

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

% **Date of decision: 18th September, 2020.**

+ **W.P.(C) 6500/2020 & CM APPL. 22803/2020 (for stay).**

RAJEEV KUMAR **..... Petitioner**

Through: Ms. Saahila Lamba, Adv.

versus

UNION OF INDIA & ORS. **..... Respondents**

Through: Mr. J.P. N. Shahi, Adv. with Dy.
Commandant Krishan Yadav.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a Sub Inspector in the respondent no.2 Sashastra Seema Bal (SSB) and selected in the respondent no.3 National Security Guard (NSG) and deputed to NSG for a period of five years, has filed this petition impugning the order dated 8th September, 2020 whereby the petitioner has been prematurely repatriated from respondent no.3 NSG to respondent no.2 SSB; mandamus is also sought, directing retention of the petitioner in the respondent no.3 NSG, till the completion of five years of his deputation tenure.

2. We have enquired from the counsel for the petitioner, what is the right of the petitioner to remain on deputation for entire tenure of five years and why is it contended that the respondent no.2 SSB, inspite of being the

parent organisation of the petitioner, is not entitled to prematurely repatriate the petitioner to itself.

3. The counsel for the petitioner has drawn attention to the Office Memorandum (OM) dated 30th March, 2019 whereby the petitioner was deputed to the respondent no.3 NSG for a period of five years, to contend that the petitioner has a right thereunder, to remain on deputation for the period of five years.

4. However paragraph 2 of the said OM itself provides that the period of deputation of five years is subject to premature repatriation on the grounds of unsuitability, indiscipline and exigency of service as well as if any other unforeseen factors so demand.

5. The counsel for the petitioner states that the petitioner does not know which of the aforesaid grounds on which alone premature repatriation is permissible, is invoked qua the petitioner.

6. However again, a perusal of the impugned order dated 2nd July, 2020 shows the reason for premature repatriation recorded as “in view of pending COI/disciplinary proceedings”.

7. The counsel for the petitioner draws attention to paragraph 3 of the OM dated 25th January, 2019 certifying that “no disciplinary proceeding is pending or being contemplated against” the petitioner and contends that the petitioner till now does not know what disciplinary proceedings have been initiated against the petitioner.

8. The matter was passed over to enable the counsel for the respondents to obtain instructions.

9. Post passover the counsel for the respondents has appeared along with Deputy Commandant Krishan Yadav of SSB who states that, (i) the petitioner joined the respondent no.3 NSG on 10th March, 2019; and, (ii) on 17th October, 2019, an inquiry was initiated against the petitioner; it is explained that the petitioner was responsible/in charge for promotion of those officers who had attained the age of 50 years or had completed 25 years of service and was detected to have not performed his said duties, while in the respondent no.2 SSB.

10. Once it is so, the petitioner, even if disputes the aforesaid charge/allegation against him, will have to contest the inquiry initiated against him and which inquiry cannot possibly be conducted while the petitioner remains deputed to the respondent no.3 NSG and the holding of the inquiry cannot be deferred for five years.

11. A Division Bench of this Court in ***Dayanand Katariya Vs. Union of India*** 2015 SCC OnLine Del 13139, relying on ***Union of India Vs. V. Ramakrishnan*** (2005) 8 SCC 394 held that a order of reversion can be questioned only when the same is *mala fide*; else neither a deputationist has a legal right to continue to the post nor he has a right to be absorbed in the post to which he is deputed. To the same effect is, ***Vinod Kumar Gupta Vs. Union of India*** 2013 SCC OnLine Del 4629 (DB) and ***Brig. V. Jaikumar Vs. Union of India*** 2011 SCC OnLine Del 1321.

12. We may mention that the petition does not even have a whisper of any *mala fide* in repatriation of petitioner.

13. Once the petitioner is not found to have any right to remain on deputation for the initial period and which initial period itself was subject to

curtailment for the reasons specified and once the premature repatriation is disclosed to be for the grounds on which the same is permitted, no case for entertaining the petition is made out.

14. Dismissed.

RAJIV SAHAI ENDLAW, J

ASHA MENON, J

SEPTEMBER 18, 2020

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