

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Writ Petition No. 7307 of 2018 (O&M)
Date of Decision: 23.03.2018**

Gursewak Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Harsh Chopra, Advocate
for the petitioner.

JASWANT SINGH, J.

1. The petitioner in the instant writ petition is seeking the quashing of the order dated 19.03.2018 (**Annexure P-2**) passed by Deputy Superintendent of Police, Vigilance and Security, PSPCL, Patiala (Respondent No. 5) for ADGP V&S, PSPCL, wherein the petitioner is ordered to be repatriated from PSPCL to the parent department under Commandant, IRB, Kapurthala. The pleaded case of the petitioner is that the aforesaid order dated 19.03.2018 is illegal, arbitrary and violative of fundamental rights of the petitioner.

2. The brief facts of the case as pleaded are that the petitioner joined the Punjab Police (7 IRB) as 'Constable' and thereafter was sent on deputation to Punjab State Power Corporation Limited where the petitioner joined on 24.08.2011. An order dated 15.05.2017 (**Annexure P-1**) was passed by Establishment-2 Branch, Administrative Wing, Office of Director General of Police, Punjab, Chandigarh wherein it was mentioned that ADGP PSPCL, Patiala has written about 131 personnel who have overstayed on

deputation in PSPCL beyond the deputation term of 3 years including the name of the petitioner at Serial No. 90. Consequently, the impugned order dated 19.03.2018 (**P-2**) was passed wherein the petitioner Senior Constable Gursewak Singh No. 7IRB/743 having overstayed on deputation period of 3 years and being included in audit para due to administrative reasons is repatriated to parent Department i.e. Office of Commandant, 7 IRB, Kapurthala with immediate effect.

3. Learned counsel for the petitioner has argued that the order dated 19.03.2018 (**P-2**) is discriminatory and arbitrary, as it is not based on any fixed or uniform policy in relation to repatriation of Constables on deputation with PSPCL; and is in violation of the principles of natural justice inasmuch as it has been passed without affording any opportunity of hearing to the petitioner.

4. After scrutinizing the pleadings in the paper-book and the arguments of the counsel for the petitioner, this Court finds that the present petition is devoid of any merit.

It could not be disputed at the time of hearing that the deputation of the petitioner to PSPCL could only be for a period of three (03) years and has overstayed like other deputationists period of stay with PSPCL, as is clear from **Annexures P-1 & P-2**. The petitioner and his counsel at the time of hearing have failed to show any statutory provision or any term and condition, which would entitle him to serve on deputation with the PSPCL permanently. Counsel for the petitioner has also failed to show that the petitioner has a legal right to overstay on deputation beyond the period of three (03) years, and the plea based simply on the assumption that

otherwise, would not vest any right with the petitioner to claim similar treatment without any legal basis. A wrong administrative precedent cannot be a basis for issuance of Mandamus by the Court to perpetuate the wrong without any legal basis.

It is also not disputed that the promotion earned, if any, by the petitioner on deputation would be purely provisional and thus no hearing or observations of the principles of natural justice would be required upon repatriation to the parent unit in a lower rank. The reliance upon any orders and judgment passed would pale into insignificance in the light of enforcement of the Punjab Police Act, 2007, which comprehensively governs the aspects of the service in the police force.

5. The Punjab Police Act, 2007 has been passed to provide for the establishment, regulation and management of the police, redefine its role, duties and responsibilities and to enable it to functions in an efficient, professional and effective manner. Chapter II “Constitution and Organization of Police Service” wherein **Section 4 Sub Section (c)** provides for the Deputation of the members of the Police Service from one cadre to another cadre or organization or department, as per Rules as under:-

“ 4. Subject to the provisions of this Act,-

(a) the Police Service shall consist of such numbers in various ranks and have such organization or cadres, as the State Government may, by general or special orders, determine, and shall include the members of the Indian Police Service, allocated or deputed to the State;

(b) the officers of subordinate ranks of district police, armed police, Intelligence and technical and support services shall form separate cadres. Seniority of each cadre shall be maintained at the State level. Transfer of a member of one cadre to another cadre shall not be allowed;

(c) notwithstanding anything contained in sub-clause(b), a member of the Police Service may be allowed to be deputed on deputation from one cadre to another cadre or organisation or department, as per Rules;

X x x x x ”

(Emphasis Supplied)

There is no provision in the Punjab Police Rules dealing with the procedure, terms and conditions for deputation to any other organization/department while there are provisions dealing with the intra cadre deputation and deputation to the Criminal Investigation Department and for borrowing on deputation and absorption in Punjab Police. The “deputation” provisions regarding pay and allowances, leave, general conditions etc. are provided for in the Punjab Civil Services Rules.

