9253 of 2022, decided on 16.12.2022) to urge that regulations cannot violate the parent Act.

- (20) The next argument addressed by the learned Counsel for the appellant is to the effect that CEO is not competent to terminate statutory appointment of appellant. According to him, before 25.07.2019, the appointing authority of the appellant was Chairman of UIDAI, who had approved initial appointment from 19.02.2014 and after the amendment, UIDAI itself by virtue of Section 21 (1) is the appointing authority and not any Officer or CEO in absence of any delegation of such powers to make appointment by general or special orders, to either CEO or any other Officer under section 51 of the Aadhar Act. Thus, it has been argued that in case the CEO is considered as an appointing authority as defined in Regulation 2(1)(b) of the Regulations, 2020, then such interpretation would render Section 51 of the Aadhar Act redundant and bad in eyes of law and in this regard, he has relied on the Constitutional Bench judgment of the Apex Court in **Nathi Devi Vs Radha Devi**

Gupta [Appeal (Civil) No. 5027 of 1999, decided on 17.12.2004] to argue that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. As such, according to him, the CEO is not competent authority to pass the impugned order of repatriation as the same is vested only in the authority i.e., UIDAI.

- (21) The third line of argument addressed by the learned Counsel for the appellant is that OM dated 17.06.2010 is not applicable after 21.01.2020. According to the learned counsel, UIDAI in exercise of powers under section 21 of the Aadhar Act notified two regulations, namely, Appointment Regulations 2020 and Service Regulations 2020, to regulate appointment and all other service conditions of employees of UIDAI with effect from 21.01.2020 and as such, in the absence of any saving clause in these regulations and according to him, even the Removal of Difficulty Order 2016 notified by the respondents under Section 58 of the Aadhar Act does not help, as the same was for a limited time period i.e., upto 3 months effective from 12.07.2016 or until all provisions of Aadhar Act and regulations became effective or in force, whichever is earlier. Thus, according to him since the Aadhar Act came to be enforced with effect from 21.01.2020, the OM dated 17.06.2010 came to be stopped and therefore, the impugned order dated 16.03.2020 passed under the said non-existing OM dated 17.06.2010 is

illegal and in violation of Section 21 of the Aadhar Act and in that regard, he relied on the judgment of the Apex Court in the case of **Employees' State Insurance Corporation Vs. Union of India** (Civil Appeal No. 152 of 2022, decided on 20.01.2022).

- (22) The fourth line of argument is based on the premises that inquiry was in violation of statutory Regulation 60 of UIDAI service Regulations 2020 under section 21 of the Aadhar Act. According to the learned Counsel, the impugned order dated 16.03.2020 was issued based on inquiry report dated 04.03.2020 for misconduct allegations, through two complaints and a report of inefficiency dated 06.03.2020. But in eventualities of misconduct and inefficiency, inquiry was to be held by disciplinary authority only in accordance with regulation 60 and in this regard, he has relied on the judgment of the Apex Court rendered in the case of **Union of India and another Vs Shardinhu : (2007) 6 SCC 276**. The competence of the inquiry committee was also doubted and according to him, the approval of such constitution of inquiry committee was not done by the disciplinary authority of appellant and as such, the same is illegal and bad in law. Further, according to him, although misconduct is a ground of repatriation, the same does not find any mention in the preliminary inquiry nor the same was reported anywhere in the finding that the two complaints

were found to be correct. Thus, according to the appellant, the said complaints were manipulated for obvious reasons and shows collusion of the respondents and has, as such prayed for quashing the judgment of the learned Single Judge and allowing the present appeal.

- (23) Per contra, Ms. Shraddha Deshmukh learned Counsel in her own eloquent manner appearing for UIDAI, has defended the impugned order by submitting that a very detailed reasoning has been recorded by the learned Single Judge while dismissing the writ petition of the appellant and it does not call for any interference. Ms. Deshmukh after narrating the factual matrix of the present case, has taken this court through the provisions of Unique Identification Authority of India (Appointment of Officers and Employees) Regulations, 2020, which came into operation on 21st of January, 2020. According to her, the appellant cannot take benefit of the regulations for permanent absorption into the cadre of UIDAI, as complaint of misdemeanour and unsatisfactory performance, was raised prior to the coming into force of the said regulations and most importantly, the regulation itself states that mere fulfilment of the eligibility criteria by a candidate and his submission of application form does not confer a right to him/her to be absorbed in the cadre of UIDAI.

