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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Dated: 08th July, 2016

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W.P.(C) 5737/2016 & CM.APPL.23665/2016(stay)

DEEPAK KUMAR & ORS

..... Petitioners

Through

Mr. M.K. Bhardwaj, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through

Mr. Anil Panwar with Mr. Ram
Kumar Jha, Advocates

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W.P.(C) 5738/2016 & CM.APPL.23667/2016(stay)

ASHOK KUMAR & ORS

..... Petitioners

Through

Mr. M.K. Bhardwaj, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through

Mr. Anil Panwar with Mr. Ram
Kumar Jha, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. The matters are taken up today as the 7th July, 2016, was declared holiday on account of *Idu'l Fitr*.
2. The petitioners are aggrieved by the orders dated 24.05.2016 and 01.06.2016 passed by Central Administrative Tribunal (*hereinafter referred to as 'the Tribunal'*).
3. The facts of both the cases are almost identical and since identical issues arise for consideration of this Court, both the petitions are being disposed of by a common order.
4. In both the cases, the claim of the petitioners for absorption in the Pay and Accounts Department was rejected by the Border Security Force by

an order dated 25.09.2014. Two OAs were filed by the petitioners before the Tribunal. While issuing notice in the matter, the order by which their request for absorption was rejected, was stayed by an order dated 09.10.2014.

5. The grievance of the petitioners in the present writ petitions is that despite the restraint order dated 9.10.2014 the respondents have issued the Office Order dated 12.5.2016 by which the petitioners stand relieved and they have been directed to join their parent cadre with immediate effect. It is further the grievance of the petitioners that the petitioners being aggrieved by the Office Order dated 12.5.2016 filed a contempt petition and also a miscellaneous application before the Central Administrative Tribunal, however, no orders have been passed in the application and in the contempt petition.
6. It is further submitted by Mr.Bhardwaj, learned counsel for the petitioners, that the arguments in both the OAs stand concluded and judgment has been reserved on 10.2.2016. Mr.Bhardwaj further contends that serious prejudice would be caused to the rights of the petitioners if the Office Order dated 12.5.2016 is not stayed.
7. Per contra, Mr.Bhardwaj, Advocate contends that the interim order granted by the Tribunal on 9.10.2014 stood automatically vacated as per the order dated 30.9.2014 passed by the Tribunal and, thus, the respondents were well within their right to issue the office order and relieve the petitioners as their period of deputation had come to an end. Counsel contends that the Tribunal was constrained to pass the order dated 30.9.2015 on account of the conduct of the petitioners as after the interim order was passed the matter was being intentionally delayed.
8. We have heard learned counsel for the parties and with their consent the writ petition is taken up for final disposal.

9. In both these cases, fourteen BSF personnel were taken on deputation in the Pay and Accounts Department, BSF, New Delhi, for a period of three years with effect from different dates. During the period of 2014-2015, the deputation tenure of all the petitioners stand expired. By an interim order passed by the Central Administrative Tribunal, the petitioners were allowed to continue on deputation. On 30.5.2015, the Tribunal made it clear that in case the applicants (petitioners herein) do not advance arguments on the next date of hearing, the interim order would stand vacated automatically. Order sheets placed on record would show that the matter was adjourned to 07.10.2015, 26.10.2015, 28.01.2016, 09.02.2016 and finally on 10.02.2016 the orders were reserved. After the order was reserved, the respondents issued Office Order dated 12.5.2016, which reads as under:

“No.100/10PrAO(Admn)?MHA/2014-15(Leg)/Date : 12/05/2016

OFFICE ORDER

Subject: Deputation of BSF personnel to PAD, BSF, New Delhi.

Whereas 14 BSF personnel listed in the enclosed Annexure were taken on deputation on transfer basis in PAD, BSF, New Delhi for the period mentioned against each for a period of three years with effect from the date mentioned against each and were posted in PAD, BSF, New Delhi during the deputation period.

2. Whereas, the deputation tenure of all the 14 personnel has already expired during the period 2014-15, on the dates mentioned against each. However, all the 14 BSF personnel were allowed to continue on deputation in compliance of an interim order of the Hon'ble CAT(PB), New Delhi, operating against the Respondents in O.A. No.3553/2014 and No.3598/2014.

3. Whereas, no interim order is in existence in the aforesaid O.As. as on date and the Hon'ble Tribunal has reserved order in both cases on 10.02.2016.

4. Whereas, under the given circumstances, the respondents are not left with any authority for further retention of these BSF deputationists (Applicants in the aforesaid Original Applications) beyond their approved deputation tenure, which inter alia administratively necessitates repatriation of the deputationists with the stipulation that the same will be subject to final outcome of the aforesaid Original Applications.

5. Now therefore, it has been decided to relieve all the 14 BSF personnel listed in the enclosed annexure from PAD, BSF, New Delhi to their parent cadre with immediate effect i.e. on 13th May, 2016 (AN), with direction to report back to their parent unit, after availing admissible joining time, for further duties.

This has the approval of Principal Chief Controller of Accounts (Home)."

10. After being served with the office order, as noticed above, the petitioners filed a contempt petition and also filed a Miscellaneous Application seeking stay of the Office Order dated 12.5.2016 before the Tribunal. The applications came up for hearing on 24.5.2016, when the matter was adjourned to 1.6.2016. On 1.6.2016 the matter was again adjourned to 2.6.2015 for listing before the appropriate Bench. We are informed that on 2.6.2016 the matter was not listed as the appropriate Bench did not assemble.
11. The submission of Mr.Bhardwaj is that since the Tribunal had found merit in the OA, an interim order was granted. The Tribunal had cautioned the petitioners on 30.9.2015 that in case the arguments were not addressed the interim order would stand vacated automatically. But the petitioners were all along under the impression that the interim

protection granted was not vacated and and more so once the judgment had been reserved the respondents could not have issued the office order after a period of more than three months.

12. We have heard the counsel for the parties.
13. We are of the considered view that the petitioners are themselves to blame for creating the present situation as after 30.5.2015 the matter was listed on 7.10.2015, 26.10.2015, 29.1.2016, 9.2.2016 and finally on 10.2.2016 the orders were reserved. On all the aforesaid dates of hearing, the petitioners did not plead before the Tribunal that since the matter is being heard, the interim order should continue.
14. Mr.Bhardwaj, at this stage, submits that since the matter was reserved for judgment as far back as on 10.2.2016, there is every likelihood that the judgment would be pronounced soon and also in view of the fact that during vacations while issuing notice a Division Bench of this Court had granted interim protection to the petitioners, the interim protection should continue till the judgment is pronounced by the Tribunal.
15. To meet the ends of justice, we dispose of the present writ petitions with a direction to the Registrar, Central Administrative Tribunal, to list the MA and the contempt petition before the appropriate bench as soon as the Bench assembles, as we are informed that one of the Members is not available. However, should the Bench not assemble within one week from today and in case the judgment is not pronounced within one week from today, we request the Chairman, Central Administrative Tribunal, to form a Bench to hear the MA and the contempt petition.
16. Accordingly, the interim protection granted to the petitioners on 27.6.2016 by this Court shall continue till the appropriate Bench is constituted and the application is heard. We also request the Bench,

which has reserved the judgment to render the judgment within a period of four weeks from today.

17. Both the writ petitions stand disposed of.
18. Dasti to the counsel for the parties.

G.S.SISTANI, J

I.S. MEHTA, J

JULY 08, 2016
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