

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

% **Date of decision: 22nd July, 2021**

+ **W.P.(C) 6838/2021 & CM No.21596/2021 (for stay)**

CT. JAGDISH PRASAD JAT & ORS. Petitioners
Through: Mr. Kunwararishali, Advocate.

Versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Prasanta Varma, Sr. Counsel for
R-1&2.
Mr. Ripudaman Bhardwaj, Standing
Counsel with Mr. Kushagra Kumar,
Advocate for CBI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

[VIA VIDEO CONFERENCING]

AMIT BANSAL, J.

1. The present petition has been filed on behalf of four petitioners who were appointed as Constables (General Duty (GD)) with the respondents Central Reserve Police Force (CRPF) on 2nd August, 1997, 28th April, 1995, 16th March, 2001 and 27th May, 2002 respectively.
2. In the years 2012 and 2013, the petitioners were transferred on deputation to the Central Bureau of Investigation (CBI), which deputation, though initially for a period of three years, was extended from time to time.

3. In the present writ petition, the petitioners seek quashing of the repatriation order dated 13th July, 2021 and the relieving orders dated 14th July, 2021 issued by CBI. The petitioners further seek mandamus directing the respondents no.1 & 3 to issue 'No Objection Certificates' (NOC) to them for permanent absorption in their respective places of posting with CBI.

4. The counsel for the petitioners has contended that (i) CBI has been willing to absorb the petitioners since the year 2018. In this regard, reference is made to Annexure P-3 and Annexure P-4 of the paper book, whereby deputationist Constables, including the petitioners, were being considered for absorption in CBI; (ii) in terms of the uniform policy for deputation titled "Policy Guidelines for Deputation of Combatised CAPFs & AR Personnel in Other Organisations" (Guidelines) dated 22nd November, 2016 issued by the respondent no.1, Ministry of Home Affairs, the petitioners fulfill the requirement/eligibility criteria for absorption as provided in paragraph 17 of the said guidelines; and (iii) similarly placed personnel have been granted NOC for the purpose of permanent absorption.

5. Mr. Ripudaman Bhardwaj, counsel appearing on advance notice for CBI submits that as on date, CBI does not wish to absorb the petitioners and the reliance placed by the petitioners on Annexure P-3 and Annexure P-4 of the paper book is unsound since these are old communications, of the year 2018 and 2019.

6. In view of the clear and categorical statement made on behalf of the counsel for CBI, no direction can be issued in respect of absorption of the petitioners with CBI.

7. It is a settled principle of law that absorption cannot be claimed as a matter of right. For an absorption to be carried out, there has to be consent of the parent department as well as the department in which the absorption is sought. In this regard, reference may be made to ***Kunal Nanda Vs. Union of India*** (2000) 5 SCC 362 wherein the Supreme Court has succinctly explained the legal position concerning absorption:

“6. ...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.”

8. The dicta in ***Kunal Nanda (Supra)*** has been reiterated in the judgment of the Supreme Court in ***Union of India Vs. V. Ramakrishnan*** (2005) 8 SCC 394 and decisions of Division Benches of this Court in ***Pawan Kumar & Ors. Vs. Union of India & Ors.*** 2018 SCC OnLine Del 12615 and ***Chandra Mohan Singh Bhandari Vs. Union of India and Others*** 2019 SCC OnLine Del 10002.

9. In ***Pawan Kumar (Supra)*** a Division Bench of this Court rejected the relief of absorption sought by the petitioners therein, who were working as Constables in various departments of the CAPFs and were sent on deputation with CBI for a long period of time. Relying on the dicta of the Supreme Court in ***Kunal Nanda (Supra)***, the Court held as under:

“23. Petitioners plea of legitimate expectation is also without merit. Merely because the Petitioners continued to be on deputation for a period of seven years or more, it cannot be said that a right has accrued in their favour. The delay on the part of CBI to complete this absorption process was also on account of the earlier circulars being contrary to the Recruitment Rules. Mr. Chibber relies on the Judgment of the Supreme Court in the case of Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381. This judgment is distinguishable from the facts of the present case. The Appellant therein were working for the Futwah-Phulwarisharif Gramya Vidyut Sahakari Samiti Ltd. (for short “the Society”). This society was brought into existence by the Bihar Government and the Bihar State Electricity Board by issuing a license to the Society under the State Electricity Act. Thereafter the license issued to the society was revoked and it was merged with the Board. On account of this merger, the Appellants claimed a right to be absorbed relying on the doctrine of legitimate expectation.

24. Further, the judgment of the Supreme Court in Rameshwar Prasad (supra) is also of no assistance to the Petitioners. In the said case the Petitioner who was on deputation claimed that he should be declared to be deemed to be absorbed on the ground that the parent department had stopped paying him deputation allowance.

25. It is worth noting what has been stated in para 15, relevant portion thereof is reproduced below:

“15. In the present case, considering the facts, it is apparent that inaction of respondent No. 1 of not passing the order either for repatriation or absorption qua the appellant was unjustified and arbitrary.”

(emphasis supplied)

26. The facts of Rameshwar Prasad (supra) therefore are completely differentiable, in as much as the Petitioner in the said case continued to be with borrowing department and there was no order for repatriation. In the instant case as noted above, all the Petitioners have been repatriated and they have joined their parent department.”

10. Similarly, it is also recorded in Paragraph 18 of the Guidelines that there is no automatic right for any individual to claim absorption. Relevant extracts from the said policy are set out below:

“...18. A requisition made by the borrowing Organisation/Department or willingness tendered by a person for absorption, will not automatically confer any right on an individual or the borrowing department to claim absorption as a matter of right. The discretion to accept or reject, a request for absorption will be exclusively with the parent CAPF or the cadre controlling authority, i.e. Ministry of Home Affairs, as the case may be. In the case of Subordinate Officers and Other Ranks, the proposals for absorption shall be decided by the Director General of the CAPF concerned in consultation with Ministry of Home Affairs.”

11. Paragraph 19 of the said policy further provides that if any subordinate officer is aggrieved by rejection of permanent absorption, he has right to make a representation to the Director General (DG) of the concerned Force and there is a procedure prescribed for pursuing the said recourse.

12. In view thereof, there is no merit in the petition.

13. However, the petitioner is free to make representation to the DG of his concerned force, if he so desires.

14. It is further clarified that there is no stay of relieving order and the petitioners are forthwith required to abide by the conditions of the relieving order.

15. Dismissed.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

JULY 22, 2021

at