(24) Ms. Deshmukh has vociferously contended that the regulations clearly mention that absorption in the cadre is contingent on the recommendation of the selection committee and the concurrence of the parent organisation/cadre, as well as, the decision of the appointing authority and availability of vacancy in the respective post. She has taken this Court through the declaration dated 07.02.2020 filed by the appellant in this regard, while preferring the application seeking absorption. Anyhow, it has been stated by the learned Counsel appearing for UIDAI, that a policy decision has been taken by UIDAI to keep the absorption policy in abeyance vide OM dated 12.03.2020, which had not only affected the Appellant but across pan-India, and as a matter of fact, no employee of UIDAI has been absorbed into the cadre under the regulations of 2020 and therefore, there could be no question of arbitrariness on the part of UIDAI.

(25) The learned Counsel for the respondent thereafter, has pointed the attention of this Court to regulation 5 of the 2020 regulations, which provides for constitution of the initial constitution of the cadre, wherein various requirements have to be fulfilled by a person to be considered for absorption. According to her, when a regulation is already at place, the appellant or for that matter, any person claiming absorption in the UIDAI has to fulfill the requirement of regulation 5 of the

2020 regulations, which is mandatory in nature. Ms. Deshmukh lays emphasis on the point that as per regulation 5, offer of absorption can be given only to those persons who are holding any post provided under the schedule and meet the requirements as specified in regulation 5(2)(3) and (4), which according to the learned Counsel for UIDIA is not being fulfilled by the appellant and as such, he cannot claim any right of absorption.

- (26) The learned Counsel for UIDAI has also submitted that the appellant has not challenged the policy decision of UIDAI for keeping the absorption policy at abeyance and per se, any argument running contrary to the said policy decision should not be entertained by this court and to fortify her stand, she has relied on the judgment of the Hon'ble Apex Court in **State of A.P Vs. Subbarayudu V.C. and others** : 1998 (2) SCC 516 and **Brij Mohan Lal Vs Union of India and others** : (2012) 6 SCC 502. Further, the learned Counsel has also relied on the judgment of **Kunal Nanda Vs. Union of India** : AIR 2000 SC 2076 and other cases to argue that there is no vested right in any person to continue for long deputation or get absorbed in the department to which he had gone on deputation. Thus, it has been summed up by her that no grounds have been made out by the appellant and the present appeal may be dismissed.

Discussion & Findings

(27) Having heard the parties at length, this Court must at the very outset record that, after the order of repatriation of the appellant, which is the subject matter engaging the attention of this court in the present appeal, it has come on record that the parent organisation of the appellant, namely, MMTC, vide its emails dated 11.01.2021 and 22.02.2021, requested the appellant to join his parent organisation. Apparently, it seems that the appellant did not join the services of MMTC and as such disciplinary proceedings have been initiated against the appellant on the ground of misconduct. This Court was informed during the course of hearing that a writ petition bearing No. 8943/2022 has been filed by the Appellant, which is pending before the learned Single Judge of this court, wherein although a notice had been issued to the Respondents, however no stay against the said departmental proceedings have been granted in favour of the petitioner. This Court, vide order dated 14.12.2023 requisitioned the said writ petition. However, during the course of hearing, this Court expressed its reservation to hear the said writ petition along with the present appeal, as any decision in that writ petition would not only cause prejudice to the Appellant for losing a chance of appeal (Special Appeal), but would also result in non-joinder of issues as the grounds espoused by the appellant in the present appeal are at variance to the grounds mentioned in the writ petition.

