

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7270/2011 and CM No.16506/2011**

K.PRADEEP KUMAR ..... Petitioner  
Through: Ms. Jyoti Singh, Sr. Advocate with  
Mr. Vaibhav, Ms. Tinu Bajwa,  
Mr. Sameer Sharma and Ms. Sahilla,  
Advocates  
  
versus  
UNION OF INDIA AND ORS ..... Respondents  
Through: Mr. Ravinder Agarwal, CGSC for  
R-1 and 2.  
Mr. Ruchir Mishra, Advocate for R-3.

+ **W.P.(C) 8764/2011 and CM Nos.19789/2011 and 2543/2012**

PARMAL SINGH ..... Petitioner  
Through: Ms. Jyoti Singh, Sr. Advocate with  
Mr. Vaibhav, Ms. Tinu Bajwa,  
Mr. Sameer Sharma and Ms. Sahilla,  
Advocates  
  
versus  
UOI AND ORS ..... Respondents  
Through: Mr. Sachin Datta, CGSC with  
Ms. Niti Arora, Advocates

+ **W.P.(C) 239/2012 and CM Nos.493/2012 and 1781/2012**

JACOB KURIAKOSE ..... Petitioner  
Through: Ms. Jyoti Singh, Sr. Advocate with  
Mr. Vaibhav, Ms. Tinu Bajwa,  
Mr. Sameer Sharma and Ms. Sahilla,  
Advocates  
  
versus  
UNION OF INDIA & ORS ..... Respondents  
Through: Mr. Ravinder Agarwal, CGSC for the  
Respondent No.1.  
Mr. Himanshu Bajaj, CGSC for the  
Respondent No.2.

+ **W.P.(C) 7681/2012 and CM No.19420/2012**

RAJPAL YADAV ..... Petitioner

Through: Mr. R.K. Saini, Advocate

versus

UOI AND ANR ..... Respondents

Through: Mr. Sunil Kumar, Mr. Rajiv Ranjan  
Mishra and Mr. T.P. Singh,  
Advocates for R-1 to 3.

+ **W.P.(C) 3942/2013 and CM No.7354/2013**

SURENDER SINGH ..... Petitioner

Through: Mr. R.K. Saini, Advocate

versus

UOI & ORS ..... Respondents

Through: Ms. Sonia Mathur and Mr. Sushil  
Kumar Dubey, Advocates.

+ **W.P.(C) 4693/2013**

SURINDER KUMAR ..... Petitioner

Through: Mr. R.K. Saini, Advocate

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr. B.V. Niren and Mr. Prasouk Jain,  
Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE REVA KHETRAPAL**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

## **ORDER**

**: VALMIKI J. MEHTA, J.**

1. By this judgment, six petitions are being disposed of inasmuch as more or less similar issues and similar reliefs are claimed *inter se* the parties, and who are also mainly common. The borrowing department in each of the cases is the Intelligence Bureau. For the sake of convenience, reference is made to the facts of W.P.(C) 239/2012.

2. In this writ petition, the following reliefs are claimed:

- “i) Quash and set aside the order No.27/Estt.(G)/2006 (32)-1019 dated 01.02.2011 and order dated 04.01.2012 issued by the Assistant Director/G of the Respondent No.2; and*
- ii) Issue a writ of mandamus and/or certiorari and/or any other writ, order or direction thereby directing the Respondents to permanently absorb the petitioner in IB by seeking consent of the respondent no.3 who shall not refuse consent; and*
- iii) Quash and set aside the order dated 19.07.2010 issued by the respondent no.2; and/or*
- iv) Pass such further order(s) and/or give direction(s) as deemed fit and proper in the facts and circumstances of the case.”*

3. Essentially, the relief which is claimed is that the Petitioner who is on deputation from his parent employer/lending employer/Central Reserve Police Force (CRPF) to IB/Respondent No.2 be absorbed by the Respondent No.2. By the impugned orders; of the Respondent No.3/parent employer dated 16.12.2011 and of the Respondent No.2/IB dated 02.05.2011; the relief claimed by the

