

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

% **Date of Judgment: 23rd July, 2021**

+ **W.P. (C) No.6892/2021**

R. SUGUMARAM & ORS. Petitioners
Through: Mr. Saket Sikri, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Gaurang Kanth, CGSC with Mr. Sahaj
Garg for UOI.
Mr. Ripudamand Bhardwaj, CGSC with
Mr.Kushagra Kumar, Advocate for
respondent/CBI

AND

+ **W.P. (C) No.6935/2021**

NARENDER SINGH & ORS. Petitioners
Through: Mr. Ankur Chhiber and Mr. Mehrotra,
Advocates.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Gaurang Kanth, CGSC with Mr. Sahaj
Garg for UOI.
Mr. Ripudamand Bhardwaj, CGSC with
Mr.Kushagra Kumar, Advocate for
respondent/CBI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

CM No.21791/2021 in W.P. (C) No.6892/2021 (for exemption)

CM No.21888/2021 in W.P. (C) No.6935/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant Rules.
2. The applications are disposed of.

W.P. (C) No.6892/2021 & C.M. No.21790/2021 (for stay)

W.P. (C) No.6935/2021 & C.M. No.21887/2021 (for stay)

3. The petitioners, working as Constables in various departments of the Central Armed Police Forces (CAPFs), have filed the present petitions under Article 226 of the Constitution of India impugning the order dated 13th July, 2021 issued by the respondents whereby 'No Objection Certificate' (NOC) has been refused to the petitioners for permanent absorption in the respondents Central Bureau of Investigation (CBI) and the repatriation orders dated 14th July, 2021 (in W.P. (C) No.6935/2021), in terms of which the petitioners have been repatriated to their parent organizations. A further direction is sought for permanent absorption of the petitioners with CBI.

4. In both the petitions, identical reliefs are sought and therefore both the said petitions are being decided by a common judgment. Brief facts as pleaded in the petitions have been separately detailed hereinbelow:

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5. The present petition has been filed by six petitioners, appointed as Constables in the Central Reserve Police Force (CRPF), who were sent on deputation to CBI between 2012 and 2013 for an initial period of three years, which period was extended from time to time. Vide circular dated 11th July, 2017 CBI invited recommendations for deputationist constables who met the eligibility criteria prescribed therein, to be absorbed in CBI. The petitioners, finding themselves to be eligible, applied for the said absorption and on 4th September, 2017 were shortlisted for an assessment by CBI. On 21st and 22nd March, 2018, the petitioners no.1, 2, 3 and 6 of the present petition furnished certificates to the respondents stating that they will not take or claim promotion/seniority in future. The CRPF issued letter dated 30th April, 2019 informing CBI that the respondent no.1 Ministry of Home Affairs (MHA) had rejected the request for grant of NOC to nine personnel, which included the petitioners, on finding them to be ineligible for absorption in CBI and such personnel were to be repatriated to their parent department. On the basis of the aforesaid communication, CBI issued an order dated 13th July, 2021, directing repatriation of the said personnel, including the petitioners, back to their parent department.

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6. The four petitioners herein were appointed as Constables in the Central Industrial Security Force (CISF) on various dates between 1993 and 1997. The petitioners applied for deputation with CBI in the year 2012 and were selected for the said deputation. Though initially for a period of three years, the said deputation was extended every year, and the petitioners continued to serve with CBI. On 3rd August, 2018, the respondents issued an

order inviting applications for deputationist constables to be absorbed in CBI, who met the eligibility criteria thereof. The petitioners, being eligible applied for permanent absorption in CBI as Constables. On 23rd August, 2018, CBI issued a list of Constables, which included the petitioners, who were short-listed to appear for personal assessment before the Screening Committee constituted by CBI. Based on the assessment by the Screening Committee CBI prepared a list of Constables that included the petitioners, who were being considered for absorption in CBI and a letter was sent to their parent department for obtaining NOC. Vide order dated 25th January, 2019, CISF granted NOCs to various Constables, including the petitioners for permanent absorption in CBI, subject to approval of MHA. On 4th July, 2019, MHA recommended seventy one CAPFs personnel for grant of NOC, however the names of the petitioners were not recommended. Vide letter dated 31st July, 2019, CBI requested the MHA to expedite the cases of the remaining eighty one deputationist Constables whose NOC was still awaited. On 12th July, 2021, the respondent no.1 MHA conveyed its refusal to grant NOC in respect of sixty nine Constables, including the petitioners, to CBI and with a further request to relieve them to their respective parent cadre. On the basis of the aforesaid communication, CBI issued an order dated 13th July, 2021, directing repatriation of the said personnel, including the petitioners back to their parent department, on account of refusal of respondent no.1 MHA issuing NOC with regard to their permanent absorption. Vide order dated 14th July, 2021, the petitioners were relieved from CBI and directed to join CISF with effect from 14th July, 2021.

