

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

% Date of Judgment: 3rd August, 2021

+ W.P.(C) 7575/2021
SUBHASH KUMAR AND ORS. Petitioners
Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Ripudaman Bhardwaj and Ms. Monika Arora, CGSC with Mr. Shriram Tiwar, and Mr. Jitender Kumar Tripathi, G.P. for UOI.

+ W.P.(C) 7608/2021
S. DHARANI KUMAR AND ORS. Petitioners
Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Ripudaman Bhardwaj, CGSC for UOI and Mr. Jitender Kumar Tripathi, G.P.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

CM No.23708/2021(for exemption) in W.P.(C) 7575/2021
CM No.23784/2021(for exemption) in W.P.(C) 7608/2021

1. Allowed, subject to just exceptions and as per extant Rules.

2. The applications are disposed of.

W.P.(C) 7575/2021 & CM No.23707/2021(for stay)

W.P.(C) 7608/2021 & CM No.23783/2021(for stay)

3. The nineteen petitioners in W.P.(C) No.7575/2021 and four petitioners in W.P.(C) No.7608/2021 who were appointed as Constables on various dates between 1990 and 2003 in different departments of the CAPFs, viz. the Central Reserve Police Force (CRPF) and the Border Security Force (BSF), have filed the present petitions under Article 226 of the Constitution of India impugning (i) the order dated 13th July, 2021 issued by the respondents repatriating the petitioners to their parent departments since 'No Objection Certificate' (NOC) was refused to the petitioners for permanent absorption in the respondent Central Bureau of Investigation (CBI); and, (ii) the relieving orders dated 14th July, 2021, in terms of which the petitioners have been relieved and directed to join their parent organizations. A further direction is sought for permanent absorption of the petitioners with CBI.

4. Since both petitions are based on common facts, involve similar issues and have been filed by the same counsel, they are being decided by a common judgment.

5. The petitioners applied for deputation with CBI and were selected for the said deputation for an initial period of three years between 2010 and 2014. In 2017 and 2018, applications were invited from deputationist constables who met the eligibility criteria for absorption in CBI. In August, 2018 the petitioners, along with other constables were short-listed to appear for personal assessment before the Screening Committee constituted by CBI.

Based on the assessment by the Screening Committee, the respondents prepared a list of constables that included the petitioners, who were being considered for absorption in CBI and NOC was sought from their parent departments. On 4th July, 2019, the Ministry of Home Affairs (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, 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 MHA issuing NOC with regard to their permanent absorption. Vide order dated 14th July, 2021, the petitioners were relieved from CBI with effect from 14th July, 2021 and directed to join their parent departments i.e., CRPF/BSF.

6. In W.P.(C) No.7608/2021, parent departments of the petitioners found the petitioners to be ineligible for permanent absorption in CBI on the common ground of not having completed eighteen years of service.

7. Vide judgment dated 23rd July, 2021 in W.P.(C) No.6892/2021 titled ***R. Sugumaram & Ors. Vs. Union of India & Ors.*** and in W.P.(C) No.6935/2021 titled ***Narender Singh & Ors. Vs. Union of India & Ors.*** (filed by the counsel herein), this Bench had dismissed petitions raising similar issues and claiming similar reliefs. In ***R. Sugumaram*** supra, while

holding that there exists no vested right for absorption in the borrowing department, this Bench has observed as under:

*“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.

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."

8. The counsel for the petitioners has sought to distinguish judgment of this Bench in **R. Sugumaram** supra on the ground that readiness and willingness of the respondent CBI to absorb the petitioners has to be seen as on the date the proposal is sent and not on the date when the petition is listed for hearing, which aspect was not considered in **R. Sugumaram** supra. In this regard, the counsel for the petitioners places reliance on letter dated 31st July, 2019 from CBI to MHA (Annexure-P5 in W.P. (C) No.7575/2021) wherein CBI requested NOC in respect of eighty one other constables for absorption in CBI, which included the petitioners along with a case by case justification contained therein. Thus, he contends that CBI was always ready and willing to absorb the petitioners on the said date and the absorption could not happen because MHA did not decide the question of grant of NOC till 12th July, 2021. He submits that on account of two years delay by MHA in deciding the issue of grant of NOC, CBI now states that it does not wish to absorb the petitioners. In support of the said contention, the counsel for

the petitioners submits that the willingness of CBI to absorb the petitioners as far back in 2019 is also evidenced from the fact that CBI did not relieve the petitioners in 2019, when the maximum permissible period of deputation of seven years came to an end. The counsel further seeks to distinguish the judgment of the Supreme Court in *Kunal Nanda Vs. Union of India*, (2000) 5 SCC 362, relied upon by this Bench in *R. Sugumaram* supra by stating that in *Kunal Nanda* supra, CBI itself, had initially refused to absorb the petitioner therein, which is not the case in the present petitions.

9. It was further contended that the petitioners were continued on deputation beyond the permissible period of seven years of deputation, on account of which the petitioners missed out on the various promotions and other benefits due to them in their parent departments. They should have been repatriated upon completion of their maximum permissible seven-year deputation period in 2019 and there was no rationale of continuing their deputation till 2021.

