

JHARANA NAYAK Petitioner
Through : Mr. A.K. Trivedi, Adv.

versus

UNION OF INDIA & ORS Respondents
Through : Mr. Ravinder Agarwal, Adv. for
C.G.S.C.

CORAM :-**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | NO |
| 2. | To be referred to the Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

GITA MITTAL, J. (Oral)

1. The petitioner assails the order dated 9th July, 2010 whereby the Central Bureau of Investigation ('CBI' for brevity) has directed that she be relieved from her posting on deputation and be repatriated to the CRPF, her parent department.

2. Mr. Ravinder Agarwal, learned Standing Counsel for the respondents has contended that the respondents have followed the Standing Order No.D.I.1/2001-Pers.II dated 30th May, 2001 issued by the Director General, CRPF with regard to deputation of Non-Gazetted (Executive) Force Personnel to NSG/SPG/NPA/MEA and other organizations in taking action in

the matter. Our attention is drawn to the conditions stipulated at serial No.6 under the heading "General" which governs consideration of the matter relating to deputation of CRPF personnel to other organizations. It is contended that the petitioner could not be issued a N.O.C. for permanent absorption with the C.B.I. on the ground that she had not completed 39 years of age which was required under the instructions and that no special circumstances were made out which could justify exercise of discretion conferred on the respondents in this regard to relax or depart from the stipulated conditions.

3. The petitioner contends that under the Standing Order, the respondents are adequately empowered to depart from the instructions which govern the subject. It is contended that the respondents have in certain cases prior thereto departed from the mandate of these instructions.

4. We have heard learned counsel for the parties. The Standing Order dated 30th May, 2001 clearly stipulates that the no objection certificate for absorption in the borrowing organization in respect of the deputationist can be issued only to personnel who are of 39 years of age or above. These instructions have stipulated that any departure from the above instructions shall be with the approval of the Director General, CRPF.

5. Before dealing with the contentions of the parties, we may usefully extract the relevant portion of the aforementioned

Standing Order dated 30th May, 2001 which reads as follows:-

"GENERAL

- i) The numbers of person of any rank sent on deputation to outside organizations, except the SPG, NSG, should not exceed 10% of the sanctioned strength in that rank.
- ii) No person of any rank should be sent on deputation to Ex—cadre post, except in SPG, NSG if the number of vacancies in that rank exceed 10%.
- iii) Personnel shall not approach the borrowing department directly.
- iv) NOC for permanent absorption in other borrowing organization can be issued to the personnel who are of 39 years of age or above.
- v) Personnel on repatriation from deputation outside the organization/Country shall not be considered for static posting and posting will be in the Battalion deployed in operational area for a minimum period of 2 years.
- vi) Concerned Unit/GCs shall be solely responsible for watching service interest of deputationist and getting them repatriated after completion of terms of deputation. They should also inform the Directorate General at least 1 year in advance in case of Superannuation of personnel on deputation.
- vii) The service records of the personnel who proceed on deputation/nominated will be brought upto date and dispatched to other organizations including Mission, abroad duly completed in all respects.

Any departure from the above instructions shall be with approval of the Director General, CRPF."

6. So far as the factual matrix is concerned, there is no dispute. The petitioner was recruited into the Central Reserve Police Force on 20th January, 1994 as Constable (Mahila). While

serving with the CRPF, she was sent on deputation to the Central Bureau of Investigation on 8th January, 2003 for a period of three years. Her tenure as a deputationist after having granted yearly extensions twice ultimately expired on 7th January, 2008. The petitioner places reliance on a communication dated 26th March, 2010 from the Central Bureau of Investigation to Central Reserve Police Force for her permanent absorption with the investigation agency. The Central Reserve Police Force has however refused the requisite no objection certificate for the permanent absorption. In this background, the Central Bureau of Investigation has issued the order dated 9th July, 2010 relieving the petitioner and repatriating her to her parent department.

7. The petitioner has also placed reliance on the relaxation in favour of a mahila Constable Ms. Kaushalya wherein the respondent is stated to have given a no objection for her permanent absorption in C.B.I. It is contended that this Constable was junior to the petitioner and had also not completed 39 years of age. The petitioner, on this basis, has contended individual discrimination in the exercise of the discretion conferred on the CRPF under the said instructions.

8. On the other hand, it is submitted by Mr. Ravinder Aggarwal, learned Standing Counsel for the respondents that the case of Constable Kaushalya falls well within the parameters of exceptional hardship. It is submitted that this Constable had suffered loss of her husband on account of

death on 6th June, 2009 and urged that she was single handedly raising her 12 years old child for within any assistance. It was in this background that the respondents were persuaded to exercise the power conferred under the instructions of 2001.

No such exceptional circumstances have been brought to our notice so far as the petitioner is concerned.

9. The learned counsel for the petitioner has placed reliance on the communication dated 26th March, 2010 issued by the Deputy Director (Admn.) of the C.B.I. to the respondents requesting for the permanent absorption of the petitioner on the ground that she along with three other CRPF personnel who were on deputation with it had become familiar with the working of the C.B.I. because of their long association and performance with it.

10. The respondents have not found the same to be sufficient justification for permanent absorption of the petitioner and in this background refused to grant no objection to her permanent absorption. The petitioner cannot claim issuance of the no objection by her parent department for permanent absorption in the borrowing department as of right. The respondents are governed by the standing instructions and appear to have followed the same.

In view of the above reasons, we find no merit in this writ petition, which is dismissed.

11. At this stage, learned counsel for the petitioner submits that he may be permitted to make representation to the

respondents to place special circumstances which could justify issuance of the no objection. It is open to the petitioner to represent to the respondent in this regard in case such special circumstances exist. Such representation, as and when made, shall be considered in the light of the applicable rules, instructions and policy.

12. This writ petition and application are dismissed in the above terms.

GITA MITTAL, J

J.R. MIDHA, J

JULY 19, 2010
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