

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1146 of 2017

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Anupam Kumar, S/o Sri Birendra Prasad Sinha, resident of Mohalla- 201, Shyamkunj Apartment, Tapeshwar Colony, Ara Garden Road, District- Patna, Bihar- 800014.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Dept. of Home, Patna.
2. The Principal Secretary, Dept. of Home, Govt. of Bihar, Patna.
3. The Joint Secretary, Home (Police) Dept., Govt. of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Senior Superintendent of Police, Patna.
6. The Union of India through the Secretary, Ministry of Home Affairs, North Block, New Delhi- 110001.
7. The Home Secretary, Govt. of India, New Delhi- 110001.
8. The Border Security Force through its Director General, 10 CGO Complex, Lodhi Road, New Delhi.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. P.K.Shahi, Sr. Adv.
Mr. Mithilesh Kumar Rai, Adv.
For the Respondent/s : Mr. Nadeem Siraj, GP-5
For respondents no.6 to 8: Mr. Satyavrat Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-11-2017

Heard Mr. P.K.Shahi, learned Senior Counsel appearing for the petitioner alongwith Mr. Mithilesh Kumar Rai, Advocate on record, Mr. Nadeem Siraj, learned GP-5, for the State and Mr. Satyavrat Verma, learned counsel for respondents no. 6 to 8.

The petitioner is aggrieved by the order bearing Memo No. 395 dated 17.1.2017 of the Principal Secretary, Home Department, Govt. of Bihar, whereby the representation of the petitioner for adding continuity to his deputation in view of the order dated 2.9.2016 of the Under Secretary, Ministry of Home Affairs, at Annexure 10 as



endorsed by the Commandant, Border Security Force through his letter dated 6.9.2016 at Annexure 11, has been rejected.

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

The facts are not in dispute. The petitioner was appointed on the post of Assistant Commandant in the Border Security Force on 11.2.1999 having succeeded in the selection process undertaken by the Union Public Service Commission. The petitioner was sent on deputation under the State Police Force on 21.6.2012 as an Addl. Superintendent of Police by the B.S.F. and the consequential posting order issued by the State Home (Police) Department dated 18.7.2012 is at Annexure 1 to the writ petition, whereby the petitioner was posted as Addl. Superintendent of Police (Operations). Before expiry of three years deputation period which was ending on 18.7.2015, an extension was issued by the Home (Police) Department and communicated through the letter dated 22.12.2014 of the Deputy Secretary, Home (Police) Department extending the deputation until 19.7.2016. A copy of the extension order is at Annexure 4 to the writ petition. The Joint Secretary, Home (Police) Department vide his letter dated 26.4.2016 i.e. before expiry of extension period, sent a request to the Special Secretary, Home Department, Govt. of India, for further extension of deputation of the petitioner for the 5th year ending on 19.7.2017. The request was turned down by the



Commandant (Personnel), who while rejecting the extension for 5th year, even questioned the State Home (Police) Department as to the authority for granting extension to the petitioner in the 4th year without obtaining approval from the Ministry of Home affairs. A copy of the order of rejection dated 17.6.2016 has been placed on record at Annexure 6 to the writ petition. It is on receipt of refusal dated 17.6.2016 that a notification was issued by the State Government bearing Memo No. 6719 dated 29.8.2016 relieving the petitioner with effect from 19.7.2016 for joining his parent department in the Border Security Force. A copy of the notification dated 29.8.2016 is on record at Annexure 9 to the writ petition and which is followed by an order bearing Memo No. 9590 dated 20.9.2016 of the Senior Superintendent of Police for joining the Border Security Force present at Annexure 12. It is while inter-departmental correspondence was going on as to the continuation/ discontinuation of deputation of the petitioner that the Ministry of Home Affairs through Under Secretary granted approval for extension of deputation of the petitioner ending on 19.7.2017 vide order issued on 2.9.2016 at Annexure 10 and which was endorsed by the Commandant through his letter dated 6.9.2016 extending the tenure of the petitioner until 19.7.2017.

Since the petitioner was not being allowed to function by the State Police Force that he came before this Court in C.W.J.C.No. 19922/2016 and a Co-ordinate Bench of this Court vide judgment and



order passed on 21.12.2016 remitted the matter before the Principal Secretary, Home Department to re-examine the claim of the petitioner in the light of the orders of the Govt. of India and the Border Security Force present at Annexures 10 and 11 of the earlier writ petition which are also enclosed in the same position in the present writ petition at Annexures 10 and 11. On remand the Principal Secretary, Home Department has rejected the claim of the petitioner in reference to the earlier orders passed and which was also made the foundation to negate the effect of extension orders issued by the Govt. of India at Annexure 10 and Border Security Force at Annexure 11 to the writ petition because in the opinion of the Principal Secretary once the petitioner had been relieved there was no occasion for granting him the benefit of extension in the light of the orders of the Govt. of India at Annexure 10 and the Border Security Force at Annexure 11 to the writ petition. Feeling aggrieved he is before this Court.