Petitioner of his absorption by Respondent No.2/IB has been declined. We may state that at the conclusion of the arguments, learned senior counsel for the Petitioner stated that the Petitioner does not press the relief of absorption by the Respondent No.2 by quashing of the impugned orders, and the Petitioner only seeks the relief of consideration of his case for absorption by the Screening Committee of the Respondent No.2 pursuant to paras 7 and 8 of the impugned order dated 02.05.2011 of the Respondent No.2, and which paras 7 and 8 read as under:

*“7. However, notwithstanding above, the absorption of deputationists to BOI in IB has been reconsidered and it has been decided to consider the absorption on benefits and liabilities inter-alia all-India transfer liability, that other deputationists have on absorption in IB.*

*8. Now therefore, Shri Jacob Kuriakose may if willing for absorption which would further be subject to concurrence of parent department, i.e, CRPF and fitness for absorption on scrutiny of the service records, may submit an unconditional undertaking that he is willing for absorption on the terms & conditions as contained in IB memo no.21/Estt(G-1)/2010-Absorption-7690 dated 01.12.2010 and serve anywhere in India.”*

**4.** A reading of aforesaid paras 7 and 8 of the impugned order dated 02.05.2011 of the Respondent No.2 shows that the Respondent No.2 in spite of whatever may have happened in the past of the Petitioner not applying within the requisite period for absorption, i.e. before expiry of the period of deputation, the Screening Committee of

the Respondent No.2 can still examine the case of the Petitioner for absorption subject to the parent employer/CRPF/Respondent No.3 giving its concurrence to the absorption of the Petitioner by the Respondent No.2/IB. Therefore, the contest in the present case is really between the Petitioner and the Respondent No.3/CRPF/parent employer which has refused to give concurrence by its impugned order dated 16.12.2011 for absorption of the Petitioner by the Respondent No.3. Respondent No.3 has in fact raised additional grounds in its counter-affidavit of administrative exigencies viz. of lack of adequate personnel with it for disputing the relief claimed by the Petitioner for his absorption by the Respondent No.2.

5. The facts of the case which are necessary for consideration of the issue of grant of concurrence by the Respondent No.3 of absorption of the Petitioner by the borrowing department/IB/Respondent No.2 has to be considered in view of the policy of the Respondent No.2 dated 01.12.2010. This policy is filed as Annexure P-8, running page 42 of the petition, and the only relevant paras of this policy which are required to be stated are its paras 3 (vi) and (vii) which read as under:

*“3(vi) Cases for absorption should be recommended by the officers JD & above keeping in view the usefulness of the officer to the organization.*

*(vii) On receipt of the recommendations for absorption, concurrence of Lending Organisation, a Screening Committee at IB Hqrs will assess the deputationist officer(s) for absorption on the basis of service record as fit or unfit. The recommendation*

*about his fitness or otherwise would require the approval of the Competent Authority.”*

6. In accordance with paras 3(vi) and 3(vii) of the policy of Respondent No.2 dated 01.12.2010, three steps are essential before absorption is granted by Respondent No.2 to any employee who is on deputation with it from the parent employer. Firstly, there is required recommendation for absorption. Secondly, there is required concurrence of the lending organization. Thirdly and finally, a Screening Committee assesses the case of the deputationist officer for absorption by deciding whether he is fit or unfit for being absorbed on the basis of the service record.

7. At this stage, it is also necessary to state that it is the common case of the parties before us that before absorption is considered by the Respondent No.2/IB, the Petitioner/employee has to give up his seniority in the lending department. To this end, the employee has to give an undertaking to the lending department, and which obviously has to be given through proper channel, and which would be the Respondent No.2 in the present case.