10. In our view, the aforesaid contention of the petitioners is misconceived. The Court has to see the willingness of the parent department as well as the borrowing department to absorb an employee at the time when the deputationist approaches the Court. Whether in the past, the parent and/or the borrowing department was inclined to absorb the petitioners would be of no relevance. The petitioners have approached the Court now and it is at this point of time that the Court has to determine whether both the parent and the borrowing departments are agreeable to the absorption. If it is correct, as the petitioners claim, that both the parent and the borrowing departments were willing for absorption of the petitioners and yet the NOC

was not granted in 2019, the petitioners should have approached the Court at that point of time. The petitioners did not approach or challenge their non-absorption in any manner but continued to enjoy their deputation with CBI even beyond the maximum permissible period of seven years. Having failed to approach the Court in 2019, the petitioners cannot approach the Court now and claim the benefit of the situation that was prevalent in 2019 in respect of their absorption.

11. Though the counsel for the petitioners has contended that the parent departments of the petitioners had consented for the absorption of the petitioners with CBI in 2019, he has failed to point out any document in support thereof. Thus, it cannot be said that parent department of the petitioners were agreeable for the absorption even in 2019. If the petitioners felt that they were missing out on promotions in the parent departments on account of their continued deputation with CBI, they should have expressed their desire to go back to their respective parent departments. But the fact of the matter is that the petitioners expected that they would be granted NOC for permanent absorption in CBI and therefore, they continued with their deputation without any protest or demur.

12. It is further contended by the counsel for the petitioners that other similarly placed personnel like the petitioners, who were also on deputation with CBI and had either overstayed the period of deputation or had not completed minimum 18 years of service, have been given NOC by MHA, whereas the petitioners were not. He contends that the respondents have followed a pick and choose approach in granting NOC to similarly placed personnel, and denying the same to the petitioners.

13. The petitioners in W.P.(C) No.7575/2021 were not granted NOC for absorption on account of overstaying their deputation tenure with CBI. Reference may be made in this regard to paragraph 3 of the policy for deputation titled “Policy Guidelines for Deputation of Combatised CAPFs & AR Personnel in Other Organisations” (Guidelines):

“3. PERIOD OF DEPUTATION:

...

(B) (i) The tenure of deputation to other CAPF and Central Government Organisations such as :-

- CAPFs- (AR, BSF, CISF, CRPF, ITBP, NSG, SSB)

- CPOs - (IB, CBI, BPR&D, NCRB, SVPNPA, NEPA, NICFS)

- NDRF

- Any other Central Government Organisations except as mentioned in Para-3(A) above will initially be 05 years and further extendable up to 07 years, one year at a time with prior consent of the lending Organisation by the competent authority, on specific request from the bon-owing Organisation/Department.”

14. The petitioners in W.P.(C) No.7608/2021 were denied NOC for absorption as they had not completed eighteen years of service. In this regard, reference may be made to paragraph 17 of the Guidelines, which is provided hereinbelow:

“17. A CAPF personnel proposed to be absorbed by the borrowing Organisation/Department should have a minimum of 18 years of service on the date, on which the absorption is proposed by the borrowing Organisation/Department. Also, the person proposed to be absorbed should already be on deputation with the said Organisation. This condition of 18 years shall be read as 15 years in case of Low medical category personnel”

15. It is clear from the above that the petitioners did not fulfill the eligibility condition for absorption and therefore, the petitioners had no right to claim absorption.

16. It is a settled position of law that there can be no negative enforcement of right to equality enshrined under Article 14 of the Constitution of India. Simply because other similarly placed personnel have wrongly been given a benefit, that cannot be the basis for the petitioners to claim similar benefit. Reference in this regard may be made to the decisions in *Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain* (1997) 1 SCC 35, *Union of India Vs. International Trading Co.* (2003) 5 SCC 437, *State of Bihar Vs. Upendra Narayan Singh* (2009) 5 SCC 65, *Fuljit Kaur Vs. State of Punjab* (2010) 11 SCC 455, *Union of India Vs. M.K. Sarkar* (2010) 2 SCC 59, *State of Orissa Vs. Mamata Mohanty* (2011) 3 SCC 436 and *Basawaraj Vs. The Spl. Land Acquisition Officer* AIR 2014 SC 746.

17. Reliance placed by the counsel for the petitioners on order dated 26th July, 2021 of the High Court of Jammu and Kashmir in W.P.(C) No.1439/2021 titled *Talvir Singh Vs. Union of India & Ors.* is completely inapposite, as it is only an ad interim order and rights of the parties are yet to be conclusively decided.

18. The contention of the counsel for the petitioners that *Kunal Nanda* supra is distinguishable on the ground that it was premised on a different factual scenario cannot be accepted. What was relied upon in *R. Sugumaram* supra was the principle laid down in *Kunal Nanda* supra that, personnel on deputation have no vested right in continuation or absorption

in the borrowing department. Thus, there is no need to take a view different from the view taken by us in *R. Sugumaram* supra.

The petitions are dismissed.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

AUGUST 3, 2021

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