Submissions

7. It was contended on behalf of the petitioners that (i) the term of deputation of the petitioners ended in 2019 and, therefore, if they had to be repatriated, they should have been repatriated then itself, after their deputation tenure expired; (ii) the petitioners missed out on the various promotions and other benefits due to them in their parent cadre, on account of being continued with CBI till 2021; and, (iii) the respondents have acted in an arbitrary and discriminatory manner by not granting NOCs to the petitioners, whereas NOCs have been granted by them in respect of seventy one such similarly placed personnel on deputation. The counsels for the petitioners have relied upon judgments in *Rameshwar Prasad Vs. Managing Director, U.P. Rajkiya Nirman Nigam Ltd.* (1999) 8 SCC 381 and *Mahesh Kumar K. Parmar and Ors. Vs. S.I.G. of Police and Ors.* (2002) 9 SCC 485 to submit that the petitioners have a right to be considered for absorption on account of their deputation in CBI.

8. The counsels appearing for the respondents on advance notice have submitted that the petitioners did not have any right for permanent absorption with CBI. It was further submitted that there was no policy as such of CBI for absorption, therefore the judgments cited by the petitioners are not applicable.

9. The counsels for the respondents have further relied upon Clause 18 of the Policy Guidelines for Deputation of Combatised CAPFs and AR Personnel in Other Organizations (Policy Guidelines) issued by the Ministry of Home Affairs on 24th November, 2016, whereunder there is no inherent right on any individual on deputation to claim absorption.

10. On a pointed query of the Court to the counsels for CBI whether CBI wishes to absorb the petitioners, the counsels replied in the negative.

Findings

11. We have considered the rival submissions.

12. The issue that arises before the Court in the present cases is whether the petitioners have a right of being considered for absorption. It has been held in a catena of judgments of the Supreme Court and this Court that deputationists do not have any inherent right of absorption in the borrowing department. 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. The Supreme Court in ***Kunal Nanda Vs. Union of India***, (2000) 5 SCC 362 held as under:

“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.”

13. Dicta of the Supreme Court in ***Kunal Nanda (Supra)*** has been followed by Division Benches of this Court in ***Pawan Kumar Vs. Union of India*** 2018 SCC OnLine Del 12615 and ***Chandra Mohan Singh Bhandari Vs. Union of India*** 2019 SCC OnLine Del 10002. In fact, ***Pawan Kumar***

(*Supra*) was a case with similar facts as the present petitions in as much as the petitioners therein were Constables working with various departments of CAPFs who were on deputation with CBI over a long period of time and had sought permanent absorption with CBI. Relying on the dicta of the Supreme Court in ***Kunal Nanda*** (*Supra*), the Division Bench rejected the relief of absorption, sought by the petitioners therein. The Division Bench further distinguished the judgment of the Supreme Court in ***Rameshwar Prasad*** (*Supra*), which has also been relied upon by the petitioners in the present case. Relevant extracts from ***Pawan Kumar*** (*Supra*) are set out below:

“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.”

14. The counsel for the respondents has rightly placed reliance on paragraph 18 of the Policy Guidelines issued by the MHA. The said paragraph is 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.”

15. It is clear from the above that the discretion to accept or reject a request for absorption will be exclusively with the parent CAPFs or the Cadre Controlling Authority, i.e. the respondent no.1 MHA. Every organization, including the CAPFs have to determine their own requirements of personnel and in light thereof decide whether they want to

give NOCs in respect of their personnel to be absorbed by another organization. Similarly, it is for the borrowing department to decide whether they want to permanently absorb the deputationists working with them or to extend the period of deputation. In the present case, the counsel appearing for CBI has categorically made a statement that they do not wish to absorb the petitioners.

16. In the present case, the Cadre Controlling Authority, MHA, has decided not to give NOCs in respect of sixty nine personnel of the CAPFs currently on deputation with CBI, which included the petitioners. It is not that the petitioners have been singled out for non-grant of NOC. Therefore, the plea of discrimination against the petitioners is not sustainable. Once, that being the position, it is not for this court to direct absorption of the petitioners in exercise of powers under Article 226 of the Constitution of India.

17. There is no merit in the petition.

18. Dismissed.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

JULY 23, 2021

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