

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.6235 of 2017**

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1. Lallan Kumar Pandey @ Lalan Kumar Pandey Son of Ram Swaroop Pandey  
Permanent resident of Village- Bandanwar, P.S.- Pathar Gama, District- Godda,  
State- Jharkhand Temporary Resident of RZA, 29 (B), Main Gopal Nagar,  
Najafgarh, South West Delhi, Delhi- 110043, currently posted as Additional S.P.  
(Operations), Banka, District- Banka, State- Bihar.

.... .... Petitioner/s

Versus

1. The Ministry of Home Affairs, Government of India through the Union of India,  
Room No- 143-B, 1st Floor, North Block, New Delhi- 110001.
2. The Director General, Central Reserve Police Force, through the Union of India,  
CGO Complex, Lodhi Road, New Delhi.
3. The Under Secretary, Ministry of Home Affairs, through the Union of India,  
Government of India, New Delhi.
4. The State of Bihar through the Director General of Police, Bihar at Patna.
5. The Principal Secretary, Home Department, Government of Bihar, Bihar at  
Patna.
6. The Joint Secretary, Home Department, Reserve Branch, Government of Bihar,  
Bihar at Patna.
7. The Special Secretary, Home (Police Department), Government of Bihar, Bihar  
at Patna.
8. The Inspector General of Police (Operation), Bihar at Patna.
9. The Inspector General of Police, Bhagalpur Zone, Zonal Range, District-  
Bhagalpur.
10. The Superintendent of Police, Banka, District- Banka.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sumeet Kumar Singh, Adv.

For the Respondent-Union of India: Anjani Kumar Sharan, ASG

For the State: Mr. Md. Nadeem Siraj, GP5

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 11-07-2017**

Heard Mr. Sumeet Kumar Singh learned counsel for the  
petitioner, Mr. Anjani Kumar Sharan, learned ASG and Mr. Nadeem  
Seraj, G.P.5 for the State.

With the consent of the parties the writ petition has been heard  
with a view to final disposal at the stage of admission.



The petitioner is aggrieved by the repatriation order bearing Memo No.2268 dated 16.3.2007 issued under the signature of the Joint Secretary, Home (Police Department), Government of Bihar, the respondent No.6 herein whereby the petitioner has been repatriated to his parent cadre with the Central Reserved Police Force (CRPF for the sake of brevity) .

The facts are not in dispute rather it is admitted that it is under the order of deputation that the petitioner is posted with the State Police Force in its Home (Police) Department vide order passed on 4.4.2014, a copy of which is placed at Annexure-2 to the writ petition. The period of deputation is 3 years and the purpose is to meet the extremist challenge. By the order impugned at Annexure-13 this period of deputation of 3 years is sought to be curtailed on administrative grounds. The name of the petitioner along with one other appears in the impugned order.

The short submission made by Mr. Singh learned counsel for the petitioner stands noted in the order passed by this Court on 15.6.2017 and 20.6.2017. Learned counsel has relied upon Clause (9) of the Memorandum dated 17.6.2010 issued by the Government of India in its Ministry of Home Affairs laying down guidelines on deputation, a copy of which has been enclosed at Annexure-18 to the supplementary affidavit to submit that even if the guidelines enables



the borrowing department to repatriate a person on deputation prematurely to the parent cadre, it can only be done after giving advance 3 months notice to the lending Ministry/ Department as well as the employee concerned and which is missing in the present case.

It is in consideration of the issue raised that this court while hearing the matter on 15.6.2017 afforded opportunity to the respondents to respond to the issue raised and while fixing the matter on 20.6.2017 interim protection was granted to the petitioner in the form of restraint to the respondents from taking any coercive steps for repatriation of the petitioner. The matter was again heard on 20.6.2017 and when this Court finding no response reminded the respondents of the issue involved requiring a stand. While the Central Government has very conveniently failed to express any opinion on the issue raised and noted by this Court in the orders referred to above, a counter affidavit is filed by the Deputy Secretary, Home (Police Department) on behalf of the Department and in reference to paragraph 12 it is the contention of Mr. Seraj learned State counsel that the petitioner has no right to continue as a deputationist and since the deputation was related to internal security and there were complaints against the petitioner, that it was thought proper to repatriate him. The deponent has gone ahead further to submit that it is also not reasonably practicable to give a three months notice.



