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

+ **W.P.(C) 4021/2014**

ANAND SARUP

..... Petitioner

Through: Mr. K. Raghavacharyulu, Mr. Kailash
Pandey, Mr. Ranjeet Singh and Mr.
Rizwan, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC with Mr.
Upendra Sai, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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26.11.2019

Dr. S. Muralidhar, J.:

1. The prayer in the present petition by an Inspector in the Central Bureau of Investigation ('CBI') is for grant of seniority as Inspector from the date he was promoted as Inspector in the Central Reserve Police Force ('CRPF') from where he came to the CBI initially on deputation and was later absorbed as such.

2. The background facts are that the Petitioner joined the CRPF on 17th September, 1985 as Assistant Sub-Inspector (Ministerial) ['ASI (M)']. He was promoted as Sub-Inspector (Ministerial) ['SI (M)'] on 29th January, 1992.

3. He applied for deputation to the CBI as Inspector of Police. Consequent upon his selection, he joined the CBI on deputation basis as Inspector on 1st November, 2000 for an initial period of three years extendable up to five years.

4. The admitted position is that the Petitioner was granted extension of deputation in the CBI consecutively for the fourth and fifth year up to 31st October, 2005.

5. The Petitioner was absorbed in the CBI as Inspector with effect from 20th August, 2008. In the meanwhile, his case for promotion as Inspector was taken up in the CRPF where a DPC was held for that purpose. By a communication dated 2nd June, 2005 the Directorate General, CRPF informed the CBI that the competent authority of the CRPF had approved the promotion of the Petitioner as Inspector (M). A request was made by the Directorate General, CRPF to repatriate him so that he could avail the cadre promotion.

6. In its counter affidavit the CBI admits that it received from the CRPF a letter dated 9th July, 2005 requesting that the Petitioner be relieved by the CBI so that he could avail the cadre promotion in the CRPF. It is stated that on 30th September, 2005, the willingness of the Petitioner for the proforma promotion to Inspector (M) in the CRPF was communicated to the CRPF.

7. It transpires from the counter affidavit filed by the Respondent Nos. 1 and 3 that the Petitioner was not relieved by the CBI after completion of his five years' deputation period "in public interest." It appears that the CRPF wrote numerous letters to the CBI asking it to relieve the Petitioner. In one such communication, it is stated that the Ministry of Home Affairs ('MHA') had not agreed to any further extension of his deputation. In another communication dated 29th January, 2008, it was added, "however, if CBI is interested in his permanent absorption, the same can be examined."

8. As it transpired, the Petitioner did ultimately get absorbed in the CBI on 20th August, 2008. In paragraph 3 of the counter affidavit filed by the CBI, it is stated that on completion of his deputation tenure, he was repatriated with effect from 31st March, 2008 after sanctioning 60 days' EL due to non-receipt of NOC for further extension. It is further stated that before the expiry of the said leave period, the CBI received the request of the Petitioner for permanent absorption, which was considered and after the due approval, he was permanently absorbed as Inspector.

9. As regards his proforma promotion as Inspector in the CRPF, the counter affidavit filed by the CRPF states that as per the instructions of the DoPT at the relevant point of time, proforma promotion could only be granted during "normal period of deputation and not during the extended period." However, it is further stated that the Government of India amended this condition in 2006 and allowed the benefit of proforma promotion during the extended period of deputation as well. The stand taken is that the Petitioner's case pertains to the period prior to the amendment.

10. The fact of the matter is that the Petitioner's promotion in the CRPF was withheld because he did not report for duty at the end of his deputation period in the CBI. However, as is plain from the subsequent developments, the Petitioner was not relieved by the CBI 'in public interest'. The case of the Petitioner, in fact, is that he was associated with various important cases, and therefore, was not relieved.

11. It appears that in the CRPF, on account of the Petitioner not reporting for duty at the end of his deputation, a Show Cause Notice ('SCN') was issued to him for the purposes of holding a disciplinary enquiry. However, this was subsequently dropped by an order dated 12th June, 2009. The said order notes that with the absorption of the Petitioner on permanent basis in the CBI with effect from 20th August, 2008, he was struck off from the strength of the Directorate General, CRPF, New Delhi with effect from the same date. It was accordingly observed that action under Section 11 (1) of the CRPF Act, 1949 could not be taken against the Petitioner as he was no longer a member of the CRPF. It was observed, "he has committed no misconduct as he remained on duty in CBI and was not relieved in public interest by the CBI after completion of his five years of deputation period."