8. For the sake of completion of narration it is required to be stated that Petitioner was earlier by the order of the Respondent No.2 dated 01.02.2011 ordered to be repatriated to his parent employer/Respondent No.3. The Petitioner challenged this repatriation order by filing a writ petition in this Court, being W.P.(C) 856/2011. This writ petition was disposed of at the admission stage by a Division Bench of this Court vide its order dated 09.02.2011. As per this order dated 09.02.2011, the parent department/lending

department/Respondent No.3 and the borrowing department/Respondent No.2 were directed to treat the writ petition as a representation and consider the case of the Petitioner for absorption by the Respondent No.2 in accordance with the extant policies. In furtherance to the order of High Court dated 09.02.2011 certain correspondence took place between Respondent No.2 and the Respondent No.3. One such letter in this regard which is relevant is dated 08.11.2011 of the Respondent No.3 to the Respondent No.2. By this letter dated 08.11.2011, the parent employer/Respondent No.3 stated that the aspect pertaining to extension of deputation or absorption of the Petitioner by the Respondent No.2 can take place only on the Petitioner giving an unconditional undertaking duly attested by a gazetted officer that Petitioner would forego his promotion as HC/GD (Head Constable) in the parent employer/Respondent No.3. By this letter, Respondent No.3 informed that the issue of its giving concurrence to the absorption of the Petitioner by the Respondent No.2 would be considered on receiving of the aforesaid undertaking.

9. That the Petitioner would have been asked for such an undertaking by the Respondent No.2, and therefore the Petitioner vide his letter dated 12.12.2011 gave the necessary undertaking to the Respondent No.2. Petitioner gave the same undertaking to the Respondent No.3 as well. The letter giving the requisite undertaking, addressed to the Respondent No.3 was through proper channel, i.e. it was submitted by the Petitioner to the Respondent No.3 through the

Respondent No.2. These letters being relevant, are therefore reproduced hereunder:

“To,  
The Assistant Director/G  
IB Hqrs, S.P.Marg,  
New Delhi

(Through the proper channel)

Subject: Willingness for Permanent absorption, extension of deputation Period as well as for forgoing promotion.

Sir,

I hereby submit my written willingness for permanent absorption, extension of deputation period for 5<sup>th</sup> years as well as for Forgoing promotion of my parent department CRPF. It is requested that my willingness may kindly be forwarded to CRPF Authority.

Thanking you Sir,

Yours faithfully,

(Jacob Kuriakose)  
CT/GD CRPF No.913205157  
Of 130 BN (Promoted as  
HC/GD-143 BN)  
(Now SA/G, PIS No.105184)  
IB/BOI, New Delhi.

Dated: 12.12.2011”

“To,  
The Deputy Inspector General of Police/Estt.  
C.R.P.F (MHA)  
Govt. of India  
CGO Complex,  
Lodhi Road  
New Delhi.

(Through the proper channel)

*Subject: Willingness for Permanent absorption, extension of deputation Period as well as for forgoing promotion.*

*Sir,*

*Respectfully, I CT/GD Jacob Kuriakose, No.913205157 hereby submitted that I may kindly be granted extension of deputation further period for one year (5<sup>th</sup> years) in Intelligence Bureau, Government of India, New Delhi as Security Assistant. I am willing to permanent absorption in IB.*

*I hereby undertake that I do not want to avail promotion as HC/GD in my parent department CRPF. I have no objection of my junior's promoted to higher grade.*

*Yours faithfully,*

*(Jacob Kuriakose)  
CT/GD CRPF No.913205157  
Of 130 BN (Promoted as  
HC/GD-143 BN)  
(Now SA/G, PIS No.105184)  
IB/BOI, New Delhi.*

*Dated: 12.12.2011 ”*

**10.** A reading of the counter-affidavit filed by the Respondent No.2/IB in this Court shows that in preliminary objection para (i), the Respondent No.2/IB has stated that the aspect with respect to willingness of the Petitioner to forego his promotion was intimated to the Respondent No.3/parent employer vide the Respondent No.2's letter dated 04.11.2009. This letter dated 04.11.2009 is written before the aforesaid letters dated 12.12.2011 given by the Petitioner to the

Respondent Nos.2 and 3 and, therefore, the letters dated 12.12.2011 are in addition to the undertaking already given by the Petitioner to the Respondent No.3 and sent by the Respondent No.2 to the Respondent No.3 vide the former's letter dated 04.11.2009.