I have heard Mr. Shahi, learned Senior Counsel appearing for the petitioner, Mr. Siraj, learned counsel for the State and Mr. Verma, learned Central Govt. Counsel appearing for Union of India as well as Border Security Force.

While it is the contention of Mr. Shahi that his continuation at Patna is not a voluntary act of the petitioner rather it is backed by the extension order initially granted by the State for the 4th year vide letter dated 22.12.2014 at Annexure 4 followed by the extension



granted by the Govt. of India and the Border Security Force at Annexures 10 and 11 for the 5th year, it is the contention of Mr. Siraj, learned GP-5, that the extension granted by the State for the 4th year vide Annexure 4 was questioned upon by the Commandant, Border Security Force who also rejected the request for extension of deputation for the 5th year vide order dated 17.6.2016 and following which the petitioner was relieved on 29.8.2016 with movement order being issued on 30.8.2016.

The Union of India and the Border Security Force have chosen to be silent on the whole issue as they have not chosen to file any counter affidavit to express any opinion either for or against the petitioner in the light of shifting stand taken by either of the two Governments. The stay of the petitioner on deputation certainly is not on his volition rather it is owing to the shifting stand of the State Government in its Home (Police) Department as well as Union of India in the Border Security Force which has left a confused state of affairs. The records transpire that it is the same Commandant who had refused extension of deputation for 5th year vide his letter dated 19.7.2016, has subsequently granted extension for the 5th year vide letter dated 6.9.2016 in the light of the decision of the Govt. of India in its Ministry of Home Affairs.

The petitioner was sent on deputation to the State Police Force for a period of three years. It is the State Home (Police)



Department who chose to extend his deputation for the 4th year until 19.7.2016 as manifest from the letter dated 22.12.2014 of the Deputy Secretary, Home (Police) Department at Annexure 4. In fact the Home (Police) Department also made a request for renewal of extension for the 5th year vide letter dated 26.4.2016 at Annexure 5. It is different matter that the Commandant, Border Security Force while initially choosing to reject the request of the State Home (Police) Department to grant extension of deputation for the 5th year vide letter dated 17.6.2016 at Annexure 6 has chosen to review his decision, perhaps, in view of the approval granted by the Govt. of India in its Ministry of Home Affairs as contained in the letter dated 2.9.2016 whereby approval has been given for extension of tenure of the petitioner for the 5th year ending on 19.7.2017 vide Annexure 10 and Annexure 11.

There is, thus, absolutely no dispute that the petitioner was certainly not continuing in the State Police Force on deputation, on his volition rather it is on the decision of the State Government to extend deputation for the 4th year and the Union of India for the 5th year which has allowed him to continue here. It is perhaps these very intervening circumstances which persuaded this Court in the last round of proceeding to remit the matter before the Principal Secretary for a reconsideration of the entire matter as present at Annexure 13 and which though has not found favour for the petitioner, inasmuch as the Home (Police) Department has decided not to continue with the



deputation of the petitioner as expressed in the order vide Memo No. 395 dated 17.1.2017 impugned at Annexure 15.

I find it rather surprising that even when it is the Home (Police) Department who vide letters dated 22.12.2014 and 26.4.2016 at Annexures 4 and 5 respectively recommended for extension of tenure of the petitioner for the 4th and 5th year, once the request has been accepted by the Union of India as well as the Border Security Force vide Annexures 10 and 11 respectively, they have chosen to backtrack on their request.

Be that as it may, the records speak that the remand by this Court has resulted in the order impugned dated 17.1.2017 rejecting the claim of the petitioner in the light of the earlier rejection and since in the opinion of the Principal Secretary the petitioner had been relieved to join duty at the parent department, the subsequent renewal had no meaning. In my opinion, if the State Home (Police) Department does not wish to continue with the deputation of the petitioner, the choice is entirely theirs and they cannot be forced to continue the petitioner on deputation but then once the claim of the petitioner has been considered by the Principal Secretary in the light of the remand order passed by this Court and in the backdrop of extension orders granted by the Union of India and the Border Security Force as contained in the letter dated 2.9.2016 and 6.9.2016 respectively, the rejection on merits by the order dated 17.1.2017 has



to be followed by issuance of a fresh movement order.

I opine thus for the reason that the issue of the earlier relieving was much in consideration before this Court in the previous round of litigation, yet the matter was remitted for consideration in view of the extension orders dated 2.9.2016 and 6.9.2016 of the Ministry of Home Affairs and the Border Security Force respectively. Meaning thereby the Court was not satisfied that by issuance of relieving order on 29.8.2016 at Annexure 9, the extension order issued subsequently had become academic. The remand order of the Writ Court was not appealed before the Division Bench on the relieving given to the petitioner and has attained finality and consequently the earlier relieving orders have lost its force. The entire issue on remand, required a reconsideration and which has culminated in the order impugned dated 17.1.2017. It is an obvious corollary that the order impugned is to be followed with a fresh movement order. Let the same be issued by the authority concerned forthwith and not later than a fortnight from the date of receipt/ production of a copy of this order enabling the petitioner to join his duty at his parent department.

The writ petition is allowed with directions above.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.12.2017
Transmission Date	NA

