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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 09.07.2015

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W.P.(C) 3872/2014

SHEKHAR SINGH

.....Petitioner

Through: Sh. K.C. Mittal, Advocate.

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Sh. Bhagwan Swarup Shukla, CGSC with Sh.
Suyash Kumar, Advocate, for Respondent Nos. 1 to 3.
Sh. S.S. Sejwal, Law Officer, CRPF.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner in these proceedings under Article 226 of the Constitution of India seeks a direction to the second respondent (hereafter referred to as “the CRPF”) to issue a *No Objection Certificate* (hereafter referred to as “the NOC”) to him to facilitate his absorption within the Intelligence Bureau (IB).

2. The brief facts are that the petitioner was enlisted with the CRPF on 05.04.1991. At the relevant time, he was working with the 126th Battalion of the CRPF. He was selected for deputation with the IB with the approval of the CRPF. He reported to the IB on 28.05.2009. During the currency of his deputation, the petitioner was promoted to the rank of Head Constable/General Duty (hereafter referred to as “HC/GD”) by an order

dated 16.10.2009 which was followed up by proforma promotion order dated 01.08.2011. His deputation period – (of 5 years) was to end on 27.05.2014. In the meanwhile, he had sought for permanent absorption in the rank of SA/G, i.e. Constable (GD). The CRPF declined permission for permanent absorption and refused to grant an NOC, and relied upon the instructions of the Department of Personnel and Training (DOPT) dated 17.06.2010. It was *inter alia* stated by the CRPF that the proforma promotion in the rank of HC/GD meant that the petitioner would not be released for permanent absorption with the IB. In these circumstances, on 14.03.2014, the CRPF wrote to the IB expressing its inability to grant no objection.

3. It is argued by the petitioner that the CRPF's refusal is arbitrary and not based upon any rationale. Contending that the ground cited, i.e. proforma promotion, learned counsel for the petitioner submits that none of the instructions relied upon by the CRPF stated that the mere grant of promotion can disentitle an individual sent on deputation to the IB to a claim for absorption. It is also argued that the instructions relied upon only pertained to fixation of pay and the period or tenure of deputation; they nowhere spell out any disentitlement once promotion is granted, and that too, on a proforma basis.

4. Learned counsel for the CRPF, during the course of hearing, produced a letter/order declining the issuance of NOC for permanent absorption dated 14.03.2014. The said document narrates that in terms of the DOPT instruction dated 17.06.2010, the deputation tenure is three years and extendable on year to year basis upto the fifth year. The said order goes on to cite as follows:

“06. In this connection, it is to inform that as per provision contained in para 3 of DoPT OM dated 17/6/2010 & OM dated 30/11/2012 a deputationist who has been allowed proforma promotion can be considered for permanent absorption in borrowing department to the post carrying pay scale equivalent to the pay scale to which he has been granted proforma promotion in parent department. Further, once proforma promotion is allowed, individual cannot make request to forgo promotion subsequently. In view of above, further action in respect of personnel mentioned at para 05 above may also be initiated as per discussion during the meeting on 11/3/2014 and thereafter case for permanent absorption may be forwarded to this Dte.”

5. Learned counsel also submitted that the petitioner never expressly opted out of his entitlement to promotion to the rank of HC/GD. It was, therefore, submitted that once the petitioner failed to report to duty and continued with the tenure of deputation, he became entitled to the appropriate posting in the promotional post, after repatriation. Such being the case, he would have been posted as HC/GD. Learned counsel highlighted that there is no provision to enable such a promoted employee (who is posted to the promotional post after his repatriation), the facility of an NOC, for absorption in the lower post. It is argued that it is evident from the above narrative that the petitioner was initially sent on deputation to the IB, from the CRPF, in accordance with the prevailing norms and instructions. The tenure of initial deputation – in terms of the OM of 17.06.2010 is three years; however, it is extendable on annual basis upto the fifth year. The CRPF relies upon the instructions of 17.06.2010 and submits in essence that proforma promotion in a parent cadre of deputation which results in his entitlement to a higher pay scale, disentitles him to absorption in the deputation post, i.e. in the lower cadre. In this regard, the CRPF relies

upon paras 3.3, 8.1, 8.2 and 8.6. These are extracted as follows:

“3.3 A person in a higher Grade Pay/scale of pay shall not be appointed on deputation to a post in lower Grade Pay/scale of pay if the deputation is from Central Government to Central Government and also in cases where the scale of pay and dearness allowance in the parent cadre post and ex-cadre post are similar.”

