

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

% *Judgment Reserved on : April 28, 2015*
Judgment Delivered on : May 01, 2015

+ **W.P.(C) 7371/2014**

MAHENDRA SINSINWARPetitioner
Represented by: Mr.K.C.Mittal, Advocate

versus

UNION OF INDIA & ORS.Respondents
Represented by: Mr.Bhagwan Swaroop Shukla, CGSC
with Mr.Ajay Choudhary, Advocate
for UOI

W.P.(C) 7373/2014

GIRDHARI LALPetitioner
Represented by: Mr.K.C.Mittal, Advocate

versus

UNION OF INDIA & ORS.Respondents
Represented by: Mr.Bhagwan Swaroop Shukla, CGSC
with Mr.Ajay Choudhary, Advocate
for UOI

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Mahendra Sinsinwar was enrolled as a constable (GD) in the Border Security Force (BSF) on March 30, 1999. Girdhari Lal was enrolled as a

constable (GD) on April 01, 1987 in BSF.

2. Mahendra Sinsinwar was sent on deputation to Intelligence Bureau (IB) on May 25, 1999. Girdhari Lal was sent on deputation to Intelligence Bureau on May 12, 1999.

3. The initial period of deputation was three years. It was extended on yearly basis. Maximum period of deputation is five years for personnel of Central Armed Police Force. The two petitioners seek permanent absorption in Intelligence Bureau and for their claim the two rely upon the Recruitment Rules framed by the Ministry of Home Affairs for Intelligence Bureau. As per the Recruitment Rules for the post of Security Assistant (Ex.) which is equivalent to that of a constable, the Recruitment Rules allocate 75% of the posts for appointment by direct recruitment and 25% by deputation/absorption from officers of Central Police Organizations or State Police Organization or Defence Personnel holding analogous post. The exact language of the Recruitment Rules notified for the post of Security Assistant (Ex.) concerning 25% quota allocated for deputation/absorption reads as follows:-

“Deputation/absorption:

Officers of the Central Police Organizations or State Police Organisations or Defence Forces holding Analogous posts on regular basis in the parent cadre/Department.

Note 1: Period of deputation including Period of deputation in another ex cadre post held immediately preceding this appointment in the same or some other organization or department of the Central Government shall not exceed five years. The maximum age limit for appointment by

deputation/absorption shall be not exceeding 56 years as on the closing date of receipt of application.”

4. The challenge by the two petitioners is to the orders repatriating both to their parent department i.e. BSF. Mahendra Sinsinwar challenges the order dated October 10, 2014 repatriating him to BSF. Girdhari Lal challenges the order of even date.
5. The two had filed writ petitions earlier on when they learnt that they would be repatriated, which were disposed of on July 28, 2014. Direction issued was that a reasoned decision be communicated to the two.
6. The direction was issued to the Intelligence Bureau and thus we find that the reasoning given by the Intelligence Bureau is that five years deputation with Intelligence Bureau is over and their parent department has not granted a ‘No Objection Certificate’ for retention beyond the period of deputation or for permanent absorption.
7. The reason given by the BSF authorities not to accede to the permanent absorption of the two is twofold. Firstly that preference has to be given to persons above the age of 50 years as also to those in low medical category for permanent absorption and secondly that the requirement of the Border Security Force of constables has to be taken into account.
8. Though not explained as to why preference is given to persons above the age of 50 years as also to those in low medical category, it is apparent that with age the agility of constables decreases and so also if one is in a low medical category. Duties performed by constables of BSF are arduous and warrants the highest level of fitness. It would be a waste of national resource if the BSF constables who are placed in a low medical category are boarded out on medical grounds. If these constables can be absorbed in

other departments of the Government where commensurate with their fitness they can work till the age of superannuation, it makes perfect sense to do so. After all a human resource is the wealth of a nation.

9. The petitioners are below the age of 50 years and are in SHAPE-I category.

10. The legal argument advanced by learned counsel for the petitioners was that if the method of appointment to a post is deputation/absorption, once a person is sent on deputation a right vests in the person to be absorbed on the post. For the proposition learned counsel cited the decision reported as AIR 1999 SC 3443 Rameshwar Prasad vs. Managing Director U.P. Rajkiya Nirman Nigam Ltd. & Ors.