6. In a decision given by the Hon’ble Supreme Court in “*State of Punjab & Ors. v. Inder Singh & Ors.*” 1997(8) SCC 372, the following observations were made:-

“...19. Concept of "deputation" is well understood in service law and has a recognized meaning. 'Deputation' has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation, means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation

post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and work there as Constables or Head Constables as the case may be. ”

(Emphasis Supplied)

In this batch of matters before the Hon'ble Supreme Court, in the Appeal filed by the Police Department of Punjab, the respondents were all enrolled as Constables in the Police Department and later deputed to the Criminal Investigation Department (CID) of the Punjab Police. During the course of their deputation, they earned promotions on ad hoc basis and some of the respondents reached the rank of ad hoc Sub-Inspectors. When they were sought to be repatriated to their parent departments, they were to go back as Constables or Head Constables if in the meanwhile on deputation, they earned any promotion in their parent departments. The respondents approached this High Court by filing writ petitions which were allowed to the extent that **the order of repatriation of the respondents being legal could not be set aside as such.** However, directions were issued that the cases of the respondents in their parent departments to be considered for promotions on the relevant dates when person junior to them were promoted at different levels and, if necessary, even to relax the rules. In some of the cases two directions were given, namely:

(1) if the respondents sought voluntary retirement from the posts they were holding in CID, the order of repatriation would not come in their cases for voluntary retirement be considered on the basis of the posts they were holding in CID; and

(2) to determine the seniority of the respondents in their parent departments by giving them the benefit of service

they rendered in CID and consequently to be considered for promotion with effect from the date the persons junior to them were promoted.

The Hon'ble Supreme Court affirmed the order of the High Court to the extent that option be given to all those respondents who have put in 20 years qualifying service to seek voluntary retirement from the CID in the ranks they are holding and they will be deemed to have worked in CID upto the date of this judgment and with this exception the appeals filed by State of Punjab were allowed.

7. In the instant case, the Order of repatriation passed by respondent No. 5 is an administrative act of the Borrowing Department / Corporation which is challenged as arbitrary and unreasonable.

The right of the Department of taking a person on deputation and to repatriate him, cannot be denied. In the realm of service law, there cannot be a perpetual deputation unless some statute provides for it. There is nothing on record nor even suggested that the order of repatriation was made on extraneous considerations or for fanciful reasons while the reasoning given is that the petitioner has overstayed on the deputation period of three years and his name has been included in the Audit para of the Corporation which has not been disputed.

8. The statute and the rules itself provide for deputationist's repatriation which is even otherwise inherent in the case of a deputation. Mere efflux of time would not denude the authorities of their right to repatriate which is a necessary corollary to deputation. The deputationist has no right to be perpetually on deputation. There cannot be mathematical equations in administrative actions. In order to permit the administration to

run effectively, some room or loose play has to be given to the authorities in their administrative actions. Ordinarily, the courts would not substitute their opinion with respect to justifiability of an administrative action unless the administrative action *prima facie*, is either contrary to law, perverse or has resulted in substantial injustice etc. The sole fact pointed out by counsel for the petitioner is that repatriation in case of some of the deputationists has been ordered to be cancelled and some of them have been repatriated, and that the petitioner had earned local rank (on provisional basis) of ASI on deputation.

9. In the given facts and circumstances, repatriation cannot be termed to be unreasonable solely on the ground that the same has been effected after efflux of time or that some were ordered to be repatriated while others were not, or that there is no fixed scheme, rules or instructions with regard to repatriation. The petitioner is also not entitled to any opportunity of hearing as on loss of the provisional promotion/local rank granted by the deputationist department/PSPCL on his repatriation to a lower rank in the parent unit, as the same by its very nature of grant is purely provisional and temporary and without any earned right in his substantive rank in the parent unit. It is not the case of the petitioner that he has worked for such a long period so as to claim the benefit of opportunity of voluntary retirement in the promoted post with the PSPCL in light of the observations in *Inder Singh's case (supra)*. The act of repatriation passed without controverting statutory provision or without exercise of excessive power and for the stated reasons of overstay is to be presumed to be in public interest, and, therefore, cannot be accepted as arbitrary or unreasonable.

cannot render the exercise of the executive power as illegal. It is settled law that one is bound to take the disadvantages along with the advantages while accepting the deputation.

10. In the considered view of this Court, the facts and factors pointed out either in isolation or even jointly would not constitute an act of discrimination. An administrative action can be termed as discriminatory only when the act was actuated by any improper motive or is charged with patent unfairness. There is neither any basis nor any factual data brought to the notice of the Court from which it can be inferred that the act of the respondents is unfair or motivated. In the absence of a right, discrimination cannot be assumed in abstract, much less with a wooden exactness.

The order of repatriation appear to be an essential part of the administration, of the process of administering the services of the deputationist. There is no public service or public interest which stands violated, especially as observed earlier that one has neither a legal nor a constitutional right to go on deputation or to stay on deputation perpetually.

In view of the above, finding no merit in the present civil writ petition, the same is hereby **dismissed**.

March 23, 2018
'dk kamra'

(JASWANT SINGH)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>