Thus, this Court vide an order 27.04.2024 has delinked the writ petition No. 8943/2022, which shall be decided on its own merit by the learned Single Judge and without being influenced by any observation made by this court in the present appeal.

(28) First & foremost, it is not in dispute that after the establishment of UIDAI under Section 11 of the Act, 2016, it has become a statutory authority and is no longer an attached office of the Government of India or the Planning Commission nor is it in dispute, that the parent corporation of the appellant is also an autonomous body, therefore, both the lending and borrowing corporation/authority are not departments of the Government of India but are autonomous bodies as of now and were so, on the date of passing of the impugned order of repatriation dated 16.03.2020 and disposal of representation dated 28.05.2020.

(29) The hinge of the argument addressed by the learned Counsel for the appellant belies the factual matrix. It has been contended that the appellant was not on deputation on the date of the impugned order dated 16.03.2020 as he had already been absorbed in the UIDAI by rule of immediate absorption with effect from expiry of three years of deputation on 19.02.2017. The learned Counsel has tried to develop a concept of “deemed absorption” or “automatic absorption” and in that regard has given various corollary arguments. The first argument being that clause 6 & 9 of the OM dated 31.10.2017 issued by the

Department of Pensions & Pensioner's Welfare, provided, that in case a central government servant proceeds to a central autonomous body on deputation basis without obtaining specific exemption for the post, the official would be treated as having resigned from the central Government and absorbed in the central Autonomous body. Apparently, it has come on record that although in the appellant's case no specific exemption for the post was obtained, but he was never treated to have resigned from his parent organisation, which is fortified from the issuance & request email dated 11.01.2021 and 22.02.2021, wherein MMTC has requested the appellant to join his parent organisation. The said OM was issued for preparation of shield that, in case no specific exemption for the post is obtained, then in that case, the person would be treated to have resigned, so that there is no lien created on the post held by that particular person in the parent organisation, which would give a meaningful & purposive understanding of the tenure of service for consideration of service benefits, including pensions, etc. According to this Court, the said OM is of no help to appellant as he has not been treated as having resigned from MMTC.

- (30)** Further, the contention of the learned Counsel for the appellant that DoPT OM dated 17.06.2010 provided for a maximum tenure of 3 years and since the appellant has been on deputation

in UIDIA for close to seven years and fundamental Rule 13 provides, that in case a person is on deputation beyond the maximum limit admissible, there would be “no lien” on the post held by that person/Government servant in the parent organisation. At the first blush, the contention of the appellant seems to be appealing, however on a closer look, it is apparent from the facts of the present case that the proposition is out of context. The said rule prescribed for an eventuality when a government servant is given only two choices i.e., either return to the parent organisation within the prescribed period or there would be “no lien”. Unfortunately, in the present case, the deputation has been extended by UIDAI much beyond the prescribed period and the appellant had been accepting the said extension. Further, there had been no endeavour by MMTC to put to notice the appellant to either return or loose the lien in his parent organisation. Apparently, all the parties have been working in tandem with each other and it is only when UIDAI repatriated the appellant, the controversy crept. In any case, it is borne from the record itself that “lien” existed on the post held by the appellant in his parent organisation- MMTC on his repatriation from UIDAI and by itself, even this OM is of no help to the appellant.

- (31) Anyway, it has to be understood that there is no concept of “deemed absorption” or “automatic absorption” as these are

terms absolutely foreign to service jurisprudence. One has to understand that deputation or permanent absorption, is a bilateral phenomenon. There is no provision under law, of deemed absorption. Pertinently, absorption has to be done as per the rules & regulations and the law on that aspect stands settled that, even if a person is found to be eligible it does not mean that he would be absorbed as a matter of right. Thus, when eligibility does not guarantee a deemed absorption, how can merely completing a particular tenure of service on deputation amount to 'deemed' or 'automatic absorption'. It has to be understood, that, merely applying for absorption as per the regulations also does not give a right for being absorbed as it would depend on various factors, including suitability and most importantly, the necessary NOC and/or the permission of the parent department/organisation. The absorption/transfer in the borrowing organisation would be complete only when the borrowing company passes an order absorbing the deputationist. An affirmative action is required from both the lender as well as the borrowing department for absorption of a government servant in the borrowing department and as such, it can be safely understood that deemed absorption or automatic absorption is not permissible under service law and nothing has been brought on record by the appellant to demonstrate any rule or regulations akin to the said concept.

