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

+ W.P.(C) 1845/2015

PAPPU SINGH

..... Petitioner

Through: Ms Ruchika Mittal, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Vivek Goyal, CGSc for R-1 and R-2

Mr Vikas Mahajan, CGSC with Mr S.S. Rai and

Mr Rohan Gupta, Advs for

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **18.08.2015**

1. The petitioner claims a direction that he should be absorbed in the Intelligence Bureau ("IB")—the third respondent. He was sent there on deputation from his parent cadre, i.e., the Border Security Force (BSF) on 15.02.2010.

2. The petitioner joined BSF as a Constable in 1988 and was subsequently promoted as Head Constable in 2006. He joined the IB on deputation for a period of three years on 15.02.2010. The deputation period was apparently extended in the meantime and was to end on 14.02.2014. The petitioner had sought for absorption in the IB and requested both the organizations—borrowing department as well as parent department—to facilitate the process. The BSF, however, declined even though the IB was willing to absorb him.

3. Learned counsel submits that the ground urged for refusal, i.e., the petitioner was neither 50 years nor in low medical category culled

out from para 15 of the Office Memorandum dated 17.01.2012 has been misconstrued and rather para 12 of the said document is relevant in as much as it spelt out the eligibility criteria.

4. It is submitted that such being the case since the authorities misdirected themselves and did not take into account the relevant circumstances the direction sought should be granted. Para 12 and para 15 of the Office Memorandum/Circular dated 17.01.2012 read as follow:

“12. A CAPF personnel proposed to be absorbed by the borrowing Organization/Department should have a minimum of 18 years of service on the date, on which the absorption is proposed by the borrowing Organization/Department. Also, the person proposed to be absorbed should already be on deputation with the said Organization/Department. This condition of 18 years shall be read as 15 years in case of low medical category personnel.

15. Personnel above the age of 50 years or in low medical category would ordinarily be permitted to be absorbed in any borrowing Organization/Department where they are working on deputation.”

5. A reading of para 15 would, no doubt, substantiate the petitioner's contention that it is not an eligibility criteria rather it seems to be more in the nature of an additional consideration—that those aged above 50 years and placed in the low medical category should be shown some preference in case requests for absorption are made. However, that this is not an eligibility condition *ipso facto* would not result in the petitioner's entitlement to absorption in the IB. His parent organization has to exercise its discretion and record its no

objection. In the present case, BSF is unwilling to do so.

6. As to the petitioner's entitlement, there can be no doubt that a permanent employee of an organization has no right to claim absorption in the deputation post. In ***Rameshwar Prasad vs. Managing Director U.P. Rajkiya Nirman Nigam Ltd. And Ors.*** AIR 1999 SC 3443, it has been held as follows:-

“17. In our view, it is true that whether the deputationists should be absorbed in service or not is a policy matter, but at the same time, once the policy is accepted and rules are framed for such absorption, before rejecting the application, there must be justifiable reasons. Respondent No.1 cannot act arbitrarily by picking and choosing the deputationist for absorption. The power of absorption, no doubt, is discretionary but is coupled with the duty not to act arbitrarily, or at whim or caprice of any individual.”

7. The above view was applied and reiterated subsequently in another decision notably ***Arun Kumar and Ors. vs. UOI & Ors.*** (2007) 5 SCC 580 and ***UOI vs. V. Ramkrishan & Ors.*** (2005) 8 SCC 394.

8. In these circumstances, the petitioner cannot seek direction to be absorbed in IB as it sought under present case. The reliefs cannot be consequently granted.

The writ petition is dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 18, 2015/bg