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

Reserved on: 29th August, 2019
Decided on: 12th September, 2019

+ **W.P.(C) 169/2017**

CHANDRA MOHAN SINGH BHANDARI Petitioner
Through Mr. K. C. Mittal, Ms. Ruchika Mittal
and Mr. Amit P. Shahi, Advocates

versus

UNION OF INDIA & ORS Respondents
Through Mr. Ruchir Mishra, Mr. Mukesh
Kumar Tiwari, Mr. Sanjiv Kumar
Saxena, Mr. Ramneek Mishra and
Mr. Abhishek Rana, Advocates

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. The Petitioner, who joined the Border Security Force ('BSF') as a Constable through direct recruitment on 24th April, 1991, was selected for deputation with the Intelligence Bureau ('IB') (Respondent No.3) as Security Assistant with effect from 11th October, 2010. Aggrieved by the order dated 2nd November, 2016 by which his parent department, the BSF (Respondent No.2), declined to grant concurrence to the continuation of his deputation with the IB, the Petitioner has approached this Court with present writ petition.

2. The Petitioner also challenges the consequent order dated 23rd December, 2016 issued by the IB repatriating him to his parent department on account of BSF declining to grant a No Objection Certificate ('NOC') for his absorption in the IB.

3. Along with the writ petition, the Petitioner filed CM No.780/2017 seeking the stay of his repatriation to his parent department. When the writ petition and the application for stay came up for hearing on 10th January, 2017 this Court passed the following order:

“Issue notice. Mr. R. Mishra, Advocate appearing on behalf of the respondents accepts the notice. Counter-affidavit be filed within six weeks. Rejoinder thereto be filed within two weeks thereafter.

Prima facie, the petitioner has no vested right to absorption in the Department in which he has been posted on deputation. The petitioner is prima facie not entitled to the interim orders prayed for. However, considering that both the children of the petitioner are appearing in board examinations and the class XII Board Examinations end on 17th April, 2017, we direct that the petitioner shall be allowed to continue in his present post till the Board Examination is over on 17th April, 2017. The petitioner shall positively report back to his parent cadre within 24th April, 2017.

List on 3rd May, 2017.

Dasti.”

4. Soon thereafter, the Petitioner filed CM No.13791/2017 which too came to be disposed of on 18th July, 2017 as having become infructuous since by then the Petitioner had joined the parent department i.e. BSF on repatriation.

This Court, however, clarified that the disposal of that application would not affect the final outcome of the writ petition.

5. At the hearing on 16th October, 2017 the Court called for the files of both the IB and the BSF with reference to a letter dated 9th February, 2016 written by the IB to the BSF seeking concurrence for the absorption of six personnel, five of whom were Head Constables and one was the present Petitioner who was a Constable. On 22nd April, 2019 CM No.780/2017 was dismissed after noting that the Petitioner had been working in the parent department since his repatriation.

6. The case of the Petitioner is that he was selected on deputation for the IB against 25% quota of posts of Security Assistants which were to be filled up under the relevant Recruitment Rules, 2011 (RR). In terms of the said RRs deputation/absorption was a method of recruitment. The requirements for absorption are laid down in guidelines dated 17th January, 2012 framed by the Ministry of Home Affairs ('MHA'). It is contended that the Petitioner fulfilled the requirements of the RRs as well as the guidelines.

7. Mr. K. C. Mittal, learned counsel for the Petitioner, submitted that the BSF refused the NOC on the ground that the request for absorption was received late from the borrowing department. According to the BSF, the overstay was beyond the five-year period for which the Petitioner was sent on deputation to the IB. Mr Mittal submitted that the Petitioner was discriminated against, since NOC was granted in the case of overstay by other similarly placed whereas the Petitioner was refused concurrence for

absorption.

8. Mr. Mittal submitted that the impugned orders declining concurrence and repatriating the Petitioner to the BSF were arbitrary, illegal and not justified. The Petitioner had continued on deputation till 10th October, 2016. Consequently, there was no question of overstay. Mr. Mittal relied on the decision in ***Rameshwar Prasad v. Managing Director UP Rajkiya Nirman Nigam Limited (1999) 8 SCC 381*** to urge that as far as the IB was concerned, the only requirement was for the Petitioner to fulfil the conditions of eligibility. The Petitioner being eligible and there being in fact no overstay by the Petitioner, the ground on which the NOC was refused was erroneous and arbitrary.

9. Mr. Mittal also distinguished the decisions in ***Kunal Nanda v. Union of India (2000) 5 SCC 362***, ***Union of India v. V.Ramakrishnan (2005) 8 SCC 394*** and ***Union of India v. S.A. Khailiq Pasha MANU/SC/1536/2009***.

10. Mr. Ruchir Mishra, learned counsel for the Respondents, on the other hand, reiterated the stand taken in the counter affidavit that the Petitioner had no right of absorption in the IB. Mr. Mishra pointed out that the initial deputation of the Petitioner, with effect from 11th October 2010, was for three years. Thereafter, on a request made by the IB, the Petitioner's deputation was extended on year to year basis for the 4th and 5th year till 10th October, 2015. Thereafter, request of the IB was received recommending the absorption of the Petitioner.