- (32) The next argument addressed by the learned Counsel for the Appellant is Regulation 4 of the Regulations 2020 is in violation of section 58 of the Aadhar Act, as it fails to consider employees as part of initial cadre, who has already been absorbed into its services through the rule of immediate absorption during the operation of Section 58 of the Aadhar Act. This ground presupposes that the appellant had already been given immediate absorption with the lapse of his tenure of three years, which this could have already been held to be untenable in the eyes of law.
- (33) As regards the other ground of the appellant that the CEO is not competent to terminate the statutory appointment of the appellant is concerned, this court finds that a co-joint reading of section 18 (4) of the Aadhar Act, 2016 and Regulation 2 (1) (b) of the Regulations, 2020 sufficiently indicates that the Chief Executive Officer (CEO) had administrative control over the officers and other employees of the Authority. Further, Regulation 3 of the Regulations, 2020 empowered the Chief Executive Officer to implement the said Regulations. Apparently, the decision communicated to the Appellant vide order dated 16.03.2020 for repatriation had been taken with the approval of the Chief Executive Officer who was competent to take a decision in this regard, as such, the contention of the appellant appears to be untenable both, on facts and in law.

(34) As regards the contention of the appellant relating to non-applicability of OM dated 17.06.2010 as the same became redundant after the enforcement of the Aadhar Act and the notice of repatriation dated 16.03.2020 having been issued under the said non-existing OM and in violation of section 21 of the Aadhar Act is concerned, this Court finds that the learned Single Judge has very extensively dealt with the said ground and has returned a finding to the following effect;

“At this very stage it needs to be mentioned that the petitioner came on deputation in the year 2014 when UIDAI was still functioning as an attached office of the Planning Commission of the Government of India and his selection as also tenure of deputation were governed by the aforesaid DoPT OM's dated 17.06.2010 which was subsequently modified by OM dated 17.02.2016 and this fact was mentioned in the OM dated 10.10.2013 in pursuance to which the petitioner applied for being appointed on deputation as also in the order of his deputation dated 05.02.2014. Clause 6 of the DoPT OM dated 17.02.2016 therefore did not make these OM's inapplicable, at least till 11.07.2016 i.e. prior to Act, 2016 coming into force, if not, even thereafter.

It is not out of place to mention that the Act, 2016 came into force on 12.07.2016 and the UIDAI was established by a notification under Section 11 of the said Act on 12.07.2016 itself. However, all the provisions of the Act, 2016 were not notified in terms of Section 1 (3) of the said Act, instead, Section 11 - 20, 22 - 23 and Section 48 - 59 came into force on 12.07.2016 as per notification issued in this regard under Section 1 (3) of the Act, 2016. Section 1 - 10 and 24 - 47 of the said Act came into force on 12.09.2016 vide a notification of the same date under Section 1 (3) of the Act, 2016.

Section 21 of the Act, 2016 dealing with terms and conditions of service of officers and employees of UIDAI was not notified as per Section 1 (3) of the said Act at that time nor any regulations as are referred therein were framed prescribing the terms and conditions of service of officers and employees. In fact, the said

provision, without being notified, was amended vide Act, 2019, which was published in the Gazette on 23.07.2019 and Section 1 to 30 of the Act, 2019 came into force on 25.07.2019 by a notification of the same date issued under Section 1 (2) of the Act, 2019. By the amendment in Section 21, the requirement of approval of the Central Government as was required under the unamended Section 21 was done away with.

The regulations as are referred in Section 21 of the Act, 2016 were framed and notified only on 21.02.2020. Regulations no. 1 of 2020 which has already been referred earlier are relevant for the case at hand.