**11.** It is at this stage that a controversy has arisen because the Respondent No.3 states that the letter dated 12.12.2011 written by the Petitioner to it was not received by the Respondent No.3. In this regard, all that we would like to observe is that the Petitioner cannot in any manner be said to be guilty of not having given the unconditional undertaking to forego his promotion once he gave the letters dated 12.12.2011, and that the letter dated 12.12.2011 addressed by the Petitioner to the Respondent No.3 had to be forwarded by the Respondent No.2 to the Respondent No.3, and merely because the same was not sent by the Respondent No.2 to the Respondent No.3 cannot take away the fact that the requisite undertaking for foregoing promotion was indeed given by the Petitioner.

**12.** After transpiring of the aforesaid events, the impugned orders dated 16.12.2011 and 02.05.2011, pursuant to the directions contained in the order dated 09.02.2011 in W.P.(C) 856/2011 have been passed by the Respondent Nos.3 and 2 respectively, and which are the subject matter of challenge before this Court by the Petitioner by essentially seeking the relief of his being considered by the Screening Committee of the Respondent No.2 for absorption by the Respondent No.2.

**13.** In view of the facts which we have narrated above, the first reason given by the Respondent No.3 in its impugned order dated 16.12.2011 of the unconditional undertaking having not been given by the Petitioner is without any basis whatsoever. The impugned order is dated 16.12.2011 and Petitioner had already given the undertaking on 12.12.2011, and if there is any fault of not sending the undertaking of the Petitioner to the Respondent No.3, the blame must lie at the door of the Respondent No.2 and no prejudice can be caused in this regard to the Petitioner for the inaction of the Respondent No.2. In any case and additionally, we have already referred to the stand of the Respondent No.2 in its counter-affidavit before this Court, wherein it is stated by the Respondent No.2 that it had already sent the undertaking of the Petitioner for foregoing of his promotion much earlier by the Respondent No.2's letter dated 04.11.2009.

**14.** Learned counsel for the Respondent No.3/CRPF very vehemently argued that concurrence of the Respondent No.3 for absorption of the Petitioner by the Respondent No.2 cannot be given even if undertaking of the Petitioner is presumed to have been given to the Respondent No.3/parent employer, in view of DOPT's instructions dated 01.03.2011 (referred to in para 3 of the impugned order dated 16.12.2011) that if there is overstaying of an employee with the department to which he is deputed, the period of unauthorized overstay will be required to be regularized, and that since no extension was granted after 28.12.2010 the overstay is unauthorized, and hence the Respondent No.3 is justified in declining the NOC for Petitioner's permanent absorption with the Respondent

No.2 organization as concurrence could only have been granted during a period of regularized deputation of the Petitioner with the Respondent No.2.

**15.** We have very frankly failed to understand this argument because no doubt no extension was granted for the deputation period after 28.12.2010, but, it is not disputed before us that the operation of the repatriation order dated 01.02.2011 of the petitioner was stayed by a Division Bench of this Court in W.P.(C) 856/2011 and which interim order/protection was to continue till orders were passed on the representation of the Petitioner for being absorbed by the Respondent No.3, the Court having directed that the writ petition itself will be treated as a representation of the Petitioner. Therefore, in our opinion, it does not lie in the mouth of the Respondent No.3 to argue any alleged illegal overstay because that would amount to negating the protection given to the Petitioner in W.P.(C) 856/2011, and which protection is final as the same was not challenged by the Respondent No.3 before a higher Court.