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8. *Tenure of deputation/foreign service.*

8.1 *The period of deputation/foreign service shall be as per the Recruitment Rules of the ex-cadre post or 3 years in case no tenure regulations exist for the ex-cadre post.*

8.2. *In case where the period of deputation/foreign service prescribed in the recruitment rules of the ex-cadre post is 3 years or less, the Administrative Ministry/borrowing organisation may grant extension upto the 4th year after obtaining orders of their Secretary (in the Central Government)/Chief Secretary (in the State Government)/equivalent officer (in respect of other cases) and for the fifth year with the approval of the Minister of the borrowing Ministry/Department and in respect of other organisations with the approval of the Minister of the borrowing Ministry/Department with which they are administratively concerned.*

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8.6 *If during the period of deputation/foreign service, on account of proforma promotion in the parent cadre the official concerned becomes entitled to a higher Pay Scale/Pay Band & Grade Pay in the parent cadre vis-a-vis that of the ex-cadre post, the official shall complete his/her normal /extended tenure of deputation already sanctioned with the approval of the competent authority. The pay shall be regulated as under:*

(a) *If the Grade pay of the officer in the parent cadre becomes higher than that of the deputation post after getting proforma promotion, he may be allowed the pay in the pay band + Grade Pay of the post to which he is promoted till the time he completes the normal/extended period of deputation (if he gets proforma promotion in the extended period) already sanctioned, if he so opts. No extension in the period of deputation shall be allowed to him after completing the sanctioned period of deputation.*

(b) *If he draws the pay in the pay band + Grade pay attached to the deputation post, on reversion to his parent cadre, his pay may be fixed by allowing him notional increments in his regular post in the parent department + the Grade pay attached to it.*

(c) *If the Grade pay of the officer in the parent cadre becomes higher than that of the deputation post on getting financial upgradation under the ACP/MACP scheme, the officer may be allowed to draw the pay in the pay band + Grade Pay to which he becomes entitled to under the ACP/MACPS, if opted for by him, as laid down in Para 27 of Annexure I to the DOPT OM No. 35034/3/2008 -Estt. (D) dated 19th May, 2009."*

6. The respondents also rely upon the OM dated 30.11.2012, which in effect alters para 8.6 of the OM dated 17.06.2010. The relevant part of the latter OM of 30.11.2012 is extracted below:

“(ii) Extension after the employee receives a proforma promotion:

The para 8.6 of the OM No. 6/8/2009-Estt (Pay-II) dated the 17th June, 2010 relating to regulation of pay after an officer has got proforma promotion and extension of deputation thereafter, which reads as under:

"If the Grade pay of the officer in the parent cadre becomes higher than that of the deputation post after getting proforma promotion,

he may be allowed the pay in the pay band + Grade Pay of the post to which he is promoted till the time he completes the normal/ extended period of deputation (if he gets proforma promotion in the extended period) already sanctioned, if he so opts. No extension in the period of deputation shall be allowed to him after completing the sanctioned period of deputation."

is modified as follows:

8.6 (a) If the Grade pay of the officer in the parent cadre becomes higher than that of the deputation post after getting proforma promotion, he may be allowed the pay in the pay band + Grade Pay of the post to which he is promoted, if he so opts. In such cases, extensions in deputation after an employee has received the proforma promotion may be considered as per the instructions contained in paras 8.1 to 8.3.2."

7. A combined reading of the relevant provisions of the OM dated 17.06.2010 and 30.11.2012, in the opinion of this Court, does not support the CRPF's contention. The CRPF's position reflected in its reply would be relevant; and is extracted as follows:

"8. Proforma promotion order in the rank of HC/GD has already been issued by the Comdt. 126 Bn vide letter NO.P.VII-02/2010-EC-I dated 01/08/2011 and informed to the IB authority accordingly. In this connection, it is to inform that once proforma promotion is allowed, individual cannot make request to forego promotion subsequently.