In this context Section 59 of the Act, 2016 is relevant and it reads as under:-

" 59. Anything done or any action taken by the Central Government under the Resolution of the Government of India, Planning Commission bearing notification number A-43011/02/2009-Admin. I, dated the 28th January, 2009, or by the Department of Electronics and Information Technology under the Cabinet Secretariat Notification bearing notification number S.O. 2492(E), dated the 12th September, 2015, as the case may be, shall be deemed to have been validly done or taken under this Act."

In view of the above quoted provision, as UIDAI functioned as an office of the Central Government therefore, any action taken under the notification dated 28.01.2019 by which it was established as an attached office of the Planning Commission and the subsequent notification dated 12.09.2015 by which it was made an attached office of DIET, Government of India, are to be deemed to have been validly done or taken under the Act, 2016. The exercise of selection and appointment of the Appellant on deputation was initiated by UIDAI after its constitution by the notification dated 28.01.2009 but prior to 12.07.2016, therefore, this action is to be treated as validly done under the Act, 2016 in view of Section 59.

In view of the above as unamended Section 21 of the Act, 2016 had not been notified under Section 1 (3) of the said Act and as no regulations had been framed as referred therein regarding terms and conditions of service of officers and employees of UIDAI, the tenure of deputation of the petitioner continued to be governed by the DoPT OM's dated 17.06.2010 and 17.02.2016 in accordance with the terms of deputation mentioned in the OM dated 10.10.2013 and the order of deputation of the petitioner dated 05.02.2014 at least till 21.02.2020, when, the

regulations namely UIDAI (appointment of officers and employees) Regulations, 2020 were notified under Section 21 of the Act, 2019.

- (35) Further, this court finds that a very pertinent question in the context was framed by the learned Single Judge in the impugned order, which inter-alia says:

“Question is, whether, once the Regulations, 2020 were notified, the OM's dated 17.06.2010 and 17.02.2016 became inapplicable? and, whether, in the absence of any provision for repatriation or curtailment of deputation in the Regulations, 2020, the impugned order of repatriation dated 16.03.2020 is illegal?”

- (36) The aforesaid question framed by the learned Single Judge was dealt very vividly covering all aspects of the matter and returning a finding in the following words;

“On perusal of the Act, 2016, the Court finds that there is no specific provision of recruitment and appointment including by a way of deputation instead there is a general provision contained in Section 21 as amended by the Act, 2019 which speaks of determination/specification of terms and conditions of officers and employees of UIDAI by regulations to be made by the UIDAI. Section 54 of the Act also empowers the UIDAI to frame such regulations.

As already stated, Regulations, 2020 made by UIDAI were notified on 21.02.2020. Regulation 11 thereof deals with deputation and reads as under:-

" 11. Deputation.- (1) The posts which are to be filled up by the method of deputation would be widely circulated among such Ministries or Departments of the Central Government, State Governments, Administration of Union Territories, Public Sector Undertakings and Statutory and Autonomous Bodies which are expected to have people with the qualifications and experience matching the requirements of the Authority and willing to join the Authority on deputation.

(2) The selection of candidates for appointment on

deputation basis shall be made on the recommendations of the Selection Committee.

(3) All appointments made on deputation in the Authority under these regulations shall initially be for a period not exceeding five years which may be extended for such period and in such manner as prescribed by the Authority from time to time."

As per Sub-regulation (3) initially all appointments made on deputation are required to be made for a period not exceeding 5 years which may be extended for such period and in such manner as prescribed by the authority i.e. UIDAI from time to time. No such decision of the "authority" as defined in Section 2 (e) of the Act, 2016 i.e. UIDAI, has been placed before the Court prescribing any period beyond 5 years up to which the deputation under Regulation 2020 could be extended nor the manner of such extension as having been prescribed by UIDAI has been placed before the Court. It being a specific power of regulation of the terms and conditions of service vested with the UIDAI, it has to be performed by it and none else.