12. The repeated requests thereafter made by the Petitioner that his absorption as Inspector on permanent basis in the CBI should relate back to the date of his promotion as Inspector in the CRPF was not acceded to. In effect, he asked the CBI to recommend to the CRPF that he should be granted a proforma promotion under the Next Below Rule ('NBR'), and that

his promotion should be granted from the date of its approval, i.e. 2nd June, 2005.

13. The Petitioner renewed his request on 27th December, 2012. However, by a letter dated 20th January, 2014, he was informed that his request for grant of proforma petition under NBR has not been acceded to by the competent authority. Thereafter, the present petition was filed.

14. As far as the CBI is concerned, it is stated that since MHA had clarified by a note dated 18th April, 2000 that NBR is not permissible in the extended period of deputation without concurrence of DoPT as per the rules which existed at that time, the Petitioner is not eligible for proforma promotion under NBR. However, there is no categorical stand expressing any opposition to the Petitioner's request for grant of proforma promotion in the CRPF.

15. As far as the CRPF is concerned, it is stated in paragraph 17 of the counter affidavit that the proposal for regularisation of the overstay of the deputation period with effect from 1st November, 2005 to 19th August, 2008 "should come from the borrowing department, i.e. CBI." It is stated that before grant of proforma promotion, the overstay period is required to be regularised from DoPT by the CBI.

16. From the stand taken by both the CBI as well as the CRPF, it is plain that there is no omission on the part of the Petitioner, as far as reporting for duty in the CRPF is concerned after the expiry of the deputation period. The

request in numerous letters written by the CRPF to the CBI asking that the Petitioner be relieved was obviously not acceded to. There is no denial of the Petitioner's case that he was not being relieved since he was associated with certain important cases investigated by the CBI. Further, the counter affidavit of the CRPF and the order passed by it dropping the disciplinary enquiry against the Petitioner makes it plain that he was not relieved from the CBI in public interest.

17. Considering that the Petitioner stood permanently absorbed in the CBI on 20th August, 2008, a case was clearly made out for regularising the Petitioner's overstay period between 1st November, 2005 and 20th August, 2008. This ought to have been done at the instance of the CBI itself by making a request in that regard to the MHA and/or the DoPT. Once it is plain that it was not the Petitioner's fault that he did not report for duty in the CRPF, then equally the denial to him of the proforma promotion as Inspector with effect from the date it was approved, i.e. 2nd June, 2005 also appears to be unreasonable.

18. At this juncture, the Court would like to refer to the decision of the Supreme Court in ***K. Madhavan v. Union of India (1987) 4 SCC 566*** where it was explained as under:

“21. We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of

service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre.”

19. In terms of the law explained hereinabove, the Petitioner cannot be made to suffer for having come on deputation to the CBI by being denied the proforma promotion in his parent department, i.e. the CRPF only because he was not relieved by the CBI to report back there after the expiry of his deputation period.

20. It may be also noticed that the above legal position has been reiterated subsequently by the Supreme Court in *Sub-Inspector Rooplal v. Lt. Governor through Chief Secretary, Delhi (2000) 1 SCC 644*. It was further explained, “in law, it is necessary that if the previous service of the transferred official is to be counted for seniority in the transferred post, then the two posts should be equivalent.”

21. In the present case, there is no manner of doubt that the Petitioner got absorbed as Inspector and he was already recommended for grant of proforma promotion as Inspector in the CRPF from a date earlier to his

absorption. As regards the NBR, the only reason for the Petitioner to be denied the proforma promotion by applying that principle is that he was recommended for promotion during the extended period of deputation.

22. The Court is of the view that in the facts and circumstances explained hereinbefore that the overstay period of the Petitioner with the CBI should be treated as having been regularised, and that the Petitioner should not suffer for the omission on part of the various authorities which would include the MHA and the CBI to take steps to have the said period regularised. Once the said overstay is held to be regularised, there can be no hurdle in granting the Petitioner the proforma promotion in his parent cadre as Inspector with effect from 2nd June, 2005. It is ordered accordingly.

23. As a result of the above discussion, it is directed that the CBI will now issue the necessary orders not later than four weeks from today granting the Petitioner notional seniority as Inspector from 2nd June, 2005, the date on which he was recommended for promotion as such in the CRPF.

24. The petition is allowed in the above terms. No order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 26, 2019

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