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11. *No comments. The action of the Dept is absolutely as per rule and regulations.*

12. *Application for unwillingness for promotion to the rank of HC/GD has not been received in the CRPF. However, his*

application dated 20/05/2010 for continuation of deputation in IB as SA/G has been received through IB letter No.21/Estt (G-I)/09(39)-4034 dated 01/06/2010. In that application, there was no mention about his willingness to forgo promotion in the rank of HC/GD. Hence, he is eligible for absorption in the equivalent post to which proforma promotion is allowed to him in parent department i.e. as HC/GD.

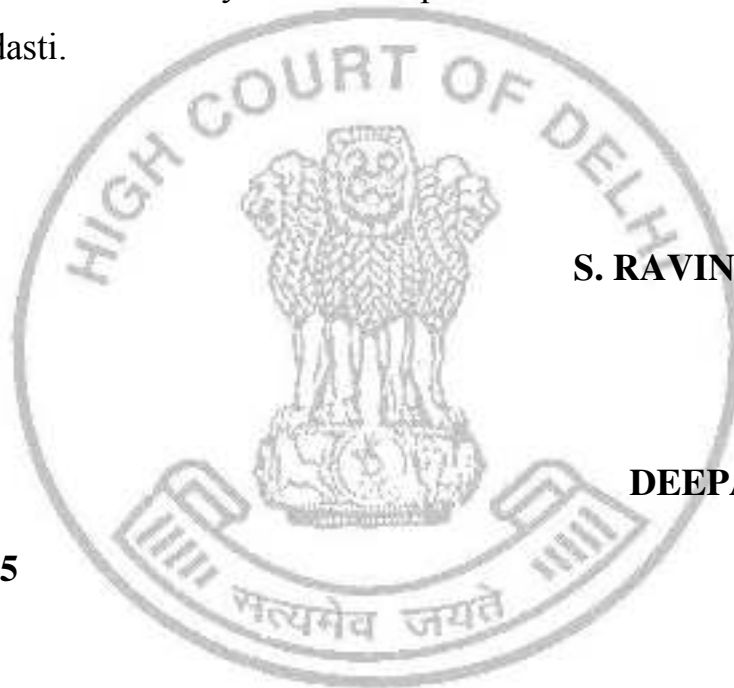
13. No comments.”

8. None of the stipulations or conditions in the OM dated 17.06.2010 or 30.11.2012 support the submissions of the CRPF. Para 3.3 merely states that an individual in a particular grade or scale of pay cannot be sent on deputation to a lower post or grade of pay within two Central Government organizations. Para 8.1 deals with the tenure of deputation/foreign service; initially it is fixed as three years in case no tenure regulation exists. Para 8.2 deals with extension of period of deputation. Para 8.6 which deals with proforma promotion in a deputationist's parent cadre, deals with regulation of pay in case the individual opts to continue on deputation. Each of the contingencies specifies that the fixation of pay consequent upon such promotion would not result in automatic extension of period of deputation. Similarly, amended para 8.6 (a) of the subsequent OM dated 30.11.2012 too regulates pay of deputationists.

9. As is apparent, none of the instructions relied upon support the respondents' interpretation made through para 6 of its letter dated 14.03.2014 [No.D.I-9/2014-Estt(Deptn)], issued by the Directorate General, CRPF. It is accordingly held that the rationale for denial of NOC to the petitioner, i.e. that his proforma promotion in the parent department disentitles him to permanent absorption in a lower grade – in the manner

urged is without any basis.

10. For the above reasons, the order dated 14.03.2014 by the CRPF refusing to issue an NOC to the petitioner to enable his absorption with the IB is hereby quashed. It is further clarified that the CRPF shall take into consideration all relevant facts and material circumstances in examining afresh the question of issuance of NOC to the petitioner and communicate its response in this regard to the concerned parties (IB and the petitioner) within six weeks from today. The writ petition is allowed to the above extent. Order dasti.



S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JULY 09, 2015
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