If the argument of the petitioner's Counsel that DoPT OM's dated 17.06.2010 and 17.02.2016 became inapplicable w.e.f. 21.02.2020, in view of Regulations, 2020, then, the logical corollary of it would be that he would have to be repatriated, as his term of 5 years expired in February, 2019 and no such decision of the authority as defined in Section 2 (e) of the Act, 2016 has been brought on record prescribing the permissible period of extension of deputation beyond 5 years and the manner of doing it under Regulation 11 (3) of the Regulations, 2020. Thus, the extension of petitioner's deputation vide order dated 13.02.2020 wherein an OM dated 23.02.2017 has been referred which according to the opposite party is in continuation of the OM's dated 17.06.2010 and 17.02.2016 will itself fall in jeopardy being contrary to Regulations, 2020.

Irrespective of the aforesaid, there is nothing in the Regulations, 2020 which may persuade this Court to hold that a person on deputation cannot be repatriated, not even on grounds of unsuitability and unsatisfactory work even though he has not been absorbed in UIDAI under the said Regulations. The scheme of the Regulations, 2020 do not lend support to such a view, which is also contrary to the general concept of deputation and repatriation as already discussed."

(37) The learned Single judge after recording and examining all the purviews of the applicability of the OM's after the enforcement of the Aadhar Act, went on to hold that,

“Now coming to the applicability of the OM's, once the UIDAI became a statutory authority under Section 11 of the Act, 2016 w.e.f. 12.07.2016 then it became an autonomous body and did not remain an office of the Government of India and DoPT OM's were not automatically applicable to it from 12.07.2016, however, in view of Section 59 of the Act, as the actions of the Central Government taken in respect of UIDAI prior to 12.07.2016 under the notification dated 28.01.2009 and 12.09.2016 were protected as being validly taken under the Act, 2016, therefore, as UIDAI functioned as an attached office of the Planning Commission and DIET, Government of India prior to 12.07.2016 when the petitioner was taken on deputation in UIDAI by the order dated 05.02.2014 according to which his tenure of deputation was to be governed by DoPT OM dated 17.06.2010 (which was modified by OM dated 17.02.2016), therefore, in view of Section 59 of the Act, 2016, the said OM's, in the absence of any regulations under Section 21 of the Act, 2016 to the contrary, continued to govern the terms of his deputation at least till 20.01.2020 and they continued to apply to his deputation to the extent they were not inconsistent with the Act, 2016, which they were not.

If the aforesaid OM's are held to be inapplicable w.e.f. 12.07.2016 then it would create a situation where in the absence of notification of Section 21 of the Act, 2016 under Section 1 (3) thereof and in the absence of any regulations made by UIDAI under the said provision, there would be no provision for bringing persons on deputation to the UIDAI, as there was no such procedure in the Act, 2016, whereas, in the very nature of establishment of UIDAI most of the officers and employees were to be brought on deputation from other departments/organisations, and the terms and conditions of the deputationist who had already been brought to UIDAI prior to 12.07.2016 would also be put in jeopardy which can never be the intent of the rule making authority or of this Court.

As the terms of deputation applicable to the petitioner's tenure of deputation vide order dated 05.02.2014 were in no manner in conflict with the Regulations, 2020 so far as repatriation is concerned, they continued to be applicable by of the order of deputation.

Even if the OM's referred above were inapplicable w.e.f. 21.02.2020, it does not help the petitioner as even under the Regulations, 2020 which came into effect from 21.02.2020, for the reasons already given hereinabove, repatriation of the petitioner was permissible, therefore, merely because the order of repatriation dated 16.03.2020 refers to Clause 9 of the OM dated 17.06.2010, it cannot be held to be illegal whether repatriation was permissible and justified on facts is another aspect."