**16.** Learned senior counsel for the Petitioner, in our opinion, is also justified in arguing that there seems to be some unexplained forces at work against the Petitioner because the ground of administrative exigency which is stated in the counter-affidavit of the Respondent No.3 for the first time is not found to be a ground for refusing grant of concurrence in terms of the impugned order of the Respondent No.3 dated 16.12.2011. We need not elaborately comment upon the same except by observing that as a matter of fact it is correct that the ground of administrative exigency urged by the Respondent No.3 in

its counter-affidavit for refusing to give concurrence is admittedly not found in the impugned order dated 16.12.2011 passed whereby concurrence of absorption of the Petitioner by the Respondent No.3 was refused. In our opinion, subsequent events of administrative exigency, which even if we assume to exist, cannot take away vested rights of the Petitioner to seek absorption pursuant to the order dated 09.02.2011 of a Division Bench of this Court in W.P.(C) 856/2011 and the giving by the Petitioner of the requisite unconditional undertaking to both the Respondent Nos.2 and 3 vide Petitioner's letters dated 12.12.2011. No one can take an advantage of his own wrong, and if we allow the Respondent No.3 to take benefit of a subsequent administrative exigency, which we had assumed to exist, would mean that the Respondent No.3 by deliberately causing delay (and even though no such ground is taken at the time of passing of the impugned order dated 16.12.2011) can yet effectively negate the claim of the Petitioner for being regularized by the Respondent No.3.

**17.** Therefore, we hold that the impugned order dated 16.12.2011 to the extent that it refuses concurrence to the Petitioner for being absorbed by the Respondent No.3 is illegal because both the grounds which are stated in this impugned order dated 16.12.2011 cannot stand the test of reasonableness, fairness and lack of arbitrariness which are the guiding beacons of the State as per Article 12 of the Constitution.

**18.** The question then is that if the impugned order dated 16.12.2011 is to be set aside, what follows next, i.e. what is the relief the Petitioner has to be granted. We have already stated in the earlier

part of this judgment that Petitioner though had claimed the relief of mandamus for seeking absorption, this relief was rightly not pressed to the extent of seeking mandamus, because admittedly the Screening Committee of the Respondent No.2 has as yet not approved absorption of the Petitioner, and which positive report of the Screening Committee is a *sine qua non* in terms of para 3(vii) of the office memorandum of the Respondent No.2 dated 01.12.2010, already referred to hereinabove. In this context, we note that two of the requirements contained in paras 3(vi) and 3(vii) of the office memorandum dated 01.12.2010 viz. of recommendation for absorption and consideration by a Screening Committee are not being decided by the present writ petition and we are only holding that the third requirement of concurrence of the lending organization exists. So far as the other two requirements are concerned, the same will have to be complied with in accordance with law for absorption of the Petitioner by the Respondent No.3 organization.

**19.** In view of the above, this writ petition is allowed to the extent of holding that the Respondent No.3 has granted concurrence to absorption of the Petitioner by the Respondent No.2 organization, and for which purpose the impugned order of the Respondent No.3 dated 16.12.2011 is set aside, and it is held that Petitioner has the concurrence of the Respondent No.3/parent employer for being absorbed by the Respondent No.2. We may hasten to add that we are not making any observation whatsoever as to whether Petitioner should or should not be absorbed by the Respondent No.2 and as to whether Screening Committee of the Respondent No.2 does or does

not find the Petitioner fit for being absorbed by the Respondent No.2. The Screening Committee of the Respondent No.2 will act in terms of the extant policies including all requirements of the Office Memorandum dated 01.12.2010 and will take a decision in accordance with law. This decision will be a speaking decision and will be communicated to the Petitioner within a period of one week of the same being passed. The speaking order/decision be now passed by the Respondent No.2, and the Screening Committee should consider the case of the Petitioner in accordance with law, within a period of eight weeks from today.