Mr. Seraj has also referred to a letter of the Inspector General of Police(Operation) addressed to the Principal Secretary (Home Special) Department to support the statement present at paragraph 12 of the counter affidavit which letter has been enclosed at Annexure-B to the counter affidavit.

Responding to the stand, it is the contention of Mr. Singh learned counsel for the petitioner that while the response is in the teeth of the guidelines noted, the letter relied upon by learned State counsel at Annexure-B of the counter affidavit of the State, in fact goes on to support the petitioner inasmuch as the two petitioners who are sought to be repatriated by the order impugned at Annexure-13, the department has merely recommended for a mutual transfer in between the two persons vice versa but there is no mention of a repatriation.

Mr. Seraj learned State counsel has also relied upon a guideline present at Annexure-20 to submit that this circular caters especially to the uniformed services and there is no such stipulation present therein as regarding the mandatory notice period for repatriation.

I have heard learned counsel for the parties and I have perused the records.

I do not intend to engage again on discussing the rival



contentions rather I deem it necessary to discuss the stipulations relied upon by the petitioner for seeking the relief to see whether he is covered under the guidelines requiring advance notice. While in view of the settled legal position as to the status of a deputationist, it is no more in debate that he has no vested right to remain on deputation but it is equally well settled that an interference with the deputation period has to be in accordance with the laid down procedures.

It is thus to be seen as to how the tenure of the deputationist is to be guided in the present case and for which Mr. Singh learned counsel for the petitioner has relied upon Clause (9) of the Office memorandum dated 17.6.2010 placed at Annexure-18 which inter alia provides as such:

“9 Premature reversion of deputationist to parent cadre.

Normally, when an employee is appointed on deputation/foreign service, his services are placed at the disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving an advance notice of at least three months to the lending Ministry/Department and the employee concerned.”

(Emphasis supplied)

The office memorandum contains the general guidelines laid down by the Government of India in its Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training on the



issue of deputation. The stipulation casts a legal obligation on the borrowing department seeking a pre-mature repatriation of a deputationist, of giving of no less than 3 months advance notice not only to the lending Department but also the employee concerned. This provision was sought to be diluted by Mr. Seraj learned State counsel in reference to the specific guidelines laid down for uniformed services present at Annexure-20 but in my opinion Clause 20 of the guidelines dated 22.11.2016 so relied upon by learned State counsel, provides an answer to the objection raised whereby the stipulations present in the guidelines dated 22.11.2016 have been made subject to the general guidelines issued by the Government of India from time to time. In other words, even if the special guidelines issued for uniformed services at Annexure-20 is silent on the right of the deputationist in case of premature repatriation, it would be guided by the general guidelines dated 17.6.2010 present at paragraph 9, in view of the stipulations present at Clause 20 of Annexure-20 which makes those special guidelines for uniform services subject to the general guidelines issued by the Government from time to time. There may be justified reasons for the State Government in its Home (Special) Department to repatriate the petitioner and this Court is certainly not expressing any opinion on their discretion but then as it is well settled that when a statute prescribes an act to be done in a particular manner,



it has to be done in that manner alone and all other modes are expressly forbidden. The Home (Special) Department could not have bye- passed the obligation cast upon them under clause 9 of the guidelines dated 17.6.2010 for seeking a premature repatriation of the petitioner.

For the discussions above, the order of repatriation bearing Notification No.2267 dated 16.3.2017 impugned at Annexure 13 in so far as it relates to the petitioner, cannot be upheld and is accordingly quashed and set aside. This order would not preclude the authorities concerned in the Home (Special) Department, Government of Bihar to pass fresh orders in accordance with law.

The writ petition is allowed.

**(Jyoti Saran, J)**

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| AFR/NAFR          | AFR        |
| CAV DATE          | NA         |
| Uploading Date    | 29.07.2017 |
| Transmission Date | NA         |