- (38) This Court is in full agreement with the findings returned by the learned Single Judge and does not find any rationale behind the contention of the appellant that the OM's by virtue which he was appointed on deputation in the borrowing organisation became non-existent while repatriating him to the lender/parent origination.
- (39) Further, the appellant has raised the issue of violation of regulation 60 of the UIDAI Service Regulations of 2020 issued under section 21 of the UIDAI Act. According to the appellant, in eventualities of misconduct and inefficiency, inquiry was required to be held by disciplinary authority. Additionally, the appellant had doubted the veracity of the inquiry committee in as much as, there was no finding by the said committee that there was any misconduct on the part of the appellant.
- (40) This Court finds that the learned Single Judge distinctively dealt with the aforesaid issue in great detail and considered the displeasure remark given to the appellant regarding his functioning in August, 2019 and has recorded in the impugned

order itself that there was no improvement in the appellant's functioning till 28.02.2020, leading to (i) the show cause letter dated 02.03.2020 relating to the allegation of huge pendency in cases relating to date of birth, name/gender change and other exception cases. The learned Single Judge after appreciating the inputs given by the Asst. Director General on 06.03.2020 observed that,

"The fact that petitioner's deputation was extended in the interregnum on 13.02.2020 does not wash off what is evident from the records as aforesaid regarding the working of the petitioner. This apart, there was a report of an internal inquiry committee dated 04.03.2020 against the petitioner which was in the nature of a fact finding report. One of the complainants Shri Devashish Bhatt was Assistant Section Officer under the petitioner with one Rajeev Srivastava as an intermediary officer between the two and the contention that he was not under his direct control is nothing but an eye wash."

(41) Thus, the learned Single Judge after recording that a complaint had also been lodged by a Driver of a general pool, wherein again the Appellant conducted himself in a manner not befitting an officer of his rank. Apparently, the learned Single Judge went on to quote, the conclusion of the internal inquiry committee report dated 04.03.2020 as herein under:-

"Recommendations: Committee feels that in an office like UIDAI where project work is being completed in a mission mode and officers have to interact with various eco partners including residents, cordial behaviour is utmost required. The behaviour of Shri Gupta, as intimated by various officials is undesirable and may hamper the work flow and ultimately damage the image of the organization."

(42) After appreciating the evidence on record, this Court finds that the learned Single Judge, returned a finding in the following manner:

“The Court has perused the statement of the petitioner recorded by the internal inquiry committee wherein there is a reference to the complaints being shown to him while putting a question to him and he being confronted with its contents. Therefore, it is incorrect to say, as was stated by the learned Counsel for the petitioner that he came to know about the complaints only through the counter affidavit. The material aforesaid forms the basis for recommending the premature repatriation of the petitioner on the ground of unsatisfactory work and unsuitability for continuation on deputation in UIDAI.

Based on the said recommendations, the Chief Executive Officer took the decision and approved the same on 12.03.2020 for premature repatriation of the petitioner. Consequently the impugned simplicitor order dated 16.03.2020 was issued mentioning the approval by the competent authority. No proceedings preliminary or otherwise were initiated against the petitioner by the disciplinary authority for punishing the petitioner for any misconduct, therefore, reliance placed by the learned Counsel for the petitioner in this regard on the decision of the Supreme Court in Chandra Prakash Shahi's case (Supra) does not help his cause, specially considering the status of the petitioner which was that of a deputationist even if based on selection as he was liable to be repatriated on account of unsatisfactory work or unsuitability even as per the decision in S.N. Maity's case (supra) and the decision in Ashok Kumar Patel's case (supra).

In these circumstances, especially in the absence of any allegation of personal malafide against any officer or employee of UIDAI who may have been involved in the decision making process or in the process leading to it, it cannot be said that the repatriation of the petitioner is punitive or arbitrary. The reasons and material mentioned in the counter affidavit as noticed hereinabove may have been the motive but not the foundation of the order. In view of the above discussion, the impugned order cannot be said to be punitive. It is an order simplicitor.”

(43) This Court is again with full agreement with the findings returned by the learned Single Judge. Pertinently, the learned Single Judge has nowhere missed the 'woods of the tree' and returned the findings which are plausible and reasonable in the given peculiar facts and circumstances of the case.

(44) This court finds that it is a settled principle of law that absorption cannot be claimed as a matter of right. For an absorption to be carried out, there has to be consent of the Lender Organisation as well as the Department in which the absorption is sought. In this regard, reference may be made to **Kunal Nanda Vs. Union of India and others** : (2000) 5 SCC 362 wherein the Supreme Court has succinctly explained the legal position concerning absorption:

"6. ...It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. 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 person to continue for long on deputation or get absorbed in the department to which he had gone on deputation."