11. Rameshwar Prasad was a civil engineer under the UP Small Industries Corporation Ltd. and proceeded on deputation to UP Rajkiya Nirman Nigam Ltd. Both organizations were governed by the UP Absorption of Government Servants in Public Undertaking Rules 1984. Rule 4 of the Rules set the time limit of five years as the term of deputation and Rule 5 permitted permanent absorption in the loanee Department if the Government agreed to the same in public interest and the employee sought absorption before expiry of three years period from the date of deputation. Rule 16 of the UP Rajkiya Nirman Nigam Ltd. Service Rules, 1980 mandated that the deputation or absorption would be on the terms and conditions agreed between the Board, the persons working on deputation and the present employer. On facts it was noted that Rameshwar Prasad proceeded on deputation on November 18, 1985 and continued to be on deputation beyond the limit of five years prescribed by Rule 4 of UP Absorption of Government Servants in Public Undertaking Rules 1984. He had sought permanent

absorption in the Nigam on December 22, 1987. Having completed five years deputation on November 18, 1990, deputation allowance was not paid to him thereafter. He continued to work till the year 1995 when on March 04, 1995 he was sought to be repatriated to the parent department. On these facts the Supreme Court observed in paragraph 15 as under:-

“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. In the present case, as stated earlier, the General Manager (N.E.Z.) specially pointed out as early as in the year 1988 that appellant’s service record was excellent; he was useful in service and appropriate order of his absorption may be passed. His application for absorption was within three years as provided in Rule 5. There is nothing on record to indicate that for any reason whatsoever, he was not required or fit to be absorbed or the power under Rule 5(1) of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 was not required to be exercised in his favour. Interim order dated 17.7.1991 passed by the High Court would not be applicable in case of appellant because his case was considered for absorption in the year 1988. Further on completion of five years on 19.11.1990 he could not have ordinarily been continued on deputation in the service of Nigam. It is apparent that he was absorbed from 19.11.90 because from that date his deputation allowance was also discontinued. If he was to be continued on deputation, there was no reason for non-payment of deputation allowance. So on the basis of statutory rules as well as the policy, appellant stand absorbed in the service of Nigam.”

12. But the observations in para 17 are important. The Supreme Court

observed that whether a deputationist should be absorbed in service or not is a matter of policy. On facts, the Supreme Court held that since the Nigam had allowed Rameshwar Prasad to continue to work with it beyond five years and had stopped paying him a deputation allowance and made him work for another five years without paying the allowance, in view of the Rules he was entitled to be absorbed and there being no valid reasons given to justify the public interest in not according approval for absorption, the Supreme Court held that Rameshwar Prasad was entitled to be permanently absorbed in the Nigam.

13. In the decisions reported as (2007) 5 SCC 580 Arun Kumar & Ors. vs. UOI & Ors. and (2005) 8 SCC 394 UOI vs. V.Ramkrishnan & Ors. the Supreme Court held that a deputationist has no legal right to be absorbed to the post on which he was sent on deputation and that absorption of a deputationist is a matter of policy.

14. Since there was no policy to guide on what basis persons on deputation to Intelligence Bureau would be permitted to be absorbed in Intelligence Bureau by the various Central Armed Police Forces, under directions from this Court on March 11, 2011 in WP(C) 10806/2009 Udai Pal Singh vs. BSF & Ors. on January 17, 2012 policy guidelines have been framed and notified by the Ministry of Home Affairs and the relevant clauses thereof are noted by us. They read as under:-

“10. Any proposal for extension of deputation, shall be initiated by the borrowing organization/Department well in advance, and not less than 06 months prior to the expiry of deputation term and will be accompanied by the willingness of the person on deputation for such extension. It will also be ensured by the borrowing organization/Department that while sending requisition/request for extension, the service

record/vigilance clearance certificate in respect of the person concerned is also forwarded to the parent CAPF to enable quick processing of the case.

11. If during the period of deputation, on account of proforma promotion in the parent cadre the official concerned becomes entitled to a higher pay scale/pay band and Grade pay a in the parent cadre vis-à-vis that of the ex-cadre post, the official shall be allowed to complete his/her normal/extended tenure of deputation already sanctioned with the approval of competent authority, provided his total basic pay does not exceed the maximum of pay in Pay Band plus grade pay of the deputation post. No extension in the period of deputation shall be allowed to him/her after completing the sanctioned period of deputation.

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.

13. A requisition made by borrowing Organization/Department or willingness tendered by a person for absorption, will not automatically confer any right on an individual or the borrowing department to claim absorption as a matter of right. The discretion to accept or reject, a request for absorption will be exclusively with the parent CAPF or the cadre controlling authority i.e. Ministry of Home Affairs, as the case may be. In the case of Subordinate Officers and Other Ranks, the proposal for absorption shall be decided by the Director General of the CAPF concerned.

14. No person of any rank should be sent on deputation, if the number of vacancies in that rank exceeds 10% of the total sanctioned strength.

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.”

15. We find that the case of the petitioners for permanent absorption in Intelligence Bureau has been considered as per the policy guidelines by the BSF and since we reject the argument that a deputationist gets an indefeasible right for permanent absorption if the post to which he is sent on deputation is capable of being filled up by permanent absorption, we dismiss both the writ petitions, but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MAY 01, 2015

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