11. Mr. Mishra has pointed out that after 10th October, 2015 the IB had submitted proposals twice for the Petitioner's absorption. On both occasions the proposals were rejected on the ground that as on the date of the proposal the Petitioner had overstayed on deputation. It is pointed out that out of the six personnel, whose names are mentioned in Annexure P-7, three including the Petitioner were not issued the NOC and this was communicated to the IB by a letter dated 19th February, 2016. This letter was not challenged by the Petitioner.

12. The second proposal dated 24th October, 2016 was received from the IB for the Petitioner's absorption. However, since the Petitioner had overstayed on deputation, his request was declined by a letter dated 2nd November, 2016. Mr. Mishra denied that the Petitioner was singled out and subjected to discrimination. He submitted that the Petitioner cannot claim any fundamental right of absorption in the IB.

13. The above submissions have been considered. While it is true that in terms of the RRs under which 25% of the posts in question are to be filled on deputation/absorption basis, there is no automatic right of a person to be granted absorption. Merely because the Petitioner may fulfil the policy guidelines does not make it mandatory for the BSF to grant concurrence.

14. In ***Kunal Nanda v. Union of India*** (*supra*), the legal position was explained by the Supreme Court as under:

“It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on

deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation.”

15.1 As far as the decision in ***Rameshwar Prasad*** is concerned, it is seen that the Appellant therein was appointed in the UP Small Industries Corporation Limited, Kanpur (‘UPSIC’) as Civil Engineer re-designated as Executive Engineer (‘EE’) on 1st May, 1973.

15.2 In response to an advertisement dated 19th March, 1981 issued by the UP Rajkiya Nirman Nigam Limited (‘Nigam’) for the post of Chief Project Manager, the Appellant therein applied through the UPSIC. The Nigam then wrote to the UPSIC for NOC along with the confidential record of the Appellant for ten years. On 18th November, 1985 the Appellant was relieved by UPSIC and joined at the Nigam.

15.3 On 22nd December, 1987 the General Manager (HQ) wrote to the Appellant that if he was willing for a permanent absorption in the Nigam, he should send an option letter in the prescribed format to the Deputy Manager (Personnel) through proper channel.

15.4 On 31st December, 1987 the Appellant submitted his willingness along

with the letter to be absorbed in the employment of the Nigam. When the Nigam did not decide the Petitioner's representation for absorption, an order was passed by the High Court in a writ petition on 9th December, 1994 directing the Nigam to decide the Appellant's representation. On 4th March, 1995 the Nigam rejected the representation. This was challenged by filing a writ petition in the High Court.

15.5 While the matters were pending in the High Court, by order dated 5th July, 1995 the Nigam decided to repatriate all deputationists. The Appellant then filed a writ petition. The High Court referred to the RRs and the manuals and held that the Appellant cannot be deemed to have been absorbed when the Nigam stopped paying him deputation allowance. It was clarified that the right of the Appellant was not prejudiced.

15.6 The Supreme Court in that case specifically referred to Rule 16 (3) of the RRs of the Nigam and Rule 5 of the UP Absorption of Government Servants in Public Undertakings Rules, 1984 which in fact provided for absorption of employees on deputation. The Supreme Court held that the inaction of the Nigam in passing an order either for repatriation or absorption was unjustified. It is in those circumstances that the Supreme Court granted relief to the Appellants by setting aside the order relieving the Appellant from the post held at the Nigam and directed the Nigam to pass an order afresh for absorption of the Appellant.

16. The Court finds that the decision in ***Rameshwar Prasad*** turned on its own facts. In the present case there is no failure on the part of the IB to request the BSF for its concurrence. Indeed a decision was taken by the BSF

not to grant concurrence. It did not agree to the absorption of the Petitioner in the IB.

17.1 In *Union of India v. V. Ramakrishnan* (supra) the first Respondent was holding the post of Chief Engineer on deputation pending selection of the regular incumbent in that post by the UPSC. The first Respondent approached the Central Administrative Tribunal ('CAT') against an order dated 14th February, 2005 repatriating him to his parent department. The CAT declined to interfere.

17.2 Meanwhile, draft rules were framed setting out eligibility criteria as regards experience for the post in terms whereof the eligibility clause of five years' experience was reduced to three years. One R. Sunder Raju was promoted on 27th April, 2004 purely on *ad hoc* basis. Subsequently, the Departmental Promotion Committee ('DPC') recommended him for being promoted to the post of CE and by order dated 27th April, 2005 he was promoted to the said post.

17.3 It was held by the High Court, which was first approached by the Respondents, that the deputation was pending selection of the regular incumbent by the UPSC and till such time the regular selection was made Respondent No.1 had right to hold that post. The question then turned on whether the draft rules will be treated as the final rules. The Supreme Court in fact declined to interfere with the judgment of the High Court.

17.4 In that process the Supreme Court explained as under:

“Ordinarily, a deputationist has no legal right to continue in the

post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post haste manner also indicates malice.”

18. With the above legal position being made clear, it is plain that the Petitioner cannot demand to be absorbed in the IB as a matter of right. The Court finds that the Petitioner has not made out any case for quashing of the orders repatriating him to his parent department.

19. The petition is accordingly dismissed.

S. MURALIDHAR, J.

TAWANT SINGH, J.

SEPTEMBER 12, 2019

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