(45) The Judgment in Kunal Nanda (Supra) has been reiterated in the judgment of the Supreme Court in **Union of India Vs. V. Ramakrishnan** : (2005) 8 SCC 394 and decisions of Division Benches of this Court in **Pawan Kumar & Ors. Vs. Union of**

India & Ors. : 2018 SCC OnLine Del 12615 and Chandra Mohan Singh Bhandari Vs. Union of India and Others : 2019 SCC OnLine Del 10002. In Pawan Kumar (Supra) a Division Bench of the Delhi High Court rejected the relief of absorption sought by the petitioners therein, who were working as Constables in various departments of the CAPFs and were sent on deputation with CBI for a long period of time. Relying on the dicta of the Supreme Court in Kunal Nanda (Supra), the Court held as under:

"23. Petitioners plea of legitimate expectation is also without merit. Merely because the Petitioners continued to be on deputation for a period of seven years or more, it cannot be said that a right has accrued in their favour. The delay on the part of CBI to complete this absorption process was also on account of the earlier circulars being contrary to the Recruitment Rules. Mr. Chibber relies on the Judgment of the Supreme Court in the case of Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381. This judgment is distinguishable from the facts of the present case. The Appellant therein were working for the Futwah-Phulwarisharif Gramya Vidyut Sahakari Samiti Ltd. (for short "the Society"). This society was brought into existence by the Bihar Government and the Bihar State Electricity Board by issuing a license to the Society under the State Electricity Act. Thereafter the license issued to the society was revoked and it was merged with the Board. On account of this merger, the Appellants claimed a right to be absorbed relying on the doctrine of legitimate expectation.

Conclusion

(46) Thus, it is concluded that the Appellant has been rightly repatriated to his parent organisation- MMTC and this court does not find any plausible ground to upset the well-reasoned and descriptive order passed by the Learned Single Judge, who has extensively touched each and every aspect of the matter. An

affirmative action is required from both the lender as well as the borrowing department for absorption of a government servant in the borrowing department and as such, it can be safely concluded that deemed absorption or automatic absorption is not permissible under service law and nothing has been brought on record by the Appellant to demonstrate any rule or regulations akin to the said concept.

- (47) Further, the concept of transfer and deputation has been explained by the Apex Court in **Prasar Bharti and Others Vs. Amarjeet Singh and Others** : 2007 (2) SCALE 486 and it has been held, that a person sent in a cadre outside his substantive cadre has no right to continue in the borrower organisation and can be repatriated to his parent cadre at any point of time without assigning any reason.
- (48) The law also stands settled that the authorities cannot be required to assign any reason, whatsoever, in an order of repatriation and such power cannot be fettered by requiring them to record reason. Which employee should be posted where is absolutely within the domain of the authority concerned and unless it is shown that an order of transfer/repatriation is contrary to the statutory rules or is otherwise mala fide or has been passed by the incompetent authority, only then the Court may interfere and not otherwise. (See: **State of U.P. Vs. Ashok**

**Kumar Saxena : AIR 1998 SC 925, Mohd. Masood Ahmad
Vs. State of U.P. & others : JT 2007 (12) SC 467).**

(49) For all the aforesaid reasons, this Court does not find any merits in the appeal and as such the same is **dismissed**. However, it is made clear as has also been stated hereinabove, that dismissal of this appeal shall not have any impediment on the pendency of the writ petition No. 8943 (S/S) 2022, which shall be decided on its own merits, without being influenced by passing of this Judgment.

(50) There shall be no orders as to Cost.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 31st May, 2024
Ajit

The judgment is pronounced today in open Court in terms of Chapter VII sub-rule (2) of Rule (1) of the Allahabad High Court Rules, 1952.

Order Date : 31st May, 2024
Ajit

(Om Prakash Shukla, J.)