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

% **Date of hearing and Order: 06.05.2015**

+ **W.P.(C) 4496/2015**

SURENDER SINGH

..... Petitioner

Through: Mr.Ankur Chhibber and Ms.Neha
Garg, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Bhagwan Swarup Shukla, CGSC
with Mr.Ajay Kumar Choudhary,
Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

KAILASH GAMBHIR, J (ORAL)

C.M.No.8134/2015 (Exemption)

Exemption granted, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 4496/2015 and C.M.No.8133/2015 (stay)

1. By this petition filed under Articles 226/227 of the Constitution, the petitioner seeks to challenge the order dated 12.03.2015 passed by the learned Tribunal in O.A.No.2098/2014, thereby dismissing the O.A. preferred by the petitioner.

2. Mr. Ankur Chhibber, counsel representing the petitioner vehemently contends that pursuant to the direction given by this Court vide order dated 10.06.2013 in WP(C) No.3942/2013, the case of the petitioner was placed before the Screening Committee but again the Screening Committee without giving any cogent reasons rejected the case of the petitioner for absorption in a most arbitrary and illegal manner. Counsel also submits that the Screening Committee has not appreciated that the case of the petitioner for his absorption was recommended by the borrowing department itself after necessary 'no objection' was given by the lending department. Counsel also submits that the petitioner had even given up his promotion to the next higher post in the parent department just to continue to work on deputation in the lending department, i.e. I.B. Counsel also submits that instead of absorbing the present petitioner, the IB is now moving ahead to appoint some other person on deputation on the same post.

3. We have heard learned counsel for the parties.

4. A batch of writ petitions was filed by the similarly situated persons including the present petitioner and the said batch of writ petitions was decided by this Court vide order dated 25.03.2014. The relevant para-24 of the order dated 25.03.2014 passed by this Court is reproduced herein:

“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”.

5. It is manifest from the said order that earlier also the case of the petitioner was rejected by the Screening Committee of respondent No.2, but considering the fact that no date was given in the decision of the Screening Committee and the fact that the said decision of the Screening Committee was not communicated to the petitioner, the Division Bench of this Court felt that it would be necessary in such circumstances that the decision of the Screening Committee 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 the date of passing of the said order.

6. Indisputably, the case of the petitioner was examined afresh by the Screening Committee and the decision of the Screening Committee has been conveyed to the petitioner vide memorandum dated 02.06.2014. On perusal of this memorandum, we find that the Screening Committee did not

recommend the case of the petitioner for permanent absorption on the ground that he did not have any (functional) utility for the organization. The Screening Committee further took a view that despite the petitioner fulfilling the eligibility criteria prescribed under the rules/guidelines, his absorption is decided on holistic assessment of his abilities, his performance during deputation tenure, his potential and promise for contributing towards the larger organisational goal. The Screening Committee thus found the petitioner not fit for absorption and accordingly repatriated the petitioner from the borrowing department to the lending department with immediate effect. This decision was challenged by the petitioner by filing an O.A. and the Tribunal rejected the O.A. preferred by the petitioner vide the impugned order.

7. We have been informed that the Screening Committee which was constituted by the respondent No.2 is a high-powered Committee and the same was chaired by the Director General of I.B. The Tribunal, after having gone through the case set up by the petitioner and the stand taken by the respondents, took a view that since the Screening Committee has taken the decision based on the overall potential and the longer run possibilities of intelligence yield/input/output therefore, the Tribunal cannot act as superior

appellate authority to that of the Screening Committee and take any decision in this regard. Instead of repeating the reasoning given by the learned Tribunal, it would be appropriate to reproduce the operative paragraphs of the impugned order, as under:-