**20.** The writ petition is allowed to the extent as stated above, leaving the parties to bear their own costs.

**W.P.(C) 7270/2011**

**21.** This writ petition will also stand disposed of in terms of the directions given while disposing of W.P.(C) 239/2012. We would also like to state that Petitioner has stated before us that he will not claim any promotion which was given to him by the Respondent No.3 during the period of his deputation with the Respondent No.2. It is also further stated that Petitioner is also appointed to an analogous higher post having the higher grade pay by the Respondent No.2, and the Petitioner will accept absorption by the Respondent No.2 at a post in accordance with the extant circulars/office memorandums. Writ petition is accordingly disposed of and allowed in terms of the aforesaid observations including the directions given while disposing of W.P.(C) 239/2012.

**W.P.(C) 8764/2011**

22. One of the controversies which was raised in the present case was as to whether the Petitioner has in fact taken benefit of the promotion which was granted by the Respondent No.3, and which is so argued before us by the Respondent No.3, but which is emphatically denied on behalf of the Petitioner. In this regard, we would like to state that the case of the Petitioner is that the higher pay/financial upgradation which he is receiving is pursuant not to grant of promotion to the Petitioner but because of grant of higher pay pursuant to an ACP scheme. Since we cannot decide disputed questions of fact in this writ petition, we only observe that if the Petitioner has received the higher grade pay not because of promotion, but only pursuant to an ACP Scheme, Petitioner will not be disentitled for being considered for absorption by the Respondent No.2. We may also state that the Screening Committee of the Respondent No.2 will consider this aspect at the time of its taking a decision and decide whether or not Petitioner has or has not received benefits of promotion or that the higher grade pay which is received by the Petitioner is only because of an ACP scheme. In case of any doubt, which the Screening Committee of the Respondent No.2 or the recommending authority of the Respondent No.3 may entertain, it can call the Petitioner to take the requisite documents to decide the aspect as to whether Petitioner has or has not received the benefits of promotion as is alleged by the Respondent No.3/principal employer. Respondent No.2 can also call for necessary comments of Respondent No.3 in this regard. In case the Petitioner has not received the higher

grade pay because of promotion but only because of a financial upgradation pursuant to an ACP Scheme, the recommending authority and the screening committee will consider the case of the Petitioner for absorption with the Respondent No.2 in accordance with law including its applicable circulars/office memorandums. Writ petition is accordingly allowed and disposed of in terms of the aforesaid observations as also the directions given while disposing of W.P.(C) 239/2012.

**W.P.(C) 7681/2012 and W.P.(C) 4693/2013**

**23.** It is conceded by the parties that the Petitioners in these cases have only to be considered by the Screening Committee because concurrence has been given by the parent employer for absorption by the Respondent No.2. Respondent No.2 will accordingly consider the cases of the Petitioners for absorption in accordance with law including its office memorandums/circulars. Writ petitions are allowed and disposed of in terms of the directions contained while disposing of W.P.(C) 239/2012 for passing of a speaking order by the Screening Committee of the Respondent No.2 within a period of eight weeks and the same be communicated to the Petitioners within a week thereafter.

**W.P.(C) 3942/2013**

**24.** This case is different from the aforesaid cases because the case of the Petitioner for absorption by the Respondent No.2 has been rejected by the Screening Committee of the Respondent No.2. Though no date is given of the decision of the Screening Committee, it is necessary that the decision of the Screening Committee, which

will be in the form of reasons given in the minutes of the meeting of the Screening Committee, shall be communicated to the Petitioner within a period of six weeks from today. In case the Petitioner has any legal right to challenge the decision of the Screening Committee to deny absorption, the Petitioner can always do so in accordance with law.

**25.** Writ petition is accordingly disposed of in terms of the aforesaid observations.

**VALMIKI J. MEHTA  
JUDGE**

**REVA KHETRAPAL  
JUDGE**

**March 25, 2014**  
*km*