“12. The next question that we are compelled to answer ourselves is as to whether outstanding ACRs are sufficient to warrant absorption of an employee into the borrowing organization. We feel that it is not the case here. Had it been so, there would have been no need for setting up of a Screening Committee and the process would have been simplified to the point of clerical calculation that a person having particular number of ACRs in Outstanding grade would be absorbed into the respondent organization suo moto. There was no need to subject the aspirants for absorption to the procedure of a Screening Committee. We do not agree with this proposition raised by the learned counsel for the respondents. To the contrary, we find that there is much more to the consideration given by the Screening Committee than mere ACRs. Here, we are inclined to agree with the argument of the learned counsel for the respondents that the Screening Committee holistically judges the overall capacities and potentials of an individual to serve in the respondent organization in the longer run. It may be the case that a person despite having outstanding ACRs may be lacking in some of the attributes/qualities that make a good Intelligence Officer. Hence, there is something more than the gradings of the ACRs which the Screening Committee examines. There is no denying that the respondent organization has counter espionage as its main task. It is a secret organization with the sole output/input intelligence relating to security of the country against incursion of foreign and internal elements, provocateurs and subversive elements that hide within us. None can deny that the persons selected for this organization should have the qualities of maintaining secrecy, merging into crowds, infiltrating the enemy ranks/organizations, gleaning and distilling intelligence inputs out of them. Therefore, it is the Screening Committee along which is competent to judge the functional utility of a deputationist in the long run for his potential to fit into the aforesaid role, and only such persons are retained who have the long time potential for this kind of work.

13. We also take note of the arguments of the learned counsel for the respondents that the applicant during the entire period of deputation was only discharging record keeping role and was not in the intelligence cadre. It is well recognized that Courts/Tribunals have been prohibited by the Hon'ble Apex Court to act as Superior Appellate Authorities over the decision of the DPC/Screening Committee/Appellant Authority in the departmental proceedings [**Diwan Singh vs. L.I.C. (Civil Appeal No. 3655/10 decided on 5.1.2015 Manu SC/0001 /2015)**]. We do agree that the applicant had pinned his hope upon absorption in anticipation of which he had foregone his promotion in his parent cadre. It does appear harsh at the first instance that he should be denied absorption. However, this is one sphere where we have no equity jurisdiction to exercise as the interest of the security of the country takes a precedence over all other considerations.

14. In conclusion, we find that a deputationist has no right to get absorbed permanently in the borrowing organization, as the decision thereon rests with the Screening Committee alone. We are of the view that since the Screening Committee has taken a decision based on overall potential and the longer run possibilities of intelligence yield/input/output, this Tribunal cannot act as a superior appellate authority to that of the Screening Committee. Therefore, there is no justifiable reason to interfere with the impugned order of repatriation. In the result, the OA fails and is dismissed. However, taking note of the fact that the applicant has foregone his promotion in the parent organization on his own in expectation of permanent absorption in the borrowing department, which belied and further has been repatriated, which has caused double jeopardy to the applicant. In this view of the matter, we direct the respondent No.3 to consider the applicant for promotion as per his eligibility from the due dates within three months from the date of his joining the parent department, and in the event he is found suitable for promotion, the same is to be given forthwith w.e.f. the date his juniors have been promoted. In the event he is not found suitable for promotion, the respondents shall pass a reasoned order and communicate the same to the applicant within the aforesaid period”.

8. We hardly find any reason to disagree with the said reasoning given

by the learned Tribunal. The absorption, in any case, is not a matter of right. The same has to be with the consent of three parties, that is, the lending department, the borrowing department and the individual himself. In this case, although the case of the petitioner was initially recommended by the borrowing department, but when it was placed before the Screening Committee for permanent absorption, the Screening Committee did not find that the petitioner's absorption would be in the interest of the borrowing department taking into account the overall potential of the petitioner. No mala fides have been attributed by the petitioner against the Members of the Screening Committee and, therefore, the learned Tribunal rightly held that it cannot sit over the decision of the Screening Committee in the absence of any cogent reasons.

9. We do not find any merit in the present petition and the same is hereby dismissed with no order as to costs.

KAILASH GAMBHIR
(JUDGE)

I.S.MEHTA
(JUDGE)

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